

**TRIBAL AUTONOMY AND ENERGY
DEVELOPMENT: IMPLEMENTATION OF
THE INDIAN TRIBAL ENERGY DEVELOP-
MENT AND SELF-DETERMINATION ACT**

OVERSIGHT HEARING

BEFORE THE
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS
OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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**OVERSIGHT HEARING ON TRIBAL AUTONOMY
AND ENERGY DEVELOPMENT: IMPLEMEN-
TATION OF THE INDIAN TRIBAL ENERGY
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DETERMINATION ACT**

**Thursday, September 28, 2023
U.S. House of Representatives
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 10:21 a.m., in Room 1334 Longworth House Office Building, Hon. Harriet Hageman [Chairwoman of the Subcommittee] presiding.

Present: Representatives Hageman, LaMalfa, Carl, Westerman; and Leger Fernández.

Ms. HAGEMAN. The Subcommittee on Indian and Insular Affairs will come to order. Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

The Subcommittee is meeting today to hear testimony on Tribal Autonomy and Energy Development: Implementation of the Indian Tribal Energy Development and Self-Determination Act; I like that name. Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I therefore ask unanimous consent that all other Member's opening statements be made part of hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

I will now recognize myself for an opening statement.

**STATEMENT OF THE HON. HARRIET M. HAGEMAN, A REP-
RESENTATIVE IN CONGRESS FROM THE STATE
OF WYOMING**

Ms. HAGEMAN. This camera is kind of in our way, and I apologize for that. We will try to fix that next time.

Tribes and individual Indians control roughly 56 million acres of land, much of which holds untapped energy and mineral potential. For example, 30 percent of the coal reserves west of the Mississippi River are found on tribal lands. An additional approximately 44 million acres of land in Alaska are owned in fee simple by Alaska Native corporations who have also sought to develop mineral and energy resources on those lands.

These untapped resources can be a key revenue source for tribes, particularly in rural areas, and can increase the U.S. supply of energy. And several tribes have chosen to develop those resources for the benefit of their tribes, tribal members, and surrounding communities. However, development of projects on tribal trust

lands requires jumping through more hoops, more bureaucracy, and involves more agencies than on any other type of land. We need to change that.

A tribe must also go through the Bureau of Indian Affairs as well as any other applicable Department of the Interior agencies and receive approval before any energy project can move forward. This increases costs for developing any projects, surface or subsurface, on Indian lands and impacts private investment opportunities that a tribe may want to pursue.

Congress has worked toward easing these restrictions to provide a more even playing field for our tribes, and in 2005, Congress authorized the Tribal Energy Resource Agreements, or TERAs, as a way to give tribes more autonomy over energy projects on their lands. Once a tribe has established a TERA and had it approved by the Department of the Interior, a tribe could enter into energy project agreements with developers without the need for Secretarial approval for each project. Yet, tribes had more questions than answers after regulations governing the creation of TERAs were finalized, and no tribe has chosen to go through the process to implement one.

In an effort to streamline the TERA process, as well as benefit other tribal energy goals, Congress passed the Indian Tribal Energy Development and Self-Determination Act amendments in 2018. Despite its passage, issues with the TERA process have remained and no tribe has yet entered into these agreements. Other provisions of the 2018 law were either not fully implemented, like the Biomass Demonstration Project, or were not fully taken advantage of, like the extended leasing authority provisions.

I look forward to talking with our witnesses as each have dealt with the difficult energy development landscape for tribes. It is important that we hear from the Indian tribes about the barriers, remaining issues, and what future activities they wish to seek to meet energy autonomy.

As I have said before, expanding the ability of tribes to use their land in ways without needing to come to the government for approval is crucial for furthering self-determination and economic security. Each tribe is uniquely situated within their lands, their culture, and their history. Tribal governments already seek to make the best decisions for their members, for their social, cultural, and economic security.

Congress has a responsibility to all Americans to work toward abundant, affordable energy and ensure tribes are able to develop their energy resources as best suits the needs and desires of each community. Energy development on tribal lands is not only beneficial for our tribes but for the United States as a whole, for each and every one of us. We need an all-of-the-above energy strategy, and I do not think that this can be accomplished without the partnership of federally recognized tribes.

Thank you to the witnesses for being with us today. I look forward to our discussion and I look forward to continuing this conversation about what tribal autonomy and energy policy should be in the future.

The Chair now recognizes the Ranking Minority Member for any statement.

STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Ms. LEGER FERNÁNDEZ. Thank you so much, Madam Chair, and good morning to everybody. [Speaking Native language], and thank you to our witnesses for joining us today. I only know good morning in a few languages, including Navajo.

The Federal Government has a trust responsibility to promote tribal self-government and sovereignty of American Indians and Alaska Natives, including their ability to develop their economy and their natural resources. Today's hearing will focus on the need to uphold that responsibility and improve the Acts that we just heard about, because we know that the Tribal Autonomy and Energy Development Acts are not working, or else tribes would be using them.

And I have worked with tribes for over three decades on both renewable energy and fossil fuel projects. I worked on trying to get one of those TERAs written and passed. But throughout those decades, I always heard the same thing, tribes want and need to be in control of their projects. Everybody is shaking their heads up and down because we know that is a fact. Tribes have incredible opportunities for energy development, and when tribes are in control, we know they do a better job protecting their environment and cultural resources.

An interesting fact. All of us in this room know that tribes have nearly 7 percent of the nation's potential for large-scale clean energy projects like solar, wind, and geothermal. We know tribes don't come anywhere near to meeting that potential. But there is no reason they shouldn't. Our job here in Congress is to give tribes the opportunities to realize that potential.

Last year, Congress took positive steps to support tribal energy development, particularly through the Inflation Reduction Act. The IRA increased funding for the Tribal Energy Loan Guarantee Program from about \$2 billion to \$20 billion to support tribal investment in energy-related projects. And unlike the TERA, we are seeing tribes take advantage of that funding.

It also provided tribes access to direct-pay tax incentives. As we know, before the IRA, existing tax incentives didn't work for tribes because you are governmental and don't pay those taxes. This change will help tribal energy projects build more quickly and affordably through our existing clean energy programs.

The IRA also provided \$150 million for the Tribal Electrification Program. This program provides tribes with financial and technical assistance for getting zero emission electricity to their homes. I always like to say, we need to build that Route 66 of renewable energy so we can transport over the grid what we need to the people who need it.

Unfortunately, all of our witnesses today know too well that many tribes continue to face barriers accessing all of our programs and the resources needed for energy development. For example, states receive administrative funding for energy projects, but tribes often don't. Federal agencies have oversight over nearly every significant land transaction on tribal lands: appraisals, leasing, permits, rights-of-ways, and environmental reviews.

Renewable energy developers may find it takes twice as long to develop a project in Indian Country than elsewhere. The volume of bureaucratic red tape and lack of coordination deters investment in energy development, and the Chair and I share the concern of addressing that.

In 2017, Congress amended the Indian Tribal Energy and Self-Determination Act to provide direction and clarity so tribes could be afforded the same opportunities as states and localities. But did they really help? We still don't have a tribe utilizing the TERA. I think because, in my experience, the TERA sort of replicated all of the bureaucratic red tape that was already in existence. So, we need to do more. We need to continue to work on simplification so tribes can take advantage of this.

I truly look forward to hearing from our witnesses. I have worked with several of your tribes on different issues over the years, and I am very curious as to what you think we could do best.

But I also want to raise that we are barreling toward a government shutdown right now. I am going to ask you how a government shutdown will impact an already lengthy process for getting approvals. I hope we don't have it, but once we get past a government shutdown, we know there will be an even bigger backlog. And I am very concerned about proposed cuts to the Department of the Interior and will also want to hear your thoughts on whether we should increase funding so that we could get more of these projects approved and what potential cuts would mean to getting your projects approved.

With that, I yield back, and thank you very much.

Ms. HAGEMAN. Thank you. I will now introduce our witnesses for our panel.

The Honorable Melvin J. Baker, Chairman, Southern Ute Indian Tribe, Ignacio, Colorado; Mr. Cody Desautel, Executive Director, Confederated Tribes of the Colville Reservation, Nespelem, Washington; Mr. Nicholas Lovesee, Director of Policy, Native American Finance Officers Association, Washington, DC; and Ms. Bidtah Becker, Chief Legal Counsel, Office of the President and Vice President, Navajo Nation, Window Rock, Arizona.

Thank you for being here. We appreciate your willingness to come and talk to us about these extremely important issues.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record. To begin your testimony, please press the "talk" button on the microphone. We use timing lights. When you begin, the light will turn green. When you have 1 minute left, the light will turn yellow. At the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement. I will also allow all witnesses in the panel to testify before Member questioning.

The Chair now recognizes Chairman Melvin Baker for 5 minutes.

**STATEMENT OF THE HON. MELVIN J. BAKER, CHAIRMAN,
SOUTHERN UTE INDIAN TRIBE, IGNACIO, COLORADO**

Mr. BAKER. [Speaking Native language.] Good morning. Welcome, everybody.

Good morning, Chair Hageman, Ranking Member Leger Fernández, and other Committee members.

My name is Melvin Baker, Chairman of the Southern Ute Indian Tribe. Thank you for allowing us to speak here today on behalf of the Tribe.

For decades, our tribal leaders have come before congressional committees to discuss the prudent development of energy resources in Indian Country. The subject of today's hearing is tied to issues of tribal sovereignty.

Our Tribe has just under 1,500 members. Our Reservation consists of approximately 700,000 acres of land in Southwestern Colorado with over 300,000 surface acres of the Reservation held in trust. The Tribe is also the beneficial owner of additional severed mineral estates held in trust for the Tribe.

The Tribe has developed a record of sound managerial experience and business practice. The Southern Ute Indian Tribe was the first in the nation with a AAA credit rating. We are the largest employer in Southwest Colorado and our members have jobs, health insurance, and the opportunity to obtain a college or vocational degree. Our elders have stable retirement benefits, and our investment portfolio is diverse in energy and non-energy assets both on and off the Reservation that span 16 states. We are on the way to providing our grandchildren and their grandchildren the opportunity to maintain our Tribe, our culture, and our lands in perpetuity.

Through the use of Federal self-determination policy, our Tribe has learned that we can do a better job of developing programs and providing services to our members than Federal agencies can. Conservation is fundamental to our Ute identity, and we have been proactive in overseeing the environmental protection of our lands while effectively managing our energy resources.

In 1990, the Tribe established a water quality program to protect and preserve the quality of the Tribe's water resources by regulating the discharge of pollutants in the tribal waters. In 2012, the Tribe pioneered the Nation's first tribal clean air program. Other departments within the Tribe assist in monitoring wildlife enhancement, habitat, and preserving culture and archeologically resources.

Federal law still requires Federal review and approval of most basic realty transactions occurring on tribal trust lands. Realty transactions trigger an environmental review under NEPA. The NEPA review second guesses the Tribal Council's decisions on how to best use our tribal trust lands and cause significant delays and lost opportunities.

In 2016, the Tribe spent significant time and funding on a supplemental EIS for energy development. The Federal agency co-leading with the Tribe had removed itself. This has been left unresolved and the Tribe does not have a clear path forward.

To eliminate administrative delays and in recognition of the ability of tribal governments to protect their own interests,

Congress authorized tribes to exercise greater control over their land through the HEARTH Act. Our Tribe's environmental review code and service leasing code received Secretarial approval under the HEARTH Act earlier this year.

Obtaining timely approval of oil and gas leases and developmental permits has also been challenging. The Energy Policy Act of 2005 has not been as successful as the HEARTH Act since no tribe has submitted a Tribal Energy Resource Agreement, or TERA, to the Secretary for final review and approval. A TERA is a bilateral agreement with the Secretary negotiated with the tribe that allows the tribe to contract and approve energy agreements and leases without further Secretary approval.

