LUMMI INDIAN BUSINESS COUNCIL
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DEPARTMENT_____EXT._____

TESTIMONY OF THE LUMMI INDIAN NATION
BEFORE THE U.S. HOUSE
COMMITTTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS
AND THE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
AT THE
OVERSIGHT HEARING ON LAND-USE ISSUES ASSOCIATED WITH ONSHORE OIL AND GAS LEASING DEVELOPMENT

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Thank you Chairman Grijalva and Chairman Costa for holding this Oversight Hearing on the Energy Policy Act of 2005. As a member of the Lummi Indian Nation, representing the Office of the Chairperson, we extend our appreciation on being able to advocate that Indian Country has an inherent right to participate in the dialogues, discussions, and negotiations associated with pre- and post development of energy (renewable and non-renewable) resource projects. There are over 525 Indian Nations located throughout the United States, including Alaska. The potential development of energy (oil, gas, wind, alternatives, etc.) within the homelands or traditional territories of the Indian Nations is a major concern of all tribes. Some see it as an opportunity for economic development, others see it as a threat to their traditional way of life, and others seek to mediate between the extremes.

The Lummi Nation is a member of those that are qualified to participate in the Self-government aspects of the Self-Determination and Education Assistance Act, as amended (Titles II, III, IV, and V). We seek to expand the exercise of self-governance in association with the government-to-government relationships between the tribes and the United States. We advocate that the Indian Nations are representative of their traditional communities and should be

consulted on all matters affecting their rights, interests, and reserved rights associated with access to sacred sites and places located in their aboriginal territories.

We ask that these respective Subcommittees give due regard and consideration to the voiced concerns of tribal governments. The Congress (via SCR #76 of 1987 and HCR #331 of 1988) recognized that the U.S. Constitution is the foundation for the government- to-government relationship between the United States and the Indian Nations. Article I, Section 2, Clause 3 addressed "excluding Indians not taxed" – which was the original language that kept tribal Indians separate from the count of the citizens that composed the "People of the United States." This language was retained in Section 1 of the 14th Amendment. Article 1, Section 8, Clause 3 gave the powers to regulate trade and commerce *with* the Indian tribes to the Congress. Article II, Section 2, Clause 2 gave the President the treaty making powers, with the consent of the Senate. Article III, Section 2, Clause 1 gave the Supreme Court jurisdiction over treaty questions. And, Article VI, Clause 2 states, "Treaties made or which shall be made under the Authority of the U.S., shall be the supreme Law of the Land". While the United States only ratified slightly more than half of the several hundred treaties with the Indian tribes, it ratified all of them by their actions- in that it took the benefits of even the un-ratified treaties.

Indian Country would maintain, obviously, that they have the governmental right to exercise jurisdiction over questions dealing with on-reservation development of oil, gas, and mineral extractions. Their rights to be self-governing over those questions are subject matter of authorization language that would allow the tribes to replace the dominant control the Interior has had over Indian lands and natural resources (Title 25 CFR- Indians, Title 25 USC- Indians). This area is being or could be addressed in the proposals for the Section 139 Tribes (initiated in the FY 2005 Appropriations Bill). Tribal self-regulation and management is key to the exercise of tribal governance inside the boundaries of the Indian Reservations, in light of the authorizations on Indian energy development opportunities included in the Energy Policy Act of 2005.

However, tribes are concerned about the development of oil, gas, mineral extraction projects that are located in their aboriginal territories or treaty ceded territories as well. Such activities may or may not impact other explicit treaty rights that have been the subject matter of major federal lawsuits- e.g., fishing, hunting, and gathering rights. But, tribes believe they have an inherent right to have the sacred sites and places located throughout their territories protected also. They do not believe these rights have been surrendered by treaty cessions. Disruption of these sacred sites destroys the foundation stones to their cosmology, their spiritual practices and ceremonials. Such developments disrupt the ability of one generation to pass on sacred knowledge to another. Once the sacred sites are destroyed then the basis of the sacred knowledge transforms from spiritual tradition and cosmology to folklore. It belittles and destroys the reality of the knowledge of the sacred sites and places and disrupts the place that elders carrying ancestral knowledge hold in tribal society. Their knowledge, their participation, their contributions become meaningless. They become replaced by the fictions of movies and televisions, and the youth are left to Christian dogma that does not respect native spirituality but rather considers it heathen and pagan in content.

Tribal knowledge about sacred sites and places is handed down from one generation to the next. Many such sites have been known for millenniums. It has been difficult for Indian Country to get Congress to provide protections for Indian Religious/Spiritual Practices, Sacred Sites and Sacred Places. Much of the resistance is due to the foundations of federal Indian law and policy that has developed over the past two hundred years via the decisions of the Supreme Court and legislative enactments (especially after 1871), but highly influenced by the preceding three hundred years (since Discovery). For this reason we reference and have made a copy available to the Committee if you should choose to include it in the Record, the work of Steve Newcomb (The Evidence of Christian Nationalism in Federal Indian Law: The Doctrine of Discovery, *Johnson v. McIntosh*, and Plenary Power, 1994), to bring further light to the reasons behind the idea that Indians and Indian Tribes are considered incompetent and non-competent under federal Indian law. Along with non-Indian church dogma, the spiritual values, teachings, and beliefs of the Indian people have been shifted to the realm of folklore and folk-cures.

