

**BEFORE THE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES**

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**On behalf of the
SOUTHERN UTE INDIAN TRIBE AND
SOUTHERN UTE INDIAN TRIBE GROWTH FUND
Oversight Hearing
*“Examining the Biden Administration’s Unprecedented
Obstruction of the BOEM Offshore Leasing Program”*
October 18, 2023**

INTRODUCTION

Good morning Chairman Stauber, Ranking Member Ocasio-Cortez, and other Committee members. I am Shane Seibel, Executive Director of the Southern Ute Indian Tribe Growth Fund, the business arm of the Southern Ute Indian Tribe. It is an honor to appear before members of both sides of the aisle to discuss a subject of major importance. For decades, our tribal leaders have come before Congressional committees to discuss the prudent development of energy resources in Indian country and across the United States. Prudent development of energy resources allows economies to grow, including our own tribal economy, and helps meet the energy needs of the American people. I hope our comments benefit this Committee.

In this testimony, I describe our Reservation and how energy development, including our activity offshore in the Gulf of Mexico, has affected the Southern Ute people. I can speak to these matters not just as the Executive Director of the Tribe’s Growth Fund. I can also attest to the dramatic impact that energy development has had on me as an enrolled member of the Southern Ute Indian Tribe. Our energy strategy is to provide safe, affordable, and reliable energy with a path to carbon neutrality. Energy developed from the Gulf of Mexico can play a crucial role in implementing that strategy.

The recent actions of the Biden Administration demonstrate a policy that minimizes future leasing and production of the Nation’s oil and gas resources from offshore. We understand the need to reduce carbon emissions in addressing climate change, and we also share the objective of achieving carbon neutrality in energy production. However, the global demand for energy is increasing, and we believe that the leasing of Federal offshore resources and their prudent development are necessary elements of energy transition, the maintenance of national security, and assuring economic stability. Additionally, we believe that reforms are necessary in the conduct of environmental reviews under the National Environmental Policy Act (“NEPA”) so that meaningful evaluation of alternatives can proceed in a timely fashion and greater certainty can be provided to agency decisions authorizing Federal mineral leasing and development both onshore and offshore.

I. THE TRIBE, OUR RESERVATION, AND THE GROWTH FUND

Our Tribe has just under 1,500 members. Our Reservation consists of approximately 700,000 acres of land located in southwestern Colorado, near the Four Corners area. Some 311,000 surface 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. Although the bulk of the Reservation involves tribal trust lands, interspersed throughout the Reservation are Federal, state, and private lands, as well as some allotted Indian lands.

Through financial discipline and farsighted leadership, the Tribe has developed a record of sound managerial experience and business practice. 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 business management. The path to successful economic development has had significant challenges. 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 more than 1,000 employees. The Tribe provides health insurance for its tribal members and operates its own health clinic. The Tribe funds educational opportunities so that all members may obtain a college or vocational degree and runs its own school for elementary and middle school children. The campus of our tribal headquarters is dotted with state-of-the-art buildings, including a justice center, museum, and recreational health facility. This success was not an accident; it is the product of sustained effort and discipline.

Without question, the Tribe's economic success has been tied to development of the Tribe's oil and gas resources. Successful development of those resources, principally coalbed methane gas, has resulted in a higher standard of living for our tribal members. Our members have jobs. Our educational programs provide meaningful opportunities at all levels. Our elders have stable retirement benefits. 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, our culture, and our lands in perpetuity.

Almost 25 years ago, tribal leaders had the foresight to recognize that for our Tribe to succeed in business, we must operate our businesses differently than our government. As a result of that vision, the Tribal Council developed a Financial Plan which we still operate under today that created the Southern Ute Indian Tribe Growth Fund, a separate and distinct division of the Tribe. Our Permanent Fund, which is our government, is focused on providing services to our members and managing our lands and the environment. The Growth Fund is focused on providing economic prosperity for our Tribe as well as employment opportunities for our Tribal Members. The Growth Fund started by successfully developing the Tribe's energy resources and today, it has blossomed into a diversified portfolio of energy and non-energy investments across sixteen states and the Gulf of Mexico. Simultaneously, the Tribe has overseen governance and protection of the environmental and cultural resources, either through the exercise of its inherent powers over land-use or through express delegations of Federal authority over air and water quality regulation.

One of our portfolio companies, Red Willow Production Company, a wholly owned component of the Tribe, has participated in oil and gas activities on our Reservation for nearly 30 years. To diversify the Tribe's energy portfolio, Red Willow Offshore, LLC, was created in 2003, and since that time Red Willow Offshore has participated as a successful bidder in multiple Gulf of Mexico offshore lease sales and has actively participated as a non-operating working interest owner in both shelf and deepwater Gulf of Mexico. The Gulf of Mexico is one of the few places in the United States where exploration of traditional reservoirs still occurs allowing businesses that do not have large existing acreage positions to compete for new opportunities to grow or sustain their business models.

