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Testimony on "H.R. 3973"

U.S. HOUSE COMMITTEE ON NATURAL RESOURCES
Subcommittee on Indian and Alaska Native Affairs
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Honorable Chairman Young, ranking member Boren, and distinguished members of the subcommittee, my name is Tara Sweeney and I am an Iñupiaq Eskimo from Barrow, Alaska.

I serve as the senior vice president of External Affairs for Arctic Slope Regional Corporation, or ASRC, and I am here representing the interests of over 11,000 Iñupiaq shareholders of ASRC.

ASRC is an Alaska Native corporation formed pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) for the area that encompasses the entire North Slope of Alaska. Shareholders of ASRC include nearly all residents of eight villages on the North Slope, Point Hope, Point Lay, Wainwright, Atkasuk, Barrow, Nuiqsut, Kaktovik and Anaktuvuk Pass.

ASRC owns approximately five million acres of surface and subsurface estate on Alaska's North Slope, conveyed to the corporation under ANCSA, as a settlement of aboriginal land claims. ASRC is the largest private landowner on the North Slope. Under the terms of both ANCSA and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), village and regional corporations like ASRC were charged with developing their assets, including the ANCSA-conveyed lands, for the benefit of their Alaska Native shareholders. The unique character of this relationship and these lands, founded in federal Indian law and the most significant Native claims settlement in U.S. history,

must be recognized by Congress and the Federal government in making any land management decisions, including decisions that impact the ability to develop energy resources on Native lands. ASRC lands are located in areas that either have known resources or are prospective for oil, gas, coal, and minerals. We remain committed to developing these resources and bringing them to market in a manner that respects Iñupiat subsistence values and ensures proper care of the environment, habitat and wildlife.

As part of this commitment to fulfill our Congressionally-mandated obligation to develop resources for the benefit of our shareholders, we constantly look to increase economic and individual development opportunities within our region, while preserving Iñupiat culture and traditions. ASRC has fostered a balanced resource development agenda by adhering to the traditional values of protecting the land, the environment, and the culture of the Iñupiat, while promoting development which improves the quality of life in the Arctic Slope communities.

Alaska's North Slope is a national energy province. It covers 50 million acres of the northern portion of our state and hosts many well known energy resource prospects and production areas including Prudhoe Bay and nearby oil fields, the National Petroleum Reserve in Alaska (NPR-A), the Coastal Plain of the Arctic National Wildlife Refuge and many others. It is adjacent to both the Beaufort and Chukchi Seas, which overlie the most prospective hydrocarbon basins of Alaska's Outer Continental Shelf (OCS).

Energy development on Native lands is familiar to ASRC, and we recognize that this is very important legislation. By facilitating development of energy on Indian lands, the proposed legislation would mark an important step in advancing the causes of energy security and providing for economic development in Indian communities. ASRC commends this subcommittee for making a significant effort to improve the laws which are intended to encourage, but sometime discourage, energy development on Indian lands.

Our communities realize that our survival depends on a healthy environment and upon resource development that exists in our region. Safe, responsible oil and gas development is the only industry that has remained in our region long enough to foster improvements to our remote communities. We formed our regional government in part to exercise permitting control on the explorers and producers of these energy resources and to benefit from the property tax

revenues contributed by the industry that built energy infrastructure in our region.

Despite the fact that there are significant known energy resources in Alaska that could contribute significantly to both domestic oil and gas production and the continued livelihood of Alaska natives, prospects lie fallow today because there is a near shutdown of new onshore and offshore development. This is due at least in part to a mixture of federal policy and land use decisions that have chilled exploration and development. However, another significant disincentive to development of these resources has been the reality that seemingly every stage of every project has been and continues to be the subject of administrative and legal challenges, brought by third parties whose sole mission is to prevent further development in Alaska.

Recognizing that the responsible development of Indian energy resources both serves the national interest and allows Indian tribes to pursue greater economic development and self-sufficiency, we are pleased to see that the legislation that is the subject of today's hearing contains a mechanism that is designed to reduce the uncertainties associated with such responsible development.

The mechanism would require that a party that seeks a preliminary injunction or administrative stay regarding the issuance of permits, licenses or other permissions for Indian energy projects post a bond in support of that challenge. If the litigant ultimately fails to prevail on the merits of the challenge, it would forfeit the bond in favor of the permitting entity.

Currently, the risks and costs are all on the side of the sponsor of an Indian energy project – we believe it would be more fair and equitable to require a bond to be posted so that parties seeking to challenge such projects are encouraged to more fully consider the merits of a challenge and face some risk (similar to the risks faced by the project developer) in challenging the projects. By balancing the risks between those who seek to develop Indian energy projects and those who seek to prevent those projects from being developed, we believe that Congress would be removing one of the significant disincentives that currently exists that has prevented greater energy production from resources in Alaska, including on lands owned by Native Corporations.

Similarly, we believe that the manner in which courts have awarded attorneys' fees to litigants under the Equal Access to Justice Act is skewing the litigation process, particularly where attorneys' fees are awarded even in cases where there is no final judgment for the litigant challenging the project. This provides an inequitable incentive for such litigants to file challenges to every proposed project. In light of the trend towards awarding attorneys' fees in all but the rarest of cases, we believe that it is necessary (and equitable) to remove this financial incentive to challenge every step of every Indian energy project.

We further suggest expanding the language to include mining, or in a more general sense, natural resource development projects on or near Native lands.

Please note that we are not advocating for, nor do we favor, attempts to restrict parties from legitimate challenges to projects that do not adhere to applicable federal and state requirements. Indeed, we have been very involved in ensuring that energy exploration and development on the North Slope and elsewhere in Alaska does not adversely impact the subsistence lifestyle of our Iñupiaq shareholders. We have pushed project developers to implement extra measures to avoid conflict with our subsistence hunters, and we do not want to limit our ability to challenge projects that fail to meet regulatory requirements designed to ensure that such projects do not adversely impact our Iñupiaq shareholders, their subsistence lifestyle, or their cultural resources. We believe that the legislation strikes an appropriate balance in terms of the risks and costs of Indian energy projects by removing incentives for filing meritless challenges designed simply to delay those projects, while preserving the right to bring meritorious challenges.

In conclusion, it is important to remember that the North Slope of Alaska is the place that our people have called home since time immemorial. The North Slope Iñupiat community subsists off the land and the sea that continue to provide the resources that support our survival. In addition to the substantial potential value that responsible development of the area's natural resources holds for our people, the land and its resources are essential to our subsistence way of life.

Congress must take a leadership role in developing sound energy policy for our nation. The federal government continues to send mixed messages about domestic energy production, and now is the time for Congress to act in the

best interests of Americans with respect to domestic energy and energy supply. Energy developed from resources that are located on Indian land, including land owned by Native Corporations under ANCSA, can play a substantial role in domestic energy production, and Congress should do everything in its power to ensure that such resources can be safely and responsibly developed, and without undue delay. ASRC stands ready to be part of the domestic energy supply solution for Congress.

We find that our community survival depends on continued energy production from our region. Let me be clear, without development in our region our communities will not survive. Thank you again, Committee members, for allowing me to share our views regarding this important legislation.