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# United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

ALLISON BINNEY, MAJORITY STAFF DIRECTOR  
DAVID A. MULLON JR., MINORITY STAFF DIRECTOR

September 10, 2009

Dear Tribal Leader:

The Senate Committee on Indian Affairs is developing legislation to help unlock the potential of tribal energy resources and increase energy efficiency programs in Indian Country.

Please find attached an Indian Energy Concept Paper that will be used to begin the discussion for legislative ideas and suggestions from tribal leaders, representatives, and other stakeholders. The proposals included in the concept paper are based on a May 2008 Committee hearing and our ongoing discussions with tribal governments and tribal organizations.

We encourage your comments, ideas, and suggestions on the concept paper both in writing and in person. Committee staff will be holding a series of Indian energy roundtables to discuss the concept paper. We invite you to attend any one or more of these roundtables. Roundtables are currently scheduled for:

September 17<sup>th</sup>  
1 p.m. to 5 p.m.

Jack Barden Center  
United Tribes Technical College  
Bismarck, North Dakota

September 18<sup>th</sup>  
10 a.m. to 2 p.m.

Embassy Suites Hotel Denver - Aurora  
4444 North Havana Street  
Denver, Colorado

Additional roundtables are planned for other regions throughout Indian Country depending on the Committee's legislative schedule. Please check the Committee's website at [www.indian.senate.gov](http://www.indian.senate.gov) for updated information on dates and locations.

Please submit written comments with the subject line "Energy Concept Paper" via e-mail to [energy@indian.senate.gov](mailto:energy@indian.senate.gov), or via facsimile to (202) 228-2589.

We look forward to working with you to address energy issues in your community and throughout Indian Country.

Sincerely,



Byron L. Dorgan  
Chairman



John Barrasso, M.D.  
Vice Chairman

# **Indian Energy and Energy Efficiency Concept Paper**

## **Findings and Theme**

Last year, the Committee heard testimony on the efforts of Indian tribes to unlock the potential of their energy resources. The Administration and Indian tribes testified that recent laws have begun to support tribal energy development by encouraging tribes to take an active role in developing their resources. However, witnesses also testified that these laws were slow in being implemented. In addition, witnesses noted that more changes are needed to overcome a century of bureaucratic federal policies that have created uncertainty and an unlevel playing field for tribal energy development. Current law creates disincentives for investment in Indian country, and discourages tribes from initiating their own development efforts.

This concept paper proposes advancing tribal energy development to include tribes in current efforts to renew the Nation's energy industry. The paper addresses three major barriers to Indian energy development: (1) outdated laws and cumbersome regulations for tribal energy development; (2) lack of tribal access to the transmission grid; and (3) difficulty in obtaining financing and investment for energy projects.

The Committee is interested in receiving feedback, comments and suggestions from Indian tribes and other stakeholders in Indian resource development on the ideas set forth in this Concept Paper. The Committee is also interested in hearing from tribes and stakeholders regarding their own ideas for encouraging Indian energy and/or other resource development that might be included in possible legislation this Congress.

## **Title I – Promoting and Streamlining Indian Energy Development**

Title I would promote and streamline Indian energy development. Provisions of this title would streamline federal processing of permits and address some of the financial disincentives to energy development on Indian lands. Specific provisions might include:

- 1. Streamline and support Indian energy development by expanding one-stop shops.** Develop a “Indian Energy Development One-Stop-Shop Demonstration Project” within the Department of the Interior in up to 3 Regional and/or Agency Offices where there is a high level of energy development opportunities. The purpose of the demonstration project would be to ensure that Indian tribes, tribal members, and the energy industry are

provided coherent and timely information on energy development, and to ensure that lease, permit, and royalty processing occurs in an efficient and timely manner.

