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Shoshone Business Council [SBC]

Testimony

The Department of Interior

March 7 & 8, 2006

**Kassel D. Weeks,
Shoshone Tribal Business Council
March 3, 2006**

Thank you, for this opportunity to share some of my thoughts and experiences with the Department of Interior (DOI) and the Department of Energy (DOE) today.

I am Kassel Weeks, an elected official of the Eastern Shoshone Business Council, for the Eastern Shoshone Tribe of Indians, on the Wind River Indian Reservation (Reservation), located at Fort Washakie, Wyoming. I'm also a member of the Joint Business Council (JBC) for the Eastern Shoshone & Northern Arapaho Tribes (Tribes) on the same Reservation. The JBC manages all the undivided land interest for the two tribes on our reservation. I feel it is my elected and personal duty to bring forth my observations and experiences in working around and with the various Federal agencies and petroleum industries on our Reservation.

Needless to say, the Department of the Interior [DOI] is the main Federal Trustee for Indian minerals and royalties, [both Tribal and individual]. As the result of this responsibility, the DOI does work with other Federal agencies, the Bureau of Indian Affairs (BIA), The Bureau of Land Management (BLM), the Minerals Management Service (MMS), and the Office of Special Trust (OST), are all required to insure that mineral royalties are correct.

On the Wind River Reservation, we depend on the production of oil and natural gas as our mainstay of generating revenues for our people and the operations of our tribal governments. It's our means of survival on Wind River, and the mismanagement of our petroleum productions by the Federal agencies is a crying shame. We the Tribes are the silent or no-face victims of this gross mismanagement of our valuable resource, - - - - which never seems to cease.

Back in the 1970s & into the 1980s, or even before this time, the theft of our crude oil by the Oil Companies was so outrageous and shocking the story was broadcast nationwide and even appeared on the popular - Television Magazine Show, "60 - Minutes." To this day, the Tribes never did get an accurate accounting from Federal agencies responsible for watching out for the Tribes, on how much oil was stolen? The BIA & BLM both Federal agencies do not have a clue nor did they make much effort to recover the stolen oil. Yes, there were some small token payments made to the Tribes by some of the oil companies, more or less out of guilt than anything else. But these payments did not come near what the market value of the millions or billions - barrels of oil stolen.

The theft of the millions/billions of barrels of oil was an outright crime against the Wind River Tribes. In many ways, the theft of our oil and natural gas still goes on today. This new theft is done with the Ink Pen and the negotiated and signing of leases by the BIA that are not in the best interest of the Tribes. We have long term leases that the BIA has negotiated which have the Tribes responsible for

a portion or part of the operations of the oilfields, we also have other leases whereas the Tribes do not get any royalties until the oil companies have recouped all their investment and operational costs? Also we have seen leases where the oil companies pay a royalty on the net production instead of the gross production. Now days with all the methods of accountings, etc. . . . a company can hide or calm expenses and charge these expenses to the Tribal oilfields thereby paying on a lessor production amount because they are allowed to pay themselves first.

The surface leases to the Tribes are some very sad situations, on our Reservation we see where by Federal regulations, “. . . . The lessee shall pay, beginning with the date of execution of leases by the Secretary of the Interior, a rental of \$1.25 per acre per annum in advance during the continuance thereof, together with a royalty of 12 ½ percent of the value or amount of all oil, gas and or natural gasoline, and/or all other hydrocarbons' substances produced and saved from the land leased, save and except oil and/or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases. During the period of supervision, “value” for the purposes of the lease may, in the discretion of the Secretary of the Interior, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and /or natural gasoline, and/or natural gasoline, and/or all other

hydrocarbon substances produced and sold from the field where the lease lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary of the Interior, be deemed mere evidence of or conclusive evidence of such value."

My point here is the Tribes have seen how oil companies on our Reservation work differently with the non-Indians and their surface lands. In the Pavillion, Wyoming area, the Tom Brown, Inc., - leased surface lands from non-Indian farmers, where the Tribes owned the mineral rights, their surface lease were for six thousand dollars (\$6,000.00) per oil pad, (which were eight feet by eight feet) and they paid this six thousand dollars (\$6,000.00) on an annual base as long as the oil well was on their property. Also the Tom Brown, Inc., paid these same farmers an additional twenty-six thousand dollars (\$26,000.00) for reclamation purposes? I guess the twenty-six thousand dollars (\$26,000.00) was for when the oil well or gas well would be pumped out or shut off then the farmer could use these dollars to reclaim these lands?

