

2011 SENATE NATURAL RESOURCES

SB 2348

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2348
February 4, 2011
14056

Conference Committee

Committee Clerk Signature

Veronica Sparling

Explanation or reason for introduction of bill/resolution:

Relating to requirements for agreements with the Three Affiliated Tribes for the taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Indian Reservation; and to provide an effective date

Minutes:

Testimony Attached

Chairman Lyson opened the hearing on SB 2348.

Senator Warner: He endorsed the concepts in the bill and introduced Tex Hall to speak to the bill.

Tex Hall, the Tribal Chairman of the Three Affiliated Tribes, introduced the bill. See Attachment #1.

Chairman Lyson: Has the ND Department of Transportation been of any help?

Tex Hall: Only for the state roads, maybe for the county roads. Only Main Street is slated to be renovated, but we need a truck route around the city of Newtown. Our roads crew is stretched thin to try to build the roads back up. The current formula with 80% to the state and 20% to the tribe on fee lands and 50-50 on trust lands has given 43 million so far to the state and 19 million to the tribe. It is not enough. The current formula does not work. Our priority is 56 miles in 2011; we don't need it in 2012 or 2013; we need it this year. That will cost between 56 million and 83 million dollars.

Chairman Lyson: Starting this year it looks like the Bakken formation is going to be going east from Parshall into your trust land so you would be getting 50-50 in that area. That looks like it is going to be a big play this summer.

Tex Hall: We sure hope so. The potential oil wells are coming into the areas of route 12, 14, and 17. Our trust land only covers half of the reservation. Even at 50-50 it will not be enough. The formula is not fair. It is 80-20 on a fee area; it should be 80-20 on the trust areas because we only have half the reservation in trust lands.

Senator Hogue: I want to ask you about what I think might be potential sources of revenue. It was my understanding that a company bought up about 85,000 acres of lease hold. I'm wondering if you have had discussions with them. They seem to be the major player both on tribal and Allottee lands. What discussions have you had with them? What was the substance of those? The second one: In the Finance and Tax Committee we have heard about counties and townships on the north side of the reservation that have received significant income from the federal government when the federal government leased up land underneath the lake. They permitted a portion back to the political subdivisions. I'm wondering, has the tribe gotten any of that revenue from the federal government for the lakebed?

Tex Hall: Not for the lake bed. That is in dispute. The tribe has ownership though of the lake shore under the 1984 Fort Berthold Minerals Restoration Act. Anything dealing with the riverbed is held in escrow because of the dispute.

Chairman Lyson: Just so everyone understands, right now you have 20 rigs on the reservation, 14 are on the trust land, 6 are on fee land. On the trust land you are going to get 50-50 on those 14. There are 130 locations already approved for drilling, 96 of those are on trust land where you will get 50% and only 34 are on fee land.

Tex Hall: I want to emphasize this is a very serious problem for us. This is not a windfall or a profit thing. This is to build roads, healthcare and infrastructure. If we don't have the necessary monies, it will slow us down. Our people's safety and health come first.

Scott Eagle spoke of the dangers the potholes in the roads are causing for school buses. He feels the industry will only be going forward and the problems with the roads need to be addressed.

Opposition: None

Neutral

Ryan Bernstein, Deputy Chief of Staff and Legal Counsel for the Governor's office, spoke in a neutral position. He provided some information. See Attachment #2. In the governor's budget they are proposing 229 million dollars to be spent on state highways in the western part of North Dakota. The major roads that will be fixed are Hwy 23 which runs right across the northern part of the reservation and Hwy 22 which runs down the western part of the reservation. They are also going to make improvements to Hwy 8 which runs just north of Hwy 23 out of the reservation. So the majority of those 229 million dollars will be working on the infrastructure through the reservation. We understand those are high impact roads. We are also proposing 142 million dollars for the counties. The counties around the reservation should be getting some of that money. Hopefully they can improve the roads in the counties. We also are looking at 100 million dollars for oil impact grants for counties affected by the oil and gas production.

Chairman Lyson: Can the tribe ask for any of that money?

Ryan Bernstein: Right now the way it is written, the tribe is not written in to the 100 million dollar oil impact. It is for the counties and they can spend the money within the reservation. He addressed the problem of the loop road needing attention. It is half BIA and half county. The latest numbers are the tribe has received \$21,255,529.00 through the tax agreement and the state has received \$47,799,523.00. As of 9/9/2010 the tribe and Allottees have received about \$181,000,000.00 in bonus and lease payments since the development of this agreement. In general the agreement has been successful.

Senator Triplett: Do you have a breakdown of the \$181 million that was paid out to the tribe and to the Allottees?

Ryan Bernstein: A large percent of it is going to the Allottees.

Senator Triplett: Have the counties spent any of the impact money on the county roads within the reservation?

Ryan Bernstein: They could going forward.

Senator Hogue: Could you help me understand what is in statute and what is in the agreement. Do we need to just pass a statute that says the governor is authorized to enter into a new agreement along the following lines or can the governor today in negotiations with the tribe change that agreement and provide for what the tribe is asking?

