



MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation

Tex "Red Tipped Arrow" Hall
Office of the Chairman

Testimony of Chairman Mark Fox Mandan, Hidatsa and Arikara Nation

U.S. House of Representatives Committee on Appropriations Subcommittee on Interior, Environment and Related Agencies Testimony on American Indian/Alaska Native Programs March 24, 2015

Good morning Chairman Calvert and Members of the Subcommittee, my name is Mark Fox. I am the Chairman of the Mandan, Hidatsa and Arikara Nation (MHA Nation) of the Fort Berthold Indian Reservation. Thank you for the opportunity to testify. We appreciate the attention this Subcommittee has paid to the oil and gas permitting approval problems that continue to plague our attempts to develop our valuable oil and gas resources.

As you know from our past testimony, our Fort Berthold Reservation sits in the middle of the Bakken Formation; the largest continuous oil deposit in the lower 48 states. In less than 6 years, oil and gas production in the Bakken made North Dakota the second highest producing state in the Nation. Only Texas produces more. Even with this large production, the permitting of a single oil and gas well on our Reservation must still make its way through a maze of at least nine (9) understaffed federal agencies.

This bureaucratic thicket is grossly impractical and growing. Just last week, BLM increased this bureaucracy by adding new hydraulic fracturing requirements that will further slow production, cost jobs, lower royalties and inefficiently use Federal funding.

To address this fundamental problem, the MHA Nation asks that the Subcommittee fully support BIA's request for \$4.5 million to create an Indian Energy Service Center. As the Department of the Interior proposed in its Budget in Brief, the Service Center would provide a "one-stop shop multi-agency processing center" that includes the BIA, the Bureau of Land Management (BLM), the Office of Natural Resources Revenue, and the Office of the Special Trustee for American Indians and the Department of Energy's Tribal Energy Program. The Service Center would "expedite the leasing, permitting, developing, and reporting for conventional and renewable energy" on Indian lands. *See Interior Budget in Brief at DH-30.*

The MHA Nation believes the Indian Energy Service Center is a step in the right direction, but much more is needed. First, we are concerned that the \$4.5 million requested is not going to be adequate for the services promised, given current backlogs and the current and anticipated demand. Any single tribe with oil and gas development on its reservation could easily put all 20 of these new FTE's to work tomorrow.

To clear out and prevent future backlogs and to ensure that the Service Center has the resources to meet the demand for energy development in Indian Country, the MHA Nation asks

that the Subcommittee increase the proposed budget for the Service Center by 3 or 4 times. Funding at this level is needed to provide the staffing and expertise to efficiently manage the federal approval process.

Second, the Subcommittee should also increase funding for our local BIA and BLM field offices. Even with the Service Center, some permit work has to be performed at the local level. The proposed Service Center can support local efforts and perform some permit related tasks on its own, but its success or failure will be highly dependent on the work performed at the local level.

Third, we ask the Subcommittee to direct Interior to focus the largest percentage of its Service Center funding on conventional energy development because it is far more permit intensive than renewable energy efforts. For example, oil and gas development typically requires the permitting of hundreds or thousands of wells, whereas renewable development typically involves permitting a single project for an entire reservation.

Fourth, the MHA Nation asks that the Subcommittee direct Interior and the agencies involved in the Service Center to transfer an appropriate level of funding and staff to the Service Center. We are concerned that much of the funding and staffing for the Service Center is highly dependent on the “good will” of the participating agencies. No agency is actively seeking to surrender funds, so we are asking you to help us ensure that these transfers and assignments actually occur. The Subcommittee should also direct that the Fish and Wildlife Service (FWS) participate in this important effort. Issues raised by the FWS often create significant delays in permit approvals and Interior’s failure to include them in the Service Center plan is a great error.

As BIA reports, oil and gas development on Indian lands has generated about \$1.1 billion in royalties in 2014. This was accomplished on a shoestring budget. This \$1.1 billion is approximately one-third of the royalties generated on federal lands, yet if you compare BIA’s oil and gas budget with that of BLM, you will quickly see that our tribal efforts are being severely shortchanged. With increased federal funding, staffing and expertise, we could, at least, triple the revenue from our resources.

Fifth, we request that the Subcommittee carefully monitor where Application for Permit to Drill (APD) fees collected on our Reservation are actually going. Congress recently created the BLM Permit Processing Improvement Fund which is to be available to “coordinate and process” onshore oil and gas authorizations on Federal “and Indian trust mineral estate” land, but we need your help to make sure that the funds generated on our Reservation are ultimately used to improve permitting on our Reservation.

As we have testified in the past, BLM does not spend a reasonable share of its funding on Indian energy and we fear that this pattern will continue unless its use of APD fees is carefully monitored. This is especially important now that Congress has increased those APD fees. The increase to \$9,500 will negatively impact on our production, and this impact will worsen if those fees are not used to improve permit processing on the Reservation. To ensure that these fees are actually used on our Reservation, the MHA Nation asks the Subcommittee to require BLM to provide a quarterly report showing exactly where those APD dollars are going.

Sixth, we are formally recommending that the Subcommittee hold a hearing that looks at Indian energy spending of the agencies that fall within its jurisdiction to see if those funds could be put to more effective use. This has never been done, and we think it would present the first clear picture of what is actually going on. It will also help to identify legislative and funding changes that could lead to a more effective use of federal resources. If you would consider holding such a hearing, the MHA Nation would be more than happy to help in any way possible.

