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INDIAN ENERGY SOLUTION CONFERENCE

GOLDEN NUGGET HOTEL & CASINO
LAS VEGAS, NEVADA

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

FEDERAL TAX POLICY AND
INCENTIVES FOR DEVELOPMENT

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Washington, D.C.

Chair: Bruce Valdez, Southern Ute Tribe

Reported by: JUNE W. SEID, NV CCR 485

1 PROCEEDINGS

2 MR. VALDEZ: In view of the time, we really
3 need to get started. We are running a little late.
4 There's a sign-up sheet going around and get people to
5 sign up on that.

6 If you have any questions, we will open that
7 up and then I'll be introducing Mr. Paul Moorehead to
8 give a brief introduction as well and we will get
9 started.

10 MR. MOOREHEAD: Thank you, Bruce.

11 Good morning everyone. Good to be in Vegas.

12 As you know, Congress is out of session.
13 They left last Friday for five weeks and then they
14 will be coming back in September, so while there's a
15 lot to do in Washington, we are back home and I guess
16 at some level the country is safer. That will be left
17 to your discretion.

18 I'm happy to be here and talk to you today a
19 little bit very briefly I think, given what Bruce said
20 about our time crunch. And we all heard David
21 Lester's remarks this morning in terms of context.

22 MR. LEBEAU: We have until 12:15, so lunch
23 will be at 12:30, so we have a little bit more.

24 MR. MOOREHEAD: Broadly speaking, why are we
25 asking the questions that David posed and Mr. Arthur

1 posed this morning? There are a lot of reasons, not
2 the least of which is we are in the eighth year of a
3 two-term President and we have elections this fall
4 that promise to be nothing if not exciting and lead to
5 at a minimum a new President, and likely changes to
6 the House and the Senate. The conventional wisdom is
7 that the Democrats will pick up several seats in each
8 chamber, but we will see come November.

9 We are here to talk about federal tax policy
10 and incentives for development. CERT and NCAI and
11 several Tribes have been working for a number of years
12 on the issue of tax incentives and tax provisions,
13 everything from tax exempt bonding to the
14 reauthorization of an Accelerated Depreciation, and
15 with Indian Wage and Health Credit first enacted in
16 1993.

17 Indian Country in the form of those
18 organizations and a handful of Tribes, and in fact
19 their private sector partners, have been working hard
20 in Congress to first educate often young,
21 inexperienced committee staff and members on what the
22 issues are precisely, and then to specifically
23 advocate for either long-term reauthorizations of
24 these provisions or changes in the laws such as that
25 is needed with the tax-exempt bond authority.

1 Let me start out very broadly, and I think
2 this is how I'm looking at our exercise over the
3 course of the next two days. It's often said that the
4 power to tax is the power to destroy. But it's also
5 true that in our context, as David mentioned this
6 morning, the Internal Revenue Code can be used to
7 shape and encourage behavior in a positive way, and in
8 this instance we are talking about energy matters.

9 Just as the federal budget deficit reflects
10 our nation's spending priorities and values, the
11 Internal Revenue Code reflects our collective belief
12 in what behavior and activity we want to support and,
13 therefore, encourage and subsidize; and conversely,
14 what activity and behavior we do not want to support,
15 and in fact want to see less of. So the theme of my
16 introduction will be the use or viewing the Internal
17 Revenue Code really as a vehicle for national policy.

18 Why is this issue important now? I
19 mentioned earlier the elections this fall. It's also
20 the case that increasingly Indian Tribes and potential
21 partners are interested in developing Tribal resources
22 on Indian land. The market conditions are right, we
23 are hitting this every day when we turn on the news
24 and look at the newspaper. The new law that
25 Mr. Arthur mentioned, Title V of the Energy Policy Act

1 of 2005 is a classically liberal pro production,
2 nondiscriminatory statute that seeks to aid Tribes,
3 and encourage their energy development.

4 I mentioned November will bring change in
5 the occupant to the White House and likely changes to
6 Congress. These are all reasons why we should be
7 thinking as we sit here in Las Vegas in August,
8 thinking in terms of the midterm, and by that I mean
9 the next five or six months in the run-up to the
10 election, and then right after the election with the
11 transition, and the inauguration, and the activity of
12 the 111th Congress.

13 Our congressional allies and NCAI and
14 certain others have been engaging on these issues and
15 just this past spring we had three events. May 1st,
16 the Senate Committee of Indian Affairs under Chairman
17 Dorgan's leadership, held a hearing on Indian energy
18 and how the new Indian Energy Title is being
19 implemented. A month later on June 1st, NCAI and CERT
20 met here in Las Vegas to discuss issues of
21 implementation, appropriations, tax incentives and
22 related matters. And then just ten days ago or so the
23 Senate Finance Committee held a hearing specifically
24 on provisions in the Internal Revenue Code and whether
25 they affect and incent economic development,

1 parentheses energy development, in Indian Country.

2 I say energy development because, as is the
3 case with most federal initiatives, and certainly
4 these tax incentives, gaming is an ineligible
5 activity. When we take gaming off the table, energy
6 strikes the globe very largely in Indian Country. It
7 has probably the most potential in terms of revenues
8 and job creation. We have every reason to think that
9 it will outpace gaming if done properly in generating
10 wealth and income and jobs for Indian Tribes.

11 The next item that I would like to briefly
12 touch on is, and David got into this a little bit as
13 well, and that is what's past is prologue. Certainly
14 in many cases of Indian policy, even in the last 25
15 years, we have seen things that are still with us. In
16 1982, Congress enacted the Indian Tribal Governments
17 Tax Status Act. In 1989 Cotton Petroleum was handed
18 down by the Supreme Court, which is still with us in
19 the form of state severance taxes on oil and gas
20 producers on Indian lands.

21 The Energy Policy Act of 1992 included a
22 commission to look at obstacles to greater use and
23 development of Indian energy resources. It was never
24 funded or implemented, and interestingly one of the
25 things that it had in its charge was to review the

1 issue of double taxation, this law being enacted three
2 years after the Cotton case.

