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President
Laguna Resource Services, Inc.
To the Subcommittee on Indian and Alaska Native Affairs
U.S. House of Representatives
Oversight Hearing on Tribal Development of Energy Resources and the Creation
of energy jobs on Indian lands”
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Introduction

Good morning Chairman Young, Ranking Member Boren and members of the Subcommittee on Indian and Alaska Native Affairs. Thank you for the opportunity to appear before you today to discuss this critically important topic for our nation as a whole and Indian Country in particular.

By way of introduction, I am a member of the Campo Band of Mission Indians in San Diego County (Campo Band). I served as an elected representative of the tribe for over 17 years. I am an engineer and for over 15 years have worked both on Indian and non-Indian projects as an environmental and energy consultant. This experience has given me the opportunity to recognize the legal, regulatory and institutional hurdles Indian tribes face in trying to develop their natural resources and improve the standards of living of their members.

My testimony today is to highlight the great potential for renewable energy development in Indian Country. As you know, Indian lands represent 5% of the U.S. land base, while holding the potential of 10% of the renewable resources. It is in the interest of Indian Country and the nation that these resources be harnessed. When they are harnessed significant benefit will be produced for some of our most impoverished communities, while simultaneously helping to diversify the energy portfolio of the United States.

In the following paragraphs, I will outline some of the basic problems that hinder the development of renewable energy resources in Indian tribal communities and make what I hope you will agree are reasonable recommendations to overcome these problems.

Background

For Indian tribal communities, the recurring theme of resource extraction or use with little or no economic gain to the tribal community is a painful legacy that has only begun to change in the last 30 years. Resources were taken from Indian lands for a royalty payment that often was often deemed “fair” by Federal officials who had little stake in the welfare of the community. These raw resources then went to off-reservation locations where they were transformed into valuable products sold into the commercial markets. The end result of decades of such treatment is a fundamental mistrust of “passive” energy deals which simply extract resources and fail to invest in the long-term health of tribal economies.

In recent years, many Indian tribes have made tribal ownership a central criterion for any large-scale development on their tribal lands.

Tribes, like any thoughtful and reasonable government, want to ensure that the full benefit of economic development is maximized for their citizens and the community as a whole. As such, the dual role of tribes as owners and potential developers must be viewed in terms of the obligation of tribal governments to provide services like law enforcement, education, elder care, emergency services, environmental protection and the like to their members, residents, visitors and employees within the reservation.

Tribes, as *owners*, face a substantial hurdle in that governments are unable to take advantage of incentives such as the production/investment tax credits and accelerated depreciation that can represent over 50% of the value of a commercial scale wind or solar project. Not only can the unavailability of these incentives make a project untenable, it almost certainly makes the tribal project uncompetitive.

Indian tribes, as *governments*, face an additional constraint in that potential tax revenues that are expected and relied on in off-reservation projects are subject to varying levels of intrusion from state and local governments for on-reservation projects. Consider the following example: a modest 200 megawatt project on tribal lands could generate over \$15 million dollars in sales tax (at 6%), \$33 million in property tax (at 1%) and hundreds of millions in corporate and individual taxable income over a twenty-year project life. The reality is that the intrusion of state and local tax authorities into tribal projects over the last 30 years has resulted in part, or all, of the potential tribal revenue being siphoned off into the state and local coffers.

The result of this excessive taxation of a project's revenues is not only the loss of revenue to fund governmental services on Indian lands, but the added possibility that tribes will refrain from developing their resources in the first instance.

A case in point is the Campo Band. The Campo Band was the first tribe in the nation to develop a large scale wind energy development, which was put into operation in 2005. For the Campo Band, the desire to enter the renewable energy field was balanced against the inherent economic unfairness and the uneven playing field described above. The tribe decided that a 50 megawatt wind project would give it the opportunity to enter the renewable energy field, while continuing to work to achieve a fairer system for future projects. With a potential of an additional 250 megawatts, the initial project was determined to be a conservative first step. This was a difficult decision, however, as it meant accepting the fact that tens of millions of dollars in sales tax would be collected by state and county governments, and that none would be shared with the tribe. Additionally, property taxes (currently over \$300,000) generated annually by the Campo project are taken entirely by San Diego County, again with none going to the tribe. (While Congress and the Courts have made it clear that outside governing bodies have no right to directly tax tribal lands, the courts have found that the non-Indian interests in leases of tribal lands are a taxable property right. While there is nothing preventing a tribe from developing its own property tax, the specter of dual taxation often makes projects economically infeasible.) When property tax is correlated with population, the Campo members generate a higher property tax per capita than the local off-reservation community. Yet, Campo provides the fire protection, emergency

medical, environmental protection and other services to the project and the local community, without benefit of any of the tax revenues it generated through on-Reservation projects.

Potential Remedies

Against the backdrop of being penalized as both a developer and as a government, tribes are pressured into a passive lease holder relationship with an outside developer, the relationship that offers the lowest value for the tribal community and represents, sadly, a repeat of the historical method of resource removal and exploitation that tribes have fought so hard to overcome. (Typically, because of limited revenue, on-reservation projects have been developed by outside third party non-Indian developers. Because of federal restrictions on agreements that encumber Indian lands third-party development usually requires the transfer of a leasehold interest to the developer. Approval of such leasee requires extensive bureaucratic review, including but not limited to review under the National Environmental Policy Act (NEPA), that can actually take years.)

A level playing field would enable tribes to benefit from the dual roles of developer and government. The American Recovery and Reinvestment Act, (ARRA) temporarily corrected a long-standing disparity in tribal access to capital at more favorable rates by authorizing tribes to issue tax exempt bonds to finance economic development projects. This is the kind of reform that is enormously beneficial and should be made permanent.

Federal legislation to authorize the transferability of tax credits and depreciation allowances from Indian tribes (non-taxable entities) to private entities (Federal taxpayers) will further open the door for tribes to invest as project developers, without any loss to the Federal treasury.

Federal support for tribes in their roles as governments would be bolstered by requiring that state and local property and sales taxes be justified based on governmental services provided to the project located on tribal lands.

At the state level, tribes must work with the state legislatures to push for an equitable share of tax revenues generated from jobs and businesses with operations on tribal lands.

An equally important aspect of renewable energy development is access to the transmission and distribution systems. In many parts of the country, the national energy distribution system was not engineered with tribal access in mind. As a result, tribes often find themselves at a competitive disadvantage in relation to projects sited on state or federal lands, offering lower cost access to the distribution infrastructure. Changes to the distribution priorities through reserved set-asides for tribal energy projects, or the use of feed-in tariffs, could contribute to a more equitable playing field.

In conclusion, Mr. Chairman, while I have focused on a handful of the major economic constraints to realizing the full commercial potential of wind and solar energy projects in Indian Country, there are many other constraints that prevent tribes from realizing their resource potential. These include access to technical assistance, funds for initial feasibility studies, resource inventories, assessments, and training. Additional impediments are the secretarial leasing review and approval process which is lengthy

and costly, the uneconomic appraisal requirements, and the time cost of complying with the NEPA.

I understand the Subcommittee will be preparing the legislation to reform or correct these and other problems and I urge you to consider the observations and recommendations of the National Congress of American Indians which has an ongoing effort to identify and work with Congress and the Executive Branch to address these constraints.

Making these simple, but significant, changes will help renewable energy projects to flourish in Indian Country and ultimately, contribute a significant element of the national portfolio.

I would be happy to answer any questions you have at this point.

Thank You.