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INDIAN ENERGY SOLUTION CONFERENCE

GOLDEN NUGGET HOTEL & CASINO
LAS VEGAS, NEVADA

AUGUST 6, 2008
2:09 p.m. - 2:45 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIBAL ENERGY PROGRAM STATUS AND APPROPRIATIONS

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

Chair: Lloyd Irvine,
Confederation of Kootenai Tribes

25 Reported by: JUNE W. SEID, NV CCR 485

1 PROCEEDINGS

2 MR. IRVINE: Hello. I think we will just go
3 ahead and get started here. My name is Lloyd Irvine
4 from the Confederation of Kootenai Tribes and I'll
5 stand in as the moderator here for this session.

6 I guess we had the last session was -- we
7 went through -- I mean the first session we had an
8 intense dialogue of this breakout session. So what I
9 want to do right now is to welcome you here, and this
10 session is to take input and hear your comments and
11 views on the current status of the federal Indian
12 energy programs, the services offered and what is
13 lacking in the service, delivery, and what needs
14 improvement.

15 It has been said that the truest statement
16 of the government's true policy is in its budget. If
17 that is the case, Indian energy is at the lowest of
18 levels of official priority, even though Indian energy
19 holds great promise for national energy policy as it
20 does also for federal Indian policy.

21 Why is there such incon -- that's a long
22 word -- and contradictions in Indian policy and
23 national energy policy?

24 So these are the types of questions that we
25 are going to be talking about here. I'm going to jump

1 right to the back end of this and we will get Paul
2 here more involved. We will have open dialogue on the
3 subject to give everyone a chance to address their
4 questions, ask about issues and understanding about
5 the dilemmas of authorized programs with no funds to
6 make the promises come true.

7 So with that in mind, I think we will -- I
8 would like to introduce Mr. Paul Moorehead of Drinker,
9 Biddle & Reath, LLC. There you go, Paul.

10 MR. MOOREHEAD: Thank you, sir.

11 Just a couple of thoughts to follow up on
12 what Mr. Chairman said. To back up, the chronology
13 here in terms of where we stand with these programs,
14 the Act was passed in August of '05. The reg was not
15 effective until April of '08 to implement the statute
16 again, but it's important to remember that from August
17 of '05 to March of 2007, the Tribes, CERT, NCAI were
18 distracted with the 1813 right-of-way report, so that
19 took literally about a year and a quarter or so out of
20 the effort to push for the reg. And I think, frankly,
21 Interior and Bob Middleton and others were similarly
22 engaged.

23 The same people that were charged with
24 drafting the reg and implementing the statute also had
25 to conduct these listening sessions in Indian Country

1 for the right-of-way report. So not an excuse, but
2 simply an explanation on the timing of the delay
3 between the statute and the reg.

4 In any event, when we move in fast forward
5 in terms of funding and how these programs have fared,
6 in other sessions we touched on this. In fiscal year
7 2007, there was zero money requested and zero money
8 appropriated for DOI and for DOE on the new Indian
9 programs.

10 In the fiscal year 2008 cycle, two million
11 dollars was appropriated for Bob Middleton's office,
12 again 1.4 million for Tribal activities, 600,000 or so
13 for administration of his office.

14 In fiscal '08, DOE, the new Office of Indian
15 Energy Policy and Programs got zero money, but
16 something called Tribal Energy Activities received
17 something like five and a half million dollars. Those
18 activities were largely, if not entirely, the
19 renewable activities I think that Tom Sacco, who many
20 of you know, from DOE managed.

21 And this current cycle, the fiscal 2009
22 cycle, it's not completed, but the DOI, Bob's office,
23 is slated to get two million dollars again. The
24 Office of Indian Energy Policy and Programs similarly
25 will be slated for no money, but it's almost

1 irrelevant at this point because for purposes of
2 fiscal 2009, Congress is not going to enact
3 appropriations bills. They are going to combine them
4 into one big continuing resolution that funds the
5 government for a period that reaches until February,
6 and then at that point we have a new President and a
7 new Congress, and they will address not only fiscal
8 '09 appropriations bills, but fiscal 2010 bills, which
9 would be the normal order of business at the beginning
10 of a new year.

11 So the other negative consequence that comes
12 with a continuing resolution is that these CRs, as
13 they are known, don't carry earmarks generally. They
14 provide a base level of funding to continue the
15 operations of the federal government for a time
16 certain, and that's what Congress is expected to do
17 when they come back from their summer recess.

