



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

**A Resolution Entitled, “Establishment of Interim Ground Water Permit Policy”**

**WHEREAS,** The Mandan Hidatsa and Arikara Nation (“MHA Nation”) having accepted the Indian Reorganization Act of June 18, 1934 (“IRA”), and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and

**WHEREAS,** The Constitution of the MHA Nation 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 MHA Nation and of the enrolled members thereof; and

**WHEREAS,** Article III, Section 1 of the Constitution of the MHA Nation provides that the Tribal Business Council is the governing body of the MHA Nation; and

**WHEREAS,** The Fort Berthold Reservation has seen a rapid pace of energy development which requires billions of gallons of fresh water to develop and maintain wells; and.

**WHEREAS,** The development of commercial water depots to meet the water needs of the energy industry has created and will continue to create tremendous demand for water resources on the Reservation; and

**WHEREAS,** The Natural Resources Department has developed an Interim Water Permit Policy to be used until the MHA Nation Water Code is made law; and

**WHEREAS,** The Business Council wishes to establish proper parameters for the issuance of water permits in order to ensure adequate protection of water resources for current and future generations; and

**WHEREAS,** The Business Council finds it in the best interest of the MHA Nation to implement the Interim Water Permit Policy.

**NOW THEREFORE BE IT RESOLVED,** The Business Council hereby approves and establishes the Interim Ground Water Permit Policy, a true copy of which is attached hereto and incorporated by reference.

**BE IT FURTHER RESOLVED,** This Resolution rescinds and supersedes any prior Resolutions or policies concerning ground water permitting.

**BE IT FINALLY RESOLVED,** the Tribal Chairman is hereby authorized to take such action as is necessary to carry out the terms and intent of this Resolution.



*Resolution No.14-018-VJB*

***DRAFT INTERIM WATER PERMIT POLICY***

**Developed by:** Natural Resources Department in conjunction with Section 17 Water Sales Corporation; Frankie Lee, Bartlett and West Consultants Peebles and Morgan: WATER TASK FORCE

**INTRODUCTION**

Due to the rapid pace of Energy Development on the FBIR and the need for billions of gallons of fresh water to develop and maintain wells; the TBC instructed the Natural Resources Administrator in 2008 to begin issuance of TAT Water Permits. The development of commercial water depots to meet the water needs of the energy industry has created and will continue to create tremendous demand for the ground water resources on the Reservation.

To date six such permits were issued. Five were issued by the former Natural Resources Administrator and one by the current Natural Resources Administrator. The latter two; being a temporary permit from a creek for construction use. With the continued need by the industry for copious amounts of fresh water to complete an estimated 3000 wells; industrial demand for fresh water has spawned numerous plans for more ground water sourced depots which have become commercially attractive to investors and tribal member allotted land owners. This trend has caused the Tribal Business Council to request a technical review of existing permits and surface and ground water resources to determine in particular; if there are sufficient ground water resources to support such permit requests. The TBC also wishes to define what permit parameters need to be implemented to ensure adequate protection of water resources for future generations, and prevent commercial exploitation of allotted landowners .

The Water Task Force met several times to assess the current level of development; projected water needs, and to review the technical merits of the water permits issued to date. Because the Hydro fracturing technology in the Bakken uses so much water, an estimated **eleven billion** gallons of water would be needed to develop and maintain the wells on the FBIR at the current level of proposed optimum development. The Task Force then looked at the estimated ground water aquifer reserves and the tribal water which can be provided through the tribes Rural Water Program and Section 17 Sales. **The Water Task Force believes that; of the two sources; the use of surface water rights to meet the industrial needs projected is the preferred alternative.**

A review of the current TAT Water permits revealed that no sound technical data was used in the issuance of the permits. The permits do not contain sufficient restrictions, technical information, or even a homogenous standard of measurement. There are also no metering or reporting requirements attached to the current permits. Some are experiencing problems with investors and non-native business partners.

