



SOUTHERN UTE INDIAN TRIBE

March 23, 2021

**Perspectives on Energy Bills Introduced in the U.S. House of Representatives
To the Committee on Natural Resources - Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
March 23, 2021**

The Southern Ute Indian Tribe (“Tribe”) respectfully provides the following perspectives and comments on five bills that were the subject of a legislative hearing by the Subcommittee on Energy and Mineral Resources on March 9, 2021. The hearing was titled “Modernizing Energy Development Laws for the Benefit of Taxpayers, Communities, and the Environment.” The Tribe would like this letter and the attachments to be made part of the Hearing Record. The five bills are: The Methane Waste Prevention Act (H.R. 1492, Rep. Diana DeGette); The Restoring Community Input and Public Protections in Oil and Gas Leasing Act (H.R.1503, Rep. Mike Levin); The Bonding Reform and Taxpayer Protection Act (H.R. 1505, Rep. Alan Lowenthal); The Transparency in Energy Production Act (H.R.1506, Rep. Lowenthal), and The Ending Taxpayer Welfare for Oil and Gas Companies Act (H.R. 1517, Rep. Katie Porter).

First Impressions

As an accomplished tribal government, sophisticated regulator, and energy producer, the Tribe appreciates the objectives of providing reasonable and appropriate benefits to taxpayers, ensuring local input in leasing and development decisions, overseeing necessary cleanups, and maintaining the highest standards of environmental stewardship of land and resources. Indeed, for decades the Tribe has incorporated all of these factors into its energy program in developing energy resources on our own lands.

As the comments attached to this letter make clear, there are elements of these newly introduced measures that the Tribe finds appealing and supports. However, we believe that aspects of these bills as currently written would unduly burden energy producers on federal and Indian lands at a time when our struggling economy needs prudently developed sources of energy that are reliable and affordable.

Profile of the Southern Ute Indian Tribe

The Tribe has just under 1,500 members and its Reservation consists of approximately 700,000 acres of land located in southwestern Colorado, near the Four Corners area. Some 311,000 acres of the Reservation are held in trust by the federal government for the benefit of the Tribe; however, the Tribe is also the beneficial owner of additional severed mineral estates held in trust for the benefit of the Tribe within the Reservation. Interspersed throughout the Reservation are federal, state, and private lands.

Through financial discipline and farsighted leadership, the Tribe has developed a sterling record of managerial experience and business acumen. For instance, the Tribe was the first Indian tribe in the nation with a AAA+ credit rating, which was earned through years of steady governance and successful and prudent business management.

Fifty years ago, our Tribal Council had to suspend the practice of distributing per capita payments to tribal members because the Tribe could not afford them. Today the Tribe is the largest employer in southwest Colorado with almost 1500 employees, provides health insurance for its tribal members and operates its own health clinic, promises all members a college or vocational education, runs its own school for elementary and middle school children, and has a campus dotted with state-of-the art buildings, including a justice center, museum, and recreational health facility. This success was not an accident. Without a prolonged effort to take control of its natural resources, the Tribe would not be the economic leader that it is today.

In addition to employment opportunities, energy-related income has allowed our Tribe to establish meaningful educational programs. Further, the Tribe provides stable retirement benefits to our Tribe's elders. We have exceeded many of our financial goals, and we are well on the way to providing our grandchildren and their grandchildren the opportunity to maintain our Tribe and its lands in perpetuity.

Successful energy development has enabled the Tribe to invest in diverse, non-energy projects, laying the foundation for long-lasting economic prosperity. For example, the Tribe has made real estate investments in multiple markets located in ten states. These investments include residential, commercial, industrial, and hotel properties in California, Nevada, Colorado, Texas, Kansas, Illinois, Ohio, Florida, Maryland, and New Jersey. Returns on these investments have spurred further economic growth for the Tribe, which would not have been possible but for the Tribe's active efforts to control and develop its energy resources.

Energy development remains a key component of the Tribe's strategy, with approximately 70% of the Tribe's revenues coming from energy development. Accordingly, we are well-positioned to speak to the relationship between energy development, economic opportunity, and tribal self-determination.

Taking Control of Our Own Resources: Tribal Sovereignty and Self-Government

Indian Self-Determination has been the hallmark of federal Indian policy since 1970, and the Tribe has learned that it can often do a better job of developing programs for the Tribe and providing services to our members than can federal agencies. In some instances, the Tribe has chosen to enter into contracts under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 5301, *et seq.*, which allows the Tribe to do the federal agency's work with the federal funding that would have gone to the federal agency to do that job. In other instances, the lack of federal funding or focus has required that the Tribe simply fill the void of effective management of programs and services.

The Tribe is a great example of the positive impacts of Indian energy development. Our Reservation is part of the San Juan Basin, which has been a prolific source of oil and natural gas production since the 1940s. Beginning in 1949, the Tribe began issuing leases under the supervision of the Secretary of the Interior. For several decades, we remained the recipients of modest royalty revenue, but were not engaged in any comprehensive resource management planning.

That changed in the 1970s as we and other energy resource tribes in the West recognized the potential importance of monitoring oil and gas companies for lease compliance and keeping a watchful eye on the federal agencies charged with managing our resources. In 1974 the Tribal Council placed a moratorium on oil and gas development on the Reservation until the Tribe could gain a better understanding and control over the process. That moratorium remained in place for 10 years while the Tribe compiled information and evaluated the quality and extent of its mineral resources.

