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Reply to Reno

Via Email

September 19, 2025

Nevada State Board of Equalization
c/o Kari Skalsky
1550 College Parkway, Suite 115
Carson City, NV 89706

Re: **State Board of Equalization Case No. 25-155; Appellant's Response to Clark County Assessor's Position on Appeal.**

Dear Board Members,

This memorandum is submitted in response to the Clark County Assessor's Case Summary ("County's Position") in 325MK 8ME, LLC's ("Appellant") direct appeal ("Appeal") in Case No. 25-155. For purposes of this memorandum, the Eagle Shadow Mountain Solar Project shall be referred to as the "ESM Project" and the Moapa Band of Paiute Tribe shall be referred to as the "Moapa Band" or "Tribe." Please include this response as part of the record in Case No. 25-155.

I. EXECUTIVE SUMMARY

The County's Position treats the determinative aspects of this Appeal in a cursory manner and reflects a failure to engage with the basic elements of applicable law. Such cursory treatment is observed in Clark County misrepresenting the language of the ESM Project's controlling agreements, disregarding on-point and binding federal law regarding both *per se* and implied preemption, misplacing reliance on non-binding out-of-Nevada authority shaped by different facts than those at play here while incorrectly applying applicable Nevada law, and ignoring direct guidance Appellant received from the State of Nevada while developing the project. All of these issues are discussed in detail below. A correct application of relevant federal law and Nevada guidance makes clear that Clark County has no authority to assess property tax on the ESM Project.

II. DISCUSSION

A. Clark County Misrepresents the ESM Project's Controlling Agreements.

Clark County misreads and misrepresents the agreements that control the ESM Project. Clark County claims the Solar Energy Ground Lease Agreement ("Lease") mandates that "upon the termination of the lease the Tenant Improvements **must** be removed by [Appellant], and the property must be restored

to substantially the same condition as the beginning of the lease unless the [Moapa Band] elects to purchase the Tenant Improvements."[1] Clark County doubles down on this inaccuracy when it states "Section 12 of the lease **requires**, at the Tribe's election, that [Appellant] remove all of Tenant's Property, including Tenant Infrastructure Improvements" and requires "a decommissioning plan."[2]

In fact, **the Lease does not require the ESM Project to be removed by default upon termination**. Section 12.01 of the Lease clearly grants the Moapa Band multiple options to exercise at its "sole discretion" upon "expiration or earlier termination" of the Lease which include: "(a) remove all of Tenant's Property, including Tenant Infrastructure Improvements, from the Premises, (b) remove all of Tenant's Property, except for Tenant Infrastructure Improvements, from the Premises, or (c) not remove any of Tenant's Property including Tenant Infrastructure Improvements, from the Premises."[3] The Lease expressly gives the Moapa Band three options and allows the Moapa Band to elect one of those options.

Moreover, the Lease does not require a decommissioning plan except in specific circumstances. Such plans are only necessary if the Moapa Band elects to remove the ESM Project via Section 12.01(a) or (b), and are not required if the Moapa Band exercises its option in Section 12.01(c) to purchase and keep the ESM Project.[4]

Clark County's representation that the ESM Project "must be removed" by Appellant fails to address the full context of the relationship between Appellant and the Moapa Band. Removal is one option, but the Moapa Band also has the option to keep the improvements. Section 7.04(A), which Clark County disregards, states that the "Tenant Infrastructure Improvements," which expressly includes the Solar Power Facilities, "shall be treated as permanent improvements."[5] This statement, combined with the Tribe's right to acquire outright ownership of the ESM Project, confirms the intent of Appellant and the Moapa Band that the ESM Project would remain permanently installed upon the land.

B. Clark County Disregards Controlling Federal Law.

i. Clark County Mischaracterizes *Chehalis*.

Clark County suggests that *Confederated Tribes of Chehalis Reservation v. Thurston County Board of Equalization* [6] ("*Chehalis*") is not applicable here because in that case a tribe and a non-tribal entity

[1] County's Position at 2.

