Before the House of Representatives
Committee on Natural Resources

Hearing on "*Tribal Prosperity and Self-Determination through Energy Development"*

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Testimony of Louis Denetsosie
Chief Executive Officer
Navajo Nation Oil and Gas Company

Good morning. I am Louis Denetsosie, President and CEO of the Navajo Nation Oil and Gas Company ("NNOGC") and a member of the Navajo Nation. I am also a former Attorney General for the Navajo Nation. NNOGC produces over a million barrels of oil a year on the Navajo Nation and operates an 87 mile crude oil pipeline and a number of c-stores and service stations on the Navajo Nation. NNOGC currently has 84 employees, virtually all of them tribal members.

Thank you for the opportunity to testify on the important topic of Tribal Prosperity and Self Determination through Energy Development. The Navajo Nation has been a major producer of coal for electricity generation and oil and gas in the Four Corners region of the reservation. The downturn in these industries has already had an adverse impact on the Navajo Nation economy as well as NNOGC and will continue to do so in coming years, therefore it is gratifying to have the Congress address these issues.

It is hoped that my testimony here will shed some light on some of the barriers and regulatory hurdles faced by the oil and gas industry in Indian Country and how Congress can spur more economic activity by lowering these barriers, including enacting legislation pending for reconciliation by the House of Representatives and the Senate.

NNOGC is in support of the legislation passed by the House of Representatives in HR 538 (Oct. 8, 2015), titled "An Act to facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development of Indian lands, and for other purposes," and similar legislation passed by the Senate in S 209, titled "An Act to amend the Indian Tribal Energy Development and Self Determination Act of 2005, and for other purposes." Enactment of a reconciled version of these two pieces of legislation by Congress, and particularly the amendments to 25 U.S.C. § 415(e), is of tremendous importance to the Navajo Nation and NNOGC. The House version of those amendments is preferable from a self-determination perspective, as it would leave any requirement for a ten year development period for oil and gas leases to be placed in an operating agreement or lease in the discretion of the Navajo Nation.

Removing the Bureau of Indian Affairs from the mineral lease approval process will eliminate unnecessary and burdensome layers of federal regulation. The Navajo Nation has a sophisticated three-

branch government. Through its Land Department and other executive branch agencies, the Navajo Nation comprehensively and thoroughly performs environmental, archaeological, biological and cultural resource studies of impacts on the environment from proposed oil and gas extraction, including impacts from applications for permit to drill ("APDs"). Clarifying the Navajo Nation's authority to issue its own oil and gas leases and drilling permits will remove additional layers of regulation by the Bureau of Indian Affairs and the Bureau of Land Management ("BLM"). Due to the redundant approvals that are required at present, it takes approximately four years to initiate a drilling program in Indian Country. That delay can make oil and gas exploration and production simply uneconomic on the Navajo Nation, and has been a significant hindrance to energy development by NNOGC. I therefore urge that reconciled legislation adopting the amendments to 25 U.S.C. § 415(e) be passed by the House of Representatives.

I would also like to note to the Committee that just last week the BLM announced that it is adjusting the fee for APDs on tribal lands to $9,610. As a tribal member, I have no objection to the collection of this fee on BLM lands but any fees collected for APDs issued on Navajo land should go to the Navajo Nation. The Navajo Nation performs the vast majority of the environmental studies and evaluations necessary for issuance of APDs on reservation lands and the services provided by the BLM relative to APDs are minimal.

From my understanding, S 209 would also make much needed changes to the requirements for entering into tribal energy resource agreements, or "TERAs," under Title V of the 2005 Energy Policy Act, P.L. 109-58. Although TERAs, once executed between tribes and the federal government, were intended to be a vehicle to improve energy development in Indian Country by removing requirements for further federal approvals, to my knowledge, not a single tribe has entered into a TERA because the requirements are so onerous. S 209 would streamline those requirements and would also create a new option for tribes to issue, without federal approval, leases and rights-of-ways on tribal lands to a certified Tribal Energy Development Organization, or "TEDO", an entity that would be majority owned by the tribal landowner. Thus, an energy and business arm of the tribe, like NNOGC, could be certified as a TEDO and no longer have to get BIA approval for energy development on behalf of its tribal owner. TEDOs and TERAs, under the proposed amendments to P.L. 109-58, are excellent vehicles for tribal self-determination in energy development, and I urge that reconciled legislation adopting this language in S 209 be passed by the House of Representatives.

Concerning other regulations not addressed by HR 538 and S 209, NNOGC has concerns about the proposed BLM regulations to reduce waste of natural gas from venting, flaring and leaks during oil and natural gas production activities and establishing when produced gas lost through venting, flaring or leaks is subject to royalties. The regulations, which are quite strict, are proposed to be codified at 43 Parts 3178 and 3179. The proposed regulations address an activity already regulated by states and other departments of the federal government. There are very few oil and gas pipelines on the Navajo Nation and thus venting and flaring under reasonable regulations is necessary if the industry is to be viable. For that reason alone, these regulations should not apply in Indian Country without the consent of the affected Indian tribe. Moreover, the regulations may be beyond BLM's delegated authority from Congress. In recently striking down hydraulic fracturing regulations promulgated by the BLM, the United States District Court for the District of Wyoming ruled that Congress has not delegated any authority to

regulate environmental impacts from oil and gas activities to the Department of the Interior. *See* State of Wyoming et al. v. Department of the Interior et al., __F.Supp.3d__, 2016 WL 3509415 (D. Wyo. June 21, 2016). That case is on appeal to the Tenth Circuit Court of Appeals, which will hopefully agree with the District Court's well-reasoned opinion.

Thank you for the opportunity to provide this testimony, and for your interest and assistance in improving tribal prosperity and self-determination in Indian Country and on the Navajo Nation, through energy development.