3 In 1993, Congress passed the Omnibus Budget
4 Reconciliation Act that included our old friends Wage
5 and Health Credit and Accelerated Depreciation, and
6 then we waited a period of years for the Energy Policy
7 Act of 2005 that included a good dose, a good deal of
8 tax incentives and provisions for Tribes and their
9 partners mostly, to encourage energy development.

10 Let me just for a moment step back and
11 mention, it's often said and we hear our political
12 leaders talk about the lack of an energy policy. I
13 would argue that it's not a lack of policy, they are
14 conflicting policies, and anybody that's reviewed the
15 Energy Policy Act of 2005, which is 18 titles long and
16 several thousand pages, and doesn't think that's
17 comprehensive, well, I don't know what a comprehensive
18 statute would look like.

19 In any event, there are a number of
20 renewable provisions in EPAct, tax credits for
21 electricity produced using renewables, including wind,
22 biomass, geothermal, production tax credit for new
23 nuclear facilities, and investment tax credit for
24 clean coal facilities, immediate write-offs of
25 equipment and business property for new fuel

1 refineries or significant expansions of existing
2 refineries, and a number of others.

3 The problem with these incentives is that
4 many, if not most, have expired or are expiring this
5 year. The Energy Security Act, after 2006 the
6 Democrats took control of Congress and enacted the
7 Energy Security and Independence Act of 2007 and put
8 their own stamp on what the majority believed to be an
9 appropriate energy policy. As a result, there were
10 additional incentives for conservation, research and
11 development, green building and a whole host of
12 others. So the 2005 enactment and the 2007 act really
13 are the last two times that Congress weighed in here
14 in a comprehensive way, and I would urge you to look
15 at both of those before, and I hope it's evident after
16 this session, before we run out and start to come up
17 with a whole new batch of incentives.

18 So is there a lack of congressional guidance
19 in federal legislation in this area? No, there's not.
20 But as I mentioned, the incentives are expiring or
21 have expired. Some or most are geared towards
22 incenting private sector behavior in their role as
23 partners with Indian Tribes, rather than aimed
24 directly at Indian Tribes themselves. The most
25 fundamental reason, of course, is that Indian Tribes

1 are nontaxable entities, and have been held as such
2 repeatedly both by Congress and the courts.

3 The next six months will be key as you and
4 other leaders begin to develop the new Indian energy
5 platform. In that regard -- I'm going to wrap up here
6 in a minute -- in that regard, one thing that I think
7 would be helpful for all of us would be getting a
8 handle on what is already in the code. And to that
9 extent, in June of this year the GAO issued a report
10 on the use and the impact of the depreciation
11 allowance on Indian reservations and Indian economies.

12 A much more valuable document is the July
13 2008 report of the Joint Tax Committee which looked
14 at, provided an overview rather, of the Federal Code,
15 the Internal Revenue Code, all provisions relative to
16 Indian Tribes and their members.

17 There are also two items of pending
18 research, one that's being privately conducted by my
19 shop and others with regard to existing tax and energy
20 provisions that are on the books and the status of
21 those provisions, are they expired, do they need to be
22 amended, do they need to be tweaked, et cetera.
23 That's the goal of that research.

24 The last item that I think will be
25 enormously helpful in the fall is a request that we

1 have made to the Senate Committee on Indian Affairs to
2 in turn request the Congressional Research Service to
3 create a product, a memorandum on energy related tax
4 incentives for Tribes and their partners, so that
5 whatever new initiatives and ideas are proposed will
6 have the benefit of scouring the code first.

7 There are dozens of bills already enacted in
8 the 110th Congress that will end come December 31st,
9 including permanent extensions of the Depreciation and
10 Wage and Health Credit, Production Tax Credit Transfer
11 Authority to authorize Tribes to transfer their
12 allocable shares of their credit to private partners.
13 At least two versions of the so-called Tax Extenders
14 Bill, which seeks to extend these cats and dog tax
15 incentive provisions for an additional year, and in
16 this case it will be through the end of 2008.

17 As late as last week, Finance Committee
18 Chairman Max Baucus introduced a pretty sizable bill
19 called the Jobs, Energy, Families and Disaster Relief
20 Act of 2008. I don't think those words have ever been
21 combined before in a title of a bill, but nonetheless
22 it includes a good number of the extensions of the tax
23 credits and incentives that we have talked about in
24 the past and hopefully will today, including the 1993
25 incentives.

1 I mentioned CERT and NCAI have been pretty
2 active. There are letters that many of you have, we
3 can make them available to you. The organizations
4 have weighed in both on the 1993 incentives and the
5 need to enact a long-term reauthorization, i.e.
6 perhaps as long as 20 years, as well as a letter to
7 the Hill on the Production Tax Credit Transfer
8 Authority legislation introduced by Mr. Grijalva of
9 Arizona.

10 So as we sit here, the division that I
11 understand the board and Director Lester wanted us to
12 have is in 2008 and 2009 and beyond, what valuable
13 discussion and proposals can we begin to make this
14 week that can carry us through the fall and into the
15 transition post-election, and then into the new year
16 with the 111th Congress.

17 So with that, Mr. Chairman, I'll turn it
18 back to you, but that is obviously a very 30,000 foot
19 view of all the things that we are dealing with here.
20 It's not exclusive obviously, but it is I think a good
21 flavor of what we have dealt with so far in the last
22 two years and what we hope to do in the next six
23 months.

24 So I think now it's question and answer time
25 or speaker time?

1 MR. VALDEZ: Yes, and we did want to hear
2 from you, and there's a sign-up sheet that's going
3 around for those of you who do want some time to speak
4 and talk about some of the issues, and basically what
5 has been your experience, and what are your ideas for
6 amending the federal tax policy to incentivize the
7 Tribal development of the Indian energy resources. So
8 there is a sheet going around, so if you guys would
9 please sign in, and then I'll go ahead and get the
10 sign-up sheet for those of you who want to speak and
11 then I'll call on you one at a time and we will have
12 you get up and we can go through the process.