A series of events in the 1980s laid the groundwork for our subsequent success in energy development. In 1980, the Tribal Council established an in-house Energy Department, which spent several years gathering historical information about our energy resources and lease records. In 1982, following the Supreme Court's decision in *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982), the Tribal Council instituted a severance tax, which has produced more than \$800 million in revenue over the last four decades.

As a result of work performed by the Tribe's Energy Department, our leaders became convinced that the Department of the Interior had unlawfully allowed private landowners and oil and gas companies to produce coalbed methane gas ("CBM") from certain Reservation lands where the Tribe owned only reserved coal deposits. Significantly, this same ownership pattern existed on approximately 50 million acres of lands in the West in which the United States is the owner of reserved coal deposits but, under the leadership of former Interior Secretary James Watt, the Interior Department had acquiesced in the oil and gas industry's development of CBM under private leases. For approximately ten years we litigated that issue, ultimately convincing the Department of the Interior to reverse its position. In 1999, however, the Supreme Court ruled against the Tribe and in favor of private landowners. *Amoco v. Southern Ute Indian Tribe*, 526 U.S. 865 (1999). Nonetheless, our efforts resulted in settlements with all of the oil and gas company defendants reached over the course of the litigation that continue to be of significant value to the Tribe.

After Congress passed the Indian Mineral Development Act of 1982, we carefully negotiated mineral development agreements with oil and gas companies involving unleased lands and insisted upon flexible provisions that vested the Tribe with business options and greater involvement in resource development. Because the Tribe's leaders believed that the Tribe could do a better job of monitoring its own resources than federal agencies, shortly after passage of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701, *et seq.*, the Tribe entered into a cooperative agreement with the Minerals Management Service ("MMS") (subsequently the Office of Natural Resource Revenue) permitting the Tribe to conduct its own royalty accounting and auditing under the ultimate oversight of the MMS. The Tribe's award-winning royalty audit

program has been instrumental in recovering tens of millions of dollars of delinquent royalties, interest, and civil penalties.

In 1992, we started our own gas operating company, Red Willow Production Company, which was initially capitalized through a Secretariially-approved plan for use of \$8 million of tribal trust funds received by our Tribe in settlement of reserved water right claims. Through conservative acquisition of on-Reservation leasehold interests, we began operating our own wells and received working interest income as well as royalty and severance tax revenue.

In 1994, we participated with a partner to purchase one of the main pipeline gathering companies on the Reservation. Today, the Tribe is the majority owner of Red Cedar Gathering Company, which provides gathering, processing, and treating services throughout the Reservation. Ownership of Red Cedar Gathering Company allowed us to put the infrastructure in place to further develop and market CBM from Reservation lands and provided a significant source of revenue for the Tribe.

These acts of energy resource management and development through self-determination are key to the Tribe's economic success. Today the Tribe, through its subsidiary energy companies, conducts sizeable oil and gas activities in several states and offshore in the Gulf of Mexico. Energy resource development has unquestionably had a great and positive impact on the Tribe, our members, and the surrounding community. The regional community college even has a new associate degree program in Tribal Energy Management, and because of the Tribe's vast experience in this realm, the college has enlisted the Tribe's assistance and input in its program.

More Recent Examples of Tribal Self-Determination

Despite the Tribe's decades-long success in managing its own affairs and conducting highly complex business transactions, both on and off the Reservation, federal law and regulations still require federal review and approval of the most basic realty transaction occurring on the lands held in trust for the Tribe on the Reservation. Federal approval constitutes federal action, which triggers environmental and other review requirements, even for simple and straightforward realty transactions.

In order to eliminate such delays, and in recognition of the ability of tribal governments to protect their own interests, Congress has taken steps in recent years to permit tribal governments to undertake review and make final decisions as to tribal land use once tribal regulatory and environmental review procedures have been approved by the Secretary of the Interior. Our Tribe's comprehensive environmental review and surface leasing code has been under review by the Secretary for approximately two years, but we anticipate that approval will occur in the near future.

The Energy Policy Act of 2005, 42 U.S.C. §§ 15801, *et seq.*, contains a separate, stand-alone Indian energy chapter - "Title V - the Indian Tribal Energy Development and Self-Determination Act," codified at 25 U.S.C. §§3501, *et seq.*, which provides federal technical and financial assistance to any Indian tribe wishing to develop energy resources of any type: renewable or traditional. It was truly an "All of the Above" approach to energy policy. The centerpiece of Title V is a novel mechanism authorizing an Indian tribe to negotiate a bilateral agreement with the

Interior Secretary governing rights and responsibilities for energy permitting and related functions for operations on tribal trust lands. Once approved by the Secretary, that tribe would be free to negotiate and enter agreements with third parties without the review or approval of the Secretary. The Tribe was instrumental in developing and convincing Congress that this was an appropriate step in the long march of Indian self-determination.

In 2012, the Tribe became the first tribe in the country to operate its own clean air program pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401, *et seq.* Just as it does with state permitting agencies, the federal EPA provides oversight to the Tribe as it issues permits and performs inspections of oil and gas operations on its land.

