



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

**A Resolution Entitled: "Demanding the Elimination of the State of North Dakota's Dual  
Taxation of Trust Natural Resources on the Fort Berthold Indian Reservation."**

- 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 Tribes 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,** Article IV, Section 5(1) of the Constitution of the Three Affiliated Tribes provides the Tribal Business Council authority to adopt resolutions regulating the procedure of the Tribal Council and other Tribal Agencies and Tribal Officials of the Reservation.
- WHEREAS,** The Tribal Business Council's responsibility includes promoting the health, security, economic, and general welfare of both members and non-members residing or conducting business on the Fort Berthold Indian Reservation (Reservation); and
- WHEREAS,** The MHA Nation's Reservation is located in the heart of the Bakken Formation which is the largest continuous oil accumulation in the lower 48 states and approximately two percent of all oil and gas production in the United States is located on Reservation; and
- WHEREAS,** The Three Affiliated Tribes inherent sovereign authority includes its authority to tax oil and gas development on the Reservation; and
- WHEREAS,** The authority of the Three Affiliated Tribes to tax activities, including oil and gas development, within its Reservation is vital and necessary for the Tribes to raise revenues to fund its governmental, develop and maintain infrastructure, manage Reservation lands, waters and resources, and provide services to its members; and



**WHEREAS,** The Three Affiliated Tribes relies on its authority to tax activities within its Reservation to fund its government and provide services to its members the same as any other government; and

**WHEREAS,** The Three Affiliated Tribes development of oil and gas resources on the Reservation is fundamental to its economic development, economic self-sufficiency, and the Tribes' fulfillment of modern and successful federal tribal self-determination polices; and

**WHEREAS,** In 1825, the Mandan, Hidatsa and Arikara Tribes, making up the Three Affiliated Tribes, each separately entered into peace treaties with the United States that specifically set out the federal government's exclusive role in regulating trade with them. For example, the Mandan treaty provides:

"All trade and intercourse with the Mandan tribe shall be transacted at such place or places as may be designated and pointed out by the President of the United States, through his agents; and none but American citizens, duly authorized by the United States, shall be admitted to trade or hold intercourse with said tribe of Indians ... [And,] the United States agree to admit and license traders to hold intercourse with said tribe, under mild and equitable regulations; ...."

TREATY WITH THE MANDAN TRIBE, 7 Stat., 264, Art. 4 and 5 (July 30, 1825), and that treaties with the Hidatsa and Arikara Tribes included identical provisions to this provision.

**WHEREAS,** In the 1851 Treaty of Fort Laramie, the Three Affiliated Tribes reserved the Fort Berthold Indian Reservation and its lands, waters and resources for the benefit of the Tribes and its members and the treaty specifically prohibits non-Indians from taking the Tribes' resources for their own benefit stating:

"In consideration of the rights and privileges acknowledged in the preceding article, the United States bind themselves to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States, after the ratification of this treaty."

TREATY OF FORT LARAMIE, 11 Stat. 749, Art. 3 (Sept. 17, 1851).

**WHEREAS,** The longstanding and successful federal Indian policy of tribal self-determination is undermined and defeated by the State of North Dakota's dual taxation of oil and gas development within the Reservation; and

**WHEREAS,** The Enabling Act of 1889, ch. 180, 25 STAT. 676 (February 2, 1889) which split the Territory of Dakota into North and South Dakota and, among other things, permitted North Dakota to enter the Union as a state, provides in Section 4:

"That the people inhabiting proposed states do agree and declare that they forever disclaim all right and title ... to all lands lying within said limits owned or held by any Indian or Indian tribes; and ... said Indian lands shall remain under the



absolute jurisdiction and control of the Congress of the United States; [and] ..., that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use;" and

**WHEREAS,** The State of North Dakota's dual taxation of oil and gas development within the Reservation is a blatant violation of the Enabling Act of 1889; and