13 By the way, for those of you who came in
14 late, my name is Bruce Valdez and I'm with the
15 Southern Ute Indian Tribe. We hold a seat on the CERT
16 board, and we are the Secretary and I've been asked to
17 chair this meeting as the CERT representative. My
18 boss is -- I would like to recognize Chairman Cross,
19 who actually holds the seat, and I'm the alternate.

20 Okay, first we have Cheryl Reevis.

21 MS. REEVIS: I'll pass.

22 UNIDENTIFIED SPEAKER: That's what we were
23 told was the sign-in sheet for.

24 (Laughter.)

25 MR. VALDEZ: So everybody is going to speak

1 then. This might take a while.

2 Okay. What we can do is we can basically
3 just have you go ahead and raise your hand and
4 introduce yourself if you've got some comments or if
5 you want to speak, and then I'll go ahead and write
6 your name down and we can kind of go from there.

7 MR. ORTEGO: Peter Ortego.

8 MR. VALDEZ: How do you spell your name?

9 MR. ORTEGO: O-r-t-e-g-o. My name is Peter
10 Ortego and I'm the general counsel for the Ute
11 Mountain Ute Tribe.

12 I just want to make a brief statement.
13 Mr. Lester asked me to come in and mention that the
14 Ute Mountain Ute Tribe is trying to distinguish Cotton
15 Petroleum. Cotton Petroleum is one of the cases that
16 was mentioned earlier as being a real detriment to
17 Indian Country.

18 Basically what happened in that case is
19 Jicarilla -- or it wasn't Jicarilla actually, it was
20 the company Cotton Petroleum sued the State of New
21 Mexico to prevent the State from collecting severance
22 taxes from resources that was removed from the
23 Jicarilla Reservation. They lost that case mainly
24 because there was an expert who testified that there
25 was no economic burden to the Tribe because of that,

1 and also because the State provides services to the
2 Tribe. So seeing that the State can provide the
3 services, then they should be able to tax the
4 companies that are operating on the Reservation. But
5 we disagree with all of that and also we do not
6 receive any services from the State of New Mexico.

7 I'm the general counsel for Ute Mountain Ute
8 Tribe who are up in the northwestern portion of the
9 state. We don't have any Tribal members who live in
10 that portion of the Reservation, we have very few
11 Tribal members who really live in the State of New
12 Mexico at all, and New Mexico OCD, Oil Conservation
13 Division, tries to come out and punish our operators,
14 they try to do things to the Tribe.

15 We always tell them no, they have to stay
16 away. We are already regulated by the BLM, we are
17 regulated by the BIA, we already have our own Tribal
18 Energy Division. We would rather not even have the
19 BIA and BLM in there if we can help it, but we have to
20 deal with them too. So right now we are suing the
21 State of New Mexico to tell them that they can't tax
22 our operators at all.

23 It's an interesting case factually, it's
24 very simple. We are about to have depositions.
25 Everybody's agreed that no services are provided to

1 the Tribe by the State, so we are hoping this is one
2 of those good facts, good law cases. As you know, a
3 lot of times what happens in Indian Countries, you
4 have a good fight, you have a good cause, but because
5 your facts may not be exactly what a judge wants to
6 hear, you end up losing.

7 Unfortunately, I find a lot of the judges
8 don't understand, particularly state judges don't
9 understand Indian issues. However, I think we are
10 lucky that we are in the State of New Mexico because
11 they do seem to understand Indian issues better than
12 Colorado for sure. We are also in Colorado, we are
13 also in Utah. We have had litigation in Colorado
14 where we have had judges interpret Indian law in a way
15 that I'm really not sure where they are coming from
16 the way that they looked at it. But we have lost in
17 Colorado, we are hoping that -- not on this issue, on
18 a separate issue we lost in Colorado -- I'm hoping if
19 we win this case in New Mexico -- it may get appealed,
20 we don't know.

21 If it does get appealed, it will go to Tenth
22 Circuit. We are in Federal Court so it will go to
23 Tenth Circuit. We are hoping that if it gets appealed
24 to Tenth Circuit, they would rule in our favor. That
25 would then set a precedent across Indian Country. We

1 don't want to settle this case at the trial level
2 because we want to win it, so it sets a precedence and
3 other Tribes can come up and start using that case and
4 say that they too have a right to prevent the State
5 from collecting taxes.

6 I don't know how many Tribes out there do
7 not receive any resources from the state that they're
8 in, but I know there are a lot of Tribes that would
9 rather tell the State that we don't need your
10 resources if we can, in fact, have a better oil and
11 gas operation. Obviously, the state taxes impact our
12 ability to collect taxes and our ability to collect
13 royalties.

14 We have two recent leases that we signed.
15 One, I know for sure. The other is in negotiation
16 where the operator is insisting that if the taxes
17 total a certain percentage, then our royalty gets
18 reduced. We don't like that, that's not the way we
19 like to operate, but that's the way we can get them on
20 the Reservation. So we are using those cases to show
21 the State that their taxes are having a direct impact
22 on our resources for our Tribal members.

23 Thank you.

24 MS. STETSON: What stage is the suit in
25 right now?

1 MR. ORTEGO: We are in the deposition stage,
2 in the discovery stage. We should be done in the
3 middle of October. We are planning on filing our
4 motion for summary judgment by the end of the year.

5 UNIDENTIFIED SPEAKER: Which federal court
6 are you in?

7 MR. ORTEGO: We are in Albuquerque, so
8 Federal District Court in Albuquerque. I can't think
9 of the judge's name.

10 MS. ROWLAND: We have had to do the same
11 thing that you did. We have had to put language in
12 our leases to allow for reintroduction of royalties
13 because we want a level playing field. If these
14 companies have to come in and pay additional fees,
15 they can't compete in the market, so we always have to
16 make concessions so that they can operate on the
17 Reservation. So if you need anyone for another
18 deposition, we would be happy to do that.

19 MR. ORTEGO: Which Tribe are you with?

20 MS. ROWLAND: Crow Tribe. We're from
21 Montana, but we are still experiencing the same thing.
22 Every time we talk to a company they are always
23 concerned about dual taxation and that always becomes
24 an issue.