In a somewhat different context, in 2016, the Tribe and the Department of the Interior settled a lawsuit the Tribe had filed challenging the Department's authority to impose a new hydraulic fracturing ("fracking") regulation on oil and gas operations on tribal lands. In 2015, without effective consultation with the Tribe, the Bureau of Land Management ("BLM") had issued a final rule governing hydraulic fracturing under federal and Indian leases. Based on our experience and the technical experience of our Energy Department, we felt that aspects of the BLM's rule were poorly considered, and our Tribal Council adopted its own hydraulic fracturing regulation that provided more reasonable and, in some cases, more stringent requirements than BLM's rule. In response to our claims that the Tribe's rule took precedence over the BLM's rule, throughout 2015-2016, we worked closely with the Department of the Interior and the Department of Justice in reaching a settlement that recognizes the Tribe's amended rule as governing hydraulic fracturing on Indian lands within the Reservation. *See Southern Ute Indian Tribe v. United States Dep't of the Interior*, Civil Action No. 1:15-cv-01303 (D. Colo., Order of March 14, 2017) (dismissing case and annexing Settlement Agreement).

As we have stated repeatedly to anyone who will listen to us, "We are the best protectors of our own resources and the best stewards of our own destiny; provided that we have the tools to use what is ours."

The Tribe respectfully suggests that the foregoing provides ample context for the specific comments we provide in the pages that follow. It is our hope that, working collaboratively, we can advance federal energy and Indian policy while respecting tribal authority and decision-making when it comes to activities on tribal lands.

Sincerely,



Mr. Melvin J. Baker, Chairman
Southern Ute Indian Tribal Council

cc:

Hon. Deb Haaland, Secretary of the Interior
Hon. Lauren Boebert
Hon. Diana DeGette
Hon. Ed Perlmutter
Hon. Joe Neguse
Hon. Jason Crow
Hon. Doug Lamborn
Hon. Ken Buck
Hon. Michael Bennet
Hon. John Hickenlooper
Paul Morehead

ATTACHMENT 1
Southern Ute Indian Tribe
Comments on H.R. 1492 (Rep. Diana DeGette)
Methane Waste Prevention Act

Introduction

In recognition of the Tribe's capacity to regulate air quality within the boundaries of the Southern Ute Indian Reservation ("Reservation") and the need for intergovernmental coordination between the Tribe and the State of Colorado, in 2004, Congress enacted an amendment to the Clean Air Act approving an intergovernmental agreement authorizing the EPA Administrator to treat the Tribe as a State for purposes of administering Clean Air Act programs within the Reservation. *See* Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat. 1354. In addition to protecting Reservation air quality aggressively, the Tribe also owns an oil and gas exploration and production company that operates several hundred wells within the Reservation and controls a midstream gathering company that collects and treats gas produced from Reservation wells for introduction into interstate natural gas markets. Revenues from lease royalties, the Tribe's severance tax, working interests, and gathering fees are critical to the Tribe's economic survival; however, the Tribe has repeatedly demonstrated its commitment to protecting the Reservation's environmental and cultural resources. The Tribe's comments on H.R. 1492 reflect a careful balancing of interests that we believe will be of value to the Subcommittee.

Goals for Methane Emission Control

The Tribe supports the goals for reducing methane emissions from the oil and natural gas sector as set forth in Section 2 of H.R. 1492. Those reductions would be measured against methane emissions from the oil and gas industry in the calendar year 2012, with the first goal to be at least 65% of that number by 2025 and the second goal to be at least 90% of that number by 2030. To achieve those goals, H.R. 1492 requires two new sets of regulatory programs, one under the auspices of the EPA Administrator through the Clean Air Act and the other to be implemented by the Secretary of the Interior in conformity with proposed amendments to the Federal Oil and Gas Royalty Management Act of 1982 ("FOGRMA") (30 U.S.C. §§ 1711, et seq.). Under each regulatory framework, H.R. 1492 sets forth multiple requirements.

In our view, the testimony received by the Subcommittee does not adequately describe the significant advances the oil and gas industry has made to reduce methane emissions since 2012. Whether driven by the realization that leaking methane means lost revenue or by the specter of mandatory regulatory measures, the industry has made significant improvements in equipment and practices to reduce methane emissions. Secondly, air quality regulation is already an extremely complex matter, and the Tribe recommends that instead of introducing a new methane regulatory regime within the Department of the Interior as to federal and Indian oil and gas leases, the nation would be better served by bolstering EPA's regulatory authority under the

Clean Air Act. In that regard, the Subcommittee should consider designating methane as a regulated criteria pollutant under the Clean Air Act.

Clean Air Act Regulations

H.R. 1492's schedules for promulgating new EPA regulations under the Clean Air Act that would address oil and gas standards of performance, operations, and equipment are challenging, i.e., December 31, 2022 for the 2025 goal and December 31, 2023 for the 2030 goal. Application of those new standards to existing sources will present practical hurdles even for those industry representatives poised to comply. One of the provisions that seems particularly unworkable, Section 2(b)(4)(C), would require any "new distribution infrastructure" constructed or installed after December 31, 2023, to be "compatible with the distribution of hydrogen." Based on the different properties of methane and hydrogen, the Tribe seriously questions whether the conversion of distribution networks from natural gas to hydrogen should be addressed through a one-sentence statutory requirement calling for regulations under the Clean Air Act.