[2] *Id*. at 4.

[3] *See* Solar Energy Ground Lease Agreement ("Lease") at Section 12.01; the Lease referred to herein was attached as "Exhibit E" to the Letter Appellant submitted to Mr. Thomas Walusek on September 9, 2025.

[4] *See id*. at Sections 12.01, 12.02.

[5] *See id*. at Section 7.04(A).

[6] 724 F.3d 1153 (2013).

shared ownership of a separate legal entity that owned improvements located on tribal land.[7] However, this indirect, partial tribal ownership was irrelevant to the *Chehalis* court.

Chehalis is underpinned by the U.S. Supreme Court's decision in *Mescalero Apache Tribe v. Jones*[8] ("*Mescalero*").[9] In *Mescalero*, the U.S. Supreme Court invalidated a state use tax on permanent improvements located on tribal land, reasoning that this form of tax was equivalent to a tax on land, and therefore barred.[10] The U.S. Supreme Court's conclusion was based on the improvements being "permanently attached to the realty" and that "use of permanent improvements upon land is so intimately connected with use of the land itself that an explicit provision relieving the latter of state tax burdens must be construed to encompass an exemption for the former."[11] The Supreme Court concluded that because "these permanent improvements on the Tribe's tax-exempt land would certainly be immune from the State's ad valorem property tax," they must also be exempt from the state's use tax.[12]

The Ninth Circuit in *Chehalis* found the following specific ruling from *Mescalero* to be dispositive: "where the United States owns land covered by [25 U.S.C. § 5108], and holds it in trust for the use of a tribe," section 5108 "exempts permanent improvements on that land from state and local taxation[.]"[13] Neither *Mescalero* nor *Chehalis* investigated or cared whether the improvements were owned by the tribal or non-tribal entity. In fact, ***Chehalis* expressly rejected the very argument Clark County makes here** (that because the ESM Project is owned by Appellant it is subject to local property tax):

> The County raises several arguments to counter this conclusion. First, the County attempts to distinguish *Mescalero* on the ground that the improvements at issue in this case are owned by CTGW, not the Tribe itself. ***Mescalero* instructs us, however, that this distinction is irrelevant**. In that case, as noted above, the form of the business through which the Mescalero Apache Tribe owned and operated the ski resort was unclear. *Mescalero* acknowledged this, but concluded it was **unimportant** because 'the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business.' *Mescalero*, 411 U.S. at 157 n. 13, 93 S.Ct. 1267. In light of this ruling, the question of immunity from the County's property tax assessments on the Great Wolf Lodge 'cannot be made to turn on' the Tribe's decision to give ownership of the Lodge to its limited liability company for the duration of the lease. *See id*.[14]

The Ninth Circuit concluded that the preemption of state and local taxation on permanent improvements built on tribal trust land applies "**without regard to the ownership of the**

[7] County's Position at 3, 4.

[8] 411 U.S. 145 (1973).

[9] *See generally Chehalis*, 724 F.3d 1153.

[10] *Mescalero*, 411 U.S. at 158.

[11] *Id.*

[12] *Id.*

[14] *Chehalis*, 724 F.3d at 1157 (emphasis added).

improvements."[15] The U.S. Supreme Court's decision in *Mescalero* and the Ninth Circuit's decision in *Chehalis*—that ownership of the improvements is "irrelevant" and "unimportant" in determining the state taxability of improvements on tribal land—are binding precedent. It was the permanence, not the ownership, of the improvements that mattered to each court. Under *Mescalero* and *Chehalis*, ownership of the improvement is not relevant to taxability, much less dispositive.[16]

Clark County also fails to appreciate the broader, longstanding legal context in which *Chehalis* (and *Mescalero* and *Stranburg*) arose. More than a century ago, in *United States v. Rickert*[17] ("*Rickert*"), the Supreme Court confirmed that permanent improvements on tribal land are immune from state taxation because the improvements are "essentially a part of the lands."[18] *Chehalis* relied on *Rickert*, in addition to relevant federal statutes, in reaching the conclusion that tax immunity applies regardless of ownership of the improvements.[19] *Rickert* and *Mescalero* both form part of an unbroken chain of Supreme Court cases holding that state and local governments may not regulate and tax Indian lands unless expressly authorized by Congress.[20]

ii. Clark County Ignores the Federal Leasing Regulations.

