

2025 SENATE FINANCE AND TAXATION

SB 2304

2025 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2304
1/28/2025

Relating to tribal oil and gas tax revenue allocation withholding.
--

10:00 a.m. Chairman Weber reconvened the meeting.

Members present: Chairman Weber, Vice Chairman Rummel, Senator Marcellais, Senator Patten, Senator Powers, Senator Walen

Discussion Topics:

- Time of funds in escrow
- Litigation and details regarding audit reports

10:00 a.m. Senator Walen, District 4, introduced SB 2304, testified in favor and submitted written testimony #32135 and #32064.

10:05 a.m. Todd Hall testified in favor and submitted testimony #31994, #31992, #31933, #31995, #31996, and #32039.

10:17 a.m. Patti Jo Hall, testified in favor and submitted testimony #32004.

10:23 a.m. Ronald Brugh testified in favor.

10:36 a.m. Carol Two Eagles testified in favor.

10:38 a.m. Carol Good Bear testified in favor.

10:45 a.m. Renetta Mandan testified in favor and submitted testimony #32173.

10:50 a.m. Katherine Young Bear testified in favor.

10:55 a.m. Representative Brown, District 9, testified on behalf of Lonna Street, Chairwoman, Spirit Lake Nation, in opposition and submitted testimony #32221.

11:00 a.m. Scott Davis, Lobbyist, MHA Nation, testified on behalf of Mark Fox, Chairman, MHA Nation, in opposition and submitted testimony #32171.

11:05 a.m. Ron Ness, President, North Dakota Petroleum Council, testified in opposition and submitted testimony #32131.

11:09 a.m. Nellie Mahto testified neutral.

Additional written testimony:

Tex Hall, Fort Berthold Allottee Land & Minerals Owners Association, submitted written testimony in favor #31968.

Joshua DeMorrett, State Government Affairs Director, ConocoPhillips, submitted written testimony in opposition #31980.

11:11 a.m. Chairman Weber closed the hearing.

Chance Anderson, Committee Clerk

Tex Hall Testimony in Support of SB 2304

SB 2304 FINANCE & TAXATION COMMITTEE TESTIMONY IN SUPPORT JANUARY 28, 2025

January 28, 2025

Chairman Mark Weber and members of Seante Finance and Taxation Committee,

I am presenting this Testimony as an enrolled member of the Mandan, Hidatsa and Arikara Nation, individual landowner and as Chair of the Ft. Berthold Allottees Land & Mineral Owners Association on the Fort Berthold Indian Reservation.

I am in support of SB 2304 because I feel its trying to correct the Tribal State oil and Gas tax agreement. Our Tribe's constitution doesn't authorize the Tribal Council to tax Individual (Allotted) Trust Land. Our constitution says under ARTICLE 1X-LAND, Section 2, page 9

Tribal Lands. The unallotted lands of the Fort Berthold Indian Reservation and all lands which may hereafter be acquired by the Three Affiliated Tribes or by the United States in trust for the Three Affiliated Tribes, shall be held as Tribal Lands and no part of such lands shall be mortgaged, sold or ceded, except as permitted by law and then only with the consent and approval of the Secretary of Interior. Tribal lands shall not be allotted to individual Indians but may be assigned to members of the Three Affiliated Tribes or leased or otherwise used by the tribes as hereinafter provided.

In other words, The Tribal Council only has authority to tax Tribal Lands not Allotted or Individual Indian owned lands. Therefore, this taxed monies should return to the Induvial Allotted Landowners.

In regard to Audits being a requirement before any tax monies distributed to MHA Nation Tribal Council, I am in agreement however the SB Bill should require both BIA and Tribal Audits due to our Constitution as these tax dollars are under the Tribes Audit requirements. It says under BYLAWS -ARTICLE 1, Section 3, page 11

The Treasurer of the Tribal Business Council shall accept receipt for, keep and safeguard all funds in the custody of the Council. Whether they be Tribal funds or special funds for which the Council is acting as trustee or custodian. He shall deposit all such funds in a bank or elsewhere as directed by the Council and shall make and keep a faithful record of such funds, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody to the Council at regular meetings and at such other times as requested by the council, his reports to be in writing and matters of record. He shall not expend or otherwise disburse any funds in his possession or in the possession or custody of the Tribal Council except when he is authorized to do so by resolution duly passed by the council. All checks be signed by the Treasurer and shall be countersigned by the Chairman of the Tribal Council.

The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the council, and at such times as the or the Commissioner Indian Affairs may direct. The Treasurer shall be required to be under a surety bond satisfactory to the council and to the Commissioner of Indian Affairs.

In other words, the Tribal Funds where the Tribal State Tax revenues are being deposited have not been audited since 2018 and as noted our Tribes constitution requires so I request that SB 2304 include this amended language requiring both Tribal and BIA audits annually and be made public to the enrolled member and to the State Tax Office.

If there is consideration by the committee for State fees for oil and gas regulation it should be agreed upon by Individual Landowners prior to payments.

In conclusion the Tribal State oil and Gas agreements need to be changed and resigned with Tribal Lands dollars going to the Tribe and the Allotted Individual Lands portion should go to those Landowners through the Bureau of Indian Affairs who has all the data, land information and oil and gas royalties so they can accurately return the dollars to the rightful owner. Thank you to Senators Walen and Senator Marcellais for co-sponsoring this legislation and I am available to answer any questions.

Tex Hall, Chair of Ft Berthold Allottee Land & Mineral Owners Association, MHA Nation enrolled member and Landowner



Josh DeMorrett
State Government Affairs Director
521 East Main Ave, Suite 325
Bismarck, ND 58501
joshua.demorrett@conocophillips.com

January 27, 2025

Chairman Mark Weber
Members of Senate Finance & Taxation Committee
North Dakota State Capitol
600 East Boulevard Ave
Bismarck, ND 58505-0360

RE: Senate Bill 2304

Chairman Weber and Members of the Senate Finance & Tax Committee:

Thank you for the opportunity to share some initial thoughts on Senate Bill 2304. ConocoPhillips explores for and produces oil and natural gas in North Dakota's Bakken oilfield with office locations in Dickinson, Dunn Center, New Town and Watford City. Through a recent transaction, we are also a proud and prudent operator on the Fort Berthold Indian Reservation.

We join with other industry partners and as members of the North Dakota Petroleum Council in opposition to Senate Bill 2304. When evaluating the deployment of capital in our operations around the world, we seek regulatory and tax certainty. Re-opening the tribal tax agreement that was reached between Chairman Fox and Governor Doug Burgum would introduce a sense of uncertainty in that process.

We appreciate your thoughtful consideration into this bill and respectfully ask that this committee move a "Do Not Pass" recommendation to the full Senate. Please reach out if we can assist you in any way.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Josh DeMorrett', with a long horizontal line extending to the right.

Josh J. DeMorrett
ConocoPhillips Company

Testimony in Support of North Dakota SB 2304
Background and Justification
Tax Reform
Within the Exterior Boundaries of the Fort Berthold Indian Reservation
By
Todd Hall
January 28, 2025

Background

The Oil and Gas Gross Production Tax Sharing Agreement is unconstitutional on both the State level and according to the Constitution of the Three Affiliated Tribes. The Three Affiliated Tribes and the State of North Dakota have been illegitimately collecting oil and gas gross production taxes on allotted lands within the reservation since the first agreement was signed.

In North Dakota, an oil and gas production tax is imposed instead of property taxes on oil and gas producing properties. Oil extraction tax is also levied on the extraction of oil from the earth. A 5% rate is applied to the gross value at the well of oil produced.

The Enabling Act which created North Dakota as a state, is an Act by the United States Congress on February 22, 1889, that makes a clear and unambiguous statement within Chapter 180, Statutes at Large 676, Section 4m in pertinent part, *“That the people inhabiting the proposed states do agree and declare that they forever disclaim all right and title... to all lands lying within said limits owned or held by any Indian or Indian tribes; and ..., that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use.”*

The express terms of the Enabling Act were incorporated into the **North Dakota State Constitution in Article XIII, Section 3**, in which North Dakota “accepted” the grants of land given to form the State, from the United States of America, *“under the conditions and limitations therein mentioned...”*.

The **Dawes Act** of February 8, 1887 authorized the federal government to divide communal territory and allotted land plots to individual Indians to be owned in severalty; rather than by the entire Indian Tribe.

The **Dawes Act states in pertinent part of Section 5**: *“That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United*

States does and will hold the land thus allotted..., in trust for the sole use and benefit of the Indian to whom such allotment shall have been made".

The Dawes Act of February 8, 1887 which preceded the Enabling Act states in **Section 6** of the document, *"That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and **no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law**. Every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States **without in any such manner affecting the right of any such Indian to tribal or other property**".*

That means an Allottee need not physically reside on the land or property of which they own, nor do they have to be considered an "enrolled member" in regards to the Indian Reorganization Act, to enjoy the rights, privileges, protections and benefits of ownership.

An individual member of the Hidatsa Tribe, the Mandan Tribe, or the Arikara Tribe, and an "enrolled member" of the Three Affiliated Tribes created under the Indian Reorganization Act of 1934 are NOT the same thing, by legal, traditional or cultural definition.

The Indian Reorganization Act of June 18, 1934 states in **Section 3**: *"The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States; Provided, however, that valid rights or claims or any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act."*

Section 5 of the Indian Reorganization Act states in part: *"Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or Individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation."*

Under the terms of the State/Tribal Oil and Tax Agreements: The MHA Nation Tribal Business Council (TBC) waived its own immunity from taxation by the State of North Dakota by entering in to the Agreement.

Allotted lands are tax exempt. Tribal lands and Allotted lands are two separate and distinct land ownership classifications according to tribal, state, and federal law.

Allottee lands are subject to the exemptions for oil and gas production and extraction taxes from trust lands under chapter 57-51 and 57-51.1.

The TBC has NO LEGAL AUTHORITY to speak on behalf of any individual beneficial allottee landowner(s) who own(s) the controlling interest in his, her or their own Allotment, unless an allottee's consent is given.

Allottees are subjected to taxation without representation or participation under current State/Tribal Oil and Gas Compacts.

The Indian Civil Rights Act of 1968, 25 U.S.C. Chapter 15, Subchapter I, 1302 (a) (5) states: "No Indian Tribe in exercising powers of self-government shall take any private property for a public use without just compensation."

The Fort Berthold Indian Reservation was created by Executive Order. Allotments were NOT. Individual Indian Allotments were created by Congress through the DAWES ACT.

According to federal statute, allottee landowners are on equal footing with the MHA Nation in regards to their own land holdings.

The Indian Civil Rights Act of 1968 amended Public Law 280 so states could no longer assume civil and criminal jurisdiction over Indian Country unless the affected tribes consented at special elections called for this purpose.

In other words, the TBC has the authority to negotiate the terms of a tax agreement, but only the people through referendum vote, have the authority to approve its enactment to be binding on the Tribal Lands.

Allottees with the controlling interest in their own allotment have the sole authority to consent to a tax agreement with the State on their own property. The TBC has no jurisdiction over allottee lands.

Article VI – POWERS, Section 2 of the TAT Constitution states: The exercise of powers granted by this Constitution is subject to any limitations imposed by the Statutes of the United States or by this Constitution and Bylaws.

Article VI Section 3 of the Constitution of the Three Affiliated Tribes states: *“The people of the Fort Berthold Reservation hereby grant to the Tribal Business Council of the Three Affiliated Tribes all necessary sovereign authority – legislative and judicial – for the purpose of exercising the jurisdiction granted by the people in Article 1 of this Constitution”.*

THE TRIBAL BUSINESS COUNCIL DOES NOT HOLD SOVEREIGN EXECUTIVE AUTHORITY UNDER THE CONSTITUTION OF THE THREE AFFILIATED TRIBES.

Article VI Section 5 of the Constitution of the Three Affiliated Tribes further limits the Tribal Council’s jurisdictional authority to tribal lands only. It also prohibits the TBC’s jurisdictional authority over allotted lands. Examples of those sub-sections of Article VI, Section 5 include:

(h) To regulate the inheritance of real and personal property, other than the allotted lands, within the territory of their jurisdiction.

(i) To make arrangements and leases of Tribal lands, and otherwise manage Tribal lands, interests in Tribal lands, and property upon such lands, in conformity with Article IX of this Constitution.

Article IX – LAND, Section 1, of the Constitution states: *The Tribal Business Council shall have the authority to manage and lease or otherwise deal with tribal lands and resources in accordance with law and to prevent the sale, disposition, lease or encumbrance of tribal lands, interest in lands or other tribal assets.*

Article IX, Section 2 defines Tribal lands, as: The **UNALLOTTED** lands of the Fort Berthold Indian Reservation and all lands which may hereafter be acquired by the Three Affiliated Tribes or by the United States IN TRUST for the Three Affiliated Tribes, shall be held as Tribal lands and no part of such lands shall be sold or ceded, except as permitted by law and then only with the consent and approval of the Secretary of the Interior.

The Corporate Charter of the Three Affiliated Tribes states: Corporate Property.

*7. No property rights of the Three Affiliated Tribes, as heretofore constituted, shall be in any way impaired by anything contained in this Charter, and the **tribal ownership of unallotted lands**, whether or not assigned to the use of any particular individuals, is hereby expressly recognized. **The individually owned property of members of the Tribe shall not be subject to any corporate debts or liabilities, without such owners’ consent**. Any existing lawful debts of the Tribe shall continue in force, except as such debts may be satisfied or cancelled pursuant to law.*

That provision in the Charter clearly, unambiguously and expressly states that the property, including lands or activities thereupon, of the citizens of the Three Affiliated Tribes **CANNOT BE TAXED** by the Three Affiliated Tribes corporate or governing body unless an owner's consent is given to do so. Any tax is a **LIABILITY to the Allottee** to pay Tribal corporate/government debt.

The only tax that can be legally levied is that, which is pointed out in **Tribal Constitution Article 6, Section 5 (b)**. This tax is issued on a per capita basis and not based on property or income of any Tribal citizen.

