BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

Tribal Natural Resource Development: Barriers and Successes

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on behalf of the

SOUTHERN UTE INDIAN TRIBE

Good morning, Chairman Hurd, Ranking Member Leger Fernández, and distinguished members of the Subcommittee, my name is Andrew Gallegos. I am a Member of the Southern Ute Indian Tribal Council. It is an honor to appear before you today on behalf of the Southern Ute Indian Tribe.

I. Background

The Southern Ute Indian Reservation consists of approximately 700,000 acres of land located in southwestern Colorado, approximately 311,000 acres of which is held in trust by the federal government for the benefit of the Tribe. As a result of the complex history of the Reservation, the Tribe also owns severed oil and gas, minerals and coal estates on additional portions of the Reservation that are held in trust by the United States. The Tribe, which has approximately 1,460 members, is a leader in Indian Country with a demonstrated record of foresight and business acumen. The Tribe is the only tribe in the nation with an AAA credit rating, which was earned through years of steady governance and successful and prudent business transactions. Though the Tribe has a diversified portfolio, energy development – both on and off Reservation – remains the key component of the Tribe's economic vitality. Accordingly, we are well positioned to speak to the relationship between energy development, prosperity, and tribal self-determination.

The Southern Ute Indian Tribe is a great example of the positive impacts of Indian energy development. Our Reservation is part of the San Juan Basin, which has been a prolific source of oil and natural gas production since the 1940s. Beginning in 1949, the Tribe began issuing leases under the supervision of the Secretary of the Interior. For several decades, we remained the recipients of modest royalty revenue, but were not engaged in any comprehensive resource management planning. That changed in the 1970s as we and other energy resource tribes in the West recognized the potential importance of monitoring oil and gas companies for lease compliance and keeping a watchful eye on the federal agencies charged with managing our resources. In 1974, the Tribal Council placed a moratorium on oil and gas development on the Reservation until the Tribe could gain a better understanding of and control over the process. That moratorium remained in place

for 10 years while the Tribe compiled information and evaluated the quality and extent of its mineral resources.

A series of events in the 1980s laid the groundwork for our subsequent success in energy development. In 1980, the Tribal Council established an in-house Energy Department, which spent several years gathering historical information about our energy resources and lease records. In 1982, following the Supreme Court's decision in *Merrion v. Jicarilla Apache Tribe*, the Tribal Council enacted a severance tax, which has generated more than $900 million in revenue since its enactment. After Congress passed the Indian Mineral Development Act of 1982, we carefully negotiated mineral development agreements with oil and gas companies involving unleased lands and insisted upon flexible provisions that vested the Tribe with business options and greater involvement in resource development. Because the Tribe's leaders believed that the Tribe could do a better job of monitoring its own resources than federal agencies could, shortly after passage of the Federal Oil and Gas Royalty Management Act of 1982, the Tribe entered into a cooperative agreement with the Minerals Management Service (now the Office of Natural Resource Revenue) to permit the Tribe to conduct its own royalty accounting and auditing.

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 received by our Tribe in settlement of reserved water right claims. Through conservative acquisition of on-Reservation leasehold interests, we began operating our own wells and received working interest income as well as royalty and severance tax revenue. In 1994, we participated with a partner to purchase one of the main pipeline gathering companies on the Reservation. Today, the Tribe is the majority owner of Red Cedar Gathering Company, which provides gathering, processing, and treating services throughout the Reservation. Ownership of Red Cedar Gathering Company allowed us to put the infrastructure in place to further develop and market coalbed methane gas from Reservation lands and provided an additional source of revenue. Our tribal leaders recognized that the peak level of on-Reservation gas development would be reached in approximately 2005, and in order to continue our economic growth, we expanded operations off the Reservation.

II. The Tribe's Energy Development Activities Support the Tribal Membership and the Broader Community

These acts of energy development through self-determination are key to the Tribe's economic success. In the 1970s, the 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, through its subsidiary energy companies, invests in oil and gas activities across several Rocky Mountain and Mid-Continent states as well as the Deepwater Gulf of America. We are the largest employer in La Plata County. The Tribe provides health insurance for its members, promises all members a college education, and has a campus dotted with state-of-the art buildings. Next month we will be cutting the ribbon on a 60-unit apartment complex that we built for our membership, staff, and local essential employees so they would have convenient and affordable housing in our community.