Clark County ignores the extensive federal leasing regulations under which the Lease was approved by the federal Bureau of Indian Affairs[21], and which apply to leases on the Moapa Reservation. Among the current set of leasing regulations is 25 CFR § 162.017(a), which provides that "[s]ubject only to applicable Federal law, **permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State**. Improvements may be subject to taxation by the Indian tribe with

[15] *Id.* at 1159.

[16] At least one other federal appellate court, in a case similar to *Chehalis*, reached the same result. In *Seminole Tribe of Fla. v. Stranburg* ("*Stranburg*"), 799 F.3d 1324 (11th Cir. 2015), the Eleventh Circuit considered a "rental tax" imposed by the state against lessees of real property. The state sought to collect this tax from a non-Indian company which leased and operated dining facilities within the tribe's on-reservation casinos. Though the tax was not a direct tax on the tribe's land or improvements thereon, the Eleventh Circuit held that the state's tax on commercial rent payments constituted a tax on a core "privilege of ownership" of real property, and the court disallowed the tax. That the taxpayer was a non-Indian company was as irrelevant for the Eleventh Circuit as it was for the Ninth Circuit in *Chehalis.*

[17] 188 U.S. 432, 442 (1903).

[18] *Rickert*, 188 U.S. at 442.

[19] 724 F.3d at 1155.

[20] *See, e.g., Cass County v. Leech Band of Chippewa* Indians, 524 U.S. 103, 110 (1998) ("State and local governments may not tax Indian reservation land 'absent cession of jurisdiction or other federal statutes permitting it.') (quoting *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251, 258 (1992)); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 170-71 (1973) ("State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply.").

[21] Record of Decision, Final Environmental Impact Statement of the Eagle Shadow Mountain Solar Projects, U.S. Dept. of the Interior, Bur. of Indian Affairs, Western Region, dated February 2020. A copy of the Record of Decision is attached to this letter as **Exhibit U**.

jurisdiction."[22] The regulations go on to say that while leases approved thereunder are subject to both federal and tribal laws, they are not subject to state law except where a tribe or Congress has made state law applicable.[23]

The preamble to these regulations clarifies that state taxation of tribal lands and improvements thereon, regardless of ownership, is preempted under longstanding law (as discussed above). The preamble further explains: "[t]he Federal statutes and regulations governing leasing on Indian lands (as well as related statutes and regulations concerning business activities, including leases, by Indian traders) occupy and preempt the field of Indian leasing. The Federal statutory scheme for Indian leasing is comprehensive, **and accordingly precludes State taxation**."[24] In addition to these general regulations that pertain to all leasing of tribal lands, there are specific regulations that govern the terms on which tribes may enter into leases for solar energy projects, such as the Lease for the ESM Project.[25] These regulations are extensive, and include provisions (among many others) to ensure the term, compensation, subleasing, mortgaging, and insurance requirements contained in any solar energy lease are fair to the tribe.[26] The regulations include specific language contemplating that the non-Indian lessee under a solar energy lease would own any permanent improvements installed during the lease term, and affirming that any "facilities and associated infrastructure" installed by the lessee for the generation and delivery of electricity shall be "considered permanent improvements," and thereby subject to exclusion from state and local taxation under § 162.017.[27]

The purposes of the federal leasing regulations would be undermined if states could impose their own taxes on non-Indian lessees. "The leasing of trust or restricted lands facilitates the implementation of the policy objectives of tribal governments through vital residential, economic, and governmental services."[28] As discussed in our prior submission and reiterated below, imposition of state tax could chill tribal economic development and hinder tribal self-governance, contrary to federal law, policy and objectives.

iii. Clark County Misunderstands *Bracker*.

