



# MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes \* Fort Berthold Indian Reservation

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Office of the Chairman

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

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Good afternoon Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to testify on the appropriations priorities for the Mandan Hidatsa and Arikara Nation (MHA Nation). My name is Roger White Owl. I serve as Chairman Mark Fox's Intergovernmental Affairs Officer.

### **State Dual Taxation of Energy Development Strains Tribal and Federal Budgets**

The MHA Nation and our Fort Berthold Indian Reservation are in the middle of the Bakken Formation one of the most active and productive oil and gas formations in the United States. This energy development brought new economic opportunities to our Reservation, but it is also overwhelming our transportation infrastructure, straining our law enforcement and healthcare facilities and requiring substantial investments in community infrastructure. Current federal law and limited federal budgets limit our ability to manage energy development and invest in our infrastructure.

Under current federal law, the State of North Dakota can place a dual tax on the development of our energy resources. To avoid state dual taxation, which would have eliminated energy development opportunities, the MHA Nation reluctantly entered into a tax agreement with the State. As a result of this agreement, the State takes more than half of the tax revenues from oil and gas development on our Reservation. Over the past 10 years, the State took more than a \$1 billion in taxes from energy development on the Reservation. While the State maintains a rainy day Legacy Fund from oil and gas tax revenues with a balance of more than \$4 billion, the MHA Nation estimates that its budget shortfall for the past 10 years was more than \$1.95 billion.

Without a change in the law, the State will take another billion over the next 5 years. The loss of these revenues prevents the MHA Nation from keeping up with road repairs and improvements, law enforcement, housing, health care, elder care, environmental management and much more. We need the same tax revenues that every other government relies on.

We ask members of the Subcommittee to seek amendments to the Indian mineral leasing laws to make clear Congress' intent to ensure that tribes retain the full value of their energy resources and stop states from making a windfall profit from our natural resources. If Congress does not confirm the ability of Indian tribes to receive the full benefit of their energy resources, even more increases federal budgets will be needed to support tribal energy development and its demands on tribal infrastructure.

### **Increased Federal Budgets Needed to Support Economic Development**

Federal budgets already do not meet the needs on our Reservation. Over the next 10 years, we estimate that we will need about \$3.6 billion to maintain our physical infrastructure, develop our governing infrastructure and keep up with growth on the Reservation. Many of these areas are federal responsibilities and the Subcommittee should provide the funding needed to meet the Federal government's treaty and trust responsibilities to the MHA Nation.

We currently need about \$215 million to cover road construction and anticipate needing \$1.185 billion over the next 10 years to maintain Reservation roads. Roads maintenance and upgrades are needed to provide safe communities and to support commercial and energy activities. Recent estimates for new road construction to meet industrial standards are about \$4.5 million a half mile. In addition, over the next 10 years we anticipate needing \$365 million for transportation improvements and safety.

In the area of housing, the MHA Nation has an immediate need of \$270 million for housing and \$160 million for housing related infrastructure. Over the next 10 years, we anticipate needing \$1.17 billion for housing growth and replacement, and \$234 million for housing related infrastructure. New housing development will also require about \$76 million in rural water infrastructure to provide municipal, residential and industrial water supplies. We also need to expand our solid waste facilities. Over the next 10 years we anticipate needing \$150 million for solid waste facilities expansion.

With increased populations we also have increased need for law enforcement. We currently estimate needing about \$10 million to meet existing law enforcement needs, \$10 million for our Drug Enforcement Agency, and \$75 million for social services and public safety. In 2016, our law enforcement personnel handled almost 14,000 calls. Each year the demand on our law enforcement officers continues to increase. From 2015 to 2016:

- arrests rose from 30 to 103;
- methamphetamine seizures rose from 220 grams to 1037 grams;
- illegal use of prescription pill cases rose from 14 to 870;
- missing children reports rose from 0 to 16; and,
- missing person reports rose from 0 to 5.

Fortunately, on March 31, 2017, we were able to complete a new Public Safety and Judicial Center on a budget of \$17.2 million. The Center provides space for law enforcement, communication, a 911 call center and tribal courts. To operate the Center we will need an annual budget of \$9.5 million.

To address the increase in drug related crimes and social problems we are developing a Drug Treatment Facility. We expect to complete the Facility in May 2018 on a budget of \$24.8 million. The Facility will provide residential treatment. To operate the Facility we will need an annual budget of \$5.25 million. Over the next 10 years we anticipate needing \$240 million for drug enforcement.

To provide for our elders we are also developing an Assisted Living Facility. Completion is expected in April 2018 on a budget of \$8.5 million. To operate the Facility we will need an annual budget of \$2.4 million. To take care of our increasing populations we also need to expand our existing health care clinic. We currently need \$70 million to expand our clinic.

