

PREPARED STATEMENT OF JOHN JURRIUS, FINANCIAL ADVISOR
TO THE UTE TRIBE OF THE UINTAH AND OURAY RESERVATION
TO THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
AND THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
“LAND USE ISSUES ASSOCIATED WITH ONSHORE OIL AND GAS DEVELOPMENT”

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INTRODUCTION

Good morning Chairman Grijalva, Chairman Costa, Ranking Members Bishop and Pearce, and distinguished members of the Subcommittees. My name is John Jurrius and I appear before you today at the request of the Honorable Maxine Natchees, the Chairwoman of the Ute Indian Tribe of the Uintah and Ouray Reservation. Mr. Chairman, I am the financial advisor to the Ute Tribe and I am accompanied today by Cameron Cuch, a tribal member and an energy analyst with Ute Energy LLC, an integrated energy company formed and owned by the Ute Tribe.

I thank the Subcommittees for the opportunity to appear before you this morning to talk about the experience of the Ute Tribe and how we believe other Indian Tribes can take advantage of the resources they are blessed with and new opportunities under the recently enacted energy law to develop and implement their own paths to economic development.

THE PROMISE AND POTENTIAL OF INDIAN TRIBAL ENERGY

In early 2001, the U.S. Department of Interior estimated that Indian Tribes own an enormous reserve of non-renewable energy resources such as natural gas, oil and oil shale, tar sands, and coal, as well as enormous potential to harness renewable energy resources such as solar, wind, and hydropower. Using then-prevailing market prices, the department estimated that

the development of these resources would result in some \$895 billion in revenues to their tribal owners.

As we all know, the tragic events of “9-11” and the ongoing war in the Middle East have caused the prices of oil, gas, and other energy commodities to skyrocket. For example, in 2001 the department valued Indian-owned oil at \$35 per barrel. Light sweet crude oil is now priced at \$65 dollars on the New York Mercantile Exchange. That’s a \$30 per barrel difference and suffice it to say that if the department revised its earlier analysis, the value of tribal resources would be in the trillions.

Because of their geographical remoteness, most Indian reservations were once seen as undeveloped --- indeed incapable of development. Today the Ute Tribe is one of dozens, perhaps hundreds, of Indian Tribes with both a natural abundance of energy resources and the determination to maximize those resources for the benefit of their members.

Combined with the sheer volume of energy resources, there are regulatory and policy reasons to be excited about the prospects of tribal energy development. In August 2005 President Bush signed into law the *Energy Policy Act of 2005* (Pub. L. 109-58) which included as Title V the *Indian Tribal Energy Development and Self Determination Act*. Title V is designed to assist Indian Tribes promote the development of their energy resources in ways that encourage tribal planning and decision-making, protect the physical environment, and result in increased employment and revenues to Indian Tribes, their members, and surrounding communities.

Title V authorizes Indian Tribes and the Secretary of the Interior to negotiate and execute “Tribal Energy Resource Agreements” (TERAs). With an approved TERA in hand, an Indian Tribe may enter into leases, agreements, rights-of-way and other business deals for energy

development on its accord and on its own land without having the Secretary of the Interior review and approve them.

The TERA mechanism reinforces the policy of Indian self determination and acknowledges in the law what we already know out in Indian country: armed with accurate information, tribal leaders make better and timely decisions than the Federal government when it comes to energy matters.

The Department of Interior's Office of Indian Energy and Economic Development (OIEED) is taking seriously its responsibilities under the new energy law and is preparing to publish the final regulation to implement the TERA provisions. Final publication is due to occur in June, 2007.

PROFILE OF THE UTE TRIBE OF THE UINTAH AND OURAY RESERVATION

The Uintah & Ouray Reservation (U & O Reservation) is located in northeastern Utah in the middle of the Uintah oil and gas basin. The U & O Reservation comprises some 8% of the entire State of Utah and ranges 120 miles north and south, east and west, and 150 miles diagonally. The Ute Tribe has become an aggressive energy producer and has leased tribal land for oil and gas resources for many years. In fact the Ute Tribe recently opened up an additional 400,000 acres of tribal land that had never before been developed.