As explained above, *Chehalis* and other binding federal law preempt Clark County from imposing its property tax on the ESM Project, *per se*. Because the ESM Project consists of permanent improvements to tribal trust land, this is a bright-line rule.

Furthermore, as Appellant pointed out in its Letter to Mr. Thomas Walusek on September 9, 2025, county taxation of the ESM Project is also preempted because the balance of interests weigh against the

[22] Emphasis added.

[23] 25 CFR § 162.014.

[24] 77 Fed. Reg. 72447 (Dec. 5, 2012), 2012 WL 6019492 (emphasis added).

[25] 25 CFR § 162.538 et seq.

[26] *Id.*

[27] 25 CFR § 162.543-544.

[28] *Id.*

imposition of the property tax pursuant to *White Mountain Apache Tribe v. Bracker*[29] ("*Bracker*").[30] Absent *per se* preemption (for taxation of tribal land and attachments thereto), the *Bracker* case sets forth a balancing test to consider whether it is lawful to tax non-tribal parties engaging in business on tribal land.[31] A critical inquiry under a *Bracker*-analysis is whether, and to what extent, Clark County has an interest in imposing taxes and whether the tax is related to the activity being taxed. Those interests (if any) are to be weighed against the interests of the tribe and the federal government in avoiding the state tax.[32]

While Clark County acknowledges that *Bracker* requires a careful assessment of the tribe's interests,[33] the County fails to actually address the tribe's interests. And, as to its own interest, Clark County provides a single sentence: "Clark County has a substantial interest as the property tax helps Clark County maintain roads and supports numerous other County services which aid the Tribe."[34] The County's conclusory and self-serving statement should carry no weight.

The County's interest in maintaining its tax on the ESM Project is weak under the *Bracker* framework. Under *Bracker*, the state's "generalized interest in raising revenue" is insufficient to justify the burden that the state's taxation would impose on the tribe's interest in self-government or on the federal regulatory scheme.[35] *Bracker* balancing requires that a state's revenue collection on tribal land be related to governmental services that the state provides to the taxpayers in question—i.e., that the state hold "duties or responsibilities" with respect to the matter or property being regulated before imposing its own taxes.[36] The Ninth Circuit has further clarified numerous times that, in cases where significant federal and tribal interests exist, a state may impose its taxes "**only if its taxes are 'narrowly tailored' to funding the services it provides in connection with the activities taking place on tribal land**" (emphasis added).[37] The "numerous other County services" Clark County refers to are not identified in the County's Position nor does any evidence of such services exist in the record. As attested by the Chief Operating Officer of Appellant's parent company, the County provides no meaningful services to the ESM Project or the Moapa Reservation generally.[38] On the contrary (and in direct opposition to the County's statement that it maintains

[29] 448 U.S. 136 (1980).

[30] *See* Letter Appellant submitted to Mr. Thomas Walusek on September 9, 2025 at 24–27.

[31] *Bracker*, 448 U.S. at 144, 145.

[32] *Hoopa Valley Tribe v. Nevins* ("*Hoopa Valley*"), 881 F.2d 657, 661 (9th Cir. 1989).

[33] County's Position at 5.

[34] *Id*. at 5.

[35] *Bracker*, 488 U.S. at 150.

[36] *Ramah Navajo Sch. Bd. v. Bureau of Rev.* ("*Ramah*"), 458 U.S. 832, 843-845 (1982).

[37] *Gila River Indian Cmty. v. Waddell*, 967 F.2d 1404, 1412 (9th Cir. 1992); *see also Hoopa Valley*, 881 F.2d at 661 ("To be valid, the California tax must bear some relationship to the activity being taxed."); *Crow Tribe of Indians v. State of Mont.*, 819 F.2d 895, 901 (9th Cir. 1987) aff'd sub nom. *Montana v. Crow Tribe of Indians*, 484 U.S. 997, 108 S. Ct. 685, 98 L. Ed. 2d 638 (1988) ("Even if Montana's interests are sufficiently legitimate, there is substantial evidence that the coal taxes are not narrowly tailored to support them.").

