

BEFORE THE COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE FOR THE INDIGENOUS PEOPLES OF THE UNITED STATES  
UNITED STATES HOUSE OF REPRESENTATIVES

Prepared Statement of Honorable Melvin J. Baker  
Chairman, Southern Ute Indian Tribal Council

On behalf of the  
SOUTHERN UTE INDIAN TRIBE  
Hearing  
*“Environmental Justice in Indigenous Communities”*

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Remote via WebEx

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**I. Introduction.**

Good afternoon, Chairman Fernandez, Ranking Member Young, and Members of the Subcommittee. My name is Melvin J. Baker. I am the elected Chairman of the Southern Ute Indian Tribal Council, which is the governing body of the Southern Ute Indian Tribe (Tribe). Thank you for the opportunity to testify before you today on the Tribe’s efforts to protect the environment while utilizing the Tribe’s energy resources, including its recent clean energy development project, the Coyote Clean Power Project.

The Southern Ute Indian Reservation (“Reservation”) consists of approximately 700,000 acres of land located in southwestern Colorado. Approximately 311,000 surface acres of that land is held in trust by the federal government for the benefit of the Tribe. As a result of the complex history of the Reservation, the Tribe also owns severed oil and gas minerals and coal estates that are held in trust by the United States on additional portions of the Reservation. The Tribe, which comprises just over 1,500 members, is a leader in Indian Country with a demonstrated and sterling record of foresight and business acumen. The Tribe is the only Indian tribe in the nation with a AAA+ credit rating, which was earned through years of steady governance and successful and prudent business transactions. Though the Tribe has a diversified portfolio, energy development remains a key component of the Tribe’s strategy, with over 70% percent of the Tribe’s revenues coming from energy development.

Accordingly, we are well positioned to speak to the relationship between energy development, prosperity, and tribal self-determination.

The Environmental Protection Agency's (EPA) Treatment as a State Rule (TAS) enabled the Tribe to create its own Clean Air Act Part 70 Title V Operating Permit Program, the first and only tribe in the nation to do so. Under this program, the Tribe has permitting, inspection, and enforcement authority over major sources of air pollution on the Reservation. Additionally, the Tribe is in the process of developing its Water Quality Standards and Clean Water Act Section 401 Certification programs, which will soon be available for public comment.

Without TAS status or, alternatively, the ability to assume federal programs through some other delegation mechanism, the EPA would be solely responsible for permitting, conducting inspections, and enforcing federal air quality and water quality laws on the Reservation, resulting in a significant regulatory under-presence on the Reservation. For example, there are approximately 300 oil and gas related minor sources of air pollution within the Reservation that are currently regulated by the EPA. The EPA only inspects the six largest of these minor sources once every five years. States that have received EPA delegations are required to conduct compliance inspections at all minor sources on a regular basis; however, states receive federal categorical grant funding to fulfill environmental requirements and to support environmental programs such as a minor new source review program. Currently, institutional impediments complicate the role that tribes can fill in regulating minor sources. The Tribe has attempted to address this disparity in compliance and enforcement of minor sources on the Reservation by requesting a delegation of the Federal Minor New Source Review Program in Indian Country ("FMNSR Program"). However, the EPA has indicated that it does not have the funding to support a delegation of the FMNSR Program to the Tribe, which means the Tribe would have to impose an additional fee structure upon the regulated industry for such a program – a fee structure that would not otherwise exist anywhere else. This is a significant example of the disparity that continues to exist in the level of environmental compliance and enforcement oversight between state jurisdictions and Indian Country.

The shift to zero emission and clean energy production will require partnership with Indian tribes. Enabling tribes, through the provision of adequate funding, to develop environmental programs in the same manner as states and to receive delegations of federal programs will be vital to reducing the carbon footprint in Indian Country.

Under the current administration, the shift to net zero carbon emissions and clean energy production emphasizes why programs such as the Title V Operating Permit Program and the Tribal Minor New Source Review Program are vital to reduce the carbon footprint in Indian Country. We support a holistic approach to climate change by leveraging the natural resources in each region where energy is consumed to reduce carbon emissions on tribal lands, within the United States, and around the world. We cannot allow policy changes to exclude technological advancements because they are not considered "renewables" or to export carbon emissions from one area of the country to another area of the country or part of the world as our earth only has one atmosphere. A holistic approach to carbon emissions and project lifecycle environmental impacts requires energy producers to make necessary changes to their energy portfolio to address climate change. The Southern Ute Indian Tribe, in its collaboration with 8 Rivers Capital, intends to build one of two clean power plants here in the United States. I am

here before you today, to testify on the Tribe's Methane Capture Project and on the Coyote Clean Power Project, which is currently in its early development phase. Both of these projects will allow the Tribe to continue to responsibly develop its natural resources to provide education, health care, culture and language preservation, and other core programs to its tribal members. Thank you for your interest and allowing me to testify today.

