



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

**A Resolution entitled, "*Amendment to Resolution No. 17-117-FWF entitled 'Approval of a Fee Structure for the MHA Nation Energy Division to Regulate and Oversee Oil and Gas Exploration and Production Activities.'*"**

- 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 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,** The MHA Nation Energy Division has the primary regulatory responsibility overseeing oil and gas exploration, development and production activities on the Ft. Berthold Indian Reservation ("FBIR"), including on-site at and on the well pad, in the oil field operations, and has been the lead tribal department that processes related ROW applications, pursuant to applicable tribal law and regulations and in accordance with applicable federal law and regulations, including requirements and conditions set forth in the respect environmental assessment documents and the application to drill documents; 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





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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,** Recognizing that the construction and operation of well pads, well heads, waste pits, reserve pits, oil storage tanks, oil pumping units, and other oil and gas production facilities, including, but not limited to, oil, gas, and water gathering pipelines, and other similar infrastructure ("Oil and Gas Facilities") create noise, dust, and smells that interfere with the quiet enjoyment of nearby property owners, the Tribal Business Council also established setback requirements for the siting of Oil and Gas Facilities in order to protect the property and wellbeing of all property owners on the FBIR; and

**WHEREAS,** Specifically, the Tribal Business Council enacted Resolution 12-103-VJB on September 27, 2012, as amended under Resolution 13-126-VJB on August 13, 2013, and further amended under Resolution 14-090-VJB on May 28, 2014, which all collectively imposed setback requirements applicable to the siting of Oil and Gas Facilities in proximity to an occupied residence, Tribal Building, school, hospital, or other structure where people are known to congregate or actually reside on lands subject to the MHA Nation's jurisdiction; and

**WHEREAS,** The MHA Nation Energy Division has the primary responsibility to review and process setback variance applications for Oil and Gas Facilities located within an half mile from the Missouri River, Little Missouri River, Lake Sakakawea and designated sacred sites or villages in the Badlands and located within the setback requirements for an occupied residence, Tribal Building, school, hospital, or other structure where people are known to congregate or actually reside on lands subject to the MHA Nation's jurisdiction; and

**WHEREAS,** On May 11, 2017, the Tribal Business Council passed Resolution No. 17-117-FWF entitled, "Approval of an Updated Fee Structure for the MHA Nation Energy Division to Regulate and Oversee Oil and Gas Exploration and Production Activities" which established a \$500.00 application fee for setback variance requests; and

**WHEREAS,** The MHA Nation Energy Division expends significant staff time and resources processing setback variance applications, and seeks an amendment to Resolution No. 17-117-FWF to increase the application fee to take into consideration the review and processing of setback variance applications; and





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- WHEREAS,** The MHA Nation Energy Division expends significant staff time and resources processing lease assignments and rights-of-way assignments, and seeks an amendment Resolution 17-117-FWF to increase the application fee to take into consideration the review and processing of lease assignments and rights-of-way assignments; and
- WHEREAS,** In the interest of health, welfare and safety of the environment of the FBIR and the people who work and reside on the FBIR, the MHA Nation Energy Division seeks an amendment to Resolution 17-117-FWF to establish a fine for operators who are found to have oil storage tanks without oil tank seals or with damaged oil tank seals; and
- WHEREAS,** A civil fine for damaged or missing oil tank seals is a customary standard in the oil and gas industry, for example, the Bureau of Land Management (BLM), per 43 CFR 3160, have defined oilfield operations oversight responsibilities and those responsibilities include ensuring the Oil Storage Tanks have physical oil tank seals to prevent theft, and when BLM periodically finds Oil Storage Tanks without or damaged Oil Tank Seals, BLM fines the responsible operator \$1,000.00 per Oil Seal Incident of Non-Compliance; and
- WHEREAS,** On August 14, 2018, at a duly held meeting of the Natural Resources Committee (NRC), the Energy Division requested approval to increase the fee to \$3,000.00 for the review and processing of setback variance applications for the siting of Oil and Gas Facilities within the existing setback requirements for Missouri River, Little Missouri River, Lake Sakakawea and designated sacred sites or villages in the Badlands and for an occupied residence, Tribal Building, school, hospital, or other structure where people are known to congregate or actually reside on lands subject to the MHA Nation's jurisdiction; and
- WHEREAS,** The MHA Nation Energy Division further recommended establishing a processing fee for reviewing lease assignments in the amount of \$3,500.00; and
- WHEREAS,** The MHA Nation Energy Division further recommended establishing a processing fee for reviewing ROW assignments in the amount of \$3,500.00; and
- WHEREAS,** The MHA Nation Energy Division further recommended establishing for operators who are found to have Oil Storage Tanks without oil tank seals or with damaged oil tank seals, in the amount of \$1,000.00 per incident of noncompliance; and
- WHEREAS,** The NRC accepted the Energy Division's recommendations to amend Resolution No. 17-117-FWF, to increase the fee for processing setback variance applications from \$500.00 to \$3,000.00; to establish a processing fee in the amount of



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\$3,500.00 per lease assignment request, to establish a processing fee in the amount of \$3,500.00 per ROW assignment request, and to establish a civil fine in the amount of \$1,000.00 for missing or damaged oil tank seals; and

**WHEREAS,** The NRC forwarded the MHA Nation Energy Division's recommendations to amend Resolution No. 17-117-FWF to the Tribal Business Council for final approval.