[38] Affidavit of Justin Johnson dated September 9, 2025 at par. 52-53.

roads for the benefit of the Tribe), the Tribe itself maintains the roads on the Reservation, including around the ESM Project; the County's road maintenance deteriorates as the road gets closer to the Reservation, and visibly and abruptly stops at the border of the Reservation, as shown in photographs attached as Exhibit S to the Letter Appellant submitted to Mr. Thomas Walusek on September 9, 2025.[39]

Under *Bracker*, the interests of the Moapa Band and the federal government, and the burden the state tax would impose on each of them and their sovereign powers, are weighty. Where the federal government has established extensive regulations applicable to the activity being taxed, courts find that imposition of state taxes threatens the ability of the federal government to enforce those regulations and fulfill its obligations toward tribes.[40] Federal law supports the leasing of tribal land "to allow Indian landowners to use their land profitably for economic development, ultimately contributing to tribal well-being and self-government."[41] Further, an "[a]assessment of State and local taxes would obstruct Federal policies supporting tribal economic development, self-determination, and strong tribal governments."[42]

In *New Mexico v. Mescalero Apache Tribe*[43] ("*New Mexico*"), the United States Supreme Court stated "when a tribe undertakes an enterprise under the authority of federal law, an assertion of State authority must be viewed against any interference with the successful accomplishment of the federal purpose."[44] Tribal interests are undermined by the imposition of state taxes, even where the tax is directly imposed upon non-Indians doing business with the tribe. In *Bracker* itself, a state tax was levied against the business operations of a **non-Indian** logging company operating on tribal land, and the Supreme Court nonetheless held that the White Mountain Apache Tribe would face a meaningful economic and regulatory burden if the State of Arizona were allowed to impose its tax on the non-Indian logging company. That's because (among other things) dual taxation puts tribes at a disadvantage in attempting to attract investment from outside businesses, chilling tribal economic development and constraining tribes' sovereign ability to use their own taxing power as a policy tool.[45]

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[39] To the extent the County might argue that maintaining county roads allows access to the ESM Project and justifies the property tax, the Supreme Court has found that argument unpersuasive. *See Ramah*, 458 U.S. at 843-44 ("The only arguably specific interest advanced by the State is that it provides services to [taxpayer] for its activities off the reservation," which is not a legitimate justification).

[40] *Bracker*, 488 U.S. at 149 ("The imposition of the taxes at issue would undermine that policy in a context in which the Federal Government has undertaken to regulate the most minute details of timber production and expressed a firm desire that the Tribe should retain the benefits derived from the harvesting and sale of reservation timber."); *Ramah*, 458 U.S. at 841-42 ("The direction and supervision provided by the Federal Government for the construction of Indian schools leave no room for the additional burden sought to be imposed by the State through its taxation of the gross receipts paid to Lembke by the Board.").

[41] *See* 77 Fed. Reg. 72440-01 (Dec. 5, 2012), 2012 WL 6019492.

[42] *See id*.

[43] 462 U.S. 324 (1983).

[44] *New Mexico*, 462 U.S. at 336.

[45] 77 F.R. 72448 ("[T]he very possibility of an additional State or local tax has a chilling effect on potential lessees as well as the tribe that as a result might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs.")