FOGRMA Regulations

In addition to new methane regulations under the Clean Air Act, H.R. 1492 requires the Secretary of the Interior to promulgate new regulations under FOGRMA to reduce the waste or loss of gas from wells operated under authority of federal laws authorizing the leasing of federal and Indian lands. Assuming that new regulations under the Clean Air Act are not sufficient to reduce methane emissions, the Tribe questions the use of FOGRMA as the vehicle for the new proposed regulations. The substantive provisions called for under H.R. 1492 are operational in nature and would be better addressed through amendments to the applicable federal leasing statutes rather than under the umbrella of FOGRMA, which was enacted principally to address accurate production and royalty reporting. Imposing uniform operational requirements as to federal and Indian lands fails to consider the fundamental statutory and policy differences that underly separate leasing systems and operational requirements and the important role that Indian tribes have in crafting and implementing their own lease terms. *See, e.g.* Indian Mineral Development Act of 1982 (25 U.S.C. §§ 2101, et seq.) (granting tribes flexibility in developing lease terms through negotiation).

The Tribe has several concerns regarding the proposed amendments to FOGRMA. First, some of the provisions are confusing. For example, the proposed Section 118(a)(1) would require enactment of regulations within 2 years of passage of the Act, but under Section 118(a)(2) those regulations would impose new mandatory percentages of recovery of gas from every covered well for periods "no later than 1 year after the date of enactment," i.e., before the new regulations would be promulgated. Further, the percentages of recovery, particularly the required percentage of capture within five years of enactment of "at least 99 percent of all gas produced each year from each onshore well," may simply be impossible to achieve.

The Tribe shares the view that flaring is far preferable to venting and that venting should rarely be permitted; however, the total prohibition of either flaring or venting from any new well drilled "not later than 2 years after the date of enactment," with no exception for emergencies or temporary conditions seems unduly onerous and potentially unsafe. As to Indian lands, the Tribe

opposes the requirement under new Section 118(a)(D) that there be any statutorily required opportunity for public comment prior to issuance of a permit to drill a well on Indian mineral lands, particularly if the issuance of such a permit is already contemplated in previously approved NEPA documents applicable to an approved lease or program. Such a requirement seems inconsistent with the federal government's trust responsibility to tribes.

The equipment replacement provisions set forth in new Section 118(a)(H) and (I) are unreasonably onerous, and, in fact, do not address more meaningful and efficient ways to control gas loss in the field. For example, the environmental cost of expedited manufacture, mobilization, and replacement of "all gas-actuated pneumatic controllers and pumps with nonemitting equipment" would likely exceed the beneficial effect of curtailing use of such controllers, particularly in the case of low bleed or intermittent pneumatics. The expense of such wholesale replacement would almost certainly lead to the premature and wasteful decommissioning of low volume wells.

In contrast to the proposed statutory requirement for monthly, system-wide leak detection inspections through use of infrared cameras and other equally sensitive equipment, our experience has shown that regular mobile detection patrols using alternative equipment are a much more cost-effective way to detect leaks. Deployment of monthly inspections through use of infrared cameras and the like is unduly cost-prohibitive and simply unnecessary to achieving effective results. In our experience, monthly inspections of well sites and pipelines would be unnecessarily frequent because these facilities do not "loosen up" within that short of a time interval. As with existing Leak Detection and Repair programs, the frequency of inspection should correspond to the demonstrated time interval in which leaks arise.

These comments are not exhaustive, but rather reflect a measured approach to achieving the underlying goals of this legislation without crippling an industry for the sake of being punitive. Because reinstatement of the Bureau of Land Management's Waste Prevention Rule 2016 (81 Fed. Reg. 83008 (Nov. 18, 2016)), would unduly complicate effective methane regulation, the Tribe respectfully suggests that new Section 118(d) be removed from this legislation.

In conclusion, the Tribe appreciates the opportunity to comment on this legislation.

ATTACHMENT 2
Southern Ute Indian Tribe
Comments on H.R. 1503 (Rep. Mike Levin)
Restoring Community Input and Public Protections in Oil and Gas Leasing Act

Introduction

With one potential exception (Section 14), H.R. 1503 does not appear to address or affect the leasing of Indian lands for energy development purposes or operations undertaken pursuant to Indian mineral leasing laws, such as the Indian Mineral Leasing Act of 1938 (25 U.S.C. §§ 396a-396g) (“1938 Act”) or the Indian Mineral Development Act of 1982 (25 U.S.C. §§ 2101, *et seq.*) (“IMDA”). Rather, H.R. 1503 proposes to amend provisions of the Mineral Leasing Act of 1920 (30 U.S.C. § 226) (“MLA”), which does not address Indian land or Indian mineral leasing. To avoid confusion, however, the Tribe suggests several changes to H.R. 1503.

Amendments to Mineral Leasing Act of 1920

Most of the provisions of H.R. 1503 call for amendments to the lease terms and the processes for issuance of leases of federal lands for oil and gas purposes under the MLA. Section 2, for example, would add new provisions to the MLA that require competitive bidding, limit acreage size, increase royalty rates and annual rentals, reduce the duration of primary terms, and restrict eligibility to submit lease bids. Other provisions of H.R. 1503 address specific operational issues through amendment of the MLA, such as surface use agreements involving split estates (Section 3), lease stipulations (Section 4), master leasing plans (Section 5), and water protection provisions (Section 13). Again, these provisions appear to have no impact on Indian mineral leasing or operations.

Water Resource Matters

In proposing amendments to the MLA to address water resource matters, Section 13 would add a new provision to the MLA as follows:

(b) RELATION TO STATE LAW. —Nothing in this section or any amendment made by this section shall be construed as—

(1) impairing or in any manner affecting any right or jurisdiction of any State with respect to waters of such State; or

(2) limiting, altering, modifying, or amending any of the interstate compacts or equitable apportion decrees that apportion water among and between States.

