



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

***A Resolution entitled: "Approval of Assessment of Civil Fine on RimRock Oil & Gas Williston, LLC for Trespass of BIA ROW No. FBOG090015 for the Two Shields Butte 14-33 Well Pad and Consent to Amend BIA ROW No. FBOG090015 to add Three Additional Wells on the Two Shields Butte 14-33 Well Pad."***

**WHEREAS,** This Mandan Hidatsa and Arikara Nation, also known as the Three Affiliated Tribes (the "MHA Nation" or "Tribes"), 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,** 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 VI, Section 5 (d) of the Constitution of the Three Affiliated Tribes empowers the Tribal Business Council to negotiate with the Federal government on behalf 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. 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 5, 2009, the Bureau of Indian Affairs (“BIA”) granted to Kodiak Oil & Gas Corporation (“Kodiak”) ROW No. FBOG090015, an “easement for right-of-way for the following purposes, specifically: TWO SHIELDS BUTTE 14-33H AND 14-33-6H WELL LOCATIONS AND ACCESS 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 149 North, Range 92 West, Fifth Principal Meridian

Allotment No. 641A – SE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 33  
(0.73 acres access road and 3.75 acres of well pad disturbance)

**WHEREAS** BIA ROW No. FBOG090015 is limited to and more particularly described to be an access road 639 feet in length, 50 feet in width, and a well pad 300 feet by 500 feet and 4.48 acres in total area; and

**WHEREAS,** BIA ROW No. FBOG090015 provides that a fifty-foot wide right-of-way is granted across the aforementioned trust property along with 3.75 acres of surface disturbance for a well pad; and

**WHEREAS,** On December 10, 2014, Kodiak amended its corporate articles changing its name to Whiting Resources Corporation (“Whiting”) and through operation of law assigned the ROW No. FBOG090015 to Whiting; and

**WHEREAS,** In July 2014, by operation of law, the assignment of ROW No. FBOG090015 transferred from Kodiak to Whiting and;

**WHEREAS,** Effective September 1, 2017, RimRock Oil & Gas Williston, LLC (“RimRock”) acquired, through a Purchase Agreement and Assignment, Bill of Sale and Conveyance, all of Whiting’s assets on the FBIR, including but not limited to leaseholds, equipment, records, permits, rights-of-way, and pending rights-of way, and on a contractual basis, Whiting continued to operate said assets for RimRock until January 1, 2018; and

**WHEREAS,** On March 6, 2018, RimRock provided the BIA supporting documentation regarding the assignment of BIA rights-of-way from Whiting to RimRock, as a result of the September 1, 2017 Purchase Agreement and Assignment, Bill of Sale and Conveyance, including detailed lists of all approved rights-of-way and rights-of-way “in process” and requested BIA to transfer all BIA ROWs on both lists from Whiting to RimRock; and



- WHEREAS,** The transfer of the approved ROWs and ROWs in process from Whiting to RimRock was completed under 25 CFR § 169.207(c) when BIA reviewed a copy of the assignment conveyance agreement and supporting documentation provided by RimRock and recorded said documentation in the Land Title and Records Office on September 17, 2018; and
- WHEREAS,** In April 2019, RimRock discovered that the original pad construction was larger than the original ROW, thus causing disturbance totaling 5.63 acres, exceeding the parameters of BIA ROW No. FBOG090015 on Allotment No. 641A by 1.88 acres, thereby creating a trespass violation; and
- WHEREAS,** On April 30, 2019, a RimRock representative met with the MHA Nation Energy Division to report the trespass matter described above, and discuss resolution of said trespass; and
- WHEREAS,** On April 30, 2019, RimRock submitted a ROW application and consent request to amend BIA ROW No. FBOG090015 to add three (3) additional well bores: (i) TSB 14-33-6-13H3, (ii) TSB 14-33-6-14H3, and (iii) TSB 14-33-7-13HU, and for the continued use of the 1.88 acres not originally approved under BIA ROW No. FBOG090015 on the Two Shields Butte 14-33 Pad, across certain Tribal tracts on Allotment No. 641A (20.37% Tribal Interest) located in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, Township 149 North, Range 92 West, the 5th Principal Meridian, Dunn County, North Dakota as more particularly described in Appendix A.1.; and
- WHEREAS,** The ROW application and consent request, submitted by RimRock for the addition of three (3) wells on the Two Shields Butte 14-33 Pad, 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,** On June 4, 2019, at a duly held meeting of the Energy Committee ("EC"), the MHA Nation Energy Division presented to the EC its findings regarding the trespass violation of acreage disturbance exceeding the parameters of BIA ROW No. FBOG090015, and RimRock representatives were also in attendance at the EC meeting and were given an opportunity to be heard; and
- WHEREAS,** Based on all of the facts and circumstances provided to the EC regarding the above described trespass matter, the Energy Committee imposed a \$94,000.00 (\$50,000 per acre of trespass) fine for RimRock's trespass violation of acreage disturbance exceeding the parameters of BIA ROW No. FBOG090015, the amount proportionate to Tribal interest of 0.2037037037 equals \$19,148.15, and directed that RimRock must pay the fine within three (3) weeks; and