II. BOEM OFFSHORE LEASING PROGRAM BENEFITS

The Tribe's interests in the BOEM National Outer Continental Shelf ("OCS") leasing program are similar to those of the United States. Just as the United States government enjoys the financial benefits of offshore leasing and successful development, so does the Tribe's government. The revenues received by the Tribe through the Growth Fund – including Red Willow's offshore investments – are a major funding source for our Reservation's schools, healthcare facilities, law enforcement, social programs, and cultural preservation.

In the United States, offshore energy resources have generated over 134 billion dollars of revenue from lease sales, royalties on production, and rental fees over the past 20 years.¹ The largest portion of these funds goes to the U.S. Treasury to fund daily operations of the government in helping to provide security and services to the American people. Other portions of those funds support revenue sharing with states and coastal political subdivisions and are used for coastal conservation, restoration, and hurricane protection.

Fully acknowledging the financial opportunities made available to the Tribe through OCS leasing, we also recognize that prudent development of the Nation's energy resources is important to national security. Whether those domestic energy resources are natural gas produced from tribal lands in the Southwest or oil from the Deep Gulf, the availability of those energy resources allows our country to survive and prosper without substantial threats from outside forces. For example, a strong energy industry has allowed the United States to escape the natural gas supply-stranglehold that Russian President Vladimir Putin attempted to place on Europe because of its support of Ukrainian sovereignty. We are living in uncertain times and a strong U.S energy industry fosters national security in the U.S and with our allies.

III. FEDERAL OCS LEASE SALES

Under Section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. § 1344), Congress has directed the Secretary of the Interior ("Secretary") to schedule "as precisely as possible" lease sales for consecutive 5-year periods in a National OCS Oil and Gas Leasing Program ("National OCS Program") after evaluating specified attributes of OCS areas. The Secretary is authorized to select the "timing and location" of proposed OCS lease sales that best meet national energy needs

¹ U.S. Dept. of the Interior, Office of Natural Resources Revenue website, "Fiscal Year Revenue, 2004-2022.csv," <https://revenue.data.doi.gov/downloads/revenue>

and that balance, to the maximum extent practicable, the potential for environmental damage, discovery of oil and gas, and adverse impact on the coastal zone (43 U.S.C. § 1344(a)(2)). From 2000-2020, the average number of annual lease sales was 3.4 per year.² However, only 3 total lease sales under the National OCS Program have occurred in the past three years, and two of the three were expressly required by Congress in the Inflation Reduction Act.³ An additional lease sale required by the Inflation Reduction Act (Lease Sale 261) is scheduled to occur on November 8th of this year following entry of a preliminary injunction by the U.S. District Court for the Western District of Louisiana invalidating last-minute restrictions imposed by BOEM and a denial by the U.S. Court of Appeals for the Fifth Circuit of a request for an emergency stay.⁴

BOEM now proposes to further reduce the number and size of OCS lease sales. In January 2018, BOEM published the Draft Proposed Program (“DPP”) for the 2023-2028 period, which included a proposed schedule of forty-seven lease sales in all four OCS regions and twenty-five of the twenty-six planning areas. The subsequent Proposed Program, published in July 2022, eliminated twenty-four of the twenty-six planning areas and proposed a schedule of up to eleven lease sales in two program areas. The Final Proposal published in September of 2023 includes three potential OCS oil and gas lease sales in the Gulf of Mexico (“GOM”) Program Area, one potential sale in 2025, one potential sale in 2027, and one potential sale in 2029. *See* U.S. Dept. of the Interior, Bureau of Ocean Energy Management, *2024-2029 National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program* (Sept. 2023) (“BOEM’s 2024-2029 Proposed Final Program”).

The uncertainty that has been created with offshore leasing in the past few years needs to be eliminated, and the Nation must recognize the important role that offshore oil and gas development plays in meeting energy demand. Information obtained from the U.S. Energy Information Administration and the Bureau of Safety and Environmental Enforcement confirms that production from existing OCS leases currently constitutes 15% of domestic oil production and 2% of natural gas production.⁵ Unnecessary gaps in the offshore leasing program erode confidence in the future availability of energy resources from the Gulf of Mexico. Further, preparation for sales by industry participants is a complex and expensive process. In statutorily requiring optimal precision in the formulation of five-year lease sales programs (43 U.S.C. § 1344(a)), Congress understood that evaluations of potential exploration prospects involve application of constantly improving technologies and expert assessments of regional geoscience, infrastructure, and economic feasibility. Recognizing the inherent risk of participating in auctions, industry needs at least some level of predictability that lease sales will be held so it can determine whether to deploy the capital and resources needed to participate effectively in scheduled lease sales. Predictability

² U.S. Dept of the Interior, Bureau of Ocean Energy Management website, <https://www.boem.gov/oil-gas-energy/lease-sales>

³ Act of August 16, 2022, The Inflation Reduction Act (§ 50264), Pub. L. No. 117-169, 136 Stat. 1818 (2022) (Lease Sales 258 and 259).

