



MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation

Tribal Business Council

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Office of the Chairman

U.S. House of Representatives Committee on Appropriations Subcommittee on Interior, Environment and Related Agencies

Testimony on American Indian/Alaska Native Programs

April 17, 2013

My name is Tex Hall. I am the Chairman of the Mandan, Hidatsa and Arikara (MHA) Nation of the Fort Berthold Indian Reservation. Thank you for the opportunity to testify.

The MHA Nation is in the middle of the most active oil and gas play in the United States—the Bakken Formation in North Dakota. The Bakken 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 the past year, our region surpassed Alaska in oil and gas production to become the second highest producing region in the United States. Only Texas produces more.

It has been at least five years since production on our Reservation began to take off. Over these five years, the MHA Nation has testified at a number of Senate and House Committee hearings and we have met repeatedly with members of Congress and Indian Affairs officials to address ways of improving energy permitting and production on our Reservation.

In brief, the record shows that the Bureau of Indian Affairs (BIA) needs more staff, expertise and resources to effectively manage and oversee energy development on Indian reservations. Even with all the attention and focus we have managed to bring to the oil and gas development at Fort Berthold, not a day goes by where federal budgets and staff cannot keep up with demand. And, more importantly, our federal government trustee has barely begun to consider and address all of the impacts of this energy development to our people, lands, air, water, roads, law enforcement, traffic and health care systems.

Despite the dramatic need for increased BIA resources to manage oil and gas development to benefit many reservations and tribal members across Indian Country, the President's fiscal year 2014 budget instead boosts the oil and gas budget of the Bureau of Land Management (BLM) by \$23 million. Meanwhile, BIA budgets for oil and gas development remain flat at a paltry \$2.5 million. This is a disgrace and an affront to our treaty and trust relationship with the federal government!

The Administration’s neglect for Indian oil and gas development is starkly displayed in the Department of the Interior’s fiscal year 2014 “Budget in Brief.” On page DH-43 of the Budget in Brief, in the middle of Interior’s lengthy discussion of its “New Energy Frontier,” Interior presents the table reproduced below.

In this table, of the 7 Interior agencies listed under “Conventional Energy and Compliance,” BIA is the only one that will not receive an increase in funding. Interior’s fiscal year 2014 budget proposes \$71 million in new funding for conventional energy development, but BIA will not get one new dollar.

In addition, of the 5 agencies in this table that will receive funding for both renewable and conventional energy development, the BIA receives the least amount of overall energy funding. For fiscal year 2014, Interior proposes providing more renewable and conventional energy funding to the Fish and Wildlife Service (FWS) than to BIA!

The MHA Nation asks that the Subcommittee take action to correct Interior’s incredible budget proposal. At a minimum, the Subcommittee should reallocate a substantial portion of the proposed BLM and FWS energy funding to the BIA so that the BIA can finally match the demand for oil and gas development on Indian reservations.

Energy development on Indian reservations provides benefits far beyond what are obtained when similar resources are developed on federal lands. Developing Indian energy resources provides needed economic development, jobs, and infrastructure growth on Indian reservations. In the Great Plains and Rocky Mountain Regions, where many conventional energy resources are available for development on Indian reservations, the average unemployment rates are 77% and 67%, respectively.¹ These regions encompass the States of Montana, Nebraska, North Dakota, South Dakota and Wyoming.

Even if the Subcommittee only reallocated the proposed budget increases for BLM and FWS to BIA, totaling \$39.3 million, the Subcommittee would go a long way toward fulfilling the

| | 2012 Enacted | 2014 Request | Change |
|---|-----------------|-----------------|--------------|
| RENEWABLE ENERGY | | | |
| BLM..... | 19.7 | 29.1 | +9.4 |
| BOEM..... | 33.0 | 34.4 | +1.4 |
| RECLAMATION..... | 0.8 | 1.1 | +0.3 |
| USGS..... | 5.9 | 9.9 | +4.0 |
| FWS..... | 7.0 | 14.1 | +7.2 |
| BIA..... | 6.0 | 8.3 | +2.3 |
| OIA..... | 1.1 | 3.0 | +1.9 |
| Subtotal..... | 73.5 | 99.9 | +26.4 |
| CONVENTIONAL ENERGY AND COMPLIANCE | | | |
| BLM..... | 125.5 | 147.9 | +22.4 |
| BOEM..... | 127.8 | 135.0 | +7.3 |
| BSEE..... | 197.4 | 222.1 | +24.8 |
| USGS..... | 25.1 | 39.8 | +14.7 |
| FWS..... | 3.1 | 3.4 | +0.3 |
| BIA..... | 2.5 | 2.5 | 0.0 |
| ONRR..... | 119.4 | 121.1 | +1.6 |
| Subtotal..... | 600.7 | 671.7 | +71.0 |
| TOTAL..... | 674.2 | 771.6 | +97.5 |

¹ Bureau of Indian Affairs Labor Force Report (2005).

federal government's trust responsibility for overseeing energy development and ensuring the beneficial use of tribal homelands to provide for our members.

