

**BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON NATURAL RESOURCES**

**Testimony of Matthew Box, Vice-Chairman  
Southern Ute Indian Tribe  
February 28, 2007**

Chairman Rahall and Members of the Committee:

On behalf of the Southern Ute Indian Tribe, I am deeply honored to be here today as a participant in your discussions of "The Evolving West." Indian country is a significant part of the West, and our cultures have been a major influence on its history and themes. There are approximately 300 Indian Reservations in the United States that collectively represent more than 2% of the Nation's land base. Most of those reservations are located in the West. Nine of those reservations are larger than the State of Delaware.

Based upon the 2000 Census, it is estimated that 2.5 million Native Americans live in the continental United States and Alaska, with approximately 500,000 Native Americans residing on Indian Reservations. We are the survivors of federal Indian policies that have varied dramatically through different periods of our Nation's history. Commencing with early treaty-making and sovereign recognition of tribes, those policies have included: removal of Indians from the East to the West, the creation of Reservations, the end of treaty-making, non-Indian settlement of aboriginal lands in the West, individual Indian land allotment, tribal re-organization, tribal termination, and, more recently, tribal self-determination.

My homeland, the Southern Ute Indian Reservation, is located in southwestern Colorado in the Four Corners Region. Since 1868, Ute-treaty lands that once comprised most of the western portion of the State of Colorado have been significantly reduced in size. Our Reservation now consists of approximately 710,000 acres; however, our Tribe owns less than fifty percent of that land. There are 1430 members of our Tribe, approximately half of whom live on the Reservation. Our people, land, and resources are our most important assets.

Despite many challenges to our Tribe's survival, today we can report substantial success. We have emerged from relative poverty to be one of the strongest economic forces in our region. We are the largest employer in the Four Corners with over one thousand employees, including many non-Indians. Most of our young children attend our own school, which is funded principally by the Tribe. Additionally, we provide substantial scholarship opportunities for members seeking secondary and graduate level studies. Our community infrastructure includes modern office buildings, top flight recreational facilities, and a modern courthouse and jail. Our water treatment plant provides safe drinking water not just to tribal members, but also to several non-Indian communities. Our waste water treatment plant, which also serves non-tribal entities, is state of the art.

In addition to per capita distributions and dividends to members from our financial investments, the Tribe provides retirement payments to our elders. We have a tribal member life insurance program, and we are pursuing health insurance programs. These are some of our accomplishments, and we are moving forward every day.

The source of our success has been our land. Located on the northern portion of the San Juan Basin, our lands contain vast quantities of natural gas, including coalbed methane. Revenues from natural gas production have been our economic lifeblood. Commencing in the 1950s, under the supervision of the Bureau of Indian Affairs (“BIA”) we issued oil and gas leases to production companies. We relied heavily on the BIA and other federal agencies to ensure that companies complied with their lease terms. Our tribal leaders quickly learned, however, that lease compliance was not a priority for the federal government. In response, our Tribe created its own Energy Department in 1980. In the process of collecting and reviewing information about our leases, we found that several companies, which had not complied with drilling and development obligations, held thousands of acres of our mineral lands for speculation. Additionally, leasing companies often avoided their royalty payment responsibilities. Since forming our own Energy Department, we have been aggressive in ensuring that companies comply with their lease obligations. Those efforts have required us to work closely with a number of federal agencies, including: the BIA, the Bureau of Land Management (“BLM”), and the Minerals Management Service (“MMS”).

In 1982, with the help of this Committee, Congress enacted the Indian Mineral Development Act, which for the first time authorized us to negotiate leases and flexible agreements directly with companies, subject to Secretarial approval. With the discovery of coalbed methane in our region, we took advantage of the new law, and by 1990, we had entered into more of those agreements than any other tribe. During that same time period, Congress approved settlement of our reserved water rights claims and appropriated funds for tribal economic development. This Committee has consistently supported implementation of that settlement agreement, and we remain extremely grateful for that support.

