



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

**A Resolution entitled, “Consent to Assign to McKenzie Electric Cooperative, the Utilities and Associated Above Ground Appurtenances Right-of-Way for the Greek Gods East Project, BIA ROW No. FBOG101022, originally granted to Enerplus Resources (USA) Corporation Company.”**

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, 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 the Constitution and By-Laws of the Three Affiliated Tribes, the Tribal Business Council is the governing body of the Tribes; 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,** 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,** Leases and Rights-of-Way (“ROWS”) across Tribal Trust land require the consent of the Tribal Business Council pursuant to federal and Tribal Law; and
- WHEREAS,** Applications for Rights-of-Way (“ROWS”) on Tribal Land are subject to the requirements of tribal law, including Resolution No. 17-117-FWF, Resolution No. 14-071-VJB (MHA Nation Application for Rights-of-Way and Use of Right-of-Way), Resolution No. 14-089-VJB (MHA Nation Pipeline Right-of-Way Terms and Conditions), and Resolution No. 15-045-LKH (Establishing a Procedure for the Approval of Leases, Rights-of-Way, Setback Variances and Permissions to Survey on Tribal Land); and
- WHEREAS,** On June 14, 2014, the Bureau of Indian Affairs (“BIA”) issued a Proposed Rule to update the “Right-of-Way on Indian Land” regulations, codified at 25 CFR Part 169, *see* 79 FR 34455-34474, and issued the Final Rule on November 19, 2015, *see* 80 FR 72492-72549; and
- WHEREAS,** Under the Final Rule, if a ROW is granted on or after December 21, 2015, the new regulations apply, *see* 25 CFR § 169.7, but, if the ROW application was



submitted before December 21, 2015, the grantee has the option of withdrawing the application and resubmit is under the new regulations, or proceed without withdrawing and said application will be processed under the prior ROW regulations, *see* 25 CFR § 169.7(a) & (c)(2)(i); and

**WHEREAS,** In accordance with the new regulations, once a ROW that was processed under the former regulations, the procedural provisions of the new rule apply except if they conflict with the explicit provision of the ROW grant or the statute authorizing the ROW document, then the provisions of the ROW grant or authorizing statute apply instead, *see* 25 CFR § 169.7(c)(2)(ii); and

**WHEREAS,** On December 11, 2015, Enerplus Resources (USA) Corporation Company (“Enerplus”) submitted an ROW application, for a well location, access road, utilities, fiber optics and above ground appurtenances, in Allotment 1133A, in Lot 1 of Section 1, and Allotment 2146, in SE ¼ of Section 33, both tracts in Township 149 North, Range 94 West, in Dunn County, North Dakota; and

**WHEREAS,** On June 15, 2017 the BIA approved Enerplus’ ROW application, described above, and granted to Enerplus BIA ROW No. FBOG101022 for the following purposes: HERA #149-93-28A-33H, APOLLO #149-93-28A-33H, HOMER #149-93-28A-33H TF, ZEUS #149-93-28A-33H, and ATHENA #149-93028A-33H-TF-LL WELL LOCATION, ACCESS ROAD, UTILITIES, FIBER OPTICS, & ABOVE GROUND APPURTENANCES (referred to as the “Greek Gods East Project”) across the following described lands located in the Dunn, North Dakota, as follows:

**Township 148 North, Range 94 West, Fifth Principle Meridian**

Tract #1133A – Lot 1 of Section 1  
(1.501 acres of road disturbance, limited to and more particularly described to be 523.04 feet in length, 125 feet in width) and

**Township 148 North, Range 94 West, Fifth Principle Meridian**

Tract #2146 – SE ¼ of Section 33  
(1.125 acres of road disturbance and 10.711 acres of well pad disturbance)

**WHEREAS,** In total, ROW No. FBOG101022 is limited to and more particularly described to be an access road 915.23 feet in length, 125 feet in width, comprising 2.626 acres in total area and a surface disturbance of 10,711 acres for the well pad, for a total combined well site and access ROW containing 13.337 acres; and

