

Prepared Statement of the Honorable Michael O. Finley, Chairman

Confederated Tribes of the Colville Reservation

First Vice-President, National Congress of American Indians

Senate Committee on Indian Affairs

Legislative Hearing on S.2132, the “Indian Tribal Energy Development and

Self-Determination Act Amendments of 2014”

April 30, 2014

Good afternoon Chairman Tester, Vice Chairman Barrasso, and members of the Committee. My name is Michael Finley and I am testifying today in my capacities as Chairman of the Confederated Tribes of the Colville Reservation (“CCT” or the “Colville Tribes”) and First Vice President of the National Congress of American Indians. I appreciate the opportunity to testify today on S.2132, the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2014.”

Both the CCT and NCAI strongly support S.2132. Although not completely identical, all of the provisions in S.2132 were included in Vice-Chairman Barrasso’s Indian energy bill (S.1684) that this Committee approved by voice vote and reported in the 112th Congress. The full membership of NCAI, in its 2011 annual meeting in Portland, Oregon, adopted a formal resolution supporting S.1684 less than three weeks after the bill was introduced. I think that speaks volumes about how NCAI and Indian Country feel about Senator Barrasso’s Indian energy bill and the extensive tribal consultation and outreach that preceded its introduction.

The CCT is particularly supportive of Section 202, which would authorize a Tribal Biomass Demonstration Project. Not only would this provision encourage biomass utilization, it would also allow tribes to perform forest health projects and on neighboring federal forest and rangelands. With wildfire season rapidly approaching, this type of authority would provide the Colville Tribes and similarly situated tribes with immediate benefits if it were currently in effect.

Because S.2132 contains provisions that the Committee has previously approved and that would provide Indian country with immediate benefits, we ask that the Committee avoid making significant changes to S.2132 that would delay or prevent its consideration and passage this year.

## **Background on the Colville Tribes and NCAI**

Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is a confederation of twelve aboriginal tribes and bands from all across eastern Washington State. The present day Colville Reservation is located in north-central Washington State and was established by Executive Order in 1872. The Colville Reservation covers approximately 1.4 million acres and its boundaries include parts of Okanogan and Ferry counties. The CCT has more than 9,400 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest, and the second largest in the state of Washington. About half of the CCT's members live on or near the Colville Reservation. Of the 1.4 million acres that comprise the Colville Reservation, 922,240 acres are forested land.

The Colville Reservation originally consisted of nearly three million acres and included all of the area north of the present day Reservation bounded by the Columbia and Okanogan Rivers. This 1.5 million acre area, referred to as the "North Half," was opened to the public domain in 1891 in exchange for reserved hunting and fishing rights to the CCT and its members. Most of the Colville National Forest and significant portions of the Okanogan National Forest are located within the North Half. Both forests are contiguous to the northern boundary of the Colville Reservation.

NCAI is the oldest and largest American Indian organization in the United States. Tribal leaders created NCAI in 1944 as a response to federal termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribes. Since then, NCAI has fought to preserve the treaty rights and sovereign status of tribal governments, while also ensuring that Native people may fully participate in the political system. As the most representative organization of American Indian tribes, NCAI serves the broad interests of tribal governments across the nation.

## **Overview of S.2132**

As noted above, all of the provisions included in S.2132 were considered and favorably reported by this Committee in the 112th Congress. These provisions are discussed in detail in Senate Report No. 112-263. As such, the bill includes the following important proposals.

First, as background, it takes an inordinate amount of time for the Department of the Interior to review and approve permits to drill, exploration and production agreements, rights of ways, and to approve other related energy agreements. Potential partners and development capital sit on the sidelines because it takes years to get anything approved by the Department. Indian Country needs an institutionalized answer to the ongoing challenge of burdensome bureaucratic processes and delay of tribal energy leasing and permitting.

Title I of S.2132 would provide increased technical assistance to tribes, increase access to existing energy grant and loan guarantee programs, and streamline the process for Indian tribes to enter into Tribal Energy Resource Agreements or “TERAs.”

With regard to TERAs, the bill would make many significant improvements to the TERA process under the Energy Policy Act of 2005. I will highlight just a few here.

First, instead of having the BIA approve or disapprove a proposed TERA, under S. 2132 a proposed TERA would automatically go into effect after 270 days unless the BIA determines that there is a reason to *disapprove* the TERA. This is important because tribes cannot rely on the federal government to take action in a timely way.