The Tribe urges a change to this provision to expand its reach not just to “State law,” but to tribal law as well. Further, the savings language of the provision should expressly indicate that neither the waters of a tribe nor the apportionment of waters to tribes under compacts and equitable

apportionment decrees are intended to be affected by the changes made through Section 13 of H.R. 1503.

Inapplicability to Indian Minerals or Operational Activities

In a broader context, because H.R. 1503 does not purport to address the leasing of Indian minerals or operations undertaken under Indian leasing laws, we strongly suggest that a broad savings clause similar to the one quoted above as to State powers over State waters, be added to indicate clearly that H.R. 1503 is not intended to affect the leasing of Indian lands or the operations or activities that may be undertaken with respect to such leases. This clarification is critical because of the authority that the Secretary of the Interior has in regulating operations on both Indian and federal lands; however, the directions given to the Secretary to enact regulations under H.R. 1503 appear intended to affect only “Federal lands.” Congress should make clear that H.R. 1503 is not a directive to alter the regulatory status quo of operations undertaken under Indian mineral leasing laws, leases, or minerals agreements.

By way of example, just as split estates exist throughout the West based on public land laws in place at the time of settlement of public lands, so, too, do some Indian reservations contain lands with split estates. On the Southern Ute Indian Reservation, for example, the Tribe is the beneficial owner of oil, gas, and mineral estates that underly the surface of lands owned by non-Indians. It should be made absolutely clear to both the public and the Secretary that H.R. 1503 is not intended impliedly or otherwise to address those relationships, which have often been addressed through intergovernmental agreements between the State and the Tribe or county governments and the Tribe.

Section 14 – BLM Hydraulic Fracturing Regulation

The need for clarification in Congress’ directions to the BLM about the scope of regulations to be promulgated under H.R. 1503—specifically non-applicability to Indian lands—is driven home by Section 14, which directs BLM to promulgate new regulations “governing hydraulic fracturing under oil and gas leases for Federal Lands.” Unlike the other sections of H.R. 1503 that confine application to the MLA, Section 14 lacks that precision. This is significant.

For Indian tribes that adopted tribal constitutions under the Indian Reorganization Act of 1934 (25 U.S.C. § 5123) (“IRA”), Congress not only recognized the inherent powers of tribal governments, but also promised that tribal lands would not be subject to encumbrance without the express consent of the governing bodies of such tribes. This tribal power expressly acknowledged by Congress has served as one of the foundations on which tribes have exercised affirmative control over their lands and resources. *See Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982) (upholding power of IRA tribe to impose severance taxes on mineral lessees). Moreover, the significance of the IRA and the regulatory powers of tribes in the mineral leasing context has been recognized by the Secretary since the 1938 Act was enacted. In that regard, the leasing regulations found in 25 C.F.R. § 211.29 provide that IRA tribes may supersede the regulations contained in 25 C.F.R. Part 211, which include operational provisions applicable to lease activity.

When, in 2015 the BLM adopted the final rule entitled “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,” (80 Fed. Reg. 16128), it did so without meaningful consultation with Indian tribes. The Southern Ute Indian Tribe felt that the regulation was flawed in several respects, including inadequate well-casing cement provisions. The Tribe was also concerned by BLM’s total disregard for the sovereign powers of the Tribe as an IRA tribe. To address this matter, the Tribe promulgated its own superseding hydraulic fracturing regulation and then challenged the applicability of BLM’s 2015 final rule in U.S. District Court in Colorado. Ultimately, the Tribe and the Department of the Interior settled the litigation pursuant to a written settlement agreement under which the Tribe’s amended hydraulic fracturing regulation is recognized by the Department of the Interior as applicable to Indian lands within the Reservation. *See Southern Ute Indian Tribe v. United States Dep’t of the Interior*, Civil Action No. 1:15-cv-01303 (D. Colo., Order of March 14, 2017) (dismissing case and annexing Settlement Agreement).

In drafting H.R. 1503, we doubt that the authors of that legislation were aware of the sovereignty concerns that Section 14 would cause for IRA tribes engaged in energy development or the potential effect that Section 14 would have in abrogating the Tribe’s settlement regarding hydraulic fracturing regulation. For these reasons, the Tribe respectfully requests that Section 14 be modified to either exclude Indian lands and leases or require tribal governmental consent prior to application of the 2015 rule to Indian lands.

The Tribe appreciates the opportunity to comment on H.R. 1503.

ATTACHMENT 3
Southern Ute Indian Tribe
Comments on H.R. 1505 (Rep. Alan Lowenthal)
Bonding Reform and Taxpayer Protection Act of 2021

Introduction

The Tribe's Department of Energy includes experienced personnel who coordinate with multiple tribal departments, federal agencies, and oil and gas operators regarding proper abandonment of oil and gas facilities on Indian lands within the Southern Ute Indian Reservation ("Reservation"). Due to the maturity of natural gas production on the Reservation and a steady decline in regional natural gas prices over the last decade, in the very near future it is likely that hundreds of Reservation wells will need to be plugged and abandoned and associated well sites and access roads reclaimed. Navigating the regulatory waters of agencies within the Department of the Interior with authority over lease operations and the setting and enforcement of financial assurance obligations is a challenging endeavor, which is made more complicated when dealing with lands with split estates, patchwork ownership patterns, and communitization. Recognizing these conditions, the Tribe recently completed an extensive and detailed review of federal statutes, regulations, guidance, and case law addressing these subjects. The introduction of H.R. 1505 confirms the timeliness of the Tribe's independent review, and we hope that the comments that follow prove beneficial in your consideration of H.R. 1505.