⁴ *See* Unpublished Order (Sept. 25, 2023), *State of Louisiana v. Haaland*, Case No. 23-30666 (5th Cir. 2023).

⁵ BOEM’s 2024-2029 Proposed Final Program at 6-7.

of lease sales is not just a need for industry; it also serves as an important tool in maintaining reasonable forecasting of energy supplies during the next few decades as aggressive transitioning to renewable energy sources proceeds in the United States and around the world.

Today, over 80% of the energy consumed around the world is fossil based.⁶ To keep energy both affordable and available, adequate supplies of oil and gas are critically needed while an aggressive transition to carbon neutrality occurs. According to the U.S. Department of Energy, 44% of Americans, or about fifty million people, qualify as low-income and have a disproportionately high energy burden; this means the percentage of gross household income they spend on energy is three times higher than it is for non-low-income Americans.⁷ The more expensive energy becomes, the larger the burden on low-income families, forcing families to make tough choices. We experienced this phenomenon this past January in southwest Colorado when San Juan Basin Indian Index Pricing hit an all-time high at \$43.20 per MMBTU.⁸ This increased pricing was a direct result of record low storage levels of natural gas along the U.S. west coast, increased seasonal demand along the Pacific coast as a result of a cold and wet winter, and limited pipeline infrastructure to deliver natural gas to the west coast markets. That price spike resulted in some local consumers' gas utility bills increasing by over 1000%. Some individuals saw their bills increase by more than \$1,000 for one month when compared to prior January bills. This increase is more than 16% of the monthly average median income for a household in LaPlata County.⁹ We must figure out a way to provide affordable and reliable energy throughout the energy transition and prevent disadvantaged communities from being disproportionately impacted.

IV. TRANSITION DUE TO CLIMATE CHANGE

Like the United States, the Tribe and its members share concerns about the effects of fossil fuel consumption and climate change, and the Tribe has been at the forefront of environmental stewardship and energy transition in the Southwest. Its projects include: the capture of fugitive methane naturally escaping from miles of coal outcrops on the Reservation, one of the first utility scale solar projects in the Four Corners, ongoing construction of a carbon capture facility at our gas treating site, and ongoing development of one of the first few zero-emissions NET Power natural gas-fired power plants in the country.

⁶ Energy Institute website, <https://www.energyinst.org/>

⁷ U.S. Dept. of Energy, Office of Energy Efficiency and Renewables website: <https://www.energy.gov/eere/energy-accessibility-and-affordability>

⁸ U.S. Dept. of the Interior, Office of Natural Resources Revenue website: <https://onrr.gov/indian/indian-pricing?tabs=indian-gas-index-zone>

⁹ U.S. Census Bureau, U.S. Census Bureau Quick Facts website: <https://www.census.gov/quickfacts/laplatacountycolorado>

Reaching “net-zero domestic GHG emissions by 2050 [is] the objective agreed to by President Biden and the parties to the Paris Agreement.”¹⁰ BOEM’s 2024-2029 Proposed Final Program reflects the Secretary’s determination that the end of global reliance on fossil fuel energy is achievable by 2050; however, the process and effects of the replacement of fossil fuel with energy substitutes is uncertain. Because of the omnipresent nature of petroleum products in the vast domestic marketplace, the transition away from hydrocarbons to renewable energy sources will unquestionably take many years. Aside from providing heat, electricity, and transportation-fuel, petroleum products are most likely elements of the chair you might be sitting in, the carpet, the furniture, the walls, and other materials used to build your house, office, or car (including electrically powered vehicles). BOEM’s own forecasts demonstrate “that for the next ten years, the [GOM] can and will continue to support America’s energy demands and economic development as needed – even as the United States continues to make strides toward sustainable energy sources.” *U.S. Outer Continental Shelf Gulf of Mexico Region Oil and Gas Production Forecast 2022-2031* at 5 (BOEM, July 2022).

BOEM fully acknowledges that “[t]echnological advancements and a strong regulatory framework have contributed to reducing the carbon profile of the OCS.” BOEM’s 2024-2029 Proposed Final Program at 1-10. Based on current research data, BOEM also confirms that deepwater GOM production appears to have one of the lowest carbon intensities of all global crude oil projects. *Id.* at 1-11. Based on the low carbon intensity of production from the deepwater GOM, not holding lease sales in the GOM could have the counterproductive effect of raising global greenhouse gas emissions, and GOM deepwater production should continue to be part of the long-term U.S. strategy to lower carbon emissions as long as it remains one of the lowest carbon intensity barrels of oil produced around the world.

