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**Testimony on**

***The Bureau of Land Management's Hydraulic Fracturing Rule's  
Impact on Indian Tribal Energy Development***

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**Before the Subcommittee on Indian and Alaska Native Affairs  
Of the House Committee on Natural Resources**

***Introduction***

Good morning, Mr. Chairman and members of this Committee. My name is Wes Martel, Co-Chairman for the Eastern Shoshone Business Council. On behalf of the Eastern Shoshone Business Council and the Northern Arapaho Business Council, I thank you for this opportunity..

The Wind River Indian Reservation is located in west-central Wyoming with over 2.2 million acres of land where we have been in the oil and gas business since 1891. In 1979, several tribal members undertook an investigation of our oil and gas fields whereby we were able to prove that all of the major oil and gas companies and the independents operating on our Reservation were stealing from us and not paying correct amounts and values. We pointed this out to the State of Wyoming and soon all of the western states began auditing after they learned what was transpiring and recovered billions of dollars in the early 1980's based on what they initially learned from Wind River.

***The Federal Oil and Gas Royalty Management Act of 1982***

Congress' answer to these egregious transgressions was the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) which established the system as we know it today. Minerals Management Service (MMS) was created, (now Office of Natural Resource Revenue (ONRR)), to oversee production accounting and royalty auditing. The Bureau of Land Management (BLM) was delegated the responsibility of the subsurface inspection and enforcement as it pertains to Federal policy and statutes and the Bureau of Indian Affairs (BIA) plays a role in regards to land records, lease agreements and surface environmental obligations. In 1983, I and 10 others representing Tribes, industry, states and the Federal government were appointed by Interior Secretary James Watt to the Advisory Committee on Minerals Accountability (ACMA) to promulgate regulations for FOGRMA. Thirty years later we are still waiting for these regulations to be fully implemented.

***FOGRMA Section 202 - Cooperative Agreements***

Section 202 of FOGRMA authorizes Tribes to enter into Cooperative Agreements to assume the duties of the MMS/ONRR to perform production accounting and royalty auditing functions. This is a role that we have been undertaking at Wind River for over 25 years. This Section also allows Tribes to undertake the inspection and enforcement duties associated with BLM's responsibility

as it relates to monitoring, enforcement and protection. Unfortunately, this is an area where Congress and the Department of Interior (DOI) have not provided the technical and financial resources to allow for Tribes to assume this function.

### ***Indian Minerals Development Act of 1982 (IMDA)***

In 1982 Congress adopted the IMDA to allow Tribes to enter into alternative types of agreements other than the **Standard BIA Lease**. Partnerships, joint ventures, operating agreements and other types of business agreements were envisioned as a way to allow tribes to attain technical and administrative capabilities while maximizing return on non-renewable resources. 31 years later most agreements being signed are still a form of Standard BIA Lease where minimum royalties are realized, no renegotiation terms are present and for the most part Tribes have been unable to develop comprehensive Energy Departments.

These Standard BIA Lease places Tribes in a predicament whereby other jurisdictions are allowed to intrude on tribal assessable valuation which diminishes return to tribes and inhibits ability to improve and upgrade governmental programs, services and infrastructure! Triple taxation is the norm on many Reservations which inhibits the economic life of producing fields. Based on a U.S. Supreme Court decision in the Cotton Petroleum case on the Jicarilla Apache Reservation the state and counties are able to tax a non-Indian Energy Company when a Tribe signs a Standard BIA Lease. Mr. Chairman I have to ask, would you do business on an Indian reservation if you had to pay twice the tax you would off the reservation? I really think if the Congress is going to help us with mineral development that you need to fix this double taxation problem and get rid of this disincentive.

### ***Bureau of Land Management's Hydraulic Fracturing Rule's Impact on Indian Tribal Energy Development***

Recently, Wind River was brought into the national spotlight, based on citizen complaints, in the east-central portion of the Reservation where residents felt that their health and water resources were being adversely affected by oil and gas activity. For several years their initial complaints fell on deaf ears as they were labeled trouble makers and malcontents. However, in 2010 and 2011, under Superfund authority, the Environmental Protection Agency (EPA) drilled two monitoring wells near the homes of these residents and determined that ground water in the aquifer contained compounds "likely associated with gas production practices, including hydraulic fracturing." This was the first report by the EPA to link hydraulic fracking to possible water pollution.

Upon release of this information, rather than a methodical, calculated, level-headed type of inquiry being undertaken, all hell broke loose! Some folks came unglued, along with industry representatives, assailing EPA for "scientifically questionable practices", "critical mistakes and misjudgments" and contaminating its own monitoring wells. This was the exact opposite of what was expected. There was a total lack of objectivity regarding the findings of the single Federal agency that undertook this volatile issue and attempted to make their best technical judgment. Issues such as well-bore integrity, inspection and other compliance must be undertaken by an authority with some regulatory power. The content of fracking solutions must be made public so we know what is being put into the ground and how to deal with it.

### *BLM – from Enforcer to Facilitator*

Perhaps it is important for you to understand that the Shoshone and Arapaho are far more in favor of mineral extraction than we are opposed to it. It is a critical source of our government's income and certainly creates good paying jobs. The main goal should not be how quickly we can get permits approved but how do we support safe and responsible development. The rules as proposed could slow development but for those Tribes who want to protect water and land from contamination there are provisions in the proposed rules that will allow for transparency, assessment, evaluation and monitoring to minimize degradation. Our worry at Wind River is that BLM has shown that they cannot bring about compliance with existing policies and statutes. How are they going to enforce a whole new set of rules that requires additional oversight, report review and monitoring? We believe a more enhanced regulatory role for the Tribes is part of the answer.

### *Conclusion*

The lack of meaningful consultation with Tribes by the BLM has eliminated discussions that should have addressed assisting Tribes in becoming self-regulating through Section 202 of FOGRMA, inserting additional language into IMDA's that would provide clear information regarding drilling practices and procedures and assist Tribes in becoming stewards of their own resources. Helping Tribes to acquire the technical and administrative capacity would uphold tribal sovereignty and treaty rights and allow Tribes to take their rightful place in contributing to the energy security of this country. In our spiritual lodges and ceremonies water is deemed a "sacred gift from the Creator" requiring great care and respect. While jobs and revenue are important, for most Indian people there are things far more important than money. We cannot forsake the blood and bones of our ancestors by desecrating the "Water of Life"

I thank you for the time allocated and would be happy to answer any questions.