18 So there are good things in terms of Indian
19 energy programs status, statute to regs, some money to
20 Middleton's office. But things that really need to be
21 worked on, and probably next year more than now, are
22 these appropriations for the DOI side of the equation,
23 as well as some of the tax matters that we discussed
24 in other sessions.

25 I don't, in terms of program status, I don't

1 know what else we could talk about more than we have,
2 but you know, Mr. Chairman, perhaps we should throw it
3 open to questions.

4 MR. CONRAD: Are there provisions for -- and
5 Bob was saying there are guaranteed loans. Are
6 those -- how are those -- you need an appropriation to
7 guarantee a loan or how is that?

8 MR. MOOREHEAD: Well, it's interesting
9 because Bob Middleton's office, under his tutelage,
10 has -- because remember, it's not just energy, it's
11 economic development. He has managed to draw into the
12 office activities formerly carried out by other
13 offices. For instance, the Indian Guaranteed Loan
14 Program is now part of his office, the 477 labor
15 training integration effort is in Bob's office, all
16 with an eye toward launching a project with finance
17 and trained personnel. I think that's the division.

18 But anyway, yes, the Guaranteed Loan Program
19 requires an appropriation, and I think when you hear
20 Bob or some of the loan guarantee officials talk, the
21 leverage is 10 to 1. So with a million dollars in
22 appropriated funds, Bob can issue I think ten million
23 dollars in loans.

24 Now, that's the DOI Guaranteed Loan Program.
25 There also is a Title V authorized DOE Guaranteed Loan

1 Program that has a maximum outstanding loan amount of
2 a billion dollars. But as we discussed earlier,
3 neither Congress nor the DOE has acted to breathe life
4 into that, either through whatever they need to do
5 internally, whether it's a reg or otherwise, or
6 through spending. So that provision is made possible
7 by Title V, but it's not been acted on, and that's
8 another item, frankly, for this platform looking
9 forward.

10 One other thing about the Interior
11 Guaranteed Loan Program, I think it's the case that
12 there are no restrictions in terms of activities that
13 they can fund, so that energy would be a possible use
14 of a guarantee in that case. And the way that it
15 would work is the Tribe works with a bank, private
16 lender, and Uncle Sam would guarantee 90 percent, I
17 think it's 90, maybe 95 of unpaid principal and
18 interest on that loan made to the Tribe.

19 MS. RYDALCH: Ann Rydalch, Idaho National
20 Lab.

21 On Title V there's quite a bit of, as you
22 know, authorization for projects in Title V. Looking
23 into your crystal ball, do you think --
24 appropriation-wise there has been nothing -- do you
25 think that's seeable or doable or will it be?

1 What do you think is more important to
2 get -- or that looks more important for Congress to
3 fund in Title V?

4 MR. MOOREHEAD: I think what we know is the
5 Interior side of the equation in starting with the
6 President's budget request in February has been more
7 charitable, progressive, helpful on the Interior side
8 of Title V. And it has not been helpful on the DOE
9 side. But in the last two cycles, the energy and
10 water appropriations people, both in the Senate and
11 the House, have been interested in getting Steve
12 Morello's office sort of viable as a first step,
13 because I think at some level the congressional intent
14 was that that office would be the coordinator and the
15 clearinghouse, the go-to office for not only the Title
16 V activities, but the other activities located within
17 DOE for which Tribes are eligible.

18 But without -- you know, Steve has a travel
19 budget, and a salary and probably an assistant, and
20 beyond that I don't think it's a going concern in
21 terms of being helpful, so I would guess that would
22 be -- and CERT has weighed in on this with the
23 appropriators repeatedly, that we don't want to, as we
24 implement Title V, we don't want to -- let me rephrase
25 it.

1 We want to start out with a solid foundation
2 in both Interior and Energy, and not leave it to the
3 political process because somebody on the Hill thinks
4 oh, this is important. That would, I think in the
5 eyes of CERT and the board, not be helpful. So I
6 think we can see some funding next year.

7 I wouldn't, to be blunt, I wouldn't expect,
8 you know, the Marshall plan for Indian energy because
9 Congress is going to be under serious constraints.

10 MS. RYDALCH: Thank you very much.

11 MS. THATCHER: My name is Corrine Thatcher.

12 I was just wondering in terms of the way the
13 funds are allocated, is there any inclination to fund
14 more capacity building, or to fund more purchasing of
15 technology or education and training, that sort of
16 thing?