As noted in the Federal Regulations, the Tribes received one dollar and twenty-five cents (\$1.25) per-annum for their surface lease and there is no mention of any money being put forth for reclamation purposes? The oil companies usually take up to two and half (2 ½) acres of land for an oil well or gas well pads on Tribal lands, so they pay the tribes roughly \$3.13 surface leases for

a two and half acre well pad. Why does the Oil Companies pay the non-Indians so much more on their fee lands on the Reservation? Or better yet why doesn't the BIA ask more for Tribal Land leases and also demand a reclamation fee be put forth?

Two years ago, I help with an assessment of all the damage done to Tribal Lands by the oil companies, especially when they pump out an oilfield and plug and abandon the wells. The amount of damage done to these lands is immeasurable. To my knowledge there never was a reclamation plan in place to let the oil companies know what their responsibilities were to reclaim these lands. I saw where due to poor or improper plugging of abandon wells, the salt water continues to flow to surface, thereby destroying all the land around these old closed wells. The amount of saltwater damage to our rangelands is forever, we saw in one case a whole landslide and the hill had sluff-off into the drainage because of the saltwater coming up from an old, so called plugged oil well. In other old oil fields we saw where the oil companies took a bulldozer and just pushed everything off in draws, this included miles and miles of steel cable, iron tanks, and the cement well pads. In many situations the oil pits were not cleaned out and there was still old dried up oil and oil slug in these pits. The thousands of tonnages of scrap metal left behind is a crying shame. With all this, where is the BIA's or BLM's reclamation plans?

Another problem we seen with our assessment of the old and abandon oil

fields on our reservation, was there were more then one oil well with the same API Number (American Petroleum Identification Number)? In some cases, the same API Number appeared on more then one well in many cases the API Number appeared on two or three wells? Also, there were old and abandoned wells with no API number. Was the oil taken from these unmarked wells with no API number ever reported in the oil companies production records? We could not find any information to support the production of what happened in these unreported or unidentified wells?

The reclaiming of the lands was a disaster, there had not been any reclamation work done on these lands and even today, you can still see the long seismographic road scars that have been there for more than fifty years crossing our lands. These old seismographic roads have caused a lot erosion, and have eroded and washed out whole hillsides causing all kinds of damage to the rangelands and country side. The amount of silt pouring off these sites are chocking up our rivers and causing considerable environmental damage to the rivers and the Reservation's blue ribbon fisheries.

I call your attention to the Federal Regulations, whereas, ". . . . Leases shall be **irrevocable** for breach of the terms and conditions of the same and may be forfeited and canceled by an appropriate proceeding in the U.S. District Court of the District of Wyoming whenever the lessee fails to comply with their terms and conditions; the lessee may, on approval of the Secretary of the Interior, surrender

a lease or any part of it:

1. That he make application for cancellation to the superintendent having jurisdiction over the land. (*Where does the Tribes fit in?*)
2. That he pay a surrender fee of \$1.00 dollar at the time the application is made. (*Is this just?*)
3. That he pay all royalties and rentals due to the date of such application. (*This is not happening on our Reservation, Tom Brown, Inc. owes the Tribes for royalties and leases for the past ten years.*)
4. That he make a satisfactory showing that full provisions has been made for conservation and protection of the property and that all wells, drilled on the portion of the lease surrendered, have been properly abandoned. (*As I witnessed this has not happened and is still not happening today. The amount of Bonding Required is much to low and does not cover the cost of recovering these scared lands. It is often much cheaper for an oil company to abandon his/her Bond then to pay for reclamation or cleanup of the Tribal lands.*) (*The BIA & BLM have done nothing about this issue.*)
5. If the lease has been recorded, that he file, with his application, a recorded release of the acreage covered by the application. (*I am not clear what this means?*)
6. If the application is for the cancellation of the entire lease or the entire undivided portion that he surrender the lease: Provided, That where the application is made by an assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of the assignment (*This appears to be legal language in favor of the oil companies, for if there is no lease, then they have nothing to surrender and the oil company should be charged with "Trespassing" by the BIA on behalf of the Tribes?*)
7. If the lease (or portion being surrendered or canceled) is owned in undivided interests by more than one-party, then all parties shall join in the application for cancellation. (*This probably covers most allotted lands and the allot tees undivided interest in these lands?*)
8. That all required fees and papers must be in the mail or received on or before the date upon which rents and royalties become due, in order for the lessee and his surety to be relieved from liability for the payment of such royalties and rentals.

