

COMPACT

**BETWEEN THE THREE AFFILIATED TRIBES and
THE STATE of NORTH DAKOTA**

Regarding

**OIL AND GAS GROSS PRODUCTION and EXTRACTION
TAXES WITHIN THE FORT BERTHOLD INDIAN
RESERVATION**

Effective Date: 2-28, 2019

PREAMBLE

WHEREAS, the Three Affiliated Tribes (“Tribe”) is a federally recognized Indian tribe, possessed of the full inherent sovereign powers of a government;

WHEREAS, the State of North Dakota (“State”) is a state within the United States of America, possessed of full powers of state government;

WHEREAS, Federal Indian law and policy recognize the right and the importance of self-determination for Indian tribes, the authority of tribes to tax certain activities, and the need for economic development in Indian country by Indian tribes;

WHEREAS, the Tribe and State will benefit from an efficient and uniform method of collection, administration, allocation, and enforcement of collection of Tribal and State Oil and Gas Gross Production and Extraction Taxes imposed on all activity subject to these taxes occurring within the exterior boundaries of the Fort Berthold Reservation;

WHEREAS, the Tribe and State will also benefit by the exercise of the attributes of tribal sovereignty and from the improved well-being of members of the Tribe that will result from economic development by the Tribe and their members;

WHEREAS, both the Tribe and State desire a positive working relationship in matters of mutual interest and seek to resolve disputes and disagreements by conducting discussions on a government-to-government basis;

WHEREAS, the Tribe and the State desire to avoid litigation relating to each party’s jurisdiction to impose taxes on oil and gas production and extraction activity within the exterior boundaries of the Fort Berthold reservation; and

WHEREAS, on the part of the State, this Compact is authorized by North Dakota Century Code (“N.D.C.C.”) Chapter 57-51.2, and on the part of the Tribe, by Tribal Resolution No. 19-050-FWF, approved and passed by the Tribal Business Council on February 25, 2019.

NOW THEREFORE, the Tribe, by and through their Tribal Council, and the State, by and through its Governor, do hereby enter into this Compact for the mutual benefit of the Tribe and the State.

ARTICLE I – ACKNOWLEDGEMENTS

1. Sovereign Immunity

A. Nothing contained in this Compact is or may be construed to be a waiver, diminution, or expansion of the sovereign immunity of the Tribe, the Tribal Council, officials, or entities. The Tribe expressly retains its sovereign immunity.

B. Nothing contained in this Compact is or may be construed to be a waiver, diminution, or expansion of the sovereign immunity of the State. The State expressly retains its sovereign immunity.

C. The terms and conditions of this Compact may not be used in any way by either party in any litigation brought by any person including the parties to this Compact other than with respect to enforcement of the Compact.

D. In the event of a conflict with any other provision of this Compact, the terms of this Paragraph shall prevail and control.

2. Authority

The parties acknowledge the following inherent authority, while not forfeiting any legal rights to apply their respective taxes by entering into this Compact, except as specifically set forth herein:

A. Tribal Authority

1. The Tribe has jurisdiction to tax certain activity that occurs within the exterior boundaries of the Fort Berthold Reservation.

2. The Tribal Business Council, under Section 5 of Article VI of the Constitution and Bylaws of the Three Affiliated Tribes, has authority to enter into tax collection compacts or agreements with the State.

3. The parties specifically acknowledge that the Tribe has jurisdiction to impose, collect, administer, and enforce oil and gas production and extraction taxes on oil and gas activities on lands within the exterior boundaries of the Fort Berthold Reservation.

B. State Authority

1. The State, subject to inherent limitations under law, has jurisdiction to tax oil and gas production and extraction activity within the Fort Berthold Reservation.

2. The State, under N.D.C.C. Chapter 57-51.2, may enter into this Compact with the Tribal Business Council.

3. The parties specifically acknowledge that the State, has jurisdiction to impose, collect, administer, and enforce oil and gas production and extraction taxes on oil and gas activities on lands within the exterior boundaries of the Fort Berthold Reservation.