The Jicarilla vs New Mexico decision is not applicable to Allotted Indian lands in the Dakotas which were created by Federal Law.

Only the United States Congress has plenary authority over allotted lands. Not the Tribal government, not the Executive Branch of the federal government, nor the State of North Dakota.

Individual Indian Allotments can exist outside the exterior boundaries of an Indian Reservation.

The Tribe does not have the authority to tax deeded or "fee" lands within the reservation boundaries unless certain conditions exist.

The State of North Dakota has tax authority over deeded lands or "fee lands" within the exterior boundaries of the reservation.

The MHA Nation does not provide significant services to the oil and gas lessees or allotment beneficiaries and lacks legitimate regulatory authority and/or interest in the allotted lands which may justify their collection of any tax or tax benefit which rightfully belongs to the Individual Indian Allottee landowner.

Article VI- Powers of the Tribal Constitution limit the TBC's regulatory authority to the following:

Section 5 (h) To **regulate** the inheritance of real and personal property, other than the allotted lands, within the territory of their jurisdiction.

Section 5 (j) To protect and preserve the property, wildlife, and natural resources of the Tribes; to **regulate** hunting and fishing on all lands within the jurisdiction of the Tribes, and to cultivate and preserve native arts, crafts, culture, ceremonies and traditions.

Section 5 (l) To adopt resolutions **regulating** the procedure of the Tribal Business Council and other Tribal agencies and Tribal officials of the Reservation.

Oil and Gas operators on the Fort Berthold Indian Reservation are being taxed twice under current agreements.

The operators just count it as “the cost of doing business” on the Reservation and penalize the mineral owners by passing on the costs to the beneficial Indian mineral allotment owners. Higher pass-through costs are a form of being taxed without actually being called a tax.

Currently the oil and gas gross production tax sharing agreement (the agreement) allows the State to collect and administer a tax on all lands within the exterior boundaries of the reservation, including allotted lands. It is **NOT a tribal tax**.

Allottees were not given notice nor due process in regards to any tax on their lands.

The State and the Tribal government (the Tribe) entered into the agreement to provide consistency and a stable business environment.

It is an agreement to avoid litigation over tax revenues.

The tax agreements are a great concept and should continue, **BUT the State and Tribe are receiving tax dollars they are not entitled to**. Immediate reform measures need to be taken to bring the law and/or agreements into lawfulness and constitutional compliance.

Proposed Action

FIX IT. As a matter of fact, the fix may already be written into the COMPACT AGREEMENT and State law.

Tax fees should continue to be levied by and paid to the State by the oil and gas operators to remain consistent and provide a stable business environment.

The State will collect and administer the proceeds of the taxes on allotted lands to the allottees.

The State will collect and administer the proceeds of the taxes collected on tribal lands to the Tribe.

The State will collect and administer the taxes due on deeded/fee lands.

Landowner refunds which were unconstitutionally and were errantly disbursed to the Tribal government and not the individual allottee beneficial landowners will be refunded to the

rightful beneficiary or beneficiaries. Refunds will be determined by each person's proportionate ownership stake within an existing or proposed spacing unit and the amount of taxes collected and disbursed or held.

Beneficial allottee landowners whose lands were illegally taxed are entitled to a full refund and/or tax benefit from the State and Tribe; in accordance with **Article V (5) of the COMPACT** which states: "**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.**"

Allottee ownership determinations can be made similar to those methods used by federal officials regarding Range Units on the reservation. Ownership records are readily available at the Bureau of Indian Affairs offices and are available with the click of a button.

Since tax fees collected on tax exempt lands cannot be considered a tax; Oil and gas operators will receive a 100% expense tax write-off as a result of payments made in lieu of taxes to the State regarding tax exempt lands.

The State, after collecting and administering taxes will issue payments to the affected allottees according to each one's proportionate ownership in the amount of the taxes collected.

In accordance with the DAWES ACT, ENABLING ACT, the North Dakota State Constitution and the federal government's trust responsibility to American Indians, the federal government, upon billing by the State, will issue payments to the State for services provided to the Tribe, Allottees and/or oil and gas operators; including compensation for regulatory enforcement and administrative processing fees. *The State already does this on other federally held, tax-exempt properties throughout the State of North Dakota.* It is not a new concept.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Plains Regional Office
115 Fourth Avenue SE, Suite 400
Aberdeen, South Dakota 57401

IN REPLY REFER TO:
Self Determination
MC-206A

JAN 19 2024

Certified Mail – Return Receipt Requested – 7015 1520 0003 4670 4188

The Honorable Mark Fox
Chairman, Three Affiliated Tribes
307 5th Avenue
New Town, North Dakota 58763

Dear Chairman Fox:

The Three Affiliated Tribes (Tribe) is operating Bureau of Indian Affairs (BIA) Programs under Public Law 93-638 contracts. The BIA intends to impose sanctions because the Tribe has failed to submit a response to the Audit Findings for Fiscal Year (FY) 18 and FY 19 and failed meet the statutory and regulatory requirements for annual submission of Single Audit Reports

The Indian Self-Determination and Education Assistance Act (ISDEAA) contains the following requirement:

For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract entered into, or grant made, under this subchapter, the tribal organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by chapter 75 of Title 31 [Title 25 U.S.C. 450c (f)].

Pursuant to 2 CFR 200, recipients are required to file their single audit reports with the Federal Audit Clearinghouse within 9-months of the end of the Tribe's Fiscal Year. According to the records of the Federal Audit Clearinghouse and the Division of Internal Evaluation and Assessment (DIEA), your Tribe has not submitted its single audit report for FY 2020, FY 2021, FY 2022 and FY 2023.

This action of placing the Tribe on Level I sanctions is taken pursuant to the authority contained in the Single Audit Act and the implementing guidance issued by the Office of Management and Budget through 2 CFR Part 200.505, which provides:

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action as provided in 200.339 remedies for noncompliance:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the Non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate Federal awards.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

Because the Tribe has not submitted the appropriate audits, we will make payments of all contract funds, including contract support costs, by way of monthly advance installments commencing in FY 2024 until all audits from FY 2020 to FY 2023 have been submitted. Other payment methods will resume once we received notification that the Tribe is current on the submission of the single audit reports. The Bureau reserves the right to impose additional sanctions, including withholding funds, if audits are not submitted in a timely manner.

Moreover, the Bureau reserves the right to impose additional sanctions, including withholding funds, if responses are not submitted within 90 days from the date of this letter.

Responses are to be sent to DIEA and the Awarding Official at the following addresses.

U.S. Department of the Interior Bureau of Indian Affairs Great Plains Regional Office 115 Fourth Avenue, SE, Suite 400 Aberdeen, South Dakota 57401 E-mail: fayette.goehring@bia.gov Phone: (605) 226-7426	U.S. Department of the Interior Deputy Assistant Secretary – Indian Affairs (Management) Division of Internal Evaluation and Assessment 12220 Sunrise Valley Drive Reston, Virginia 20191 E-mail: oiea@bia.gov Phone: (703) 390-6484 Fax: (703) 390-6504
--	--

If mailing responses, we suggest they be mailed "return receipt requested."

APPEAL NOTICE

This is a final decision of the Awarding Official. You may appeal this decision to the Interior Board of Contract Appeals, 1800 F St. NW, Washington, DC 20405. The Interior Board of Contract Appeals (IBCA) is the authorized representative of the Secretary of the Interior with jurisdiction to hear and determine appeals relating to contracts made by any Bureau or Office of the Department of the Interior.

If you decide to appeal, you must mail or otherwise furnish a written notice of appeal to the IBCA with 90 days of receipt of this decision and provide a copy to the Awarding Official from whose decision the appeal is taken. The Notice of appeal must indicate that an appeal is intended, reference this decision, and identify the contract number.

If you appeal to the IBCA, you may, solely at your election proceed under the Board's small claims procedures for claims of \$50,000 or less or its accelerated procedure for claims of \$100,000 or less.

Instead of appealing to the IBCA, you may bring an action directly in the U.S. Claims Court or the Federal District Court within 12 months of the date you receive this decision, pursuant to section 110 of the ISDA, Title 25 U.S.C. § 450m-1, and the Contract Disputes Act, Title 41 U.S.C. § 601 *et seq.*

Should you have any questions, please contact Fayettea Goehring, Self Determination Specialist, Branch of Self Determination at (605) 226-7426, or by email at fayettea.goehring@bia.gov.

Sincerely,



Regional Director

cc: Division of Internal Evaluation and Assessment, Reston, VA
Financial Analyst, Division of Self Determination, Indian Affairs, Reston, VA
Acting Superintendent, Fort Berthold Agency

North Dakota Senate Bill 2304
Finance and Taxation Committee
Testimony of Todd Hall, Private Citizen
January 28, 2025

Good morning, Chairman Weber and members of the Finance and Taxation Committee. My name is Todd Hall. I am a private, tax-paying citizen who has both surface and mineral ownership interests on the Fort Berthold Indian Reservation. I own land that is held in trust by the United States of America, and I own deeded land, which is in fee simple status and I pay property taxes to the State of North Dakota.

I am a family man, rancher, an Awaxxawii Hidatsa. My Indian name is Mashee. I am an enrolled member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation. I was adopted into the Hidatsa clan, Awaxxe' by my grandpa, a World War I combat veteran. I am Magadishda Apuxxga Wigaa.

I AM HERE IN SUPPORT OF SENATE BILL 2304. In doing so, I am humbly asking the North Dakota Legislature to right a wrong. However, the current bill is in need of two amendments or addendums.

First, on line 11, Number 1. Needs to be amended to include: a tribal governing body and the governor for tribal land and an allottee(s) who holds at least a 51% majority controlling ownership interest in a surface allotment or tract of land affected by any agreement, consistent with federal law.

Second, on line 14, Number 2. Needs to be amended to include: an independent audit of all monies collected and disbursed to the Tribal governing body under past agreements, to determine the amount of proceeds which were collected on allotted lands and due back to the Individual Indian beneficial surface interest landowner(s) of an affected tract(s) of land. The Individual Indian landowners are entitled to a full accounting and return of their full and rightful tax benefit(s).

Currently the oil and gas gross production tax sharing agreement (the agreement) allows the State to collect and administer a tax on all lands within the exterior boundaries of the reservation, including allotted lands. It is **NOT** a tribal tax.

Under the terms of the State/Tribal Oil and Tax Agreements: The MHA Nation Tribal Business Council (TBC) waived its own sovereign immunity from taxation by the State of North Dakota by entering in to the Agreement.

The tax agreements are a great economic development concept and should continue, BUT, the State and Tribe are receiving tax dollars they are not entitled to. Immediate reform measures need to be taken to bring the law and/or agreements into lawfulness and constitutional compliance. New agreements are needed. The proposed legislation addresses the one major flaw of all past agreements:

While the Tribal Council has the authority to negotiate the terms of a tax agreement, only the people through referendum vote, have the authority to approve its enactment to be binding upon the Tribal Lands. The Tribal Council lacks Executive Authority under its own constitution.

The Indian Civil Rights Act of 1968 amended **Public Law 280** so states could no longer assume civil and criminal jurisdiction over Indian Country unless the affected tribes consented at special elections called for this purpose.

Article VI – POWERS, Section 2 of the TAT Constitution states: The exercise of powers granted by this Constitution is subject to any limitations imposed by the Statutes of the United States or by this Constitution and Bylaws.

As a part of my testimony, I am invoking Article 6, of the Horse Creek Treaty, which is otherwise known as the Fort Laramie Treaty of 1851.

Article 6 of the Horse Creek Treaty states: *“The parties to the second part of this Treaty have selected principals or head-chiefs for their respective nations, through whom all national business will hereafter be conducted, do hereby bind themselves to sustain said chiefs and their successors during good behavior.”* The Indian Reorganization Act of 1934 federally chartered Tribal Council (the Tribe) and its non-compliance with its ministerial duties according to the Constitution and Bylaws of the Three Affiliated Tribes, its federal corporate charter, its alleged mispending, mismanagement, and outright theft from the grassroots landowners like me, is NOT good behavior.

A temporary moratorium is needed to safeguard the funds in question from being disbursed, squandered and hidden from the public’s eyes.

The portion of the proposed legislation dealing with federal audits is warranted but needs to be expanded to include **all** income derived from resources and assets held in federal trust for the benefit of the Tribe and its members. Audits must be conducted and findings addressed to restore the public’s faith in government. As we all know, the lack of accountability of public tax dollars often translates to undelivered services to the demographic populations which well-intended legislation is meant to benefit.

The State of North Dakota, as the apparent controlling interest co-signer to the compact agreement and pass-through funding agency to the Tribe, should not expend or disburse any more publicly funded tax dollars to the Tribe until all the public's monies are accounted for.

A demand for public transparency and accountability is not a threat to tribal sovereignty. In fact, Senate Bill 2304 seeks to uphold tribal sovereignty through a demand of transparency and accountability by the people and of the people of the Three Affiliated Tribes and the State of North Dakota.

Allotted lands are tax exempt. Tribal lands and Allotted lands are two separate and distinct land ownership classifications according to tribal, state, and federal law.

The TBC has NO LEGAL AUTHORITY to speak on behalf of any individual beneficial allottee landowner(s) who own(s) the controlling interest in his, her or their own Allotment, unless an allottee's consent is given.

Tribal and Allottee lands are subjected to taxation without representation or participation under current State/Tribal Oil and Gas Compacts.

Allottee lands are subject to the exemptions for oil and gas production and extraction taxes from trust lands under chapter 57-51 and 57-51.1.

Allottees with the controlling interest in their own allotment have the sole authority to consent to a tax agreement with the State on their own property. Allottee lands account for over 70% of all trust lands within the exterior boundaries of the Fort Berthold Indian Reservation.

Coincidentally, nationally, it is estimated over 70% of American Indians live outside the exterior boundaries of their respective reservation homelands and do not receive services or protection under the law by Indian Reorganization Act chartered tribal organizations.