Our Letter submitted to Mr. Thomas Walusek on September 9, 2025 explains in detail why the interests of the federal government and the Tribe are very strong in this case, and outweigh Clark County's generalized interest in raising revenue. But to further illustrate the point: the Moapa Band collects PILOT payments from Appellant on the ESM Project pursuant to Section 4 of the Tribal Agreement.[46] That section sets forth two important principles. First, it provides that PILOT payments "shall not exceed $100 per acre of the aggregate Premises actually leased by Project Company during the year immediately preceding the Pilot Date, which $100 per acre figure shall increase by three percent (3%) annually."[47] Second, it provides a cap on PILOT payments by stating that "in no event shall any single annual Pilot Payment due and payable by Project Company hereunder be in an amount greater than eighty percent (80%) of the **real property taxes** that would be imposed by federal, state or local authorities if the Project were located on land outside the Reservation in the State of Nevada lying within Clark County Tax District No. 100 (Unincorporated County)."[48]

Here, the ESM Project is located on approximately 2,300 acres of leased real property. Accordingly, the maximum PILOT payment is approximately $230,000 in year one, with annual 3% increases. However, Clark County takes the position that almost no part of the ESM Project is properly characterized as real property, meaning that under the Tribal Agreement, the "real property taxes that would be imposed" by Clark County if the ESM Project was not located on tribal lands would be nominal. If Clark County prevails on its theory, the Tribe would lose almost the entirety of the value of the PILOT fees over the lifetime of the Lease. Over the 50-year Lease term, using 3% increases to the annual PILOT payments, the total revenue generated for the Moapa Band through PILOT payments is almost $26,000,000. **The Moapa Band would lose almost all of that value if Clark County prevails on this Appeal**.

This reduction would harm tribal economic development, self-determination and tribal government—all of which are expressly stated priorities of federal law and important considerations in the *Bracker* balancing of interests test.[49]

iv. Clark County's Reliance on Non-Nevada Precedent is Misplaced.

Clark County relies heavily on a case out of Arizona to support its position. In *South Point Energy Center, LLC v. Arizona Department of Revenue*[50] ("*South Point Energy*"), the Arizona Supreme Court held that a power project located on tribal land but owned by a non-tribal entity was subject to Arizona property tax.[51] The *South Point Energy* case is not applicable here for several reasons. First, *South Point Energy* is an Arizona state court case and is not binding precedent in Nevada.

[46] The Tribal Agreement referred to herein was attached as "Exhibit H" to the Letter Appellant submitted to Mr. Thomas Walusek on September 9, 2025.

[47] *See* Letter Exhibit H (Tribal Agreement) at Section 4.

[48] *See id*. at Section 4 (emphasis added).

[49] *Bracker*, 488 U.S. at 149.

[50] 508 P.3d 246 (2022),

[51] *South Point Energy*, 508 P.3d at 255.

Second, the facts of the *South Point Energy* case are different. In *South Point Energy*, the project owner was required to remove the project from tribal land upon termination of the lease, and the tribe had no interest in the project itself.[52] That's not the case here. As explained above, the Moapa Band has the right to acquire the ESM Project upon the expiration or termination of the Lease.[53]

Clark County also relies on another out-of-Nevada case in *Pickerel Lake Outlet Association v. Day County*[54] ("*Pickerel Lake*") to support its conclusion that Clark County is not preempted from imposing property taxes here.[55] Like *South Point Energy*, South Dakota's *Pickerel Lake* is not binding in Nevada. The County nevertheless suggests that *South Point Energy* and *Pickerel Lake* provide helpful roadmaps on how to perform *Bracker* balancing.[56] With regard to *Pickerel Lake*, that assertion is wrong as a basic factual matter – *Pickerel Lake* expressly did **not** engage in *Bracker* balancing because, for reasons unexplained, the parties to that case stipulated that *Bracker* did not apply (the *Pickerel Lake* court noted that this was incorrect as a matter of law, but proceeded to assess preemption without *Bracker*).[57] As for *South Point Energy*, the Arizona court made the same errors Clark County makes here. The state and county at issue in *South Point Energy* provided virtually no services to the taxpayer in connection with the power plant (which the Arizona court acknowledged[58]), just as Clark County provides virtually no services to the ESM Project. In any event, *Bracker* balancing is highly fact-specific, with potential for small differences in the facts, history, and economics to alter the outcome.

Finally, we land back where we started: *Bracker* is not actually necessary to resolve this question. As we have explained, applicable federal laws, including Supreme Court precedent and the leasing regulations, clearly preempt Clark County's property tax *per se*, without any need to assess implied preemption under *Bracker*.

