

**TESTIMONY OF ARLYN HEADDRESS, CHAIRMAN
ASSINIBOINE AND SIOUX TRIBES OF THE
FORT PECK RESERVATION
BEFORE THE
SENATE FINANCE COMMITTEE
AUGUST 24, 2001**

I. INTRODUCTION

I am Arlyn Headdress, Chairman of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation. There are seven Reservations in Montana. One-third of the Indian people are under the age of 16. Thus, for the tribal leaders in the Tribes in Montana, the number one priority for our people is ensuring that our youth, who make up the largest segment of our population and more importantly who make up our future, will have opportunities that we did not have.

To do this will not be easy. The high school graduation rate for Indian people is 65%. This is far below the national average. The infant mortality rate for tribes in Montana is 15. This means that fifteen out of every 1000 Indian babies born in Montana will die. This is 150% higher than the national average. Indian people suffer from diseases that most people thought to be eradicated. We face new challenges with the onslaught of AIDS and Hepatitis C in our communities, while the old challenges of diabetes and alcoholism continue to plague our communities. The unemployment rate for Indian people in Montana is 49%, and on some Reservations like mine it is higher. Almost 70% of the Indians living on or near the seven Reservations in Montana earn less than \$7,000. This means that the majority of Indian families living on or near the Reservations in the Billings Area live far below the poverty rate. In addition to addressing the challenges that face our people in the areas of education, health care, and employment, we are responsible for the land and resources that our ancestors preserved for us. In the Billings Area we have over 9 million acres of Indian trust land, which includes miles of rivers, valuable mineral resources and rich agricultural lands. We are the stewards of these resources and must ensure that they will be able to support our people for generations to come.

In order to address these challenges, we need economic development that will bring jobs to our people and provide a tax base for our tribal governments. The development of natural resources has long been the mainstay of tribal economies; whether it is oil and gas, hydro power, or agriculture, our economies have always been resource based. In fact, as the Committee no doubt knows, Indian country provides approximately 10% of the Nation's domestic energy production. This could and should be increased. We believe that encouraging further development of both conventional and renewable energy resources in Indian country is not only important to addressing the Nation's energy crisis, but also critical for strengthening tribal economies.

Below, I discuss several specific tax measures before Congress that we believe will accomplish this.

II. DUAL TAXATION OF TRIBAL ENERGY RESOURCES

The Fort Peck Tribes receive substantial revenues from bonuses, lease rentals and royalties from oil and gas leasing on tribal lands and from operating our own oil and gas wells on several tracts of tribal land and from agricultural leasing. Since 1982, we have imposed a severance tax on oil companies doing business on our Reservation trust lands; severance tax payments amount to approximately \$320,000 annually for the Tribes. The State takes in the range of \$900,000 to \$1.1 million a year in taxes from these same leases. The Tribes' tax revenue is all the more critical to the Tribes in light of the recent court decisions that threaten the Tribes' ability to levy taxes against utilities and businesses using tribal lands and services.

As the Committee is well aware, in 1989 the Supreme Court ruled in *Cotton Petroleum Corp. v. New Mexico*, that states can tax non-tribal lessees of tribal lands used for oil and gas production. This subjects lessees of Indian lands to both tribal and state taxes. The problem of dual taxation as a result of the Supreme Court's decision in *Cotton Petroleum Corp.* remains a significant impediment to the development of Indian oil and gas resources. Since *Cotton*, my Tribes had to reduce our royalty rate in an attempt to attract mineral lessees to our Reservation. Even so, no major oil company has expressed interest in leasing our lands since *Cotton*, and some producers have reduced or ceased their activities. The only way a tribe can avoid the disadvantage *Cotton* creates is to forego entirely its right to tax. This is a cruel choice, as it provides a course which if taken would bankrupt tribal governments.

Cotton together with the recent decisions of the Supreme Court and Ninth Circuit are absolutely inconsistent with the goals of modern federal Indian policy: to promote Indian economic development and tribal self-sufficiency. Congressional action is needed to strengthen tribal authority to levy and collect taxes on those doing businesses within our boundaries. Without such action, the successes that we have witnessed in the last three decades will not continue and we will return to an era of paternalism and dependency.

In this regard, we support legislation that would provide a federal credit for oil and gas production on Indian lands, which would address the problem of dual taxation of our oil and gas resources. Specifically, S. 1106 introduced by Senator Domenici, would provide a federal tax credit for oil and gas production on Indian lands. This credit would entice developers back to Indian country. This development will produce jobs, increased royalties and an increase the Tribes' tax base. The Nation will also gain by decreasing its dependence on foreign oil supplies.