Surface Disturbance and Reclamation

Section 2 of H.R. 1505 would replace existing Section 17(g) of the Mineral Leasing Act ("MLA"), 30 U.S.C. § 226(g), with new provisions that cover many of the subjects related to surface reclamation and bonding currently addressed under the existing 30 U.S.C. § 226(g). Under current provisions, the Secretary of the Interior (as to public lands) and the Secretary of Agriculture (as to National Forest lands) are directed to regulate surface-disturbance associated with mineral lease activities. In addition to requiring the establishment of standards for reclamation, the law currently requires the Secretaries to establish adequate bonds, surety, or financial arrangements securing performance of reclamation duties and prohibits the issuance of new leases or assignments of existing leases to parties who fail to meet their reclamation responsibilities.

While duplicating some of the provisions of existing law, Section 2 of H.R. 1505 would convert many of the Bureau of Land Management's ("BLM") existing regulatory requirements into statutory provisions for leases issued under the MLA. For example, the requirement for approval of a "surface use plan of operations" ("SUPO") that addresses both interim reclamation and final reclamation activities is already a regulatory prerequisite to obtaining a BLM permit to drill an oil and gas well on lands covered by the MLA. *See* 43 C.F.R. §§ 3162.3-1(d)(1), (3); Onshore Order Number 1, 72 Fed. Reg 10,333 (March 7, 2007). Further, H.R. 1505 would substantially increase the minimum bond or alternative financial assurance amount for "each entity on an individual oil or gas lease" to no less than \$150,000, or, alternatively, no less than \$500,000 for each entity with MLA leases within a particular state.

Because the MLA does not address Indian lands, the statutory changes contemplated under Section 2 of H.R. 1505 do not directly affect Indian lands. However, unless lawfully superseded by an Indian Reorganization Act (“IRA”) tribe (as arguably permitted under the Bureau of Indian Affairs (“BIA”) regulations addressing Indian leases (*see* 25 C.F.R. §211.29)), the BLM’s operational requirements for matters such as the issuance of permits to drill are made applicable to Indian leases through the BIA’s regulations. 25 C.F.R. § 211.4 (certain BLM operational provisions applied to tribal leases); 25 C.F.R. § 212.4 (certain BLM operational provisions applied to individual Indian allottee leases); 25 C.F.R. § 225.4 (certain BLM operational provisions applied to tribally negotiated minerals agreement under the Indian Mineral Development Act of 1982). Accordingly, though H.R. 1505 would not effect a statutory change in the Indian leasing statutes, the statutorily imposed standards for reclamation activities to be carried out through the BLM as to MLA leases would presumably be applied through review of a SUPO needed for approval of a permit to drill on Indian leased lands.

While BLM’s operational standards related to reclamation activities—proposed to be made statutory under H.R. 1505—would almost certainly be administratively applied to Indian lands through the application for permit to drill (“APD”) process, the same is not true with respect to the increased bonding and financial assurance provisions of Section 2 of H.R. 1505. BLM’s Onshore Order No. 1 confirms that BLM’s bonding regulations, found generally at 43 C.F.R. subpart 3104, do not apply to Indian leases. Rather performance bonds for Indian leases fall within the administrative jurisdiction of the BIA and are not addressed in H.R. 1505. These jurisdictional points are likely obvious and well known to the Subcommittee, but for those not familiar with the distinctions between administration of leases under the MLA and Indian mineral leasing statutes, this discussion may be illuminating.

With that said, the Tribe has long recognized that the bonding requirements related to Indian leases, which generally correspond to BLM’s bonding levels for MLA leases, have been inadequate to secure plugging, abandonment, and surface reclamation obligations. Whether the precise bonding levels proposed under H.R. 1505 are the correct levels is not clear, but the need to increase financial assurance requirements for public lands and for Indian lands can hardly be questioned. Though not addressed in this legislation, when the subject of reclamation bonding for Indian lands is considered, the Tribe would like to be included in that discussion.

Inspection Fees

Section 4 of H.R. 1505 proposes to amend the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. § 1718) by imposing on the designated operator of each oil and gas lease or unitized or communitized area involving “Federal or Indian lands,” nonrefundable annual inspection fees sufficient to cover the full costs incurred by the United States for required inspections and enforcement of such leases. The Tribe has several concerns about this section of H.R. 1505. In the absence of an agreement with the United States or the Secretary of the Interior to the contrary, we believe the Department of the Interior has a trust obligation to conduct such inspections to ensure that federally approved leases or unitized or communitized areas involving Indian lands are being properly operated. Although the cost of such inspections related to Indian lands may be shifted from the United States Government to operators, we do not believe that cost should be shifted to the tribes to whom the federal duty is owed. The imposition of the inspection

fees called for in Section 4 do not consider situations where such operators are tribes or tribally controlled companies. Yet, on our Reservation, the Tribe's company, Red Willow Production Company, is one of the largest operators, and its activities tie directly to the economic wellbeing of the Tribe and its members. In those instances in which the proposed inspection fees would fall on tribes or tribally controlled entities operating on their own lands, we respectfully suggest that federal taxpayers rather than tribes should bear the financial cost of such inspections. Accordingly, we request that an exception to those mandatory inspection fees be added when the operator is a tribe or a tribally controlled company operating on lands within its Reservation.

