



MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation
Tribal Business Council

Tex "Red Tipped Arrow" Hall
Office of the Chairman

April 15, 2013

The Honorable Kevin Brady
U.S. House of Representatives
301 Cannon House Office Building
Washington, D.C. 20515

The Honorable Mike Thompson
U.S. House of Representatives
231 Cannon House Office Building
Washington, D.C. 20515

Re: Indian Energy Tax Reform Proposals for Energy Tax Reform Working Group

Dear Congressman Brady and Congressman Thompson:

The Mandan Hidatsa and Arikara Nation (MHA Nation) and our Fort Berthold Indian Reservation are in the middle of the most active oil and gas play in the United States. The Fort Berthold Reservation is located in the heart of the Bakken Formation in North Dakota. The Bakken Formation is the largest continuous oil accumulation in the lower 48 states. There are 26 drilling rigs operating on our Reservation and about 500 oil and gas wells in production. In five short years, our region has become the second highest oil and gas producing areas in the United States. We produce more oil than Alaska. Only Texas produces more.

Despite the tremendous economic impact from this energy development, federal law prevents the MHA Nation from raising the tax revenues needed to manage the impacts of energy development on our members, infrastructure and natural resources. Currently, out dated Supreme Court precedent allows North Dakota to place a double tax on the energy development on our Reservation. This job and development killing double taxation forced the MHA Nation into an unfair tax agreement with North Dakota.

Under the tax agreement North Dakota gets about 61% of the tax revenues from energy production on the Reservation, and the Tribe gets 39%. Since 2008, the State has taken \$314 million in tax revenues from the Tribe and has not accounted for how it is spent. We do know that in 2011, the State collected more than \$75 million in taxes from energy development on the Reservation, but spent less than \$2 million of that amount on state roads on the Reservation and zero tax dollars on tribal and Bureau of Indian Affairs roads. Moreover, none of the funds were used to mitigate impacts that oil and gas development has had on the Tribe, its members and our natural resources.

North Dakota should not be allowed to rob the MHA Nation of its resources. The MHA Nation and tribes everywhere need Congress to affirm the exclusive authority of tribes to raise tax revenues on our reservations so that we can rely on the same revenues that every other government uses to maintain infrastructure and support economic activity. Just like other governments, tribes maintain roads so that heavy equipment can reach drilling locations and so that our tribal members can safely get to school or work. We also need to provide increased law enforcement to protect tribal members and the growing population of oil workers. Additionally, we need to develop tribal codes and employ tribal staff to regulate activities on the Reservation. Please find attached two picture illustrating the kinds on energy impacts that the MHA Nation must address every day.

Our oil and gas resources are tribal resources and the tax revenues should stay on the Reservation. Tribes across the Nation need to be able to develop their resources without state interference. Our efforts to get our fair share of tax revenues have been supported by Secretary Salazar and the oil and gas companies operating on our Reservation. We appreciate your consideration of the following options for amending federal law to prevent state double taxation of our resources.

In both proposals, we are only seeking to clarify the law. In the first proposal, out dated Supreme Court precedent needs to be clarified to recognize the current level of tribal government operations. In the second proposal, the law is merely being clarified to affirm the existing authority of the Secretary of the Interior.

Proposal 1. Affirm exclusive tribal authority to tax energy activities on Indian lands.

Legislation could reaffirm exclusive tribal taxing authority and could require tribes to fairly reimburse states for any substantiated services that have a nexus to oil and gas production impacts on Indian lands.

Proposed Legislative Text:

- (a) IN GENERAL.—Indian tribes have exclusive authority to levy or require all assessments, taxes, fees, or levies for energy activities on Indian lands.
- (b) REIMBURSEMENT FOR SERVICES.—State and other local governments may enter into agreements with Indian tribes for reimbursement of services provided by the state or local government that are a directly related to the energy activities on Indian lands. Indian tribes, state and local governments are directed to negotiate in good faith in developing such agreements. Any agreement under this section may be reviewed for accuracy by the Secretary of the Interior.
- (c) DEFINITIONS.—For the purposes of this section, the terms “Indian tribe” and “Indian land” have the meaning given the terms in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

Proposal 2. Indian Mineral Development Act preemption of State taxing authority. The Indian Mineral Development Act (IMDA), Public Law No. 97-382 (1982), was enacted “to

further the policy of self-determination and ... to maximize the financial return tribes can expect for their valuable mineral resources. S.Rep. No. 97-472 at 2 (1982). Current state taxation of minerals produced under an IMDA agreement limits the financial return tribes can obtain for their mineral resources. To fulfill the original purpose of the IMDA and encourage domestic production of Indian energy resources, Congress could clarify that the IMDA preempts state taxation of minerals produced under an IMDA agreement.

Proposed Legislative Text:

- (a) PREEMPTION OF STATE TAXATION.—Section 3 of the Indian Mineral Development Act of 1982 is amended by adding at the end the following new subsection:

“(c) The Indian tribe owning a beneficial or restricted interest in the mineral resources that are the subject of a Mineral Agreement shall have the exclusive authority to tax the development of those resources.”

Photo of Oil and Gas Impacts on Fort Berthold Reservation Roads



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