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Navajo Nation Oil and Gas Exploration and Production  
Before the Subcommittee on Indian and Alaska Native Affairs  
Testimony on “The Native American Energy Act” (H.R.3973)  
February 15, 2012

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#### INTRODUCTION

Good afternoon Chairman Young, Ranking Member Boren, Congressman Gosar and members of this distinguished Subcommittee.

My name is Wilson Groen and I am the President and Chief Executive Officer of the Navajo Nation Oil and Gas Exploration and Production (NNOGC), an oil and gas exploration, development and distribution company wholly-owned by the Navajo Nation.

I want to thank Chairman Young, Ranking Member Boren, and our Congressman, Paul Gosar, for consulting with tribal leaders and experts in the energy sector in the development and introduction of H.R. 3973. I would also like to thank the Chairman and Ranking Member for the February 8, 2012 letter to Secretary Salazar calling his attention to the fact that the Bureau of Land Management’s proposed hydraulic fracturing regulation will provide additional, harmful and unnecessary regulatory burdens on energy producers in Indian Country on top of those already in place.

#### HISTORY OF THE NNOGC

The Zah/Plummer administration issued the Navajo Nation Energy Policy (Energy Policy) in January 1992. The Energy Policy was formulated with input from energy specialists, environmentalists, economic development specialists, lawyers, and political leaders of the Navajo Nation. The Energy Policy observed that the Navajo 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. The oil and gas leases issued by the BIA had relegated the Navajo Nation to the role as passive lessor, and that needed to be changed.

NNOGC is a direct outgrowth of the 1992 Energy Policy. The Navajo Nation Council created the Navajo Nation Oil and Gas Company, Inc., in 1993 as a tribal corporation for the purpose of engaging in oil and gas production as an integrated, for-profit business entity. The goal of the Council was to address the minimal values accruing to the Nation from oil and gas production on Navajo Nation trust lands.

NNOGC received \$500,000 in start-up capital from the Navajo Nation Division of Economic Development and, with a three-year grant from the BIA, produced a comprehensive business plan which initially concentrated on so-called “downstream” activities – service stations

and convenience stores – and on increasing revenues to the Nation by taking oil royalties “in kind” and marketing that oil at better prices than by the Nation’s lessees.

Since its creation, 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. 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 Navajo Nation and host communities, which these entities use to provide employment and services to the Navajo People.

NNOGC commenced operations in 1995, building two Chevron stations in Window Rock and Kayenta and acquiring another at Chinle. NNOGC immediately elevated the standards of service and cleanliness for stations on the Reservation; some stations did not even have toilets for the employees, much less the traveling public. Because of the favorable decision in *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450 (1995), NNOGC was able to lawfully bring gasoline into the Navajo Nation without State gasoline excise taxes, and NNOGC became the distributor of choice on the Reservation. NNOGC then purchased crude oil gathering and transmission pipelines when the right-of-way for those lines was about to expire. Those activities made NNOGC profitable and increased revenues to the Nation significantly.

After the Internal Revenue Service issued Revenue Ruling 94-16, it became clear to NNOGC that it should operate as a Federal corporation chartered under section 17 of the Indian Reorganization Act, as amended. The Navajo Nation Council petitioned the Secretary of the Interior for such a charter by Resolution in January 1997, and the Secretary issued the charter in December 1997. The Council ratified that charter by unanimous vote in February 1998. The Navajo-chartered corporation merged into the new Federal corporation shortly thereafter.

The State of Arizona sought a fuel excise tax agreement with the Nation. NNOGC negotiated that agreement on behalf of the Nation, and it has proved valuable to both the State and the Navajo Nation, which now retains 96.5% of those taxes and devotes that money to road construction and maintenance. While NNOGC lost its competitive advantage after the tax-sharing agreement was signed, the Council allocated Navajo funds to launch NNOGC into the “upstream” (exploration and production) part of the business.