ARTICLE II – DEFINITIONS

For the purposes of this Compact, the following definitions apply:

1. “**Non-Trust Lands**” means all mineral acres in a producing Spacing Unit not classified as Trust Lands.
2. “**Non-Trust Ratio**” means the total mineral acres of Non-Trust Lands in a Spacing Unit divided by the Spacing Unit Acres.
3. “**Spacing Unit**” means the area in each pool assigned to a well for drilling, producing, and perforation purposes in accordance with the State Industrial Commission’s rules or orders.
4. “**Spacing Unit Acres**” means the total mineral acres in a producing Spacing Unit.
5. “**Trust Lands**” means all mineral acres in a producing Spacing Unit that are owned by the United States in trust for the Tribe or for an individual tribal member. Trust Lands acreage in a producing Spacing Unit must be determined by the North Dakota Office of State Tax Commissioner (“Tax Commissioner”), on behalf of the State, based on records obtained from the Bureau of Indian Affairs in Aberdeen, South Dakota.
6. “**Trust Ratio**” means the total acres of Trust Lands in a Spacing Unit divided by the Spacing Unit Acres.

ARTICLE III - APPLICATION OF COMPACT

The respective rights of the Tribe and State, with respect to the oil and gas production and extraction taxes subject to this Compact, are to be determined exclusively by the terms of this Compact. The provisions of this Compact apply as follows:

1. The production from wells located within the exterior boundaries of the Fort Berthold Reservation drilled and completed after the effective date of this Compact are subject to the taxes and allocation provided in this Compact for the life of the well.
2. Except as provided in Article III, Paragraph 3, this Compact rescinds and supersedes the “Oil and Gas Tax Agreement Between the Three Affiliated Tribes and State of North Dakota” executed on June 21, 2013, by and between Chairman Tex Hall and Governor Jack Dalrymple.

3. Notwithstanding Article III, Paragraph 2, any oil or gas well drilled and completed during the term of a prior Agreement between the State and the Tribe remains subject to the terms and conditions provided in that prior Agreement.

4. Any oil or gas well that is drilled and completed during this Compact is subject to applicable federal, tribal, and state regulatory provisions for the life of the well. The State and Tribe agree to continue mutual efforts to cooperate on a government-to-government basis in an effort to coordinate regulatory enforcement in their overlapping spheres of authority and promote responsible oil and gas development.

ARTICLE IV – OIL AND GAS TAXES – ATTRIBUTION AND EXEMPTION

For the purposes of this Compact, the following provisions apply:

1. The total Tribal and State tax rate attributable to production and extraction of oil from Trust Lands must not exceed ten percent (10%), unless the one percent (1%) rate adjustments provided in N.D.C.C. § 57-51.1-02 are triggered, subject to applicable exemptions in N.D.C.C. Chapters 57-51 and 57-51.1. The total Tribal and State tax rate attributable to production of gas from Trust Lands must be the rate provided in N.D.C.C. Section 57-51-02.2.

2. The total State tax rate attributable to production and extraction of oil from Non-Trust Lands must not exceed ten percent (10%), unless the one percent (1%) rate adjustments provided in N.D.C.C. § 57-51.1-02 are triggered, subject to applicable exemptions in N.D.C.C. Chapters 57-51 and 57-51.1. The total State tax rate attributable to production of gas from Non-Trust Land must be the rate provided in N.D.C.C. Section 57-51-02.2.

3. The following exemptions apply to this Compact:

a. All exemptions under the United States Constitution, North Dakota Constitution, or federal law, apply to oil and gas production and extraction from wells located within the exterior boundaries of the Fort Berthold Reservation.

b. Oil and gas production and extraction from wells located on Trust Lands within the exterior boundaries of the Fort Berthold Reservation are entitled to all current exemptions in N.D.C.C. Chapters 57-51 and 57-51.1 (2017). Any future exemptions must be agreed to by both parties.

4. Production from Trust Lands must be determined by multiplying the total production from a Spacing Unit times the Trust Ratio of the Spacing Unit.

5. Production from Non-Trust Lands must be determined by multiplying the total production from a Spacing Unit times the Non-Trust Ratio of the Spacing Unit.

6. The respective tax rate(s) and allocations for Trust Lands and Non-Trust Lands must be based on the Trust and Non-Trust Ratios of each producing Spacing Unit.

7. The tax rates and allocations for unknown or unidentified mineral ownership interests in a Spacing Unit must follow the larger of the identifiable Trust Ratio or Non-Trust Ratio in the Spacing Unit, subject to correction based on future identification of the mineral ownership interests. In the event that the identified Trust and Non-Trust Ratios in the Spacing unit are equal, the tax rates and allocations for the unknown or unidentified mineral ownership interests are equal to the Trust and Non-Trust Ratios, subject to correction by the Tax Commissioner, based on future identification of the mineral ownership interests as the information becomes available. The revised tax rates will become effective and applied in the next production reporting period following revision.

