

**SENATE BILL 2319
HOUSE FINANCE AND TAXATION COMMITTEE
MARCH 23, 2021**

**TESTIMONY OF MARK FOX, CHAIRMAN, MANDAN HIDATSA AND
ARIKARA NATION**

Mr. Chairman and members of the Committee, my name is Mark Fox, I am the Chairman of the Mandan, Hidatsa and Arikara (MHA) Nation. The MHA Nation supports Senate Bill 2319 with amendments to restore the original intent of the Bill. SB 2319 is intended to correct an inequity in the current Oil and Gas Tax Agreement between the MHA Nation and North Dakota. Put simply, if a well extracts oil and gas from within the Fort Berthold Indian Reservation, it needs to be part of the agreement, whether the well head is on or off the Reservation.

Off Reservation wellheads have been excluded from the tax agreement since its inception in 2008. SB 2319 was introduced in the Senate to correct the existing inequity. Including off Reservation wellheads in the agreement ensures that all production from oil and gas on the Reservation is shared under the tax agreement. This in turn creates a more equitable split of tax revenue.

There are currently 132 wellheads off the Reservation that extract oil and gas from the Reservation using horizontal drilling technology. Without a tax sharing agreement, the MHA Nation has the right to tax all the production from these wells attributable to trust land. Because we have a tax agreement, these wells should be

included precisely because they extract oil and gas from the Reservation. The fact they have not been included is an historic injustice that must be corrected.

Since 2008 when the first tax agreement was signed, these border wells have generated over \$200 million in production and extraction taxes, \$31 million in the last two fiscal years alone. All the revenue from these wells has gone to the state to the exclusion of the MHA Nation, even though they extract Reservation oil and gas, and even though Reservation infrastructure is used to service these wells.

SB 2319 is not new; it simply is intended to correct an old problem that was before the legislature in 2019. The 2019 legislative session resulted in a needed revised oil and gas tax agreement, which we supported. However, in order to advance the agreement in 2019, we reluctantly left the border well issue on the table. We did so based on the state's assurance that the issue would be addressed by the Tribal Taxation Issues Committee during the interim. The Committee studied the issue and we participated in those discussions. We determined the issue could not be resolved without statutory changes. SB 2319, as originally presented in the Senate, was intended to correct the problem.

After SB 2319 was introduced in the Senate, we thought we had reached agreement with legislative leadership on the effective date of the legislation. To address concerns over efforts to develop Federal minerals adjacent to the Reservation, we agreed that the legislation would sunset after two years, unless

federal minerals were drilled within the two-year term. However, without our knowledge the sunset provision which was added to SB 2319 was eliminated from the Bill by an amendment that would instead make the legislation ineffective until 2023, delaying the effective date for another two years. This amendment is unacceptable, and the Bill needs to be amended to restore the original two-year sunset provision. The MHA Nation has already waited for two years since the 2019 legislative session when we reluctantly agreed to forgo the border well issue to get a new agreement in place. We did so on the state's promise to study the issue in the interim and address it this session. The MHA Nation cannot wait another two years, the Bill needs to be effective now, subject to the sunset clause we agreed to with legislative leadership.

A second amendment was added to the Bill that excludes border Wells on the north side of the Reservation in Mountrail County. The reason for this amendment, we are told, is concern with a fiscal note showing the potential loss of revenue to the county if these wells are included in the agreement. But any revenue reduction from these wells is far outweighed by other fiscal factors and should not be considered an impediment to including all border wells in the legislation. To begin with, the MHA Nation pays millions of dollars in property taxes each biennium to Mountrail County. To date, the MHA Nation has done so even though it has the right to claim an exemption from those taxes under federal law. These county taxes increase every

year, yet the MHA Nation utilizes its own revenue to build and improve infrastructure on fee land in and around the city of New Town, without any support from the county. The MHA Nation has also spent millions of dollars on street and road improvements in and around New Town and this too benefits the county. Two other recent examples of infrastructure investment are the MHA Nation's recent purchase of the abandoned ShopKo building and the purchase of and new construction on the abandoned car dealership site in New Town. These and other improvements that the MHA Nation has made in the county provide significant benefits to Mountrail County, not just in increased employment and tax revenue, but to the county's economy in general. Furthermore, the fact that the MHA Nation has been a good partner in terms of promoting the development of oil and gas, most recently illustrated by its ability to help convince the federal government to exempt its land from the Federal oil and gas moratorium on federal lands, helps preserve and generate new tax revenue for the state which would otherwise be lost. The fiscal notes that came with this Bill do not account for this positive economic reality.