My allottee relatives and I are tired of being the Tribe's golden goose while being simultaneously economically and socially starved out of existence along with our own lands. Basic environmental mitigation efforts are critically lacking. The allottees and our lands pay a heavy toll for the overall benefit of North Dakota.

The MHA Nation does not provide significant services to the oil and gas lessees, the deeded landowners whether Indian or non-Indian, or the landowner of an allotment. The Tribe lacks legitimate regulatory authority and/or interest in the deeded and allotted lands which may justify their collection of any tax or tax benefit which rightfully belongs to the Individual Indian Allottee landowner, the deeded landowner or the State of North Dakota.

As a part of my testimony, I have attached another document that goes into further detail, background, justification and in support of Senate Bill 2304. The paper makes references to the laws associated including:

The Enabling Act which created North Dakota and admitted it into the Union. The North Dakota State Constitution, the Dawes Act, the Indian Reorganization Act of 1934, the Indian Civil Rights Act of 1968, Public Law 280, the Constitution of the Three Affiliated Tribes, and more.

Thank you, if you have any questions, I would be happy to answer.

Gowits

**CONSTITUTION AND BYLAWS
OF
THE THREE AFFILIATED TRIBES
OF
THE FORT BERTHOLD RESERVATION**

PREAMBLE

We, the Arikara, Gros Ventures, and Mandan Indians of the Fort Berthold Reservation, in North Dakota, eagerly embrace the opportunities for self-rule. And in order to enjoy the blessings of liberty and justice: to intelligently protect our vested rights under existing treaties and the Constitution of the United States: to guarantee to our posterity a more hopeful future: to preserve and develop our real estate and resources: to promote educational efficiency of the enhancement of good citizenship; to promote the general welfare of the three tribes; to make possible a more hopeful, self-sustaining and honorable living, socially and economically, do with deep consciousness of God, as our sovereign, ordain and establish this Constitution for the Three Affiliated Tribes of this Reservation.

ARTICLE I – JURISDICTION

The jurisdiction of the Three Affiliated Tribes of the Fort Berthold Reservation shall extend to all persons and all lands, including lands held in fee, within the exterior boundaries of the Fort Berthold Reservation as defined by the Act of March 3, 1891. (26 Stat. 1032) to all lands added to the Fort Berthold Reservation by Executive Order of June 17, 1892; and to such other persons and lands as may hereafter come within the jurisdiction of the Three Affiliated Tribes, except as otherwise provided by law. (As amended by Amendment No. VIII, approved by the Secretary of the Interior's delegate on March 11, 1985.)

ARTICLE II – MEMBERSHIP

SECTION 1. Membership. The membership of the Three Affiliated Tribes of the Fort Berthold Reservation shall consist of:

- (a) Persons of at least 1/8 degree blood of the Hidatsa, Mandan, and/or Arikara Tribes.

(As amended by Amendment No. A, effective December 16, 2010. Most recent prior amendment pursuant to a 2008 Secretarial Election)

SECTION 2. -- Dual Enrollment.

- (a) Persons enrolled with another tribe and who have received benefits from such tribe in the form of land or payments shall not be eligible for enrollment with the Three Affiliated Tribes of the Fort Berthold Reservation, provided that inherited interests shall not be considered as being benefits.

(b) A person eligible for membership with the Three Affiliated Tribes of the Fort Berthold Reservation and another tribe shall relinquish whatever rights of membership he may hold in the other tribe as a condition to his enrollment with the Three Affiliated Tribes of the Fort Berthold Reservation.

SECTION 3. The Tribal Business Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, governing future membership, the adoption of new members and the revision of the membership rolls from time to time as determined by such ordinances.

ARTICLE III – GOVERNING BODY

SECTION 1. The governing body of the Three Affiliated Tribes of the Fort Berthold Reservation shall be known as the Tribal Business Council.

SECTION 2. The Tribal Business Council shall consist of seven (7) members. The Chairman of the Tribal Business Council shall be elected at large by a majority of all of the votes cast for the office of Chairman. The six (6) other Council members shall be elected from segments, one council member to be elected from each of the following segments by a majority of all the votes cast for the office of Council representative from that respective segment:

White Shield	1 representative
Twin Buttes	1 representative
New Town/Little Shell.....	1 representative
Mandaree.....	1 representative
Four Bears.....	1 representative
Parshall/Lucky Mound.....	1 representative

SECTION 3. The boundaries of the segments shall be described as follows:

White Shield: That part of the Reservation starting at a point intersecting the eastern boundary and the McLean-Mountrail County line, thence westerly on that line to its junction with Highway #37, thence southerly on that line to the thread of Deep Water Bay, thence along that thread to its junction with the thread of the Missouri River, thence southerly and westerly along the thread of the Missouri to extreme southeasterly corner of the Reservation boundary, thence north approximately two (2) miles, thence due west to the line of the eastern boundary, thence due north to the point of beginning.

New Town/Little Shell: That part of the Reservation starting at a point at the junction of the thread of the stream of the Missouri River with the 48th parallel of north latitude, thence southward along the thread of the Missouri River to the thread of the Van Hook Arm, thence northward along the thread of the Van Hook Arm to the thread of Shell Creek, thence northeasterly along the thread of Shell Creek to its junction with the 48th parallel, thence due west along the 48th parallel to the point of beginning.

Mandaree: That part of the Reservation starting at a point at the junction of BIA Highway #4 and the western boundary of the Reservation, thence due south to the thread of the Little Missouri River, thence eastward and northward along the thread of the Little Missouri River, to the thread of the Missouri River, thence northward and westward along the thread of the Missouri river to the northern boundary of this segment, the northern boundary starting at the point of origin eastward along BIA

#4 to the junction of Highway #22, thence along the line connecting the northern boundaries of Sections 32, 33, 34, 35, and 36 of T. 151 N. eastward to the thread of the Missouri River.

Four Bears: That part of the Reservation lying within the northern and western Reservation boundaries with the thread of the Missouri River as the eastern boundary, the southern boundary being a line running eastward along BIA Highway #4 to the junction of Highway #22, thence along the northern boundaries of Sections 32, 33, 34, 35 and 36 of T. 151 N. eastward to the thread of the Missouri River.

Parshall/Lucky Mound: That part of the Reservation starting at a point at the junction of the thread of the stream of Shell Creek with the 48th parallel, thence southward along the thread of Shell Creek to the thread of the Van Hook Arm, thence southward on the thread of the Missouri River, to the thread of Deep Water Bay, thence easterly on a line to a point approximately one and one half miles due north to Highway #37 and continuing along Highway #37 to a point intersecting the McLean-Mountrail County line, thence easterly on that line to its junction with the line of the eastern boundary, thence north on that line to the point at the junction of the 48th parallel, thence westerly on that parallel to the point of beginning.

(as amended by Amendment IX, effective July 2, 1986 changing referendum vote September 1, 1970, Resolution No. 70-89)

SECTION 4: The Tribal Business Council shall have the authority to change the segment boundaries, subject to the approval of the voters of the Reservation at any regular or special election.

SECTION 5: Within three (3) days after the installation of the successful candidates for Council positions elected at the general election, the newly constituted Tribal Business Council shall meet and organize by electing a Vice Chairman, a Secretary, and a Treasurer from its own members; and from within or outside its own members. It may elect or appoint a Sergeant-at-Arms and such other officers and committees as it may find necessary.

(This section amended by Amendment No. 1, effective October 16, 1956 and further amended by Amendment No. III, effective September 10, 1974.)

SECTION 6: The members of the Tribal Business Council shall hold office until the next regular election and until their successors are elected or appointed and qualified.

(As amended by Amendment No. 1, effective October 16, 1956.)

ARTICLE IV -- NOMINATIONS AND ELECTIONS

SECTION 1. All elections shall be by secret ballot.

SECTION 2 (a). Any member of the Three Affiliated Tribes of the Fort Berthold Reservation, who is eighteen (18) years of age and over, shall be eligible to vote at any tribal election.

(This section amended by Amendment No. 1, effective October 16, 1956 and further amended by Amendment No. IV, effective September 10, 1974.)

SECTION 2 (b). For the purposes of voting in Tribal Business Council elections exclusively, any eligible voter of the Three Affiliated Tribes, whose place of legal residence is located outside the exterior boundaries of the Fort Berthold Reservation on the date of an election, shall return to the Reservation in order to vote in the election and shall register to vote and cast his ballot at the appropriate segment polling place on the date of the election.

In the initial election actually voted in subsequent to the effective date of this Amendment, each such non-resident eligible voter shall be entitled to vote at the polling place located in the segment of his

choice; provided, however, that such choice of segment shall be binding upon such non-resident voter in subsequent elections, until such time as he has established and maintains legal residence on the Fort Berthold Reservation in a different segment on the date of any subsequent election.

(As amended by Amendment XI, effective July 2, 1986)

SECTION 3 (a). The general election of the Tribal Business Council shall be held on the Tuesday next after the first Monday in November in every even numbered year. In the event, however, that the general election cannot be held on said date. The election shall be held on a date designated by the Tribal Business Council, which date shall be within a period of thirty (30) days from the day heretofore specified.

In case of a tie vote for any position on the Tribal Business Council in a general election, such that a qualified candidate for such position is not elected, a special run-off election shall be held between the tied candidates. The candidate who receives the higher number of votes in the special run-off election shall be declared elected to such position.

In case of tie vote in a run-off election for any position on the Tribal Business Council, a second run-off election shall be held between the two (2) tied candidates for such position and the candidate who secures the higher number of votes cast in the second run-off election shall be declared elected to such position. In the case of a tie vote in the second run-off election, the two (2) tied candidates shall draw straws in a special lottery conducted by the tribal election board for the purpose of determining which candidate shall be declared elected to the position. (As amended by Amendment XII effective July 2, 1986.)

SECTION 3 (b). A primary election shall be held for each vacant position on the Tribal Business Council, which election shall be held on the Tuesday next after the third Monday in September in every even numbered year. In the event, however, that pursuant to the authority granted in Section 3 (a) of this Article, the Tribal Business Council should extend the date of the general election beyond the Tuesday next after the first Monday in November in a particular election year, the date on which the primary election will be held in such year shall be likewise extended for the same period as the general election has been extended.

(As amended by Amendment XII, effective July 2, 1986.)

SECTION 3 (c). The two (2) qualified candidates for each position on the Tribal Business Council, for which an election is being held, who secure the highest number of votes in the primary election shall stand for election in the ensuing general election. In the event, however, that any one qualified candidate for a particular position on the Tribal Business Council should secure a majority of the votes cast for such position in the primary election, such candidate shall be declared elected to such position at the primary stage of the election and a general election shall not be held for such position in that election year.

(As amended by Amendment XII, effective July 2, 1986.)

SECTION 3 (d). Notice of each primary and general election to be held in a respective election year shall be given by the Secretary of the Tribal Business Council to each eligible voter of the Three Affiliated Tribes at least thirty (30) days previous to the date on which the primary election is to be held, which written notice shall set forth the respective locations, dates, and times of both the primary and general elections. In the event, however, that the Secretary of the Tribal Business Council should fail to give the requisite notice in a timely manner as prescribed herein, the Secretary of the Interior, upon receipt of a petition signed by at least ten (10) percent of the eligible voters of the Three Affiliated Tribes, shall call such elections and give at least twenty-five (25) days notice to each such

eligible voter, wherein are set forth the respective locations, dates, and times of both the primary and general elections.

(As amended by Amendment XII, effective July 2, 1986.)

SECTION 3 (e). For the purpose of the 1986 Tribal Business Council election, the respective terms of office of each of the incumbent members of the Council shall expire upon the installation of those persons duly elected in the 1986 Council election. Each of the seven (7) positions on the Tribal Business Council shall be elected in the 1986 election. The three (3) segment representatives elected to the Council in the 1986 election by the first, second, and third highest proportionate percentage of votes cast in the respective segments and the person elected to the Office of Chairman shall each serve a four (4) year term of office, each of which shall expire in 1990 upon the election and installation of the successors to such position, unless any such council member is unable to serve throughout such term as provided for in Article V, Section 1. In the event that two (2) segment representatives elected to the council shall secure the same third highest proportionate percentage of votes, such tied council members shall draw straws in a special lottery conducted by the tribal election board for the purpose of determining which of such members shall serve a four (4) year term. The remaining three (3) segment representatives elected to the council shall each serve a two (2) year term, each of which shall expire in 1988 upon the election and installation of the successors to such positions, unless any such council member is unable to serve throughout such terms, as provided for in Article V, Section 1.

In the 1988 Tribal Business Council election and in the council elections held every second year thereafter, three (3) segment representatives shall be elected to the council, each of whom shall serve a four (4) year term. The term of office of the Chairman of the Council shall expire in 1990, upon the election and installation of the successor to such office, and every four (4) years thereafter. The duly elected council member shall serve for the respective specified terms of office, each of which term shall commence upon the installation of the elected Council member pursuant to Article 1, Section 4 of the Bylaws of the Three Affiliated Tribes and shall expire upon the installation of the successor to such council position, unless such council member is unable to serve throughout such term, as provided for in Article V, Section 1. (Section 3 (e) added by Amendment X, effective July 2, 1986.)

SECTION 4. Special elections may be called by two-thirds vote of the Tribal Business Council in favor of such special election, or by a petition signed by at least 10 percent of the qualified voters of each community as provided in Article VIII.

SECTION 5. All elections shall be held under the supervision of the Tribal Business Council or an election board appointed by that council, and the Tribal Business Council or the election board appointed by it, shall make rules and regulations governing all elections, and shall designate the polling places and the election officers.

