

Testimony of
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Secretary, Tribal Council
Colorado River Indian Tribes
Before the House Committee on Natural Resources
on Section 2 of H.R. 5680 (Grijalva)
April 9, 2008

I. Summary

The Colorado River Indian Tribes ("CRIT") appreciates the opportunity to testify in favor of Section 2 of H.R. 5680 (Grijalva) (a Bill to Amend Certain Laws Relating to Native Americans). CRIT would also like to thank Congressman Grijalva for his sponsorship of H.R. 5680 and for his support for CRIT's effort to achieve greater energy independence. Enacting Section 2 of this bill provides essential support for making the Federal policy of tribal energy self-determination a reality on CRIT's Reservation. CRIT would like to propose some amendments to this provision to avoid unnecessary delays in implementing the new law. Before addressing these amendments, it may be helpful to summarize CRIT's proposal and to provide some background information.

II. Summary of CRIT's Proposal

Federal law strongly encourages Indian tribes to develop their respective energy resources. The *Energy Policy Act of 2005* ("2005 Energy Act") provides the regulatory and policy framework for tribal energy self-determination. To date, however, Congress has not appropriated the necessary resources for Indian tribes to realize this new law's intended benefits. For example, Title V of the 2005 Energy Act authorizes Tribes to create Tribal Energy Resource Agreements ("TERA"). But developing and obtaining Federal approval for a TERA is likely to cost hundreds of thousands of dollars. In addition, the 2005 Energy Act requires an Indian tribe to demonstrate the institutional capacity to *implement* a TERA before the Secretary can approve the TERA.

CRIT has identified an appropriate funding source to establish the capacity CRIT needs to implement the 2005 Energy Act. Under Federal law, the revenue derived from operating the BIA's power system is held in a special account under 25 U.S.C. § 385c. This revenue may only be expended for the project where it was generated. The law already authorizes the Bureau of

Indian Affairs ("BIA") to expend these power proceeds and the related investment income on a "revolving fund" basis for the BIA's power system at CRIT. CRIT seeks legislation providing that the Secretary of Interior may disburse some of these proceeds directly to CRIT for the purpose of developing CRIT's institutional, managerial, and technical capacity envisioned by the 2005 Energy Act.

III. Background

The BIA's management of the funds collected from the BIA power system at CRIT (and on other Indian irrigation and power projects) is dictated by laws enacted in 1946, 1951, and 1983.

In 1946 Congress granted "permanent appropriations" status to allow ongoing disbursements of Indian electrical power accounts proceeds on a revolving fund basis "in connection with the respective projects from which such revenues are derived," for the following four purposes: (1) payment of the expenses of operating and maintaining the power system; (2) creation and maintenance of reserve funds to be available for making repairs and replacements to the power system; (3) amortization of power system construction costs; and (4) payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law. The BIA has indicated, and CRIT agrees, that the last two purposes are not applicable to the CRIT power system.

The Fiscal Year 1952 Appropriations Act further clarified the BIA's authority to expend revenue from these special power accounts, such as CRIT's.

There is hereby appropriated . . . the amount of power revenues covered into the Treasury during the current and each succeeding year to the credit of each of the [Indian] power projects . . . to remain available until expended for the purposes authorized by [the 1946 Act] . . . in connection with the respective projects from which such revenues are derived.

The BIA's authority to expend these Indian power revenues for the four authorized purposes is not dependent on annual appropriations legislation. Nevertheless, Congress may authorize the use of these funds for other purposes, at least in instances where the relevant tribal beneficiary grants its consent. In response to a critical need for irrigation water on an Indian irrigation project in Arizona, Congress authorized the BIA to use the funds held in a power account to purchase irrigation water.¹ There is also precedent for making these funds directly available to the respective tribal beneficiary. The legislation that conveyed the BIA's irrigation project to the Salt River Pima-Maricopa Indian Community ("Community"), included a provision allowing the Community to collect and disburse the fees collected pursuant to the 1946 Act.²

The *Fiscal Year 1984 Interior Appropriations Act*, Public Law 98-146 ("1984 Appropriations Act"), provides for the BIA to invest Indian power accounts and to apply the investment proceeds for use in connection with the project where the funds were collected. In particular, this law provides for the use of these interest accruals to cover operation and maintenance

¹ Public Law 101-301, section 13 (1990).

² Public Law 106-568, section 102(a) (2001).

expenses on the power system where the funds were collected. CRIT believes that is also appropriate to make these investment proceeds immediately available to allow CRIT to address its energy development opportunities.

Several years ago CRIT insisted that the BIA evaluate and update its electrical rate structure to ensure that the project would generate a sufficient annual surplus to capitalize the power system's critical infrastructure needs. The BIA reports that the current balance of the power fund is approximately \$11 million. As a result of CRIT's effort, the fund's annual growth is approximately \$1.5 million. Based on the information available to CRIT, this appears to constitute an appropriate level of growth, even taking into account the direct disbursement to CRIT. In fact, after factoring in the investment proceeds that accrue to this fund pursuant to the 1984 Appropriations Act, it is clear that an annual disbursement to CRIT of \$350,000 is appropriate. CRIT urges the Committee to amend H.R. 5680 to authorize the immediate disbursement of this amount. In CRIT's view, the best way to "invest" the power fund is to ensure that CRIT has the technical and managerial expertise to help develop and use its significant energy resources. In addition, there is no reason to limit CRIT's access to this fund to this annual disbursement. There are other policies and programs established by the 2005 Energy Act that might also be funded from the power fund. CRIT encourages the Committee to amend Section 2 to allow greater flexibility to direct the funds proceeds for purposes that are otherwise authorized by the 2005 Energy Act.

CRIT has significant, but unrealized potential for energy development. CRIT has a sizable amount of undeveloped land in both Arizona and California, and –perhaps most important- our Reservation is strategically located at the cross-road of several major interstate energy transmission corridors for both electricity and natural gas and in a high solar radiation belt. (Solar energy production on our Reservation is without question a year-round proposition.) These major resources invite major CRIT electric energy developments, including renewable solar and other forms of renewable electricity generation, as well as more conventional thermal and pumped storage installations. Opportunities also exist for alternate fuels, namely biofuel and compressed natural gas production. Moreover, CRIT and its members can save money and energy by learning and adopting proven energy efficiency practices. The only thing missing is the funding that CRIT needs to develop a TERA and to establish the administrative and regulatory structure that Congress envisioned when it passed the 2005 Energy Act. Enacting Section 2 of H.R. 5680 is an essential step in making this shared Federal-Tribal vision of an energy future a reality.

With a few changes to Section 2 of H.R. 5680, CRIT is ready to hit the ground running and serve as a flagship effort to implement the 2005 Energy Act. CRIT is hopeful that its effort to implement the 2005 Energy Act and achieve energy self-determination will provide other Indian tribes will valuable insights and ideas for use on their reservations.

Once again we would like to thank Chairman Rahall for holding this hearing and Congressman Grijalva for his leadership in introducing this legislation.