C. Nevada Law is Irrelevant to the Property Classification of the ESM Project.

The County suggests that the ESM Project is personal property for purposes of Nevada state law, and accordingly is subject to state taxation because it is not part of the tribal land. This analysis appears flawed on its face, for reasons explained in our prior Letter and further explained below. But in any event,

[52] *Id*. at 248 ("at the expiration of the lease, South Point must remove all above-ground real property improvements and personal property, excepting roads and foundations").

[53] Indeed, the State of Arizona recently emphasized the importance of this very point. Earlier this year, in its brief to the United States Supreme Court in opposition to a petition for a writ of certiorari, Arizona argued that *Chehalis* was not applicable to *South Point Energy* because the tribe in *South Point Energy* had no interest in the project. *See* Brief in Opposition, State of Arizona, *South Point Energy Center, LLC v. Arizona Department of Revenue*, Case No. 24-952, 16-17. Here, the Moapa Band has an interest in the ESM Project by virtue of its option to acquire 100% of the project upon the expiration or termination of the Lease. As such, *Chehalis* is on point and *South Point Energy* is not.

[54] 953 N.W.2d 82 (2020).

[55] County's Position at 5.

[56] *Id.*

[57] 953 N.W. 2d at par. 12 and fn. 8.

[58] *Id.* at 1138.

Nevada state law is irrelevant for determining whether the tax in question applies on tribal land. The county in *Chehalis* similarly argued that because applicable Washington state law categorized portions of the resort structure as personal property, it was not exempt from state taxation. The Ninth Circuit rejected that argument, noting that in both *Rickert* and *Mescalero*, the classification of the improvements as real or personal property under state law was irrelevant. In *Rickert*, *Mescalero*, and *Chehalis*, the analysis turned instead on whether the improvements in question were permanently affixed to the lands, making them "essentially part of the lands."[59]

There is no question that for purposes of federal law, the ESM Project is a permanent improvement upon the land, just like the resorts in *Chehalis* and *Mescalero*. The federal leasing regulations clarify that "permanent improvements" mean "buildings, other structures, and associated infrastructure attached to the leased premises."[60] The ESM Project consists of solar panels, inverters, transmission infrastructure, water supply systems, and an electrical substation, among other improvements. All of these solar improvements are "structures" or "associated infrastructure" that are properly classified as "permanent improvements" "attached" to the land under the federal leasing regulations, and are thereby beyond the reach of state property tax.

Clark County still argues that Nevada Revised Statute ("NRS") § 361.035(3) mandates the ESM Project be treated as personal property because "the lease has a requirement to remove" the project.[61] Even if state law applied (it does not), Clark County's position would only be persuasive **if the Lease provided that removal of the ESM Project was required as the only option at the conclusion of the Lease**. As explained above, removal of the ESM Project is not the only option. The Moapa Band may elect to own the project. Nevada Energy, as the purchaser of electricity generated by the ESM Project, has a similar right.[62] There is no existing requirement to remove the ESM Project. As such, NRS 361.035(3) is irrelevant.

D. Clark County Disregards Direct Guidance Appellant Received from Nevada and Bright-Line Rules Issued by the Nevada Department of Taxation.

Clark County's position on this Appeal directly contradicts written guidance Appellant received from the State of Nevada when it developed the ESM Project. Nevada has historically and unequivocally considered renewable energy projects similar to the ESM Project to be real property and, moreover, those situated on tribal land to not be subject to local property tax. This exact sentiment was confirmed by email to Appellant in the project's early stage development whereby **Nevada directly informed Appellant that the ESM Project is immune from property tax, that "property taxes would be paid to the [T]ribe and**

[59] *Rickert*, 188 U.S. at 442.

[60] 25 CFR § 162.003.

[61] County's Position at 2.