9. In the event oil or gas is being drained from the leased premises by wells not covered by the lease; the lease, or any part of it may be surrendered, only on such terms and conditions as the Secretary of the Interior may determine to be reasonable and equitable. *(This paragraph appears to say its ok to steal oil from Indian lands without a lease. Thereafter the crime, the Secretary will review the acts of theft to see if there are any reasonable action to be taken?)*

As I have noted, there does not seem to be any relief in these regulations for Indian Tribes? Most of the regulations appear to be in favor of the Oil Companies and not the Tribes.

It's not only the fact the Tribes appear to be the low man in these Federal regulations, the Tribes are not given justice when with the theft of oil on our Reservation and no Federal Official was ever charged with anything? But the theft in many different ways is still continuing today.

Recently, the Tribes discovered the regulations to be very vague in helping the Tribes control the development of the Coal Bed Methane (CBM) gas. The Tribes have stopped the CBM development on the Wind River Reservation, until the Devon Oil Company can complete an Environmental Impact Statement (EIS) to assure the Tribes, that the tribal lands will be protected and not damaged by the de-watering of the coal seams. Today the EIS is still on hold, until the Devon Company comes to the Tribes. In this situation, the BIA was ready to give the Devon Co. a go-ahead without notifying the Tribes? Bad move, the Joint Business Council told the BIA to halt all CBM development until the oil and gas companies

come to the Tribes and talk about what they are going to be doing. The Tribes are still waiting for the BIA and the Devon Company to schedule a meeting to talk about the CBM development.

Out of the discussion over the CBM in the Riverton Dome Oilfield, Devon brought in a surface map, which they received from the BIA showing that a Ms. Mary O'Connor owned a section of the Reservation and that on this Township and section map, the BIA Reality Office at Wind River showed the lands to be Fee Land. They also showed the minerals on these lands to also be Fee. We did an investigation on these lands and our findings were much different than what the BIA has recorded.

Back in 1934, U.S. President Roosevelt gave a section of Reservation Land to Mary O'Connor, she was given half section of Reservation Land that was never allotted nor was these lands ever opened up for homesteading. This land was recorded in the Fremont County Courthouse as Fee Lands on the Reservation and she was issued a Deed. In the 1950s this section on land was in the Riverton Dome oil & gas lease that the Tribes advertized and when the lease was awarded to an oil company, they drilled three oil wells on this land. Thereafter, since 1954 the Mary O'Connor received the royalties from the oil production on this land. Recently the Tribes through the Wind River Environmental Quality Commission (WREQC) did a title search and after several months of research through the old BLM archive records in Washington, D.C. and Cheyenne, Wyoming. The Tribal

attorneys and the WREQC could not find where the Tribes had ever assigned or ceded the mineral rights on these lands? It is the opinion of the Tribes and the WREQC, that the BIA records are wrong and need to be corrected, ---- in this case Mary O'Connor has been receiving royalties since 1954 on Tribal mineral rights? The tribal attorneys and the WREQC could not find any records to support the BIA's acts of determining this section of land on the Reservation was FEE/FEE lands?

At this time, the BIA is using the NIOGEMS data mapping and land status software for tracking Tribal lands on the Wind River Indian Reservation. The NIOGEMS came to the BIA from the Lockheed Martin Company, and most if not all the data put into the NIOGEMS system came from the Wyoming Oil & Gas Commission in Casper, Wyoming. When the Lockheed Martin software installers were ask if the data was correct, he said he could not confirm this because they only put in what they were given? Thereafter the WREQC has found several concerns with the land status data, the USGS (United State Geodetic Service) data and the NIOGEMS land ownership did not match, the two data sets are different. This is a serious problem with the BIA Reality Office and needs to be audited and corrections need to be made immediately, because of these problems, the Wind River Tribes and the WREQC are looking at other lands where the BIA has said the owners have FEE/FEE and we are very concerned about what we are finding.

