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INDIAN ENERGY SOLUTION CONFERENCE

GOLDEN NUGGET HOTEL & CASINO
LAS VEGAS, NEVADA

AUGUST 5, 2008

2:49 P.M. - 3:12 P.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FEDERAL TAX POLICY AND
INCENTIVES FOR DEVELOPMENT

Moderator: Paul G. Moorehead, Esq., Partner
Drinker Biddle & Reath, LLP
Washington, D.C.

Chair: Bruce Valdez, Southern Ute Tribe

Reported by: JUNE W. SEID, NV CCR 485

1 PROCEEDINGS

2 MR. MOOREHEAD: Why don't we get started.

3 There may be more people dribbling in as we proceed.

4 One thing that we probably should have done
5 in the morning session, we started off today and I
6 gave some contextual remarks about tax incentives and
7 court cases, and why it's important to be thinking
8 about changes to the tax code, beginning of 2009. And
9 the reason I said that was while there will be three
10 weeks or so left in the session when Congress comes
11 back in September, it's unlikely that they are going
12 to get anything done. So what we are really looking
13 at is an initiative that will take root, we hope, in
14 the run-up to the election in November, certainly with
15 the transition team, whoever that is, in November and
16 December, and then the formal transition takes place
17 in January along with, of course, a newly sworn-in
18 Congress. So the idea is that we get there earliest
19 with the mostest, and not wait until February to start
20 thinking about energy related tax provisions.

21 But one thing that Chairman Valdez and I
22 both failed to do is essentially to give you -- to
23 read the blurb that is in the CERT material to give
24 you some flavor on what the CERT board feels is
25 important. So let me, if I could, read that now and

1 then we can continue where we left off this morning
2 about tax matters or other things.

3 The session is dedicated to federal tax
4 policy and incentives for development, and it goes on,
5 the manner in which Congress shapes energy tax
6 policies is crucial to the future of the nation's
7 energy supply and how that supply will be generated.
8 Both the Energy Policy Act of 2005 and the Energy
9 Dependence and Security Act of 2007 include tax
10 provisions aimed at encouraging the development of
11 renewable and nonrenewable energy resources on Tribal
12 lands, as well as various conservation and energy
13 efficiency programs managed by the Tribes.

14 Congress is likely to defer, as I just
15 mentioned, energy related overhauls and amendments to
16 the tax code until 2009, and those efforts ought to
17 include Indian Tribes, Tribal projects and Tribal
18 lands so that Native communities are included in the
19 larger national framework, and further so that Indian
20 Tribes will be encouraged to embark on the development
21 of their resources.

22 Without a level tax code playing field, the
23 old game of giving the Indians a passive royalty that
24 is paid on a quasi honor system, which states and
25 their political subdivisions carve up in the Tribal

1 tax base and industry takes the profits will be
2 perpetrated. It is this neocolonial framework that
3 has perpetuated Tribal economic underdevelopment and
4 has resulted in Indian poverty.

5 So that's how the board wished us to go into
6 the discussion, and I think by and large that was the
7 flavor of what I noted at the outset this morning.
8 And for those of you that weren't with us this
9 morning, we talked about the large number of
10 incentives that were first enacted in 2005 as part of
11 the Energy Policy Act that either already have expired
12 or will be expiring at the end of this year. And if
13 anything passes this year tax-wise, the only thing
14 that's possible I suppose is a one year extension of
15 these tax incentives, which I guess is better than no
16 extension, but not as good as a five to seven to nine
17 to, in some cases, 20-year extension, which is what
18 CERT and NCAI and individual Tribes have been
19 promoting in the House and the Senate.

20 So that's the perspective and that's the
21 context of where we are, and I think it's the board's
22 idea, we started in May really, May and June, to
23 intermittently carry on this conversation through the
24 fall and take advantage of your insights along the
25 lines of federal tax policy and incentives and energy

1 development.

