

**STATEMENT
OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
ON
S. 522
THE
“NATIVE AMERICAN ENERGY DEVELOPMENT AND SELF-DETERMINATION ACT OF 2003”
AND
S. 424
THE “TRIBAL ENERGY SELF-SUFFICIENCY ACT”
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

MARCH 19, 2003

Good afternoon, Chairman, Vice-Chairman and Members of the Committee. My name is Theresa Rosier and I am the Counselor to the Assistant Secretary - Indian Affairs within the Department of the Interior. I am pleased to be here today to present the Department of the Interior's views on S. 522, the Native American Energy Development and Self-Determination Act of 2003 and S. 424, the Tribal Energy Self-Sufficiency Act.

Background

The Bureau of Indian Affairs (BIA) manages approximately 56 million acres of land held in trust for individual Indians and Indian tribes in the lower 48 states and Alaska. Currently, there are 1.81 million acres of actively leased oil, gas and coal in various phases of exploration and development. It is estimated that an additional 15 million acres of undeveloped energy resources exist on individual and tribal land. Indian energy development plays an important role in the domestic production of fossil and renewable energy. In fact, production of energy minerals from Indian lands continues to represent over 10 percent of the total federal onshore production. Moreover, the production from Indian lands in the year 2001 was 13.1 million barrels of oil, 285 billion cubic feet of gas and 29.4 million short tons of coal. Since most Indian lands are located in sedimentary basins possessing geophysical features frequently associated with natural gas and oil, the potential for further energy development on Indian lands is exciting.

Increased energy development in Indian and Alaska Native communities means increased jobs in these communities. In many Indian and Alaska Native communities, joblessness and underemployment are painfully acute. This dismal state of affairs has impeded tribal economic development and self-sufficiency. More than ever, tribes need the job and training opportunities that come hand-in-hand with expanded mineral and energy development.

One of the tragic ironies of life in Indian communities is that tribes possess substantial energy resources yet pay some of the highest electrical costs or even lack complete access to electricity. The Navajo, for example, reside on lands abundant in minerals. They have coal, hydrocarbons, and photovoltaic assets. Yet a huge proportion of the Navajo people lack access to any electricity at all. Unfortunately, blackouts, brownouts, and other kinds of energy disruptions are quite common in many Indian communities.

Consistent with the President's National Energy Policy to secure America's energy future, increased energy development in Indian and Alaska Native communities could help the Nation have more reliable home grown energy supplies. S. 522 promotes increased and efficient energy development and production in an environmentally sound manner.

S. 522

While the Administration supports the goals and objectives of S. 522, the promotion of both tribal self-determination and economic development, there are several provisions that we look forward to working with the Committee on prior to moving forward in the legislative process. Because this legislation has programs for the Department of Energy, the Department of the Interior, and Housing and Urban Development, my testimony is appropriately focused on those provisions relating to the Department of the Interior.

S. 522 builds upon the self-determination principles of the Indian Mineral Development Act of 1982 to increase tribal control over the exploration, extraction, processing and development of fossil and renewable resources. Indian tribes are in the best position to determine how and when minerals are to be extracted from their lands. After all, increased tribal regulation and responsibility for their resources is consistent with tribal sovereignty.

S. 552 would authorize individual Indians and tribal governments to enter into energy development leases or business agreements without federal review as long as certain preconditions have been met. The preconditions are that the "Secretary" has already approved tribal regulations which govern these leases and business agreements, and that these leases and agreements do not exceed 30 years. Moreover, the bill authorizes tribes to grant rights-of-way over tribal lands for pipelines, electrical

transmission or distribution lines without federal review if the “Secretary” has approved the tribal regulations which govern the right-of-way, the right-of-way does not exceed 30 years, and the pipeline, transmission or distribution lines serve a facility located on Indian lands or the energy has been produced on Indian land. The Department supports tribal regulation and expedited review of these regulatory processes.

