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Before the Subcommittee on Indian and Alaska Native Affairs
Committee on Natural Resources
U.S. House of Representatives

**Oversight Hearing on Tribal Development of Energy Resources and the Creation of
Energy Jobs on Indian Lands**

April 1, 2011

I. Introduction

Good morning, Chairman Young, Ranking Member Boren, and Members of the Subcommittee on Indian and Alaska Native Affairs. My name is Irene Cuch and I am a member of the Ute Tribal Business Committee of the Uintah and Ouray Reservation, which is located in the State of Utah. First, let me say that the re-establishment of this Subcommittee is a development that Indian Country welcomes and will ensure Indian issues receive the attention they deserve. I would also like to thank the Subcommittee for holding this Oversight Hearing and for providing the Ute Indian Tribe with the opportunity to appear here today. My testimony will focus on issues of paramount importance to the Ute Indian Tribe relating to the Tribe's energy development on the Reservation.

II. Background on the Ute Indian Tribe

By way of background, the Ute Indian Tribe (Tribe) has 3,157 tribal members living on one of the largest Indian reservations in the United States, with more than 4.5 million acres. The Tribe consists of three Ute Bands: the Uintah, the Whiteriver and the Uncompahgre Bands. The Business Committee has six members, two representatives from each of the three Bands --- each of whom serves a four year term. The Tribe's mineral estate is comprised of a fractionated, checkerboard system of ownership which makes the regulation and development of the Tribe's natural resources much more difficult. The Tribe's reservation is comprised of the following types of land ownership: Ute Indian Tribe Land, Ute Indian Allotted Land, Ute Distribution Corporation Jointly Managed Indian Trust minerals, along with privately owned fee and federal minerals. Indian Trust lands comprise approximately 1.2 million surface acres, and 1 million

mineral acres within the 4.5 million acre reservation boundary. This lack of unity between the mineral and surface estates is an ongoing challenge for the Tribe in developing its mineral resources.

III. Oil and Gas Development Crucial to Tribe's Economy and Government

The tribal government is an important provider of services to the tribal members, managing 60 separate tribal departments and agencies including land, fish and wildlife management, housing, education, emergency medical services, public safety, and energy and minerals management. The primary source of revenue for these tribal departments and agencies is revenue derived from oil and gas development, making the need to economically extract oil and gas resources on the reservation in an efficient manner of critical importance to the Tribe and its membership.

Energy development has long been an important part of our Reservation's economy. Early on in this country's history, as settlers migrated west and began to populate the Tribe's aboriginal areas, the federal government established the Uintah Valley Reservation in 1861 and removed the three bands from their homelands in Colorado to what were thought to be barren lands in the Uintah Basin. But oil was discovered in the Basin and within the Reservation. The early production of oil and gas on the Reservation began in the late 1940's, and further development increased in the 1960's, with significant expansion taking place in the 1970's, 1980's and again today. A significant amount of conventional oil and gas deposits have been explored and developed, and multiple oil and gas operating companies are proposing to continue development of oil and natural gas resources across the Reservation over the next 15 years.

Oil and gas development is important to the Tribe for many reasons, not least of which is because the State of Utah completely prohibits gaming of any kind, and the tribes in Utah do not have the gaming-as-development option. As a result, the Tribe's primary source of income is from oil and gas. The measured economic success of the Tribe has been directly attributable to the development of the Tribe's oil and gas resources. The Tribe has approximately 2,500 wells that include 300 gas wells. Ute tribal lands produce an average of 10,000 barrels of oil per day and we are in the process of opening up an additional 150,000 acres of mineral leases on the reservation with an \$80 million investment dedicated to exploration.

To attract outside capital and to assist in the measured development of its energy resources, in 2005, the Tribe established the Ute Energy LLC (Ute Energy). To-date, Ute Energy, which is a majority Ute Tribally owned company, has worked with private equity and energy companies to explore for and develop the Tribe's oil and gas resources. Ute Energy has proven an valuable asset in the Tribe's development, and has plans to drill and operate 54 wells in 2011, with an annual capital budget of \$216 million dollars. Through this company, the Tribe has taken an active role in the development of its resources and is investing significant capital and resources into the local economy to generate further development on tribal lands.