2

3 MS. STETSON: Cate Stetson, Cate with a C.

4 So CERT and NCAI had written letters about

5 their position on these various -- okay, are those

6 letters on-line for the respective organizations?

7 MR. MOOREHEAD: I don't think they are

8 on-line. I have copies with me if you want.

9 MS. STETSON: Of course.

10 MR. MOOREHEAD: If not, I can e-mail them to

11 you when I get back to Washington D.C.

12 MS. STETSON: So this is a pretty

13 comprehensive statement of what they're looking for?

14 MR. MOOREHEAD: No. There are two letters.

15 They were both issued in spring of '07, NCAI and CERT.

16 One letter is issued to Finance Committee Chairman

17 Baucus and his ranking member on the Accelerated

18 Depreciation and the Wage and Health Credit, and it

19 encourages a long-term, I think 20-year extension of

20 those two tax incentives. So that's one letter.

21 MS. STETSON: Is that realistic? Is 20

22 years realistic?

23 MR. MOOREHEAD: You know, I don't know if

24 it's realistic, but we are playing poker here and we

25 didn't want to go in and urge them to extend it two

1 years because they would give us one.

2 MS. STETSON: But is five realistic?

3 MR. MOOREHEAD: Originally it was ten,
4 remember?

5 MS. STETSON: No.

6 MR. MOOREHEAD: They were enacted in '93 for
7 a ten-year period, so they expired in '03, and then
8 every year since then, Congress has done these
9 one-year rollovers, which I presume from a business
10 planning certainty perspective is not helpful. So I
11 think we are looking at more than one year and, you
12 know, obviously it's negotiable. But going in at the
13 outset with something that was pretty aggressive is
14 what President Garcia and Chairman Devers wanted to
15 do.

16 NCAI also did a resolution in '07 on those
17 two incentives that accompanied the letter. And then
18 the other letter was a letter to the House Tax Writing
19 Committee, Ways and Means Chairman Rangel and his
20 ranking member, McCreary, on the enactment of the Raul
21 Grijalva Production Tax Credit Transfer Authority bill
22 that he introduced in the house. So those are the
23 only two letters that, as far as I know, CERT and NCAI
24 have issued. I think individual Tribes have probably
25 weighed in with the committee directly, but we often

1 don't see those.

2 MS. STETSON: And what about the tax-exempt
3 bond issue, have they taken positions on that?

4 MR. MOOREHEAD: That's been -- NCAI's top
5 economic development tax priority has been tax-exempt
6 bonds. So for purposes of correspondence and
7 testimony, like NCAI testified at this Finance
8 Committee hearing on July 22nd, that's front and
9 center. It hasn't been CERT's because tax-exempt
10 bonds, the scope of bonding authority is greater than
11 just energy, so it hasn't been CERT's. It's not to
12 say CERT doesn't support it, it does, but it hasn't
13 been the number one issue.

14 And there was something else. Oh,
15 tax-exempt bonds is the number one priority of NCAI.
16 Number two is the reauthorization of the 1993
17 incentives. So there's some synergy, some simpatico,
18 however you want to characterize it, between CERT and
19 NCAI on these issues.

20 And I mentioned this morning that while the
21 July 22nd hearing that Chairman Baucus held in Finance
22 wasn't technically about Indian energy development, it
23 was about nongaming economic development, and I think
24 certainly from the perspective of the senators on that
25 committee, most of whom are from Indian Country

1 states, I mean if you just looked at the roster of the
2 Finance Committee, it should be the powerhouse Indian
3 committee in the United States Senate. But no, the
4 Indian committee is, right? But I think each member,
5 darned near every member of that committee has Tribes
6 as constituents.

7 And as I mentioned today, not beyond gaming,
8 the big boogey man of gaming, there are always
9 carve-outs, whether it's tax-exempt bond authority or
10 these 1993 incentives, for a lot of reasons, that's
11 been the decision of Congress. So my point is, I
12 guess, in their eyes energy development holds enormous
13 potential for Tribes, so therefore they are going to
14 focus on that.