In short, these two changes to the original version of SB 2319; the removal of the two-year sunset clause, and the exclusion of wells on the north side of the Reservation, need to come off the Bill. The two-year sunset clause should be restored, and the exemption for the wells on the north side removed. We cannot support the Bill without these amendments.

Other concerns about the fiscal note attached to this Bill are outweighed by other factors. First, the state has received more than its fair share of the tax revenue from Reservation production off border wells since 2008, so the scales are already tipped in the state's favor. Second, the current federal moratorium preventing drilling on federal land is expected to result in less production and less tax revenue. If we work together, we can find ways to avoid production slowdowns. If this Bill is passed with the amendments we propose, the MHA Nation will work to include production from adjacent federal minerals in Reservation drilling units. The MHA Nation has already demonstrated its ability to avoid what operators initially believed to be a crippling loss of production by getting Reservation trust land exempted from the federal drilling moratorium on federal land. Since we share tax revenue, this benefitted the state's fiscal situation as well, and should be considered a positive in any analysis of the fiscal note attached to SB 2319.

Oil and gas operators should not have to be pressured to locate their wellheads on one side of the Reservation or the other. These decisions should be based on geographical and technological considerations aimed at getting the best production results. Yet, because of the loophole created by the border well issue, operators have had to spend money moving wellheads inside of the Reservation.

SB 2319 is intended to remove this uncertainty. Our oil and gas producers support SB 2319 because it will provide more stability. It also does not affect the

amount of taxes they owe from Reservation production because we have a tax sharing agreement in place that covers production from off Reservation wells. By contrast, without SB 2319 -with the amendments we propose- oil and gas extracted from the Reservation through off Reservation well heads will become subject to dual state and tribal taxation. The MHA Nation has reached a point where it will begin taxing Reservation production from these wells because they are not included in the agreement, and because we cannot allow the deprivation of revenue from these wells to continue.

There is a common misperception surrounding the oil and gas tax agreement that the state is sharing its revenue under the tax agreement. This is simply not so. By entering into a tax agreement, we are preventing dual state and tribal taxation, by sharing one tax. Both the MHA Nation and North Dakota are foregoing their respective claims of right to tax reservation oil and gas production through the tax sharing agreement. The state is not giving revenue to the MHA Nation, nor is the MHA Nation giving revenue to the state. Instead, we are sharing revenue we both have a right to claim because we both recognize the problems dual taxation can cause. In other words, the state is not giving us something we are not already entitled to, and this is an important point to keep in mind.

We understand the importance of a stable tax environment for the state. It also serves our interests as well. However, during each biennium that this issue remains

unresolved, we lose between \$8-12 million per year. Although we allowed this issue to linger past 2019, the MHA Nation can no longer afford to forgo its fair share of revenue from off Reservation wells extracting on Reservation oil and gas.

Mr. Chairman, this is a fairness issue. The MHA Nation's current oil and gas tax agreement includes the sharing of tax revenue from lateral wells going out of, but not coming into the Reservation. Border wells drilling into the Reservation are excluded from our current agreement even though most of the oil and gas produced from these wells comes from the Reservation. The State has received all of the tax revenue from Reservation oil and gas production from these wells to the exclusion of the MHA Nation. There is simply no legitimate reason not to include these wells in the agreement.

We are simply seeking a fair distribution of production revenue from our resources for us to build our infrastructure and provide governmental services to our residents and the oil and gas industry. As we grow stronger, North Dakota grows stronger because we are in this together. Thank you for the opportunity to testify today. We strongly urge your support of SB 2319 with the amendments we propose.