Ryan Bernstein: Right now the breakdown is 80-20 on production tax only. The extraction tax goes 100% to the state. But right now there is a 60 month exemption on the extraction tax so none of that tax is being collected right now on fee land. The statute spelled out very clearly that the extraction tax was not to be on the table for negotiations. So if that was to be re addressed, that would have to be changed in the statute to allow that extraction tax to be negotiated between the governor and the tribe.

Chairman Lyson: Without this bill, leaving out the extraction tax, can governor negotiate with the tribe and change the percentage amounts of what they are receiving right now?

Ryan Bernstein: SB 2419 that passed in 2007 did this: The allocation amounts were set by the statute and by the bill. The governor wouldn't be able to change the allocation amounts on the production tax obtained from fee lands. The governor could negotiate the tax rate on trust land.

Ed Hall grew up on Fort Berthold Reservation. He spoke in a neutral position. He made a point that usually when people pay taxes, they receive services. He feels they should be getting money to keep their roads up, etc. The roads were not built for this kind of traffic.

Chairman Lyson closed the hearing on SB 2348.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2348
February 7, 2011
14142

Conference Committee

Committee Clerk Signature

Veronica Spurling

Explanation or reason for introduction of bill/resolution:

Relating to requirements for agreements with the Three Affiliated Tribes for the taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Indian Reservation; and to provide an effective date

Minutes:

No Attachments

Chairman Lyson opened the discussion on SB 2348.

Senator Triplett: Were we going to get more information from the governor's office so we have some sense of what they plan to do with the money? It would also be helpful to have an estimate from the tax department as to how much drilling on the trust land is estimated for the next biennium so we have at least a rough estimate of how things are going to change. The balance of payments to the state and to the tribe will change a lot by the end of the next biennium. If we had those numbers it would help us think it through.

Chairman Lyson: Ryan Bernstein will hopefully be bringing those. For every well on the reservation, the tribe gets \$100,000.00 beyond the fees that they receive from the amount of oil that is pumped. They want to get 80/20 on trust land; right now they get 50/50. Let me explain the Fort Berthold Reservation. (He explained the start of the reservation and the borders of the reservation and where the trust land is.) There is not a lot yet to be drilled in the trust land. The other thing that bothers me about this bill: they ask for money but they have no plan of what to use it for.

Senator Triplett: I understand being bothered, but I would rather find some way to respond to the concerns in a positive way.

Ryan Bernstein took the podium.

Chairman Lyson: Could you give us the amount the tribe is receiving now?

Ryan Bernstein: 50/50 on all trust lands. If a well is drilled on the trust lands or if the majority of the tract has trust land then they also get \$100,000.00. If a well is drilled on fee land, then the split is 80% production tax to the state, 20% to the tribe. Right now there is

no extraction tax being levied on fee land on the reservation because there is a 60 month exemption on that. So there is only 5% being levied there and of that 5%, it is an 80-20 split.

Senator Triplett: My question is more about the future. From the map it seems the fee land is pretty well drilled up but the trust land drilling is just getting started. Do you have a guesstimate of the number of wells expected to be drilled on the trust land in the next 2 years? Also would you have a guesstimate of what that 50-50 split would bring in to the tribes in the next 2 years?

Ryan Bernstein directed their attention to the handout he gave them during the hearing on February 4th. See Attachment #2 from February 4th.

Senator Triplett asked about the time frame of the 130 wells and the 493 wells listed in the handout and Ryan was not sure of the time frame for the actual drilling of those wells.

Senator Hogue: Is there somewhere we could get information on the other sources of financial income the tribes get?

Ryan Bernstein: We don't have anything for a breakdown. We have the allocations they have received through the agreement itself. The other information I have is concerning the 181 million dollars. I have heard a few different things on that, what the tribe retained and what went to the Allottees. I think we could get from the BIA what they have spent and plan to spend on roads. Each fiscal year the BIA sets out a plan of how to spend the money for roads. We could probably get that if the committee desires.

Senator Triplett: I would find that helpful.

Ryan Bernstein: I will do my best to get that. .

Senator Triplett: On the sheet you provided you indicate daily production is about 58,000 barrels per day, roughly 10,000 from trust land and 47,000 from fee lands. Is the trust land zone near the sweet zone of the Bakken that we could expect similar production from the wells on the trust land?

Ryan Bernstein: I understand it is in a very good area. From what I understand the area south and west of the lake is also a good area.

Senator Hogue: Have the Governor's office and the tribe discussed revising or terminating the agreement?

Ryan Bernstein: The Governor met with Chairman Hall. There was talk of maybe modifying the agreement. It takes statutory changes, so it is up to the legislature to do it. As far as continuing the agreement we think it has worked well, we would like to see it continue. We would have no desire to cancel it unless we start getting feedback from the industry that it is not working.

Chairman Lyson: Does the Governor's office have any ideas on changing the formula?