Ute Energy has also served the Tribe in generating investment and operational confidence in private sector operators. As an example, in June 2008, the Tribe though Ute Energy teamed with the Anadarko Petroleum Corporation to establish a jointly own the Chipeta gas processing and delivery plant in the Uintah Basin.

Using revenues from energy development, the Tribe has become a major employer and engine for economic growth in northeastern Utah with a diverse array of tribal businesses including a bowling alley, a supermarket, gas stations, a feedlot, an information technology company, a manufacturing plant, Ute Oil Field Water Services LLC, and Ute Energy LLC, an oil and gas development company. Our governmental programs and tribal enterprises employ 450 people, 75% of whom are tribal members. In addition, each year the Tribe generates tens of millions of dollars in economic activity to surrounding towns and communities.

IV. Indian Tribal Energy Has Enormous Potential

As you are aware, Indian tribes throughout this country own a substantial amount of untapped energy resources. Energy production from tribal lands equals ten percent of the total federal onshore production of energy minerals.¹ Indian-owned energy resources are still largely undeveloped: 1.81 million acres are being explored or in production, but about 15 million more acres of energy resources are undeveloped.²

¹ Tribal Energy Self Sufficiency Act and Native American Energy and Self Determination Act: Hearing on S. 424 and S. 522 Before the S. Comm. On Indian Affairs, 108 Cong. app. at 93 (2003) (statement of Theresa Rosier, Counselor to the Assistant Secretary-Indian Affairs, U.S. Dep't of the Interior).

²*See id.* (Statement of Sen. Ben Nighthorse Campbell, Chairman, S. Comm. on Indian Affairs).

There are over 90 tribes that own significant energy resources – both non- renewable and renewable in this country, and it is the goal of all of these tribes to fully develop these resources to provide jobs and incomes to their members and others, and to generate revenues to fund the essential programs and activities of tribal governments. Unfortunately, these tribes have quite often been prevented from realizing this goal, and a substantial amount of these energy resources have not been developed because of a number of comparative disadvantages including bureaucratic red tape, physical access limits to pipelines, transmission grids and the financial capital that would allow tribes to be equal partners in the development of their natural resources.

Given the disparate impact these issues have had on reservation economies, the Tribe is encouraged to see that this Subcommittee is holding this hearing to bring attention to these issues, and hopefully will be proposing solutions so that tribes can move forward in the development of their energy resources.

V. Federal Regulatory Impediments Strangle Tribal Development

The Tribe's success in creating economic growth has been curtailed by problems inherent in the federal regulatory system. These regulatory obstacles include delays with the Bureau of Indian Affairs' and Bureau of Land Management's approval of Rights of Ways and Applications for Permission to Drill (APDs), respectively, which serve to limit energy development on the Reservation.

Other inhibitors include the split estate issue, the triggering of the National Environmental Policy Act (NEPA) simply by virtue of the Secretary of the Interior's review and approval of lease and other documents, as well as a regulatory gap that currently exists with regard to the Clean Air Act and stationary sources in Indian Country.

V.1. Split Estate Issues as a Major Challenge to Energy Development

Since statehood, the Tribe's Reservation has been checkerboarded with the Tribe, the state and the federal government owning various surface and subsurface interests. The Chairman is familiar with this as a similar situation exists in Alaska with the Regional Corporations owning the subsurface interests and the Village Corporations owning the surface interests.

In 2005, the Tribe reached agreement with the State of Utah's School and Institutional Trust Lands Authority (SITLA) that would have SITLA relinquish certain mineral interests

within the boundaries of the Reservation to the Tribe and, in turn, SITLA would select other federal mineral interests also within the boundaries of the Reservation.

Once accomplished, the transaction will unify the Tribe's estate in an area of the Reservation that is culturally and environmentally sensitive and one where the Tribe will refrain from oil and gas development. The subsurface mineral interests to be conveyed to SITLA will also unify its estate in an area that is already subject to oil and gas development.

This is the kind of "win-win" agreement that we think makes a lot of sense, and will also result in American energy development at a time when it is critical that we develop our own resources.

Since 2006, a petition to effectuate this agreement has been pending with the U.S. Department of Interior. Despite the unanimous support of the Tribe, the State of Utah, and Duchesne, Grand, and Uintah Counties, the department has failed to review or approve the petition, claiming it lacks the legal authority to do so.