17 MR. MOOREHEAD: At Interior?

18 MS. THATCHER: Yes.

19 MR. MOOREHEAD: I think the capacity
20 building solicitation that Bob Middleton's office sent
21 out was pretty clear. I think they're looking for
22 human expertise, development, and I don't know if you
23 were here, the gentleman from the southwest, I think
24 one of the Pueblos brought this up, that a lot of gear
25 and equipment and indirect cost rates, et cetera, are

1 considered ineligible for being defrayed by the
2 capacity building grant, and that is something that I
3 think we ought to bring up with Middleton.

4 And back in '96 when the Welfare Reform Bill
5 became law, the same debate was occurring because
6 Congress wanted to just walk around all the welfare,
7 Aid to Families with Dependant Children, et cetera, of
8 the Tribes, but without the generational capacity
9 building that the States are going through, so the
10 same issue came up.

11 But based on that solicitation, I would say
12 it's expertise and skills that they are seeking to
13 identify first in terms of inventorying what the
14 Tribes have, where the gaps are, and then what do you
15 need to rectify that lack of expertise, either
16 directly or through contract. I think that's what
17 they want to look at.

18 MR. CONRAD: Without earmarks, was CERT
19 operating with some earmarks? If it's a continuing
20 resolution for '09, '10 and there's no earmark for
21 CERT, two years without funding, that's kind of
22 bringing it to your knees or worse. The CERT needs
23 some support from Tribes in this process, and at least
24 the other question may be CERT prepares a transition
25 paper on Indian energy and takes some leaders to the

1 Hill, or to the administration, or weighs in on
2 appointments or something like that. Is that right?

3 MR. MOOREHEAD: Yes. CERT's federal funding
4 is through an earmark out of DOE. And this cycle,
5 Senator Salazar from Colorado had made it one of his
6 requests, and I don't think it survived the Senate,
7 the Senate committee appropriation process. And the
8 fact that we will all be in a continuing resolution
9 until early next year, you know, puts a strain on the
10 organization's budget. But it doesn't mean that they
11 won't get money, quote, in fiscal '09, it just means
12 it will be delayed.

13 This is the case with a number of Indian
14 organizations. To the extent there's money in the
15 pipeline, unobligated, unspent, whatever the
16 vernacular is, that will help get them to February.
17 But clearly it's not ideal, you know, in terms of
18 having largely a single source of revenue that is
19 either delayed or shut off and you're rendered
20 vulnerable.

21 I talked to David Lester about it this
22 morning, and there's a small contingent of Tribes from
23 Colorado and North Dakota that are going to go to
24 Senator Dorgan, Chairman of the Energy Appropriations
25 Committee, in December or whenever he goes back to his

1 home state and talk to him about this item
2 specifically.

3 As the Chairman said, looking ahead at the
4 platform and what it is that can be done, in the other
5 sessions we got good ideas about tax matters and fees
6 on APDs that need to be addressed. Some of the other
7 challenges, Cotton Petroleum, et cetera.

8 I think it's the intent of the Board and
9 CERT to identify what needs to be done, and who needs
10 to be talked to, and then who is the best vehicle to
11 do it. And, you know, in my experience, constituent
12 Tribes talking to their members' senators is the way
13 to go.

14 There's sort of a detachment when a national
15 organization walks in to a member that has, frankly,
16 very little connection to that outfit, and trying to
17 take advantage of that privity in that connection is
18 something we try to do, so it will definitely be done
19 on CERT's funding, at least the federal funding side.

20 MR. CONRAD: Are there things at the state
21 level, you know, working with utility commissions,
22 getting extra points for red and green energy
23 purchases that we can work with in our own states?

24 I mean, are there renewable portfolio
25 standards, and take that Christmas approach, red and

1 green, like a chile in New Mexico? You know, you get
2 two points if it's red and green, instead of one point
3 if it's just green as far as your portfolio standard
4 goes?

5 I mean, we can have a national strategy
6 where all the Tribes go to their states to help create
7 some of that pull, create some market for those
8 projects. If there are guaranteed loans and there's a
9 market for it, maybe we can actually do something.

10 MR. MOOREHEAD: The first session that I was
11 in, I don't know, I guess it was a tax session, when
12 you look back at the last four or five years and all
13 the tax provisions that have been enacted, you almost
14 need a legal-medical examiner to go back in and figure
15 out what was enacted, what are they geared to do, have
16 they expired, do they need to be reauthorized, are
17 Tribes eligible. And in developing a platform,
18 instead of laying new proposals on top of everything
19 that's happened, is actually do some digging and
20 figure out what would be most helpful and have that as
21 the core of the platform.

