

April 15, 2015

RECOMMENDATIONS TO THE SENATE FINANCE COMMITTEE FROM WESTMORELAND COAL COMPANY, ENGLEWOOD, COLORADO

LEVELING THE PLAYING FIELD – INDIAN COAL PRODUCTION TAX CREDIT

The Indian Coal Production Tax Credit provides a crucial tax incentive to level the playing field for future development of the vast Tribal coal resources that are subject to more regulatory requirements than comparable development on private, state, or federal lands, as well as to protect the economic viability of existing Tribal coal mining projects that provide much-needed jobs and whose royalties and taxes provide a major source of non-Federal funding for coal-producing Tribes. This tax credit must be permanently reauthorized with some important revisions to ensure that Indian Tribes can pursue economic development and self-determination.

Current Law

The Energy Tax Incentives Act of 2005 provided a business tax credit starting in tax year 2006, based upon the number of tons of Indian coal produced and sold to an unrelated party. “Indian coal” is coal produced from reserves owned by an Indian Tribe or held in trust by the United States for the benefit of an Indian tribe, as of June 14, 2005. (*See* 26 USC Section 45 (c)(9).) Eligible facilities must have been placed in service by January 1, 2009. (*See* 26 USC Section 45 (d) (10).) The tax credit is calculated by multiplying the number of tons of Indian coal produced and sold by \$1.50 for calendar years 2006 through 2010; and by \$2.00 for calendar years beginning after 2010. Both dollar amounts will be adjusted for inflation each year. This credit was allowed to be used against alternative minimum tax (AMT) for four years. The credit did not apply for sales occurring after December 31, 2012. (*See* 26 USC Section 45(e)(10).) Section 406 of the American Taxpayer Relief Act of 2012 extended this tax credit through the end of 2013. The credit expired on December 31, 2013, was renewed and expired again in December 2014.

Proposal

A permanent extension of the Indian Coal Production Tax Credit is sought to provide stability and attract energy investors. Striking the expiration date and the “placed in service” date will achieve this goal. In addition, modifications to existing law are needed to allow the credit to be used against alternative minimum tax (AMT) for the full period of the credit and to delete the requirement that the coal be sold to an unrelated person, in order to allow mine-mouth coal conversion facilities to participate as well as facilities owned by Tribes. This proposal has been incorporated into H.R. 1522, as introduced in the House. A companion bill is expected to be introduced in the Senate in the near future.

Reason for the Change

The Indian Coal Production Tax Credit serves to counter-balance the additional costs and time required to permit and lease Indian coal, to buffer the impacts caused by the general vagaries of

the coal markets, and to encourage private investment in Indian energy, jobs, and wealth. The credit leverages Tribal coal revenues and employment that are worth several times the cost of the credit. All of these benefits contribute to funding critical tribal governmental functions and securing the self-sufficiency and self-determination of the coal-producing Tribes. A permanent extension to the Indian Coal Production Tax Credit is needed to ensure these multiple benefits for the future. A permanent extension will provide the certainty investors need for effective long-term business planning, which is, of course, critical for large energy development projects.

How does the Indian Coal Production Tax Credit impact the economy?

All of Westmoreland Coal Company's (Westmoreland's) experience mining Indian coal is with our long-term partner (over 40 years of continuous mining), the Crow Tribe of Montana. While the following information applies to Crow only, we understand that the other federally-recognized Indian Tribes now mining their coal are in very similar situations regarding their dependency on their coal production as means of self-sufficiency.

The revenues and royalties produced by the current mining of Crow coal supports two-thirds of the annual non-Federal Tribal budget, on average. Maintaining this mining activity is crucial for the day-to-day operation of tribal government functions. There is no source of funds available to replace the coal-supported funding. The negative impact of a threat to the operation of the current mining operation, the Absaloka Mine, would be devastating to the Crow Tribe. On the other hand, the Absaloka Mine provides good-paying, benefit-providing, stable jobs to members of the Crow Tribe. 70% of the work force at the mine is Crow. Unemployment on the Reservation is 47%. The mining jobs create a significant impact for the miners and their immediate and extended families.

And as noted above, the ICPTC helps to level the playing field for Indian coal to compete fairly with coal resources on private, state, or federal lands. The regulatory burden for permitting a mine on a federally-recognized Indian Reservation is significantly higher than that applied to permits on other land. In order to attract a mining company, Tribes need a reason to counterbalance the additional costs and time required to permit a Tribal mine as compared to permitting a non-Tribal project. Westmoreland Resources, Inc. ("WRI"), who operates the Absaloka Mine, estimated that they spent twice as long at twice the cost to re-permit the mine when the mining activity moved over the Reservation line. With the ICPTC, mining companies are attracted to Indian coal because the tax credit helps balance the additional permitting costs.

The Crow Tribe executed an agreement with WRI in March 2013 to expand its mining operations with a lease of an estimated 145 million tons of Rosebud McKay coal resources located adjacent to the Mine. This new lease will provide the Crow Nation with long-term revenues and employment and sustain the operations of the Mine past 2020.

Similarly, in June 2013, the BIA approved another tribally-approved agreement with Cloud Peak Energy ("CPE") to explore, with options to lease, and develop an estimated 1.4 billion tons of Crow coal in the southeastern corner of the Crow Reservation. This long term agreement will also provide much needed revenue to the Crow Nation, increase employment opportunities for Crow and Montana citizens, and diversify tribal revenue sources.

