



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

**A Resolution entitled, “Approval of Setback Variance Requested by Marathon Oil Company for the Modified Luther Pad Right-of-Way Expansion Project.”**

- WHEREAS,** This Mandan Hidatsa and Arikara Nation (the "MHA 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 under said Act, and
- WHEREAS,** Pursuant to Article III, Section 1 of its Constitution and By-Laws, the Tribal Business Council is the governing body of the MHA Nation; and
- WHEREAS,** Pursuant to Article VI, Section 5(1) of said Constitution, the Tribal Business Council has the power to adopt resolutions regulating the procedures of the Tribal Council, its Agencies and Officials; and
- WHEREAS,** The Tribal Business Council has authority to engage in activities on behalf of and for the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS,** Article IX Sections 1 and 3 of the Constitution provides that the Tribal Business Council has the authority to manage and lease or otherwise deal with tribal lands and resources; and
- WHEREAS,** The Tribal Business Council passed Resolution No. 12-087-VJB, entitled, “The Missouri River, Badlands and Sacred Sites Protection Act” which requires a half mile setback for well sites/drilling pads from the Missouri River, Little Missouri River, and designated sacred sites or villages in the Badlands; and
- WHEREAS,** The Tribal Business Council passed Resolution No. 12-139-VJB, entitled, “Amending the Missouri River and Badlands Protection Act to Allow Variances upon Recommendation by the Tribal Energy Office,” which authorizes the MHA Nation Tribal Energy Office to consider setback variance requests and make recommendations to the Tribal Business Council to approve such requests “when minerals would be stranded due to the setback provisions or where the applicant has made a clear showing that granting the variance would not cause an adverse environmental effect upon the Missouri River or the Little Missouri River”; and
- WHEREAS,** On March 27, 2017, the Tribal Business Council passed Resolution No. 15-045-LKH entitled, “Establishing a Procedure for the Approval of Leases, Rights-of-Way, Setback Variances and Permissions to Survey on Tribal Land”; and



**WHEREAS,** Marathon Oil Company (“Marathon”) submitted a ROW application to modify the existing Luther USA #11-16H and Luther USA 31-16H Well Pad and Access Road, approved by ROW No. FBOG100095, dated July 26, 2010, to add five (5) wells and up to four (4) acres, expanding the width of the existing Access Road ROW by an additional one hundred feet (100’) to include a Multiuse Corridor for access road, snow removal, electrical lines, fiber optics, water transfer lines, construction, and maintenance, across Allotment 383A (65.278% Tribal Interest in the Surface Estate), more particularly described as the W/2 of Section 9, Township 150 North, Range 93 West, of the 5<sup>th</sup> p.m., Mountrail County, North Dakota; and

**WHEREAS,** On July 17, 2018 Marathon Oil Company (“Marathon”) submitted to the MHA Nation Energy Division a request for a Setback Variance, as set forth in Exhibit A, as follows:

**Modified Luther Pad Right-of-Way Expansion Project:** For a Well Pad Expansion for up to five (5) additional wells, listed herein below, for a distance of One Thousand Seven Hundred Twenty One Feet (1,721’):

- Eunice USA 11-16TFH
- Flynn USA 21-16TFH
- Gartland USA 31-16H
- Reyes USA 21-16H
- Sears USA 21-16TFH

**LOCATION:** W/2 of Section 9, Township 150 North, Range 93 West, of the 5<sup>th</sup> P.M., Mountrail County, ND.

**ACRES OF DISTURBANCE:** Well Pad Expansion for up to four (4) acres for five (5) additional wells.

**DISTANCE FROM HIGH WATER MARK:** The existing well pad is located ± 1,363 feet from the 1854 High Water Line, this is the only bay that is within a Half (½) mile of the pad.

**WHEREAS,** On June 21, 2017, during the environmental and right-of-way on-sites, Marathon met with the MHA Nation Energy Division to review and consider all other alternatives for the construction and siting of the Modified Luther Pad Right-of-Way Project; and

**WHEREAS,** The MHA Nation Energy Division reviewed, processed and fully vetted Marathon’s request for a setback variance for Modification of Luther Right-of-Way project and has determined that Marathon has made a clear showing that



granting the variance would not cause an adverse environmental effect upon the Missouri River or the Little Missouri River; and

**WHEREAS**, On August 30, 2017, at a duly held meeting of the Natural Resources Committee (“NRC”), the MHA Nation Energy Division recommended approval of Marathon’s setback variance request for the Modified Luther Pad Right-of-Way Expansion Project, and the NRC approved Marathon’s setback variance request and forwarded it to the Tribal Business Council for final action.

**NOW THEREFORE BE IT RESOLVED**, the Tribal Business Council hereby approves the Setback Variance requested by Marathon Oil Company, attached as Exhibit A, as follows:

**Modified Luther Pad Right-of-Way Expansion Project:** For a Well Pad Expansion for up to five (5) additional wells, listed herein below, for a distance of One Thousand Seven Hundred Twenty One Feet (1,721’):

- Eunice USA 11-16TFH
- Flynn USA 21-16TFH
- Gartland USA 31-16H
- Reyes USA 21-16H
- Sears USA 21-16TFH

**LOCATION:** W/2 of Section 9, Township 150 North, Range 93 West, of the 5<sup>th</sup> P.M., Mountrail County, ND.

**ACRES OF DISTURBANCE:** Well Pad Expansion for up to four (4) acres for five (5) additional wells.

**DISTANCE FROM HIGH WATER MARK:** The existing well pad is located ± 1,363 feet from the 1854 High Water Line, this is the only bay that is within a Half (½) mile of the pad.

**BE IT FURTHER RESOLVED**, the consent and approval of Marathon’s Setback Variance request for the Luther Pad Modification Project, described herein, is specifically conditioned on Marathon’s payment of the following trespass fines:

(1) \$50,000.00 for exceeding ROW No. FBOG100095 dated July 26, 2010 for the Luther Pad; and

(2) \$10,000.00 for exceeding ROW No. FBOG100124 dated September 20, 2010 for the Jones Road.



**BE IT FINALLY RESOLVED**, that the Chairman is hereby to take such further actions as are necessary 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 Regular Meeting thereof duly called, noticed, convened and held on the 11<sup>th</sup> day of October, 2015, 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 11<sup>th</sup> day of October, 2017.

**ATTEST:**

Tribal Secretary, Fred W. Fox  
Tribal Business Council

Chairman, Mark N. Fox  
Tribal Business Council