25 MR. ORTEGO: Does your Reservation by any

1 chance receive services from the State?

2 MS. ROWLAND: No. Our permits and all our
3 activities are all approved by BIA.

4 MR. ORTEGO: You're in the Tenth Circuit, so
5 this is good.

6 You know, it's pretty insidious. In the
7 State of Colorado, they collect our severance taxes
8 and the vast majority of them go to the County, and
9 the County needs them so bad we don't see anything.
10 We don't see a cent of the severance taxes that go to
11 the State of Colorado.

12 We have been begging for a new road, we have
13 been begging to have things repaired, we have been
14 asking for the schools to notice who we are and what's
15 going on, they don't seem to be doing a very good job.
16 The people seem to care, but as far as getting
17 revenues to the schools to teach the language, to
18 teach culture, to teach history, that's not happening,
19 so hopefully our case will help you too.

20 MR. LEBEAU: If I could get everybody to
21 please introduce themselves if they make comments and
22 questions, because we are going to try to record this
23 with the court reporter.

24 MR. ORTEGO: Yes, sir.

25 MR. SWAIN: My name is Phil Swain. I'm

1 local so I can travel and move, but what I was going
2 to ask, you mentioned, what did you call that? It was
3 an oil...

4 MR. ORTEGO: New Mexico Oil Conservation
5 Division.

6 MR. SWAIN: No, but what were they suing you
7 for? That they couldn't do oil, cotton, something?

8 MR. ORTEGO: Yes, Cotton Petroleum was the
9 case that was mentioned.

10 MR. SWAIN: What was that?

11 MR. ORTEGO: Cotton Petroleum was an oil and
12 gas operator on the Jicarilla Reservation back in the
13 eighties.

14 MR. SWAIN: Oh, I thought it was produce.

15 MR. ORTEGO: No.

16 MR. SWAIN: Okay. The next question I had,
17 in a situation like that it usually makes national
18 news, and like here in the state of Nevada, if you do
19 something, it's kind of like considered a class action
20 suit, like the Jicarilla's case up here in northern
21 Nevada, you know, that made an impact on Indian Tribes
22 across the United States. And I was wondering, you
23 know, if you really understood that, you know, that if
24 you lost that case it's going to affect everybody in
25 this room to some certain degree, and I was wondering

1 how you guys were planning to handle that.

2 Because in my case, you know, I kind of came
3 in late, so I don't want to be critical, but when you
4 talked about federal tax policy and incentives, I was
5 hoping that I could come here and find out about those
6 things or to listen to the Ute Tribe where they were
7 successful in going around about this whole process of
8 leasing, of rights-of-way, of the tax issue, how we
9 could benefit from their experience and put it in our
10 ballpark so we can do the same thing without going
11 into the ballgame and making our new rules up as we go
12 along, and I was just wondering, are they going to
13 give us that information, because my secretary here, I
14 just pointed at her, she just said she wasn't going to
15 take any notes, so she's out of it, so I was wondering
16 are we going to talk about that here?

17 MR. ORTEGO: I think we can probably all
18 learn a lot from how the Southern Utes do their
19 operation over there. That's not my Tribe.

20 MR. SWAIN: That's what's my concern. I'm a
21 small Tribe and I don't have the resources like maybe
22 the Ute Tribe does now, but what I was wondering is
23 how we could apply this in our area. Because we were
24 negotiating with a cement company, and then the issue
25 of taxes came up, the natural resources. How come the

1 Bureau has to get involved if we are using our own
2 money? Is there a trick there that you can get around
3 this without having the Bureau come down or the State
4 involved in these things?

5 I mean, to me it's like somebody has already
6 played in that game and we need to learn what the
7 rules are so we don't make that same mistake. You
8 know, because you're talking about dual taxation, you
9 know. The company doesn't want to pay taxes to the
10 State, but they would rather pay it to the Tribe, but
11 the State is saying no, you still have to pay taxes.

12 Well, where are these darn tax policies that
13 say we can get away from some of that stuff, so we can
14 lure some of these big companies to come to our
15 Reservation?

16 MR. ORTEGO: That's what we are doing in New
17 Mexico, we are trying to get the State off our back.

18 MR. SWAIN: I understand what you're doing
19 in New Mexico, but for myself, I want to know, so I
20 can go home and tell my council that hey, I went to
21 that CERT meeting and here's what they told me, I can
22 do this and I can do that. But I was looking for some
23 brochures and I don't see anything here that I can
24 hand out. But anyway, that's my concern.

25 You know, if the gentleman here can get up

1 and talk about how we can save money on the federal
2 tax policy; what is the federal tax policy? That's
3 why I say I apologize because I came in late, but I'm
4 asking for things like that and incentives for
5 development.

6 What's an incentive for development? That
7 I've got an abundance of land? That I've got water?
8 That I've got electricity? That I've got the prime
9 location? You know, what are the incentives for a
10 company to come out to my Reservation? You know, to
11 me, you have to decide how you do that.

12 I listened to the Chairman of the Ute Tribe
13 when he was in Denver, the NCAI come in, and he said
14 he had a lot of problems with his council, and I'm not
15 saying mine is exempt, I had the same problem, so I
16 guess in a way what I'm looking for is some
17 information. And I hate to sound like a broken record
18 if everybody else already knows what they are doing,
19 but you don't read stories about many rich Tribes in
20 the natural resource area, you know.

21 Here in the State of Nevada you would think
22 that gaming would be your big revenue, but I'll tell
23 you what, it's not, because you have the Golden Nugget
24 and everybody else right around us that we can't
25 match, so we have to look for other things. So that's

1 what I'm saying, is there a federal tax policy or
2 something?

3 MR. MOOREHEAD: I think I can answer that,
4 sir.

5 In my mind, there are two categories here of
6 what we are talking about. One is federal tax
7 incentives, provisions within the Internal Revenue
8 Code that are currently on the books, you know, in
9 law, that serve at some level to encourage Tribes and
10 their private sector partners as some Tribes have been
11 successful in doing, in developing their resources,
12 whether it's oil and gas or other flavors of energy.