The Tribe's success was not an accident. Without a prolonged effort to take control of our natural resources, the Tribe would not have the financial stability it has today. Our energy-related economic successes

have resulted in a higher standard of living for our tribal members. We have exceeded many of our financial goals, and we are well on the way to providing our grandchildren and their grandchildren with the opportunity to maintain our Tribe and its lands in perpetuity. Energy resource development has unquestionably had a great positive impact on the Tribe, our members, and the surrounding community.

Successful energy development has also enabled the Tribe to invest in diverse, non-energy projects, laying the foundation for long-lasting economic prosperity. For example, the Tribe has made real estate investments that include industrial properties, multi-family properties, office, structured finance, self-storage, and land development, active in 16 states across the Country. Additionally, Kava Equity Partners, which is the direct private equity investment arm of the Southern Ute Indian Tribe Growth Fund, has strategically acquired three businesses, further strengthening and diversifying its portfolio across complementary sectors.

Return on these investments has spurred further economic growth for the Tribe, which would not have been possible without the Tribe's active efforts to control and develop its energy resources. Along the way, we have encountered and overcome numerous obstacles, some of which are institutional in nature and others of which are within Congress's control.

III. Barriers to Tribal Energy and Economic Development

We have collaborated with Congress over the decades to make the path easier for ourselves and other tribes to take full advantage of the economic promise afforded by tribal energy resources. For at least the last 25 years, our message to Congress was largely the same: excessive federal involvement impedes tribal energy development. For tribes that are willing and able, the United States must remove the legislative and regulatory barriers it has created and allow those tribes to voluntarily assume responsibilities normally performed by federal agencies such as the Burean of Indian Affairs (BIA) and the Bureau of Land Management (BLM). Until relatively recently, BIA approval was required for leases of tribal land to tribal members, including residential, business, or farmland leases. Federal approval is still required for a right-of-way to bring electricity to tribal member homes, or to bring broadband to tribal office buildings.

What is worse is that the required approval often constitutes a federal action, which triggers federal environmental and other review requirements, even for simple and straightforward realty transactions like those mentioned above. In essence, the Tribe's own lands are treated as public lands, and, if federal approval is involved, no ground-disturbing action – not even some initiated by the Tribe itself – can occur until the federal government has analyzed the potential impacts under the National Environmental Policy Act (NEPA), among other statutes.

This dual governance of tribal trust lands creates market disincentives, discouraging economic development and infrastructure upgrades on tribal lands. A 2015 GAO Report found that weaknesses in the BIA's management of oil and gas resources contributed to a general preference by industry to acquire oil and gas leases on non-Indian lands over Indian lands. These disparities create a problem that is exacerbated on reservations like the Southern Ute Indian Reservation, where tribal land and non-Indian fee land are arranged like a checkerboard, and oil or gas operators can develop on non-Indian fee land for less time and money, all-the-while depleting tribal minerals. For years the Tribe has been asking for the statutory and regulatory

requirements to be modified so that federal review and approval is not required for the Tribe to use its own land.

IV. Congress has Removed Some Barriers

In 2005 and 2012 Congress enacted laws that removed some of those barriers, first with the 2005 Energy Policy Act and then with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"). Those statutes created mechanisms for tribes to voluntarily assume some components of federal authority over realty transactions on tribal lands.

A. HEARTH Act

Until Congress passed the HEARTH Act, codified at 25 U.S.C. 415(h), most surface leases of tribal land had to be approved by the BIA. The HEARTH Act, which amended the Indian Long-Term Leasing Act of 1955, provided federally recognized tribes the opportunity to approve certain land leases without further Secretarial review and approval so long as those leases were executed under tribal regulations that are consistent with the BIA's surface leasing regulations and so long as the tribal regulations included an environmental review process meeting the statute's requirements. Before exercising that authority, tribes were required to obtain Secretarial approval of the tribe's leasing regulations.