8. The Tribe agrees not to impose any additional taxes or fees during the term of this Compact, not present at the time of entry of this Compact, on any present or future oil and gas exploration or production activity or interest within the exterior boundaries of the Fort Berthold Reservation, except for the one-time \$100,000.00 drilling fee and tribal application fee assessed on wells on Trust Lands to offset the costs of oil and gas regulation and impacts. For the purposes of this subsection, a well is determined to be on Trust Land if the majority of the Spacing Unit is comprised of Trust Lands. In the exercise of its pre-existing authority to impose taxes of a general nature, the Tribe agrees that no such taxes will be imposed that target or disproportionately impact the oil and gas industry.

By way of illustration, the impact of a generally applicable commercial vehicle registration fee is not disproportionate if the generally applicable tax applies equally to vehicles of the same weight or other classification regardless of the type of commercial activity in which the vehicles are used.

9. The State and the Tribe agree to collaborate in mutual efforts to reduce impacts to sites of cultural or archaeological significance to the Tribe. These collaborative efforts supplement, and do not diminish, existing tribal authority to manage trust lands within the Fort Berthold Reservation.

10. In addition to Article IV, Paragraph 8, the Tribe specifically agrees to forgive any uncollected tribal taxes, and to no longer impose such taxes including its 0.75% production taxes, under Three Affiliated Tribes Business Council Resolution No. 17-003-FWF, or other tribal resolutions, on oil and gas production occurring between January 1, 2016, and the effective date of this Compact.

ARTICLE V – ADMINISTRATION OF TAXES

1. The State, by and through its Tax Commissioner, is responsible for the collection, administration, enforcement, and allocation of the taxes subject to this Compact. The Tax Commissioner may use production data by pool from the State Industrial Commission, Department of Mineral Resources, for Trust Lands and Non-Trust Lands covered by this Compact, in addition to other sources of information necessary to ensure compliance with the terms of this Compact.

2. The Tribe retains exclusive jurisdiction and authority to file and prosecute civil and criminal enforcement actions as needed with respect to the tribal taxes, according to tribal and federal laws, and engage in any collection or enforcement actions necessary to implement the requirements of this Compact.

3. The State and Tribe agree to the imposition of the taxes at the rates set forth in this Compact. Neither party will adjust, raise, or lower the production and extraction taxes on oil and gas activities within the exterior boundaries of the Fort Berthold Reservation during the term of this Compact.

4. Notwithstanding the termination provisions in Article IX, Paragraph 2 of this Compact, an oil or gas well drilled and completed during the time this Compact is in effect will be subject to the terms of this Compact, including the terms relating to remittance and sharing of tax proceeds, for the life of the well.

5. The Tax Commissioner, on behalf of the State, has the authority to offset future distributions to the Tribe to address situations in which refunds of taxes are made to a taxpayer.

6. The Tribe, upon request of the State, may assist the State in the assessment and collection of any tax subject to this Compact.

7. The Tax Commissioner, on behalf of the State, retains the authority to administer and enforce the provisions of N.D.C.C. Chapters 57-51 and 57-51.1, in their present forms, and as may be amended from time to time by the North Dakota Legislative Assembly, where not in conflict with this Compact.

8. Each party shall notify the other in writing of any intended or enacted changes to, or repeal of, their respective state or tribal taxes covered by this Compact.

ARTICLE VI – REMITTANCE AND SHARING OF TAX PROCEEDS

The tax proceeds assessed and collected under this Compact are to be shared as follows:

1. The State agrees to remit to the Tribe its share of revenues collected in an amount equal to eighty percent (80%) of the total State and Tribal taxes assessed and collected under Article IV, Paragraph 1 of this Compact on oil and gas production and extraction from Trust Lands.

2. The State agrees to remit to the Tribe its share of revenues collected in an amount equal to twenty percent (20%) of the total State taxes assessed and collected under Article IV, Paragraph 2 of this Compact on oil and gas production and extraction from Non-Trust Lands.

3. Within thirty (30) days of the end of the calendar month during which collection of taxes occurs from oil and gas production and extraction covered under this Compact, the Tax Commissioner, on behalf of the State, shall determine and certify the payments specified in this Article to the North Dakota Office of the State Treasurer. Unless otherwise requested in writing by the Tribe, the remittance must be by State Warrant or electronic funds transfer (ACH) by the Office of the State Treasurer, payable to the order of the Three Affiliated Tribes.

4. Within thirty (30) days of the end of the calendar month during which collection occurs from oil and gas production and extraction covered under this Compact, the Tax Commissioner, on behalf of the State, shall furnish the Tribe a list identifying the source of revenues remitted to the Tax Commissioner intended for distribution to the Tribe.