Our Tribe submitted input in 2014 to the Senate Committee on Indian Affairs as to why no tribe had entered into a TERA. One of the reasons is that the BIA regulations minimize tribal authority reserving to the Federal Government an array of functions called inherent Federal functions, an undefined term that deluded the Act's goal of fostering tribal decision making and self-determination.

Despite positive amendments to the law in 2018, still no tribe has entered into a TERA. Energy-producing tribes like the Southern Ute are still waiting for promised clarification regarding inherent Federal functions. The lack of clarity on this item shows a disregard by the Interior for the ambiguous objectives of Congress. It also undermines the time, expense, and the lost opportunities associated with participating in the uncertain TERA process.

I trust this testimony provides backgrounds about how TERAs became embraced in law and how Interior's regulations were developed. We still believe that TERAs are a valuable option for tribes, including our Tribe, should clarification be provided on inherent Federal function.

I would like to thank the Committee for the opportunity to present this testimony this morning.

[Speaking Native language.] Thank you.

[The prepared statement of Mr. Baker follows:]

PREPARED STATEMENT OF THE HONORABLE MELVIN J. BAKER, CHAIRMAN, SOUTHERN UTE INDIAN TRIBAL COUNCIL

I. INTRODUCTION

Good morning, Chair Hageman, Ranking Member Leger-Fernandez, and other Committee members. I am Melvin J. Baker, Chairman of the Southern Ute Indian Tribal Council, the governing body of the Southern Ute Indian Tribe. It is an honor to appear before you today to discuss a subject of major importance. For decades, our Tribal leaders have come before Congressional committees and subcommittees to discuss the prudent development of energy resources in Indian Country. Prudent development of Tribal energy resources allows Tribal economies to grow and also helps meet the energy needs of the American people. The subject of today's hearing is tied to issues of Tribal sovereignty. I trust that our comments will be of value to the Committee.

In this testimony, I will describe our Reservation and how energy development has affected our people. I also want to share with you our role in seeking passage of the Indian Tribal Energy Development and Self-Determination Act of 2005 (25 U.S.C. §§ 3501-3506) and the amendments to that law enacted in 2018. The job of making that legislation work for Tribes is not over, and I want to share with you what we see as obstacles to its effectiveness. With that, let me first describe our Tribe and where I come from.

II. THE SOUTHERN UTE INDIAN TRIBE AND OUR RESERVATION

As the oldest inhabitants to what is now the State of Colorado 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 Indian allotted 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 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 opportunity so that all members may obtain a college or vocational degree and runs its own Montessori Academy 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 ("CBM"), 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 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.

Successful energy development has also enabled the Tribe to invest in diverse, non-energy projects, strengthening the foundation for long-lasting economic prosperity. For example, the Tribe has made real estate investments in multiple markets. These investments include residential, commercial, industrial, and hotel properties in California, Colorado, Texas, Kansas, Illinois, Ohio, Florida, Maryland, New Jersey, and Tennessee. Even greater diversification is reflected in the Tribe's investments in managed private equity funds involving hundreds of portfolio companies. 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.

III. 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 our Tribe has learned that we can do a better job of developing programs for the Tribe and providing services to our members than federal agencies can. In some instances, the Tribe has chosen to enter into "638 contracts" under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§5301, *et seq.*, which authorizes the Tribe to do the tribally-related work of federal agencies and receive the federal funding that would have gone to a federal agency to perform that function. In other instances, the lack of federal funding or focus has required the Tribe to simply fill the void with its own programs and services.

Energy development on our lands has evolved over time. 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 mineral leases under the supervision of the Secretary of the Interior. For decades, we maintained a passive role, receiving modest royalty revenue, but we 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 more control over that process. The moratorium on leasing 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 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 \$900 million in revenue for the Tribe over the last four decades.

With the enactment of the Indian Mineral Development Act of 1982, 25 U.S.C. §§2101-2108, ("IMDA"), 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 more thorough job of monitoring the royalty payment practices of oil and gas companies, 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") (later named the Office of Natural Resource Revenue) permitting the Tribe to conduct its own royalty accounting and auditing under that agency's ultimate oversight. 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 Secretarially-approved plan for use of \$8 million of tribal trust funds held by the Secretary as part of a settlement of our 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. Today, Red Willow successfully operates hundreds of wells on the Reservation. It has also been a regional leader in successful development of horizontal drilling in coal formations, which has increased CBM production volumes while dramatically decreasing adverse surface impacts.

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 has provided a significant source of revenue for the Tribe.

Just as we have relied economically on oil and gas development, we have also been active in overseeing environmental protection. In 1990, the Tribe established a Water Quality Program to protect and preserve the quality of the Tribe's water resources through management of various Clean Water Act programs. With support from the U.S. Environmental Protection Agency ("EPA"), the Tribe has established its own water quality standards and is actively involved in regulating the discharge of pollutants into tribal waters on the Reservation. 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.* Other departments within the Tribe's governmental organization assist in monitoring wildlife, enhancing habitat, and preserving cultural and archaeological resources on the Reservation.

IV. MORE RECENT EXAMPLES OF TRIBAL SELF-DETERMINATION

Despite the Tribe's decades-long success in managing its own affairs and conducting complex business transactions, both on and off the Reservation, federal law and regulations still require federal review and approval of the most basic realty transactions occurring on the lands held in trust for the Tribe. Federal approval constitutes federal action, which triggers environmental review under the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4332(2)(C), even for simple and straightforward realty transactions. In addition to second-guessing the Tribal Council's decisions on how to use its tribal trust lands, federal agency NEPA review can cause significant delays and lost opportunities.

To eliminate administrative delays, and in recognition of the ability of Tribal governments to protect their own interests, Congress has taken steps in recent years authorizing Tribal governments to exercise greater control over Tribal lands. Under the HEARTH Act, for example, once tribal regulatory and environmental review procedures have been approved by the Secretary of the Interior, Tribes may make final decisions in issuing tribal surface leases without prior review and approval of the Secretary. *See* 25 U.S.C. §415(h), Helping Expedite Affordable and

Responsible Tribal Homeownership Act of 2012, Pub. L. No. 112-151, 126 Stat. 1150 (“HEARTH Act”). Our Tribe’s comprehensive environmental review code and surface leasing code received Secretarial approval under the HEARTH Act earlier this year. That approval does not extend to mineral leasing, however. As addressed below, the Indian Tribal Energy Development and Self-Determination Act, which does address mineral leasing, is more complicated than the HEARTH Act in terms of transferring final approval authority over energy agreements and development from the Secretary to Tribes.

V. THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT OF 2005

Just as Tribes had encountered delays in obtaining Secretarial approval of surface leases, obtaining timely approval of oil and gas leases and associated developmental permits has often been challenging. More than 20 years ago, in a memorandum dated June 30, 2002, our legal counsel informed the legal counsel for the Senate Committee on Indian Affairs, as follows:

The problems with Secretarial approval of tribal business activities include an absence of available expertise within the agency to be helpful Some structural alternative is needed. The alternative should be an optional mechanism that allows tribes to elect to escape the bureaucracy for mineral development purposes, provided the Secretary has a reasonable indication that an electing tribe will act prudently once cut free.

Congress responded to the concerns of energy producing Tribes in the course of revising the Nation’s energy policy.

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.” *See* Act of August 8, 2005, Public L. No. 109-58, Title V, 119 Stat. 764-779 (amending Title XXVI of The Energy Policy Act of 1992 (25 U.S.C. §§3501-3506)). Significantly, Title V authorizes an Indian tribe, in its discretion, to negotiate a bilateral agreement with the Interior Secretary, known as a Tribal Energy Resource Agreement (“TERA”), governing the rights and responsibilities for mineral leasing of tribal trust lands. *See* 25 U.S.C. §3504. Once a TERA is approved by the Secretary, that tribe would be free to negotiate and grant energy-related leases, enter into energy-related business agreements, and issue rights-of-way for such things as pipelines and electric transmission facilities without prior Secretarial review and approval. For various reasons, some of which are identified below, no Tribe has submitted a TERA to the Secretary for final review and approval.

After passage of the TERA legislation, the Senate Committee on Indian Affairs held hearings in which it sought input from energy producing Tribes as to why no Tribe had entered into a TERA. Our Tribe submitted formal comments addressing that issue. In our comments of April 30, 2014, we identified the following potential reasons for why no TERA had been consummated:

1. The BIA regulations implementing Title V’s TERA provisions (25 C.F.R. Part 224) minimized the scope of authority that could be obtained by a TERA tribe by reserving to the federal government an array of functions—called “inherent federal functions”—an undefined term that potentially diluted the act’s goal of fostering tribal decision-making and self-determination.
2. Unlike “638 contracts” carried out by Indian tribes under the Indian Self-Determination and Education Assistance Act, the TERA legislation provided no funding to Indian tribes even though TERA-contracting tribes would be assuming duties and responsibilities typically carried out by the United States.
3. One of the statutory conditions for a TERA, the establishment of a tribal environmental review process, requires public comment, participation, and appellate rights with respect to specific tribal energy projects, which some tribes considered to be an unacceptable opening of tribal decisions to outside scrutiny, including from individuals with no local connection to the affected tribe or project.
4. The statutory standards for measuring a tribe’s capacity to enter into a TERA were vague and unclear.
5. The extensive process of applying for and obtaining a TERA was simply too time-consuming and distracting to merit disruption of ongoing tribal governmental challenges.

Although it took several years following those hearings before changes were made, in 2018 Congress amended the TERA statute in several significant ways. *See* Act of Dec. 18, 2018, “Indian Tribal Energy Development and Self-Determination Act Amendments of 2017,” Public L. No. 115-325 § 103, 132 Stat. 4445-4465 (amending Section 2604 of the Energy Policy Act of 1992 (25 U.S.C. § 3504) (“2018 Amendments”).

VI. 2018 AMENDMENTS TO THE TERA STATUTE

The 2018 Amendments addressed many of the concerns that had been raised by Tribes related to implementation of TERAs. For example, in determining what Tribes were qualified to enter into a TERA, Congress replaced the vague requirement of demonstrated “capacity to regulate the development of energy resources,” with a more concrete test of successful administration of “638 contracts” involving “management of tribal land or natural resources” for a period “not less than 3 consecutive years.” 2018 Amendments, § 103(a), *see* 25 U.S.C. § 3504(e)(2)(B)(XII)). On another point, although Congress retained the requirement that a TERA Tribe develop environmental review procedures as a condition for entering into a TERA, the nature of those tribal environmental review procedures was refined to provide the public notification of and a reasonable opportunity to comment on “significant environmental impacts of the proposed action.” *Id.*, *see* 25 U.S.C. § 3504(e)(2)(C)(i)). As to funding, Congress directed that Tribes with approved TERAs will receive from the Secretary the amounts that would have been expended but were not expended “as a result of an Indian tribe carrying out the activities” under a TERA. *Id.*, *see* 25 U.S.C. § 3504(g)(1). To facilitate the processing of a TERA application, Congress also imposed a 271-day deadline on the Secretary’s disapproval of a TERA, which, if not met, would result in automatic approval of the TERA. *Id.*, *see* 25 U.S.C. § 3504(e)(2)(A).