- WHEREAS,** Alternative resolution of ROW violations is consistent with intent and spirit of BIA Right-of-Way Regulations codified at 25 C.F.R. 169 Subpart F, which recognizes deference to Tribal decision-making and negotiated remedies; and
- WHEREAS,** Pursuant to fees established and set forth in Resolution No. 18-212-FWF, the projected compensation proportionate to the MHA Nation ownership (0.2037037037 Tribal interest) for this ROW application is \$15,000.00 for three (3) additional well bores (\$5,000.00 for each additional well bore) and \$6,580.00 for the additional 1.88 acreage (\$3,500.00 per acre of additional disturbance) for a total of \$21,580.00 (\$4,396.65 = proportional amount for the Tribal interest); and
- WHEREAS,** Provided that RimRock remits timely payment of civil fine for the above described trespass violation of BIA ROW No. FBOG090015, the EC, at a duly held meeting on June 4, 2019, approved RimRock's ROW application and consent request to amend BIA ROW No. FBOG090015 to add three (3) additional well bores: (i) TSB 14-33-6-13H3, (ii) TSB 14-33-6-14H3, and (iii) TSB 14-33-7-13HU, and for the continued use of the 1.88 acres not originally approved under BIA ROW No. FBOG090015 on the Two Shields Butte 14-33 Pad, across certain Tribal tracts on Allotment No. 641A (20.37% Tribal Interest) located in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, Township 149 North, Range 92 West, the 5th Principal Meridian, Dunn County, North Dakota, more fully described herein, and in the attached Appendix A.1., and the EC forwarded RimRock's application to the Tribal Business Council for final action; and
- WHEREAS,** During the course of finalizing RimRock's ROW application and consent request to amend BIA ROW No. FBOG090015 for consideration and approval by the Tribal Business Council, RimRock informed the MHA Nation Energy Division that the BIA could not locate the Tribal consent for ROW No. FBOG090015, and that RimRock could not locate said Tribal consents in the files or records of Kodiak or Whiting; and
- WHEREAS,** Although the BIA and RimRock could not produce documentation of the Tribal consent for ROW No. FBOG090015, RimRock provided the following: (i) a copy of BIA Invoice No. 000207314 in the amount of \$10,730.00 dated September 18, 2009 issued to Kodiak, and (ii) a copy of the Check No. 20290 in the amount of \$10,730.00 dated October 2, 2009 from Kodiak for payment of the invoice for BIA ROW No. FBOG090015; and
- WHEREAS,** Because there are no known records or documentation of a written Tribal consent for BIA ROW No. FBOG090015, as a prudent matter and in conformance with prevailing Tribal and federal laws, RimRock seeks the formal consent of the MHA Nation for the Tribal interest on Allotment No. 641A to be encumbered by BIA ROW No. FBOG090015.



**NOW THEREFORE BE IT FURTHER RESOLVED**, That the Tribal Business Council hereby provides the retroactive consent of the MHA Nation for the Tribes' interest (20.37%) in Allotment No. 641A to be encumbered by BIA ROW No. FBOG090015 issued on March 5, 2009, provided that the BIA demonstrates to the MHA Nation Energy Division that the BIA remitted to the MHA Nation of its proportionate share of the \$10,730.00 payment that Kodiak Oil and Gas Corporation rendered to the BIA on or about October 2, 2009.

**BE IT FURTHER RESOLVED**, That the Tribal Business Council hereby affirms the action of the Energy Committee to impose on RimRock Oil & Gas Williston, LLC a \$19,148.15 civil fine for a trespass violation of acreage disturbance exceeding the parameters of BIA ROW No. FBOG090015.

**BE IT FURTHER RESOLVED**, Provided that RimRock Oil & Gas Williston, LLC timely remits payment for the trespass violation of BIA ROW No. FBOG090015, described herein, and subject to RimRock Oil & Gas Williston, LLC'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:

- RimRock Oil & Gas Williston, LLC – To amend BIA ROW No. FBOG090015 to add three (3) additional well bores: (i) TSB 14-33-6-13H3, (ii) TSB 14-33-6-14H3, and (iii) TSB 14-33-7-13HU, and for the continued use of the 1.88 acres not originally approved under BIA ROW No. FBOG090015 on the Two Shields Butte 14-33 Pad, across certain Tribal tracts on Allotment No. 641A (20.37% Tribal Interest) located in SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, Township 149 North, Range 92 West, the 5th Principal Meridian, 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 three (3) additional Wells on the Two Shields Butte 14-33 Well Pad will be subject to the term from the originally executed BIA ROW grant FBOG090015.

**BE IT FURTHER RESOLVED**, The Tribal Business Council hereby consents to the estimated compensation proportionate to MHA ownership (20.37% Tribal Interest) for this ROW application for the three (3) additional well bores (\$5,000.00 for each additional well bore) and continued utilization of an additional 1.88 acres for the well pad not previously approved under BIA ROW No. FBOG090015 (\$3,500.00 per acre of additional disturbance) for a total of \$21,580.00 (\$4,396.65 = proportional amount for the Tribal Interest), pursuant to the 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. FBOG090015.

**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 RimRock Oil & Gas Williston, LLC 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 Bureau of Indian Affairs to incorporate these terms and conditions into the amended BIA ROW No. FBOG090015.

**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 10<sup>th</sup> day of October, 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. [ X ] Not Voting.

Dated this 10<sup>th</sup> day of October, 2019.

### ATTEST:

  
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Tribal Secretary, Fred Fox  
Tribal Business Council

  
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Tribal Chairman, Mark N. Fox  
Tribal Business Council