

Senate Bill 2304
Senate Finance and Taxation Committee
January 28, 2025
Testimony of Mark Fox, Chairman, MHA Nation

Mr. Chairman and members of the Committee, my name is Mark Fox, Chairman of the Mandan Hidatsa and Arikara (MHA) Nation. The MHA Nation opposes Senate Bill 2304 because it would require the state of North Dakota to breach its legal obligations under the current oil and gas tax agreement by withholding payments that North Dakota is obligated to make under the agreement, and because it asks North Dakota to interfere in the internal affairs of the MHA Nation.

As many of you know, we have worked for years to reach a mutually acceptable oil and gas tax agreement. After years of work and cooperation on both sides the MHA Nation and North Dakota executed an oil and gas tax sharing agreement that has now been in effect for years. Both sides continue to follow their respective obligations under the Agreement and it has brought positive economic benefits to both the MHA Nation and the North Dakota economy. Now, certain individuals who do not represent the MHA Nation and who have their own political agenda are attempting to use this legislature to advocate a violation of the Agreement.

I'm confident that the North Dakota legislature will honor the Agreement it has previously authorized. We have come too far in our relationship over the last decade to let something like this interfere with the positive government to government relationship we now enjoy. The individual tribal members who are advocating for this bill do not represent the MHA Nation. Some of them unsuccessfully ran for political office with the MHA Nation in the past. Having failed that, they are now seeking to use the North Dakota legislature to circumvent

the MHA Nation government to achieve their aims. This is not something this Committee should allow.

I do not want to take a lot of your time, but I do want to address some of the statements made by individuals supporting this Bill because they are false and misleading.

First and foremost, the existing Oil and Gas Tax Agreement does not violate state, tribal or federal law. It is an intergovernmental agreement between two sovereigns that is authorized by state statute. The agreement is also authorized by the MHA Nation's Constitution. Specifically, Article I of the MHA Constitution states that the jurisdiction of the MHA Nation extends to "all persons and all lands" within the boundaries of the Fort Berthold Reservation. Under our Constitution, the MHA Nation is governed by our Tribal Business Council whose members, including myself, are democratically elected by a majority of our voters each four year term. Among the enumerated powers, Article 6 section 5 of the MHA Constitution gives the Tribal Business Council the authority to negotiate with federal, state and local governments on behalf of the MHA Nation.

Second, The United States Supreme Court has upheld the authority of Indian tribes to tax non Indians who execute oil and gas leases and produce oil and gas on Indian reservations. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). Federal courts have also specifically upheld tribal tax authority as it applies to oil and gas produced from leases on allotted lands within reservations. *Mustang Prod. Co v. Harrison*, 94 F.3d 1382 (10th Cir. 1996), *cert denied*, 520 U.S. 1139 (1997). The Supreme Court has also upheld the authority of states to tax non Indian oil and gas lessees who produce oil and gas on Indian Reservations. *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989). As a result, oil and gas production on the Fort Berthold Reservation is potentially subject to dual state and tribal taxation. It is precisely because of the dual taxation threat that the MHA Nation and North Dakota

executed the existing oil and gas tax sharing agreement, in order to prevent oil production at Fort Berthold from declining because of the excessive tax burden.

Some of the individuals advancing this Bill have also made reference to the General Allotment Act, also known as the Dawes Act. However, the Fort Berthold Reservation was allotted pursuant to the Fort Berthold Allotment Agreement, which the MHA Nation executed with the United States in 1886, and which Congress ratified in 1891. Nothing in either the Fort Berthold Allotment Act or, for that matter, the Dawes Act affects the MHA Nation's jurisdiction to tax non-Indians engaged in oil and gas activities on the Fort Berthold Reservation, including specifically on allotted lands. None of the other federal laws cited by these individuals affect the validity of the current oil and gas tax agreement either. Simply put, these individuals are asking the North Dakota legislature to violate an agreement that was lawfully executed and works well for both North Dakota and the MHA Nation.

I am proud of the many things that North Dakota and the MHA Nation have accomplished together in the past decade. I look forward to continuing this positive relationship. But Senate Bill 2304 violates an existing agreement that we both worked so hard to obtain, and it is a step backward in what has become a very positive relationship.

For all the reasons stated, I ask that you vote no on Senate Bill 2304. Thank you