## **II. Tribal Methane Capture Project History**

Much of the Reservation is underlain by extensive coal deposits that extend underground like a pie pan hundreds of miles to the south into New Mexico. Those coal deposits rise to the surface in an arc or outcrop across the northern portion of the Reservation, both on and off the Reservation. The Tribe has supported data collection by industry, third parties, and university research along the Outcrop for at least 20 years as part of the Modeling, Monitoring, Mapping, and Mitigation Studies and other outcrop related projects. Data from the Outcrop monitoring indicates 1.2 million metric tons of CO<sub>2</sub> equivalent are vented annually from methane seeps along the Outcrop on the Reservation.

In 2008, the Tribe voluntarily implemented a pilot vent well recovery system to collect methane down-dip of the Outcrop in an attempt to capture and reduce methane emissions on the Reservation. This project successfully captured methane gas along the Outcrop for 11 years. The captured gas was collected and sent into a Tribal-owned and operated gas gathering system for treating and delivering to natural gas transmission pipelines. The Southern Ute Indian Tribe's Department of Energy (DOE) was successful in certifying this recovered gas (~1.9 BCF cumulative) and sold approximately 420,000 metric tons of carbon credits over the life of the project.

Ten years later, the pilot vent well capture project was shut down when oil and gas infrastructure in the area was taken out of service as it was no longer economic to continue operation. At the time the project was decommissioned, the Tribe's DOE was charged with evaluating other alternatives for the vent well system.

The Tribe, in cooperation with MI3 Petroleum Engineering, has begun exploring options for enhancing recovery from the Outcrop to reduce the naturally venting methane emissions and identify ways to commercialize the methane recovery. One concept is to use the captured methane to offset carbon emissions produced from new natural gas power generation, thus creating a carbon neutral source of electricity to the power grid. Since the Global Warming Potential of methane is approximately 28-36 times higher than the CO<sub>2</sub> equivalent, the tons of captured methane in the recovery process is more valuable when compared to a ton of CO<sub>2</sub> generated while burning traditional fuels.

## **III. Coyote Clean Power Project**

The effects of the ongoing energy transition to lower carbon intensive sources are, in part, demonstrated by the retirement of coal power plants in the Southwest Region of the United States, which, coupled with the influx of intermittent power generation sources, such as wind and solar, create a demand for clean, affordable baseload power to the grid, and the Coyote Clean Power Project (the "Project") can play a part in addressing that demand. The Coyote Clean Power Project is a joint venture between the Southern Ute Indian Tribe and 8 Rivers Capital, LLC

established to pursue the development, construction, and operation of a NET Power plant that utilizes the innovative Allam-Fetvedt Cycle to produce 284 MW of electricity from natural gas while capturing and storing CO<sub>2</sub> emissions.

If the Project is approved, the plant will be located on an 18-acre brownfield site on the Reservation that is ideally positioned for natural gas delivery for fuel and offtakes for both electricity and CO<sub>2</sub>. The Project has the potential to create meaningful economic benefit to the Tribal membership through short and long-term employment, revenue from land leases associated with the facility site and the sale of natural gas used in the process for fuel. If the Tribe decides to directly invest in the Project, it would receive its proportionate share of long-term, predictable cash flow from the sale of electricity and CO<sub>2</sub>, while maintaining the Tribe's long held focus on protecting the natural resources of the Earth in which we live. Coyote Clean Power expects to make a final investment decision in 2022 and production could begin by 2025.

#### **IV. Southern Ute Indian Tribe – Leading the Way Into the Clean Energy Transition**

The Tribe's history with environmental stewardship and energy development both on and off the Reservation is vast, including development of one of the first utility scale solar farms in Southwest Colorado, the recovery of over 420,000 metric tons of CO<sub>2</sub> equivalent by capturing naturally venting methane, and other alternative projects such as biofuels. Participation in the Coyote Clean Power Project and the pursuit of enhanced capture of naturally venting methane along the outcrop, will continue our long legacy of leadership, vision, and environmental stewardship while providing economic benefit and essential services to our membership. The Tribe has successfully owned, operated, and participated in numerous energy development opportunities both on and off the Southern Ute Indian Reservation and is interested in leading the way by collaborating with stakeholders to develop and commercialize real world solutions for the energy transition to carbon neutrality. We hope that the Tribe's experiences and our statement today will assist the Committee in facilitating expanded roles for tribes in improving the environment while growing tribal economies.