SECTION 6. In the first election after the adoption of this Amendment, any qualified voter of the Three Affiliated Tribes of the Fort Berthold Reservation who is bona fide resident of one of the segments described herein and who has a blood quantum of at least $\frac{1}{4}$ Mandan, Hidatsa and/or Arikara Tribes, may become a candidate to represent said segment on the Tribal Business Council by filing a notice candidacy with the Secretary of the Tribal Business Council at least fifteen (15) days before the election in which he is to be a candidate. In all succeeding elections, a qualified voter to be eligible to become a candidate must have resided in the segment he proposes to represent for a period of at least six (6) months next preceding the date of the election and have a blood quantum of at least $\frac{1}{4}$ Mandan, Hidatsa and/or Arikara Tribes. At least ten (10) days before the election, the Secretary of

the Tribal Business Council shall post the names of all candidates in each voting community. In the event that any community has no qualified candidate, as provided herein, such community may nominate one or more candidates by petition, signed by at least ten (10) qualified voters of such community.

(As amended by Amendment No. B, effective December 16, 2010 and previously by Amendment No. 1, effective October 16, 1956)

Any qualified voter of the Three Affiliated Tribes of the Fort Berthold Reservation who is a bona fide resident of one of the segments described herein and who has a blood quantum of at least $\frac{1}{4}$ Mandan, Hidatsa and/or Arikara Tribes may become a candidate for the office of Tribal Chairman by filing a notice of candidacy with the Secretary of the Tribal Business Council at least fifteen (15) days before the election in which he is to be a candidate.

(As amended by Amendment No. B, effective December 16, 2010. Previously added as a new paragraph to Section 6 by Amendment No. III, effective September 10, 1974.)

ARTICLE V – VACANCIES AND REMOVAL FROM OFFICE

SECTION 1. If a council member or officer shall die, resign or be permanently removed from the Reservation, or be removed from office for cause, the Council shall have full authority to appoint a qualified Tribal member from the segment where the vacancy occurs to serve the unexpired term of said member or office.

However, in case the Chairman's position becomes vacant due to the Chairman's death, resignation, permanent removal from the Reservation or removal from office for cause, the unexpired term of the Chairman shall be filled by a member of the Council, selected by a majority vote of the council. In that instance, the Council shall promptly appoint, as herein provided, to fill the vacancy created by a Council member assuming the Chairman's position.

SECTION 2. The Tribal Business Council may remove a member for cause by five (5) or more members voting for such removal, but before any vote is taken on the matter, such member shall be given an opportunity to answer any and all charges at a designated meeting of the Council, and the decision of the Tribal Business Council shall be final as to the removal or retention of such member,

SECTION 3. The Tribal Business Council shall, within one (1) year of the date of approval of this Section, enact an ordinance setting forth what constitutes cause for removal of a Council member pursuant to Section 2 of this Article.

ARTICLE VI – POWERS

SECTION 1. The Three Affiliated Tribes of the Fort Berthold Reservation, acting through their Tribal Business Council, shall have the powers granted by this Article; but any power exercised through that Council shall be subject to a popular referendum as provided by this Constitution.

SECTION 2. The exercise of the powers granted by this Constitution is subject to any limitations imposed by the statutes of the United States or by this Constitution and Bylaws.

SECTION 3. The people of the Fort Berthold Reservation hereby grant to the Tribal Business Council of the Three Affiliated Tribes all necessary sovereign authority – legislative and judicial – for the purpose of exercising the jurisdiction granted by the people in Article 1 of this Constitution.

Further the people hereby delegate to the Tribal Court such jurisdictional power and authority as may be necessary to realize the jurisdiction granted by the people in Article I of this Constitution.

SECTION 3 (a). To present and prosecute any claims or demands of the Three Affiliated Tribes, and to assist members of the Tribes in presenting their claims or grievances before any court or agency of government, and to employ legal counsel; the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

SECTION 3 (b). The people of the Three Affiliated Tribes, in order to achieve a responsible and wise administration of this sovereignty delegated by this Constitution to the Tribal Business Council, hereby specifically grant to the Tribal Court the authority to enforce the provisions of the Indian Civil Rights Act, 25 U.S.C. 1301, *et seq.*, including the award of injunctive relief only against the Tribal Business Council if it is determined through an adjudication that the Tribal Business Council has in a specific instance violated that Act.

SECTION 4. Any resolution or ordinance which, by the express requirements of federal law, is subject to the approval of the Secretary of the Interior, shall be presented to him, and he shall, within ten (10) days thereafter, approve or disapprove the same.

(Article VI - Powers, Sections 1 through 4 amended by Amendment No. VIII, effective March 11, 1985.)

SECTION 5. The Tribal Business Council shall have the following powers, the exercise of which shall be subject to popular referendum as hereinafter provided in this Constitution.

(a). To manage all economic affairs and enterprises of the Three Affiliated Tribes of the Fort Berthold Reservation in accordance with the terms of a charter to be issued to them by the Secretary of the Interior.

(b). To create and maintain a Tribal Business Council fund by accepting grants or donations from any person, state, or the United States, or by income from the Tribal enterprises, or by levying assessments of not less than 10 cents and not to exceed \$1 per year per capita on the qualified voters of the Three Affiliated Tribes, and to require the performance of labor in lieu thereof, provided the payment of such per capita levy shall be made before any person shall vote in any election held more than 6 months after the date of said levy.

(c). To administer any funds or property within the exclusive control of the Tribes to make expenditures from available Tribal funds for public purposes of the Tribes, including salaries or other remuneration of Tribal officials or employees. Such salaries or remuneration shall be paid only for services actually rendered. All expenditures from the Tribal Business Council fund shall be by resolution duly passed by the Council to such effect, and the amounts so paid shall be matters of public record at all times.

(d). To negotiate with the Federal, State and local governments on behalf of the Tribes, and to advise and consult with the representatives of the Interior Department on all activities of that Department that may affect the Fort Berthold Reservation.

(e). (Stricken by Amendment No. II, effective December 22, 1961.)

(f). To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Three Affiliated Tribes prior to the submission of such estimates or projects to the Bureau of the Budget and to Congress.

(g). To purchase land of members of the organization under condemnation proceedings in courts of competent jurisdiction.

(h). To regulate the inheritance of real and personal property, other than allotted lands, within the territory of their jurisdiction.

(i). To make arrangements and leases of Tribal lands, and otherwise to manage Tribal lands, interests in Tribal lands, and property upon such lands, in conformity with Article IX of this Constitution.

(j). To protect and preserve the property, wildlife, and natural resources of the Tribes; to regulate hunting and fishing on all lands within the jurisdiction of the Tribes, and to cultivate and preserve native arts, crafts, culture, ceremonies and traditions.

(k). To make recommendations to the Superintendent of the Fort Berthold Agency, the Commissioner of Indian Affairs, or the Secretary of the Interior, concerning the appointment and removal of employees assigned to duty of the Fort Berthold Reservation.

(l). To adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies and Tribal officials of the Reservation.

SECTION 6. Likewise subject to popular referendum, the Tribal Business Council may exercise such further powers as may in the future be delegated to the Three Affiliated Tribes of the Fort Berthold Reservation by the Secretary of the Interior or by any other duly authorized official or agency or government.

SECTION 7. Any rights and powers heretofore vested in the Three Affiliated Tribes of the Fort Berthold Reservation, but not expressly referred to in this Constitution, shall not be abridged by this Article, but may be exercised by the people of the Fort Berthold Reservation through the adoption of appropriate Bylaws and Constitutional amendments.

(NO ARTICLE VII)

ARTICLE VIII – REFERENDUM

Upon a petition signed by at least 10 percent of the qualified voters of each community, demanding a referendum on any proposed or enacted ordinance or resolution of the Tribal Business Council. The Council shall call an election and the vote of a majority of the qualified voters voting in such referendum shall be binding upon the Tribal Business Council, provided that at least 30 percent of the eligible voters shall vote in such referendum.

ARTICLE IX – LAND

SECTION 1. The Tribal Business Council shall have authority to manage and lease or otherwise deal with tribal lands and resources in accordance with law and to prevent the sale, disposition, lease or encumbrance of tribal lands, interest in lands or other tribal assets.

SECTION 2. Tribal lands. The unallotted lands of the Fort Berthold Indian Reservation and all lands which may hereafter be acquired by the Three Affiliated Tribes or by the United States in trust for the Three Affiliated Tribes, shall be held as Tribal lands and no part of such lands shall be mortgaged, sold or ceded, except as permitted by law and then only with the consent and approval of the Secretary of the Interior. Tribal lands shall not be allotted to individual Indians but may be assigned to members of the Three Affiliated Tribes, or leased or otherwise used by the tribes as hereinafter provided.

SECTION 3. Leasing of Tribal land – (a) Tribal land may be leased by the Tribal Business Council, with the approval of the Secretary of the Interior, for such periods as permitted by law. (b) Grazing permits covering Tribal lands may be issued by the Tribal Business Council, with the approval of the Secretary of the Interior, for such periods of time as permitted by law.

SECTION 4. Assignment of Tribal lands – (a) The Tribal Business Council may by ordinance, approved by the Secretary of the Interior, provide for granting and tenure of assignments of Tribal land to members of the Tribes. (b) Any member of the Tribes who owns an allotment or any share of heirship land or patent-in-fee land may voluntarily transfer his interest in such land to the Tribes in exchange for an assignment to the same land or for other land of a proportionate share in other Tribal assets.

SECTION 5. Use of unassigned Tribal Land – Tribal land which is not leased or assigned, including Tribal timber lands, shall be managed by the Tribal Business Council subject to the approval of the Secretary of the Interior, for the benefit of the members of the Tribes.

SECTION 6. Acquisition of land by Tribe – The Tribal Business Council of the Three Affiliated Tribes is hereby authorized and empowered to acquire by purchase, exchange of tribal land, relinquishment, or otherwise any lands or interests in land and on behalf of the Three Affiliated Tribes under such terms as may be agreed upon provided the acquisition is approved by the Secretary of the Interior.

ARTICLE X – AMENDMENTS

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the tribes voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty (30) percent of those entitled to vote shall vote in such election: but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment when requested by a two-thirds (2/3) vote of the Tribal Council, or upon presentation of a petition signed by one-third (1/3) of the qualified voters.

BYLAWS

ARTICLE 1 – DUTIES OF OFFICERS

SECTION 1. The Chairman of the Tribal Business Council shall preside at all meetings of the council and direct the work of its officers. He shall appoint, subject to the approval of the council, such standing committees and special committees and other officers as the business of the tribe may require.

In the absence of the chairman from any regular council meeting or any special meeting regularly called, the vice-chairman shall preside in his place, and he shall have all the privileges, duties, and responsibilities of the chairman in his absence.

SECTION 2. The Secretary of the Tribal Business Council shall conduct all correspondence of the council, shall keep all records, minutes of meetings, and an accurate roll of members by communities. He shall receive all petitions, applications and other papers, and prepare them for the action of the council. He shall promptly submit a copy of the minutes of each council meeting to the Superintendent of the Agency. He shall perform such other clerical duties relating to the business of the council as it may direct.

SECTION 3. The Treasurer of the Tribal Business Council shall accept, receipt for, keep and safeguard all funds in the custody of the council, whether they be Tribal funds or special funds for which the council is acting as trustee or custodian. He shall deposit all such funds in a bank or elsewhere as directed by the council and shall make and keep a faithful record of such funds, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody to the council at regular meetings and at such other times as requested by the council, his reports to be in writing and matters of record. He shall not expend or otherwise disburse any funds in his possession or in the possession or custody of the Tribal Business Council except when he is authorized to do so by resolution duly passed by the council. All checks shall be signed by the Treasurer and shall be countersigned by the Chairman of the Tribal Business Council, and all checks issued prior to July 1, 1940, shall be approved by the Superintendent of the Reservation.

The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the council, and at such other times as the council or the Commissioner of Indian Affairs may direct. The treasurer shall be required to be under a surety bond satisfactory to the council and to the Commissioner of Indian Affairs.

SECTION 4. The Tribal Business Council, or an election board appointed by it, shall certify to the election of the duly elected council members within 3 days after the election, and the newly elected councilmen who have been certified shall be installed at the first meeting of the Tribal Business Council thereafter, upon subscribing to the oath of office as follows: "I do solemnly swear that I will support and defend the Constitution of the United States and the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation, and will faithfully and impartially discharge the duties of councilman to the best of my ability".

SECTION 5. The duties of all appointed committees and officers shall be clearly defined by resolution of the Council at the time of their appointment, and such committees and officers shall

report from time to time as required by the Council, and their activities and decisions shall be subject to review by the Council at any time.

ARTICLE II – SALARIES

The Tribal Business Council may prescribe such salaries for Council members and Tribal officers appointed by the Council as it deems advisable, from such funds as may be available, provided that no compensation shall be paid to any tribal officer out of any tribal funds except by resolution duly passed and approved by the Council, and subject to popular referendum the same as other powers of the Council, and further provided that no compensation shall be paid to any Tribal officer out of tribal funds under the control of the federal government except upon a resolution stating the amount of the compensation and the nature of the services rendered, and said resolution shall be of no effect until approved by the Secretary of the Interior.

ARTICLE III – MEETING OF COUNCIL

SECTION 1. The regular meetings of the Tribal Business Council shall be held at such place as may be designated by the Tribal Business Council, on the second Thursday of each month.

SECTION 2. Special meeting may be called by the Chairman or by any three councilmen who shall notify all members of the council at least twenty-four (24) hours before the time of convening such meeting unless a majority of the council approves a shorter call in an emergency.

SECTION 3. Five (5) members shall constitute a legal quorum of the Tribal Business Council.

SECTION 4. In the absence of the Chairman and the Vice Chairman, if a quorum is otherwise present, the Secretary shall act as Chairman until a temporary Chairman is selected.

SECTION 5. At the first meeting of a newly elected Tribal Business Council, it shall establish by resolution a regular order of business such as: roll call, reading of minutes of previous meeting, report of Treasurer, report of committees, unfinished business, new business, etc.

HISTORICAL NOTE

The initial Article III of the Indian Reorganization Act Constitution approved by the Secretary of the Interior, Harold L. Ickes, on June 29, 1936, reads as follows:

ARTICLE III – MEETING OF COUNCIL

SECTION 1. The regular meetings of the Tribal Business Council shall be held at Elbowoods, North Dakota on the second Thursday of each month.