Ryan Bernstein: The governor's office is neutral on the formula.

Chairman Lyson: We will get the information from Ryan Bernstein. We will meet tomorrow at 2:00.

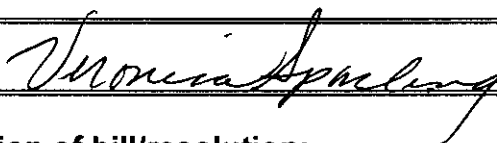
2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2348
February 8, 2011
14217

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to requirements for agreements with the Three Affiliated Tribes for the taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Indian Reservation; and to provide an effective date

Minutes:

No Attachments

Chairman Lyson opened the discussion on SB 2348.

Senator Hogue: I think the Three Affiliated Tribes is in a situation similar to what our counties are. They have the same impacts, same demands on infrastructure, damages to the roads, etc. I would like to find a way to make sure we are treating them equally compared to our oil impacted counties. I don't have enough information to make that comparison. We have the complex formula, but I would like to have a study to see if we are treating the tribe and the oil impacted counties the same. I would recommend a study.

Chairman Lyson: A study puts it 2 years out. This won't wait 2 years, so that is not an option. We have an agreement with the tribe right now. They are getting money; they feel they should get more. We must decide. We can have more negotiations afterward. Even if we do a do not pass, we can discuss with the tribe and call it back with a 2/3 vote on the floor.

Senator Schneider: I agree we are flying blind. We need more information. The agreement is not perfect now. I would like to have something around to work with so I would resist a do not pass motion only so we can keep this issue alive.

Senator Freborg: I am sure there is a vehicle we can amend in 2 months when we have more information. There will definitely be a vehicle in one committee or another that we can amend. It should still be there in the next 2 months.

Senator Uglem: Do Not Pass Motion with the agreement that there will still be a vehicle so this can be addressed.

Senator Hogue: Second

Senator Freborg: I hope that the committee is in agreement that we will look very hard for a vehicle to amend down the road.

Chairman Lyson: I am meeting with Chairman Hall tomorrow with others. If we can come to an agreement, we will be bringing it to the floor for a 2/3 majority of the vote to bring the bill back. I rely on all of you, if that is what we are going to do, to get your fellow senators to vote for bringing it back when we bring it to the floor.

Roll Call Vote: 5-1-1

Carrier: Chairman Lyson

FISCAL NOTE

Requested by Legislative Council
01/26/2011

Bill/Resolution No.: SB 2348

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				(\$22,480,000)		
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$2,880,000					

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2348 changes the distribution of oil extraction and gross production tax revenues from oil and gas produced within the Fort Berthold Reservation.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, SB 2348 is expected to increase tribal revenue allocations by an estimated \$19.6 million in the 2011-13 biennium. This will also reduce permanent oil tax trust fund revenues by \$19.6 million.

Section 1 of the bill also creates a "hold harmless" feature for the counties in which tribal production occurs. Relative to the existing state/tribe distribution, this is expected to increase county revenue by an estimated \$2.88 million in the 2011-13 biennium. This will reduce permanent oil tax trust fund revenue by the same amount.

Combined, the provisions of SB 2348 will reduce permanent oil tax trust fund revenues by an estimated \$22.48 million in the 2011-13 biennium.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

SB 2348 will require substantial modifications to computer systems within the Office of State Treasurer. The expected costs of system changes are currently not known.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and*

appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/02/2011

Date: 2-8-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2348

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Uglen Seconded By Hogue

Senators	Yes	No	Senators	Yes	No
Chairman Lyson	✓		Senator Schneider		✓
Vice-Chair Hogue	✓		Senator Triplett		
Senator Burckhard	✓				
Senator Freborg	✓				
Senator Uglen	✓				

Total (Yes) 5 No 1

Absent 1

Floor Assignment Lyson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2348: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO NOT PASS (5 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2348 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

SB 2348

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TESTIMONY ON SB 2348
SENATE NATURAL RESOURCES COMMITTEE
FEBRUARY 4, 2011
Tex "Red Tipped Arrow" Hall, Chairman,
Mandan Hidatsa & Arikara Nation
Fort Berthold Indian Reservation

Dosha! Chairman Lyson & Members of the Natural Resources Committee. My name is Tex Hall, or Ihubdah Hishi, which means "Red Tipped Arrow". I am honored to present this testimony as the Chairman on behalf of the Mandan Hidatsa & Arikara Nation.

The Tribe supports SB 2348 for two main reasons. First, SB 2348 will ensure that the MHA Nation, whose lands lie in the heart of the Bakken Formation, receives its fair share of tax revenue from oil production on the Fort Berthold Indian Reservation. And second, SB 2348 will help us mitigate the massive toll that the oil and gas industry is taking on reservation trust lands, infrastructure and resources.