In addition, the 2018 Amendments expanded the scope of approvable tribal actions that could be taken under a TERA to include transactions involving electric generation, transmission, and distribution facilities (including those associated with renewable energy) (25 U.S.C. § 3504(a)(B)(i)) and transactions involving processing and treating facilities involving production from tribal lands (§ 3504(a)(B)(ii)). The 2018 Amendments confirmed that pooling or communitization agreements could be approved by a Tribe under a TERA (25 U.S.C. § 3504(a)(1)(C)). Collectively, the 2018 Amendments, which were adopted by unanimous consent in both the House and the Senate, reflected significant changes contributing to the attractiveness of TERAs as an option for electing Tribes. To be sure, as with the original 2005 enactment, TERA Tribes would be principally responsible for the business consequences of the negotiated terms of their business agreements; however, similar provisions had not deflected Tribes from seeking HEARTH Act approvals for surface leasing. Despite the positive changes contained in the 2018 Amendments, no Tribe has yet entered into a TERA with the Secretary.

VII. THE SECRETARY’S IMPLEMENTING REGULATIONS AND INHERENT FEDERAL FUNCTIONS

The TERA provisions contained in the 2005 Act directed the Secretary to adopt implementing regulations within 1 year of the effective date of the legislation, i.e., by August 8, 2006. *See* 25 U.S.C. § 3504(e)(8). Recognizing the challenges that the Interior Department would have in meeting that deadline, our Tribe volunteered to assist the Secretary in preparing a preliminary set of draft regulations, and then-Assistant Secretary James Cason accepted that offer. In collaboration with representatives from the Department of the Interior, including the Interior Solicitor’s office, a small working group proceeded with that task, and a preliminary draft was submitted to the Secretary’s representative in early 2006. The product generated by that working group assisted the Secretary in developing proposed regulations that would later be subject to comment and refinement under the rulemaking process prescribed by the Administrative Procedures Act. The Secretary issued implementing regulations on March 10, 2008 (73 Fed. Reg. 12, 821).

At the outset, we recognized that administrative delays associated with proposed federal agency approvals were not limited simply to minerals agreements or rights-of-way, but often involved the subsequent issuance of operational permits related to those documents. For example, the approval of an oil and gas lease or IMDA minerals agreement by the BIA, did not have any effect on the timing of the Bureau of Land Management’s approval of an application for a permit to drill a well on those affected lands. With that in mind, we sought to authorize a Tribe to seek, not

just mineral lease approval, but other Interior agency authority needed to implement such a lease. The working group was supportive of that approach. When the final implementing regulations were issued, however, 25 C.F.R. §224.52(c) stated as follows:

[A TERA may] include assumption by the tribe of certain activities normally carried out by the Department, except for inherently Federal functions

(emphasis added). The term “inherently Federal functions” was not defined in the Secretary’s implementing regulations. Despite repeated efforts to get meaningful clarification from the Interior Department as to what that exception means, we have been unable to do so.

Among other provisions in the 2018 Amendments, Congress explicitly provided that in its TERA application a tribe could:

at the option of the Indian tribe, identify which functions, if any, authorizing any operational or development activities pursuant to a lease, right-of-way, or business agreement approved by the Indian tribe, that the Indian tribe intends to conduct.

25 U.S.C. § 3504(e)(B)(iii)(XIII). Following enactment of the 2018 Amendments, the Secretary was again directed to promulgate implementing regulations, and, in light of the statutory language set forth above, that rulemaking provided another opportunity to find out what the Department would preclude a tribe from undertaking under a TERA. In response to comments submitted during that rulemaking, the BIA stated as follows:

D. Inherently Federal Functions

Comment: Several Tribes and other commenters expressed the need to define “inherently Federal functions” to clarify what functions are not available for Tribes to undertake in a TERA. According to these Tribes, a definition is necessary for several reasons, including to address issues, provide certainty, and ensure consistency of interpretation. A few requested that the definition exclude basic minerals development functions, like applications for permits to drill, thereby allowing Tribes to undertake these functions through TERAs

Response: The Department has undertaken efforts to define “inherently Federal functions” based on years of Tribal input and anticipates releasing a list of functions that it has determined to be “inherently Federal” in the near future.

BIA, “Tribal Energy Resource Agreements,” Final Rule, 84 Fed. Reg. 69602 (Dec. 18, 2019). Our Tribe and all energy producing Tribes are still waiting for that promised clarification just as we have been waiting since 2008.

We anticipate, when confronted with questions about “inherent Federal functions” that Interior will say something to the effect of, “Submit your application; tell us what you want to undertake, and we’ll see if we can work it out.” If that is Interior’s position, it shows a clear, institutional disregard for the unambiguous objectives of Congress. It also grossly underestimates the time, expense, and lost opportunities associated with participating in required pre-application meetings (which we undertook several years ago), preparing a detailed application, negotiating final terms of a TERA, only to be potentially confronted at the end of that process with a stop sign saying that a critical aspect of our proposed TERA is now a closed opportunity. With deep respect for the Secretary, we do not believe that is what Congress intended, and we hope that greater clarity on this critical point can be obtained.

CONCLUSION

We hope this testimony provides background about how the concept of a TERA became embraced in law and how Interior’s regulations were developed. We still believe that TERAs are a valuable option for many Tribes, including our Tribe. Again, we are most appreciative of the opportunity to present this testimony.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. MELVIN J. BAKER, CHAIRMAN,
SOUTHERN UTE INDIAN TRIBE

The Hon. Melvin Baker did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. Can you further expand on your written testimony and explain further how the Southern Ute tribal members' standard of living, economically, culturally, and socially has improved over the last four decades as a result of the tribe taking an active role in developing energy resources?

Question 2. Are there other specific barriers the Southern Ute Indian Tribe has experienced when seeking to develop energy projects on Indian lands? And beyond simply instituting a Tribal Resource Energy Agreement, what other solutions exist for getting rid of or lessening barriers to developing projects on Indian lands?

Ms. HAGEMAN. I thank the witness for his valuable testimony.
The Chair now recognizes Mr. Cody Desautel for 5 minutes.

**STATEMENT OF CODY DESAUTEL, EXECUTIVE DIRECTOR,
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION,
NESPELEM, WASHINGTON**

Mr. DESAUTEL. Thank you. Good morning, Chair Hageman, Ranking Member Leger Fernández, and members of the Committee.

My name is Cody Desautel, and I am the Executive Director for the Confederated Tribes of the Colville Reservation. I also serve as the President of the Intertribal Timber Council, but today I am testifying in my capacity in representing the Colville Tribe.

I appreciate the opportunity to testify on the implementation of the Indian Tribal Energy Development and Self-Determination Act of 2017, which was signed into law on December 18, 2018. As explained in my written statement, the Colville Tribes developed Section 202 of the Act which established the Tribal Biomass Demonstration Project.

Unfortunately, when the committees of jurisdiction in the Senate considered the bill in early 2017, they failed to update the authorization dates for the project. This error meant that when the Act became law, the project authority would expire in Fiscal Year 2021, less than 3 years from the date of the enactment. That unexpectedly short authorization window proved to be an insufficient amount of time for the Secretaries to implement the project authority and for any tribe to utilize it.

The Tribal Biomass Demonstration Project remains an important tool for Indian tribes, not only for biomass energy utilization but also for forest management. The project is unique in that it directs the Secretaries to enter into at least four projects with Indian tribes annually for each year of the authorization. The prescriptive nature of the authority was intended to ensure that agreements that the tribes proposed would ultimately be entered into by the Secretaries.

The Tribes' expertise with the Tribal Force Protection Act, Federal land managers are often not motivated to negotiate agreements with tribes, and this authority was intended to address that

issue. Congress enacted the Tribal Force Protection Act in 2004 and over the first decade only six projects were completed. The project authority also allows biomass agreements to have terms of up to 30 years.

This was intended to ensure that Indian tribes that wished to participate in the development of a biomass project could provide a reliable supply of biomass over a long period from adjacent Federal lands. The economics of biomass projects that require longer term contracts to make those projects economically viable. This is essential if new infrastructure is to be constructed in areas where it currently does not exist.

The Colville Tribes is currently working with the Myno Carbon Corporation on a supply agreement to provide biomass from the Colville Tribes on reservation forests for a planned carbon removal facility in Kettle Falls, Washington. The planned facility is expected to remove 90,000 metric tons of CO₂ per year in the form of biochar and avoid 200,000 metric tons of CO₂ emissions per year. The Biomass Demonstration Project authority would assist this project and similar biochar projects by ensuring an adequate supply of biomass.

The project also directs the Secretaries to incorporate tribal on-reservation management practices on the project lands at the Tribe's request. As the Committee is aware, many Federal lands that are adjacent to tribal trust lands require fuels reduction and restoration activities.

Since 2015, more than half of the 1.4 million acre Colville Reservation has burned as a result of massive wildfires. The under-managed conditions on some Federal lands adjacent to the Colville Reservation contributed to the severity of at least one of these fire events. The Colville Tribes did not receive any air tanker or suppression resources until the 2015 NorthStar fire had burned 100,000 acres because those resources were already committed to fires on Federal lands.

The NorthStar Fire eventually burned for 57 days and burned 217,000 total acres and 800 million board feet of timber, which in today's market would be worth approximately half-a-billion dollars. Although the Reservation saw more than 250,000 acres burn in 2015, the post-fire severity experienced on the Reservation was lower than that on adjacent Federal land because of the forest health and fuels treatments the Tribe carried out in previous decades.

The project authority provides Indian tribes with a valuable tool not only for biomass projects but also for protecting on-reservation forests from wildfire and insect dangers from adjacent Federal forest lands. Congress should renew the project authority and extend its authorization to allow Indian Country to fully realize its potential.

I would be happy to answer any questions the Committee may have. Thank you.

[The prepared statement of Mr. Desautel follows:]

PREPARED STATEMENT OF CODY DESAUTEL, EXECUTIVE DIRECTOR, CONFEDERATED
TRIBES OF THE COLVILLE RESERVATION

On behalf of the Confederated Tribes of the Colville Reservation (“Colville Tribes” or the “CCT”), I appreciate the opportunity to testify on the implementation of the Indian Tribal Energy Development & Self Determination Act of 2017 (the “Act”), which was signed into law in December 2018.

Beginning in 2011, the Colville Tribes developed what ultimately became Section 202 of the Act, the Tribal Biomass Demonstration Project (“Project”). Unfortunately, when the committees of jurisdiction in the Senate considered the bill in early 2017, they failed to update the authorization dates for the Project. This error meant that when the Act became law on December 18, 2018, the Project authority would expire in fiscal year 2021, less than three years from the date of enactment. That unexpectedly short authorization window proved to be an insufficient amount of time for the Secretaries to implement the Project authority and for any Indian tribe to utilize it.

The Colville Tribes urges the Committee to update the dates in the Project to enable Indian tribes to utilize the authority. The Intertribal Timber Council, of which the Colville Tribes is an active member, has also recommended that the Project authorization dates be updated in the next Farm Bill. As explained below, the Colville Tribes is a participant in a planned biomass and biochar project in northeastern Washington that would benefit by utilizing the Project authority.

Background on the Colville Tribes

The Confederated Tribes of the Colville Reservation is a confederation of twelve aboriginal tribes and bands from across eastern Washington state, northeastern Oregon, Idaho, and British Columbia. The present-day Colville Reservation is in north-central Washington state and was established by Executive Order in 1872. The Colville Reservation covers approximately 1.4 million acres, an area slightly larger than the state of Delaware. The CCT has nearly 9,300 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest and the second largest in the state of Washington. About half of the CCT’s members live on or near the Colville Reservation. Of the 1.4 million acres that comprise the Colville Reservation, 913,000 acres are forested land and 652,308 of those forested acres are commercial timber land. Because of this, healthy forest management is critical to the Colville Tribes and its membership.

