

Oil and Gas Development: Restoring Community Input and Public Participation in Leasing Decisions

Joletta Bird Bear June 18, 2019

My name is Joletta Bird Bear, I am an enrolled Mandan Hidatsa tribal member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation and a member of Fort Berthold Protectors of Water and Earth Rights. I have a vested interest in the subject matter: Oil and Gas Development: Restoring Community Input and Public Participation in Leasing Decisions. I am an owner of allottee trust surface and minerals and I rely on the federal regulatory requirements that protect my interests in the Bureau of Indian Affairs (BIA) Oil and Gas Hydraulic Fracturing Program on the Fort Berthold Indian Reservation. The Fort Berthold Indian Reservation contains a portion of the vast Bakken and Three Forks oil formations in western North Dakota.

The federal agencies responsible in the federal oil and gas leasing process need to be compliant to the federal leasing requirements not only on a national level but on the local level where the individual tribal members reside and where the oil companies seek landowners consent.

Federal oil and gas leasing regulatory requirements already exist and the landowners of trust lands rely on those provisions to protect their lands; however, under the Trump administration current regulatory requirements are targeted for recession or weakening.

The Fort Berthold Indian Reservation is allotted lands, meaning it is the allottees – individual Mandan, Hidatsa, and Arikara individuals who own over 430,000 trust surface and mineral acres on the Fort Berthold Indian Reservation in comparison to the minimal 80,000 trust acres that the tribal government owns. The federal government created the allotments out of our own historic lands and it has the obligation and fiduciary responsibility to protect the interests of every single allottee who remain as the the individual owner of trust lands on Fort Berthold. In the 2007 BIA oil leasing race on Fort Berthold, the individual tribal member landowners rights to Informed Prior Consent were negated when a federal law was proposed and enacted to relieve the oil industry and the Bureau of Indian Affairs of the requirement to obtain 100% signatory consent on oil leases with a reduction down to 51%; negating the right of Prior Informed Consent to the allottees who looked for more information on the lease offers but where quieted when oil industry and BIA obtained the needed 51% signatures from allottee landowners. In effect allottees right of Prior and Informed Consent was eliminated and they were pulled into BIA oil leases without signing. Restore the prior federal requirement of 100% allottee signatory Informed and Prior Consent in federal oil and gas leasing inclusive of Right of Way offers on trust lands.

The recent revision of the BIA Right of Way regulation further eroded allottee landowner consent when tribal governments were given preference in consent simply because a tribal government owns a % of trust interest in that shared tract.

The National Environmental Policy Act (NEPA) requires that the agency of proposed federal action prepare an Environmental Impact Statement (EIS) when the proposed federal action anticipates impact the environment. In the mid 2000 the BIA approved its proposed federal action to conduct a major oil and gas hydraulic fracturing drilling program on the Fort Berthold Indian Reservation. BIA failed to comply with the requirements of NEPA, failed to protect the interests of the Mandan Hidatsa Arikara allottees who own 430,000 trust acres when it approved its major federal proposed action without the

required EIS. An Administrative Review of the BIA Oil and Gas Hydraulic Fracturing Drilling Program on Fort Berthold reviewing compliance to existing federal regulatory requirements would restore community input and public participation in federal oil leasing.

I attended and testified at an EPA Public Hearing in the BIA oil and gas leasing process – it was a Scoping Hearing to collect public statements, concerns, questions, recommendations on the proposed BIA Oil and Gas Hydraulic Fracturing Drilling Program on Fort Berthold. I testified and submitted in written form the requesting the BIA adhere to the NEPA requirements and conduct an EIS in its decisionmaking process because the proposed action was major. BIA officials were making public statements that projected wells were 10,000 – upwards of 40,000 oil wells on Fort Berthold trust lands. How could the BIA's own projected oil well figures not constitute a major federal action with anticipated major environmental impacts to our lands on Fort Berthold?

An Administrative Review of the BIA oil leasing on Fort Berthold will reveal along with many other inconsistencies that the EPA Public Scoping Hearing conducted at the casino was advertised in newspaper or pamphlets as a 'meeting'. Therefore, no accurate public notice was provided as required by federal law. The lead federal agency the BIA and the EPA failed to provide the allottees public notice of this significant public scoping hearing where their right to speak, to ask questions, to make recommendations on record is a requirement of this oil and gas lease process and is protected.

The first producing oil well on trust lands on Fort Berthold was 2007. An Administrative Review of the BIA's oil lease process on Fort Berthold and the BIA's 10 year delay of releasing its Programmatic Environmental Assessment (PEA) on June 9, 2017, would help restore community input and public participation in the leasing process.

Last week an oil pipeline company was full of frustration as allottees were not responding to the pipeline company's offers of consent for Right of Ways for installation of a pipeline across their property. Their reluctance to sign could be due to the 2014 Crestwood Arrow pipeline's undetected leak which resulted in a ND historic spill of oil company reported 1 million gallons of oil waste toxic, hazardous, carcinogenic, radioactive fluids which spilled over the embankment down into Bear Den Bay into the Missouri River within ¼ mile upstream from the Mandaree community drinking water intake valve. Reclamation of that spill area has not occurred, yet. An Administrative Review of the BIA's oil leasing program on Fort Berthold is needed to provide answers regarding the 2014 Crestwood Arrow pipeline spill and the subsequent four pipeline spills. The Mandaree community has a right to know about the safety of their drinking water source and how it is affected by the oil waste contaminants.

The 2016 Bureau of Land Management's Waste Prevention and Conservation regulation was a final rule released and implemented on Fort Berthold in January 2017 and was abruptly withdrawn by the current administration. In order to restore community input and restore community participation in the leasing process, I request your support for the reinstatement and full implementation of the 2016 BLM beneficial regulation on federal lands.

I highly recommend that field hearings be conducted at the location where the landowners live, on the federal trust lands where oil and other minerals are being extracted in order to hear directly from the thousands of allottees. I extend an invitation to you to conduct a field hearing on the Fort Berthold Indian Reservation.

Thank you.