13 The other category is policy, and Cotton
14 Petroleum, which is still good law, is a serious
15 disincentive because of at least double taxation,
16 perhaps more, to the activities of private parties on
17 Indian land. So in answer to your question, we can
18 make available mechanically a list of those incentives
19 that are on the books that need to be reauthorized,
20 et cetera.

21 But I think really what you're talking about
22 requires a kind of qualitative analysis as evidently
23 the Northern Ute Tribe or Ute Mountain is going
24 through with regard to creatively defeating the impact
25 of the Cotton Petroleum case. In this case, they want

1 it held inapplicable. But I know from past certain
2 NCAI meetings, there are Tribes that have tried to be
3 creative, I think Crow may be one of them, in working
4 with the State to reach an outcome so that your
5 partner doesn't demand a decrease in the royalty rate
6 as a result of the double taxation.

7 Is that helpful to you?

8 MR. SWAIN: I don't know, seems like I've
9 heard it again and again. I'm always in the ballgame
10 looking for new things, you know, because like what I
11 was going to say, then I'll shut up after this, the
12 City of Las Vegas is trying to buy our water. You
13 know why? Because it's not federally reserved water
14 rights. That's the key. If you have federally
15 reserved water rights, if you have abundance of water
16 going into the lake or to the Missouri River, you
17 don't get any compensation for that. But if you
18 didn't have that and you could negotiate just with the
19 State, you could then be reimbursed for that water
20 going into the river.

21 We have a small river out there and it's
22 been running into Lake Mead for years, and we are not
23 getting any compensation. But because water is so
24 scarce around here, because we are not -- in our
25 court -- I mean our case has been in Washington for

1 almost 15 years to get a federally reserved right
2 established, and that hasn't been done. So to turn it
3 100 percent, because we haven't done that, now we can
4 negotiate with the State and the State will pay us for
5 the water.

6 So to me if you haven't done that, that's a
7 plus in itself to get something like that going,
8 because how many people don't use their allocated acre
9 foot of water that's allocated to the Tribe in the
10 bank.

11 MR. ORTEGO: I did want to respond to one
12 thing you said and that was about the impact this
13 could have on other Tribes. We are fully aware of
14 that. That's why we are very careful about it. Like
15 I said, we have good facts, hopefully a good law
16 scenario.

17 We did inform NARF and we have informed
18 NCAI. They are both monitoring what we are doing.
19 They say they won't get involved until we get to the
20 appellate level, if we get to the appellate level.
21 But that's where we are on that, and we understand it
22 could have an impact on Tribes. We're hoping it's
23 positive. We are doing the best we can to win this
24 case obviously, so let's keep our fingers crossed on
25 that.

1 MR. WILLIAMS: Damon Williams, lead attorney
2 for Three Affiliated Tribes.

3 We realize the same thing in trying to get
4 production and exploration with Cotton outstanding and
5 sort of sitting there looming on the horizon. What we
6 did was we just finished -- we entered two agreements
7 with the State of North Dakota. One was a tax
8 agreement and one was a regulatory agreement. We just
9 finished the regulatory agreement. The tax agreement
10 is sort of a working document.

11 The legislature sort of gave us some
12 parameters that we had to abide by. We are trying to
13 stimulate production, as you heard on the videotape of
14 Senator Dorgan, one Tribal well on the Reservation
15 with a bunch of wells around the reservation, even on
16 our fee land. So what we did is we came to an
17 agreement with the State that on trust land we would
18 each share equally. We capped the tax at 11 1/2
19 percent and we would each share half, because the
20 alternative was the state had a potential tax of
21 11 1/2 percent and Tribe had about 8-1/2 percent
22 sitting there. So with a 19 1/2 percent to 20 percent
23 tax rate, we didn't think we were going to get any
24 production on the Reservation. So we came to an
25 agreement where we would share equally the taxes on

1 the trust side.

2 And on fee land, we are taking 20 percent of
3 the State's take on that, which is going to be
4 something because I think -- Fred, how many wells do
5 we have on fee right now?

6 MR. FOSTER: Currently we have probably
7 about 35 wells.

8 MR. WILLIAMS: So we are going to get 20
9 percent of their taxes they are collecting. It's sort
10 of a give and take. We look at it as a revolving,
11 moving document.

12 We have legislative sessions every two
13 years, the next session is '09. We are going to go
14 in, we want more than just 20 percent. We would like
15 eventually half on the fee side, so we are working
16 towards that in a couple of sessions, because the more
17 money we have in production on the Reservation in tax
18 revenue benefits everyone. So it's sort of the cart
19 before the horse, horse before the cart, however you
20 want to look at it. So it's sort of a calculated
21 gamble on the Tribe's side.

22 On the regulatory side, we don't have any
23 regs on the Reservation. So what we have done is at
24 least initially we have agreed, sort of a term of art,
25 we have agreed to apply the regs on the Reservation

1 until the time the Tribe adopts their own, which is
2 what we are going to do.

3 Again, we are stuck out there, you know, we
4 have immense federal bureaucratic hurdles to get
5 development on the Reservation, we have a shortage of
6 regs within the country trying to get development, and
7 just the whole geographic problem of trying to get
8 development, so we are trying to reduce all those
9 hurdles right now in the short term.

10 In the long term, when we get that economic
11 capital behind us, we will take in the Southern Ute
12 model and we will start to pull back some of those
13 resources on the regulatory side that we are capable
14 of.

15 Right now Fred Foster, oil and gas director,
16 he has a staff of about six. I have a staff of maybe
17 myself and another attorney who works on it full-time
18 right now with oil and gas. It's trying to avoid that
19 problem where we have gone to the State and we have
20 said we agree to disagree right now. There's no
21 precedent and there's no binding -- you can't take any
22 precedence from these agreements, because we have some
23 jurisdictional issues on the Reservation, we have a
24 possible diminishment if you take it -- if we don't
25 watch what we're doing.

1 So we are sort of taking small steps, but in
2 the meantime I feel it's better to disagree in coming
3 to some of these agreements that are getting us some
4 production.