Moreover, these are exactly the kinds of investments the Congress should be making. Increased energy production on Indian lands provides badly needed jobs and increased resources for tribes to serve their members. Facilitating Indian energy and economic development is exactly what is needed to lift many tribes out of ongoing dependence on federal budgets.

Even more astonishing, the President and members of Congress are refining and expanding the BLM's "Pilot Project to Improve Federal Permit Coordination" while leaving tribal requests for this same kind of coordination behind. Section 365 of the Energy Policy Act of 2005 authorized BLM to establish 7 pilot offices and streamline federal permitting by co-locating staff from different federal agencies in these offices. And, just a few weeks ago, the Senate Energy and Natural Resources Committee voted out a bill that would expand these BLM pilot offices. The President's fiscal year 2014 budget also proposed reforms to revamp and improve these BLM one-stop-shops.

These BLM offices, placed strategically in areas of high energy development, are nearly identical to the Indian Energy One-Stop Shops that Senator Dorgan first promoted 5 years ago and the MHA Nation and other tribes have been asking for ever since. As you may know, a "virtual" one-stop shop was intended to be established to serve the Fort Berthold Reservation. Unfortunately, this was a "virtual" office because Interior would never fully commit to the effort.

While we did get the time and attention of a part-time petroleum engineer, we never got the one-stop shop we were promised. This Subcommittee even provided \$500,000 to fund that office. However, since I was elected in 2010, we have never seen this funding or had a substantive consultation with the Office of Indian Energy and Economic Development (OIEED) about how to spend these funds.

I only recently learned, to my shock and displeasure, that the first half of our fiscal year 2013 one-stop shop funding has been awarded to the Lockheed Corporation to hire three oil and gas clerical workers and a group that will document oil spills. This is exactly the type of misuse and misdirection that we cannot afford during these times of tight budgets, and it is exactly the reason that I have come before this Subcommittee two years in a row to advise you that we are not seeing the funding that you worked so hard to appropriate.

Instead of OIEED's contractors we need permanent staff on the ground overseeing and managing Indian energy development for decades to come. This is why it is so important for this Subcommittee to ensure that when energy funding is provided to BIA, that these funds are available at the Regional and Agency level where energy activities are actually taking place and additional staff are needed.

Instead of being subject to OIEED's funding choices, I have tried for almost two years to "638 contract" this funding, but I have run up against a brick wall. Interior refuses to let the MHA Nation determine the best way to spend this funding because Interior's Solicitors determined that this funding was included in the Assistant Secretary's budget and not to the BIA's. We need this funding at Fort Berthold, and we need it now! This funding should be

available to our Regional and Agency offices where it can be used to address ongoing delays in oil and gas permitting.

Originally, I thought that the creation and funding of OIEED was a good idea, but it simply is not benefitting tribes on the ground level. We do not need more centralized resources and oil and gas “strike teams” whose offices are hours away from any Indian reservations. We need people on the ground where oil and gas activity is taking place.

I ask that the Subcommittee continue to fund our one-stop shop, but respectfully request that the funding be provided to our Regional and Agency BIA, not OIEED. I have worked with my Regional Director to prepare a realistic budget to address oil and gas activity on the Fort Berthold Reservation. If we can accomplish this, it will really make a difference for the most active Indian energy development in the Nation.

Finally, it is time to find a real solution to Indian energy funding problems. While increased funding and more staff at local levels are needed, we will continue to fall short in tribal government and infrastructure funding. To solve this problem, it is time for Congress to free tribes from unfair state taxation of tribal energy resources so that tribes can raise our own tax revenues to support energy and economic development.

Currently, out dated Supreme Court precedent allows states to place a double tax on the energy development on Indian reservations. The threat of 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 for state roads on the Reservation and zero tax dollars on tribal and BIA roads.

Of course, this impact is occurring on programs and infrastructure that are in large part paid for with federal dollars. Consequently, we are not the only ones who are losing out when our tax revenues are directed off the Reservation into state coffers.

North Dakota should not be allowed to rob the MHA Nation of its resources and drain federal budgets by double taxing tribal resources. 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 relies on to maintain infrastructure and support economic activity. Our oil and gas resources are tribal resources and the tax revenues should stay on the Reservation. Our efforts to get a fair share of tax revenues is supported by Secretary Salazar and the oil and gas companies operating on our Reservation, however, the State is getting a windfall and refuses to negotiate. We need Congress to act!

Thank you for your consideration of these important issues.