#### NNOGC’S OIL AND GAS PRODUCTION

From 1998 to 2004, oil and gas production on Navajo lands in southeastern Utah had been in decline from 6% to 10% annually. Since then, NNOGC, in partnership with Resolute Energy Corporation (“Resolute”), has improved production levels and enhanced oil and gas recovery and the Nation is enjoying an increase in annual production, and consequently oil and gas royalty revenues. It is critical to the development of a sustained Navajo Nation economy to continue oil and gas resource development on Navajo lands. Approval of the proposed amendments to 25 U.S.C. §415(e) will increase the likelihood that a sustainable reservation economy can be achieved.

NNOGC and Resolute have now reversed the decline curve, and production from the Aneth Field has actually increased. The investments of NNOGC and Resolute have had other

benefits, including increasing employment and adding to economic prosperity in the Four Corners Area.

NNOGC, often with industry partners, is also leasing and developing additional tracts of land within and near the Navajo Reservation. NNOGC has recently partnered with another company to develop oil and gas reserves in Montana. NNOGC has also obtained rights to 150,000 acres of land within the Navajo Nation to develop coal bed methane, oil and conventional gas resources. NNOGC is also exploring the feasibility of developing helium reserves on the Reservation. All of this activity contributes not only to the self-sufficiency of the Navajo Nation, but also to the energy security of the United States.

NNOGC has expanded from its main office near Window Rock, Arizona, with an exploration and development office in Denver. NNOGC's generous scholarship program seeks to educate and train capable Navajo students who want to participate in this dynamic field at the highest levels. NNOGC has returned significant royalty payments, taxes, right-of-way payments, rentals, bonuses, scholarships and other contributions to the Navajo Nation and our host communities, and that money is devoted to essential governmental services by the Nation.

NNOGC's continued growth is critical to the development of a sustained Navajo Nation economy. Approval of the amendments to 25 U.S.C. § 415(e) as contained in section 11 of the "Native American Energy Act" will facilitate that growth and encourage Navajo self-determination by removing federal delays and unnecessary obstacles from the process.

#### COMMENTS ON "THE NATIVE AMERICAN ENERGY ACT"

The NNOGC fully 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. We support the provisions of the bill and, in particular, believe the following sections will go a long way to achieve these objectives.

Section 3 of H.R.3973 amends existing law to reform the costly and inflexible appraisal process and places a 30-day limit on the Interior Secretary's review and approval (or disapproval) of the appraisal. This section also authorizes tribes to waive the appraisal requirement, provided it releases the United States from liability for damages as a result of the lack of an appraisal.

Section 5 amends the existing law to reform the environmental review process triggered under the National Environmental Policy Act by limiting the distribution of required environmental documents to members of the relevant Indian tribe and other individuals residing "within the affected area." We believe this language will serve to reduce often-frivolous challenges made to energy projects on Indian lands.

Section 6 of the legislation would direct the Secretary to establish 5 "Indian Energy Development Offices" to (1) provide energy-related information and resources to tribes and tribal members; (2) coordinate meetings and outreach among tribes, tribal members, energy companies, and relevant governmental agencies; (3) oversee the timely processing of energy

applications, permits, licenses, and other documents subject to development, review or processing by specifically named Federal agencies; and (4) consult with Indian tribes to determine what services, information, facilities or programs would best expedite the responsible development of energy resources.

We understand the objectives of section 6 but, as far as the Navajo Nation and the NNOGC are concerned, believe a more effective option is that included in section 11 of H.R.3973.

As the Subcommittee knows, there is a long list of impediments to energy resource development on Indian lands. The NNOGC supports section 7 of the bill which will eliminate some of the financial challenges and prohibits the Secretary, from collecting any fee (1) for applications for permits to drill; (2) to conduct any oil or gas inspection activity; or (3) on any oil or gas lease for nonproducing acreage.

Just as section 5 would reform the NEPA process, section 8 will provide disincentives to those who would challenge energy projects on Indian lands by requiring the posting of surety bonds and payment of attorneys fees if the challenge is solely for purposes of frustrating such energy projects. The NNOGC supports this section and believes it, will level the playing field when it comes to frivolous lawsuits and dilatory administrative tactics that prevent energy projects from being pursued in Indian Country.

Likewise, the NNOGC supports sections 9 and 10 which will, establish a Tribal Biomass Demonstration Project, and provide that tribal resource management plans approved by the Secretary shall be considered “sustainable management practices” for purposes of any Federal standard, benefit or requirement that requires a demonstration of such sustainability.