The tax revenue that the MHA Nation receives under the current oil and gas tax sharing agreement is not nearly enough to meet the soaring costs caused by the enormous burden that the oil and gas boom is placing on reservation roads, infrastructure, and our natural and human resources. Mr. Chairman, the Bakken oil & gas has given us all what maybe a once in a lifetime opportunity to seriously invest in our future. Equalizing our tax structure is not just about fairness. It's about allowing our Tribe to build for our future.

Equality

In my address to the Joint Session of the 62nd Legislative Assembly on January 6, 2011, I asked the Legislature to revisit the current tax agreement legislation as set forth in NDCC Chapter 57-51.2. The current legislation provides that the state and the MHA Nation share equally the oil and gas tax proceeds from trust mineral acres, while the state gets 80% and the MHA Nation receives 20% from non-trust mineral acres on the Fort Berthold Indian Reservation. This is simply not fair.

We think that the same logic should apply when oil and gas is produced on tribal lands. Thus we believe that the MHA Nation should get 80% with respect to production on trust lands and the State receives 20%.

SB 2348 would achieve this goal and correct the imbalance that currently exists. The bill would level the playing field by equalizing the respective percentages shared by the Tribe and State from production on reservation trust and non trust lands and makes a fair agreement for both the Tribe & State.

Financial Costs Borne by the Tribe

According to a recent article in the Bismarck Tribune, state Tax Department records show that since July of 2008, the state has collected \$43.7 million from the agreement and the MHA Nation has received \$19.1 million. As I discuss in more detail below, the percentage received by the MHA Nation under the tax agreement is simply not sufficient to keep up with the serious financial impacts that the oil and gas boom has brought upon our infrastructure and resources. In particular, oil production has dramatically raised the costs of maintaining and improving our reservation roads as well as the costs of maintaining and increasing our emergency response and law enforcement.

SB 2348 would also amend NDCC Chapter 57-51.2 to reallocate a portion of the state's share of the tax from reservation production to the counties on the reservation where production occurs. The revenue that would come back to the counties from Fort Berthold production if SB 2348 becomes law will be very significant, and would restore to the counties their full share from reservation production.

Mr. Chairman, in considering the proposed amendments, I ask that the Committee consider the following facts. While the oil and gas industry has brought increased economic opportunities to every resident of Western North Dakota, including the MHA Nation, those increased opportunities have not come without costs. The three most visible of those costs are the virtual destruction of many of our reservation roads, the advent of new law enforcement and public safety needs, and the environmental negative impacts associated with oil & gas development.

Reservation Roads costs

The Fort Berthold reservation encompasses approximately 1 million acres, approximately 1,544 square miles, and 1,520 miles of roads. The Reservation encompasses parts of six North Dakota Counties: Mountrail, McKenzie, Ward, McLean, Dunn and Mercer. Approximately half of the reservation consists of tribal and allotted trust land. Of the 1,520 miles of roads, more than 70%, 1,200 miles, are in the BIA inventory system. Roads in the BIA inventory are broken down as follows:

Rural minor arterial roads:	141.2 miles
Community streets:	28.7 miles

Rural major collector roads:	191.5 miles
Rural local roads:	729.5 miles
City minor arterial streets:	6.8 miles

In addition to the 1,200 miles of BIA/Tribal Indian reservation roads described above, there are also approximately 664.4 miles of county roads and 150 miles of state Highways within the reservation. There also an undetermined amount of private roads and abandoned BIA roads that will need to be rebuilt or improved to support the oil and gas industry on the reservation.

The current road system was not constructed to withstand the weight and volume of heavy truck traffic that accompanies the oil boom. The damage being done daily is enormous, and the MHA Nation does not nearly have the resources, even with its current share of oil and gas tax revenue, to keep up with the burden. For example, The MHA Nation recently had to break up the existing pavement and resurface it with additional gravel paid for by the Tribe estimated to be over \$500,000. This took place on the road south of Sanish and New Town because the oil traffic literally destroyed the road faster than any paving contract could repair it. At a minimum this year, 56.2 miles of BIA/Tribal roads need to be reconstructed immediately, with more reconstruction becoming necessary in the future. According to the BIA Roads Engineer the estimated cost for adequate design and reconstruction of the inferior roads is approximately \$1.5 million per mile, which equals over \$84.3 million. The current roads on the reservation are also beyond their life span. The highways were built with 2 inches of bituminous asphalt in the 1970s-80s, not enough to withstand the heavy traffic that comes with oil boom traffic. The Tribe has currently over 2,500 trucks working on the reservation and each oil well from drilling to production takes over 2,024 trips per

year per truck. The Tribe is anticipating over 200 new oil wells this coming year, which will triple the number of trucks on our roads.

According to our tribal records 57.7% of the reservation roads are gravel, 26.6 % are paved and 16% are primitive dirt. Much of the current system remains inaccessible to drilling and is in need of immediate upgrade to allow access to well sites; we cannot afford to have potential stranded wells. In addition to the immediate repairs and upgrades needed, we estimate that it will cost millions of dollars per year to maintain the reservation roads as long as the oil boom lasts. The current BIA budget to maintain our road system is a paltry \$456,000.