Simply put Mr. Chairman, energy resource development is the backbone of the Ute Tribe's economy. Thanks to the vision and leadership of Chairwoman Maxine Natchees and the Tribe's Council, the Ute Tribe has taken steps from being a passive royalty collector to vigorously participating in the development of its natural bounty. So instead of simply leasing its lands to outside companies, the Tribe has begun to partner with the private sector to take an active position in the exploration and development of its resources.

THE TRIBE'S GOAL: FINANCIAL SELF DETERMINATION

Before I discuss the Tribe's specific energy projects and plans, it is important that I share with you the fundamental decision made by the Tribe's leaders and members several years ago. In 2001, the Tribe decided that it could no longer afford to play a passive role in resource development nor could it depend on the Federal government to provide vision, leadership or strategic decision-making, let alone wherewithal, for the well-being of its citizenry. To better serve its members, the Tribe decided it must become pro-active in dealing with resource development and the maximization of its financial assets.

The Tribe therefore developed a comprehensive plan to manage all aspects of its operations as a sovereign from providing basic government services to engaging in revenue generating activities. The Tribe's leaders knew that accomplishing the kind of restructuring necessary to effect these changes would require "buy-in" from the members, and so the financial plan was subjected to a tribal referendum. The membership approved the financial plan by a factor of 10 to 1, giving it the highest status under the Tribe's constitutional authority.

The financial plan called for an aggressive deployment of the Tribe's energy resource estate. Similarly, the plan authorized aggressively using the Tribe's financial assets beyond their historic role of simply subsidizing tribal government operations.

The financial plan's success required a sophisticated land data system that would enable the Tribe to identify (1) what it owned, whether surface or mineral estate; 2) whether those lands or minerals were leased or un-leased; and (3) whether the underlying agreements were complied with by the Tribe's private sector partners. In essence, the Tribe built a tool to allow us to manage our energy resource estate in real time.

The new land system helped the Tribe to determine that it had not received the market rate for most of its transactions; that nearly 50% of the rights-of-way holders were in trespass; and that a large number of exploration agreements were not in compliance.

The new system now enables the Tribe to show all tribal surface and mineral ownership, as well as other ownerships, e.g. Forest Service, Bureau of Land Management, State of Utah, and Fee Lands. The Tribe can also discern production by producer, by simply “clicking on” a well on an electronic map and reviewing the relevant agreement and resolution.

The Tribe can now drill down into any particular production field or well and determine when each well was drilled, determine what formations were completed, and calculate annual production.

Additionally, the new land system has helped the Tribe demonstrate to governmental officials and potential business partners that the Ute Tribe is a sophisticated operator with business savvy that cannot and will not be exploited.

CURRENT CHALLENGES TO TRIBAL ENERGY DEVELOPMENT

One challenge common in the west and one which Indian Tribes often face are the so-called “split estate” issues involving different ownership of surface and mineral estates. In these cases access to the subsurface minerals is an issue that must be resolved.

Mineral ownership is dominant under “Onshore Order Number One” which benefits the mineral owner. However, the Ute Tribe has identified situations where access to non-tribal minerals underlying tribal surface lands presents a major problem as it may involve access to sacred sites and areas of cultural and environmental importance to the tribe that the Tribe may seek to protect from development. As some on the Subcommittees know, the Ute Tribe is proposing a land exchange with the School and Institutional Trust Lands Administration

(SITLA) of Utah to rectify a class split-estate problem. The proposal is currently pending before the Bureau of Land Management.

The SITLA holds some 20,000 acres of *mineral lands* in the southernmost portion of the Hill Creek Extension of the U & O Reservation. The Ute Tribe holds the *surface rights* to these lands. These SITLA mineral lands lie in an area of great cultural significance to the Tribe. In addition, the Ute Tribe maintains these lands as a wildlife conservation area. Thus, it would be difficult for SITLA to lease these lands for mineral development. The proposed relinquishment would protect sacred tribal lands, consolidate tribal ownership, and reduce potential use of these sensitive lands by third parties. It would also assure a revenue stream to the SITLA by developing mineral resources which are not currently being developed.

If the proposed land exchange is not approved, the split estate problem will prevent the development of mineral resources, wilderness and culturally significant areas will not receive the certain protection they would under the terms of the agreement.