**WHEREAS,** The State of North Dakota's dual taxation of oil and gas development within the Reservation is based on an outdated United States Supreme Court precedent interpreting a federal statute from 1938, long before the federal tribal self-determination laws and policies were enacted, involved a tribe in New Mexico and did not involve the Three Affiliated Tribes, did not discuss the impact of oil and gas development on its Reservation, the Three Affiliated Tribes need to maximize its tax revenue in order to keep up with the impacts, or include an analysis of the Three Affiliated Tribes' treaties, among other things; and

**WHEREAS,** The State's detrimental interference in the Three Affiliated Tribes' oil and gas development through dual taxation, forces the Tribes to either forego its own taxes or enter into unfair and inequitable tax revenue sharing agreements; and

**WHEREAS,** Since 2009, over \$2 billion in tax revenue has been generated from oil and gas development on the Reservation under the "Oil and Gas Tax Agreement Between The Three Affiliated Tribes And State of North Dakota and the State received more than half of the tax revenue generated on the Reservation, with over 60% of that revenue being derived from lands and resources held in trust for the exclusive benefit of the Three Affiliated Tribes; and

**WHEREAS,** The State returns little to none of these tax revenues back to the Reservation to address the impacts of oil and gas development on the Three Affiliated Tribes' infrastructure, lands, waters, resources and members. The MHA Nation has a \$3.75 billion need over the next 10 years to fund the governmental services it provides to our members and non-members, such as, roads construction and maintenance; infrastructure; transportation improvements/safety; health care; law enforcement; education, including new school construction; fire protection; emergency management; and regulatory and drug enforcement; and

**WHEREAS,** In support of Indian energy development and tribal self-determination, the United States Department of Energy stated that the current Administration supports "liberating Indian energy development from stifling taxes and regulations."; and

**WHEREAS,** The Tribal Business Council has determined it necessary to formally declare its position and policy demanding an end to dual state taxation of energy trust resources on the Fort Berthold Indian Reservation.

**THEREFORE BE IT RESOLVED,** The Three Affiliated Tribes' oil and gas development cannot progress without addressing dual taxation.



**BE IT FURTHER RESOLVED,** The Three Affiliated Tribes need to maximize its tax revenue from oil and gas development to fund the Tribes' government, build and maintain the infrastructure, manage and protect Reservation lands, waters and resources, and provide needed services to the Tribes' members

**BE IT FURTHER RESOLVED,** The Three Affiliated Tribes cannot maximize its ability to raise and collect tax revenue while the State of North Dakota continues to impose taxes on oil and gas development within the Reservation.

**BE IT FURTHER RESOLVED,** That if Indian oil and gas, and other energy development cannot progress, the burden on the Federal government to increase federal budgets for tribal programs will continue, and continue to prevent tribal governments from realizing full tribal self-determination.

**BE IT FURTHER RESOLVED,** That the President recognizes the benefits from oil and gas and other energy development and the disastrous impacts from infringements on tribal sovereignty, like dual taxation, and stated in a Tribal, State, and Local Energy Roundtable at the White House on, June 28, 2017, that "vast amounts of deposits of coal and other resources have ... been taken out of your hands and we're gonna have that changed, gonna put it back in your hands [and] these infringements upon tribal sovereignty are deeply unfair to Native Americans and Native American communities who are being denied access to the energy and wealth that they have on their own lands."

**BE IT FURTHER RESOLVED,** That the Tribal Business Council adamantly opposes the State of North Dakota's taxation of oil and gas development within the Reservation.

**BE IT FINALLY RESOLVED,** That the Chairman shall actively pursue the elimination of state dual taxation of tribal oil and gas and other resources on the Reservation with the Federal government through support from other tribal governments and various entities and Indian organizations.

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**CERTIFICATION**

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 8<sup>th</sup> day of November 2018; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [ X ] voting. [ ] not voting.

Dated this 8<sup>th</sup> day of November 2018.

**ATTEST:**

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

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