With a portion of the water settlement funds, we created our own energy company, Red Willow Production Company. Over time we purchased back many of our old leases and improved operations. Red Willow is now one of the largest producers of natural gas in Colorado. We also purchased an interest in one of the major gas gathering and treating companies operating on our Reservation. Today, more than one percent of the natural gas needed to satisfy the Nation’s natural gas requirements comes from our Reservation and flows through our gathering company facilities. Our in-house staff of engineers, geologists, landmen, accountants, and computer specialists is recognized as one of the best in the industry.

While our tribal leaders actively pursued strategies for enhancing revenue from our natural gas resources, they also recognized that those resources are finite and non-renewable. In fact, gas production volumes have already begun to decline on our Reservation. In order to prepare for the future, we have diversified our investments into

new areas, including: biomedical research, real estate development, home-building, radio scanning technology, and computer technology, and we are evaluating alternative energy technologies. Although gas will continue to be produced from our Reservation for several decades, our approach is long-term. We intend to remain on our lands forever.

Natural resource development poses many challenges, including environmental concerns. We have attempted to lead the way in employing prudent environmental practices. Protection of the environment is part of our cultural teachings, we generally exceed the requirements of laws in such matters. For example, in response to those who wanted to employ less-expensive methods of disposal, our Tribe insisted on deep underground injection of water produced in conjunction of coalbed methane. Only by doing so could we protect our water resources from degradation. We have also insisted upon development practices that minimize duplication of well pads and pipelines needed to produce gas. We were one of the first governmental entities in our region to monitor air quality, and our historical air quality data and information have been critical in evaluating the effects of growth and resource development in our region. Our Environmental Programs Division, Natural Resources Department, and Energy Department work in cooperation with federal, state and local governments in establishing environmental best practices. As participants and sponsors of such organizations as the Western Governors' Association and the Council of Energy Resource Tribes, we have been at the table with leaders throughout the West to discuss many of the issues related to natural resource development.

For example, one common circumstance that complicates energy resource development arises from ownership of split estates. Because of the federal reservation of mineral estates on many lands in the West, particularly lands patented after 1916, the federal government owns the oil and gas rights under lands where private parties own the surface. The patents under such lands guaranteed the federal government the right to develop those minerals. However, the issuance of federal oil and gas leases and the drilling of wells on those lands frequently raise objections from the private surface owners. Such conflicts are intensifying as more and more people build homes in once-rural areas and as more gas wells are drilled to recover leased resources. Although there are some unique federal aspects of the split estate issue, it is not just a federal matter. Even on lands patented in earlier time periods where there was initially no split estate, the private division of surface and subsurface interests has led to split estates.

We have this same situation on our Reservation, where the Tribe is the beneficial owner of trust minerals that underlie private, fee surface lands. Just as the Nation's demand for energy calls for additional development on federal lands, our economic needs require us to proceed with development of our gas resources on split estate lands. We have, however, been able to avoid much of the conflict that has occurred in other areas. We work extremely hard to meet the reasonable requests of surface owners, including their preferences for location of wellpads and pipelines and non-duplication of such facilities. We also believe that advances in horizontal drilling technology hold significant promise in minimizing surface disturbance in the future. We believe we are part of the solution and not just part of the problem. Even though it will not occur overnight, we also

recognize that, ultimately, less dependence on non-renewable energy resources and greater reliance on alternative energy sources could reduce the adverse surface effects of gas development.

The success and growth of our Tribe has had a number of political and social consequences that deserve mention. While decades ago, our neighbors, and officials from federal, state and local governments gave consistent encouragement for us to improve ourselves, they had no idea that we would really succeed. While many of our friends and neighbors have congratulated us for our accomplishments, in some cases, there has been a backlash to our achievements. As one former tribal chairman put it, "They liked us better when we were poor." People who feel that way simply have no understanding of the historical conditions that defined our path and the institutional disadvantages that we have had to overcome. Increasingly, we are called upon to defend the attributes of sovereignty that our Tribe possesses.

Much of the last year, for example, has been spent deflecting the efforts of energy transmission companies to obtain condemnation powers over tribal lands in the West. A congressionally mandated study of this issue, called for in Section 1813 of the Energy Policy Act of 2005, is close to completion. We have reason to believe that the collective resistance of tribes to condemnation of tribal land will be positively reflected in the final report that you will receive in the near future from the Department of Energy and the Department of the Interior. We hope that members of this Committee and other members of Congress will continue to honor the promises of tribal sovereignty made to Native Americans, and that you will resist efforts to limit our powers to control our lands or to subject tribes to the regulatory or taxing powers of State and local governments. We also hope that you will recognize the tremendous contributions that our achievements have had on the economic stability of our neighboring communities.