We understand that a permanent extension of the ICPTC – including application to AMT – will be decisive in CPE’s future decisions to exercise its lease options and develop this Tribal coal, which will more than double the Tribe’s royalty and tax revenue, along with related bonus payments and college scholarship funding. Extension of the ICPTC will also support Westmoreland’s large additional investment for developing the new Tract I area, and maintaining this critical source of Tribal revenue and employment. Without the ICPTC in place, the economics of the Absaloka mine expansion are difficult at best.

The ICPTC has significant impacts on the economy of the Crow and the region of Montana and Wyoming surrounding the reservation. Because continued interest in mining Indian coal, with its much more difficult regulatory regime, is highly dependent of the permanent extension of the ICPTC, it is crucial that the ICPTC be included in any tax reform package moving forward. Without revenues produced by their mined coal, the coal-mining Tribes would become dependent on the federal government to replace the lost mining taxes and royalties. In addition, the major source of good-paying jobs on the reservation would be gone, thereby increasing an already high unemployment rate. The net effects would be devastating to the Tribe and its members and ultimately costly to the Federal government.

The Indian Coal Production Tax Credit makes the tax code fairer.

As discussed above, the ICPTC serves to counterbalance the additional regulatory burdens that come with permitting a mine on a federal Indian reservation. By allowing Indian Tribes to compete more effectively with other holders of coal resources, the tax code allows the Tribes to compete fairly in the coal market.

The Indian Coal Production Tax Credit effectively supports other important Federal policy objectives such as Native American self-determination.

By allowing Indian coal to compete with coal resources on private, state, or federal land, the ICPTC supports the development of Indian-owned resources, thereby supporting tribal economic growth, employment and self-sufficiency. As we continue to develop our natural resources, we grow the basis of support for all of the Tribe’s economic development, which as you well know, is critical to create a stable environment to best serve our people.

Summary of the “Playing Field” – Regulatory Burden

Coal mine permitting is generally regulated by the Federal Surface Mining Control and Reclamation Act (SMCRA) administered by the Office of Surface Mining Reclamation and Enforcement (OSM), and approved State (and Tribal) plans for implementing the Act. SMCRA is one of the most complex and comprehensive regulatory schemes in any industry.

Below is a summary and comparison of regulatory agencies involved in developing Private, Federal and Tribal coal in Montana, including administration of SMCRA and additional requirements for Tribal lands:

Mine Location	Agency	Examples of Agency Functions
Off-Reservation Private Coal & Surface	Montana Dept. of Environmental Quality (MDEQ)	All mine and exploration permitting
Off Reservation Federal Coal/Private Surface	MDEQ Bureau of Land Management (BLM)	All mine permitting Exploration permitting
Tribal Coal	OSM	Most mine permitting
	Bureau of Indian Affairs (BIA) ¹	Exploration program approval Trust Land surface access appraisals and consent approvals ² Rights of Way appraisals and consent approvals Lease approval for mining
	BLM	Exploration plan approval
	U.S. EPA	Water discharge/NPDES permits
	Crow Tribe	Training and workforce development Cultural resources protection
	MDEQ	Absaloka Mine "Ceded Area" permitting (with OSM concurrence) Off-Reservation infrastructure/impacts for mines near the Reservation border

¹ Each federal agency approval must comply with NEPA (CatEx, EA or EIS)

² For Cloud Peak Energy's Big Metal project, surface access agreements for initial exploration involve 39 tracts of allotted trust land with a total of 560 individual Indian owners.

Draft bill to permanently extend the Indian Coal Production Tax Credit:

MCG15201 S.L.C.

114TH CONGRESS, 1ST SESSION

S.

To amend the Internal Revenue Code of 1986 to extend and improve the Indian coal production tax credit.

IN THE SENATE OF THE UNITED STATES

Mr. DAINES introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to extend and improve the Indian coal production tax credit.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 **SECTION 1. EXTENSION AND IMPROVEMENT OF INDIAN**
4 **COAL PRODUCTION TAX CREDIT.**

5 (a) **REPEAL OF LIMITATION BASED ON DATE FACIL**
6 **ITY IS PLACED IN SERVICE.**—Section 45(d) of the Inter
7 **nal Revenue Code of 1986 is amended to read as follows:**
8 **“(10) INDIAN COAL PRODUCTION FACILITY.—**
9 **The term ‘Indian coal production facility’ means a**
10 **facility that produces Indian coal.”.**

1 (b) **REPEAL OF LIMITATION ON PERIOD DURING**
2 **WHICH COAL MUST BE PRODUCED AND SOLD; TREAT**
3 **MENT OF SALES TO RELATED PARTIES.**—Section
4 **45(e)(10)(A) of the Internal Revenue Code of 1986 is**
5 **amended by striking “per ton of Indian coal—” and all**
6 **that follows and inserting the following: “per ton of Indian**
7 **coal—**
8 **“(i) produced by the taxpayer at an**

9 Indian coal production facility, and
10 “(ii) sold (either directly by the tax
11 payer or after sale or transfer to one or
12 more related persons) to an unrelated per
13 son.”.

14 (c) REPEAL OF LIMITATION ON TREATMENT AS A
15 SPECIFIED CREDIT.—

16 (1) IN GENERAL.—Section 38(c)(4)(B) of the
17 Internal Revenue Code of 1986 is amended by redes
18 ignating clauses (iv) through (ix) as clauses (v)
19 through (x), respectively, and by inserting after
20 clause (iii) the following new clause:
21 “(iv) the credit determined under sec
22 tion 45 to the extent that such credit is at

23 tributable to section 45(e)(10) (relating to
24 Indian coal production facilities),”.

1 (2) CONFORMING AMENDMENT.—Section
2 45(e)(10) of such Code is amended by striking sub
3 paragraph (D).

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to coal produced and sold after
6 the date of the enactment of this Act, in taxable years
7 ending after such date.