



**RESOLUTION OF THE GOVERNING BODY OF THE
THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution entitled, “Requesting the EPA to Delay the Implementation of the Synthetic Minor Source Rule Pending Meaningful Consultation and to Prevent any Delay in Oil and Gas Production on the Fort Berthold Indian Reservation”

WHEREAS, the Three Affiliated Tribes of the Fort Berthold Reservation, also known as the Mandan, Hidatsa and Arikara Nation (“Nation”), is a sovereign government and federally recognized Indian Tribe existing pursuant to its inherent and retained sovereignty; and,

WHEREAS, this Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and,

WHEREAS, the Constitution of the Three Affiliated Tribe generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and,

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and,

WHEREAS, the Nation, on behalf of itself and its individual member landowners, is involved in the most active oil and gas development in the United States of the Bakken Formation underlying the Reservation and estimated to produce approximately four billion barrels of oil; and,

WHEREAS, the Nation has been in regular contact with the Environmental Protection Agency (“EPA”) since March 2011 and before about the need for greater tribal consultation regarding EPA’s intentions to issue a final rule for minor sources in Indian Country under the Clean Air Act; and,

WHEREAS, on July 1, 2011, the Environmental Protection Agency promulgated final rules titled “Review of New Sources and Modifications in Indian Country.” (Tribal Minor NSR Rule) 76 Fed. Reg. 38748-808 (July 1, 2011) (to be codified at 40 C.F.R. Parts 49 and 51); and,

WHEREAS, in response to concerns of the Nation, EPA agreed to delay the implementation of the final rule for 36 months while EPA prepared its staff and developed “general permits” to provide for more efficient permitting in Indian Country; and,





WHEREAS, unbeknownst to the Nation, one small part of the rule, a requirement for synthetic permits, was scheduled to go into effect only 60 days, on August 30, 2011, after the issuance of the final rule; and,

WHEREAS, only after the rule was issued, and its implementation pending, were the Nation and oil and gas operators on the Reservation informed of the requirement that all oil and gas wells producing on the Reservation and flaring gas would be subject to the synthetic permit requirements; and,

WHEREAS, EPA never consulted with the Nation on the implementation of the synthetic permit requirement and their intent to apply this requirement to every oil and gas well on the Reservation by August 30, 2011, in violation of Executive Orders mandating meaningful tribal consultation; and,

WHEREAS, EPA is proposing an Administrative Complaint and Consent Agreement that would phase in the synthetic permit requirement rule over the next year and EPA is requiring that oil and gas operators sign the Administrative Complaint and Consent Agreement by 3:00 p.m., August 26, 2011; and,

WHEREAS, oil and gas operators have requested more time to review the Administrative Complaint and Consent Agreement; and,

WHEREAS, even with an Administrative Complaint and Consent Agreement, EPA has not shown that it has the staff to process permits in a timely manner, EPA cannot assure the Nation that a streamlined and efficient process will be used to ensure that public comments do not delay the issuance of permits, EPA's final rule allows EPA to take up to one year in its issuance of a synthetic permit; and,

WHEREAS, EPA's implementation plan for the synthetic permit requirement could do substantial harm to oil and gas development on the Reservation and the economic benefits being realized by the Nation and the State of North Dakota; and,

WHEREAS, the Nation estimates that EPA's implementation plan for the synthetic permit requirement could result in an additional 90 wells not being completed on the Reservation in 2012 and a total loss of \$46 million in royalty revenues for the Nation and its members in 2011 and 2012; and,

WHEREAS, the Nation plans to seek "Treatment as a State" status under the Clean Air Act so that the Nation can implement any permitting requirements in a manner best suited to the Nation.





NOW THEREFORE BE IT RESOLVED, by the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, that the Tribal Business Council hereby requests that EPA consult with the Nation on the implementation of the synthetic permit requirement; and,

BE IT FURTHER RESOLVED, that the Tribal Business Council hereby requests EPA to delay the implementation of any synthetic minor permit requirements until August 30, 2012, to allow for meaningful consultation and while the Nation obtains "Treatment as a State" status under the Clean Air Act so that the Nation can implement any requirements itself; and

IT FURTHER RESOLVED, that the Tribal Business Council requests that the EPA include an express provision in the Administrative Complaint and Consent Agreement to establish, prior to the termination of the Administrative Complaint and Consent Agreement, a federal implementation plan that codifies a model permit that may be used as a permit by rule for any source that qualifies without obtaining an individual permit on the Reservation.

BE IT FURTHER RESOLVED, that the Tribal Business Council hereby requests the EPA to allow oil and gas operators on the Reservation additional time, until August 30, 2011 to sign any Administrative Complaint and Consent Agreement.

BE IT FURTHER RESOLVED, that the Tribal Business Council calls on Congress to intervene if necessary to delay the implementation of any federal regulations under the Clean Air Act which would delay or disrupt oil and gas production on the Reservation





CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 5 were present at a Special Meeting thereof duly called, noticed, convened and held on the 25 day of August, 2011, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman Voting. Not Voting.

Dated this 25 day of August, 2011.

ATTEST:

Tribal Secretary V. Judy Brugh
Tribal Business Council
Three Affiliated Tribes

Tribal Chairman, Tex G. Hall
Tribal Business Council
Three Affiliated Tribes