Institutional obstacles to the success of tribes continue to exist in numerous areas. Unfortunately, many of those barriers are the direct result of federal laws and policies and lack of federal attention. Because of the pervasive role of the Department of the Interior in Indian affairs, we are limited by law in what we can do without Departmental approval or involvement. Despite the dedicated service of many in the agency, the BIA appears to be collapsing. Only last week, our local BIA Superintendent informed our Tribal Council that our agency no longer has the resources to maintain the realty records for our lands. The limited staff is overwhelmed with the thousands of transactions that take place on our Reservation each year. The maintenance of those records is a fundamental aspect of federal trust responsibility. We cannot function without reliable realty records. We are prohibited by federal law from granting leases or rights of way without BIA approval. In many cases, delays in the review of environmental reports, archeological reports, and land status are extending from months to years. Those delays directly affect our development and revenues as well as the operations of third parties who must cross our lands in the normal course of business.

The shortfall in BIA support has affected our Tribe in other important areas. In 1972, Congress specifically authorized our Tribe to purchase lands for trust consolidation on

our Reservation (25 U.S.C. § 668). We have paid the money and purchased such lands. Most of these properties are agricultural or open space. None of them involve casinos or gaming issues. Currently, twenty applications are pending to place those lands into trust status. The applications have been awaiting approval anywhere from 3 to 11 years without action. Based on recent public comments of senior officials in the BIA, our situation is not unique. There are no resources anticipated to process those applications in the foreseeable future. Local BIA officials have also informed us that operational funds for our Indian irrigation project have dried up.

Health care also remains a critical concern on our Reservation. Approximately, twenty years ago, our Tribe used its own funds to construct a health clinic, which was leased to the Indian Health Service (“IHS”) to care for Indians on our Reservation. To facilitate the delivery of care, we contracted to operate the health clinic under the provisions of the Indian Self-Determination and Education Assistance Act. For two years, our contract has remained in a state of limbo because we refused to accept less than the statutory rate for providing the health care service. We have requested a federal court to order the IHS to comply with the law. Again, our experiences are not unique in this area.

We were one of the first tribes in the country to contract to perform royalty audits in conjunction with the MMS. Since 1985, our auditors have recovered more than sixty million dollars in underpayments from oil and gas companies operating on our Reservation. For reasons that we do not understand, the MMS wants to abandon or de-emphasize the practice of conducting royalty audits. In place of royalty audits, the MMS wants to utilize “compliance reviews,” which rely principally on unverified company-generated data. The information supplied by the MMS to Congress in support of this policy change has been flawed and has materially understated the amounts recovered by State and tribal auditors. Despite our request that MMS present corrected data to Congress, it has not done so, and the Agency’s reaction to our criticism has been hostile. In addition to demanding restrictive changes to our audit contract, the Southern Ute Indian Tribe no longer has a representative on the Royalty Policy Committee (“RPC”) where we have had a representative since creation of the RPC.

In conclusion, Members of this Committee understand that federal Indian policy is complex and that our futures are tied in large measure to the actions of Congress. As the West evolves, we hope that Congress will take the actions needed to maintain the vibrancy of our people and cultures. We also urge you to protect tribal sovereignty. Our Tribe is a proud example of what can be accomplished through strong leadership, hard work, and prudent resource development. Although our Tribe has the tools to be largely self-reliant, many tribes remain principally dependent upon the federal government for their existence. Accordingly, the federal trust responsibility is extremely important in Indian country and will be so for the foreseeable future. As we evolve, historic relationships, including the federal trust responsibility, may also undergo changes and adjustments. We hope that refinements in the trust responsibility will be made consciously with the objective of giving tribes the option and the opportunity to prosper. We also hope that federal agencies charged with trust duties are not permitted to limit our dreams through neglect or incompetence. We look forward to building on our

relationships with State and local governments, and we are confident that through mutual respect and cooperation we can protect the people and the lands of the West for many generations.