V. NEPA IN TRIBAL MINERAL DEVELOPMENT AND OFFSHORE LEASING

Despite the Tribe’s decades-long success in conducting highly complex business transactions, both on and off the Reservation, and its record of successfully implementing environmental laws and standards, federal statutes still require Federal review and approval of most transactions occurring on Reservation lands held in trust for the Tribe by the United States. Federal approval constitutes federal action, which triggers environmental review under the NEPA, 42 U.S.C. 4332(2)(C). Whether the Tribe’s proposed action involves the granting of a right-of-way for a waterline or fiber-optic cable or entering into an oil and gas lease to protect against resource drainage from neighboring non-Indian wells, Bureau of Indian Affairs (“BIA”) approval is required. Whether because of funding or staffing needs, BIA faces major challenges in carrying out NEPA reviews, which causes delays and potential lost opportunities. Accordingly, the Tribe has been supportive of NEPA reforms that facilitate more expeditious reviews and decision-making.

Because of NEPA’s dramatic presence in the administration of the Tribe’s lands, the Tribe participated actively in the rulemaking undertaken by the Council on Environmental Quality (“CEQ”) that led to the revised 2020 Rule as well as CEQ’s more recent Phase 1 Revision process.

¹⁰ U.S. Dept. of the Interior, Bureau of Ocean Energy Management, *2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program Final Programmatic Environmental Impact Statement* at 221 (Sept. 2023).

See Letter from Chairman Christine Sage to CEQ dated Aug. 20, 2018, CEQ-2018-0001-12261; Letter from Chairman Christine Sage to CEQ dated Feb. 25, 2020, CEQ-2019-0003-82306; Letter from Chairman Melvin J. Baker to CEQ dated November 18, 2021, Docket No. CEQ-2021-0002-36121. The Tribe also participated as an amicus in the case of *Wild Virginia v. Council on Environmental Quality*, 544 F.Supp.3d 620 (W.D. Va. 2020), *aff'd*, 56 F.4th 281 (4th Cir. 2022), which dismissed challenges to the 2020 CEQ Rule. Several weeks ago, the Tribe submitted detailed comments addressing CEQ's proposed NEPA Phase 2 rulemaking. See "National Environmental Policy Act Implementing Regulations Revisions Phase 2," 88 Fed. Reg. 49,924 (July 31, 2023); Letter from Chairman Melvin J. Baker to CEQ dated September 26, 2023, CEQ-2023-003-27134.

On April 20, 2022, CEQ adopted its Phase 1 Final Rule (87 Fed. Reg. 23,453), which reversed key regulatory reforms to administration of NEPA that had been instituted in 2020. Slightly more than a year following CEQ's adoption of the Phase 1 Final Rule, Congress passed, and President Biden signed, the Fiscal Responsibility Act of 2023, Pub. L. No. 118-5 ("FRA"), which statutorily amended NEPA by clarifying its scope and adding efficiencies to NEPA's environmental review processes. Congress' FRA amendments to NEPA appeared to recognize that the NEPA process had reached a level of unworkability, particularly when the proposed Federal action involved large scale projects, such as those needed to upgrade the Nation's highway system, electrical grid, and major infrastructure. Among other provisions, the FRA facilitates effective inter-agency use of categorical exclusions to expedite projects that are not likely to cause significant adverse impacts to the environment. FRA, Pub. L. No. 118-5 § 321(a), 137 Stat. 43 (establish new NEPA § 109).

Just as the Tribe has experienced delays and challenges regarding development of tribal lands, the offshore leasing program has also become victim to the constantly changing interpretations and application of the NEPA process. In recognition of the importance of the National OCS Leasing Program and the size of investment implicated in making leasing and development decisions, we believe that a more expeditious process of review is needed. That process should not be one that abandons meaningful consideration of or mitigation of adverse environmental consequences. It should be one that provides greater certainty to the conduct of lease sales and planned development. In sum, we continue to encourage Congress to address permit reform, so resources and infrastructure development needed to provide affordable and reliable energy with a path to carbon neutrality can be achieved.

CONCLUSION

We hope this testimony provides information regarding the importance of OCS leasing to the Tribe and United States. Oil and gas production from the Gulf of Mexico does not just provide revenue and economic benefit to the U.S. while supporting national security. It also can be a critical supply of oil and gas to provide affordable and reliable energy throughout the energy transition to carbon neutrality. Again, we are most appreciative of the opportunity to present this testimony.