



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

A Resolution entitled, “*Enforcement of the 11.5% Oil and Gas Tax Rate Under The Tax Agreement With North Dakota*”

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 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 Tribes and of the enrolled members thereof; and

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

WHEREAS, The Tribal Business Council finds that the Nation has a significant interest in protecting the health, safety, and general welfare of its members, the residents within the Nation’s Reservation and those persons and business doing business on and/or visiting the Nation’s Reservation; and

WHEREAS, The Tribal Business Council finds that is critically important to raise revenues to fund health, safety, and general welfare programs and services provided to residents of and visitors to land within the Nation’s territorial jurisdiction; and

WHEREAS, The MHA Nation has the inherent authority to impose taxes on economic activity within the Fort Berthold Indian Reservation, to defray the cost of providing governmental services, and to fund essential governmental functions; and

WHEREAS, Pursuant to Resolution 03-276-RP the MHA Nation imposes a 5% gross production tax oil; and

WHEREAS, The surge of oil and gas development on the Fort Berthold Reservation has brought significant and costly impacts to the MHA Nation, including the destruction of Reservation roads and infrastructure, increased crime, illegal drug activity, hazardous spills, air and water pollution, and heavy truck traffic that endangers Reservation residents; and

WHEREAS, On June 21, 2013, the MHA Nation entered into an Oil and Gas Tax Agreement with the State of North Dakota under which the MHA Nation and State agreed to evenly share oil and gas taxes imposed on the production and extraction of oil and gas on the Fort Berthold Reservation at a tax rate that would not exceed 11.5%; and



WHEREAS, As part of the consideration for the 2013 Agreement the MHA Nation agreed to forego its right to collect its gross production tax or otherwise tax oil and gas production on the Reservation, and instead agreed to share equally North Dakota's 5% gross production tax and 6.5% extraction tax; and

WHEREAS, Pursuant to § E.3 of the 2013 Tax Agreement, both North Dakota and the MHA Nation agreed to share the production and extraction taxes at the rates in effect at the time the agreement was executed. Both parties agreed that neither would "adjust, raise or lower the production and extraction taxes on oil and gas activities within the exterior boundaries of the Fort Berthold Reservation during the term of the Agreement"; and

WHEREAS, Despite § E.3 of the Agreement, in 2015 North Dakota enacted legislation unilaterally lowering the extraction tax rate from 6.5% to 5%, over the objection of the MHA Nation and in violation of § E.3 of the Tax Agreement; and

WHEREAS, Subsequent to the unilateral reduction in the extraction tax rate, North Dakota asked the MHA Nation to agree to amend the Tax Agreement to reflect the lower extraction tax rate, and the MHA Nation refused to do so; and

WHEREAS, Pursuant to HB 1166, the North Dakota Legislature is currently considering legislation that would; (1) permanently fix the extraction tax rate at 5% and (2) amend NDCC § 57-51.2-02 by lowering the extraction tax rate applicable to state and tribal tax agreements from 6.5% to 5%; and

WHEREAS, Since lowering the extraction tax rate in 2015, North Dakota has refused to share the extraction tax with the MHA Nation at the 6.5% rate required under the Tax Agreement, and has instead collected and shared the extraction tax based on the lower 5% rate, in violation of the Tax Agreement; and

WHEREAS, As a result of North Dakota's refusal to share the extraction tax based on the 6.5% rate called for in the 2013 Tax Agreement, the MHA Nation lost an estimated \$16-20 Million in oil and gas tax revenue in 2016; and

WHEREAS, The Tribal Business Council finds that the current tax revenue collected by the MHA Nation is insufficient to cover the costs attributable to oil and gas development on the Reservation, and that in light of North Dakota's failure to abide by the Tax Agreement it must take action to collect its share of the tax revenue due under the Agreement, which North Dakota has refused to collect.

NOW THEREFORE BE IT RESOLVED, The Tribal Business Council hereby authorizes and directs the MHA Nation Tax Department to assess and collect the tribal gross production tax at a rate equal to one-half of the difference between the 6.5% extraction tax rate due under the Tax Agreement and the 5% currently being collected by the North Dakota Tax Commission, (.75%); and




BE IT FINALLY RESOLVED, The Tax Department shall assess and collect the tax pursuant to the procedures under the current MHA Nation Tax Code, and such other regulations as are necessary to adopt in order to carry out the terms and intent of this Resolution.

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, 7 were present at a Special Meeting thereof duly called, noticed, convened and held on the 11th day of January, 2017, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

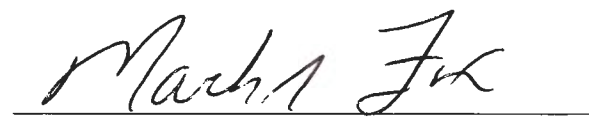
Chairman [X] Voting. [] Not Voting.

Dated this 11th day of January 2017.



Tribal Secretary, Fred W. Fox
Tribal Business Council
Three Affiliated Tribes

ATTEST:



Tribal Chairman, Mark N. Fox
Tribal Business Council
Three Affiliated Tribes