- 2. Provide individual Indians the authority to negotiate mineral agreements for allotted lands.** Currently, tribes use Indian Mineral Development Act (IMDA) agreements to be more active in the leasing of minerals on their lands and to have more control over the development of agreement terms that are negotiated. Individual Indians, however, must use a process led by the Bureau of Indian Affairs. The IMDA or Title V of the Energy Policy Act of 2005 could be amended to allow individual Indians the ability to negotiate their own agreements in a manner similar to tribes, eliminating some of the steps currently needed to process energy leases.
- 3. Bundle leases and right-of-ways on Indian Lands.** Most leases for energy development also require a right-of-way to access the energy resources. Current laws separate the processes for obtaining leases and right-of-ways on Indian lands and, therefore, require two sets of approvals. The law could be changed to provide Tribes and individual allottees the option to sign energy leases that include appropriate provisions for necessary and reasonable right-of-ways. Combining these steps would streamline the energy development process.
- 4. Encourage long-term reservation-wide planning and streamline environmental review of energy permitting.** The federal government is required to conduct environmental reviews for most development on Indian lands. However, this process takes too long in part because the federal government generally conducts the environmental reviews on a project-by-project basis. Additional authority could be developed to direct the Secretary of the Interior, through the Office of Indian Energy and Economic Development, to prepare comprehensive environmental review documents for reservation-wide energy planning—functions that also might be contracted or compacted by Indian tribes or tribal development organizations pursuant to P.L. 93-638. This should provide proactive planning and decrease the amount of time needed to obtain permits for projects.
- 5. Repeal the federal charge for oil and gas drilling on Indian Lands.** The Consolidated Appropriations Act of 2008 authorized the Bureau of Land Management to collect a \$4,000 charge for processing applications to drill on federal lands, including Indian lands. The law could be changed to exempt Indian lands while still allowing the charge for other federal lands. This would eliminate one of the obstacles to encouraging energy development on Indian lands.

## **Title II – Programs to Support Indian Energy Development and Efficiency.**

Title II would enhance federal programs designed to support Indian energy development and efficiency. Provisions of this title would require the Department of Energy (DOE) to implement sections of the Energy Policy Act of 2005 that remain unfulfilled. Some provisions of the 2005 law were discretionary and DOE has failed to act upon them. Provisions would also require or improve tribal participation in existing DOE energy efficiency programs. Specific provisions would:

- 1. Increase project financing available to tribes by requiring implementation of the DOE Indian Energy Loan Guarantee Program.** A DOE Indian Energy Loan Guarantee Program was authorized by the Energy Policy Act of 2005, but DOE has not implemented the program because the legislation did not require it. The Program is currently authorized at \$2 billion. The law should be changed to require DOE to implement the program.
- 2. Study on inclusion of Indian tribes in national and regional electrical infrastructure planning.** Nationwide electrical transmission plans often overlook Indian lands and consequently tribes are not able to participate in development opportunities. DOE's Indian Energy Office could conduct a study, either alone or in concert with other planning efforts, to identify Indian tribes interested in developing electrical generation and the obstacles that need to be overcome to transmit that electricity to energy markets.
- 3. Support energy efficiency efforts on Indian lands by including tribes in DOE's State Energy Program.** The DOE State Energy Program provides funding to State governments for development and implementation of laws, policies, and programs to conserve and improve energy efficiency. These laws might be reviewed for potential amendments to make this funding more accessible to Indian tribes.
- 4. Ensure that Indian tribes benefit from home weatherization assistance provided by DOE.** DOE's current weatherization program requires that tribal funding pass through State programs, and is based on criteria not well suited for tribal communities. This program might be reviewed for potential amendments to make this funding more accessible to Indian tribes.

### **Title III – Technical Amendments and Reauthorizations**

- 1. Amend the Indian Energy title of the 2005 Energy Policy Act.** To date, going on 5 years after the enactment of the 2005 Energy Policy Act, no Indian tribe has entered into a Tribal Energy Resource Agreements (TERA) with the Secretary pursuant to Title V of that Act. Title V might be streamlined and improved to make the TERA process a more practical, effective and attractive alternative to the IMDA or the Mineral Leasing Act.