



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

***A Resolution entitled, "Consent to the Application to Amend BIA ROW No. FBOG101118 to add Four Additional Wells on the Metals East Well Pad Submitted by Enerplus Resources (USA) Corporation."***

- 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 provide 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. 13-109-VJB (Establishing Standardized Minimum Rates for Oil and Gas Lease Bonus, Royalties and Road and Pipeline Easements), 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), Resolution No. 17-117-FWF (Approval of Fee Structure), and Resolution No. 18-212-FWF (Amending Fee Structure); and
- WHEREAS,** On March 13, 2015, the Tribal Business Council passed Resolution No. 15-095-LKH, entitled, "Approval of Consents for Certain Rights-of-Way on Tribal Land" which among others granted consent to a right-of-way to Enerplus for a well site for three well bores: Nickel #147-93-16A-21H, Lead #147-93-16A-21H TH, Zinc #147-93-09D-04H, and Silver #147-93-09D-4H TF; and



**WHEREAS,** On June 9, 2016, the Tribal Business Council passed Resolution No. 16-129-CSB, entitled, “Technical Correction to Resolution No. 15-095-LKH, Relating to Right-of-Way granted for Enerplus’s Metals Pad, WPX’s Packineau Project, and WPX’s Bear Den Project” which recited that the BIA would only grant a ROW for the Metals Pad for the purpose of developing a “well site” and no other purpose because Resolution No. 15-095-LKH only identified a “well site” as the only purpose for said ROW; and

**WHEREAS,** The ROW application submitted by Enerplus for the Metals Pad listed as its purposes: “Access across and road, well pad, utilities, fiber optics, above ground appurtenances”; and

**WHEREAS,** In accordance with Enerplus’s request, Resolution No. 16-129-CSB made certain technical corrections to Resolution No. 15-095-LKH, including: “On page 2, row 2, column 3, strike the word “wellsite” and replace it with: “Access across and road, well pad, utilities, fiber optics, above ground appurtenances” and

**WHEREAS,** On June 19, 2016, MHA Nation Chairman Fox executed the Bureau of Indian Affairs (“BIA”) “Consent of Owner’s - Grant of Right-of-Way” application submitted by Enerplus Resources (USA) Corporation across certain Trust lands on Allotment No. T2028 (100% Tribal Interest) located in S½ SE¼ of Section 9, W½ NW¼ of Section 15, NE¼ of Section 16, in Township 147 North, Range 93 West, in Dunn County, North Dakota; and

**WHEREAS,** The Consent of Owner’s – Grant of Right-of-Way for Allotment No. T2028, described above, includes the following description of easement: STEEL #147-93-09D-04H TF, NICKEL #147-93-16A-21H, TUNGSTEN #147-93-16A-21H, LEAD #147-93-16A-21H TF, COBALT #147-93-09D-04H, SILVER #147-93-09D-04H TF, TITANIUM #147-93-16A-21H, ZINC #147-93-09D-04H, PLATINUM #147-93-09D-04H TF-LL:

“Access across and a road right-of-way in the SE/4 of Section 9 and in the NE/4 of Section 16, T147N, R93W, the proposed right-of-way being 1616.73 feet long and 125 feet wide comprising a total of 4.639 acres, more or less, in addition to a well pad of approximately 400 feet X 800 feet, comprising an additional 14.428 acres, more or less, being 19.067 total acres, more or less, from the above described Allotments”; and

**WHEREAS,** On May 3, 2017, the Bureau of Indian Affairs (“BIA”) granted to Enerplus Resources (USA) Corporation, (“Enerplus”), ROW No. FBOG101118, an “easement for right-of-way for the following purposes, specifically: STEEL #147-93-09D-04H TF, NICKEL #147-93-16A-21H, TUNGSTEN #147-93-16A-21H, LEAD #147-93-16A-21H TF, COBALT #147-93-09D-04H, SILVER #147-93-



09D-04H T2F, TITANIUM #147-93-16A-21H, ZINC #147-93-09D-04H, PLATINUM #147-93-09D-04H TF-LL WELL LOCATION, ACCESS ROAD, UTILITIES, FIBER OPTICS AND ABOVE GROUND APPURTENANCES over land embraced within a right-of-way, situated on the following described lands located in” Dunn County, North Dakota on the Fort Berthold Indian Reservation (“FBIR”):