The Tribe and the State of Utah disagree with the department's legal analysis but, nonetheless, have agreed to seek a legislative clarification of the legal authority. On March 11, 2011, Representative Jim Matheson introduced H.R.1053, co-sponsored by Representative Rob Bishop.

The Tribe strongly supports H.R.1053 and is very appreciative of the determination and support of Mr. Matheson and Mr. Bishop in pursuing this matter. We are, of course, very glad the legislation was referred to this Subcommittee, Mr. Chairman, where we are hopeful it will get a warm welcome and be expedited to the Full Committee and the Floor of the House.

V.2. Delays in Approving Applications for Permits to Drill (APDs)

On Reservation, there is a direct correlation between the number of APDs approved and the revenues that are available to the Tribe to fund critical government programs and services. The Tribe has experienced significant delay in the approval of APDs and the agency needs to be more diligent and effective in approving these APDs. While the BLM approves and issues the actual APD for each well, the BIA approves the necessary Right of Way associated with each APD. The Tribe has been made aware that BLM has 90 employees working on APD-related issues, including federal and Indian lands, and approves twice as many APDs as APD associated ROW and NEPA review at the BIA. The BIA has only four people working on these issues at

the Uintah and Ouray Agency. As a result, the BIA has not been able to approve the Tribe's APD associated rights of way and NEPA reviews in a timely fashion.

The Tribe estimates that it will need 600-800 Rights of Way Applications processed and approved each year, for the next several years, yet currently the Tribe's energy partners expect 200 such approvals or less at the current rate. Some of these applications have been pending for more than five years, at great cost to the Tribe. As these Rights of Ways and APDs languish, the Environmental Assessments that accompany them become outdated, which results in additional costs to the Tribe. Our private sector energy partners routinely indicate that the processing and approval of permits by the agencies is the biggest risk factor in their entire operation on the Reservation, and the agency's current capacity limitations have served to cut-off the revenue stream to the Tribe, which limits the Tribe's ability to provide critical services and resources to our tribal members.

Put simply, the APD delays have been driving development away from tribal lands in favor of state and private lands with vastly lower associated fees. A real-world example of this disincentive will demonstrate my point. When oil or gas companies bring in drilling rigs without the necessary permits approved, the companies seek other opportunities and the rigs are relocated to other federal, state and private lands. Anadarko, for instance, needs 23 well locations approved per month in 2011 and beyond, but in 2010, their APDs had been approved at a rate of 1.7 per month." Operators, such as Anadarko and others, have indicated that inconsistent approvals of ROWs application result in difficult changes to operation plans and often results in development elsewhere, such as State and private lands. With consistent and reliable ROW and APD approvals, the Tribe is hopeful additional rigs will move on to Tribal lands and increase economic prosperity.

V.3. The National Environmental Policy Act and Tribal Operations

Current law requires the Secretary of the Interior to review and approve leases of Indian land for purposes of mineral development. Since the 1972 Tenth Circuit decision in *Morton v. Davis*, this review and approval has been considered to be a "major federal action" triggering the procedural requirements of the National Environmental Policy Act (NEPA).

As the Subcommittee can imagine, the sheer size of the Tribe's Reservation and oil and gas operations means that the Secretary is asked to review and approve a large number of leases, lease renewals and other business agreements related to mineral development.

As is the case with the APD delays and other associated regulatory challenges, the Tribe witnesses additional delays and cost in having to comply with the NEPA, while energy exploration and development operations on private lands do not. While each of these inhibitors by themselves may not be fatal to tribal development plans, taken together they present a formidable --- and almost insurmountable --- mountain of challenges. At the end of the day, leases and other required permits that go unapproved or are delayed mean that tribal communities remain mired in poverty and poor economic conditions.

V.4. The Regulatory Process Needs to be Streamlined

The Uintah Basin is a prolific producer of oil and gas and the Tribe needs the assistance of the Executive Department, specifically the Assistant Secretary of Indian Affairs, to ensure that the Department of the Interior resolves these backlogs to fulfill its trust responsibility by retaining the necessary personnel within BIA to assist in the APD approval process.