In addition to the on-reservation forests, the former North Half¹ of the Colville Reservation includes significant acreage of Colville National Forest land where the Colville Tribes possess reserved rights for hunting, fishing, and gathering. Approximately 40 miles of Forest Service land in the North Half is contiguous to the northern Reservation boundary. The Colville Tribes and the Colville National Forest have carried out Tribal Forest Protection Act projects on Colville National Forest land and have worked cooperatively to prevent fire and disease on Forest Service lands. Despite the CCT’s positive working relationship with its Forest Service neighbors, more tribal authority to carry out or direct activities on adjacent federal lands is needed. The Biomass Demonstration Project would benefit the Colville Tribes and other similarly situated tribes and local communities by allowing tribes to have an increased management role on federal lands that border reservation lands.

Wildfires on the Colville Reservation

The Colville Tribes has endured multiple major wildfire events during the past decade that have collectively burned more than half of the Colville Reservation’s land base. In 2015, the North Star and Okanogan Complex fires collectively burned more than 255,000 acres on the Colville Reservation and more than 800 million board feet of timber, making it the most destructive wildfire event in terms of loss of timber on any Indian reservation in recorded history.

In 2020, the Washington Labor Day Fires burned the most acres (330,000) over a 24-hour period in Washington state’s history. Two of those fires, the Cold Springs

¹In 1891, many of the various aboriginal Indian tribes and bands of the Colville Indian Reservation approved the Agreement of May 9, 1891, under which the Colville Tribes ceded the North Half, which consists of roughly 1.5 million acres. However, the 1891 Agreement also reserved to the Colville Tribes and its citizens several important rights to the area, including the rights to hunt and fish. The ceded North Half is bounded on the north by the U.S.-Canadian border, on the east by the Columbia River, on the west by the Okanogan River, and on the south is separated from the south half of the Colville Indian Reservation by a line running parallel to the U.S.-Canadian border located approximately 35 miles south thereof.

and the Inchelium Complex fires, burned nearly 200,000 acres on the Colville Reservation and caused one fatality. Nearly 80 homes and 70 other structures also burned.

Two separate but related factors increased the severity of some of these fire events on the Colville Reservation. The first was the undermanaged condition of some federal forest lands in the North Half and the surrounding areas. The other was the fact that air tankers and other suppression resources were tied up on other fires on those undermanaged areas and prohibited those suppression resources from being deployed to suppress fires on the Colville Tribes' on-reservation trust forest land. These concerns highlight why Congress should renew and extend the Biomass Demonstration Project authority in the Act.

The Biomass Demonstration Project

The Biomass Demonstration Project in section 202 of the Act amended the Tribal Forest Protection Act of 2004 to authorize projects for Indian tribes on federal lands adjacent to tribal lands that are under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture. Section 202 also separately authorized biomass demonstration project authority for Alaska Native Corporations on federal lands adjacent to Alaska Native Corporation land.

Section 202 is unique in that it directed the Secretaries to enter into at least four projects with Indian tribes annually for each year of the authorization (one annually for ANC projects). The projects could have terms of up to 30 years. This was intended to ensure that Indian tribes that wish to participate in the development of a biomass project could provide a reliable supply of biomass over a longer period from adjacent federal lands. The economics of biomass projects have required longer term contracts to make the projects economically viable, which is essential if new infrastructure is to be built in areas where it currently does not exist.

Section 202 also directs the Secretaries (at tribes' request) to incorporate tribal on-reservation management practices on the project lands. As the Committee is aware, many federal lands that are adjacent to tribal trust lands require fuels reduction or restoration activities—activities that Indian tribes are uniquely suited to perform because of tribes' experience managing their own forests and natural resources. This was one of the motivating factors for the Colville Tribes in developing the provision.

Allowing tribal management planning principles to be incorporated in these projects will also ensure that protection of cultural resources and sacred sites will receive the attention that they deserve. These cultural resources typically are not accounted for in federal land management plans. For example, the CCT manages certain areas of its on-reservation forests to promote growth of huckleberries, a culturally significant food for the Colville Tribes.

The Biomass Demonstration Project remains a viable tool for energy projects. The Colville Tribes is currently working with the Myno Carbon Corporation on a supply agreement to provide biomass from the CCT's on-reservation forests for a planned carbon removal facility in Kettle Falls, Washington.

As explained in more detail on the Myno Carbon Corporation's website,² the planned facility will intake approximately 183,000 Bone Dry Tons (BDT) of sustainably harvested timber waste feedstock to produce 40,000 BDT of biochar, which is anticipated to generate 18MW of renewable electricity. The planned facility is expected to remove 90,000 metric tons of CO₂e per year in the form of biochar and avoid 200,000 MT of CO₂e per year by mitigating slash pile burning and downstream emission reductions from biochar application.

For tribes that wish to construct their own biomass or biochar facilities, the Project authority will provide them an enhanced ability to obtain financing by providing a pathway for a long-term supply of biomass from federal lands.

The Project authority provides Indian tribes with a valuable tool not only for biomass projects, but also for protecting on-reservation forests from wildfire and insect dangers from adjacent federal forest lands. The Project authority should be renewed and its authorization extended to allow Indian Country to fully realize its potential.

²See <https://mynocarbon.com/myno-wins-bid-to-build-first-large-scale-carbon-removal-facility/>

QUESTIONS SUBMITTED FOR THE RECORD TO CODY DESAUTEL, EXECUTIVE DIRECTOR,
THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Questions Submitted by Representative Westerman

Question 1. Your written testimony recommended that Congress reauthorize the biomass demonstration program.

1a) How long do you think a reauthorized tribal biomass demonstration project should run for?

Answer. When the Colville Tribes originally drafted the provision, the demonstration project had a five-year authorization. With the benefit of hindsight, however, and considering the lengthy processes for the U.S. Forest Service to consider and act on agreements and the potential for compliance with the National Environmental Policy Act (NEPA), the Colville Tribes recommends the project be authorized for at least seven years.

1b) How far out should Congress put the implementation date of a biomass demonstration project to ensure there is enough time for tribes to participate?

Answer. Section 202 of Pub. L. 115-325 requires the Secretary of Agriculture and the Secretary of the Interior to ensure that the criteria for biomass demonstration projects are publicly available by not later than 120 days after the date of enactment. Both Secretaries made guidance publicly available by the spring of 2019.

It may be advisable, however, to provide a deadline for the Secretaries to determine whether a proposed project meets the criteria and is considered as one of the projects for a given fiscal year. I would be happy to discuss this with the Committee and provide recommendations on how to include this concept in a reauthorization.

Question 2. In your testimony you cited the need for further tribal authority regarding management activities on adjacent federal lands. Could you expand on how a biomass or biochar project could address this issue?

Answer. Facilities that utilize biomass or biochar provide a market for biomass, which makes removal of biomass from forests more economically viable. Without a facility that can pay for biomass material, there are few, if any, economical options to utilize the material. Additional tribal management authorities, such as the Biomass Demonstration Project, can assist in the development of biomass or biochar facilities by providing a reliable supply of biomass, which will assist in obtaining financing to build the facilities. Also, prior to passing of BIL and IRA forests were limited in their ability to enter into agreements by available funding at the forest, or supplemental funding from the regional office or Washington office. That limitation is likely to occur again once the additional BIL and IRA funding is spent. Having markets for traditionally non-commercial material should reduce the cost of restoration activities, and increase the number of acres that can be treated.

2a) Would an up and running biomass or biochar project have prevented the devastation to the Colville Reservation suffered during the 2015 North Star fire?

Answer. A biomass or biochar project would likely not have prevented all the devastation the North Star fire caused on the Colville Reservation due to the extremely dry conditions and high winds and the fact the Colville Tribes actively manages its forests in the first instance. Had a biomass project been in place on adjacent federal lands, however, it is likely that more suppression resources would have been available on the Colville Reservation before the North Star fire reach 100,000 acres and mitigated the fire's on-reservation impact.

2b) And how could an up and running biomass or biochar project also assist with post-fire restoration?

Answer. Many post fire restoration activities include the removal of dead or dying timber to reduce future fuel loading and decrease the risk to the staff and public. While those trees have value for roughly one year for local sawmills, once that timeline is over there isn't a market for those forest products. A biomass or biochar facility could make use of that material, extending the timeline for this work and provide a source of revenue that offsets the costs of restoration. This benefit is in addition to the market created for traditionally non-commercial forest products generated during forest restoration activities.

Question 3. How would a biochar or biomass project be able to use low value hazardous fuels to benefit active forest management for the Colville Tribes' forests and adjacent federally managed forests?

Answer. A biochar or biomass project would provide a market for the material, making removal of the biomass from the on-reservation or federally managed forest land more economically viable. Adding value to traditionally non-commercial material also allows limited funding to be stretched across additional acres, which should increase the pace and scale of current restoration efforts on both tribal and federal land.

Question 4. Are there other specific barriers the Confederated Tribes of the Colville Reservation 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?

Answer. For biomass related energy projects, the two main barriers have been (a) the reticence of federal officials to utilize all the discretionary authority that they possess when evaluating proposed projects, and (b) the timelines associated with the NEPA process and the potential for third party appeals for projects located on off-reservation federal land. For on-reservation energy projects involving forestry resources, Congress can be helpful by delegating to tribes the authority to permit and approve the projects with triggering the NEPA process.

Ms. HAGEMAN. I thank the witness for his testimony and will note that I also believe that the Federal Government must do a better job of managing its resources in order to protect yours.

The Chair now recognizes Mr. Nicholas Lovesee for 5 minutes.

**STATEMENT OF NICHOLAS LOVESEE, DIRECTOR OF POLICY,
NATIVE AMERICAN FINANCE OFFICERS ASSOCIATION,
WASHINGTON, DC**

Mr. LOVESEE. Thank you so much, Madam Chairwoman, Ranking Member Leger Fernández, and members of the Indian and Insular Affairs Subcommittee.

My name is Nicholas Lovesee. I am Director of Policy for the Native American Finance Officers Association (NAFOA) and would like to thank you for the time to speak with you today about tribal autonomy and energy development.

Over the past 2 years, NAFOA has made tribal energy development and policy a focus of our organization and a goal of ours to help increase tribes' ability to participate in the new energy economy and help unlock the massive energy potential of Indian Country.

There are two points I really want to stress before continuing. First, there should be a focus on leveling the playing field in ensuring that tribes have a fair opportunity to compete. Fair. Second, NAFOA is energy source agnostic. A crucial part of tribal self-determination is being allowed to make the decisions based upon the unique needs and situations of any individual tribe.

First, I would like to talk about the Loan Program Office (LPO). Last summer, as part of the Inflation Reduction Act, they made an important change of allowing the Loan Program Office to offer loans directly. Previously, they had to go through a third party. This is an important change and hopefully will help decrease some of the friction in the process of offering loans.

Additionally, they changed from \$2 billion to \$20 billion the amount of loans for the LPO to be able to offer. These changes are

a major step forward. Unfortunately, we have yet to see LPO grant any loans and there are unnecessary stumbling blocks in the way.

Also, in the IRA were provisions limiting the use of appropriated funds by making the loans subject to Federal support restrictions. DOE has heard from Congress and tribes that this restriction creates uncertainty when trying to get loans to projects through the LPO program.

Also, part of the IRA, Congress made an exciting, well, I guess I am kind of stretching the definition of exciting, change to the tribal energy development by allowing tribes to access the Federal direct pay clean energy tax credits. Adding up these bonuses, these credits potentially enable a tribe to cover 70 percent of a project's cost.

NAFOA has been working with the Department of Treasury to ensure that information about these changes in tax credits are available to all tribes that are interested in taking advantage of them. However, it has been slow to get guidance out and this has caused a number of programs to enter essentially a holding pattern while they wait to find out what is going to be available with direct pay credits.