5 MR. ORTEGO: The representative that would
6 cover that area that we are in in New Mexico is
7 Representative Begaye, and we met with him to see if
8 we should negotiate with the State. And even though
9 he was very helpful, he was actually -- he really
10 believed in what we were trying to do, he said in the
11 past he had tried to introduce that kind of
12 legislation and it didn't work. So then we went to
13 Governor Richardson and talked with his staff and see
14 if we could try and negotiate with him and they
15 weren't very cooperative. They really didn't want to
16 bend at all with the state taxes, so we ended up with
17 a political decision on the council's part, but they
18 said the negotiations are not going to take us
19 anywhere, let's go to suit.

20 MR. WILLIAMS: It's hard when State dictates
21 terms to you. I know they want five, or beyond five
22 in the agreement. We limit it to two. That was the
23 gamble we made. I don't think anyone on the State
24 side really thought the Tribe was going to do it,
25 because they put some carrots out there, but they put

1 some barriers.

2 We figured two years with the BIA and BLM
3 permitting it through the leases, we will probably
4 still only have 10 or 20 wells on the Reservation
5 before the agreement is done, so that was sort of the
6 gamble we made to sort of get the foot in the door.

7 MR. ORTEGO: Yes, sometimes it's a cost
8 benefit analysis. You have to do what you think is
9 going to work.

10 MR. MICKLIN: Willie Micklin, Ewiiapaayp
11 Band of Kumeyuay Indians.

12 Is there any non-Tribal capital improvements
13 on the Reservation that are subject to possessory
14 interest tax assessed by the State, by the County on
15 behalf of the State?

16 MR. ORTEGO: The State, I'm not aware
17 whether the State does a possessory interest tax.
18 They do a severance tax, they do several other taxes.
19 We do a BIT. I'm not aware whether they do that or
20 not. I don't think that's one of the taxes. We
21 identified six taxes altogether and I don't recall
22 that being one of them. And they total about 8 or 9
23 percent. Our taxes total about 6.

24 Thank you.

25 MR. VALDEZ: Do we have anybody else?

1 MS. HOLIDAY: Hello, I'm Michelle Holiday.
2 I work for Southern California Edison, and I'm a
3 manager of legislative and Native American affairs
4 located in Washington D.C. I'm a member of the Iowa
5 Tribe of Oklahoma. I'm one of the representatives
6 from our Tribe here for CERT, a Tribal representative.

7 I've also worked for my Tribe over the
8 years, but I'm in the energy industry, folks here
9 today. But just offering to piggyback on Paul's
10 discussion earlier on the tax, I think there's an
11 opportunity at least right now in terms of the
12 continuation of the discussion of Tribes and industry
13 coming together, at least particularly at this
14 particular bill, this Baucus bill or other vehicles,
15 and at least for the recommendation back to CERT and
16 also back to NCAI is possibly to do a congressional
17 outreach for the energy partnership.

18 I think there's an opportunity for trade
19 associations like the Solar Energy Industry
20 Association, also the American Wind Energy
21 Association, they work and actively lobby with
22 industry on these renewable projects and legislation
23 in Washington D.C. Also Edison Electrical Institute
24 who is very active on the Section 1813 study, there
25 was some dialogue that was still left on the table to

1 see how Tribes and industry can come together.

2 These types of legislative matters in terms
3 of finding some partnerships within the bill, of
4 course the Tribes have their provisions, but the
5 industry also has theirs to push the Investment Tax
6 Credit and the Production Tax Credit, the ITC and PTC.
7 All those for Tribal interests and for industry
8 interests are significant, millions and potential
9 billions of dollars in terms of business aspect to the
10 project is going to be going on Tribal land.

11 So there really hasn't been an initiative to
12 kind of bring them together that would be
13 collaborative, but not confrontational, so I just
14 offer that as a recommendation going forward, back
15 after this session ends, to take a look at that, and I
16 would be happy to work with Paul and also with Gwen
17 and other specific Tribes who have that interest or
18 who have representatives in D.C. who would want to
19 take that interest. I think it's a building block and
20 a foundation to begin that continuation of the
21 dialogue that was sort of fostered a couple of years
22 ago.

23 So particularly, again, as Paul had
24 mentioned about the Baucus bill, the tax bill, and he
25 had mentioned also about Senator Baucus does speak

1 regularly with industry, and I think to see Tribes and
2 particular companies and/or associations come to the
3 office speaks a lot differently, because you don't
4 really see it in Washington D.C. They are always on
5 the other side of the issues primarily. But that's
6 just a recommendation I would put forward for
7 consideration.

8 MR. MOOREHEAD: If I could follow up on
9 that, the Depreciation provision, the Wage and Health
10 Credit that were first enacted in 1993 expired in
11 2003, and since then Congress has chosen to
12 reauthorize them serially one year at a time.

13 Two years ago, a handful -- I mentioned this
14 earlier -- a handful of private sector entities, as
15 Michelle mentioned, including a solar company, a
16 couple of coal outfits and some other partners of
17 Tribes, were persuaded that because they are really
18 the party in interest when it comes to these tax
19 incentives, that they ought to get to the Hill and do
20 the same kind of advocacy that has been left to solely
21 the Tribes since 2003. So as Michelle says, it is a
22 good idea. It brings a different perspective to the
23 Max Baucuses of the world and the Finance Committee
24 people and reminds them that there are enormous
25 opportunities, many of which involve partnerships, and

1 the code is oriented in many respects accordingly. So
2 it hasn't happened to the degree you're suggesting,
3 but there have been, as I say, a handful of outfits
4 that have seen the wisdom in doing that.

5 MS. HOLIDAY: I think I'll also make a
6 comment on the industry perspective. There are a lot
7 of folks who are interested in working out
8 opportunities on Tribal lands. How they do that,
9 people are still figuring that out in terms of who is
10 the right contact to get on the land, et cetera,
11 understanding the Tribal aspect.