ARTICLE VII – ADMINISTRATION AND MAINTENANCE OF RECORDS

1. The Tribe agrees to maintain accurate records setting forth information in sufficient detail to allow for verification that Tribally-owned entities are collecting and remitting the correct amount of tax due under this Compact. The Tribe agrees to furnish these records to the Tax Commissioner, on behalf of the State, upon request.

2. Upon reasonable request of the Tribe, the Tax Commissioner, on behalf of the State, must make available to the Tribe records of tax filings that relate to the taxes provided for under this Compact.

3. If the State receives a request for information pertaining to this Compact that it is required to furnish under the State's Open Records laws (N.D.C.C. Section 44-04-17.1, et seq.), the Tax Commissioner, on behalf of the State, shall inform the Tribe of the request and identify the information released.

4. The Tribe agrees to report annually to the Governor and the Budget Section of the State's Legislative Management regarding tribal investments in essential infrastructure and fees, expenses, and charges the Tribe imposes on the oil industry. The report must identify projects totaling investments of at least ten percent of tribal oil and gas gross production and extraction tax receipts of the Tribe for the preceding fiscal year in essential infrastructure.

ARTICLE VIII – EFFECTIVE DATE

1. The parties agree this Compact is effective upon the filing with the North Dakota Secretary of State, of legislation enacted by the Sixty-sixth Legislative Assembly containing the terms of Senate Bill 2312 as it existed on the day this Compact is signed by the Governor and the Tribe.

2. The parties agree that, if the conditions of Article VIII, Paragraph 1 are not met, this Compact shall be null and void.

ARTICLE IX – TERM AND TERMINATION

1. The parties agree that this Compact shall remain in effect indefinitely, unless formally cancelled by either party.

2. Termination may occur as follows:

a. Either party may terminate this Compact without cause and without liability, except as to any amounts collected and due to either party, upon thirty (30) days written notice to the other party.

b. Before the Compact is terminated under this provision, the parties will meet and make a good-faith effort to resolve the differences leading to the Notice of Termination. A Notice of Intent to Terminate on behalf of the Tribe must be executed by the Tribal Business Council. A Notice of Intent to Terminate on behalf of the State must be executed by the Governor's Office.

c. Except for tax collections and distributions that survive the termination of this Compact, within thirty (30) days of its receipt of a Notice of Termination, the Tax Commissioner, on behalf of the State, shall notify each known taxpayer affected by the termination by first class mail that it will no longer collect the taxes covered by this Compact, and the taxpayer should no longer remit to it the affected taxes.

ARTICLE X – AMENDMENTS, WAIVER, SEVERABILITY, VENUE, AND NOTICE

1. This Compact may not be modified or amended, nor may compliance with any provision of it be waived except by an instrument or instruments in writing signed by the party against whom enforcement of any modification, amendment, or waiver is sought.

2. Should any part of this Compact be rendered or declared invalid by the Federal District Court for the Western Division of North Dakota or a subsequent federal appellate court, the invalidation of any part or portion of this Compact will not invalidate the remaining

portions, which remain in full force and effect. Venue for any dispute arising from the terms of this Compact not resolved by the parties shall be the Federal District Court for the Western Division of North Dakota.

2. Notice and Payment shall be as follows:

a. Notice required to be sent to the Tribe under this Compact must be sent to:

Tribal Chairperson
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota 58763-9402

Tribal Tax Department
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota 58763-9402

b. Payment required to be sent to the Tribe under this Compact must be sent by state warrant or electronic funds transfer (ACH) to:

Three Affiliated Tribes
Tax Department
404 Frontage Road
New Town, North Dakota 58763-9402

c. Notice required to be sent to the State under this Compact must be sent to the Tax Commissioner, on behalf of the State, to:

North Dakota Office of State Tax Commissioner
Director, Tax Administration Division
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0599

d. Payment to the State under this Compact must be sent to the Tax Commissioner, on behalf of the State, to:

North Dakota Office of State Tax Commissioner
Compliance Supervisor, Sales, Oil, and Special Taxes
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0599

Either party may change its notice or payment address by giving written notice of the change to the other party.

ARTICLE XI - EXECUTION

IN WITNESS WHEREOF, the Three Affiliated Tribes and State of North Dakota have caused this Compact to be executed and delivered by their respective officers, duly authorized.

2/28/19
Date

Mark Fox
Mark Fox, Chairman
Three Affiliated Tribes

2/28/19
Date

Doug Burgum
Doug Burgum, Governor
State of North Dakota