SECTION 2. Special meetings may be called by the Chairman or by any three councilmen who shall notify all members of the council at least twenty-four (24) hours before the time of convening such meeting unless a majority of the council approve a shorter call in an emergency.

SECTION 3. Seven members shall constitute a legal quorum of the Tribal Business Council.

SECTION 4. In the absence of the Chairman and Vice Chairman if a quorum is otherwise present, the Secretary shall act as Chairman until a temporary Chairman is selected.

SECTION 5. At the first meeting of a newly elected Tribal Business Council, it shall establish by resolution a regular order of business such as, roll call, reading of minutes of previous meeting, report of Treasurer, report of committee, unfinished business, new business, etc.

AMENDMENTS:

SECTION 1 was amended by Amendment V, effective September 10, 1974, to read as it appears above.

SECTION 3 was amended by Amendment IX, effective July 2, 1986, to read as it appears above.

ARTICLE IV – ADOPTION OF CONSTITUTION AND BYLAWS

This constitution and attached Bylaws, when adopted by a majority of the qualified voters of the Arikara, Gros Ventres and Mandan Tribes of the Fort Berthold Reservation, voting at a special election called by the Secretary of the Interior, in which at least 30 percent of those qualified shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in effect from the date of his approval.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved March 11, 1936, by the Secretary of the Interior, the attached Constitution and Bylaws was submitted for ratification to members of the Arikara, Mandan and Gros Ventre Tribes of the Fort Berthold Reservation and was on May 15, 1936, duly ratified by a vote of 366 for, and 220 against. In an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

GEORGE R. GRINNELL
Chairman of Election Board

ARTHUR MANDAN,
Chairman of the Business Council

PETER BEAUCHAMP,
Secretary

W.R. BEYER,
Superintendent

I, Harold L. Ickes the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended do hereby approve the attached Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and Bylaws are hereby declared inapplicable to the member of the Three Affiliated Tribes.

All officers and employees of the Interior Department are ordered to abide by the provisions of said Constitution and Bylaws.

Approval recommended June 3, 1936

JOHN COLLIER,
Commissioner of Indian Affairs.

HAROLD L. ICKES,
Secretary of the Interior

WASHINGTON, D.C., June 29, 1936.

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial election authorized by the Regional Director, Great Plains Regional Office, on July 27, 2010, the attached Amendments A and B to the Constitution and By-laws of the Three Affiliated Tribes of North Dakota, were submitted to the qualified voters of the tribe and on November 2, 2010, who duly adopted Amendment A, by vote of 616 for and 477 against; and duly adopted Amendment B, by a vote of 693 for and 400 against; in an election in which at least 30 percent required of the 2,583 members entitled to vote, cast their ballot in accordance with 25 U.S.C. § 476.

Howard Betner, Chairman, Election Board

Lyndon Desjarlais, Member, Election Board

Sharlene Baker, Member, Election Board

Viola Grant-Code, Member, Election Board

Phyllis M. Lincoln, Member, Election Board


June Schettler, Member, Election Board

Janice M. Smith, Member, Election Board

November 14, 2010

APPROVAL

I, Weldon B. Loudermilk, Regional Director of the Great Plains Regional Office, Bureau of Indian Affairs, by virtue of the authority granted by 10 BLAM 3.1, hereby approve the attached Amendments A and B to the Constitution and Bylaws of the Three Affiliated Tribes.



*Weldon B. Loudermilk, Regional Director
Bureau of Indian Affairs, Great Plains Region*

December 16, 2010

CORPORATE CHARTER
OF THE
THREE AFFILIATED TRIBES
OF THE
FORT BERTHOLD RESERVATION

A FEDERAL CORPORATION CHARTERED
UNDER THE ACT OF JUNE 18, 1934

Whereas, the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota are a recognized Indian tribe organized under a Constitution and By-laws ratified by the Tribe on May 15, 1936, and approved by the Secretary of the Interior on June 29, 1936, pursuant to section 16 of the Act of June 18, 1934, (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378); and

Whereas, more than one-third of the adult members of the Tribe have petitioned that a charter of incorporation be granted to such Tribe, subject to ratification by a vote of the adult Indians living on the Reservation;

Now, therefore, I, Harold L. Ickes, Secretary of the Interior, by virtue of the authority conferred upon me by the said Act of June 18, 1934, (48 Stat. 984), do hereby issue and submit this Charter of Incorporation to the Three Affiliated Tribes of the Fort Berthold Reservation to be effective from and after such time as it may be ratified by a majority vote in an election at which at least 30 percent of the adult Indians living on the Reservation shall vote.

Corporate
Existence
and
Purposes.

1. In order to further the economic development of the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota by conferring upon the said Tribe certain corporate rights, powers, privileges and immunities; to secure for the members of the Tribe an assured economic independence; and to provide for the proper exercise by the Tribe of various functions heretofore performed by the Department of the Interior, the aforesaid Tribe is hereby chartered as a body politic and corporate of the United States of America, under the corporate name of "The Three Affiliated Tribes of the Fort Berthold Reservation".

Perpetual
Succession.

2. The Three Affiliated Tribes of the Fort Berthold Reservation shall, as a Federal Corporation, have perpetual succession.

Member-
ship.

3. The Three Affiliated Tribes shall be a membership corporation. Its members shall consist of all persons now or hereafter members of the Tribe, as provided by its duly ratified and approved Constitution and By-laws.

Manage-
ment.

4. The Tribal Business Council of the Three Affiliated Tribes established in accordance with the said Constitution and By-laws of the Tribe, shall exercise all the corporate powers hereinafter enumerated.

Corporate
Powers.

5. The Tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the Constitution and By-laws of the said Tribe, shall have the following corporate powers in addition to all powers already conferred or guaranteed by the tribal Constitution and By-laws:

- (a) To adopt, use, and alter at its pleasure a corporate seal.

(Section 5(b) changed in its entirety by Amendment No. I, ratified November 27, 1961)

- (b) To purchase, take by gift, bequest or otherwise, own, hold, manage, operate and dispose of property of every description, real and personal, subject to the following limitations:

- (1) No sale or mortgage may be made by the corporation of any land, interest in land, including water rights, oil, gas, and other mineral rights now or hereafter held by the tribal corporation, unless specifically authorized by law and then only with the consent and approval of the Secretary of the Interior.

NOTE:

(2) No authority is hereby granted to sell, mortgage or lease for a period exceeding that authorized by law any land within the reservation and all leases, permits or other contracts relating to lands within the reservation must be approved by the Secretary of the Interior or his duly authorized representative.

NOTE:

(3) No action shall be taken by or in behalf of the corporation, which conflicts with the regulations authorized by Section 6 of the Act of June 18, 1934, or in any way operates to destroy or injure the tribal grazing land, timber or other natural resources.

(c) To issue interests in corporate property in exchange for restricted Indian lands, the forms for such interests to be approved by the Secretary of the Interior.

(d) To borrow money from any source for any purpose not inconsistent with law, regulations of the Secretary of the Interior, the tribal constitution or this charter: Provided, that any agreement covering a loan to the tribes which involves the pledge or assignment of chattels, future tribal income or other tribal assets as security therefor shall be subject to the approval of the Secretary of the Interior; and provided further, that any contract involving payment of money by the corporation in excess of \$50,000 in any one fiscal year shall be subject to the approval of the Secretary of the Interior. (Changed by Amendment No. I, ratified November 27, 1961)

NOTE:

- (e) To engage in any business that will further the economic well-being of the members of the Tribe or to undertake any activity of any nature whatever, not inconsistent with law or with any provision of this Charter.
- (f) To make and perform contracts and agreements of every description, not inconsistent with law or with any provisions of this Charter, with any person, association, or corporation, with any municipality or any county, or with the United States or the State of North Dakota including agreements with the State of North Dakota for the rendition of public services: Provided, That any contract involving payment of money by the corporation in excess of \$50,000.00 in any 1 fiscal year shall be subject to the approval of the Secretary of the Interior or his duly authorized representative. (Changed by Amendment No. I, ratified November 27, 1961)
- (g) To pledge or assign chattels or tribal income due or to become due to the Tribe: Provided, That such assignments of tribal income, other than assignments to the United States, shall not extend more than 10 years from the date of execution and shall not exceed \$50,000.00 in any one year: And provided further, That any such pledge or assignment shall be subject to the approval of the Secretary of the Interior or his duly authorized representative. (Changed by Amendment No. I, ratified November 27, 1961)
- (h) To deposit, to the credit of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, corporate funds, without limitation on the amount in any account, in

any National or State bank whose deposits are insured by any agency of the Federal government: Provided, that funds advanced from the Indian Credit Fund or from funds of the corporation held in trust in the United States Treasury shall be deposited with a bonded disbursing officer of the United States whenever the conditions prescribed by the Secretary of the Interior or his authorized representative, in connection with such advance, require that the advance be so deposited.

NOTE:

NOTE:

- (i) To sue and to be sued in courts of competent jurisdiction within the United States; but the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said Tribe or by the United States to the levy of any judgment, lien or attachment upon the property of the Tribe other than income or chattels specially pledged or signed.
- (j) To exercise such further incidental powers, not inconsistent with law, as may be necessary to the conduct of corporate business.

Termination of Supervisory Powers.

- 6. Upon the request of the Tribal Business Council for the termination of any supervisory power reserved to the Secretary of the Interior under sections 5 (b) (3), 5 (c), 5 (d), 5 (f), 5 (g), 5 (h), and section 8 of this Charter, the Secretary of the Interior, if he shall approve such request, shall thereupon submit the question of such termination for ratification by the Tribe. The termination shall be effective upon ratification by a majority vote at an election in which at least 30 percent of the adult members of the Tribe residing on the reservation shall vote. If at any time after 10 years from the effective date of this Charter such request shall be made, and the Secre-

tary shall disapprove it or fail to approve it within 90 days after its receipt, the question of the termination of any such power may then be submitted by the Secretary of the Interior or by the Tribal Business Council to popular referendum of the adult members of the Tribe actually living within the Reservation and if the termination is approved by two-thirds of the eligible voters, it shall be effective.

Corporate
Property.

7. No property rights of the Three Affiliated Tribes, as heretofore constituted, shall be in any way impaired by anything contained in this Charter, and the tribal ownership of unallotted lands, whether or not assigned to the use of any particular individuals, is hereby expressly recognized. The individually owned property of members of the Tribe shall not be subject to any corporate debts or liabilities, without such owners' consent. Any existing lawful debts of the Tribe shall continue in force, except as such debts may be satisfied or cancelled pursuant to law.

Corporate
Dividends.

8. The Tribe may issue to each of its members a non-transferable certificate of membership evidencing the equal share of each member in the assets of the Tribe and may distribute per capita, among the recognized members of the Tribe, all profits of corporate enterprise over and above sums necessary to defray corporate obligations and over and above all sums which may be devoted to the establishment of a reserve fund, the construction of public works, the costs of public enterprises, the expenses of tribal government, the needs of charity, or other corporate purpose. No such distribution of profits in any 1 year amounting to more than \$10 in any 1 year per capita payment shall be made without the approval of the Secretary of the Interior. No distribution of the financial assets of the Tribe shall be made except as provided herein or as authorized by Congress.

Corporate
Accounts.

9. The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments, and shall furnish an annual balance sheet and report of the financial affairs of the Tribe to the Commissioner of Indian Affairs.

Amend-
ments.

10. This charter shall not be revoked or surrendered except by act of Congress, but amendments may be proposed by resolutions of the Council which, if approved by the Secretary of the Interior, shall be effective when ratified by a majority vote of the adult members living on the Reservation at a popular referendum in which at least 30 percent of the eligible voters vote.

Ratifica-
tion.

11. This charter shall be effective from and after the date of its ratification by a majority vote of the adult members of the Three Affiliated Tribes living on the Fort Berthold Reservation, provided at least 30 percent of the eligible voters shall vote, such ratification to be formally certified by the Superintendent of the Fort Berthold Agency and the Chairman of the Tribal Business Council.

Submitted by the Secretary of the Interior for ratification by the Three Affiliated Tribes of the Fort Berthold Reservation in a popular referendum to be held on April 24, 1937.

HAROLD L. ICKES,
Secretary of the Interior.

(SEAL)

WASHINGTON, D. C., April 1, 1937.

AMENDMENT
CORPORATE CHARTER
OF THE
THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION
NORTH DAKOTA

AMENDMENT I

Section 5(b) shall be stricken in its entirety and the following shall be substituted:

"Section 5(b) To purchase, take by gift, bequest or otherwise, own, hold, manage, operate and dispose of property of every description, real and personal, subject to the following limitations:

(1) No sale or mortgage may be made by the corporation of any land, interest in land, including water rights, oil, gas, and other mineral rights now or hereafter held by the tribal corporation, unless specifically authorized by law and then only with the consent and approval of the Secretary of the Interior.

(2) No authority is hereby granted to sell, mortgage or lease for a period exceeding that authorized by law any land within the reservation and all leases, permits or other contracts relating to lands within the reservation must be approved by the Secretary of the Interior or his duly authorized representative.

(3) No action shall be taken by or in behalf of the corporation, which conflicts with the regulations authorized by Section 6 of the Act of June 18, 1934, or in any way operates to destroy or injure the tribal grazing land, timber or other natural resources."

Section 5(d) shall be deleted in its entirety and the following shall be substituted:

"5(d) - To borrow money from any source for any purpose not inconsistent with law, regulations of the Secretary of the Interior, the tribal constitution or this charter: Provided, that any agreement covering a loan to the tribes which involves the pledge or assignment of chattels, future tribal income or other tribal assets as security therefor shall be subject to the approval of the Secretary of the Interior; and provided further, that any contract involving payment of money by the corporation in excess of \$50,000 in any one fiscal year shall be subject to the approval of the Secretary of the Interior.

In Section 5(f) the figure \$10,000.00 shall be stricken and the figure \$50,000.00 shall be substituted.