15 MS. STETSON: Is it basically Tribes or the
16 few voices from Indian Country that are pushing it?
17 Or have like any of the wind or solar companies been
18 weighing in obviously to their benefit? And that
19 might be what that lady was talking about.

20 MR. MOOREHEAD: I mean, as part of our small
21 group of Tribes, there are three or four private
22 companies that are partnering with Tribes. One is a
23 solar company and another one is a coal company. One
24 is the equity fund that's financing the Desert Rock
25 Plant with Navajo. So they have all come in and we

1 can say legitimately that it's renewable and
2 nonrenewable, and they are the real parties in
3 interest for these incentives.

4 I think it adds an element to the advocacy
5 that's been missing in the past, because the only
6 people advocating on behalf of these incentives have
7 been Indian Tribes, and these incentives are not aimed
8 at Indian Tribes. Reservations are the collateral
9 beneficiaries, but Tribes as nontaxable entities don't
10 benefit from these things. And it's been helpful, but
11 not helpful to the point where they are enacted or
12 reauthorized long-term. But it's not as glum as your
13 facial expression would suggest, Cate.

14 MS. STETSON: It's just after 2:00 in the
15 afternoon, that's all the facial expression...

16 MR. MOOREHEAD: I mentioned earlier, for a
17 lot of reasons going into 2009, having a statute and a
18 reg and two offices, and being able to think about and
19 dedicate advocacy time and money to things like which
20 tax incentives should we aim to get reauthorized,
21 that's not a bad position to be in, you know, when we
22 are looking at these generic macro reauth's that have
23 to be done by Health Improvement and NAHASDA.

24 MS. STETSON: So you would be a logical
25 clearinghouse person then, right?

1 MR. MOOREHEAD: We represent CERT in D.C.,
2 so most of the energy stuff falls to me and I work
3 with NCAI and the Tribes. There's a handful of
4 Tribes, not many. It's not like gaming in that
5 regard.

6 MS. STETSON: Or housing.

7 MR. MOOREHEAD: Right.

8 MS. STETSON: Well, that's helpful.

9 MR. MOOREHEAD: So I think the agenda
10 provides that tomorrow afternoon after the last set of
11 sessions, there will be a general session of all the
12 people here, and we will try to encapsulate what
13 occurred in these breakouts and try to bring it to a
14 head as we move through time here.

15 At some point, I presume David's going to
16 ask the various group moderators to do papers or take
17 advantage of the record that's developed and draw
18 something up, but I don't think we are there yet.

19 MS. PENDERGRAPH: Rebecca Pendergraph,
20 Cortina Rancheria.

21 You were saying that since 2003, they have
22 been extending it every year. What's the purpose of
23 them doing that? Just because they don't want to take
24 a stand on it or we are on the bottom?

25 MR. MOOREHEAD: Yes, it's basically a cost

1 question. I mean, two things I think are important to
2 answer that. One is we are not alone in having our
3 tax incentives, the need to reauthorize them. I mean,
4 other sectors, renewable and nonrenewable, are largely
5 in the same boat.

6 The good thing is we have cost estimates
7 from the Joint Committee on Tax in Congress, and
8 extending these incentives for ten years will not top
9 200 million dollars total. And we think it will have
10 some impact. Whereas, for years the argument has been
11 oh, the infrastructure needs are so great in Indian
12 Country, extending these incentives will cost billions
13 of dollars. And we know that's not the case now.

14 The other thing is, I think Congress in
15 asking the various group segments, do you want us to
16 include this one-year reauthorization in our package
17 or not, because if we don't do it, someone on the
18 outside or inside Congress will read that as a lack of
19 support for the provision. So you're in this kind of
20 well, not ideal situation of advocating for a one-year
21 reauthorization, knowing it's not probably going to do
22 much in terms of incentivizing this kind of behavior
23 by the investors. I think that's why.