12 Aside from that, what's important here is
13 that the Tribes can continue to build relationships
14 with these trade associations or with these solar
15 associations and energy wind associations, because
16 these people are the ones who are advocating for
17 industry, but they are also interested in learning
18 about the different aspects that are business
19 opportunities, particularly with Tribal interests that
20 they are not hearing. They are not hearing from the
21 Tribes, they are only hearing the point of view from
22 the industry. Or they have perhaps positive or more
23 than likely negative experiences saying we would like
24 to do this, this is a great wind or solar location,
25 and continue opportunities in the more base load of

1 coal or the fossil fuels.

2 So those things exist, but as I mentioned,
3 those folks have access that you don't have access to
4 now, and relationships that you don't have access to
5 now, that Tribes certainly given that perspective and
6 that kind of paradigm change in terms of moving
7 forward and working with industry hasn't really
8 happened. I think there's probably maybe very rare
9 instances where they have worked together in that
10 sense, but I think the time is very ripe now because
11 of the push, as we heard in our opening comments today
12 from Mr. Lester, regarding energy and renewable
13 development, and again, fossil fuel development on
14 Tribal lands.

15 MR. VALDEZ: Thank you.

16 Do we have anybody else?

17 MR. FLORES: I have a question. What role
18 is CERT playing in that? I mean, I haven't -- I mean
19 that would be -- I mean, if you have -- and I'm new
20 with visiting with CERT, so my question would be since
21 this is an organization that has its specific role
22 that they have taken on, then what role or what
23 component would they -- and to me it would be a
24 natural fit, so maybe I'm posing a question for
25 clarification -- is there currently an ongoing or a

1 possible link that can be established with those
2 organizations to create opening doors?

3 And especially since I believe in the
4 packet, it says that CERT is looking at legislative
5 analysis and those types of things, that would be to
6 me like a natural component that should be in that,
7 because what you want to do is use those alliances to
8 motivate your own interests while helping to serve the
9 other parties' interest to where you can have a
10 mutually beneficial relationship, and you have a cost
11 savings to the Tribes that are currently doing that or
12 thinking about coming on board to do that.

13 So when you start looking at advocacy and
14 these types of things, to me that would be something
15 that would be instrumental, plus looking at resources
16 from a perspective of different mindsets to broaden
17 the spectrum, but also to be very targeted and
18 disciplined in the way that you approach legislation,
19 and then you can use those lobbyists to their fullest
20 advantage. Instead of using them to do the research,
21 you can start directing them in making more use of the
22 Tribal dollars as well as the organization dollars to
23 specifically advance Tribal interests.

24 So my question is kind of...

25 MS. HOLIDAY: Well, you know, CERT does

1 have -- of course, Paul and Ginny worked with the CERT
2 organization on their policy development in Washington
3 D.C., but you know, again, there are resources to
4 CERT, there's the board, and you can bring that
5 forward and talk to the board. And then within those
6 membership Tribes, if there are Tribes that are
7 interested in participating in that and/or non-CERT
8 Tribes that have an industry or an energy interest, so
9 I open that up for that recommendation to be brought
10 forward. But ultimately, in terms of CERT's
11 initiatives and their policy direction, I look to Paul
12 to talk to David about that.

13 And also Gwen Salt is here from the National
14 Congress of American Indians who handles the energy
15 issues. There is, as you know, a subcommittee who
16 deals with energy. But this is a continuation of the
17 work that was done that is still very controversial,
18 not the 1813 study, but out of that there was
19 discussion and consultation meetings that had industry
20 folks, and there was an opportunity where they did
21 come together and there were people who did want to do
22 something that was positive. Not necessarily on
23 rights-of-way issues, but there's still some business
24 interest there that we need to foster those
25 relationships or strengthen them.

1 This is a win-win opportunity to do so,
2 without having interests to be so conflicted, other
3 than, you know, like I said earlier, those provisions
4 may be a little bit different. You just don't really
5 see them coming together in a meeting, and so it's
6 going to be like you said, very targeted and very
7 specific, but I think it's something that can field a
8 framework to.

9 We really haven't moved forward with any
10 sort of initiative after those 1813 studies and
11 discussions. There's been a lot of talk about let's
12 do something. Well, this would be something that we
13 could actually do that's actually realistic and
14 something that can build those relationships that I
15 mentioned. It's not going to necessarily end all the
16 conflict, but I think people can learn more about the
17 industry, industry can learn more about Tribes'
18 interests and associations, and in particular can hear
19 again from the Tribal point of view what's happening
20 out there.

21 They are only hearing from industry. And
22 again, not to say that's a bad or good thing, but I'm
23 always of encouragement that you want to hear
24 everybody's story who is part of the game. So the
25 game is moving on and nobody's there on the side of

1 the Tribes in certain respects. So again, that's my
2 point of view.

3 MR. MOOREHEAD: If I could just add a couple
4 of things. I think it's the CERT board's judgment and
5 that of Mr. Lester that the organization ought to do
6 precisely as you suggest. The way that, for instance,
7 NIGA does, the National Indian Gaming Association has
8 a phalanx of lawyers in Washington dedicated almost
9 exclusively to gaming. But when their Tribal
10 leadership tells them to work on healthcare or
11 whatever it is, that's what they do. And I think it's
12 the CERT board's idea that the member Tribes'
13 representatives, whatever talents they have, whether
14 it's legal or lobbying or accounting or energy or
15 whatever, be brought to bear for purposes of this new
16 Indian energy platform.

17 And the other half of it I think is, as
18 Michelle said, that 1813 report was very acrimonious,
19 and there was a lot of bad feelings with Indian
20 Country and the private sector, but there are
21 certainly areas of overlap as you suggest with
22 associations and private sector in terms of tax
23 advocacy or policy advocacy or what have you. And I
24 think in part, today and tomorrow are to begin to give
25 shape to what should that look like and what should

1 those outfits and individuals be charged with doing
2 back in D.C. and elsewhere.

3 MR. VALDEZ: Also I think this is a really
4 good point, because I think right now where we are
5 with CERT is we are looking at how CERT continues and
6 what function does it play, and how do we better
7 implement that in Indian Country. We do recognize
8 that there are needs in a lot of sectors as far as
9 Indian Country goes where it may not necessarily be
10 strictly something that is an energy resource. Such
11 as the tax code, you know, it's going to affect Tribes
12 in all sectors as well. So we do realize that and we
13 do recognize that, and I know we have been talking a
14 lot about the future of CERT and the direction of
15 CERT. So that's been huge as far as what we are
16 trying to establish with CERT today. How does it fit
17 in with today's Indian Country and how do we best
18 utilize CERT and the staff that we have?