In Section 5(g) the words "shall not cover more than 10 percent of the net tribal income" shall be stricken and the words "shall not exceed \$50,000.00 in any one year" shall be substituted.

Section 5(h) shall be stricken in its entirety and the following substituted:

"Section 5(h) - To deposit, to the credit of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, corporate funds, without limitation on the amount in any account, in any National or State bank whose deposits are insured by any agency of the Federal government: Provided, that funds advanced from the Indian Credit Fund or from funds of the corporation held in trust in the United States Treasury shall be deposited with a bonded disbursing officer of the United States whenever the conditions prescribed by the Secretary of the Interior or his authorized representative, in connection with such advance, require that the advance be so deposited.

The foregoing Amendment I is herewith approved and submitted for ratification by the adult members of the Three Affiliated Tribes living on the Fort Berthold Reservation, North Dakota, in accordance with Section 10 of the Corporate Charter of the Three Affiliated Tribes of the Fort Berthold Reservation and pursuant to the authority vested in the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984).

/sgd/ John A. Carver, Jr.
Assistant Secretary of the Interior

Washington, D. C.

Date: Oct. 19, 1961

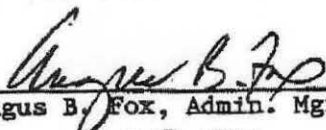
CERTIFICATION OF ADOPTION

Pursuant to section 17 of the Act of June 18, 1934 (48 Stat. 984), the attached Amendment I issued on October 19, 1961, by the Assistant Secretary of the Interior to the Corporate Charter of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, was duly submitted for ratification to the adult members of the Tribes living on the reservation, and was on November 27, 1961, duly ratified by a vote of 357 for, and 118 against, in an election in which at least thirty percent of those entitled to vote cast their ballots.

/sgd/ Robert Fox
Chairman, Council of Three Affiliated Tribes

/sgd/ Homer M. Gilliland
Superintendent, Fort Berthold Agency

I certify that this is a copy on file at the Bureau of Indian Affairs.


Angus B. Fox, Admin. Mgr.
06-29-93

Senate Finance and Taxation Committee**Chairman Mark F. Weber****January 28, 2025****SB 2304**

Chairman Weber and members of the Finance and Taxation Committee:

My name is Patti Jo Hall. I am a Mandan Indian, an enrolled member of Three Affiliated Tribes and a member of the Prairie Chicken Clan (Ciicga). I am also an Allottee with surface and mineral interests on Fort Berthold Indian Reservation and I am a ND tax-paying citizen with the same. My allotted land is held in trust by the United States of America for my sole use and benefit. My deeded land is fee land and I pay property taxes. My family owns and operates a commercial cow-calf operation in Dunn County.

Thank you for this opportunity to testify in support of SB 2304. Currently, there is a lack of transparency and accountability of tax dollars distributed to the governing body of Three Affiliated Tribes. Historical tax revenues have been distributed monthly since the inception of the Oil & Gas Gross Production and Extraction Tax Agreement dating back to 2008. These tax monies are derived from Allottee lands, fee lands and Unallotted lands. The three taxes are: Oil and Gas Gross Production Tax, Oil Extraction Tax and since 2021, the Oil and Gas Straddle Well Tax.

These tax dollars have grown exponentially from September 2008 – January 2025. The revenue from all three taxes collected are broken down as follows (numbers are from the ND State Treasurer website):

Oil and Gas Gross Production Tax: **\$1,446,732,052.25.**

Oil Extraction Tax: **\$1,392,303,611.83.**

Oil & Gas Straddle Well Tax: **\$16,881,830.04.**

The total amount paid to Three Affiliated Tribes is a whopping **\$2,855,917,454.12.**

For the month of January 2025, tax revenues distributed to Three Affiliated Tribes total **\$18,919,577.24.**

This is an astounding amount of money!

For the purpose of comparison and the illustration of the vast lack of transparency and financial accountability of a governing body, namely the Tribal Treasurer, entrusted with the safeguarding of billions of tax dollars on behalf of its tribal members, a perusal of Three Affiliated Tribes website will only show the number of acres owned by American Indians (457,837), enrolled membership (17,492) and how many are employed (1,800). In stark contrast, the State of North Dakota's website allows its citizens to see the Daily Operating Balance (\$4,199,305,359.39 – January 23, 2025) and the North Dakota Legacy Fund's most recent deposit (\$60,167,006.11), and the ability to access data.

Immediate reform measures are needed with the Agreement to hold Three Affiliated Tribes Tribal Business Council accountable to Allottees, enrolled tribal members and North Dakotans. Transparency and financial accountability are needed to stop the continued gift and profligacy. Therefore, I am asking for an

immediate moratorium on historical tax revenues distributed to the governing body of Three Affiliated Tribes. Both Federal and tribal audits need to be conducted to get an accurate reporting of monies received and expended.

If the recommended projected date of August 2025 is used, approximately \$132,437,040.68 will be injected into the tribal coffers based upon the January 2025 calculation of \$18,919,577.24 tax revenue disbursed to Three Affiliated Tribes (amount x 7 months). (Good Bear vs Mark Fox shows an alleged \$1B unaccounted for). Three Affiliated Tribes will still have a continued stream of revenue into the tribal coffers from BTFA, Direct Deposits, Docket Funds, Investments, Section 17 Corporations, JTAC Interest earnings, 638 Contracts, Casino revenue, etc. Through resolutions passed in 2024, this constituted an amount of over a half-billion dollars (\$584,816.00).

Amendments: I ask for your consideration to insert language on the following:

Line 11 #1 to read: A tribal governing body and the governor **and a 51% majority controlling beneficial ownership interest holder(s) in a surface allotment or tract of land** enter a new agreement under this chapter;

Line 13 #2 to read: A tribal governing body that enters an agreement under this chapter has submitted to the federal Bureau of Indian Affairs, **the Governor of North Dakota, and tribal membership all required audit reports, both federal and tribal, and responses and findings to audits of all monies collected and disbursed to the tribal governing body under past agreements, to determine the amount of proceeds which were collected on allotted lands and due back to the individual Indian beneficial surface interest landowner(s) of an affected tract(s) of land.** The individual Indian landowners are entitled to a full accounting and return of their full and rightful tax benefit(s).

Thank you for your consideration of SB 2304.

Patti Jo Hall

Allottee

701-260-5644 (mobile)

west17@bektel.com

THREE AFFILIATED TRIBES

IN DISTRICT COURT

FORT BERTHOLD RESERVATION

NEW TOWN, NORTH DAKOTA

Carol Good Bear, Terrance Fredericks, Todd Hall, Patti Jo Hall, Kelly Hosie, and Edward S. "Tyke" Danks,

Plaintiffs,

vs.

Mark N. Fox, as Three Affiliated Tribes' Tribal Chairman, Cory Spotted Bear, as Three Affiliated Tribes' Vice-Chairman, Fred Fox, as Three Affiliated Tribes' Executive Secretary, Mervin Packineau, as Three Affiliated Tribes' Treasurer, Robert White, as Three Affiliated Tribes' Councilman, Sherry Turner-Lone Fight, as Three Affiliated Tribes' Councilwoman, Monica Mayer, as Three Affiliated Tribes' Councilwoman, and The Three Affiliated Tribes' Tribal Business Council,

Defendants.

Case No. CV-2023-0469

COMPLAINT

[¶1] Plaintiffs Carol Good Bear ("Good Bear"), Terrance Fredericks ("Fredericks"), Todd Hall ("T. Hall"), Patti Jo Hall ("P. Hall"), Kelly Hosie ("Hosie"), and Edward S. "Tyke" Danks ("Danks"), by and through their counsel, for their Complaint state and will show as follows:

I. PARTIES

[¶2] Plaintiff Good Bear is a person of Nueta/Mandan and Gros Ventre/Hidatsa descent, is an enrolled member of the Three Affiliated Tribes, residing in New Town, North Dakota 58763.

[¶3] Plaintiff Fredericks is a person of Nueta/Mandan and Gros Ventre/Hidatsa descent, is an enrolled member of the Three Affiliated Tribes, residing in Halliday, North Dakota 58636.

[¶4] Plaintiff T. Hall is a person of Gros Ventre/Hidatsa descent, an enrolled member of the Three Affiliated Tribes, a citizen of the United States, and a beneficiary of the Fort Laramie Treaty of 1851, residing in Bismarck, ND 58504.

[¶5] Plaintiff P. Hall is a person of Nueta/Mandan descent, an enrolled member of the Three Affiliated Tribes, a citizen of the United States, and a beneficiary of the Fort Laramie Treaty of 1851, residing in Bismarck, ND 58504.

[¶6] Plaintiff Hosie is a person of Nueta/Mandan, Gros Ventre/Hidatsa, and Arikara descent, is an enrolled member of the Three Affiliated Tribes, residing in New Town, North Dakota 58763.

[¶7] Plaintiff Danks is a person of Gros Ventre/Hidatsa descent, is an enrolled member of the Three Affiliated Tribes and resides on the Fort Berthold Indian Reservation.

[¶8] Defendant Mark N. Fox is an enrolled member of the Three Affiliated Tribes and is the Chairman of Three Affiliated Tribes Tribal Business Council (“the Council”).

[¶9] Defendant Cory Spotted Bear is an enrolled member of the Three Affiliated Tribes, Councilman for the South Segment, and is the Vice-Chairman of the Council.

[¶10] Defendant Mervin Packineau is an enrolled member of the Three Affiliated Tribes, Councilman for the Northeast Segment, and is the Treasurer of the Council.

[¶11] Defendant Fred Fox is an enrolled member of the Three Affiliated Tribes, Councilman for the East Segment, and is the Executive Secretary of the Council.

[¶12] Defendant Robert White is an enrolled member of the Three Affiliated Tribes and is the Councilman for the Four Bears Segment.

[¶13] Defendant Sherry Turner-Lone Fight is an enrolled member of the Three Affiliated Tribes and is the Councilwoman for the West Segment.

[¶14] Defendant Monica Mayer is an enrolled member of the Three Affiliated Tribes and is the Councilwoman for the North Segment.

II. JURISDICTION AND VENUE

[¶15] This Court has subject matter jurisdiction over this matter by virtue of Title I, Sections 2.1, 2.2, 3.1, 3.2, and 3.3 of the Fort Berthold Code of Law.

[¶16] This Court has personal jurisdiction over the parties by virtue of Title I, Sections 2.1, 2.2, 3.1, 3.2, and 3.3 of the Fort Berthold Code of Law.

[¶17] This Court has jurisdiction over the members and officers of the Council by virtue of exceptions to the doctrine of Sovereign Immunity, namely an exception providing authority for suits requesting injunctive relief against officials acting outside the scope of their authority. *See, e.g., Ex parte Young*, 209 U.S. 123 (1908); *Vann v. Kempthorne*, 534 F.3d 741, 750 (D.C. Cir. 2008) (under *Ex parte Young*, when “[f]aced with allegations of ongoing constitutional and treaty violations, and a prospective request for injunctive relief, officers of the [tribe] cannot seek shelter in the tribe’s sovereign immunity.”); *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014) (“[T]ribal immunity does not bar such a suit for injunctive relief against individuals, including tribal officers, responsible for unlawful conduct.”). Also, Article VI, Section 3(b) of the Constitution of the Three Affiliated Tribes provides this Court authority to adjudicate Tribal violations of the Indian Civil Rights Act (“ICRA”), specifically actions seeking injunctive relief against the Council.

[¶18] Venue is proper in this Court because the events and actions/inactions arose within Three Affiliated Tribes, and it is where the Council resides.

III. FACTUAL BACKGROUND

A. Constitutional and Organizational Framework of The Three Affiliated Tribes

[¶19] The Three Affiliated Tribes of Fort Berthold (“the Tribe”) is a federally recognized Indian Tribe organized under the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation (“Tribal Constitution” or “Constitution,” and “Tribal Bylaws” or “Bylaws,” respectively), which were ratified by a vote of Tribal members on May 15, 1936.

[¶20] The boundaries of the Fort Berthold Indian Reservation were initially established by the Fort Laramie (Horse Creek) Treaty of 1851 (“the Treaty”), a document to which the Mandan, Hidatsa, and Arikara tribes are parties.

[¶21] Pursuant to Section 17 of the Indian Reorganization Act, the Tribe petitioned the Secretary of Interior (“the Secretary”) for a Charter of Incorporation. The Corporate Charter of the Three Affiliated Tribes of the Fort Berthold Reservation (“Tribal Charter” or “Charter”) was issued by the Secretary April 1, 1937, and duly ratified by the Tribe in a referendum April 24, 1937.

[¶22] The Constitution provides the consent of the Tribe to suits for violations of ICRA. Specifically, Article VI, Section 3(b) provides:

The people of the Three Affiliated Tribes, in order to achieve a responsible and wise administration of this sovereignty delegated by this Constitution to the [Council], hereby specifically grant to the Tribal Court the authority to enforce the provisions of the Indian Civil Rights Act, 25 U.S.C. 1301, et seq., including the award of injunctive relief only against the [Council] if it determines through an adjudication that the [Council] has in a specific instance violated the Act.

[¶23] ICRA, 25 U.S.C. § 1301 provides that in exercising powers of self-government, no Indian tribe shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

[¶24] Under Article I, Section 4 of the Bylaws, before installation to the Council, elected members are required to subscribe to the oath of office as follows: “I do solemnly swear that I will support

and defend . . . the Constitution and Bylaws of the [Three Affiliated Tribes] . . . and will faithfully and impartially discharge the duties of councilman to the best of my ability.”

[¶25] Article VI, Section 5(b) of the Constitution states that the Council may establish a Tribal Business Council fund by “accepting grants or donations from any person, state, or the United States, or by income from the Tribal enterprises, or by levying assessments . . .”

[¶26] The Constitution also enumerates powers and duties of the Council. Article VI, Section 3 grants the Council “all necessary sovereign authority – legislative and judicial – for the purpose of exercising the jurisdiction granted by the people in Article I of this Constitution.”