[62] *See* Long Term Renewable Power Purchase Agreement ("PPA") at Section 6.3 (providing Nevada Energy with an option to acquire the ESM Project during years 26-50 of the Lease); the PPA referred to herein was attached as "Exhibit G" to the Letter Appellant submitted to Mr. Thomas Walusek on September 9, 2025.

not the state," and that Nevada "does not have jurisdiction over the property taxes paid on [tribal] land."[63]

Moreover, Clark County's Position completely disregards guidance and bright-line rules issued by the Nevada Department of Taxation. As noted in Appellant's Letter to Mr. Thomas Walusek on September 9, 2025, the Nevada Department of Taxation is charged with the "general supervision and control over the entire revenue system of the State[.]"[64] In fact, the relationship between the Nevada Department of Taxation and "county assessor, assessment procedures and equalization" is made unmistakably clear under NRS § 360.215(6): the Nevada Department of Taxation "[s]hall continually supervise assessment procedures which are carried on in the several counties of the State and advise county assessors in the application of such procedures."[65] All taxpayers in Nevada must be treated with "courtesy, fairness, uniformity, consistency and common sense."[66]

Importantly, the Nevada Department of Taxation has determined (on 43 separate occasions since 2011, and as recently as April of 2025) that all components of a solar project are real property when operated as a unit.[67] The State of Nevada's position, through the Nevada Department of Taxation, is unequivocal and consistent—renewable energy projects are classified as real property and not as personal property.

Nevada Department of Taxation's Guidance Letter 14-001, issued in the immediate aftermath of *Chehalis*, explicitly states "[b]ased on the rulings of the Federal courts and Federal regulation, real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe is not taxable property, **even when owned by a person or entity other than the tribe**"[68] (emphasis added). In applying the principles from Guidance Letter 14-001, the Nevada Department of Taxation and assessors must "determine whether the real property is non-taxable," and to do so "it must be established that the property is located on lands owned by the United States held in trust for an Indian tribe. Title records must be checked to confirm said ownership of the land. In addition, the Taxpayer must provide a copy of the lease showing that the subject property is on property owned by the United States and held in trust for the Indian tribe."[69]

Clark County claims Nevada Department of Taxation's Guidance Letter 14-001 to be "helpful" but not "a bright-line rule that any buildings or improvements located on tribal land are exempt from

[63] The email referred to herein was attached as "Exhibit I" to the Letter Appellant submitted to Mr. Thomas Walusek on September 9, 2025.

[64] NRS § 360.200.

[65] NRS § 360.215(6).

[66] NRS § 360.291(1)(a).

[67] The 43 RETA Fiscal Impact Notes referred to herein were attached as "Exhibit P" to the Letter Appellant submitted to Mr. Thomas Walusek on September 9, 2025.

[68] Nevada Department of Taxation's Guidance Letter 14-001 is attached to this memorandum as **Exhibit V**.

[69] *See* **Ex. V** at 2.

taxation."[70] In fact, it **is** a bright-line rule: "real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe is not taxable property, even when owned by a person or entity other than the tribe." As noted above, Nevada Department of Taxation is charged with the "general supervision and control over the entire revenue system of the State," and Clark County should follow the direction of the Nevada Department of Taxation on property tax matters.

III. CONCLUSION

Until this year, Clark County had not issued a property tax bill on the four-year old ESM Project, consistently following Ninth Circuit precedent, federal preemption, federal leasing regulations, and direct guidance from the Nevada Department of Taxation providing that property taxes could not be applied to permanent improvements on tribal lands. The County's abrupt reversal of its position, and its refusal to follow State guidance, is inappropriate and unlawful. Quite simply, the County's Position is contrary to applicable law and express guidance from the Nevada Department of Taxation. The County's Position is based on mischaracterizations, misplaced reliance, and incorrect application of clear directives and binding caselaw, infringes on tribal sovereignty, and will cause significant economic harm to both Appellant and the Moapa Band. None of this provides adequate support to uphold Clark County's imposition of property tax on the ESM Project.

Sincerely,

Josh Hicks, Esq.
McDonald Carano LLP

[70] County's Position at 3.