For almost a year now, tribes have had to wait for Treasury to release guidance. And even though they have started the process, they haven't completed it, and there are still important questions remaining outstanding.

Another important area that is blocking tribal energy development is the lack of decision making on tribally chartered corporations. NAFOA participated with TETRAA and NCAI as part of a Department of Treasury "Dear Tribal Leader" letter sent around in May of this year. Per the Department of Treasury's letter, presently there is no guidance addressing the Federal tax status of corporations chartered under tribal law that may be wholly owned, majority owned, or jointly owned by tribes.

In response to substantial tribal leader requests for guidance on this question for over 30 years, Treasury's Office of Tax Policy is seeking tribal leader feedback. Why is this important to tribal energy development? As anyone who has worked in the energy industry knows, that how you structure these partnerships can be just as important as what the project is itself, whether it is being able to defer risk, whether it is about who owns the project, being able to seek financing. These are important questions that remain uncertain, and these are all part of the problems that play into tribal energy development issues.

Another area that doesn't get enough talk, in my opinion, is staffing. There is a severe lack of staff that understand both tribal energy and also just energy in general, they don't have enough staff to work with experience in tribes and also in energy.

A good example of this would be COVID where a number of the departments had to quickly staff up to deal with the millions and millions of dollars that Congress was nice enough to appropriate. But they didn't have enough people who understood tribal issues, and we spent a lot of the last 2 years working with the staff to try to help them understand, because many of these offices had never dealt with tribal issues before.

I want to thank everyone for their time today and we look forward to working with Congress and the Committee on any potential future legislation. Thank you.

[The prepared statement of Mr. Lovesee follows:]

PREPARED STATEMENT OF NICHOLAS LOVESEE, DIRECTOR OF POLICY, NATIVE AMERICAN FINANCE OFFICERS ASSOCIATION (NAFOA)

Good morning, Chairwoman Hageman, Ranking Member Leger Fernandez, Committee Chairman Westerman, Ranking Member Grijalva, and Members of the Indian & Insular Affairs Subcommittee and Natural Resources Committee. My name is Nicholas Lovesee, I am Director of Policy for the Native American Finance Officers Association (NAFOA) and I would like to thank all of you for your time today and for the opportunity to speak with you about Tribal Autonomy and Energy Development. Over the past two plus years NAFOA has made tribal energy development and policy a focus of our organization and a goal of ours to help increase tribes' ability to participate in the new energy economy and help unlock the massive energy potential of Indian Country, which for too long has gone untapped.

There is one point I want to stress before continuing, there should be focus on leveling the playing field for tribes to have a fair opportunity to compete. At NAFOA, we hear repeatedly from both member and non-member tribes, "we don't want anything more than anyone else, we want to ensure that we have a fair shot". As we've seen over and over, when tribes are able to compete on a fair playing field, they succeed.

Lastly, as an organization, NAFOA is energy source agnostic. A crucial part of tribal self-determination is being allowed to make decisions based upon the unique needs and situation of any given tribe, and it should be up to tribes and tribal members to decide what the best solutions are for their unique needs and situations. Just like for states, there is no "one size fits all" solution for tribes.

Loan Program Office (LPO)

Last summer, NAFAO testified before the House Energy & Commerce Committee on the Department of Energy's Loan Program Office (LPO) program. At the time, LPO had just been granted the ability to give direct loans to tribes, rather than guarantee loans that a tribe would receive. However, it was a temporary situation and there was uncertainty as to whether LPO would be able to continue to maintain that option. Fortunately, the Inflation Reduction Act (IRA) made the change permanent and increased the total amount of loans that could be offered, going from \$2 billion to \$20 billion. These changes were major steps forward for the LPO program and could have a huge potential impact on tribal energy development opportunities.

Unfortunately, we have yet to see LPO grant any loans and there are unnecessary stumbling blocks still in the way. For example, the Inflation Reduction Act (IRA) included a provision limiting the use of appropriated funds by making the subject to a federal support restriction. DOE has heard from Congress and tribes that this restriction creates uncertainty when trying to get loans to projects through the LPO program.

Elect/Direct Pay

As part of last summer's IRA, Congress made an exciting change to tribal energy development by allowing, for the first time, tribes to access the federal Direct Pay, clean energy tax credits. Adding up all the bonuses, these credits potentially enable a tribe to cover 70% of a project's cost. NAFOA has been working with the Department of the Treasury to ensure that information about these changes and tax credit opportunities is available to all tribes that are interested in taking advantage of them.

However, as exciting as Direct Pay possibilities are, there have been some major roadblocks put in the way of accessing them. First, following passage of the IRA there has been almost a hold placed on many tribal energy projects as developers and tribes have adopted a "wait and see" approach to Direct Pay changes. Without guidance from Treasury and the IRS, no one is really sure what to make of these Direct Pay provisions for tribes, how they would be implemented, and what they actually mean in practical terms. For almost a year now we've seen this holding pattern and while Treasury has released some guidance, there are still key questions outstanding and many of the tribes and developers that I've spoken with are hesitant about what the landscape will look like going forward. Even the financing side

of a project is impacted and slowed while we wait for Direct Pay guidance and rules, as tribes have an option to receive lending based on Direct Pay credits.

Another major issue the lack of technical assistance that IRS and Treasury can offer tribes. To this point, tribes do not file federal income tax. So how would they access a federal income tax credit payment? Our understanding from IRS statements is that they do not have the legal authority to provide this assistance. There needs to be an authorization that will allow IRS to give in-depth information and technical assistance to tribes, similar to the types of technical assistance available with many other tribal programs, as well as a place where tribes can go to ask for guidance or clarification.

Tribally Chartered Corporations

On the 18th of last month, NAFOA submitted consultation comments in partnership with the Tribal Economic Tax Reform Advocacy Alliance (TETRAA) and the National Congress of American Indians (NCAI) as part of a Department of Treasury and IRS “Dear Tribal Leader” letter sent around on May 15th of this year. The purpose of the letter and consultation was to seek guidance on the tax status of tribally chartered corporations, including those that are just jointly owned by a tribe. This is a problem that tribal leaders have asked to be addressed for decades. Per the Department of the Treasury’s letter:

Presently, however, no guidance addresses the Federal tax status of corporations chartered under Tribal law that may be wholly owned, majority owned, or jointly owned by a Tribe. In response to substantial Tribal leader requests for guidance on this question for over thirty years, Treasury’s Office of Tax Policy is seeking Tribal leader feedback to inform its understanding of Tribally chartered corporations.

Why is this relevant for today’s hearing and tribal energy development? As anyone who’s worked in the energy industry or around energy projects knows, the ownership structures and entities of energy projects can make a massive impact on the profitability and/or viability of a given project. How tax credits are assigned, liability protections, ownership and investment stakes, and more all play key roles in the life cycle of energy projects and the current situation creates uncertainty and liabilities.

Unfortunately, tribes have been dealt an unfair hand. Going back to the Direct Pay, currently IRS is not able to offer the required technical assistance on tax filings that many tribes need or will need. This will require a change in authorization, just to bring the assistance to parity with the types of technical assistance already available to other programs.

Tribal Energy Development Issues

Another issue that doesn’t get nearly enough attention is the shortage of experts and staffing when it comes to tribal energy development. There are plenty of experts in the energy industry and sector, but very few have any kind of experience working with tribes or tribal governments, and often don’t even know the first place to start or where to take their issues. On the flip side, there are plenty of tribal experts who can tell you inside-and-out how tribal governments work, the unique issues tribes and tribal members face, and how to best address issues that tribes are used to facing. However, there is a shortage of those types of tribal staff and experts that have experience working in the energy sector.

We recently lived through a good example of this with COVID-19. To deal with the sudden influx of COVID funding, various Departments throughout the Administration had to “staff-up” and were finding themselves responsible for millions of dollars in aid to Indian Country, many of which had never dealt with tribes or tribal issues before. There was a shortage of experienced people from which these Departments were able to hire and at NAFOA we spend a significant amount of time these past three years having to educate staff on how to reach tribes and tribal members, what they needed to know about working in Indian Country, how to solve the issues they were facing, and more.

I want to stress that in almost all cases these were extremely competent, smart, hardworking, and dedicated staff, but from the outside looking in, it appeared as though they were thrown into the deep end of a pool and told “now swim!”

Another unique situation that has created unique barriers for tribes is the land into trust system, and these are barriers that non-tribal energy developers don't face. When testifying before the Senate Committee on Indian Affairs this past March, NAFOA stated:

I have repeatedly heard that delays in approvals by the Bureau of Indian Affairs of rights-of-ways, permits, and leases increases costs of tribal projects, delays projects unnecessarily, and sometimes, directs projects onto neighboring non-tribal fee lands. Beyond energy, these delays impact broadband and other infrastructure projects. Congress can improve the efficiency of these processes by putting authority back into the hands of tribal governments where they wish to exercise it. Archaic and stifling rules regarding tribal land use can tie-up the process in red tape and discourage investments. In some cases, BIA requests could take up to two years, which can be the end to of any economic, development project. According to the GAO, the permitting review process under the BIA can take two times as long as the Bureau of Land Management.

Two years for a permitting review is a lifetime for many energy projects and developers and financiers sometimes decide "why put up with this when I can do a different energy project that won't face these issues?"

One of the solutions that NAFOA has recently been working on is legislation that would give tribes more control over permitting and regulations on their own land. States are allowed to set regulations, why can't tribes? If tribes want to create a situation that is attractive to developers or capital, they should have that option. Being able to create an environment where energy projects are economically attractive to businesses is going to be a huge step forward in making tribal energy projects a reality.

This would also help ease the business "friction" that exists for tribal energy projects and development. Sadly, some companies and developers look at working with tribes as "adding headaches" or hurdles and not as an advantageous partner. This creates issues not just in financing, but in trying to bring on additional partners so that tribes don't have to do a project alone and accept the full burden of a project's risk, a huge ask for almost any tribe but especially smaller ones.

Lastly, there is a disconnect between Washington, D.C. and the realities tribal governments face. In April, NAFOA hosted its Spring Conference here in D.C. and we were very fortunate to have a strong turn-out of Administration and government staff. However, while they discussed a wide range of programs and monies available, there was a sentiment of "that's nice, but how are we supposed to access it." There needs to be more done to make these programs practically accessible. During COVID the amount of information flooding the field was nearly impossible for tribes to keep up with, from application deadlines to changes in guidance to new opportunities.

Conclusions

Again, tribal energy is not about more or special, it is about creating a level and fair playing field and certainty. The good news is that there is a lot of excitement for tribal energy development. Webinars and information sessions that NAFOA hosts are widely attended, and we often receive information requests about different energy programs, grants, credits, and possibilities from both members and non-members. Tribal energy development is a massive opportunity, not just for Indian Country but the United States as a whole, it is estimated that the 53 million acres of Indian lands are host to 20% of Americas conventional energy resources, as well as holding the potential for vast renewable energy resources.

NAFOA is eager to work with the Subcommittee and Members to help ease the energy transition and allow all tribes an opportunity to participate in the new energy economy we are building.

QUESTIONS SUBMITTED FOR THE RECORD TO NICHOLAS LOVESEE, DIRECTOR OF
POLICY, NATIVE AMERICAN FINANCE OFFICERS ASSOCIATION

Questions Submitted by Representative Westerman

Question 1. Your testimony mentioned that having a level playing field and allowing tribes to pursue whatever energy projects will best benefit their individual tribal communities and people. In your experience, which energy sources or other energy resources are tribes seeking to develop the most, and what are reasons for the preference that tribes have provided to you?

Answer. Fortunately, there is an interest in Indian Country for a diverse array of energy project, both renewable and traditional. On the renewable front, it would appear that more tribes are interested in solar than anything else, this is partly due to geography and that there are more contractors and experts available in the solar field at the moment. For traditional energy there is a stronger interest in oil and gas production.

