

May 19, 2008

Representative Merle Boucher
Chairman, Tribal and State Relations Committee
North Dakota Legislative Assembly
Bismarck, North Dakota 58505

Re: Status of Relations between the State and Tribes – Oil and Gas Agreement
pursuant to SB 2419 and Motor Vehicle Fuels Taxes

Representative Boucher and Members of the Committee:

Thank you for the invitation to provide an update on the status of relations between the State of North Dakota and Tribal Governments, specifically the ongoing negotiations regarding oil and gas on the Fort Berthold Reservation and a motor vehicle fuels tax agreement with the Turtle Mountain Band of Chippewa.

During the 2007 legislative session, the Legislature passed SB 2419, which authorized the Governor to negotiate certain tax rates with the Three Affiliated Tribes within the exterior boundaries of the Fort Berthold Reservation. These negotiations are still ongoing.

The negotiations have materialized into two different proposed agreements. One agreement addresses the regulatory structure relating to oil and gas and the other agreement sets forth the tax rates and structure on the Reservation.

The regulatory agreement addresses the regulatory roles of the Tribe, BIA, and State and expressly states which laws and regulations are applicable on the Reservation with respect to fee and trust land. The agreement recognizes the inherent sovereign rights of the Tribe regarding its rules and regulations and explicitly states the agreement does not diminish either party's jurisdictional authority.

The outstanding issues with the tax agreement, which I outlined with this committee in my last report, have largely been resolved. The tax rate on fee land will be five percent with the Tribe receiving twenty percent pursuant to SB 2419. The tax rate on trust land is still be negotiated. This is the only tax rate open to negotiations under SB 2419. Whatever the final tax rate, the Tribe will receive fifty percent. A large issue that was resolved was the allocation of taxes between trust land and fee land within a well spacing. Currently, the State Tax Department determines the applicable tax rate based on the location of the wellhead. Under the proposed agreement, the applicable tax rate will be applied on a trust to non-trust ratio that will recognize the higher tax rate for trust land and allocate the additional tax revenue pro rata to the Tribe. Again, the tax agreement does not diminish either party's jurisdictional authority.

While great strides have been made in completing an agreement, a few issues became apparent during the negotiations that may have to be addressed during the next

legislative session. The largest issue is the differing tax rates between the fee and trust lands. The possible differential in tax rates may make for an inequitable incentive split between fee and trust land. I believe it is the perspective of both parties that a substantially similar tax rate on both the trust and fee land would have been mutually beneficial for all parties, including industry. I hope a resolution to the agreements can be reached by the end of this month.

Finally, the Governor met with the Chairman and Tribal Council members of the Turtle Mountain Band of Chippewa last month to discuss a motor vehicle fuels agreement. The Governor indicated he was open to an agreement with the Tribe as long as it was substantially similar to the other motor fuels agreements the State has with the other tribes. The State Tax Department is currently engaged in discussions with the Tribe and we expect to receive a proposed agreement sometime in 2008.

Thank you again for the opportunity to present this information. If you have any questions, please contact me at (701) 328-2200.

Sincerely,

Ryan Bernstein
Legal Counsel