Finally, the MHA Nation would also like to ask for your support for lifting the 42-year old crude oil export ban. Oil can already be exported once it has been refined into gasoline and diesel fuel, why not also allow for crude oil exports? Industry experts recently testified before the Senate Energy and Natural Resources Committee that lifting the ban would generate \$86 billion in gross domestic product between 2016 and 2030 and \$1.3 trillion in tax revenue for governments, including our tribal government. While not directly an appropriations issue, the ban on crude oil exports is costing us revenue, jobs and taxes, and no longer makes sense in today's global marketplace.

We also ask this Subcommittee to look carefully at the social, legal, and practical impacts that oil and gas development has had on our Reservation. We are dealing with a societal explosion which none of the federal agencies that serve the MHA Nation have the practical ability to address. For example, today, the BIA openly admits that it needs additional federal employees to address our expanded needs, but because it has no additional office space, and no ability to acquire it, they cannot hire. The Office of Justice Services recognizes that we need more police officers in our community, but its funding limitations can offer no solution, even though local crime has skyrocketed. The BIA's own reports reveal that our tribal courts, which have not seen any real increase in federal dollars for the last six years, are now being forced to dismiss thousands of cases each year because they lack the practical ability to handle them.

These are the things that keep us up at night. Along with oil and gas development comes heroin, meth, human trafficking and prostitution - all of which my community has never experienced before, yet when we look to the Federal government for help, all we receive in response is a detailed discussion of budget limitations.

One simple thing you can do to help is to raise the cost of living for those federal and federally funded employees who are, or want to, work on the Fort Berthold Reservation. The cost of living on or near my Reservation skyrocketed over the last five years. Today, two bedroom homes are renting for \$2,700 per month, which few people can afford on a government salary. As a result we are having a terrible time recruiting the nurses, teachers, police officers and other federal professionals needed to fill vacancies. We can solve this recruitment problem if you help us obtain a fair cost of living allowance (COLA) for those federal and federally funded employees who work on the Reservation. The Federal government has unique COLA allowances for Alaska, Hawaii and D.C. and we now need the same on our Reservation.

Moving to non-energy areas, the MHA Nation strongly supports moving Contract Support Costs into a non-discretionary funding account. The underfunding of Contract Support Costs has plagued large land based tribes, like the MHA Nation, for years. We present our actual costs and supporting documentation to the federal representative designated by the Office of Management and Budget (OMB). We negotiate a fair rate. Then BIA and Indian Health Service

(IHS) come back and say that they lack the funds to pay the amount that the Federal government insisted upon and tell us that we have to either pay the difference or take those costs out of our service dollars.

The MHA Nation appreciates the efforts that this Subcommittee has undertaken to provide us with 100% of our Contract Support Cost funding for the last two years but we need a long-term solution. The Contract Support Costs we incur are driven by uncontrollable costs like utilities, insurance, and by new and ever expanding accounting and oversight requirements imposed by OMB. Thus, we feel that segregating these costs into a non-discretionary category is both necessary and appropriate.

We also feel that the Federal government needs to settle its past Contract Support Cost claims in an honorable way and settle them now! Please encourage both BIA and IHS to resolve these matters before the end of the summer. Federal funding should not be used by BIA, IHS or the Department of Justice in an attempt to try to find a way around a Supreme Court decision.

We also need a solution to the problem of road maintenance and road replacement. We know that the reauthorization of the Highway Trust Fund is not before this Subcommittee, but you do hear regularly about the practical impacts that the current Indian allocation is having on our Indian roads. We need your support for an amendment which provides tribes with a much more realistic percentage of those funds if they are ever going to bring their Indian roads to a reasonable standard. Creating a new formula which re-allocates the same inadequate Indian roads allocation will not solve the problem.

We also need adequate funding to maintain the roads that we do have. On our Reservation in North Dakota virtually every dollar that we receive for road maintenance goes to snow removal and seasonal repairs which we supplement with tribal dollars. In addition to these weather related impacts we need a separate set-aside to repair and rebuild federal and tribal roads damaged by domestic energy production on Indian lands. This proposal would cover federal roads in both Indian and non-Indian areas. Constructing and repairing these roads should be seen as a federal cost of energy production, not as a local give away.

Finally, we were thrilled to hear Congressman Cole express an interest in increasing tribal assistance from the Department of Health and Human Services (HHS). As a result of the oil and gas development, drugs have become a big problem on our Reservation and we are in need of a treatment facility and programs on our Reservation.

The MHA Nation strongly supported the substance abuse treatment and other diversion programs included in the Tribal Law and Order Act of 2010 (TLOA). Yet, despite the strong support that IHS and HHS expressed for the passage of the TLOA, neither of those agencies has taken any significant steps to provide funding to address these needs. In fact, I do not know of a single comprehensive federally funded residential on-reservation treatment program in the Nation. We ask that you direct HHS and IHS to live up to the obligations that they accepted when TLOA was adopted by creating the first comprehensive federally funded residential drug and alcohol treatment program on our Reservation.

Thank you for your consideration of these important issues. I am available to answer any questions you may have.