Travel is hazardous even in good weather as a result of the damage being inflicted on the tribal, county and state road system our traffic accidents and fatalities have dramatically increased since 2007 when the oil activity began. Presently, there are so many potholes and ruts on our tribal roads that the Tribe simply cannot keep up with them. In fact, many of our roads are so deteriorated, that when we can find the money to repair a small stretch, the patch does not hold and the next section of road just falls away. This winter's snow accumulation has doubled our snow removal budget and our small crew has to work around the clock to keep our roads open for this oil traffic. For all of these reasons, our roads currently present a very real danger to our school busses, emergency vehicles, the general public and even the vehicles operated by the oil and gas industry itself. Those roads are also costing our citizens, our governments and the oil and gas industry itself thousands of dollars a year in vehicle repairs and replacements, and this situation is and will continue to stifle economic growth.

Let me make it clear that the Tribe is already doing its part. We are currently supplementing over \$2 million to the BIA Roads Budget. We are spending our BIA provided dollars as carefully as possible, however; we are

constantly petitioning the BIA and other federal agencies for additional funds. Unfortunately, the funds that we need simply are not available from the federal system, and given our current national budget crisis, I honestly fear that our federal funding problems will only get worse. Thus, we need your help in the form of a practical and equitable adjustment of the allocation of oil and gas related tax dollars. The Tribe is not looking for a windfall; it is simply looking for the funds necessary to allow this economic boom to continue in a safe and responsible manner.

Mr. Chairman, nothing is more important to any of us than the safety of our citizens and to put it bluntly - on these roads, our citizens are not safe.

Law Enforcement Costs

In addition, the MHA Nation has very serious and very pressing law enforcement and public safety problems that have to be addressed immediately, and those problems can only be addressed with increased dollars. The influx of new oil and gas workers has created a great deal of strain on our already severely underfunded tribal law enforcement and highway law enforcement systems. At present, the Tribe can only afford to employ thirteen (13) law enforcement officers- and this is after the Tribe supplements the federal law enforcement dollars that we receive by approximately \$1 million a year.

These thirteen officers are, according to testimony presented to the Congress by the Bureau of Indian Affairs in 2010, only 1/3 of the minimum number of officers that we require just to service our on reservation population of approximately 12,500 (approximately 10,000 of whom are Indian). This does not include the thousands who are on the reservation on a temporary basis just to work. Add to this the number of officers that we now require in order to serve the

increasing population from new oil and gas workers in our communities, the increased traffic, the large land base our officers must cover, the increased number of automobile accidents and increased fatalities created by our ever deteriorating roads and the heavy traffic, and you can begin to see just how serious our situation really is. Because of the distances our officers have to travel, and the substantial increase in calls for police assistance, our police response time has now risen to up to 1 hour in some cases, which is unacceptable. This coupled with the significantly increased costs of repairing police vehicles which are traveling 1,500 miles or more a day on our deteriorated roads, has left our small tribal police department and its budget stretched to the breaking point. For all of these reasons, we need more law enforcement resources in order to protect the public and without those resources, people will continue to suffer unnecessarily.

The MHA Nation is in the process of constructing a health clinic. The clinic is underfunded and my Administration has made it a priority to find sufficient funds from all available sources to build a larger and better facility and one that has an emergency response capability for our Tribal Members and for oil and gas potential accidents. In addition, we need ambulance and air ambulatory services that will deliver much needed critical care. Additional funding is needed to build houses to recruit and support doctors, nurses and clinic staff. Increasing the MHA Nation's share of tax revenue from trust land on the Reservation will help us overcome the funding deficit and build a health facility our people deserve.

Environmental Costs

No one disputes the overwhelming effect that the oil and gas boom in western North Dakota is having on our tribal, county and local governments, as

well as our citizens in western North Dakota. The impact on our roads, infrastructure, law enforcement, emergency services and particularly our natural environment, has far exceeded the resources our respective governments have to keep up with the burden. The need for a fair, cooperative and comprehensive oil and gas tax and regulatory system on the Fort Berthold Reservation is critical as we move forward to deal with the continuing onslaught that comes with this economic boom. Mr. Chairman and members of the Committee, it is particularly important to recognize that we all have a responsibility to ensure that the oil and gas industry is held accountable for the responsible development of our resources. This is particularly true when it comes to the dust, the fumes, and the damage to our roads, our horses and cattle, and the increased danger to our people as a result of the heavy truck traffic that comes with oil and gas activity. We must all be concerned about the transportation and use of the chemicals used in the oil fields of western North Dakota and to make sure that it is done in a safe and responsible manner. The MHA Nation needs more revenue to put an effective regulatory and inspection system in place for drilling wells on trust land. This must come from the tax revenue derived from production on trust land. We must have a coordinated regulatory system in place to protect our land and our resources while we promote responsible development.