Finally, it is important to note that increased energy development also brings a need for increased human capital within tribal government. While the federal government asks tribes to take on more oversight and responsibilities for trust resources, federal proposals lack the funds tribal governments need to hire and train staff. To provide regulatory staff and resources to oversee oil and gas development on our Reservation under current laws we need \$20 million immediately and anticipate needing \$234 million over the next 10 years to staff and support regulatory offices.

### **Federal Leasing of Tribal Facilities**

When we are able to take action with tribal funds and replace aging federal facilities, at a minimum, the Federal government must sign leases to use the facilities and secure O&M funding to fulfill the federal functions that occur in these facilities. For example, the Bureau of Indian Affairs (BIA) recently run into problems finalizing leases due to new issues being raised at the General Services Administration (GSA). BIA needs full authority to enter into leases to operate facilities constructed by Indian tribes. These are still federal responsibilities, we simply took action to repair and replace aging and often unsafe federal buildings

To resolve this issue, the MHA Nation asks that the Subcommittee include language in its FY 2019 appropriations bill that grants BIA full unilateral leasing authority. There are no other federal spaces available on our large, remote and rural reservation and BIA should be able to utilize tribal placement facilities as needed to run federal programs.

### **Funding for Drug Addiction Prevention and Treatment**

One of the more important infrastructure projects we are working on is a Drug Treatment Facility noted above. When this facility is completed we will need long term funding solutions to ensure that we can provide stable services to our Reservation. Currently, the Indian Health Service (IHS) has a small amount of treatment dollars, the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Department of Justice (DOJ) have small competitive grant programs. We cannot sustain treatment programs with this kind of funding. Meanwhile, BIA's Office of Justice Services (OJS), which actually operates or funds on-reservation detention programs, has no treatment dollars at all.

Meanwhile, Medicare and Medicaid regulations prohibit the use of funding for court ordered treatment. This is a result of how funding works in state detention facilities. This does not work for tribal facilities and tribal sources of funding. We ask that FY 2019 appropriations for Medicaid and Medicare allow tribes to access this funding by including the following language: "except persons receiving addition services pursuant to an order of a tribal court."

### **Office of Special Trustee – Office of Trust Funds Management**

In addition to adequate infrastructure, we need Federal agencies that are well staffed to support energy development on our Reservation. This includes the management of trust revenues from energy development. The Office of Special Trustee (OST) and its Office of Trust Funds Management (OTFM) provides direct services to the MHA Nation and its members in the management of revenues from energy development. We ask that the Subcommittee provide funding for these essential federal staff and maintain local offices.

In areas of active energy production, like our Reservation, OST and OTFM staff must maintain staff and offices onsite. On our Reservation, OTFM is responsible for overseeing thousands of individual Indian money (IIM) accounts and must be available to answer questions and resolve issues with an account. In large part, the number of IIM accounts on our Reservation is a legacy of the Federal government's allotment policies that divided up Indian lands. OTFM could not serve these accounts without a local presence and expertise.

### **Increased Funding Needed to Complete Fort Berthold Rural Water System**

We also ask that you work with your colleagues on the Energy and Water Appropriations Subcommittee to increase annual funding for Authorized Rural Water Projects, including, funding from the \$500 million in existing surpluses in the Bureau of Reclamation (BOR) Fund. Our Fort Berthold Rural Water Project remains incomplete more than 50 years after it was originally authorized. This Project was promised when the Garrison Diversion Unit, part of the Pick-Sloan Missouri River Basin Project, flooded the heart of our Reservation and cut off tribal members from their long-standing water supplies. No other rural water projects have taken this long.

Under current funding levels, this important infrastructure project will never be completed. By the time BOR funding reaches our project managers there is little for us to spend on construction each year. North Dakota takes half of the Garrison funding and the other half is split among four tribes. As a result, in many years, the Fort Berthold Rural Water Project barely has the money to keep going. At this rate, funding provided by Congress can barely keep up with the cost of inflation.

### **Tribal Consultation Needed on Interior Reorganization Plans**

Finally, it has been about a year since Secretary Zinke announced his plans to reorganize the Department of the Interior. The Secretary has not held a single consultation session us or any other tribes. We ask that the Subcommittee refuse to appropriate any funding for reorganization efforts until proper and required government-to-government tribal consultation is held. Interior's own Tribal Consultation Policy requires that we have input in the early stages of this effort, not once the decisions have already been made.

Thank you for the opportunity to testify. The MHA Nation is ready to work with the Subcommittee in support of these requests.