III. RENEWABLE ENERGY TAX CREDIT

The Fort Peck Tribes believe that the further development of wind energy is an important part of the solution to our nation's energy crisis and our dependence on foreign oil supplies. The development of wind energy is a viable sustainable economic tool that will provide energy to our nation, economic resources to our communities and assist us in bringing America's prosperity to Indian people.

According to recent reports, Montana is one of the five windiest states in the union and the Fort Peck Reservation in northeast Montana presents one of the greatest opportunity for wind energy development in the entire state. With the necessary support from the State and federal governments, the Fort Peck Tribes will be able to attract the necessary business interests to bring a wind energy project to the Fort Peck Reservation.

We have been working on a wind energy project on the Fort Peck Reservation for several years. We began with a grant from the Department of Energy to conduct an economic feasibility of a wind energy project on the Reservation. The objective of the study was to assess the technical and economic feasibility for a staged-development, utility-grid-interactive, multi-grid-interaction, multi-megawatt wind power at Fort Peck. This study concluded that indeed this project would be feasible on the Reservation. The exact size and scope of such a project depends on both the investors and the transmission capacity. As we discuss below, a lack of transmission capacity is a major impediment to wind power development.

The Tribes are hoping to develop a “wind farm” that will produce not only energy for the Nation, but jobs for the Community. Since the feasibility study was completed, the Tribes have been actively seeking partners in this venture. Because we do not have the funds to build this facility ourselves, we are working with outside investors to be our partners. However, in order to do this, it is critical that Congress extend the existing tax credit for renewable energy, in particular wind energy. Without this tax credit extension, the Tribes will not be able to attract wind development to the region. S. 530, introduced by Senator Grassley in March would extend this credit until 2007. We are pleased that H.R. 4, the House’s Energy bill, would also extend this credit until 2007. We urge the Committee to include this credit in any final energy tax credit package.

We also support the provisions of H.R. 2412 and S. 249 that would expand the existing credit to include other renewable energies such as solar, biomass, incremental hydro power and geothermal. Significantly, these measures also provide an additional credit for production from these sources on Indian lands, thereby creating an incentive to site these projects on Indian Reservations. S. 249 would increase the 1.5 cents credit by .25 cents and H.R. 2412 would increase the credit by 1.5 cents. H.R. 2412 would make this credit transferable by tribal governments. This is an important provision for tribes that undertake this development themselves. While we support these measures, we believe that it is important to amend them to ensure that wind production in Indian country would enjoy the additional credit.

In the Montana Legislature we were successful in enacting similar legislation granting certain State tax benefits to companies that build projects on Reservation. There was already a state tax credit for wind energy projects. The amendments made it clear that the credit applies to projects on reservations, and removed a limit on the credit allowed. The bill also extended the period of time that a company has to use the credit from seven years to fifteen years.

IV. ASSET DEPRECIATION AND WAGE TAX CREDIT-SECTION 168(j)

We support Section 3310 of H.R. 4, which would extend the Indian asset depreciation and wage credit—Section 168(j) of the tax code—for only energy development in Indian country. However, while we support this concept in H.R. 4, we believe that it should not be limited to energy activities alone in Indian country, but must include all economic development in Indian country—as does the current law. While we understand that these credits have not been significantly utilized outside of Oklahoma, we believe they still present an important incentive for businesses to locate in Indian country. Thus, we would urge the Committee to permanently extend these credits as they currently exist.

V. TAX-EXEMPT BOND AUTHORITY AND INFRASTRUCTURE DEVELOPMENT

Finally, as this Committee knows, economic development in any region requires that basic infrastructure be in place to support the development. Unfortunately, many places of Indian country lack the basic infrastructure, (including communication lines, power lines, and health facilities) necessary to build sustainable economies. In fact, one of the biggest barriers to the development of wind energy in Montana is the lack of transmission capacity on existing lines. Thus, we must build this infrastructure. One way to fund the building of this infrastructure is through the issuance of tax exempt bonds. In this regard, we would like to thank the Chairman for his sponsorship of S. 660, which would expand tribes' ability to issue tax exempt bonds. As we understand it, this new authority would be similar to the authority that states and local governments already have.

It is true that in order to issue bonds, tribes must have a steady stream of income with which to pay the bond holders. Many tribes, including Fort Peck, do not have this economic stability right now. Nevertheless, we believe that with congressional action to encourage economic development and strengthen our tax base, we will be able to achieve this stability and take advantage of the opportunities that S. 660 presents.

VI. CONCLUSION

I would like to thank the Chairman and the Committee for this opportunity to present this testimony. I would be happy to answer any questions that you may have.