22 Because as we sit here in 2008, you know,
23 very good ideas are in the tax code, for instance, and
24 simply need to be extended, so we don't have to dream
25 them up. Congress just has to extend them for a

1 reasonable period, whatever that may be. But the same
2 thing with the ideas you're talking about, okay, they
3 would be I guess under the rubric of new initiatives.

4 MR. CONNELLY: Mike Connelly, Campo.

5 Again, one of the -- it's a really good
6 point that you make. One thing that I wasn't aware
7 of, and I've been really pushing for the
8 transferrability of the production tax credit, and a
9 couple of months ago I stumbled across a reference to
10 the investment tax credit, and I guess -- I don't know
11 if it was ten or fifteen years ago, it was if you're a
12 government you could actually go out and sell them.

13 There was a market for investment tax
14 credits. And man, that would be so much better than
15 transferrability of protection tax credit if we could
16 actually just take them and sell them to anybody that
17 wants them. That would be fantastic, and I wasn't
18 aware that that had even been around. And I don't
19 know if there's any hope in hell of that ever being
20 resurrected, but it's another way to go. And the fact
21 that it was in existence before might even help that.

22 MR. MOOREHEAD: Well, I would encourage you,
23 Mike, to pursue that or send something in. We have it
24 in the record now, but that sounds like something that
25 would be helpful to pursue. And I think in developing

1 an initiative, a proposal or a bill, we are at the
2 front end here, and I think it's prudent to throw a
3 big net, you know, get all the ideas and not jettison
4 things too early, prematurely, because somebody,
5 someplace down the line is going to oppose it. I
6 mean, I don't think that's the way to do this. We
7 want to go for as much as we can, and at the
8 appropriate time make decisions that are pragmatic.

9 MR. CONNELLY: Have you heard of any
10 opportunities for linkages with counties and cities
11 that maybe are in similar situations that would be
12 willing to support some provisions if it would also
13 apply to them on some of these things?

14 MR. MOOREHEAD: I haven't, but I think as we
15 discussed yesterday, with a proposal to make overtures
16 to the various associations on some the tax things,
17 that that would be helpful to do.

18 MR. CONNELLY: I wasn't here yesterday.

19 MR. MOOREHEAD: Okay. I think our friend
20 from Cortina brought that up. And, you know, it all
21 at some point goes back to resources, and I don't mean
22 renewal or nonrenewable, I mean money, for CERT and
23 the member Tribes to be able to pursue these ideas.
24 They need to have some wherewithal. So whether it's
25 employing the professionals that the Tribes have now

1 in service to these ideas or some other idea, I mean
2 that has to be considered very seriously.

3 I think we are in a good position here. I
4 wouldn't be glum, unless everybody is just tired.
5 Come on, Mike, we have got the statutes, the regs, the
6 office is up. What's not to like?

7 MR. CONNELLY: I'm very positive on the
8 whole energy situation.

9 MR. MOOREHEAD: You have to be.

10 MR. CONNELLY: I think it's really coming
11 together as almost a perfect storm. There's a few
12 odds and ends out there, but even the issue of the tax
13 credits and the -- I mean, there's ways to work around
14 those things. It makes it more complicated, but
15 there's ways around that and we are -- I think we are
16 on the upside of the bubble and you can see the stuff,
17 Silicone Valley now, that's the big thing.

18 And IPOs now are renewable energy, and
19 people crawling out of the woodwork to get a piece of
20 the action, foreigners just want to invest in U.S.
21 renewable market like crazy, because they are seeing
22 that eventually the U.S. economy is going to do an
23 about face, and they are going to make money on the
24 change in the dollar in addition to whatever they make
25 on the energy. So there's just so many opportunities,

1 and it's really a great opportunity for the Tribes to
2 get into this.

3 And I just -- I really -- I get kind of glum
4 sometimes when I see so many pushes for grants and
5 studies and all that, and I just think of all the
6 bookshelves we have back at my Tribe, with all the
7 studies that are gathering dust, and it's just -- I
8 just want to see things happen, and not be studied to
9 death.

10 MR. MOOREHEAD: Well, you know, I think this
11 is the question about CERT's mission came up the other
12 day in the tax session, and federal funding and what
13 have you, and my own perspective, and this isn't on
14 behalf of anyone other than myself, is there's always
15 going to be a federal advocacy element to whatever
16 Tribes do, because it's federal, like maritime law or
17 et cetera. But in large measure, we are out of the
18 halls of Congress and we are into project development.
19 This is project time. So that brings certain
20 challenges, but also opportunities for increased
21 revenues and revenue streams, both for Tribes and
22 organizations like CERT, and I hope that that is a
23 discussion that's had inside the Board, because I
24 think that's appropriate.