19 As you know, we are also going through
20 budget cuts. We get a lot of the money coming from
21 the federal government which has been cut. So we have
22 got to become more efficient, we have got to become
23 more lean and mean. We have got to decide how we are
24 going to take CERT into the future and what its role
25 is going to be.

1 So those are really good points that you've
2 made, and again, we will take those into consideration
3 when we are talking about a lot of what we are doing.
4 But that's kind of a little bit of where we are as far
5 as CERT goes, and we are working really close with
6 NCAI now, so it is being more united for Indian
7 Country.

8 MR. FLORES: I forgot to state my name,
9 Kesner Flores. I'm with Cortina Rancheria.

10 I think it's really good to look at it and
11 then follow the direction that's needed in the
12 relationship with the other national organizations. I
13 know that there's also in NCAI, I've worked with and
14 throughout the years on numerous environmental issues
15 and other concerns, and so I think that optimizing the
16 Tribal benefits as far as respectfully across to all
17 the Nations, I mean, we really have to get, as you
18 said, lean and mean, and we really have to look at
19 what our expertise is and how best can we utilize that
20 to benefit all.

21 Because I know NCAI is also going through
22 some of the same, the constant reorganization and
23 looking at how to operate. And I think the more that
24 they have organizations that specifically have an
25 expertise, that can only benefit the Tribal leadership

1 because then you start being a resource to give
2 information as well as the memberships of the Tribes,
3 because then they can then hear the Tribal voices.
4 That's key to the future. And yes, we can't rely
5 on -- we can't rely on grant dollars because those are
6 the first to go when we -- the way -- the state of the
7 nation, and we see that more and more.

8 So I think the way that that might be looked
9 at, I know for our Tribe we look at and are currently
10 looking at the best utilization, optimization of all
11 of our individual resources, as well as how can we
12 bring in others to benefit our Tribal needs and our
13 visions and goals.

14 MR. MOOREHEAD: Let me at the risk of
15 sounding too optimistic, NCAI is tasked with following
16 all the issues for Indian Country. There are other
17 organizations like the Indian Housing Council that
18 follows NAHASDA, and that's their job being NAHASDA.
19 So we have two major reauthorizations now pending,
20 healthcare and NAHASDA.

21 CERT and the Energy Tribes have the benefit,
22 I think, of having won two pretty significant
23 enactments in the last three years. They are EAct
24 and the 2007 Energy Dependence Act. Similarly, the
25 regulation implementing the new Indian Title is

1 finished. And for the first time, two years running
2 now, federal money has been appropriated to the
3 Department of Interior's Indian Energy Office and the
4 DOE, we're here joined by Director Morello. It's not
5 ideal, but there's some money at DOE.

6 So I don't think anybody should leave
7 thinking it's an enormous task, and I think there are
8 a lot of good things that have already been done, and
9 we're in, I think collectively, the enviable position
10 of looking at things that we can choose to work on,
11 rather than those things that we have to work on, and
12 that's a good position to be in when you're in the
13 policy realm in D.C.

14 MR. VALDEZ: Any other questions or
15 comments?

16 MS. ROWLAND: I have a comment. This is not
17 about taxation, but it's about policy.

18 MR. VALDEZ: Would you please state your
19 name?

20 MS. ROWLAND: Oh, I'm sorry. My name is
21 Joanie Rowland and I'm from the Crow Nation. I'm the
22 Minerals Director with the Tribe.

23 In 2008, the 2008 Omnibus Appropriations
24 Bill that Congress passed last -- I think it was
25 December or November, they established a \$4,000 filing

1 fee on all APDs that are filed on federal lands, and
2 so for us that was a detrimental. We had a company
3 who hit gas with every well that they drilled and they
4 had a 50-well plan that they were going to implement
5 this summer, but because of the \$4,000 filing fee they
6 pulled back their drilling so that they would save
7 some money and only drilled where they knew they were
8 going to be, because they said they had to make major
9 changes in their planning.

10 And so we have been talking to everybody
11 that would listen to us about taking Indian lands out
12 of that, or at least taking the Crow Reservation out
13 of that because our situation is different. There's
14 no distinction between deep wells or shallow wells,
15 you know, there's little distinction between gas or
16 oil. And the companies can go right outside the
17 Reservation and can get a permit for \$25, and they can
18 also get that permitted in like three days, whereas
19 our permits will take 60 to 90 days sometimes.

20 I just want to bring that up. I know it's
21 not a tax, but it's still something that we are trying
22 to fight so that they don't pass that again in the
23 2009 budget, so we can eliminate that and level the
24 playing field.

25 That's what we are always fighting. We are

1 always trying to make the playing field level, if
2 there's any way CERT or NCAI can help with that. I
3 know each Tribe may have a different situation, but
4 that's been a big issue for us.

5 MR. VALDEZ: Thank you.

6 Do we have anything else? Anybody else?

7 (No response.)

8 MR. VALDEZ: Again, thank you. I appreciate
9 your participation and those of you who commented.
10 And again, this is going to be valuable information
11 for others and we are getting the message out to
12 everybody that, you know, there is opportunity here.

13

14 (Proceedings adjourned at 11:57 a.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3)
3 COUNTY OF CLARK)

4 I, June W. Seid, Certified Court Reporter,
5 do hereby certify:

6 That I reported in shorthand the proceedings
7 had in the above-entitled matter at the place and date
8 indicated.

9 That I thereafter transcribed my said
10 shorthand notes into typewriting, and that the
11 typewritten transcript is a complete, true and
12 accurate transcription of my said shorthand notes.

13 IN WITNESS WHEREOF, I have set my hand in my
14 office in the County of Clark, State of Nevada this
15 11th day of August, 2008.

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JUNE W. SEID, CCR #485