The Tribe appreciates the opportunity to comment on H.R. 1505.

ATTACHMENT 4
Southern Ute Indian Tribe
Comments on H.R. 1506 (Rep. Alan Lowenthal)
Transparency in Energy Production Act of 2021

Introduction

Members of the Tribe, like most Americans, enjoy the conveniences of modern living; however, the Tribe's culture also emphasizes the spiritual connection between human beings and nature. Even though economically dependent on natural gas development, the commitment of the Tribe's leaders, administration, and businesses to best practices and efficiencies pervades the Tribe's organization at all levels. The Tribe's commitment to sustainability is what spurred the Tribe to invest significant capital and resources in a tribally-operated pilot project demonstrating that methane naturally venting from coal outcrops on the Reservation could be captured instead of escaping destructively into the atmosphere. Whether investing in solar energy projects to offset electrical energy usage at the Tribe's buildings or sponsoring experimental efforts to produce fuels from algae, the Tribe has supported and will continue to support innovations in sustainability. In sum, the Tribe understands the motivations behind H.R. 1506.

Disclosures and Reports

At the time than any applicant submits a bid for a lease involving any "public land," as broadly defined in the proposed legislation, H.R. 1506 would require the bidder to disclose, to either the Secretary of the Interior or the Secretary of Agriculture, as applicable, sustainability performance results for that entity's "covered operations" (a defined term) based upon criteria established by the Sustainability Accounting Standards Board ("SASB") for extractive industries or renewable/alternative energy industries. Similarly, any holder of such a lease would be required to file an annual report with the applicable Secretary making such SASB-related disclosures. At either stage, the disclosed information—which would become publicly available—must be broken down by "covered operations" on a state-by-state basis. Failure to provide the required information would result in denial of a lease application or suspension of an existing lease. Every two years, the applicable Secretary would submit a report to Congress addressing the sustainability topics included by SASB in its standards, measuring "covered operations" on public lands and comparing the relative performance of extractive and renewable industries when hypothetically juxtaposed.

Despite repeated readings of H.R. 1506, it is confusing in many respects. The scope of information required to be submitted by a reporting bidder or lessee is not clear and it does not appear to correlate to the Secretarial reports to be submitted every two years to Congress. For example, the "covered operations" to be reported by a bidder or lessee involving a "fossil fuel operation" are not necessarily limited to "covered operations" on "public lands." H.R. 1506, §5(1) (defining "covered operation" for a fossil fuel operation). Yet, the bi-annual Secretarial reports to Congress address "covered operations" on "public lands." It is unclear how the Secretary is expected to synthesize what is reported by bidders or lessees as "covered operations" (without their reference to public lands) when the biannual reports that are to address "covered operations" on "public lands." H.R. 1506, § 4(1).

Fundamentally, one must ask if the complex reporting system contemplated under H.R. 1506 can be reasonably justified, even assuming that the topics and criteria identified by SASB are objective and practical. Are there other sources of reported data available through the Environmental Protection Agency that could meet Congress' informational needs? Would existing reports filed by public companies with the Securities and Exchange Commission provide sufficient levels of information to make the comparisons and projections that Congress desires without having to implement the new, onerous reporting system envisioned in H.R. 1506?

Definition of "Public Lands"

H.R. 1506 defines "public land" to be "any land, interest in land, or submerged land owned by the United States." Most land beneficially owned by Indian tribes is held in the name of the United States and would fall within this definition of "public land." The suggestion that Indian land is public land is an anathema to Indian tribes and Native Americans across the country. Unlike public land, Indian land is not held for the benefit of multiple stakeholders. Rather it is held by the United States for its Indian beneficiaries. To effectively include Indian land within the definition of "public land," suggests a diminution of the special duties the United States owes to Indian tribes and individual Indian allottees with regard to their lands. If H.R. 1506 is intended to apply to Indian land, we strongly suggest that "public land" be defined to exclude Indian land and that "Indian land" be separately defined. *See, e.g.,* 25 U.S.C. §3501(2) (defining "Indian land.").

Beyond definitional problems, practical differences between the leasing of public lands and Indian lands create difficulties in application of H.R. 1506. For example, the issuance of minerals agreements between Indian tribes and third parties under the Indian Mineral Development Act of 1982 (25 U.S.C. §§ 2101, *et seq.*) ("IMDA") is not a bidding process, and the product of a negotiated minerals agreement is not necessarily a lease. Moreover, unlike the public nature of lease information regarding public lands, information regarding IMDA minerals agreements is not intended to be public, as demonstrated by the following:

Notwithstanding any other law . . . all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Minerals Agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe.

25 U.S.C. §2103(c). Given the broad statutory constraints on disclosure of information obtained by the Department of the Interior regarding IMDA minerals agreements, Congress' intent to roll Indian lands into the SASB disclosures should be unmistakably clear.

In conclusion, the Tribe respectfully suggests that H.R. 1506 requires considerable refinement. The Tribe appreciates the opportunity to comment on this legislative proposal.