Township 147 North, Range 93 West, Fifth Principal Meridian  
Tribal Tract T2028 – S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 9 and NE $\frac{1}{4}$  of Section 16  
(4.639 acres of access road/utility corridor disturbance and  
14.428 acres of well pad disturbance); and

**WHEREAS** BIA ROW No. FBOG101118 is limited to and more particularly described to be a utility corridor/access road 1,616.73 feet in length, 125 feet in width, 4.639 acres in total area and 14.428 acres (400 feet X 800 feet) of surface disturbance for the well pad; total combined well site, access road/utility corridor right-of-way contains 19.067 acres, more or less; and

**WHEREAS,** On May 13, 2019, Enerplus submitted a ROW application and consent request to amend BIA ROW No. FBOG101118 to add four (4) well bores on the Metals East Pad, with no additional disturbance area, across certain Tribal tracts in Allotment No. T2028 (100% Tribal interest), located in S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 9, W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 15, NE $\frac{1}{4}$  of Section 16, in Township 147 North, Range 93 West, in Dunn County, North Dakota as more particularly described in Appendix A.1.; and

**WHEREAS,** The ROW application and consent request, submitted by Enerplus for the Metals East Pad ROW Modification 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,** Pursuant to fees established and set forth in Resolution No. 18-212-FWF, the projected compensation to the MHA Nation for this ROW application is \$20,000.00, in addition to the one-time application fee; and

**WHEREAS,** On June 4, 2019 at a duly held meeting of the Natural Resources Committee (“NRC”), the MHA Nation Energy Division recommended for approval of Enerplus’s ROW application and consent request for the Metals East Pad ROW Modification Project, more fully described herein, and in the attached Appendix A.1., and the NRC approved Enerplus Resources (USA) Corporation’s application and forwarded it to the Tribal Business Council for final action.



**NOW THEREFORE BE IT RESOLVED**, Subject to Enerplus Resources (USA) Corporation's 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 the following ROW application, attached as Appendix A.1, and ROW consent, as follows:

- Enerplus Resources (USA) Corporation – The Metals East Pad ROW Modification Project, to add four (4) well bores on the Metals East Pad, with no additional disturbance area, across certain Tribal tracts in Allotment No. T2028 (100% Tribal interest), located in S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 9, W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 15, NE $\frac{1}{4}$  of Section 16, in Township 147 North, Range 93 West, in Dunn County, North Dakota.

**BE IT FURTHER RESOLVED**, In accordance with the MHA Nation Standard Terms and Conditions for Right-of-Ways, the ROW for the Metals East Pad ROW Modification Project will be subject to the term granted in BIA ROW No. FBOG101118.

**BE IT FURTHER RESOLVED**, The Tribal Business Council consents to the estimated compensation to the MHA Nation for this ROW application and consent request, in the amount of \$20,000.00, in addition to the one-time application fee, which is based on the MHA Nation ROW compensation and application fees established and set forth in Resolution No. 18-212-FWF.

**BE IT FURTHER RESOLVED**, In accordance with governing MHA Nation law and policy as well as applicable federal ROW regulations, all ROW grantees must obtain the prior written approval from the MHA Nation before assigning any ROW that contains any Tribal interest, and therefore, the Tribal Business Council does not pre-consent to an assignment of the BIA ROW No. FBOG101118, other than what is expressly authorized by this Resolution.

**BE IT FURTHER RESOLVED**, The Tribal Business Council does not consent to waive any bond, insurance, or alternative form of security.

**BE IT FURTHER RESOLVED**, The MHA Nation Standard Terms and Conditions for Right-of-Ways, executed by Enerplus Resources (USA) Corporation and the MHA Nation Energy Division, 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 the Bureau of Indian Affairs to incorporate these terms and conditions into the modification of BIA ROW No. FBOG101118.

**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, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 7<sup>th</sup> day of August 2019, 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  Voting.  Not Voting.

Dated this 7<sup>th</sup> day of August 2019.

ATTEST:

  
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Tribal Secretary, Fred Fox  
Tribal Business Council

  
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Chairman, Mark N. Fox  
Tribal Business Council