There are a lot of errors in the BIA's land data information on Tribal oil and

gas leases. The other problems this wrong data sets are bringing to the Wind River Tribes, the BIA Realty Department has been using the NIOGEMS data base maps for other BIA and Tribal activities such as, Right-of-ways, Tribal home sites, boundary lines between individual's lands, irrigation and the issuance of water rights, and the issuance of oil & gas leases. These land documents all need to be looked into and the necessary corrections made to the BIA land data sets, these discrepancies should not be tolerated.

The topic of royalties is an old question? Because the Tribes and the Tribal people see the high cost a barrel of oil is bringing on the oil market and yet the Tribal royalties never seem to go up? I believe the division of the royalty is a serious question, in-that why do the Tribes not get their royalty until the oil companies have recovered their investment and operating costs? The royalties should be based on the gross and not on the net. This reduces the amount the oil companies have to pay the Tribes.

I also believe the Federal regulations need to be changed that allows an oil company to hold on to an oil & gas lease, "Held by Production" in some cases, the Tribes have seen where an oil company will set on a lease depending on the oil and gas market and maybe only drill one well and produce one barrel of oil. This qualifies them to keep their lease. This is not a fair practice to the Tribes, and the clause of irrevocable needs to be revisited, so these terms are more in favor of the Tribes instead of the oil companies.

The Bonds that oil companies should be required to put up has to be more in line with their activities. At this time, the BIA does not require a very heavy bond by any oil company. There was a situation on the Reservation, where an oil company was qualified by claiming they had a \$50,000.00 dollar Nationwide Bond. Well \$50,000.00 dollars will not go very far with the cleanup of any oil spill or oil field.

The Tribes need to be the controlling entity when it comes to the leasing of Tribal lands, the BIA is here to help the Tribes, not to negotiate deals which are so ridiculous and almost criminal, they BIA all but gives away the Tribes' natural resources to the companies submitting bids, etc. . . . This is and has been a serious problem for many years and it is time the BIA but taken out of these kinds of negotiations. The Southern Ute Tribe in Colorado has taken over their oil and gas operations and today they are very profitable. They could not live with the oil and gas negotiations the BIA did for them. This is only one example where the Tribes have done better without the BIA getting involved. The BIA in a meeting between the Wind River Tribes and the BIA in Billings, Montana on December 21, 2005, the BIA admitted they accept the lowest royalty rate allowed by law on all oil & gas leases and they also accepted the very minium requirements on an oil company to operate on a Reservation. This is where the Tribes could broker a much better lease and production deal plus negotiate a greater royalty with a minium of 28% royalty rate on gross production. In all fairness to the Tribes, the

oil companies will still make a substantial profit and not have to cheat or rob the very poor they are working with. The BIA oil & gas regulations are so out of date that leases are written based on the 1938 Indian Minerals Act with an update in 1964 with the latest modification in 1980. Even at 1980, these regulations are too old to reflect the modern oil & gas operations on a reservation. Worse yet, the Tribes being held by the 1938 Indian Minerals Act, so one needs to have their head examined to continue to negotiate leases based on the 1938 Indian Minerals Act.

Another very unpleasant topic for the Wind River Indian Tribes, is the amount of taxation on the Reservation oil production. The State of Wyoming and Fremont County make more money through their taxation on Tribes oil production than the Tribes do through their royalties and Tribal Minerals Tax. The State's Severance Taxes do not come back to the Reservation in the form of services for the Tribal members, nor does the Reservation Schools benefit from all the taxes taken from the Reservation. These taxes are a very serious problem and the Federal Government though it's Trust Responsibilities need to work with the Tribes and the State of Wyoming's governmental taxes.

I want to thank you for this opportunity to share my thoughts and concerns with you, and I hope that we can work out some of the kinks and problems that have plagued the Wind River Tribes. Thank you.