Of most concern to the Water Task Force was the four permits previously issued for sales of ground water from the Fox Hills Aquifer. This is a multi state Aquifer extending well beyond the reservation into Montana, South Dakota, Wyoming and Canada . The Water Task Force consulted with several State Water regulatory agencies and learned that technical concerns exist over the head pressure in this aquifer and its ability to recharge because it is a confined aquifer. Most states severely limit permits to this aquifer and hold these permits to a higher standard. Of the estimated 51million acre feet of water available in this aquifer the other states of Mt WY and SD combined only account for 6-7000acre feet of withdrawals annually, while Ft Berthold alone has already permitted 2600 acre feet. The recharge rate for this aquifer is unknown. Recharge can only be scientifically measured through the use of test wells in proximity to the wells drilled for withdrawal.

The Water Policy Committee has drafted a MHA Nation Water Code which will create a Water Commission and staff a Hydrologist and other professional technical staff which will then assume the responsibility for issuance and regulation of MHA Water Permits. Until the 120 day period has passed for public comment and input and the Code is officially passed the Natural Resources Department shall operate under an Interim Water Permit Policy.

It is the recommendation of the Water Policy Committee and the Natural Resources Administrator that Ground Water resources on the reservation be permitted under the following priority system.

1. Domestic Consumption including municipal use.
2. Agricultural use including irrigation and stock watering.
3. Industrial Commercial Use.

In addition permitting of Industrial/Commercial use of ground water resources will be subject to technical review and will be contingent upon the condition of the Aquifer, the effect if withdrawal of water on neighboring landowners, the location of monitoring wells, the level of current permitting, integrity and safety of future water supply, location of depots, the availability of other water supply sources and other relevant factors. Ground Water sources under current Industrial/Commercial permit will be reviewed annually and will be renewed based upon recommendation of the Natural Resources Committee after technical review and report compiled by the Natural Resources Department. Metered water sales reports for each permittee will be submitted to the Natural Resources Administrator monthly.

## INTERIM WATER PERMIT REQUIREMENTS

1. Contact Information, Business Structure
2. Tribal Enrollment if Applicable
3. Water Source (if Ground Water Identify Aquifer)
4. Annual Acre Feet Requested
5. Engineering/Drilling Plans
6. Site Plan/GIS Map (Demonstrate access, approach width, fencing, lighting, sanitation, parking) Meter installation
7. Legal Description
8. TSR for Site
9. Proof of Ownership
10. Copies of Negotiated Agreements with other Owners
11. Article of Incorporation if Applicable
12. Proof of Applicable Easements
13. TERO certification
14. BIA Review of Allotted Land/Lease if applicable
15. Tribal Business License
16. Proximity to Monitoring Wells
17. Business Plan and or Participation Contracts
18. Contractor Certifications
19. Describe specifications for any tanks, psideon tanks, structure on site.
20. Power requirements and Utility Service and lighting.
21. Additional requirements for Industrial/Commercial ground water permits:
  - a. If there is no existing monitoring well within a one mile radius of the proposed location, a monitoring well which meets the specifications of the Natural Resources Department must be constructed within the one mile radius at the applicants expense.
  - b. Notice of the application must be posted in a public place for 30 days, and notice must be mailed to all landowners within a one mile radius of the proposed location giving the public and the landowners 30 days to submit comments on the application.
  - c. The Natural Resources Committee, upon recommendation of the Natural Resources Department, may set limits on the volume of water that may be withdrawn in order to protect neighboring landowners and the integrity and safety of future water supply.

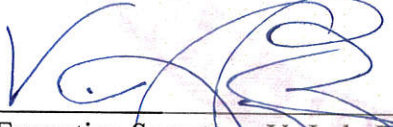


### CERTIFICATION


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, 6 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 9<sup>th</sup> day of January, 2014, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 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 9<sup>th</sup> day of January, 2014.

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

ATTEST:

 *vice-chairman*  
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Tribal Chairman, Tex G. Hall  
Tribal Business Council  
Three Affiliated Tribes