[¶27] Article VI, Section 5 states that the Council shall have the powers enumerated therein, but that the exercise of those powers shall be subject to a popular referendum. Article VI, Section 5(c) of the Constitution provides that the Council has the following responsibilities:

To administer any funds or property within the exclusive control of the Tribes to make expenditures from available Tribal funds for public purposes of the Tribes, including salaries or other remuneration of Tribal officials or employees. Such salaries or remuneration shall be paid only for services actually rendered. All expenditures from the Tribal Business Council fund shall be by resolution duly passed by the council to such effect, and the amounts so paid shall be matters of public record at all times.

(Emphasis added).

[¶28] Article VIII of the Constitution reserves the right of Tribal members to demand a referendum “on any proposed or enacted ordinance or resolution of the [Council].”

[¶29] Article I of the Bylaws provides additional duties applicable to particular officers of the Council.

[¶30] Article I, Section 2 of the Bylaws imposes upon the Secretary the duty to “keep all records, minutes of meetings, and an accurate roll of members by communities.” The Secretary shall also

“receive all petitions, applications, and other papers, and prepare them for the action of the council.”

[¶31] Article I, Section 3 of the Bylaws enumerates the duties of the Treasurer of the Council as follows:

The Treasurer of the Tribal Business Council shall accept, receipt for, keep and safeguard all funds in the custody of the Council, whether they be Tribal funds or special funds for which the council is acting as trustee or custodian. He shall deposit all such funds in a bank or elsewhere as directed by the council and shall make and keep a faithful record of such funds, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody to the council at regular meetings and at such other times as requested by the council, his reports to be in writing and matters of record. He shall not expend or otherwise disburse any funds in his possession or in the possession or custody of the Tribal Business Council except when he is authorized to do so by resolution duly passed by the council.

(Emphasis added). This section also provides that “[t]he books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the council. The Treasurer shall be required to be under a surety bond satisfactory to the council and to the Commissioner of Indian Affairs.” (Emphasis added).

[¶32] In addition to the Constitution and By-laws, the Council is also governed by the Charter, Section 9 of which explicitly provides “The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments . . .” (Emphasis added).

[¶33] Additionally, Article VI of the Treaty provides “The parties to the second part of this treaty have selected principals or head-chiefs for their respective nations, through whom all national business will hereafter be conducted, do hereby bind themselves to sustain said chiefs and their successors during good behavior.”

B. The Council and its Historical Financial Practices

[¶34] Mark Fox was first elected Chairman of the Council in 2014 and remains Chairman at this time.

[¶35] Cory Spotted Bear was appointed as Vice-Chairman in 2022 and remains Vice-Chairman at this time.

[¶36] Fred Fox was appointed as Executive Secretary of the Council (“Secretary”) in 2016 and remains Secretary at this time.

[¶37] Mervin Packineau was appointed as Treasurer of the Council in 2009 and remains Treasurer at this time.

[¶38] Robert White was elected as the Four Bears Segment’s Councilman in 2022 and remains a Councilman at this time.

[¶39] Sherry Turner-Lone Fight was elected as the West Segment’s Councilwoman in 2020 and remains a Councilwoman at this time.

[¶40] Monica Mayer was elected as the North Segment’s Councilwoman in 2016 and remains a Councilwoman at this time.

[¶41] Austin Gillette (“Gillette”) was an elected member of the Council from 1974 through 1982, and again from 1988 through 2004. Exh. A, Affidavit of Austin Gillette.

[¶42] Gillette served in various roles as an elected member of the Council, first serving as the Councilman for the East Segment from 1974 through 1978, then serving as Chairman of the Council from 1978 through 1982, and again serving as Councilman for the East Segment from 1988 through 2004. *Id.*

[¶43] According to Gillette, despite the Tribe’s lack of a finance department in 1974, the Council’s practice was to ensure that before any expenditures were made from the Tribal Business Council

fund (“the Fund”), a resolution was proposed, discussed, and passed in an open, public meeting of the Council. Gillette affirmed that during his time on the Council, “[a]ll payments made by the [Council] were approved in open meetings of the [Council],” and all information regarding expenditures was made public pursuant to the Constitution and Bylaws. *Id.*

[¶44] Also, Gillette identified that at some point during his term as Chairman, there were concerns raised about handing out the Tribe’s financial information for all to see. Despite those concerns, rather than entirely concealing financial records, the Council continued to discuss receipts and expenditures at its regular meetings and continued to create written reports on those receipts and expenditures for each regular meeting, but simply changed its practice from handing information out to everyone at every meeting to making the information available upon request. *Id.*

[¶45] An interest-bearing note is an obligation that constitutes an expenditure under the Constitution and Bylaws. Former Council members and lenders have always recognized this fact, so all interest-bearing notes were authorized by formal resolution disclosing the amount of the note, the interest on the note, and the term of the note. *See e.g.* Resolution Nos. 00-16-MWJr., 00-324-AG, 01-296-MWJR, 03-139-RP, 08-75-JB, and 10-016-VJB. This Constitutionally mandated process allows Councilmen and Tribal members to participate in the decision-making process and make informed decisions concerning such obligations before the Chairman making such decisions on his or her own through Executive Action.

C. The Council’s Current Financial Practices

[¶46] The Secretary administers a Records Office for the Tribe that maintains a website (“the Records Website”) containing records of minutes from regular and special meetings of the Council and resolutions considered and passed by the Council. *See* <https://www.mhanation.com/tat-records-office>.

[¶47] The Records Website contains records of minutes from Council meetings dating back to 1960, while certain resolutions are available dating back to 1956. Although some minutes and resolutions are missing, a review of the records provides a competent history of the Council's activities concerning budgets, audits, tribal businesses chartered, and expenditures and receipts.

[¶48] Dating back to at least 2009, the minutes of the Council's regular meetings provide no record of Mervin Packineau as Treasurer of the Council ("Treasurer Packineau") providing a written record of the receipts and expenditures, financial statements, or audits of the Tribe or any of the enterprises it has chartered. Also, there is no record of Treasurer Packineau providing a detailed, comprehensive oral report explaining the receipts and expenditures of the Tribe, sharing any audits of the Tribe or any financial statements or audits for any of the Tribe's chartered enterprises.

[¶49] Upon information and belief, Treasurer Packineau has disbursed monies from the Fund for home purchases and other items and services without any resolution duly passed by the Council, and without making the amounts expended for such homes part of any written report or a matter of public record.

[¶50] Upon information and belief, Treasurer Packineau has never reported on all receipts and expenditures at the regular meetings of the Council, and Plaintiffs are unaware of any instance in which he made such a report.

[¶51] Upon information and belief, Treasurer Packineau has failed to create, maintain, and provide to the public reports on all receipts and expenditures of the Council, and Plaintiffs are unaware of any instance in which he has issued such a public report. As outlined below, requests to Treasurer Packineau to provide budgetary information in conformity with the Constitution and Bylaws have been met with no response.

[¶52] The resolutions provided on the Records Website provide record that the Council has chartered approximately 26 for-profit Tribal enterprises that appear to still be operating. A review of the minutes on the Records Website provides no record of Treasurer Packineau providing any financial statements or audits concerning any of those enterprises, and Plaintiffs are unaware of any such statements or audits.

[¶53] 4Bears Casino & Lodge provides financial reports to the Council, but all reports are provided during closed sessions. So, the financial reports, including receipts and expenditures, of 4Bears Casino & Lodge are concealed from the Tribal members. The concealed information includes donations and special interest payments, complimentary items and services (i.e. “comps”), and gifts—all of these transactions are done in secret. The Tribal members have a Constitutional right to know the transactions of 4Bears Casino & Lodge.

[¶54] The resolutions provided on the Records Website additionally provide a record of at least, seventeen (17) non-profit development organizations, corporations, or authorities, created and maintained by the Council from 1985 to present. A review of the minutes on the Records Website provides no record of Treasurer Packineau ever providing any financial statements or audits concerning any of these entities, and Plaintiffs are unaware of any such statements or audits.

[¶55] Upon information and belief, the Tribe possesses a number of financial accounts that the Council utilizes for deposits of receipts and withdrawals for expenditures.

[¶56] At some point, the Council established the *Nuxbaaga Iidaa Uuh Waa Zaah, Salmis waaplsis, Aki numuk aki tawatesh sha geddish* (“the People’s Fund”). The People’s Fund is funded by revenue from the Tribe’s non-renewable oil and gas assets. Upon information and belief, the Council established an account for the People’s Fund with the Bureau of Trust Fund Administration (“BTFA”) entitled Proceeds of Labor Account PL10017014.

[¶57] In 2013, the Council established a department to administer the People's Fund under Resolution No. 13-004-VJB ("the People's Fund Department"). Pursuant to Resolution No. 13-004-VJB, the People's Fund Department was to establish a distribution and eligibility plan. Resolution No. 13-004-VJB identified that at the time of its passage in January 2013, the People's Fund contained over \$100,000,000.00.

[¶58] In 2014, under Resolution No. 14-112-VJB, the Council approved a distribution and eligibility plan put forth by the People's Fund Department. Section 3 of the distribution and eligibility plan recommended "allocating eighty percent (80%) of the Tribe's non-renewable oil and gas resource revenues to The People's Fund and has limited the use of the principal amount of investment except as may be authorized by the Business Council in the future." Upon information and belief, in addition to the BTFA account for the People's Fund, the Council also established a separate account with the BTFA for the remainder of the revenue from the Tribe's non-renewable oil and gas resources, account PL7228700.

[¶59] Resolutions provided on the Records Office Website reveal that the Council has made numerous draw downs on trust funds managed by the BTFA from the Tribe's Economic Recovery Fund, Proceeds of Labor Account PL7228700 and Proceeds of Labor Account PL10017014. Said withdrawals total \$1,579,079,002.44 from 2010 through 2022. Throughout that duration, to Plaintiffs' knowledge, Treasurer Packineau has never provided a report, written or verbal, on the status or balance of the People's Fund, despite the fact that he receives a monthly Tribal Trust Statement for the People's Fund from the BTFA.

[¶60] A comparison of the Tribe's budget expenditures from 2010 through 2022 against the monies the Council has drawn down from the trust accounts and additional revenue from oil and

gas taxes provide reason for concern about the Council's spending, the financial state of the Tribe, and the state of the People's Fund.

[¶61] The Council's budget resolutions provided on the Records Office Website show that from 2010 through 2022, the Council purportedly expended \$4,827,027,000.00 from the General Fund. During this same time, the Tribe's known receipts amounted to the following: \$2,307,133,165.56 in oil and gas tax revenue and \$1,579,079,002.44 in drawdowns from the People's Fund, Economic Recovery Fund, and other BTFA trust accounts for total receivables of \$3,886,212,168.00. The discrepancy between the amounts expended and receivables disclosed to the public appears to be a deficit of \$940,814,832.00.

[¶62] In 2020, the Council passed Resolution No. 20-170-FWF declaring the Tribe's "intention to reimburse expenditures from the proceeds of tax-exempt obligations" in an amount "not to exceed \$150,000,000.00". This resolution suggests the Council has pre-emptively authorized and obligated the Tribe to take on loans of up to \$150,000,000 to finance "all or a portion of the MHA Nation's capital improvement and infrastructure costs for FY 2020 and 2021 with tax exempt obligations". However, a search of the resolutions filed with Secretary's Record Office does not reveal any resolutions actually authorizing tax exempt obligations to the Tribe. Any loans committing the Tribe to pay interest constitute an expenditure required to be authorized by resolution; failure to pass such a resolution is violation of the Tribe's Constitution. Tribal members have a Constitutional right to know all the terms of all loans and obligations binding the Tribe and the right to be heard on the same before the Chairman and the Council obligating the Tribe to such loans.

[¶63] The \$150,000,000 tax exempt obligations, which the Tribe appears to have incurred, fall far short of the \$940,814,832 deficit that the Tribe appears to have incurred. Upon information and

belief, the Council has committed the Tribe to other obligations far exceeding the \$150,000,000 in order to cover the Council's deficit spending. There are no resolutions on record supporting a \$150,000,000 obligation or any amounts exceeding \$150,000,000.

[¶64] Treasurer Packineau has failed to ensure annual audits of the books and records of the Treasurer are completed. Requests to the Council to make public any audits that have been completed have been met with silence.

[¶65] Since 2010, the last audit known by Plaintiffs to have been conducted of the books and records of the Treasurer was completed in 2021 and was for the fiscal year that ended September 30, 2018 ("the 2018 Audit"). On July 26, 2023, MHA Nation published a news article that confirmed audits have not been completed for 2020, 2021, and 2022.

[¶66] Despite multiple requests by members of the Tribe, the Council refused to reveal the results and conclusions of the 2018 Audit.

[¶67] A summary of the 2018 Audit was eventually leaked to an unknown Facebook page. The leak of the 2018 Audit summary found on Facebook by Plaintiffs revealed the auditing firm, Moss Adams, issued two adverse opinions and four disclaimed opinions with respect to the books and records of the Treasurer. Exh. B. Plaintiffs do not possess, or have access to, the full 2018 Audit, but it appears to be a summary of the full audit.

[¶68] Moss Adams' adverse opinions regarding the 2018 Audit are indicative of improper and/or negligent activity in the bookkeeping of the Council.

[¶69] The leak of the 2018 Audit also revealed that Moss Adams included a disclaimer regarding the Tribe's "major governmental funds." The basis for that disclaimer stated as follows: "Due to the inadequacy of accounting records to support financial balances for the year ended September 30, 2018, we were unable to adequately test receivables, equity interest in discrete component

units, capital assets, and all liabilities, net position, fund balances, transfers, revenues, and expenses.” *Id.*, at p. 2. The disclaimer also stated: “Because of the significance of the matter described in the [basis], we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial statements of the governmental activities and each major governmental fund of the Tribes.” *Id.*

[¶70] Moss Adams’ 2018 Audit adverse opinions were issued regarding the Tribe’s Major Enterprise Fund and Aggregate Discretely Presented Component Units. The basis for the adverse opinion stated as follows:

The financial statements do not include financial data for the Tribes’ legally separate blended and discrete component units . . . Because of this departure from accounting principles generally accepted in the United States of America, the assets, liabilities, net position, revenues, and expenses of 4 Bears Casino & Lodge, blended component unit, which would have been reported as business-type activities and major proprietary fund, would have increased by approximately \$103,474,000, \$42,606,000, \$60,869,000, \$54,981,000, and \$60,521,000, respectively.