Again, I would add much of the interest is shaped by a tribe's geography, local resources, individual needs, size (this includes factors such as land area, economy, and membership numbers), and location (more urban vs more rural). Each tribe faces a unique set of circumstances, and what is attractive or economical to tribes in one area might be a poor investment for a similar tribe in a different part of the country.

1a) Do you think tribes would be interested in more expansive sources if some projects were easier to develop or had less federal bureaucracy to wade through?

Answer. From what I have heard from tribes and contractors, there would be an increased interest in energy projects of all types if there was less federal bureaucracy, especially if questions related to federal projects, tax credits, regulations, and more were answered in a timely manner that considers both the needs of tribes and the intent of Congress. Unfortunately, in the current environment we don't know how interested various tribes will be in many different areas of energy development because one look at the difficulty managing all the federal rules, regulations, and programs kills projects before they even get off the ground.

Another factor that would increase tribal interest in energy projects is increased tribal control over rules and regulations for projects on tribal lands. Allowing tribes to set their own regulatory standards will enable them to decide what is right for their unique situation and be more in line with the government-to-government relationship that the United States has with tribes. Additionally, it would help with the gridlock for permitting and approvals, which take almost twice as long at the Bureau of Indian Affairs (BIA) than at the Bureau of Land Management (BLM).

In general, on tribal issues there is not enough federal assistance to tribes to help navigate these complex rules and regulations, and this is especially true when it comes to tribal energy projects. The complexity makes it nearly impossible for tribes to find a safe place to start and again highlights the need for more experts that understand both Indian Country's unique challenges and the energy industry.

Again, thank you for your interest and work on this important topic. I look forward to continuing to work with you and your staff on this topic, as well as any other topic that NAFOA might be helpful with. If there is any additional information or help that we can provide, please do not hesitate to contact us.

Sincerely,

SUSAN MASTEN,
Interim Executive Director

Ms. HAGEMAN. I thank the witness for his testimony.
The Chair now recognizes Ms. Bidtha Becker for 5 minutes.

**STATEMENT OF BIDTAH BECKER, CHIEF LEGAL COUNSEL,
OFFICE OF THE PRESIDENT AND VICE PRESIDENT, NAVAJO
NATION, WINDOW ROCK, ARIZONA**

Ms. BECKER. [Speaking Native language.] Good morning, Chair Hageman, and Ranking Member Leger Fernández. I think she is the only one who understood me just now, so appreciate that.

As the Chair mentioned, my name is Bidtah Becker, and I am Legal Counsel to President Nygren and Vice President Richelle Montoya of the Navajo Nation. President Nygren sends his regards. He is very busy. Started the week in Alaska at a tribal transportation meeting and I am not even sure where he is today, that is how busy he is.

Energy has been super critical to the Navajo Nation's economy for 100 years now. I am going to share one story, just one of many. The United States was very critical in standing up something called the Navajo Generating Station that supplied power to Los Angeles, Phoenix, Las Vegas. Not a single electron was used on the Navajo Nation.

The United States was critical in both the plant site lease that was on the Nation, and on ensuring that coal leases were developed between the Hopi Tribe, the Navajo Nation, and the Peabody Coal Mine. The Navajo Nation and the Hopi Tribe expected that plant to stay open until 2044. It shut down in 2019. And I share that story because it is critical to our conversation, really everything that has been talked about today.

We lost a thousand direct jobs, lots of coal royalty, around \$40 million a year we lost. But the lesson we learned from that is, we cannot be at the mercy of outside entities when it comes to the jobs and revenue on the Navajo Nation. One of President Nygren's key priorities is ensuring that as we continue down this energy development portfolio that the Navajo Nation has some ownership role in that so that we have a say instead of watching these jobs disappear.

The Act does allow for all Tribal Nations to take over mineral leasing. And we have been asked repeatedly why haven't we done that. One of the challenges of why we aren't currently pursuing taking over mineral leasing is there are databases of valuable information that the Department of the Interior holds. And we have been informed that if and when we take over mineral leasing, we will lose access to that information.

That is really akin to what Mr. Lovesee is talking about, about the types of expertise that are needed for energy development. And I could not underscore enough what he mentioned about business structure, because one of the things we learned when the Navajo Generating Station closed was, we should not have been surprised it was closing. There were people that were anticipating this, but at the time we didn't have the expertise to foresee that.

Another challenge is, I am going to call it limited technical assistance that the Department of Energy provides. And I recognize that at this point I am stepping into areas that are uncomfortable because the committees have jurisdiction over certain agencies. We would really benefit from the extensive and very technical expertise from the Department of the Interior.

Ms. HAGEMAN. I am sorry, I didn't hear that. Could you bring your microphone just a bit closer? Benefit from what?

Ms. BECKER. We would benefit from the extensive technical expertise that the Department of Energy could provide that we wouldn't necessarily find in the Department of the Interior. Everything that Mr. Lovesee said underscore, highlight. Energy is a big field, right? You have transmission, you have business structure, you have taxes. Those skills are not necessarily all found in the Department of the Interior.

Again, I recognize that I am stepping into areas that perhaps could be uncomfortable because of types of jurisdiction, but there are more agencies that do energy development, right, than just Interior and Energy. USDA plays an important role in that.

I guess what I will end with is a great quote, and Representative Leger Fernández may remember the great dean, Fred Hart, of the UNM School of Law. When I was a youngster without all this gray hair, he said, "The problem with Federal Indian law is that it is national in nature." It is national in nature. Boy, this was an Irish guy from Boston who is teaching a Navajo girl, and he was spot on.

Thank you for your time. I really appreciate it and stand for questions.

[The prepared statement of Ms. Becker follows:]

PREPARED STATEMENT OF BIDTAH N. BECKER, LEGAL COUNSEL, NAVAJO NATION
OFFICE OF THE PRESIDENT AND VICE-PRESIDENT

Yá'át'ééh Chair Hageman, Vice Chair González-Colón, and Members of the Committee, my name is Bidtah Becker and I serve as the Chief Legal Counsel to Navajo Nation President Buu Nygren and Vice-President Richelle Montoya. I have had extensive experience with the Navajo Nation's natural resources and energy development activities during my twenty-one (21) years with the Navajo Nation. Over the years I have served in both legal and non-legal roles including directing the Navajo Nation Division of Natural Resources.

Energy has been critical to the Navajo Nation economy for decades. As we celebrate the Navajo Nation Council's centennial year, we are reminded that the Navajo Nation Council was first created at the request of the United States to approve oil and gas leases. In more recent times, the Navajo Nation was home to the Navajo Generating Station which was the largest coal fired power plant west of the Mississippi. It was commissioned in 1974 and the United States played a critical role in standing up the Navajo Generating Station and developing coal leases between the Navajo Nation and the Hopi Tribe with the Peabody Coal Company. The coal mine's sole customer was the Navajo Generating Station. Stewart Udall, Secretary of the Interior, penned a letter at the time praising the economic benefits and opportunities that the Generating Station and the coal mine would provide.

In 2017, to the Navajo Nation's surprise the owners of the Navajo Generating Station announced it would shutter the facility in 2017 rather than operating until 2044 as expected. The owners needed sufficient comfort through new agreements to keep the Generating Station open for two additional years to 2019. I served as the lead negotiator for the Navajo Generating Station Extension Lease that kept the Generating Station open to 2019.

In 2019, the Generating Station was closed along with the coal mine. These closures led to the loss of 1,000 direct jobs and 3,000 indirect jobs. In addition, in 2019 the school district where the coal mine was located lost 300 students or nearly 10% of the district's enrollment. The Navajo Nation and the Hopi Tribe both lost significant revenue with the loss of the coal royalties.

I share this story because it is relevant to the Indian Tribal Energy Development & Self-Determination Act. One of the key lessons for the Navajo Nation is to not recreate the situation where the Nation is at the mercy of others for energy development on the Nation when the livelihoods of Navajo people are at stake. One of President Nygren's priorities is that the Navajo Nation have an ownership role in

energy development so that when hard decisions need to be made concerning the livelihood of Navajo people, the Navajo Nation has a voice in the decision.

The Act allows the Navajo Nation and other Native Nations to develop regulations so that the Native Nations can issue mineral leases, including oil and gas leases. The Act also allows for the Department of the Interior (Department or DOI) to provide technical support in the development of those leasing regulations. The Act, however, does not address the services that DOI provides to the Navajo Nation when we are making leasing decisions. Specifically, the Department, including the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and Office of Natural Resource Revenue (ONRR), have lease, production and royalty databases that include well and lease information, production formations, production volumes, sales volumes, commodities pricing, major portion price analyses, index zone pricing, royalties, economic data, contract data, regional pricing forecasts—and so much more—that the Navajo Nation will not have access to if it should decide to take over its own mineral leasing process. Without access to these data sets, the Navajo Nation's effectiveness at negotiating and overseeing mineral leases, including compliance, will be greatly, and negatively, affected. The Navajo Nation has confirmation from the Office of the Solicitor staff who advise ONRR that that Nation will lose access to these data sets if we issue our own mineral leases.

As mentioned, the current Navajo Nation Administration is interested in more than the issuance of mineral leases related to energy development. There are certainly mineral leases that do not involve energy development but when it comes to energy related mineral leases, the Nation has learned the difficult way what ensues when the Nation does not have a management voice.

Another challenge with the Indian Tribal Energy Development & Self Determination Act is that it is focused only on the Department of the Interior. The Navajo Nation could benefit greatly from expertise and more expansive technical assistance within the Department of Energy. The Navajo Nation signed a Memorandum of Understanding with the Department of Energy last December to assist with navigating the many federal funding opportunities available for energy transition. The Navajo Nation is located in a geographically key area for energy development in the Southwestern United States and is blessed with vast and a variety of natural resources. One of the areas where the Nation could benefit from DOE technical assistance is understanding the energy market and getting out in front of new and developing technologies, especially related to a carbon neutral future.

One of the things the Subcommittee could consider is granting several federal departments and agencies the discretion to work with Native Nations. Importantly, these federal entities could be empowered to meet the unique and specific needs of the Nations. It goes without saying that the needs of the Navajo Nation for energy development are very different than the needs of a Native Nation located in the Northwestern United States. I understand how challenging it can be to grant discretion to federal entities. At the same time, I am reminded on a regular and reoccurring basis of the words of the late Dean Fred Hart of the University of New Mexico School of Law: *the problem with federal Indian law is that it is national in nature.*

Thank you for your time. I look forward to further Subcommittee discussions that can address energy development issues facing the Navajo Nation and Native Nations in general. As this Subcommittee appreciates, I know of no other community more interested and committed to protecting the lands of the United States and ensuring self-sufficiency than Native Peoples. We have been here from time immemorial and the majority of us plan for our communities to be living and thriving on this land forever. Ahehee' (Thank you).

QUESTIONS SUBMITTED FOR THE RECORD TO BIDTAH BECKER, CHIEF LEGAL COUNSEL,
OFFICE OF THE PRESIDENT AND VICE-PRESIDENT, NAVAJO NATION

Questions Submitted by Representative Westerman

Question 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?

Answer. 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.

1a) Can you expand on what that ownership role for Navajo Nation practically looks like in the future?

Answer. 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 shut-down 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.

1b) What would be the ideal managing situation look like for Navajo Nation?

Answer. 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.

Question 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.

2a) 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?

Answer. 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.

2b) 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?

Answer. 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 ONRR 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 ONRR. 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. ONRR 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 ONRR database in the event it takes over all mineral leasing.

BLM also has a database that provides production reports. The BLM system works together to compare ONRR data with BLM data. BLM reports well level data and ONRR 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.