Conclusion

Chairman Lyson, and members of the Natural Resources Committee, let me emphasize again that the MHA Nation is already doing its part. We are supplementing our roads, infrastructure and law enforcement budgets as much as possible and next week we will be lobbying both the federal agencies and the

Congress for increased funds, but that is simply not enough. The additional tax revenue that would come to the MHA Nation as well as the counties from oil and gas production on the Fort Berthold Indian Reservation if SB 2348 becomes law is sorely needed because our roads, infrastructure and resources have suffered as a result of the boom that is responsible for the state's one billion dollar budget surplus. The MHA Nation's share of tax revenue under the current tax agreement is not sufficient to keep up with these very serious impacts. We do not have a budget surplus; we are currently operating at a multi-million dollar deficit, much of it due to infrastructure costs and the negative impacts due to oil and gas development. The additional revenue that will come as a result of a more equitable cost share of tax revenue derived from production on trust land will help us reduce our deficit and build the infrastructure necessary to maintain responsible oil and gas production on reservation trust land.

While we are appreciative of the current tax agreement it simply is not enough, \$43 million versus \$19 million does not address our needs and we don't want to go back to a dual tax system on oil companies. Therefore, we urge the passage of SB2348.

Maa zagidaz!

Oil and Gas Gross Production and Oil Extraction Tax Collections From Oil Production within the Fort Berthold Reservation
And Approximate Distributions of Tribal Production-Related Oil Taxes (Actual Distributions are made by State Treasurer and may vary slightly)

Production Tax Distribution				Gross Production Tax Distribution				Oil Extraction Tax Distribution				Oil & Gas Distribution Combined			
Month	Month	Month	Month	Month	Month	Month	Month	Month	Month	Month	Month	Month	Month	Month	Month
Jan 08	Feb 08	Mar 08	Apr 08	May 08	Jun 08	Jul 08	Aug 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	Jun 09	Jul 09	Aug 09
Production Tax	1,018,484.14	906,221.48	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
Gross Production Tax	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42	31,985.42
Total	1,050,469.56	938,206.90	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42
Oil & Gas Distribution	1,050,469.56	938,206.90	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42
Total	1,050,469.56	938,206.90	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42	1,031,985.42

TRUST LAND - 50% - 50% - Bar Production / Extraction
 NON-TRUST - 20% - Production -

(1) The state's share of Gross Production tax revenues are distributed to the state general fund, the permanent oil tax trust fund, the impact grant fund, the oil and gas research fund, and the producing counties, cities and school districts.
 (2) The state's share of Oil Extraction tax revenues are distributed to the state general fund, the permanent oil tax trust fund, the resources trust fund, education funds, and the oil and gas research fund.

1 well drilled between February 1988 and July 1, 2008

There are 372 producing wells on Fort Berthold

105 are pre-agreement

267 are post agreement

86 on trust lands

181 on fee lands

Daily production is 57,779 barrels of oil per day

10,437 from wells on trust lands

8,275 is the trust share from wells on trust lands

47,342 from wells on fee land

There are 20 rigs drilling

14 on trust lands

6 on fee lands

There are 130 locations already approved to drill

96 on trust lands

34 on fee lands

There are 493 wells to be drilled in approved spacing units

418 on trust lands

75 on fee lands

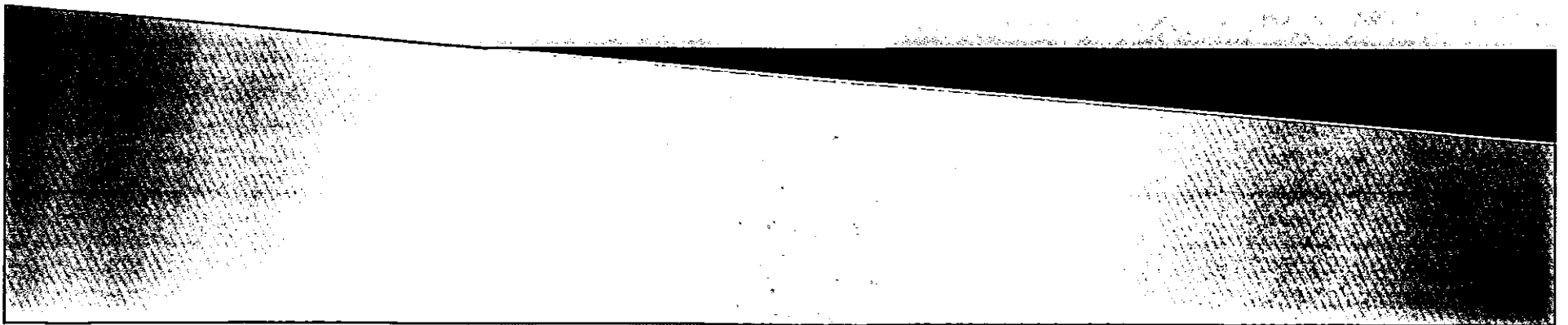
Taxation for Well Located Within the Fort Berthold Reservation
Quick Reference Sheet