In addition to requiring participating tribes to develop tribal leasing regulations, the HEARTH Act required tribes to develop an environmental review process that would be enacted as tribal law. Southern Ute's "Tribal Environmental Review Policy," which was approved as a tribal law, will ensure that the Tribe is informed of the environmental and cultural resource impacts of a proposed project before approving or denying the project. Our Environmental Review Policy establishes procedures much like the procedures federal agencies must follow under NEPA and the National Historic Preservation Act. Importantly, by giving the Tribe authority to act in place of a federal agency, and by allowing the Tribe to develop our own environmental review laws, we were able to incorporate improvements to the federal process, consistent with permitting reform efforts in Congress, such as page limits and time frames for completing required environmental analyses under NEPA.

After the BIA approved Southern Ute's leasing regulations and Environmental Review Policy in 2023, we could finally approve business, agricultural, residential, and renewable energy resource leases on our own land. Using the authority we gained through the HEARTH Act, in just the past month the Tribe has been able to approve two significant projects on the Tribe's land. One of those projects was the 60-unit apartment building described above. Before the Tribe had an approved Leasing Code, it would have needed to obtain BIA approval of a business lease to begin renting units, which would have included waiting for BIA to complete the NEPA process. Using the Tribe's Environmental Review Policy and the Leasing Code, the Tribe's Lands Division determined that the environmental analysis completed by the project development team was adequate and did not require additional environmental analysis – a determination that for past projects has typically taken 3-6 months for BIA to issue. The project – from when Tribal Council approved beginning construction to when tenants sign leases – will be completed in under two years.

The other project was a surface lease for an energy production company to construct a well pad for drilling off lease minerals that will be approved by the BLM. While the company had the authority it needed

for development of minerals on the lease, it did not have authorization to drill long horizontal laterals into other lands. We were able to issue a surface lease confirming the right for the operator to use the well pad for surface activities associated with its project. This reduced the time associated with approvals of the site for development of off lease minerals because it was able to be completed through the Tribe's Leasing Code.

These two projects illustrate how the Leasing Code allows the Tribe to more quickly provide benefits to its membership. However, while the Tribe's leasing regulations allowed us greater authority over some aspects of how we use our land, the authority is narrow. We still could not approve leases for conventional energy development, nor could we approve any rights-of-way.

B. Tribal Energy Resource Agreements

To fill the gaps in the Tribe's authority, our next option was to enter into a Tribal Energy Resource Agreement ("TERA") pursuant to the 2005 Energy Policy Act. A TERA, which is an agreement between a tribe and the Secretary of the Interior, gives a tribe authority to negotiate and enter energy related leases, business agreements, rights of way, and other agreements without the prior review or approval of the Secretary. Entering into a TERA would—at least in theory—address many of the delays the Tribe had faced. However, the implementing regulations diminished the scope of authority to be obtained by a TERA tribe by preserving the federal government's role to perform an array of functions called "inherent federal functions." This undefined term threatened to render the Act's goal of fostering tribal decision-making practically meaningless, especially given that one of the primary benefits of a TERA is that it would largely remove underfunded federal agencies from the review and approval process.

The Tribe repeatedly urged Congress to improve the 2005 Act because the application process was burdensome, and there were a number of unanswered questions, including what constituted an inherent federal function that the Interior Department would be retaining. We testified at several hearings, much like this one, about why tribes were not taking advantage of the TERA option. Congress responded in 2017 by passing the Indian Tribal Energy Development and Self-Determination Act Amendments, which the Tribe strongly supported. Those amendments greatly improved the TERA process by revising the conditions for approval, establishing deadlines for approval, and providing technical assistance to tribes.

In 2025, the Southern Ute Indian Tribe was the first tribe to submit a TERA application. The application includes approval of energy leases, rights-of-way, and related contracts as well as some administrative functions involving tribal energy and mineral resources. If the Tribe's TERA application is approved, Interior would retain responsibility to carry out limited "inherent federal functions" and would maintain oversight of allotted minerals and lands. The Tribe would have authority over all BIA-administered tribal trust activities as it relates to energy development on trust lands within the boundary of the Reservation. The Tribe looks forward to exercising the authority it will be granted under the TERA, which we expect Interior to approve in May.