As drafted, it is unclear whether this section would apply to the Department of the Interior or the Department of Energy. The Department believes that it is more appropriate for the Secretary of the Interior to approve tribal regulations which govern the leasing of trust or restricted lands, business agreements, and rights-of-way conveyance because the documentation necessary to approve such tribal regulations requires trust records and payments that are under the purview of the Department of the Interior.

Generally, the Department is also supportive of the creation of the Indian Energy Resource Commission. Among other things, the Commission is tasked to recommend improvements to the current tax structure governing Indian energy production. The current tax structure in Indian Country imposes multiple severance and ad valorem taxes on those who extract and operate energy enterprises in Indian Country.

We look to the Commission to recommend ways to facilitate economic growth in Indian and Alaska Native communities. Hopefully, this will mean more tribal joint ventures, greater tribal participation in the building of transmission and distribution lines, and increased tribal ownership of power plants and utility companies.

The Department is strongly opposed to the proposed power of the Commission to subpoena testimony and records. We do not believe it is necessary for the Commission’s mission. The Commission should not be an investigatory body, but rather an entity that looks to what the future can hold for Indian energy development. In addition, as we understand it, even the General Accounting Office does not have authority to subpoena records from federal agencies.

S. 424

President Bush’s National Energy Policy report established a comprehensive, long-term energy strategy for securing America’s energy future. Both renewable and nonrenewable Indian energy is uniquely positioned to play a vital role as the nation begins to curb its dependence on foreign energy supplies. In addition to traditional energy sources, alternative and renewable energy sources are also a fundamental component to the President’s energy policy. Geothermal, wind, hydro, and solar energy, while a small percentage of total U.S. energy supply and consumption, are important to the

long-term energy security of this Nation.

The purposes of S. 424 are to establish an Office of Indian Energy Policy and Programs at the Department of Energy; to encourage greater tribal self-determination in the regulation of Indian energy leases, rights-of-way, and business agreements; to assess and evaluate the Indian Mineral Development Act of 1982; to conduct various studies and feasibility analysis related to Indian renewable and nonrenewable energy; and to authorize certain Indian energy related provisions. My testimony will focus on those provisions pertaining to the Department of the Interior.

S. 424 would authorize Indian tribes to lease tribal land for electric generation, transmission or distribution, and for a facility to refine renewable or nonrenewable energy without Department of the Interior approval. This expedited leasing process is available to a tribe if two preconditions have been met: 1) the lease was carried out under regulations which were already approved by the Secretary of the Interior pursuant to provisions in the bill, and 2) the lease does not exceed 30 years. Moreover, tribes are also authorized to grant a right-of-way across tribal lands without Secretary of the Interior approval if the right-of way is executed with regulations pre-approved by the Secretary, the right-of-way does not exceed 30 years, and the transmission or distribution line serves a facility located on Indian land, or aids the processing of energy developed on Indian lands. In addition, S. 424 authorizes the approval of energy business agreements without Secretarial review if a comprehensive environmental review process has been completed.

These provisions promote increased tribal self-determination as tribes administer and regulate their tribal energy policy. Moreover, energy development promotes increased economic opportunities in Indian communities. An efficient, locally controlled regulatory structure in Indian communities creates a business friendly environment that encourages exciting partnerships between tribes, the private sector and the federal government.

This section of the bill requires the Secretary of the Interior to conduct a review of the Indian Mineral Development Act (IMDA) of 1982 and report to Congress within a year. The IMDA represented a fundamental shift in Indian energy development. Since its enactment, Indian tribes have become more proactive in developing their energy resources. Since it has been twenty years since its enactment, assessing the IMDA is important as tribes and Department begin to develop a national Indian energy plan. Currently, the BIA is planning a framework for formal consultation with tribal leaders regarding a national Indian energy policy. These consultations will build upon the groundwork that the BIA has recently completed. Since April, the BIA has held six Indian energy policy meetings throughout the United States with representatives from more than 100 tribes to discuss the development of a tribally driven energy policy.

Conclusion

Thank you for the opportunity to testify before you today to speak on a subject that is a priority for this Administration, tribal leaders and the American public. It is a very exciting and opportune time to focus on increased Indian energy development. I welcome any questions that the Committee may have.