

**Testimony of Bidtah N. Becker, Legal Counsel,
Navajo Nation Office of the President and Vice-President,
Tribal Autonomy and Energy Development: Implementation of the Indian Tribal Energy
Development & Self-Determination Act” Subcommittee on Indian and Insular Affairs
September 28, 2023**

Yá'át'ée'h 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. Ahéhee' (Thank you).