**WHEREAS,** Enerplus submitted the ROW application for the Greek Gods East Project prior to December 21, 2015, and elected not to withdraw its application for resubmission





and processing under the new ROW regulations, and therefore, BIA processed said application said application under the former ROW Regulations; and

**WHEREAS,** In accordance with the former ROW regulations, Enerplus was required to obtain a majority consent of the owners of Allotment 1133A, and was able to secure such majority consent without having to obtain the MHA Nation's consent for its 6.6666666666% interest in said tract; and

**WHEREAS,** Enerplus submitted an application to the MHA Nation Energy Division seeking the MHA Nation's consent to assign its interest in ROW No. FBOG101022 for the utilities and associated above ground appurtenances for the Greek Gods East Project, to McKenzie Electric; and

**WHEREAS,** The ROW Assignment application, submitted by Enerplus for the Greek Gods East Utilities and Associated Above Ground Appurtenance Assignment Project, described above, has been reviewed and recommended for approval by the MHA Natural Resources Department and the MHA Nation Energy Division in accordance with the MHA Nation's approved procedure for authorizing ROWs on Tribal Land; and

**WHEREAS,** The projected compensation to the MHA Nation for this ROW application is \$0.00 and

**WHEREAS,** On April 4, 2018 at a duly held meeting of the Natural Resources Committee ("NRC"), Enerplus requested the MHA Nation's consent to assign its interest in ROW No. FBOG101022 for the Utilities and Associated Above Ground Appurtenances for the Greek Gods East Project, to McKenzie Electric, and the NRC forwarded Enerplus' request to the Tribal Business Council for final action.

**NOW THEREFORE BE IT RESOLVED,** Subject to Enerplus Resources (USA) Corporation Company agreement to the execution of the MHA Right-of-Way Application and Terms and Conditions, as listed therein, and payment of ROW fees, the Tribal Business Council hereby approves Enerplus Resources (USA) Corporation Company's request for the MHA Nation to consent to the assignment of ROW No. FBOG101022 to McKenzie Electric for the Utilities and Associated Above Ground Appurtenances for the Greek Gods East Project.

**BE IT FURTHER RESOLVED,** In accordance with the MHA Nation Standard Terms and Conditions for Right-of-Ways, the assignment of the ROW for the Utilities and Associated Above Ground Appurtenances for the Greek Gods East Project will be subject to a twenty (20) year term, from the date of the BIA's execution of the grant of the ROW for said project.



**BE IT FURTHER RESOLVED,** The MHA Nation's consent to an assignment of ROW No. FBOG101022 to McKenzie Electric Cooperative, described above, is subject to the MHA Nation Standard Terms and Conditions for Right-of-Ways, which constitutes a written agreement as part of the MHA Nation's consent to the grant of the ROW, and therefore, as provided in 25 CFR §169.107(a), the Tribal Business Council requests Bureau of Indian Affairs to incorporate these terms and conditions into any assignment of the ROW No. FBOG101022.

**BE IT FURTHER RESOLVED,** The Tribal Business Council retains the authority, as well as the delegation of authority to the MHA Nation Energy Division and other Tribal departments, to issue fines and set conditions to address and resolve ROW trespass, abandonment, non-use, and other violations, including violations of applicable MHA Nation Standard ROW Terms and Conditions, and further requests the Bureau of Indian Affairs to defer to these remedies, in accordance with the intent and notice provisions in 25 CFR §169.403(a).

**BE IT FINALLY RESOLVED,** that the Chairman is hereby authorized to execute such documents and 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, 6 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 12<sup>th</sup> day of June, 2018, 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 [ X ] Voting. [ ] Not Voting.

Dated this 12<sup>th</sup> day of June, 2018.

**ATTEST:**

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

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