

June 30, 2008

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

Re: Status of Oil and Gas Agreement pursuant to Senate Bill 2419.

Representative Boucher and Members of the Committee:

For the record, my name is Ryan Bernstein, and I am the legal counsel to the Governor. I appreciate the opportunity to appear before you today and tell you the Oil and Gas Agreement between the State of North Dakota and the Three Affiliated Tribes was agreed to and signed June 10, 2008, at New Town, North Dakota.

At this time, I would like to give you an overview of the agreement. I also passed out a copy of the tax agreement for your reference. One of the main principles of the agreement is that each party recognized the inherent sovereign rights of the other. The rest of the agreement focuses on the rate, collection, and allocation of the oil and gas production and extraction taxes.

The total Tribal and State tax rate attributable to production and extraction of oil from Trust Lands is 11.5%. The total State tax rate attributable to production and extraction of oil from Non-Trust Lands is 11.5% with a 60 month exemption on the extraction tax – effectively 5% for 60 months and 11.5% thereafter. All State exemptions apply on the Reservation except the 60 month extraction tax exemption on Trust Land and the Bakken exemption on both Trust and Non-Trust Land.

The Tribe agreed not to impose any taxes or fees on any oil and gas activity or interest within the Reservation except for a one-time \$60,000 TERO fee and a one-time \$40,000 Tribal Application fee. TERO employment regulations apply if the well is located on Trust Land.

The Tribe will receive 50% of the tax collected from the Trust Land and 20% of the tax collected from the Non-Trust Land. If a spacing unit consists of both Trust and Non-Trust Land, the tax is assessed, collected, and allocated proportional to the amount of Trust Land within the spacing unit. This was an important aspect of the agreement for the Tribe, and I must thank the State Tax Department for working through the details to make this happen.

The State Tax Department is responsible for the administration of the taxes covered by the agreement. The agreement is effective July 1, 2008, and will remain in effect for a period of 24 calendar months. It may be renewed for any period upon the written agreement of the parties.

As I have mentioned in previous reports to this Committee, 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 Trust and Non-Trust Lands. I will be compiling a final report regarding the negotiations with the legislative council, pursuant to SB 2419, wherein I will layout in more detail the issues raised by the Tribe and State during these negotiations.

We are still working with the BIA to finalize the regulatory agreement. The Tribe and State have agreed in principle to the terms of the regulatory agreement, but the BIA still has to agree because it holds the Trust Land for the benefit of the Tribe and regulates the oil and gas production on its lands. Governor Hoeven and Chairman Wells met with Secretary of the Interior Dirk Kempthorne in Washington D.C. June 19, 2008, to urge the BIA to sign the regulatory agreement. We also asked DOI to better staff the BIA office in Aberdeen, South Dakota to minimize the turn-around time on the Trust leases.

When we started to negotiate this agreement, I hoped to accomplish three things: create more revenue for the Tribe and State, promote economic development on the Reservation, and open the doors to the Reservation while maintaining Tribal sovereignty. I think we accomplished all three with this agreement.

I must close with several acknowledgements. Many people made this agreement possible through their hard work and vision. It started with a delayed bill in the Legislature. The majority leaders from both houses moved the bill forward and ultimately the bill was passed overwhelmingly. Chairman Wells and Governor Hoeven both remained committed to finding a resolution that benefited both parties. The Tribal Council and Chairman Wells' staff were instrumental in working out the details of this agreement. Also, the State Tax Commissioner, Attorney General's Office, and Lynn Helms of the Oil and Gas Division worked closely with the Governor's Office in drafting this agreement and lent invaluable expertise to the details of this agreement.

Mr. Chairman, members of the committee, thank you for your time,  
and I am happy to answer any questions.