Question 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?

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

3a) In addition, please expand on how this withdrawal affects other energy projects on Navajo lands.

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

Question 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?

Answer. 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.

Ms. HAGEMAN. I have to go to a different committee, and then I will come back and ask my questions. Thank you very much.

Mr. LAMALFA [presiding]. Thank you again. It is kind of nice to be back in the old Chair seat for the Indian Affairs from years ago.

I want to thank our witnesses again for your testimony and, of course, for your time and travel.

Let's move into Member questions. I will bypass myself for now. Let's go to our Ranking Member for her 5 minutes.

Ms. LEGER FERNÁNDEZ. Thank you so very much for both the written testimony that we had all read but also for emphasizing I think some of the very key areas.

Perhaps, I am going to start about the issues that have been raised by NAFOA, which is a national organization, but I do know that you work on trying to keep all of the different tribal interests in play. And I wanted to actually touch a bit on some of the issues that you raised that I think we need to go back and look at getting the guidance out, and are there things that we need to do at a congressional level, and it might not be in this Committee.

The great thing about this Committee, Ms. Becker, is we have oversight. We cannot legislate, but we sure can raise issues with the other Federal agencies, including the need for a tribal task force with all of the different agencies, bringing the kind of expertise they have in their unique areas. And this Administration has

done that a lot. They keep calling it the whole of government approach. I don't know if I am crazy about the tag line they use, but the idea of pooling what is necessary from each of those areas to get these projects going.

I think that there is a concern I have about, there are two levels of expertise that we need. We need the expertise at the Federal level, the agency level, in order to address how do you actually go about issuing a lease since we have so many different—you know, is it an IMDA (Indian Mineral Development Act), is it an old lease, new lease, et cetera. But also, we need to make sure that there is expertise available to the tribe for them, and that could be a funding issues that we need to do.

So, Mr. Lovesee, can you tell us a little bit more? Because I want to get this money out, right. We need to get this money out. We need to get you using it. I think you said it in your written testimony, but could you tell us the two things that you want us to do, and it might not be this Committee, so we can get the tribes the money they need to do these projects that America needs.

Mr. LOVESEE. First of all, I would like to thank you, ma'am, because last year you were very instrumental in NAFOA being in front of the House Energy Committee and testifying on LPO.

The two things that I would recommend is first, we need to sit down and figure out what can we do to create a positive business atmosphere for tribes so that companies or any outside group isn't looking at the negatives of working with the tribal government, but they are looking at the positives. And I would imagine it is very frustrating for all the Members sometimes to do something like direct pay or like LPO changes and still not have enough projects going forward, and people like myself saying, well, what can we do next instead of thanking you for what you did. But it needs to be kind of a whole effort looking at it rather than just a little bit here, a little bit there. What can we do to really create a positive situation overall?

And then secondly, I would say again, and it is not a very exciting thing, but staffing is so important because we need to get people in the tribes who represent the tribe's interest instead of having just a consultant come in and say this is what needs to be built. We need people who are in the tribes that understand energy from front to back.

Ms. LEGER FERNÁNDEZ. Yes. And because we have little time, I am going to say in some ways I am going to—and you know the way CERT (Council of Energy Resource Tribes) played a particular role like that because they might not have always needed to be in the tribe because the tribe might not always have, except for some tribes, a continuous development, but then that ability of a trusted agency back in those days of a certain namesake.

We are talking a bit about when people go to Southern Ute, they know they are dealing with a tribe incredibly versed in the business world and incredibly successful.

But, Chairman, I was also struck by in your testimony how important it was for you to make sure you controlled the protection of the environment and the cultural resources. Can you give us a quick example of that? And then I did want to get to this question

on staffing, what would a shutdown look like? So, if you could perhaps be quick, and then I am going to do a maybe yes or no round.

Mr. BAKER. Yes, thank you, Ms. Fernández. I think, it really starts with our past leaders, their visions, how they moved forward and how we are always going to protect the land and the cultural resources, and everything. But what can we do better tomorrow for our people?

So, again, as I sit as the Chairman, it is still maintaining that consistency of we are going to protect that land at all cost. We have our water quality, air quality, we have our own standards that surpass the state of Colorado's, so everything that comes through, we are always about cultural resources, protecting the land, taking care of our elders, our children, just everything.

I mentioned it as it is like the past leaders are building a house, and they built that foundation, and it is up to us today to finish that house, doing it in the right way, but utilizing their expertise that started this whole process.

Ms. LEGER FERNÁNDEZ. Well, thank you very much. I have run out of time, so I will do it this way. If a shutdown would negatively impact the tribe or the tribes you serve, will you raise your hand?

Thank you. I yield back.

Mr. LAMALFA. Thank you. The gentlelady yields back. I will now recognize Mr. Carl for 5 minutes.

Mr. CARL. Thank you, Mr. Speaker. Well, OK, Chairman.

[Laughter.]

Mr. CARL. Do you want to be Speaker? We will get you in line.

[Laughter.]

Mr. CARL. I don't think anybody wants that job on either side of the aisle.

[Pause.]

Mr. CARL. To the Indian Nation, I may not be the right person on this Committee, because I don't understand why as a Nation you have to come and ask for permission from the Federal Government to do something with your own land because we, the Federal Government, are the ones that put you on that land to start with. I think you should have the ability to determine your own future.

I grew up around two Creek Indians. Mr. Pruitt was one of them, and I can't remember the second one's name. One of them did not have electricity and did not have water in his home, by choice. That may seem odd to some people in this room, but he was linked to his Native roots. I learned a lot from that man.

Another man was a trapper who had come down from Michigan and he taught me how to trap, and we trapped hundreds and hundreds of beavers, and I learned from that man. And he had some very peculiar ways versus my ways, but I learned from that man. But he was where he wanted to be in that moment, in that time.

I don't understand why we as a Federal Government think that we are so high and mighty that we can tell an Indian Nation, period, what they can do or what they cannot do. It frustrates me because the tribes that I work with and the Navajos I have been getting very close to lately, they are more than capable of running their own businesses and doing their own things.

So, I would encourage you to start pushing back on the Federal Government. You have the power, and the power is in the votes.

You don't get what you want from up here, look at the person, including me, look at the people that are unwilling to work for you and get them out of office. Get people on this Committee that want to work with you.

Now, you are talking about needing information from the Department of Energy, there is no reason why you shouldn't have that information. That is your land. Taxpayer's money paid for that information and that information should be yours. I don't understand why we can't—oh, we are so important. We have a bill loss bureaucracy around it. We have to have another meeting, to have another meeting, to have another meeting.

This is like serving on a board of the Southern Baptist Convention, I am telling you; it is all about more meetings. It is not that complicated. Turn me loose.

What other group of people in America has to live by the rules that you have to live by? Tell me. I am telling you it is a modern-day term of slavery, and we need to start calling it what it is and quit being nice about it.

And I got that off my chest. And I have found out I do have Indian roots. My tribe has long been gone, but it is OK, I still have Indian roots. I still have a little fire in myself. OK, I am sorry.

Let's see. Chairman Baker, from your testimony, it is obvious that the Ute Indian Tribe has benefited from long-term planning and forward thinking about how to develop and use your resources. Can you discuss how the Tribe goes about making these big decisions and how these decisions may have been impacted by the Federal barriers?

Mr. BAKER. OK, yes. We have a department of the Tribe that is called the Growth Fund and within that we have our energy department. We have some very, very knowledgeable people. I mean, we hire them to do a good job. They have done an awesome job. They really push.

And the way it works is whenever they come up with an acquisition or a deal they want to move forward on, we have in the middle what is called the Growth Fund Management Committee, so it goes to the next level. It has to have their approval before it can come to Tribal Council for final approval. And at that meeting, we will discuss or we can question that committee, that group, anything we want before we make a final approval. And it has to be in the best interest.

And I just praise our teams. We have been so successful, and they do a diligent, awesome job for us.

Mr. CARL. Thank you. I want you to understand there is good and bad in all cultures and all races, and it is good and bad. I have been exposed to nothing but good in the tribal community. Please take advantage, use me. I can be a voice. But we have to be one voice. We have to be one voice to be heard.

So, get together, figure out how you can use me, or I will get out of the way if that is the case. But thank you for your patience with the Federal Government because I don't think you need the Federal Government.

With that, I yield back.

Mr. LAMALFA. Thank you, Mr. Carl. And, colleagues, if you wish, it looks like we might have a little time to do a second round of questioning since our panel is—

VOICE. We may not.

Mr. LAMALFA. Or may not. Who has the gavel?

[Laughter.]

Mr. LAMALFA. I just got elevated to Speaker a while ago. But anyway, it is something we can consider, perhaps. I will go ahead and recognize myself for 5 minutes as hopefully our Chair gets back from the other committee in a moment as well.

I am pleased to be able to represent far Northern California where we have many, many tribes that are represented there, and the issues are common with being remote areas, or energy, minerals, timber, other resource development is the best option for tribes and everyone else in a district in an area like that.

So, when we take in the testimony from our witnesses today, I note that there are many similarities between the complications and the roadblocks that the tribes cite and along with what everybody else in my district cites as well, too, with rural governments run into that, and just roadblock after roadblock. You have common themes such as a process of approval that extends for years without even a clear end in sight. Regulations that require their own special training to even remotely understand them. Phrases and carveouts which are nonsensical to the average person and left completely undefined by our Federal agencies.

So, we need to address these problems because the great harm it is going to put on Indian Country and Rural America in general without ability to economically develop except maybe tourism, right? Tourism is great, but we have to actually produce wealth that comes from the land. I am a farmer in my real life, so I get that as well.

Let me toss a question. Mr. Baker, Congress tried to improve the tribal energy development agreements in 2017, we took a shot at it, but it really hasn't worked out to be as fruitful as we had hoped. So, you are pursuing a resource agreement under these new rules and regs that were finally put in place in 2019. So, what difficulties have you faced already, what difficulties would smaller tribes with fewer economic resources face than what you have available?

Mr. BAKER. Well, I think of what you mentioned, the setbacks, the things that we can work on together. But today is a new world, today is a new day. I am thankful that they are working with us and trying to move forward. I mean, I think every tribe is different, the setbacks, the things that we can or cannot do.

But I just can't praise enough in all of my testimonies that, again, here we are together with our leaders, and working together with you to be a better tomorrow. Enough is enough. I think it is long overdue, and we have to all work together to do a better job. And as I mentioned, every tribe is different, so they all have their own challenges.

Mr. LAMALFA. Certainly. And some have better ability to roll with the punches on that than others, but nobody should have to, as Mr. Carl was passionately talking about, why do you even have to be here to begin with if you are an autonomous federally recognized government. That is very frustrating for all of us.

Let's see, where was I at as I made the jump. For Mr. Baker and Ms. Becker, both of your tribes have been successful in developing some amount of energy or mineral resources, but in your experience across the board, what are the barriers that separate tribes that can develop their own resources on their own land and those who can't? What do you find are the differences between tribes that have had success and not? Let me go to Ms. Becker, give you a chance first, then we will come to Mr. Baker.

Ms. BECKER. Thank you for the question. As Mr. Lovesee said, it is essentially an unequal playing field because of the permitting that we need to go through with the Federal Government. Even when we take over land leasing, which the Navajo Nation has done, and we can issue our own land leases, there are sub-elements where we still have to go back to the Federal Government and get their approval.

I am going to point out one example because it touches on the whole spectrum of energy, and that is we are struggling right now with getting tree cutting permits from—and I see your reaction, Mr. Carl. We are struggling with that. I was just told by our Navajo tribal utility authority that is using, thank you, Congress, some of the American Rescue Plan Act funding to get electricity to people who would like electricity, and they have hit a log jam in getting a tree cutting permit out of the Bureau of Indian Affairs.

