

Tribal Energy Subcommittee
Tuesday, February 27, 2018
1:00-2:30 PM CT
Meeting Summary

Welcome and Roll Call

Meeting Introduction

- Meeting purpose: for attendees to raise any questions or concerns about materials put forth by this subcommittee to the full RPC.
- Review of RPC operating procedures and definition of decision making by consensus.
- At the RPC meeting, the Tribal Energy Subcommittee will provide updates on each of the four working groups and highlight expected statutory changes. The subcommittee will recommend an official name change from Tribal Affairs to Tribal Energy and will provide recommendations from the four working groups at subsequent RPC meetings.
- The four working groups cover key areas explored by the subcommittee:
 - TERA
 - 1938 Act
 - Model Statute
 - Taxation

TERA Working Group Presentation

- The TERA Working Group's preliminary recommendation is for DOI to enhance the definition of what constitutes inherently federal functions and what functions Tribes will be able to utilize under TERA.
- It is currently difficult to apply for a TERA without further definition by DOI of the term "inherently federal functions."
- Energy independence can't be achieved without development on Tribal lands.

Model Statute Working Group Presentation

- The Model Statute Working Group seeks to review the variety of statutory structures currently available and the barriers – under each of these structures – to tribes seeking their own resources.
- Statutory vehicles introduced in Congress are typically narrow and tweak existing vehicles without rethinking the whole system. This group is developing the scope of what a model statute would look like.
- The group seeks advice from the full RPC about what should be considered in working group discussions. The appendix included in the meeting materials has initial ideas but needs more input. By June or September the working group hopes to have a more structured proposal for the model statute.

1938 Act

- The 1938 Act Working Group is considering what congressional changes to the 1938 Act are necessary if tribes wish to control the process of leasing.

- In further discussion, the Working Group will propose amended language that would allow tribes to do their own permitting.

Taxation Working Group Presentation

- The Taxation Working Group was formed to look at existing statutes and regulations that have prevented energy development in Tribal lands.
- The group has discussed updating Indian Trader Regulations so partners can maximize return in Indian energy development.

Comments on Working Group Presentations

- Taxation on trust lands is an impediment to energy development. This working group needs to articulate the need for change in ways that are achievable.
- There are concerns that gas flaring can result in lost money and other impacts to the environment.
- There are concerns that lower royalty rates impact rates that Tribes charge partners on trust land.
- The Taxation Working Group should consider broadening the proposed dual taxation fix to go beyond Indian Trader statutes. Consider amending existing regulations under the Indian Mineral Leasing Act (sections 211, 212), and the Indian Mineral Development Act (section 225).
- Consider removing property tax from existing ONRR regulations.
- Consider how to fix the restriction on Tribes' ability to issue tax-exempt bonds without making statutory changes.
- Consider recommending a rule that companies would defer to Tribal law on flaring.
- DOI has limitations that preclude overturning tax law.

Comments on boosting (from Fair Value and Return Subcommittee recommendations)

- Tribes and DOI have questions about the boosting issue.
- Changes being proposed are for Federal regulations, not Indian regulations, however concerns are that the practice will be mandatory on Indian country

Next Steps:

- Taxation Working Group bring in additional representatives from DOI/ASIA and consider what actions can be recommended to the Secretary.
- DOI provide information to the Taxation Working Group to support discussion about feasibility of addressing taxation issues at the Departmental level.
- Tribal Energy Subcommittee provide input on Planning, Analysis and Competitiveness Subcommittee recommendations.
- Tribal Energy Subcommittee provide input to the Fair Value and Return Subcommittee on 1) coal valuation having the first benchmark be equivalent to oil/gas and 2) boosting.

Attendees:

President Russell Begaye, Najavo, Subcommittee Co-Director

Dr. Steven Payson, ASIA, Subcommittee Co-Director
Bidtah Becker, Navajo
Jackson Brossy, Navajo
Rob Joe, Navajo
Councilman Adam Red, Southern Ute
Tom Shipps, Southern Ute
John Melhoff, ONRR
Cynthia Monteau, MHA Nation
Chairman Mark Fox, MHA Nation
John Fredericks, MHA Nation
John Barder, ONRR
Jim James, BIA
James Schindler, RPC Executive Director, DOI/BOEM
Charles Robertson, Choctaw
Lynn Helms, North Dakota Industrial Commission
Adam Stern, DOI
Benjamin Simon, DOI
Chris Stolte, DOI
Josh Campbell, DOI
Mike Nedd, BLM
Jennifer Malcolm, ONRR
Bonnie Robson, ONRR
Monte Mills, University of Montana School of Law
Greg Gould, ONRR
Chairman Everett Waller, Osage
John Andrews, State of Utah
John Sweeney, VWR Corporation
Matthew Adams, Cloud Peak Energy
Randall Luthi, National Ocean Industries Association
John Tahsuda, ASIA
Chris Mentasti, ONRR