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To the House Subcommittee on Indian and Alaska Native Affairs

Oversight Hearing

”Bureau of Land Management’s Hydraulic Fracturing Rule’s Impacts
on Indian Tribal Energy Development”

April 19, 2012

INTRODUCTION

Good afternoon Chairman Young, Ranking Member Boren, and members of this distinguished Subcommittee.

My name is Wilson Groen and I am the President and Chief Executive Officer of the Navajo Nation Oil and Gas Company (NNOGC), a company wholly-owned by the Navajo Nation (the Nation). NNOGC is active in oil and gas exploration and production on and off Navajo lands, owns and operates a crude oil pipeline, and is a retail and wholesale distributor of refined petroleum products. I had the privilege of appearing before you in February of this year to discuss Chairman Young’s “Native American Energy Act” (H.R.3973), and urge you to bring that bill to a markup in the full Committee on Resources.

Thank you for the opportunity to appear today to discuss the Bureau of Land Management’s (BLM) proposed hydraulic fracturing regulation that will provide additional and unnecessary regulatory burdens on energy producers in Indian Country.

NNOGC’s mission statement is particularly appropriate considering the theme of this oversight hearing. It is NNOGC’s mission to “Maximize resources for the benefit of the Navajo Nation with respect for Mother Earth.” I can assure the Subcommittee that NNOGC approaches its mission and its operations with utter seriousness.

BACKGROUND OF THE NNOGC

In 1992, the Navajo Nation Energy Policy (Energy Policy) was issued by the Nation after much discussion and input from energy experts, environmentalists, economic development specialists, lawyers, and political leaders of the Nation. The Energy Policy observed that the Nation was resource rich, but that it was neither obtaining proper value for its minerals nor, more importantly, participating in the energy industry as a business owner. For example, the standard oil and gas leases issued by the Bureau of Indian Affairs (BIA) relegated the Nation to the role as passive lessor, and that needed to be changed.

NNOGC was established in 1993 and is a direct outgrowth of the Energy Policy. The Nation's objective was to launch a tribal corporation to engage in oil and gas production as an integrated, for-profit business entity to maximize the value of the Nation's energy resources for the benefit of the Navajo people.

NNOGC has acquired and now operates an 87-mile crude oil pipeline, acquired and is continuing to acquire significant oil and gas working interests in the Greater Aneth, Utah, oil fields, and expanded its retail and wholesale business. Just last week, NNOGC entered an option to purchase 10 percent of Resolute Energy Corporation's interest in the Aneth Field, the largest oil producer in the State of Utah.

While NNOGC is still in a robust growth mode, it has returned significant royalty payments, taxes, right-of-way payments, lease payments, scholarships and other contributions to the Nation and host communities. Much of the Nation's resources used to provide employment and services to the Navajo people derives from NNOGC's operations.

NNOGC'S OIL AND GAS ACTIVITIES

Since 2005, oil and gas production on Navajo lands in southeastern Utah has increased and the Nation is consequently witnessing an increase in oil and gas royalty revenues. It is critical to the continued growth of the Nation's economy to continue oil and gas resource development on Navajo lands.

NNOGC, often with industry partners, is also leasing and developing tracts of land on and near the Navajo Reservation. NNOGC has obtained rights to 150,000 acres of land within the Nation to develop coal bed methane, oil and conventional gas resources. NNOGC is also exploring the feasibility of developing helium reserves on the Navajo Reservation. NNOGC has recently partnered with another company to develop oil and gas reserves in Montana.

As the Committee will surely appreciate, these activities contribute not only to the Nation's self-sufficiency, but also to the energy security of the United States.

NNOGC COMMENTS ON THE BLM'S PROPOSED RULE

NNOGC is a corporation wholly-owned by the Nation, and is a significant producer of oil and natural gas from Nation lands. With the largest reservation and tribal population in the U.S., NNOGC's energy-related activities represent a major source of revenues to the Nation and significant employment and income opportunities to Navajo people.

Tribal oil and gas producers and their private sector partners around the country, including the Southern Ute Indian Tribe, the Ute Tribe of the Uintah and Ouray Reservation, the Mandan Hidatsa and Arikara Nation, and the Blackfeet Nation, make prudent use hydraulic fracturing and believe the practice necessary for the future development of their mineral resources. NNOGC agrees with these sentiments, particularly with respect to the anticipated development of recently-acquired lands and mineral resources.

Should the department proceed with a rule regulating the practice of hydraulic fracturing, NNOGC strongly suggests it be guided by the following principles and considerations.

The expressed justification for the rule is to “protect the larger public’s interest in the public domain,” and as Indian lands cannot remotely be considered “public lands,” the rule should not apply to Indian lands in the first instance.

Nevertheless, if the department decides to proceed with a rule and intends the rule to have application to activities on Indian lands, the rule should not include reference to state and local rules or jurisdiction over activities and persons on Indian tribal lands, see e.g., 25 CFR 1.4.

Departmental officials have cited environmental protection, and specifically water quality measures, as justifying the need for a Federal rule to regulate activities related to hydraulic fracturing. The reality is that best management practices have been successfully developed in the oil and gas industry relating to the hydraulic fracturing process, the construction and monitoring of wells and wellbore integrity, groundwater sampling and protection, and others, all of which minimize the types of environmental degradation that is at the heart of the argument for a Federal rule.

Unlike all other landowners in the U.S., Indian tribes and their development corporations such as NNOGC face unique hurdles in their efforts to identify and develop conventional energy resources. These hurdles include significant delays in securing Federal approvals for land leasing and related permitting, an untimely Federal appraisal process, fees for applications for permits to drill and other Federal fees, NEPA compliance, and other challenges which, taken together, result in under-investment in energy resource development on tribal lands.

A Federal rule relating to hydraulic fracturing will result in additional and extraordinary delays in getting tribal projects moving because the need for new BLM approvals will likely foster appeals that could take the Interior Board of Land Appeals a year or more to decide.

Imposing a new, burdensome rule on tribal energy producers and their partners is contrary to the essential thrust of Indian energy bills now pending in the House of Representatives and the Senate that are intended to remove unreasonable, uneconomic, or anachronistic barriers to more vigorous energy production on Indian lands and to promote tribal self-determination and self-sufficiency. The BLM’s proposed regulation will place additional burdens on an already over-regulated industry and will harm Indian tribes, their members and surrounding communities, many of which depend on energy production to drive the regional economies.

To-date, the BLM has held four regional meetings to discuss a draft rule informally shared with tribes earlier this year. I am reliably informed that a second draft rule has been developed but has not been circulated to any tribes. Given there is a second draft rule extant, and as various Indian tribes, the National Congress of American Indians, the Council of Energy Resource Tribes, industry groups, and Members of Congress have already noted in correspondence to you, the breadth and depth of BLM outreach and consultation with Indian Country has been insufficient given the potential impact the rule could have on tribal energy resources and economic development.

In lieu of the proposed rule’s current trajectory, NNOGC has urged the department to undertake a more vigorous consultation with the tribal community consistent with President

Obama's public commitments and Secretarial Order 3317, in which Secretary Salazar announced a policy of "enhanced communication" when it comes to decisions that impact Indian tribes and their members.

CONCLUSION

In conclusion, I want to thank Chairman Young and Ranking Member Boren for their leadership in holding this oversight hearing.

If, as we suspect, the BLM insists on promulgating the proposed rule, we urge the Subcommittee to consider legislative action that will respect tribal regulatory authority and encourage the continued development of energy resources on Indian lands.

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