Because of the so-called "49 steps" the BIA has in place to approve energy leases and other business agreements involving many offices within the Bureau, the Tribe believes it would be a prime candidate for establishing a "one stop shop" to resolve these issues concerning the review and approval of leases and APDs, provided that sufficient personnel and funding is authorized and appropriated on a continued basis as necessary to accomplish this effort. The local BIA Agency would need as many as thirty-six additional staff members to process the 40 plus permits per month to meet our needs. In coming years, the need for greater regulatory efficiency in the permitting process will become even more urgent. Based on a survey of the Tribe's operating oil and gas partners conducted as part of the development of the Tribe's Reservation-wide EIS, it is estimated that over 5,000 new wells will be drilled on the Reservation over the next 15 years, involving over 4,600 different proposed surface locations. The creation of a "one-stop shop" designed to improve and streamline the permitting process would greatly benefit the Tribe by allowing for more efficient and effective future management of the Tribe's oil and gas resources.

V. 5. Clean Air Act Regulatory Imbalance in Indian Country

Apart from permitting and split estate issues, environmental regulatory issues also are of critical importance to the Tribe. Because the Environmental Protection Agency (EPA) has no Minor Source Permitting Program within Indian Country, gas compressor stations and other stationary sources related to energy development that would normally qualify as a “minor source” under state law and under EPA’s own regulations applicable to BLM and other federal lands have been subject to much costlier and more stringent “major source” regulations for purpose of air emissions regulated under the current EPA regulations. This results in a regulatory scheme that is not only fundamentally unfair and inequitable, but which detracts from future energy development in Indian Country, where operators would prefer to locate their energy production facilities on state lands, where such facilities are regulated as “minor source” emitters not major source emitters. Again, this is an instance of a federally-imposed comparative disadvantage that works against tribal development for tribes and their members.

The Tribe has objected to EPA’s treatment of minor emitting sources as "major sources" for purpose of air emission regulation given the fact that the application of these major source regulations has created a significant economic disincentive for the Tribe’s energy partners and operators to develop tribal minerals on tribal land. The application of these “major source” regulations has had a disastrous effect on the Tribe’s energy development on the reservation, as operators instead choose to locate their energy production facilities on state lands, where such facilities are regulated as "minor source" emitters not major source emitters.

The Ute Tribe has therefore led an initiative, in coordination with the Council of Energy Resource Tribes (CERT), of which the Ute Tribe is a charter member, and the National Congress of American Indians (NCAI), to secure support for EPA’s issuance of this rule. This would encourage additional energy production on Indian reservations by essentially leveling the playing field for energy development, instituting a comparable system of environmental regulation under federal law that is equal to state environmental regulatory systems.

However, the Tribes have recently been informed that EPA plans to issue this final rule without any further consultation with the affected Tribes. None of the Tribes have been provided with a copy of the Rule, and we are unable to determine what effect it might have on the course of our energy development. However, if the proposed rule does not allow for more efficient and productive environmental regulation of the air shed in Indian Country, or otherwise serves to

replace one complex and burdensome set of air permitting regulations with another to the further delay the regulatory process, this rule will have devastating consequences to the Tribes energy development. It is therefore critical that EPA provide the Ute Indian Tribe and other energy producing Tribes with an additional opportunity for review, comment and input on the terms of the proposed rule prior to final approval and promulgation. It is the opinion of the Tribe that EPA's approval and issuance of this rule without further consultation is violative of EPA's trust responsibility to the Ute Indian Tribe and is inconsistent the express terms of EPA's current and proposed consultation policy with Indian Tribes. Many of the problems that have come to arise with Tribal energy development have occurred because Federal Regulatory Agencies to not provide proper consultation with Tribes, and I greatly hope that this proposed minor source rule will not end up as another representative example of this type of problem. President Obama has issued a November 5, 2009 Executive Memorandum, recognizing the need for these Agencies to engage in full and meaningful consultation with Tribes on a government-to-government basis, which included holding subsequent rounds of consultation in situations such as the present one, where there are significant changes in EPA's originally-proposed activity when new issues arise and in providing follow-up consultation giving affected Tribes feedback with regard to how their input has been considered in the final agency action.

In closing, I would like to thank Chairman Young, Ranking Member Boren and members of the Subcommittee for the opportunity to present these issues on behalf of the Tribe and can commit to the Subcommittee the continued cooperation of the Tribe in finding ways to eliminate these barriers that are preventing the Tribe and its members from realizing improved standards of living and hope for our children and grandchildren.

Towaok (Thank You)

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