



# MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes \* Fort Berthold Indian Reservation  
404 Frontage Road New Town, ND 58763  
Tribal Business Council

Office of the Chairman  
Mark N. Fox

## SENATE BILL 2319 SENATE FINANCE AND TAXATION COMMITTEE FEBRUARY 10, 2021

### TESTIMONY OF MARK FOX, CHAIRMAN

Madam 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 because it will correct an existing inequity in our oil and gas tax sharing agreement with North Dakota which has existed since the agreement's inception in 2008. The Bill would clarify that off reservation wellheads which extract oil and gas from within our reservation boundaries are included in the oil and gas tax agreement. Including these wellheads 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 wells 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 oversight 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 2 fiscal years alone. All of the revenue from these wells has gone to the state.

The MHA Nation has not received a dime of revenue from these wells, even though they extract reservation oil and gas. It is now time to correct this inequity.

SB 2319 is not new, it simply is intended to correct an old problem that has been before the legislature before, most recently 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 left the border well issue on the table, even though it was a contentious issue then. 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 is intended to correct the problem.

Madam 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. By contrast, border wells drilling into the reservation are excluded from our current agreement, the State is receiving all of the tax revenue from reservation oil and gas production to the exclusion of the MHA Nation. There is simply no legitimate reason not to include these wells in the agreement.

Any concerns about the fiscal note attached to this Bill are outweighed by at least two factors. First, the state has received more than its fair share of the tax revenue from reservation production off of border wells since 2008 so the scales are already tipped in the states 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. The MHA Nation has already demonstrated its ability to avoid what operators initially believed to be a significant loss of production by getting its reservation trust land exempted for the federal drilling moratorium on public 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 to one side of the reservation or the other. SB 2319 is intended to remove this uncertainty.

Our oil and gas producers support SB 2319 because it provides 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.

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.

We are simply seeking a fair distribution of production revenue from our trust 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.