The bill also includes a funding mechanism for tribes in carrying out a TERA. Some tribes have expressed concerns about the costs of implementing a TERA and would want to have financial support for taking on the additional activities. In a section called “Financial Assistance in Lieu of Activities by the Secretary,” S. 2132 would create a process for the Secretary of the Interior (“Secretary”) to calculate the savings to the Department resulting from a tribe entering into a TERA and direct the Secretary to make that savings available to the tribe. This would provide funding to the tribe without impacting the Federal budget.

S.2132 would also clarify the liability clause of the 2005 Act. The bill would make it clear that the exemption from liability only applies to losses stemming from matters negotiated by the tribe itself; it does not extend to matters that are in the Secretary’s control or for losses occasioned by the Department’s failure to perform its obligations.

Title II contains several miscellaneous provisions that would enhance the ability of Indian tribes to develop both renewable and traditional energy resources. Section 201 would amend the *Federal Power Act* to authorize the Federal Energy Regulatory Commission to give Indian tribes the same preference that states and municipalities can receive when that Commission issues preliminary permits or original licenses for hydroelectric projects.

Section 203 would amend the home weatherization program under the *Energy Conservation and Production Act* to make it easier for Indian tribes to request and obtain direct funding from the Secretary of Energy. These changes are critical in that they would bring Indian tribes into closer parity with states in being able to access these weatherization funds.

Section 204 would provide new flexibility for tribes to obtain appraisals of tribal mineral or energy resources by allowing tribes or certified, contract appraisers to prepare appraisals and imposing timeframes for Secretarial review and approval of the appraisals. Indian tribes have long complained of delays in obtaining appraisals for their trust resources, particularly for time sensitive transactions with potential economic development benefits. These changes would

provide a measure of certainty that the Secretary will approve appraisals of energy resources in a timely manner.

Section 205 would amend the *Long-Term Leasing Act* to allow the Navajo Nation to enter into leases for the exploration, development, or extraction of any mineral resources without the approval of the Secretary, if the lease is executed under tribal regulations, approved by the Secretary and meets certain other requirements.

### **The CCT is Particularly Supportive of the Tribal Biomass Demonstration Project in Section 202**

Section 202 would add a new section to the *Tribal Forest Protection Act of 2004* that would require the Secretary of Agriculture (in the case of Forest Service land) and the Secretary of the Interior (in the case of Bureau of Land Management land) to enter into a collective total of at least four new contracts or agreements with tribes to promote biomass, biofuel, heat, or electricity generation each year of the five-year authorization. Section 202(c) would also authorize for Alaska Native Corporations one biomass demonstration project per year for FY 2015 through 2019.

Renewable energy development such as biomass has been of particular interest to the Colville Tribes as it seeks new ways to promote on-reservation economic development and diversify its economy. Although Section 202 requires the Secretaries to enter into a minimum number of contracts, the Secretaries would be responsible for jointly developing the eligibility requirements. In evaluating applications, the respective Secretaries must consider a variety of factors, including whether a project would improve the forest health or watersheds on the federal land and whether a project would enhance the economic development of the Indian tribe and the surrounding community.

As the Committee is aware, many federal lands that are adjacent to tribal lands are in need of thinning, hazardous fuels reduction, and restoration activities to reduce the risk of catastrophic wildland fires, disease, and insect infestations. These risks are particularly severe in dry forested areas like the Colville Reservation, the southwestern United States, and other areas that do not receive significant rainfall. Indian tribes like the CCT are uniquely situated to carry out these activities because they have a vested interest in ensuring that neighboring federal lands do not pose fire or disease threats that will encroach on our tribal lands and threaten our communities.

Section 202 also allows for tribal management land practices to apply to areas included in contracts or agreements entered into under demonstration projects. This would allow, for example, Indian tribes to incorporate cultural resource considerations into activities conducted on federal lands included in demonstration projects. Many have praised tribal land management practices as being far more efficient than those of their federal counterparts. Federal agencies,

however, have been slow to incorporate these principles even on those federal lands that are contiguous to tribal trust lands. Section 202 would provide tribes with this much needed opportunity.

### **Conclusion**

The CCT and NCAI believe that S.2132 will provide tribes with immediate benefits by removing structural barriers to energy development on tribal lands. We appreciate the Committee's consideration of these issues and look forward to working with the Committee to ensure passage of S.2132. At this time I would be happy to answer any questions you may have.