**NOW THEREFORE BE IT RESOLVED,** That the Tribal Business Council hereby approves the Energy Division's recommendation to amend Resolution No.17-117-FWF to increase the fee for the review and processing of setback variance applications for the siting of Oil and Gas Facilities, from \$500.00 to \$3,000.00, to be effective as of August 1, 2018, *see* the attached Amended Exhibit A; and

**BE IT FURTHER RESOLVED,** That the Tribal Business Council hereby approves the MHA Nation Energy Division's recommendation to establish a processing fee for reviewing lease assignments in the amount of \$3,500.00 per lease assignment request; and

**BE IT FURTHER RESOLVED,** That the Tribal Business Council hereby approves the MHA Nation Energy Division's recommendation establishing a processing fee for reviewing ROW assignments in the amount of \$3,500.00 per ROW assignment request; and

**BE IT FURTHER RESOLVED,** That the Tribal Business Council hereby approves the MHA Nation Energy Division's recommendation to establish a civil fine for operators who are found to have Oil Storage Tanks without oil tank seals or with damaged oil tank seals, in the amount of \$1,000.00 per incident of noncompliance; and

**BE IT FURTHER RESOLVED,** That the Tribal Business Council directs that the payment of the setback variance application fee, the lease assignment processing fee, the ROW assignment processing fee, and the civil fine for missing or damaged oil tank seals, set forth in the Amended Exhibit A shall be due and paid to the MHA Nation within fifteen (15) business days from the date the Tribal Business Council approves a respective setback variance application; and

**BE IT FURTHER RESOLVED,** The Tribal Business Council reserves the ability to grant a waiver or modification of the fees established by this Resolution, in cases where the MHA Nation has negotiated specific agreements or where other extenuating circumstances may arise; and

**BE IT FINALLY RESOLVED,** This Resolution supersedes any prior actions of the Tribal Business Council on this subject, and shall be part of the laws of the MHA Nation





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and the MHA Nation Energy Office shall be responsible for carrying out the mandates of this Resolution; and

**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 15<sup>th</sup> day of August, 2018, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 2 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting.  Not Voting.

Dated this 15<sup>th</sup> day of August, 2018.

A handwritten signature in cursive script, appearing to read "Fred W. Fox", written over a horizontal line.

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

**ATTEST:**

A handwritten signature in cursive script, appearing to read "Mark N. Fox", written over a horizontal line.

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



**AMENDED EXHIBIT A**

**MHA NATION ENERGY DIVISION  
FEE STRUCTURE  
Oversight and Regulatory of  
Oil & Gas Exploration and Production on  
EFFECTIVE MARCH 1, 2017**

- I. APPLICATION FEE** - One time fee of \$500.00 for processing an application per project for Right-of-Way, Well Pad siting, and other access approvals relating to oil and gas exploration and production on MHA Nation tribal lands. This application fee shall be non-refundable.
- II. FEES**
- A. Fees – Shall be due and paid within 15 business days upon approval by the Tribal Business Council.
1. Well Pad plus initial well - \$25,000.00 per well pad
  2. Additional Wells - \$5,000 per additional well
  3. Additional Acreage to Expand Well Pad - \$3,500.00
  4. Gathering Pipelines – One time upfront fee ROW Fee equal to \$6,000.00 per acre for permanent disturbance (20 years), and \$2,500 per acre for temporary disturbance, and an annual rental fee of \$2,000.00 per acre
  5. Access Road - \$2,500.00 per acre
  6. Utilities - \$2,500.00 per acre
  7. Produced Water Pipeline – (same as gathering)
  8. Temporary Pipelines for Freshwater Water - Based on a fifteen (15) foot width, charges are equal to five thousand dollars (\$5,000.00) per acre for a twelve (12) month period or prorated for a portion of a year. The money BIA bills and collects goes directly back to the Energy Division.
  9. Multiuse Corridors – \$3,500.00
  10. Setback Variance Requests/Applications - \$3,000.00 [*Effective August 1, 2018*]
  11. Lease Assignment Request - \$3,500.00 [*Effective August 1, 2018*]
  12. Right-of-Way Assignment Request - \$3,500.00 [*Effective August 1, 2018*]
- B. Small Interests ROWs – \$1,000.00 for each right-of-way application, which consists of interest in Tribal land of 0.50 acres or less, to be effective for all ROW applications approved by the Tribal Council as of March 1, 2017.
- C. Gas Sniffer Checks - \$2,000.00 per event when leak is detected.
- D. Tank Hatch Open - \$20,000.00 per incident.



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- E. Missing or damaged Oil Storage Tank Seals - \$1,000.00 per incident. [*Effective August 1, 2018*]