1. Tax Rate
 - a. Oil
 - i. Trust Land
 1. 11.5%
 - ii. Non-Trust Land
 1. 5% for the first 60 months then 11.5% thereafter
 - b. Gas
 - i. Tax rate for gas produced from Trust and Non-Trust land is set by N.D.C.C. 57-51-02.2.
2. Spacing units comprised of Trust and Non-Trust land.
 - a. Tax rate is determined by applying a "Trust and Non-Trust Ratio" to the applicable tax rate.
 - b. For example:
 - i. "Trust Ratio" is determined by dividing the total Trust Lands acreage in a Spacing Unit by the Spacing Unit Acres.
 - ii. "A Non-Trust Ratio" is determined by dividing the total Non-Trust Lands acreage in a Spacing Unit by the Spacing Unit Acres.
 - iii. The two different "Ratios" then are applied to the corresponding tax rate.
 1. Example #1
 - a. In a hundred acre spacing unit, 60 acres are Trust lands and 40 acres are Non-Trust lands.
 - i. Trust Ratio would be 0.6 and Non-Trust would be 0.4
 - ii. Therefore, 0.6 of the oil produced from the well would be taxed at 11.5% and 0.4 of the oil produced from the well would be taxed at 5% for 60 months and 11.5% thereafter.
 2. Example #2
 - a. In a hundred acre spacing unit, 30 acres are Trust lands and 70 acres are Non-Trust lands.
 - i. Trust Ratio would be 0.3 and Non-Trust would be 0.7
 - b. Therefore, 0.3 of the oil produced from the well would be taxed at 11.5% and 0.7 of the oil produced from the well would be taxed at 5% for 60 months and 11.5% thereafter.
3. Tribal Fees
 - a. Trust Land
 - i. Tribe collects a \$60,000 TERO fee and \$40,000 Tribal Application fee. This is a one time fee per well remitted to the Tribe. TERO employment regulations apply if the well is located on Trust land. For the purposes of fees and employment only, a well is on Trust land if the majority of the Spacing Unit is comprised of Trust lands.
 - b. Non-Trust
 - i. No fees or employment regulations.
 - c. The TERO and Tribal Application fees are not applied on a prorated basis.

**Oil and Tax Agreement
&
Regulatory Agreement**

Three Affiliated Tribes and State of North Dakota

2/4/2011





Background

- ▶ Senate Bill 2419 introduced as a delayed bill in the 2007 session
- ▶ Bill allowed the Governor, in consultation with the Tax Commissioner, to enter into agreements with the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production on the Fort Berthold Reservation.



SB 2419

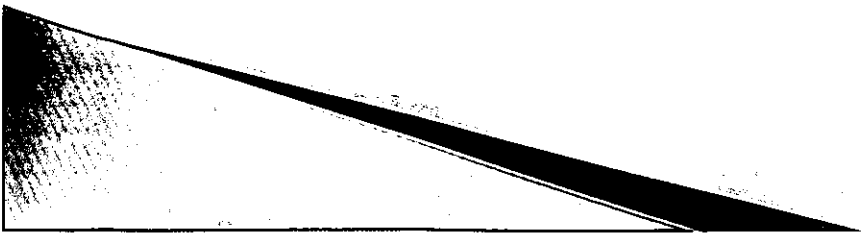
- ▶ State's oil and gas gross production tax under chapter 57-51 must apply to all wells on the Reservation
- ▶ State's oil extraction tax under chapter 57-51.1 on trust lands could not exceed 6 ½% but could be reduced by negotiation
- ▶ All current tax exemptions for oil produced on fee land still apply.



SB 2419

Cont.

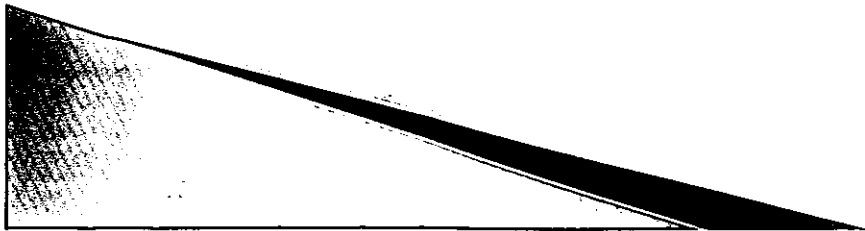
- ▶ Oil and gas wells drilled and completed during the agreement are subject to the agreement for the life of the well.
- ▶ Passed both Chambers unanimously.