LACK OF REFINING CAPACITY HINDERS ENERGY DEVELOPMENT

Another current challenge to developing tribal resources is inadequate refining capacity to process production from tribal oil assets. A large volume of the crude oil produced on the reservation is what is called “black wax” crude oil. Black wax crude is a unique form of crude and is desirable for its low sulfur content and potential for the creation of high value wax and lube products. Current black wax crude production and drilling activities within the Uintah basin have been curtailed due to reductions in what Salt Lake City refiners are willing to accept for processing. These refiners have instead turned to imported Canadian crude oil which is fast displacing production from the Uintah basin and deprives regional refineries of any economic incentive to make capital investment necessary to process greater portions of local basin black

wax crude.

The importation of Canadian oil, along with the fact that black wax crude congeals quickly and therefore cannot be transported long distances by way of pipeline, means that in large part local black wax crude is “stranded” with no refinery to process it.

The intersection of these factors could result in a shut down of production for the Tribe at a time when the nation needs a boost in domestic oil production. The only way to prevent stranding this major energy source is to build new refining capacity in the Uintah basin that is capable of processing black wax crude oil. As it has done with other matters, the Ute Tribe is taking the initiative to build a new refinery in the Uintah basin.

Last month, the Tribe signed a Memorandum of Understanding (MOU) with Calumet Specialty Products to explore potential refining solutions for the Tribe’s black wax crude production. As many Members know, Calumet is a leading independent producer of high-quality, specialty hydrocarbon products in North America and the Tribe is excited about the potential for this new collaboration.

On a related note, the Tribe is keenly aware that there is great interest in the potential of oil shale and tar sands to reduce our national dependence on foreign oil. There are significant reserves of oil shale and tar sands on the Ute Tribe’s reservation and in the Uintah basin in general. The Tribe is perplexed as to how we as a nation can move forward with unconventional hydrocarbon resources such as these when it does not have the refining capacity to refine its own domestic energy resources existing resources and continues to depend on foreign resources.

Nonetheless, the Tribe’s refinery blueprint takes the long view and includes plans to construct oil shale and tar sand processing and refining facilities at a later date.

ENERGY DEVELOPMENT AND ENVIRONMENTAL PROTECTION

The Ute Tribe and all of its activities are inherently tied to its land. In a very real sense, the Tribe cannot be distinguished from its land. . These lands are the sole resource for the Tribe, and the sole source of its economic future. The Tribe protects and cherishes its land and has set aside a portion of its reservation as a pristine, untouchable area, preserved for its members alone.

As part of its energy plan, the Ute Tribe is engaged in ongoing discussions with the U.S. Environmental Protection Agency (EPA) on a number of issues affecting the Tribe. Because the Tribe is entirely dependent on revenues from oil and gas operations on Tribal lands to fund its government, a decrease in those revenues would prevent the Tribe from providing fundamental governmental services -- health care, education, housing, and law enforcement -- to its members.

EPA has requested that the Bureau of Indian Affairs prepare an environmental impact statement (EIS) addressing additional oil and gas development on the U & Ouray Reservation. The Tribe is taking an active role in that process and is designing an approach that assures development can continue while the review process is underway.

The Tribe is also working to resolve air emissions issues affecting the U & O Reservation. EPA has been slow to promulgate a minor source rule governing air emissions for Indian country and, as a result, operators on tribal lands must comply with overly complex and onerous air permitting requirements.

As the Members would guess, these operators can avoid the harsh and untenable air regulations simply by relocating their operations across the border of the reservation to state-regulated lands. The Ute Tribe does not want to see the double standards in air standards drive energy development from its reservation. The Tribe has been actively engaged with EPA, operators, and other regulators to address this anomaly. To its credit the EPA has thus far been

open to assisting the Tribe in developing creative approaches to resolving this issue.

Along these lines, the Tribe has reviewed the recently proposed “Indian Country Minor Source Rule” and has provided comments on it. The Proposed Rule is flawed because it fails to recognize the comparative disadvantage Indian Tribes are burdened with when it comes to air emissions. Nonetheless, the Tribe remains hopeful that EPA will promulgate an equitable and meaningful rule that results in a minor air source permit for Indian country.

CONCLUSION

In conclusion I want to thank you for the opportunity to appear before you and discuss the great things that the Ute Tribe is doing in northeastern Utah.

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