In close collaboration with the Navajo Nation, the NNOGC is appreciative of the inclusion of section 11 in H.R.3973. We are also very appreciative of the strong support we have received from Congressman Paul Gosar.

#### SECTION 11. LEASES OF RESTRICTED LANDS FOR THE NAVAJO NATION

In 2000, the Navajo Nation requested Congress to amend the Long Term Leasing Act (25 U.S.C. §415) to authorize Nation to develop and execute its own business, home-site, agricultural and other leases without the approval of the Interior Secretary. The Nation made this request because member-owned businesses were not developing 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 Navajo 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 25-year limitation has hindered financing of improvements and thus discouraged long-term investment in the business site leases, and the Navajo Nation Council has, by

resolution, requested that this limitation be removed and that the Nation be permitted to issue such leases with terms of up to 99 years, as is permitted on other reservations and was permitted on the Navajo Reservation when Congress passed the Navajo Nation Surface Leasing Act in 2000.

The Nation has promulgated leasing regulations, approved by the Secretary, and 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 Navajo Nation's business leasing and environmental laws. The various agencies and offices of the Navajo Nation, which are the most advanced in Indian Country, have more than ten years experience in performing these studies and assuring regulatory compliance. The Navajo 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. Section 11 of H.R. 3973 would continue to advance Navajo Nation 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 25 U.S.C. § 415(e) to provide the Navajo Nation the ability to execute mineral leases, again, under the regulations approved by the Secretary of the Interior, for a term of 25 years, and potential renewal for an additional term of 25 years, the customary terms of minerals agreements approved by the Navajo Nation Council since approximately 1985.