That is one example of how even after we take over leasing we still have to go back to the Federal Government.

Mr. LAMALFA. I am running out of time. I appreciate that comment, because in my own district, the town of Paradise, which 90 percent of it burned in what was known as the Camp Fire, 85 lives lost. Five years later, they are still trying to remove dead trees, and get permitting, and get a NEPA, and all this and all that. They removed some of the hazardous trees already, thankfully, but there is still a lot of work to be done.

Mr. Desautel from Colville, I heard you, too, with what you are dealing with, because we have many, many 6-digit or larger fires. I had a 7-digit fire, a 1-million-acre fire 2 years ago known as the Dixie Fire. And it boils down to Federal land is not being managed in a way that makes for a good neighbor. What you were saying, good results happen on managed lands, even when they are adjacent to unmanaged ones, because we saw that in Paradise where a wildfire hit a managed area, the fire knocked right down. I hear you. We are going to keep after it.

I will yield back, Madam Chair. I didn't have such a tough gavel when I ran it.

[Laughter.]

Ms. HAGEMAN [presiding]. I am tough on people.

I recognize myself for my 5 minutes of questions. Thank you.

What you have described is I think the epitome of the old adage that the government is always trying to fix its last solution. And I really do look forward to working with you to find better solutions that actually meet the needs of the tribes rather than merely giving lip service to what it is that you need. The heavy hand of the Federal Government is just simply unacceptable, and the fact that it can take this amount of time for you to get the permits or

the approvals that you need is just simply, again, I am going to use the word unacceptable.

Also, Ms. Becker, you indicated that perhaps you were going to raise issues that were a little bit uncomfortable. If we don't have uncomfortable discussions, we are not going to have any discussions at all. If our agencies are failing our tribes at addressing these energy issues that are not only critical to you but critical to the United States of America, then we are failing everybody.

I want to thank you for what you do in Wyoming, for what your Tribe does in Wyoming. You guys are a fabulous neighbor, a fabulous producer. We appreciate how you operate, and we appreciate what every one of you are trying to do in terms of improving this situation for your tribal members.

Mr. Baker, the TERA concept seems to hold a lot of promise for those tribes like the Southern Ute that want more control over resource decisions on your own lands. However, no tribe has yet submitted one to the Department of the Interior for approval. Can you elaborate on your testimony a little bit and discuss more about the inherent Federal function issue that has affected your Tribe's decision on whether to submit a TERA and why it is important to solve it?

Mr. BAKER. Well, again, as we mentioned, no tribe has entered that. I think our Tribe has been asking for clarification for many years on that. And it does make an impact on how we are going to move forward. But, again, it just appears that with the TERA regulations, it is like saying we are going to play a game but the government is not telling us the rules of the game. Why do we want to waste time and money? We have already done that in the past where we put a lot of our staff ahead to try to get ahead of this and it really boiled down to nothing.

So, for us, it was a loss of funding. And I think we have to move cautiously how we are going to do things. And we have held back on some of that because, again, we don't know the rules, we just are not working together. I feel that the Federal Government is not doing their part.

I mean, it should be a simple answer. It should be a simple question. And, again, as we sit here today, that is what we are all here for as leaders to talk. How can we see a better tomorrow? How can we work together?

And you all know the challenges of every tribe are different, so help us get through it. And with that, I believe our own tribes, they work with each other. They ask how did you do that, how did you do this. They meet, at certain meetings they talk about these issues, the challenges. But it just seems like for years nothing has ever come out of it, and that is why they are really being cautious on not moving forward.

Ms. HAGEMAN. And I take it that you are seeking clarification from Federal agencies, but that clarification has not been forthcoming?

Mr. BAKER. Right.

Ms. HAGEMAN. OK. So, then I am going to challenge the four of you, and I am going to ask you to do something for us. I would like you to put together the checklist, or the information, or the documentation of what you believe our agencies should be doing. You

bring that to us and then let's see if we can solve it from your standpoint.

Because if these agencies are not moving forward with the projects, or you are not able to move forward with the projects, because the agencies are neither clarifying, nor responding, nor dealing with the individual situations that every single one of your tribes have or any other tribe around this country, then we need to solve it from the ground up. Coming to Washington, DC and saying that the Department of the Interior or the Secretary of the Interior is not giving us the information, we know that, and that is the frustration that we have.

I want your help in knowing what I need to ask the Secretary of the Interior to do. Tell us how to make these programs better, and we will try to fix them. This should never be at top-down approach. We need to come to you and say, how do we go about making sure that we do get the permits that we need to be able to remove the trees? Why in the world would it take years to do that?

That is an absolute absurdity and it kind of demonstrates how broken this place can be, but it is also why I have worked as hard as I have to try to return autonomy to the tribes because you are the ones who can make the better decisions that are going to be in the best interest of your members and you are actually going to be able to succeed to accomplish something. So, help us help you. I am all ears. I will work with you.

Mr. Baker, what is your response?

Mr. BAKER. Yes. And I would like to say the Southern Ute Tribe would like to work with the Committee to address the issue to bring clarity and certainty to the TERA idea. Again, you mentioned how can we help you help us, and that is one of our philosophies even working with the local BIA. There are a lot of things we cannot get done, and we have to the point where we are asking the BIA how can we help you help us.

We have to work together. We are, as a tribe, reaching out because we need things to move along, but you are not doing it. We always get the excuses of they don't have the professionalism. Well, the tribes do. We do. But you are holding us back. How can you help us help us.

And, again, just indicating that the Tribe would be willing to work with how we can bring certainty to the TERA.

Ms. HAGEMAN. I have a lot more questions I wanted to ask you, and I kind of got on my soapbox, but I am going to tell you, I am two floors above here. You come here and you come and talk to my staff, and we will sit down, and we need to make that list. We need to have an idea of where to go because I don't have the answers, but you do. So, help us fix this.

And with that, I will call on our Chairman, Mr. Westerman, for his 5 minutes of questioning.

Mr. WESTERMAN. I am not sure I want to follow that.

[Laughter.]

Mr. WESTERMAN. Thank you to the witnesses for being here today. This is an issue or an area that is very important to my role as Chairman of the Committee and to the outlook that we are trying to lead the whole Resources Committee and especially this

Subcommittee. And I want to commend the Subcommittee Chair, Representative Hageman, for the excellent work that she is doing in putting together hearings like this on tribal sovereignty.

I have told folks when we talk about tribal sovereignty, it is not just talk, we want to see action. And the reason you all have been selected for this panel, or invited to be here today, is because you come from an area where I would say there is a lot less talk and a lot more action. You are getting things done, whether it is in resource management, or finance, or whatever area you work in.

And I had the good privilege to be out and visit the Colville Tribe last year and traveled around and looked at some of the great work that is being done there, and I thought, this needs to be replicated. But also, was a little frustrated because of the boundaries and barriers that were being put in place by people far away from the Colville Tribe, and I saw so much more potential.

And, Mr. Desautel, I know that you all are working on an agreement for a planned biochar facility in Kettle Falls, which is a beautiful place, by the way. But can you further expand on how new biochar and/or biomass projects can benefit the management of tribal forests?

Mr. DESAUTEL. Sure. I think when you look at tribes across the West, many of them have leaned on timber as a source of revenue to support their tribal government for decades, but there has not been a place for those non-merchantable forest products. And now we recognize that not only are those a source of revenue, but they are a source of fuel that has fueled wildfires that have damaged Indian Country for the last couple decades in particular.

So, if we can find a way to utilize those materials in a cost-efficient way or potentially even a way that generates some additional revenue for the Tribe, that would be a huge opportunity for the Tribe to improve management and resilience on their own lands. But with the authorities Congress has given us over the last few years with the Tribes' ability to work with its partnering Federal agencies, we can do that work not only on our land but on adjacent Federal land, too.

So, I think there is a great opportunity if you can develop the infrastructure and the markets that make good use of those non-commercial forest products that right now are going up in flames contributing to global warming and burning down communities.

Mr. WESTERMAN. Yes. And how could a reauthorized tribal biomass project specifically help development at Kettle Falls?

Mr. DESAUTEL. When we look at the development of a project like that, the infrastructure costs are huge, so financing for that is something that is going to take probably 2 or 3 years to work through, and I am sure the payback timeline is going to be a couple decades. So, you have to have a supply commitment that matches the payback timeline of that facility. When you are looking at roughly 20 years for a facility like that to pay for itself, you have to ensure that you have supply for that over that time.

You have seen mills close over the last couple decades because of that and many of them never reopen because they just couldn't secure the financing they needed because historically a lot of that wood came from Federal forests and there is just no confidence that that will happen in the future. But if you can enter into these long-

term supply agreements, there is some confidence by the banking industry that those loans will be paid, that those facilities will operate.

And if we have that authority—the problem is that we had 5 years to do it. That is a pretty short timeline to put together projects that are in the neighborhood of \$50 to \$100 million to build and the capacity and contracting capacity that you need to add is substantially bigger, and it takes time to do that.

So, I think if we have a reauthorization, hopefully it is for a longer period of time and hopefully permanent at some point. I hope the intent of the pilot project was just to test its concept, and in the long-term it would just be a tool we put in our toolbox.

Mr. WESTERMAN. And as was talked about, when we were out, we saw some of the tracks that you all had managed, and done a phenomenal job with, and I guess it was that fire in 2015 that had firefighters tied up on unmanaged Federal forest. So, not only did the failure to manage the adjacent Federal forest result in that forest being destroyed, it took resources away from fighting the fire on land that you all had done a good job of managing.

And you are exactly right, if we can use this biomass to make energy, it is good for the forest, it is good for the economy, it is good for the environment, and a whole host of benefits that you get from that. But I understand the complexities of trying to build the project that can be millions and millions of dollars and not having any certainty.

And, Mr. Lovesee, I am going to give you just a couple of minutes to talk about, or seconds, I guess. How important is it from a financial standpoint when somebody comes in to do a project to have the certainty that you are going to have the resources to be able to do that project?

Mr. LOVESEE. I mean, certainty is everything when it comes to a project. And, unfortunately, we are still in the process of figuring out what partnerships can be done. There are even issues right now with what the IRS can provide as far as guidance when doing some of the projects and some of these partnerships.

We have been trying to work with Treasury on that, but I know that they have even said they need to come back and talk with Congress about the authorization to even be able to answer tribes' questions, because right now there is nowhere tribes can go when it comes to being able to get some of these questions answered, as far as being able to work with what partnerships and what financing options they have available, especially for something like direct pay credits. There is nowhere they can go on the Federal Government side.

So, it is everything. I mean, you can't do an energy project if you don't know where your financing is going to come from or what it is going to look like 5, 6 years down the road. And, unfortunately, we are just not there.

Mr. WESTERMAN. Madam Chair, I would just add that if we could just clear the way so they could do what they do best and take the barriers away, they are so far ahead of our Federal land managers in so many places that I have traveled around the country and visited that we are missing a huge opportunity by not empowering our tribal partners to do more of what they do best.

And I am way out of time, so I yield back.

[Laughter.]

Ms. HAGEMAN. But, Mr. Chairman, I want to thank you for being here today and joining us on what I think is one of the more important panels that we have had.

The future of energy production, and our tribal autonomy, and the future of your communities is really at stake with some of the things we are talking about today.

I thank the witnesses for your valuable testimony and the Members for their questioning.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to those in writing. Under Committee Rule 3, members of the Committee must submit such questions to the Committee Clerk by 5 p.m. on Tuesday, October 3, 2023. The hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 11:26 a.m., the Subcommittee was adjourned.]