24 But the other side of that issue is I think
25 there's been so much pent-up expectation and

1 frustration going back years now, I mean, we had a
2 majority change in Congress in '06, we have at some
3 level conflicting energy priorities, and I think a lot
4 of people are looking for the '08 election to provide
5 some clear lines on okay, here are the things that we
6 are going to pursue as a nation. And I think that
7 will come with, frankly, a new President and new
8 Congress. Because right now, there's a lot of chaos,
9 acrimony.

10 When I left yesterday, in D.C. there was
11 still a bunch of Republicans on the house floor, you
12 know, bemoaning high gas prices, and that's good, but
13 Congress was out of session, so they were calling for
14 Congress to come back into session and deal with the
15 prices. I mean it's very -- even on Tribal issues,
16 which in my experience tend not to be extremely
17 partisan, there's not a lot of movement now, and the
18 gridlock between the majority and the minority is
19 pretty intense, so hopefully that too will be lifted
20 come January. May be lifted after the election if
21 there's a lame duck session. They come back after the
22 fall election. And I might be recruited by the
23 Cincinnati Reds to be a fastball hurler next year.
24 That's possible, I guess.

25 (Laughter.)

1 MS. STETSON: I think there's just a lot of
2 indecision with everything going on right now. People
3 are just standing back to see what happens. And once
4 we get a new President in, that's probably when we
5 have to get fast and furious, because it takes so long
6 for things to be implemented.

7 We need strength in Tribes to help push this
8 through, because even though we are a small Tribe we
9 have a lot of Tribes around us that are dealing with
10 the same issues beyond the casinos. And of course
11 being from Northern California, we are all related
12 somehow. And so they have tax issues too, and right
13 now with our Governor things have changed a couple of
14 times, like since the first time he came in and made
15 promises, and now, you know, he comes in and he makes
16 changes again. So it's kind of like the old people
17 say, I remember when my grandmother was around, it's
18 hard to have trust in people when they promise you
19 something, you feel like you're losing.

20 I think the thing is, I know young kids
21 between the ages 20 and 30 don't have guidelines where
22 they are going, so you're counting on people 50 or
23 older to be in the front and take over again and
24 really push things through. So I think at that point
25 once a new President comes in, it wouldn't be a bad

1 idea to send letters to Tribes and ask for support and
2 see if you can increase your organization.

3 MR. MOOREHEAD: Well, I think that's the
4 goal is to have a reasonable set of tax priorities
5 that the Tribes can get behind. And to be very blunt,
6 a reasonable set doesn't mean a hundred, it means what
7 can we really do. I mean, we don't want to deal
8 against ourselves going into this, but at the same
9 time if everything is a priority, then nothing is a
10 priority.

11 MS. STETSON: You just have to find out
12 which ones are the best ones for the majority of the
13 population.

14 MR. MOOREHEAD: Tomorrow I think we will
15 talk about appropriations for the DOI and DOE offices,
16 and Congress the last couple of years has funded them
17 with not an overwhelming amount of money, but enough
18 money to get them up and running, and process these
19 new tariffs and what have you to make capacity
20 building grants to Indian Tribes and et cetera. But
21 my expectation is no matter who is the President, you
22 know, that money will probably still be there for the
23 functioning of the federal offices, but I wouldn't
24 expect, you know, for there to be a reservoir of new
25 project finance money coming out of the United States

1 government.

2 I think that's why these tax incentives and
3 the NARP, Native American Resource Partners, outfits
4 like that are so important on how do you finance it, a
5 project.

6 We don't have to keep going.

7 MS. STETSON: Thank you, Paul.

8 MR. MOOREHEAD: Thank you.

9 I think it's been helpful. I wouldn't
10 imagine this is the last tax session that will be
11 held, and I think now that we know what some of the
12 issues are, as the gentleman in the back raised from
13 the Nevada Tribe.

14

15 (Proceedings adjourned at 3:12 p.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