

Committee on Natural Resources
Subcommittee on Indian and Insular Affairs

Oversight Hearing

1334 House Office Building

September 28, 2023

10:15 AM

- “Tribal Autonomy and Energy Development: Implementation of Indian Tribal Energy Development & Self-Determination Act”

Questions from Rep. Westerman for Bidtah Becker, Chief Legal Counsel – Office of the President and Vice-President, Navajo Nation:

1. Your testimony mentioned that one of President Nygren's priorities is for the Navajo Nation to have an ownership role in energy development. How has Navajo Transitional Energy Company (NTEC) been a part of this move towards ownership in energy development, and what have been the benefits to Navajo Nation of establishing the NTEC?

The Navajo Nation took ownership created NTEC in response to the prior owner of the Navajo Mine announcing it was going to close the mine. By establishing NTEC, the Navajo Nation took ownership of the sole mine that provides coal to the Four Corners Generating Station. The Navajo Nation preserved the coal royalties and on Navajo Nation jobs associated with the mine and power plant, which totals about 800 jobs. Since the purchase of the mine several years ago, NTEC has ventured into new areas and is currently engaged in several discussions concerning both off Navajo Nation and on Navajo Nation energy projects.

- a. Can you expand on what that ownership role for Navajo Nation practically looks like in the future?

The ownership role allows the Navajo Nation to have a say in when and how to close important employers on the Nation. It also allows the Navajo Nation to know as soon as possible when employers are possible shutting down. The shutdown of the Navajo Generating Station (NGS) resulted in the loss of 1,000 direct jobs on Navajo Nation jobs and 3,000 indirect jobs. If the Nation had been an owner of NGS, it would have known sooner what the owners' plans were and could have begun working on worker placement programs so that these individuals could continue to be employed on the Navajo Nation.

- b. What would be the ideal managing situation look like for Navajo Nation?

The ideal managing situation will be unique to each energy project. That being recognized, the ideal managing situation allows the Navajo Nation to have a say in not only how to protect Navajo Nation jobs but also to ensure the Navajo communities are heard and their concerns are adequately responded to. It also helps ensure the development of an on Navajo Nation economy.

2. Your testimony mentioned that access to several agencies' databases would be crucial to fully carry out the expanded leasing authorities included in the Indian Tribal Energy Development and Self Determination Act Amendments of 2017.

- a. Could you provide further information to the committee regarding what the Department of the Interior Solicitor staff provided as the reason(s) the Navajo Nation would lose access to the data if the Nation decided to issue its own mineral leases?

The Navajo Nation staff spoke with the Office of Natural Resources Revenue who reported the decision from the Office of the Solicitor. The reasons for the Solicitor's decision were not shared with the Navajo Nation staff.

- b. While a lack of access to the lease, production, and royalty databases is mentioned prominently in your testimony, could you expand on any other issues that would impact the Navajo Nation's use of these expanded leasing authorities?

The Navajo Nation Minerals Department currently collaborates with the Bureau of Land Management (BLM), Office of Natural Resources Revenue (ONRR), and Bureau of Indian Affairs (BIA) in managing mineral leases. For the most part, these are complicated leases to manage and ONNR provides very valuable assistance. For instance, regulations concerning the appropriate valuation of royalty price change over time as the energy market develops. This type of real-world energy market engagement requires a specialized staff that is employed through ONNR. When considering taking over mineral leasing authority, the Minerals Department is and has struggled with developing the appropriate staffing and finding the funds to ensure this appropriate staffing for valuation alone. Even when considering contracting valuation services, the Navajo Nation Minerals Department has been unable to find the resources necessary to meet the standard of service it currently expects.

This is why access to the databases referenced above is so important. ONNR has a royalty collection database that ensures a monthly reporting for each producer on the Nation. This includes but is not limited to what is produced, sales volume, sales values, royalty values, including deductions, and more. The Navajo Nation has yet to determine how it can replace this ONNR database in the event it takes over all mineral leasing.

BLM also has a data base that provides production reports. The BLM system works together to compare ONNR data with BLM data. BLM reports well level data and ONNR report lease level data. These two reports are then compared and shared with Mineral

hyper accurate reporting. Again, in imagining how to take over mineral leasing, the Minerals Department struggles to determine how to replace this hyper accurate data.

The Minerals Department is committed to tribal sovereignty and is currently considering taking a small slice of mineral leasing authority over, and specifically sand and gravel leasing. This is because the database services are not as critical to sand and gravel reporting and lease management as they are for oil and gas. Reporting is required from sand and gravel companies but because it is above ground, it is easier to monitor the production.

It is important to note that the Minerals Department is committed to tribal sovereignty and last year the Navajo Nation Council passed the necessary laws for the Minerals Department to eventually obtain primacy over surface mining reclamation from the Office of Surface Mining. The Navajo Nation is poised to become the first tribal nation to take over primacy of surface mining regulation in the United States. This is important to note because Minerals has been able to figure out staffing needs for other of its programs so as to take over roles of the federal government. Mineral leasing has been more elusive.

3. President Nygren testified earlier this Congress against the mineral withdrawal around Chaco Canyon because it would be detrimental to Navajo allottees that have allotted land within the withdrawal area and rely on revenues from oil and gas production to make ends meet. Looking at that decision from a different perspective: Does this withdrawal affect the overall energy resource development for Navajo Nation?

The Navajo Nation is currently reviewing how the withdrawal affects the overall energy resources development for the Nation.

- a. In addition, please expand on how this withdrawal affects other energy projects on Navajo lands.

The Navajo Nation is currently reviewing how the withdrawal affects other energy projects on Navajo lands.

4. Are there other specific barriers the Navajo Nation has experienced when seeking to develop energy projects on Indian lands? And what other solutions should Congress consider for getting rid of or lessening barriers to developing projects on Indian lands?

Specific barriers can include certain regulatory reviews and timing. Meaning if regulatory reviews are too slow, the Nation may not capture the market opportunity.

Something Congress could consider is granting discretion to agencies when they are working specifically on Indian land. The purpose of discretion would be able to, among other things, consider the various benefits occurring on Indian Land that might be lost if regulatory reviews are unnecessarily delayed. As things stand, all projects are treated as essentially equal for many

regulators. To respond to the market, some projects need to be evaluated more quickly than others, and without losing the quality of the review.