V. Additional Solutions

With these two new tools: HEARTH Act Leasing Regulations and a TERA, the Tribe will have authority to approve residential, business, and agricultural surface leases, and energy-related leases, agreements, and rights-of-way. However, a significant body of basic realty transactions remain within BIA's purview. Those

include non-energy rights-of-way, such as for roads and fiber optic lines. Given the need for federal approval of such land uses, NEPA review is triggered, which allows for legal claims against BIA approvals for important tribal projects that the Tribe has consented to as part of its self-governance authority. **The Tribe is once again urging Congress to give us the tools we need to have authority regarding the use of our lands and the sovereign right to decide how to use them.**

The Standardizing Permitting and Expediting Economic Development Act (the "SPEED Act"), H.R. 4776, is one such tool. NEPA established a procedural framework for ensuring that federal agencies evaluate the potential impacts of their actions prior to taking those actions. NEPA also enhances public participation in the federal planning and decision-making process. Because tribal lands are generally held in trust by the United States, development activities on tribal lands frequently require federal approval, subjecting Indian tribes to the same NEPA process that applies to decision-making on federal public lands. NEPA is pervasive in Indian Country and, unfortunately, too often impedes the exercise of tribal autonomy and self-determination. In Indian Country, NEPA should serve as a tool to inform tribal decision-making and not a regulatory obstacle that tribes must overcome to develop their resources, generate revenue, conduct business, and exercise self-determination. Accordingly, the Tribe strongly supports the SPEED Act to amend NEPA to facilitate a more efficient, effective, and timely environmental review process. The SPEED Act tribal provision specifically limits availability of claims against a tribally-approved project on tribal trust lands.

The Tribe has brought this message to Capitol Hill time and time again. We support informed decision making. We have expended extraordinary resources to ensure that energy development on the Reservation is conducted with the most minimal environmental impacts feasible. NEPA, though well-intentioned, impedes tribal governments in timely implementation of their decisions about the use of tribal land. Tribal land is not public land. It is not managed by a federal agency on behalf of the American public for recreation, historic preservation, or natural resource extraction, for example. Tribal trust lands are held in trust by the United States for the benefit of a tribe and therefore must be managed for the benefit of that tribe – not the general public. Yet the full array of NEPA requirements apply, including public comment on proposed actions on tribal land, as if tribal land were a National Park or National Historic Site that the public is entitled to visit. It must be noted that proposed actions on tribal lands *have already obtained tribal consent*, otherwise, they would not be moving forward. The overly-broad public comment feature of NEPA allows third parties to delay or defeat tribally supported projects for the use of tribal trust resources.

The SPEED Act would largely resolve the issues that have resulted from applying NEPA to tribal land. In particular, the Act would limit judicial review under NEPA by establishing a heightened, logical standing requirement for claimants to challenge NEPA documents. A potential claimant must have filed "a substantive and unique comment" during any public comment process to bring a judicial action. There is also tribal-specific language in the Act that would address the particular problem created by applying NEPA on tribal land: for any final agency action that authorizes or affects the use of lands, minerals, or other resources held in trust by the United States for the benefit of a Tribe, administrative and judicial review would be limited. Importantly, there is of course an exception for claims brought by the Tribe itself or claims regarding reasonably foreseeable effects that agency action would have outside the Tribe's lands, minerals, or other resources.

Other beneficial provisions in the SPEED Act include an amendment to Section 108 of NEPA that would allow programmatic NEPA documents to be used for a period of ten years, rather than five years, without the need for supplementation unless there are substantial new circumstances or information. The amendment to Section 106(a)(6), which would allow tribal environmental review as a substitute for federal agency NEPA review, is also beneficial.

The Tribe appreciates Congress's actions to pass legislation such as the HEARTH Act, the Energy Policy Act's TERA provisions, and the 2017 Energy Policy Act amendments to increase tribal authority over how we may use our own land. We will continue to urge similar legislation and will take advantage of new options to exercise self-determination in developing our natural resources. We hope our testimony today provided insight into the barriers and successes we have experienced. The Tribe appreciates the continued efforts of this Subcommittee to encourage tribal self-determination through economic and energy development.