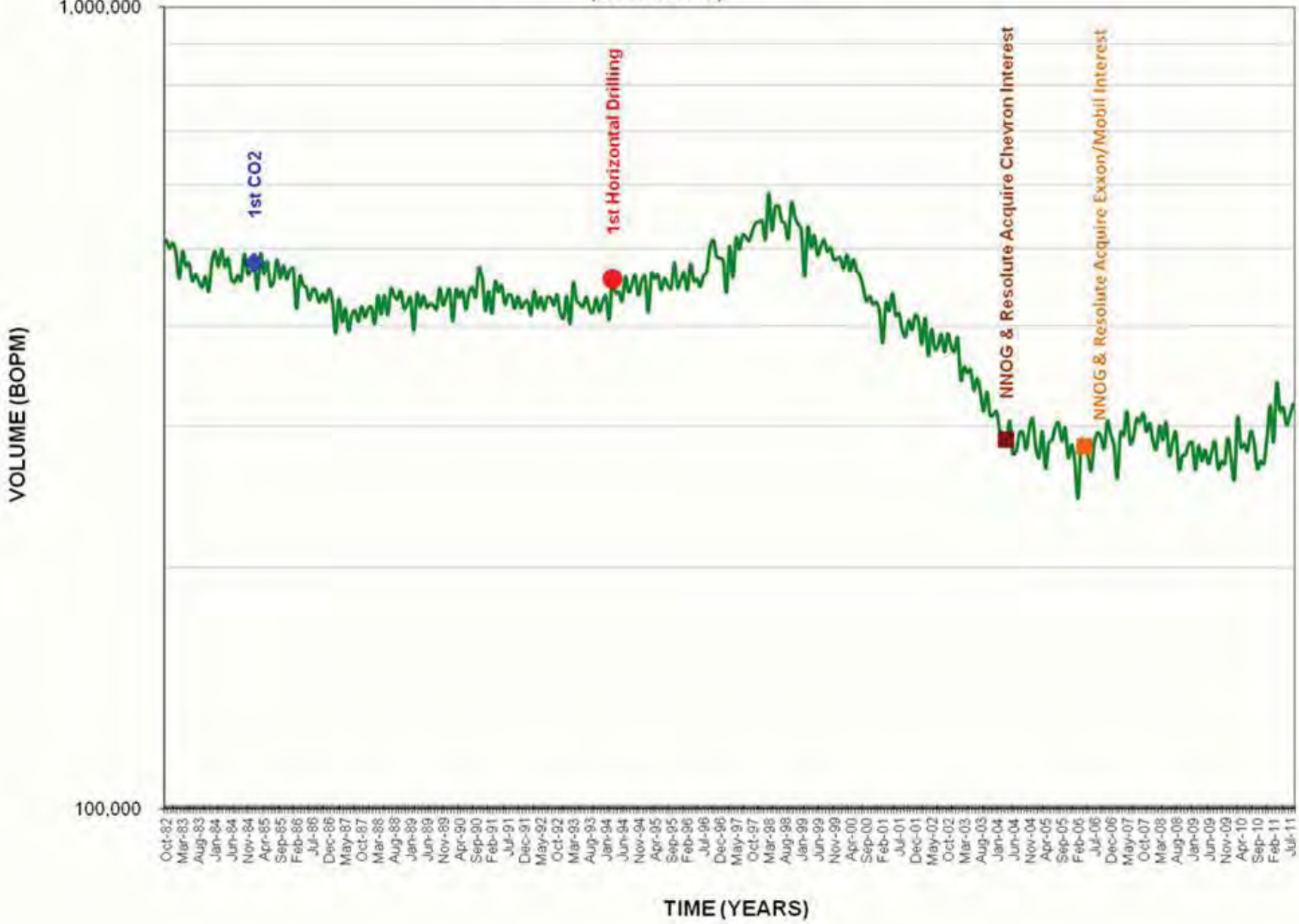
#### CONCLUSION

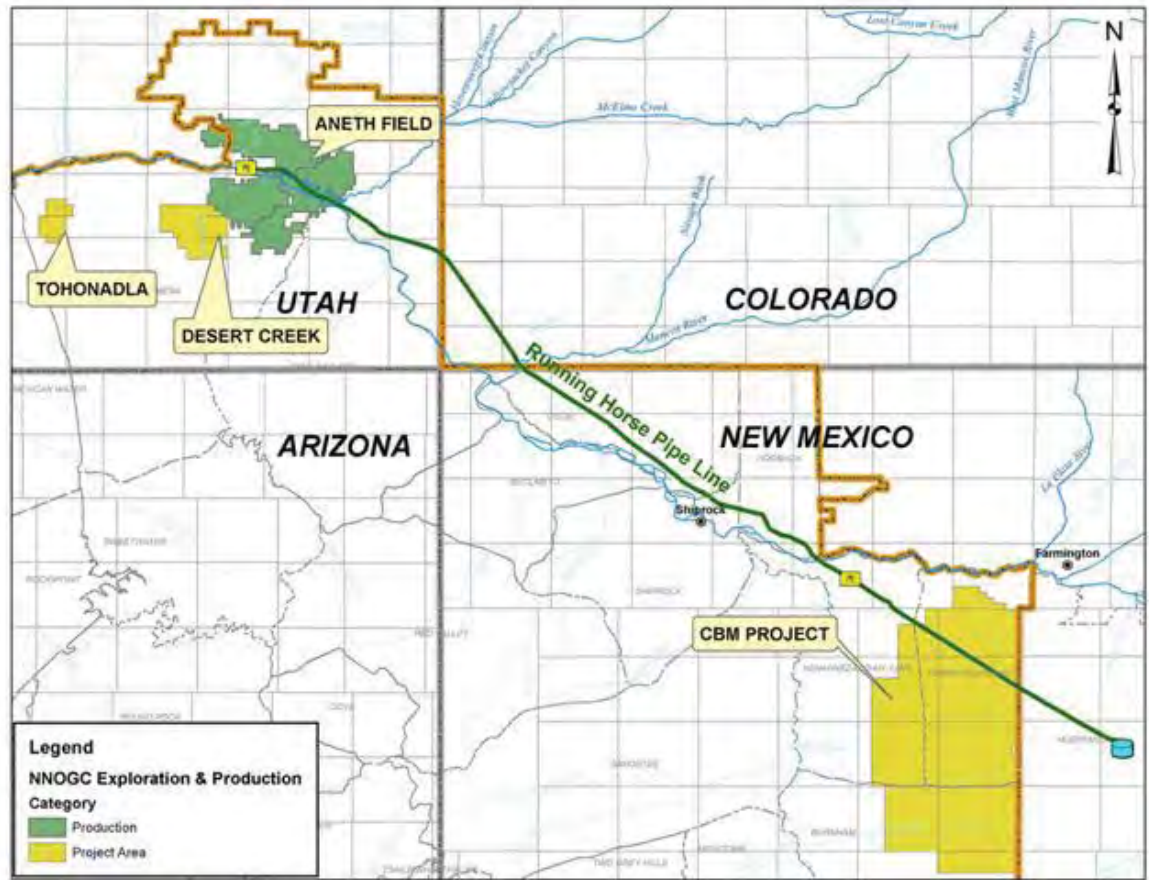
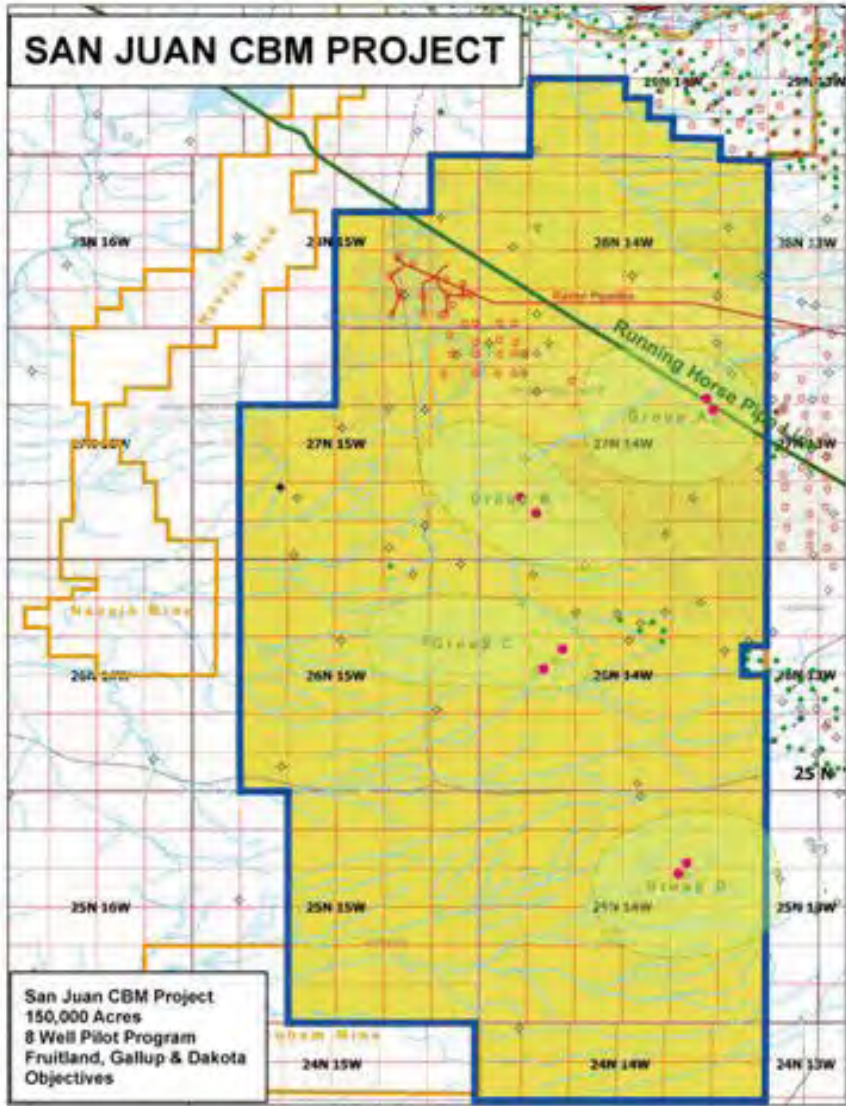
In conclusion, I want to thank Chairman Young, Ranking Member Boren, and Congressman Gosar for their leadership and vision in developing and introducing "The Native Energy Act."

It is our hope that the Subcommittee and the Full Committee on Resources will quickly and favorably report this important legislation to the House Floor for its consideration.

At this juncture, I would be happy to answer any questions you have.

### GREATER ANETH OIL PRODUCTION (Gross 8/8ths)





# Navajo Nation with Active Areas of Operations & Basins