25 MR. CONNELLY: I've had talks with companies

1 about doing an expansion at Campo and we are looking
2 at ultimately maybe a 750 million dollar project, and
3 I've had companies come in and say yeah, we are really
4 interested in your project, why don't you apply for a
5 grant so you can go do some wind monitoring. And I
6 say, man, 750 million dollar project and you can't
7 cough up a couple hundred thousand to study this
8 thing? You don't even need to be talking to me.
9 Just, you know, you're going to make me go apply for a
10 grant to do this? It's silly, but you know, a lot of
11 people are kind of stuck in that mentality and it's
12 hard to break through from that.

13 MR. MOOREHEAD: I think the question asked
14 about the crystal ball is I wouldn't expect and I
15 don't expect massive federal financing largess for
16 project development to be coming down the pike. I
17 think that's illusory. But they will fund what they
18 need for Middleton's shop to approve TERAs, that's a
19 good use of scarce money. DOE, same thing.

20 MR. IRVINE: Is anybody here from the
21 Northwest Tribal Energy Group? No one?

22 I've got kind of a draft of what they have
23 come up with their proposal for tax amendments and all
24 the way through -- I don't know if they want a copy
25 for this to be forwarded or not.

1 MR. MOOREHEAD: I got this out from the
2 registration table.

3 MR. IRVINE: I think we want it included,
4 because it's part of the Affiliated Tribes of
5 Northwest Indians, and it's made up of 54 Tribes in
6 the Northwest that came up with this draft
7 presentation.

8 MR. MOOREHEAD: And it's got however many,
9 dozen and a half specific legislative initiatives that
10 ought to be pursued.

11 MR. IRVINE: That's right. And as a matter
12 of fact, it includes what we have been talking about,
13 about your tax amendments and business initiatives,
14 all the way down through clarifying bond authorities
15 and infrastructure issues, climate change and carbon
16 issues, bioenergy and small hydropower, and funding of
17 authorized programs, low income programs, wave
18 hydrokinetic energy, off-shore drilling, energy jobs
19 and tribal sovereignty. And these are some of the
20 issues that should be included in the legislative
21 priorities.

22 I think there's copies of this out on the
23 table.

24 MR. MOOREHEAD: There are, yes.

25 MR. CONRAD: Just to make a request I guess

1 of CERT, that however fast you can get a report out or
2 just a general feeling of what occurred at this
3 meeting, there's going to be a United Indian Nations
4 of Oklahoma, Kansas, Texas meeting on August 21st, in
5 Tulsa at the Osage North Tulsa Casino events center.
6 If there could be something that you could transmit,
7 either a summary of a few pages or send somebody to
8 maybe give an informal report or something like that,
9 that would be a great way to start building that --
10 putting that thread through all these regional Tribal
11 organizations. And if Tribes from Oklahoma can be of
12 any help with their senators, you know, energy issues
13 for senators from Oklahoma seem to be a pretty easy
14 thing to ask for support on.

15 MR. MOOREHEAD: Well, in fact, Senator
16 Inhofe introduced a bill to permanently extend the
17 1993 tax incentives. I think because of that Texas
18 into Oklahoma phenomenon, right, from the late
19 nineties, the companies putting property in Tulsa and
20 getting a depreciation for it, but nonetheless he
21 introduced a bill.

22 MR. CONNELLY: You're right. Short session.

23 MR. IRVINE: In regards to what he was
24 talking about to make the recommendation, I think of
25 the overall after we get down here, you know, and

1 compile this and come up with the -- I think David and
2 the staff is going to come up with a compilation of
3 what's going on here and get it out by the end of the
4 day. So what he was talking about would be a good
5 recommendation to do that at that particular time, to
6 have somebody attend this particular meeting down
7 there in Tulsa and give an update of our initiative,
8 what come out of CERT here.

9 Is there anything else? Any more questions?
10 Do we need to reconvene in a general session?

11 MR. LEBEAU: I think that's the schedule for
12 3:30.

13 MR. IRVINE: We can take a break and meet in
14 general session in the main hall.

15 MR. LEBEAU: Back in Pebble Beach.

16 MR. IRVINE: Thank you.

17 MR. MOOREHEAD: Thank you.

18

19 (Proceedings adjourned at 2:45 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