Most all Indian tribes have experienced the impacts of the U.S. "Colonialization of the American Indians"- which was the federal policy of using treaties to limit tribes to small reservations (1848-1871) and had vast aboriginal lands ceded over to the United States. This process, of course, limited the ability of the tribes to continue their traditional subsistence practices. Most tribal peoples, outside of the limited few that are successful gaming tribes, have experienced socio-economic marginalization. They have suffered the worse socio-economic conditions imaginable to the general public. Shortest life expectancy, highest infant mortality, poorest housing, lowest educational & vocational attainment, highest teenage suicide rates, and other major traumatizing events and conditions. These conditions are common to the tribes- especially the rurally isolated that may be subjected to the promise or threat of oil, gas, mineral exploration and development. These tribes are financially hindered in participating in "consultation" on impacts to traditional culture, sacred sites and places. Their disposal funds or revenues (if any) go toward daily survival costs and activity for the community members.

Tribal people, especially the traditionalists, are concerned that modern tribal leadership are too quick to go to the negotiations tables on projects (oil, gas, etc) that promise to bring great wealth to the community. Traditionalists see themselves as a part of the tribal society that has been shunned. Much of this has been directly due to the historical legal and social treatment and influences of the federal government and institutionalized Christian Churches upon the tribal communities. Tribes need to staff up with scientific professionals, with technological experts, with legal staff to protect their rights to advocate the pro and cons of oil, gas, energy development. Along with this is the need to have the ability to advocate the rights and interests of their traditional communities. Traditionalism is a foundation to tribalism. Traditional teachings have helped tribal peoples bridge the tremendous historical trauma that has plagued the tribal communities over time.

We have included, herewith, more extensive written testimony from the Lummi Nation for the record. We really believe that since the Energy Policy Act of 2005 has been authorized that the main oversight has been failure to give the tribes the means to effectively participate and coordinate in compliance with this "national" policy. We recommend that the Secretary be

mandated to work with and grant those tribes directly dealing with current or potential projects, based on the singular tribal application. But, for the national concerns, we recommend that the National Tribal Environmental Council (NTEC) be the specific focus for earmarked funding and authorization to coordinate the tribes nationally on questions of impacts to sacred sites and places. They, then, would be required to work with the other national and regional intertribal organizations to streamline tribal participation and education. They would help develop the professional advisory staff that would work with the tribal traditional communities and not be subjected to the peddled influences of the energy industry that works more directly with tribal councils in pro-development forums. The goal would be to provide a neutral forum for the advocacy of the protection of sacred sites and places and with the potential for developing recommended management regimes that consider the needs of the tribes, the traditionalists, and the industry as well.

This would allow for the creation of an intertribal advisory system that is governed by the membership tribes, and influenced by the other intertribal organizations' leadership. This group could do a lot of work to help and advise both the government and the tribal efforts on changes to the FERC, to NEPA, and other enactments that require consultation and coordination of compliance with national laws. The Indian Energy Title of the 2005 Energy Policy Act, to be codified as 25 USC Section 3502(a), calls for the Secretary of Interior to provide assistance to an intertribal organization "To establish a national resource center to develop tribal capacity to develop and carry out tribal environmental programs in support of energy-related programs and activities." The majority of such funds should be earmarked for the National Tribal Environmental Council, with additional grants to other intertribal organizations to participate in the project, in cooperation with NTEC. This language should be expanded to authorize the inclusion of the development of the means and methods for the tribes, and their traditional communities, to give voice to their concerns associated with traditional culture and especially sacred sites and places.

In our experiences with the Self-Governance Tribes (under the Indian Self-determination and Education Assistance Act, as amended), we recognize that tribes can more rapidly develop

their skills, their staff, their databases, their science and their technology by cooperative working arrangements and coordination of intertribal planning and review activities. This is a role-model structure for giving the Indian Voice a vehicle to coordinate and express itself on issues concerning impacts to sacred sites and places, and addressing the means to find the middle road between pro and anti-development forces and interests. NTEC can fill this void. Membership to NTEC is accomplished by the tribes authorizing membership by resolution and choosing their representatives. Normally, the tribal representatives are leaders or tribal government employees and not generally representative of the traditional community, so additional considerations do have to be made so that NTEC can recruit and gather the traditional voice & concerns and develop management regimes that are compatible to their interests and may help energy development be streamlined.

We thank that Committee and the Subcommittees for this opportunity to give testimony.