ATTACHMENT 5
Southern Ute Indian Tribe
Comments on H.R. 1517 (Rep. Katie Porter)
Ending Taxpayer Welfare for Oil and Gas Companies Act of 2021

Introduction

Approximately three years prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. §§ 1701, *et seq.*) (“FOGRMA”), the Tribe engaged the services of a Denver-based oil and gas accounting firm to review the royalty payment practices of companies operating on the Reservation. At that time, royalty payment practices essentially followed an honor system. The results of the Tribe’s study were similar to the subsequent conclusions of the Linowes Commission; royalty payments were often late and deficient. Shortly following passage of FOGRMA, personnel from the Tribe’s Department of Energy joined the State and Tribal Royalty Audit Committee (“STRAC”) and were active participants in the development of federal oil and gas royalty valuation regulations affecting Indian lands. Our experience has shown that the slogan, “Trust, but verify,” is no less applicable to practices of royalty reporting and payment than to foreign policy. While reasoned policies and enforcement practices are essential, the Tribe considers the prudent development of oil and gas resources as vital to the nation’s economy and national security. In updating enforcement penalties, we also believe it is important to remember that the vast majority of energy company representatives and personnel are dedicated and honorable. The Tribe’s following comments to H.R. 1517 address several of the proposed amendments to FOGRMA, as well as other specific provisions.

Inspection Fee

Section 6 of H.R. 1517 would amend FOGRMA to impose an annual, nonrefundable inspection fee for every operator of leases or communitized/unitized areas containing either federal or Indian leased minerals. A similar provision is also proposed as Section 4 to H.R. 1505. With respect to both bills, the Tribe opposes the imposition of such inspection fees when the Indian reservation operator is the local tribe or tribally controlled company. Accordingly, the Tribe requests that an exception to those fees be added when the operator is a tribe or a tribally controlled entity operating on lands within its Reservation.

Penalties.

The Tribe has no objection to Section 7(b) of H.R. 1517, which proposes substantial increases to various maximum penalty amounts under FOGRMA (30 U.S.C. §§ 1719, 1720). However, the Tribe does have concern with those aspects of Section 7(c) of H.R. 1517, that would eliminate the prior notice and cure provisions of Section 24(b) of the Outer Continental Shelf Lands Act (43 U.S.C. §1350(b)) (“OCSLA”). Under the OCSLA proposal, an individual, who could be subject to a daily civil penalty of up to \$75,000 per day under the increased penalty amount, would no longer be given prior notice and an opportunity to cure the violation. We recommend that notice and cure opportunities be restored. Additionally, Section 7(c) of H.R. 1517 would increase maximum criminal fines from \$100,000 to \$1,000,000 for specified knowing and willful violations and would also replace the “knowingly and willfully” scienter requirement for

corporate officers or agents with the less demanding “reckless disregard for the law” standard. Particularly in light of the ten-fold increase in criminal fine provisions, we believe the higher standard of “knowingly and willfully” is appropriate and should be left unchanged.

As a final comment on the FOGRMA civil penalty provisions, our general experience has been that federal agencies, such as the Office of Natural Resources Revenue (“ONRR”), have been extremely slow in assessing civil penalties. Approximately, ten years ago, the Tribe’s royalty audit staff was able to convince ONRR to initiate a major civil penalty proceeding for knowing and willful violations of audit requests for information and corrective reporting related to leases on our Reservation. The Tribe intervened as a party to the civil penalty proceedings, which ultimately resulted in a multi-million-dollar stipulated penalty. Regardless of the permissible penalty amounts, the more important deterrent to violations is the availability of resources and qualified personnel within the agencies to support compliance with federal law and regulations.

Designee Provisions

Several of the proposed amendments to FOGRMA definitions set forth in Section 10 of H.R. 1517 would alter the permissible practice of a lessee appointing a designee to compile information and submit reports and payments on behalf of the lessee. Often the holders of leasehold interests on public lands are small companies who are not directly involved in operations and who must rely on the services of operators or third-party designees to process reports and payments. Under current law, the designees do not become liable to the United States with respect to the reporting and payment practices undertaken on behalf of the lessees for whom they perform services. Through proposed changes in definitions, H.R. 1517 would eliminate requirements for notice or service in order to commence proceedings against a lessee related to reports or payments made by the designee. Further, other provisions in Section 12 of H.R. 1517 would make designees liable for the obligations of the lessees for whom they are performing services. Before enacting these changes into law, the Tribe urges the Subcommittee to reach out to industry associations to receive their views on whether the suggested changes, which would effectively discourage use of designees, would actually benefit the United States.

Shared Penalties

The Tribe strongly supports Section 22 of H. R. 1517, which would provide clarity and fairness to the FOGRMA provisions (30 U.S.C. § 1736) addressing the sharing of recovered payments and penalties between the United States, on the one hand, and a state or tribe, on the other hand. In our experience, the work performed by state and tribal auditors under a delegation or cooperative agreement has been critical to the recovery of civil penalties. The equitable sharing of such recoveries was hindered by the current provisions of FOGRMA.

Beneficial On-lease Use

The Tribe opposes the elimination of the beneficial on-lease use exception to royalty computation proposed under Section 25(a)(1)(A) of H.R. 1517. This exception is consistent with longstanding practices and regulations and is beneficial to both lessors and lessees. However, the Tribe supports the elimination of the royalty exemption of gas lost or consumed by venting or

flaring under Section 25(a)(1)(B) based on the need to discourage such practices for the benefit of the environment and the atmosphere.

“Removed or Sold”

The Tribe questions whether the striking of the “removed or sold” language from leases issued under the MLA or OCSLA as a condition for triggering royalty payment obligations is a favorable proposal. Again, this change is one that should be discussed actively with knowledgeable industry organizations, operators, and representatives of the public interest before enactment.

In conclusion, we hope these comments are useful in your consideration of H.R. 1517 and appreciate the opportunity to provide them.