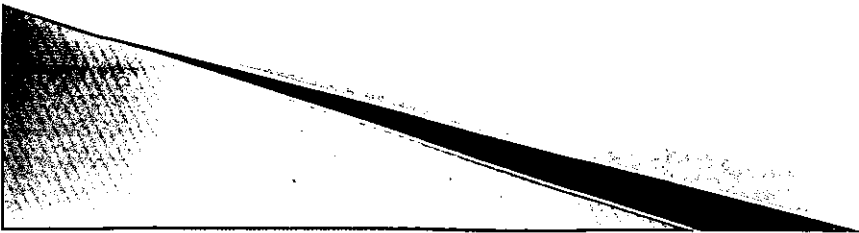
Tax Agreement

- ▶ Originally signed by Governor Hoeven and Chairman Levings on June 10, 2008.
 - Two year term
- ▶ Governor Hoeven and Chairman Levings signed an indefinite extension on January 13, 2010.
 - May be formally cancelled by either party



Tax Agreement

- ▶ State Tax Commissioner will establish for each Reservation well the mineral acres of Trust Lands and Non-Trust Lands.
- ▶ Gross Production Tax Rate of 5%
- ▶ Oil Extraction Tax Rate of 6.5%
 - Non-Trust Land exempt for 60 months
- ▶ Gas Tax Rate same as current state law.

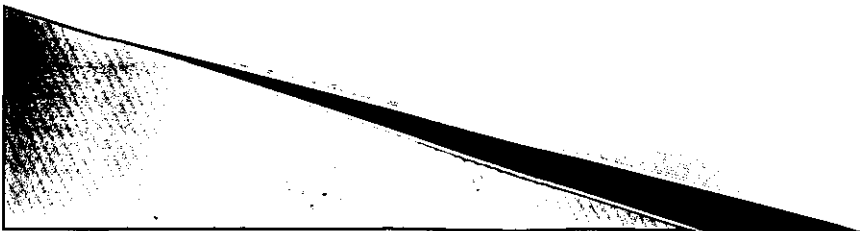




Tax Agreement

Revenue Sharing - Trust Lands

- ▶ Oil and gas tax revenue sharing from production on Trust Lands
 - 50% of total allocated and paid to the Tribe
 - 50% of total allocated and paid to the State and political subdivisions based on statutory distribution formulas





Tax Agreement

Revenue Sharing – Non-Trust Lands

- ▶ Oil and gas tax revenue sharing from production on Non-Trust Lands
 - 20% of gross production taxes allocated and paid to the Tribe
 - 80% of gross production taxes and 100% of oil extraction taxes allocated and paid to the State and political subdivisions based on statutory distributions formulas



Tax Agreement

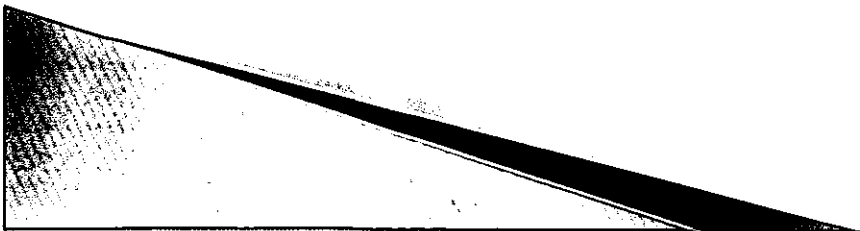
- ▶ Agreement provides for a one time \$60,000 TERO fee and \$40,000 Tribal Application fee per well.
- ▶ The fees are payable to the Tribe and are not collected and administered by the Office of State Tax Commissioner.
- ▶ Fees are applicable if the well's spacing unit is comprised of a majority of trust land.





Tax Agreement Results

- ▶ Before the Agreement
 - 1 well drilled
 - 0 on Trust Land
- ▶ Since
 - 2837 Leases approved by Tribe
 - 65 wells currently producing
 - 23 rigs currently drilling
 - Mostly on Trust Land





Tax Agreement Results

- ▶ Total Production and Extraction Tax Distributed
 - Tribe – \$21,255,529.35
 - \$181,227,968.14 leases paid (as of 9/9/2010)
 - State – \$47,799,523.70






Regulatory Agreement

- ▶ Original Regulatory Agreement
 - Differentiated Regulatory Authorities
 - Signed by Chairman Levings and Governor Hoeven June 2008.
 - BIA & BLM did not sign the Agreement
- ▶ New Regulatory Agreement
 - Defines the cooperative process to approve permits and spacing rules





Regulatory Agreement

- ▶ BLM will adopt state-wide well location rules and set-back requirements.
 - ▶ BLM shall be provided a seat at the hearing and present expert testimony.
 - ▶ Orders will be issued as follows:
 - Only Trust lands, the BLM will issue Order and the NDIC may co-sign the Order.
 - Both Trust lands and non-Trust lands, the BLM and NDIC will co-sign the order.
 - No Trust lands, the NDIC will issue order and the BLM will not co-sign the order.
- 



Regulatory Agreement

- ▶ BLM still needs to approve the Agreement
 - BLM was working with the Tribal Energy Office to set up three consultation sessions for August.
 - BLM's feedback at local Allottee and Landowner meetings have been positive.
 - BLM presented it to the Tribal Council and it recommended more extensive consultation.
 - BLM's District and State Office are in agreement with the MOU and are waiting for the completion of the consultation efforts.
 - BLM plans to wrap up these efforts in early September.
- 