Id. (Emphasis added).

[¶71] Upon information and belief, the Council has not conducted or submitted a federal program audit for 2020, 2021, or 2022, and Plaintiffs are unaware of any such audit for these years. Regardless, if there have been any audits, then they are not public record for the Tribe’s members to review and consider.

[¶72] Upon information and belief, the Council’s failure to conduct and submit federal program audits has led to the Bureau of Indian Affairs’ Contract Office issuing two warning letters to the Council for not submitting the 2019 audit (which was just submitted in February of this year), one warning letter for not submitting the 2020 audit, and one warning letter for not submitting the 2021 audit. Any letters should be in the possession of the Council, and have not been made public or

otherwise available to Tribal members. Upon information and belief, failure to submit audits to the BIA results in sanctions against the Tribe involving loss of contract support costs from the BIA.

[¶73] Upon information and belief, there are ongoing improprieties which have been allowed to continue by Treasurer Packineau's failure to conduct annual audits as required by Article I, Section 3 of the Bylaws. According to an Affidavit by FBI Agent Jake O'Connell filed in support of the criminal complaint against Francisco Javier Solis Chacon ("Chacon") for paying kickbacks to the two councilman and two tribal employees that were criminally charged for taking the kickbacks. At the 2017 Reservation Economic Summit, Chacon claimed he had "four of the six" Councilmen on his payroll. Exh. C, Affidavit of Jacob O'Connell in Support of Chacon Complaint, page 6. Three of the six Councilmen that were on the Council in 2017 are no longer on the Council. Therefore, between one and three Councilmen Chacon asserted he had on "his payroll" are still serving on the Council. Upon information and belief, the Chairman and the Council have not taken any action to determine if other Councilmen also took kickbacks from Chacon because nothing has been made public regarding any investigations on this subject matter.

[¶74] Chacon's allegations concerning other councilmen taking kickbacks is supported by other statements he made. For instance, Chacon said that one of the Councilmen he paid kickback to received his payments via check, "but that other TBC members were smarter about concealing their payments and were paid through other means." *Id.* One Councilmen who took kickbacks from Chacon specifically told Chacon that he was going to talk with his employee and tell him he should be paid in cash because taking checks would "get you in trouble." Exh. D, Affidavit of Jacob O'Connell in Support of Phelan and Reeves Complaints, p. 6. During an interview with the FBI, Chacon stated "working on the FBIR saw like being in Mexico, if you knew the right people, you could do whatever you wanted". Exh. C. Chacon was obviously talking about knowing the

Tribe's Councilmen. The same Councilmen that have refused or otherwise failed to conduct audits and provide written records of the receipts and expenditures of the Tribe.

[¶75] Federal Bureau of Investigations ("FBI") Agent Jacob O'Connell also stated in his affidavit that the FBI met with Wipfli CPA's and Consultants ("Wipfli") on September 12, 2018. Wipfli advised the FBI they had been hired by the Tribe to conduct a review of several of the Tribe's programs, including the Four Bears Segment. Wipfli's auditors reported the Four Bears Segment representative was "uncooperative with their audit." Exh. C, p. 10.

[¶76] The FBI subpoenaed bank records and conducted a forensic audit of bank records concerning Chacon's various business dealings with the Tribe and the Segments and found Chacon's businesses were paid over \$17,250,000 from approximately January of 2012 through January of 2020 from the Tribe and the segments. Exh. D, p. 3. The West Segment alone paid Chacon's companies \$7,489,000 from February of 2014 through October of 2019. It is unclear what amounts the Tribe and other segments may have paid to Chacon's companies from 2012 through 2020 in order to account from the remaining \$9,750,000 and how much of this money Chacon may have paid to the other two Councilmen on "his payroll".

[¶77] Audits of all contracts and funds paid to Chacon's companies from the Tribe's finance department and/or all segments are necessary to determine the total amounts paid to Chacon's companies and who else may have received kickbacks from Chacon. The Tribal Council has had at least five years or more to conduct such audits and take action to prosecute others who may have received kickbacks but inexplicably, it has done nothing.

[¶78] As of the date of this complaint, Chacon and the four others involved in his kickback scheme pled guilty to various charges that were filed against them. Judgments have been filed against all

of the defendants and restitution totaling \$1,467,690.00. Upon information and belief, the Tribe has not taken any action whatsoever against any of the five defendants to recover these funds.

[¶79] According to the Tribe's own budgets and resolutions, the Tribal Council has spent well over two billion dollars (\$2,000,000,000.00) on projects on the Fort Berthold Indian Reservation since 2012. Upon information and belief, most of these projects have exceeded the amount authorized by Resolution.

[¶80] Treasurer Packineau and the Council's failure to accurately account for the receipts, expenditures, and assets of the Tribe on a regular basis is a violation of the Constitution, Bylaws, and Charter. These violations create and perpetuate the opportunity for misuse of Tribal assets, both by Council members and other individuals or entities, distrust of Tribal governance, and unnecessary and unhealthy tension between Tribal officials and Tribal members.

[¶81] Upon information and belief, the failure to conduct annual audits of the books and records of the Treasurer as required by Section 3, Article I of the Bylaws has resulted in severe detriment to the Tribe, members of the Tribe, and the overall assets of the Tribe.

[¶82] Chairman Mark Fox and the Tribe's Chief Financial Officer, Whitney Bell, gave an oral and written report on the Tribe's "financial situation" to the Tribe's elders on July 20, 2023 at the MHA Nation Elder's Summer Outreach Event. This inaccurate, misleading, and incomplete report was published in the MHA Times on July 26, 2023. The report underscores the need for the Council to strictly abide by the Constitution and provide financial reports showing all expenditures and receipts of the Tribe and all its entities. For instance, the numbers in the report do not reconcile in the following respects:

- a. The heading on for the General Operating Expenditures of the Tribe are reported to be \$285,374,806 but the expenditures listed under that heading add up to \$298,172,955 for a discrepancy totaling \$12,798,898.
- b. The report states that \$357,318,656 was expended on Special Projects but the expenditures listed under Special Projects total \$357,144,212 for a discrepancy totaling \$174,444.
- c. The report also states Disbursements to Tribal Members totaled \$228,004,362 the line items under disbursements only total \$106,334,300 for a discrepancy totaling \$121,670,062.

[¶83] The report also fails to provide any information concerning the Tribe's debts. The report does not provide any financial information concerning the Section 17 Corporation, the 4Bears Casino & Lodge or the Tribe's many for-profit and non-profit companies. For that reason, the report is inaccurate, misleading, and incomplete. The Tribal membership has a Constitutional right to accurate financial information, and the inaccurate "financial situation" report that was provided to the elders on July 20, 2023 confirms the need for transparency.

[¶84] Upon information and belief, Treasurer Packineau is not secured by a surety bond. This is to the detriment of the members of the Tribe.

[¶85] A review of the Council's regular meeting minutes on the Records Website provides a record of the Council utilizing ratifications at its regular meetings on numerous occasions to approve of executive actions taken during previous Executive Committee meetings. Although the subject matter of the executive actions being ratified varies, many involve expenditures of Tribal funds.

[¶86] The Council does not provide adequate notice of its meetings relative to the subject matter of the meetings before the meetings occur, which is a due process violation of the Tribal

community. The meetings themselves also violate due process because, among other things, the Council has closed session meetings—the Tribal members are given an opportunity to be involved or heard in those discussions. The notices and meetings are inadequate and violate due process.

[¶87] Upon information and belief, when the Council engages in ratifications of executive committee actions relating to expenditures, there is no meaningful, public discussion of the expenditures and no ample opportunity for members of the Tribe to discover the amount and nature of any expenditures or provide meaningful input on such expenditures. The Council’s ratifications are not resolutions and do not comply with the requirements under the Constitution.

[¶88] Additionally, upon information and belief, Chairman Fox began issuing unilateral “Executive Actions” between regular Council meetings that he then has the Chief Executive Officer present for ratification at regular Council meetings. A review of the Council’s regular meeting agendas and the agendas of committee meetings reveals that the “Executive Actions” are generally not listed in specificity and are instead listed categorically as “Executive Actions.”

[¶89] Upon information and belief, because of the lack of information about the “Executive Actions” before the Council’s regular meetings, the subject matter of those “Executive Actions” first raised, if it is even raised at all, at the regular meetings of the Council, again with no prior notice and no opportunity for meaningful, public discussion on the subject matter of the actions before their approval/denial. Also, unilateral “Executive Action” is not supported by the Constitution or Bylaws and blanket ratification of these secretive actions frustrates the resolution process required with regard to expenditures.

[¶90] To that end, on or about July 2, 2020, the Council closed on its first property purchase in Las Vegas for \$12,000,000.00. The Council also paid a Real Property Transfer Tax on the purchase in the amount of \$61,200. The total amount paid for this property was \$12,061,200. Although that

purchase was approved by Resolution No. 20-120-FWF, the financing for said purchase was not authorized or approved by that resolution. Indeed, nearly a week after its purchase and without an authorizing resolution, the Council authorized a loan from Goldman Sachs via ratification of an executive order entitled EA2020-22. Specifically, the Council indicated that Goldman Sachs managed the Tribe's investments and offered the Tribe a loan for the Las Vegas property, which was secured by the Tribe's investments. It is believed, but not known, that the Council leveraged additional Tribal assets originally held with Payden and Rygel for this particular loan via ratification of Executive Order EA2021-01, entitled "Transfer of Investment Income Held by Payden and Rygel to Goldman Sachs to Increase Margin Lending Capacity for Capital and Infrastructure Projects."

[¶91] The nature and extent of any loans, or other debts and obligations, utilized by the Tribal Council remains secret. Also, the specific investments, and the amount of any investments securing any loans, debts, or obligations is unknown to the Tribal members.

[¶92] On or about December 30, 2022, the Council closed on a property purchase in Las Vegas, Nevada for \$92,820,000.00. The Council also paid a Real Property Transfer Tax on the purchase in the amount of \$473,382.00. The total amount paid for this property was \$93,293,382.00. A resolution was never publicly discussed or passed for the purchase of this property nor for the payment of the Real Property Transfer Tax. Further, Treasurer Packineau and the Council failed to make public the amount expended for this property or the source of the monies expended on the property – rather, the expenditure was made public only after several local and regional news agencies reported on it. The Tribe's members still do not know the source of the funds used to purchase the property.

[¶93] On or about April 5, 2023, the Council closed on an additional 1.1-acre parcel of property in Las Vegas for \$10,250,000.00. The Council also paid a Real Property Transfer Tax on the purchase in the amount of \$52,250.00. A resolution was never publicly discussed or passed for the purchase of this property. The total amount paid for this property was \$10,302,250.00. Again, the purchase was made public only after several local and regional news agencies reported on it and the Tribe's members do not know the source of funds used to purchase the property.

[¶94] Given Treasurer Packineau and the Council's willingness to expend large sums of money from Tribal funds, in addition to inundating the Tribe's investments for properties in Las Vegas in contravention of the Constitution, Bylaws, and Charter, it is believed that since 2010, there have been numerous other expenditures made from Tribal funds absent any resolution duly passed by the Council or a public record and accounting of such expenditures. It is also believed that the Council has consistently and continuously leveraged the Tribe's assets in order to make risky purchases such as the Las Vegas properties without appropriate notice to the Tribe's members or due process of law.

[¶95] Given Treasurer Packineau and the Council's willingness to expend large sums of money from Tribal funds for properties located in Las Vegas in contravention of the Constitution and Bylaws, it is believed that since 2010, there have been numerous other expenditures made from the Tribal funds absent any resolution duly passed by the Council or a public record and accounting of such expenditures.

D. Plaintiffs' Requests to the Council and Interest in Communal Property

[¶96] On February 16, 2023, Plaintiffs Good Bear and Fredericks sent written correspondence to Treasurer Packineau, requesting records of receipts, expenditures, and other various financial information dating back to fiscal year 2010 in conformity with the Bylaws and Constitution. Exh.

E. Specifically, Plaintiffs Good Bear and Fredericks requested the following: A detailed monthly report of all monies deposited and withdrawn from the Fund; an annual report detailing the total of all bonuses and royalties received by or otherwise credited to the Tribe from fiscal year 2010 to present; a detailed accounting of federal funding received and expended by the Tribe from fiscal year 2014 to present; and, budgetary information outlining line item explanations of revenues and expenditures to account for the budget doubling from fiscal year 2018 to fiscal year 2022. Treasurer Packineau never responded to those requests.

[¶97] On February 21, 2023, Plaintiffs Good Bear and Fredericks sent additional correspondence addressed to Chairman Fox and Treasurer Packineau requesting financial information about the Tribe's Section 17 Corporation created under the Charter, namely: Annual profit and loss statements for the Tribe's Corporation from 2010 through 2022; Annual balance sheets for the Tribe's Corporation from 2010 through 2022; and, Annual ledgers showing all receipts and expenditures of the Tribe's Corporation from 2010 through 2022. Exh. F. Chairman Fox and Treasurer Packineau never responded to those requests.

[¶98] On February 23, 2023, Plaintiffs Good Bear and Fredericks sent additional correspondence addressed to Chairman Fox, Secretary Fox, and Treasurer Packineau, requesting records of all homes purchased by the Council with monies from the Fund from fiscal year 2010 through present. Exh. G. That correspondence also requested a list of the resolutions authorizing said home purchases. Chairman Fox, Secretary Fox, and Treasurer Packineau never responded to those requests.

[¶99] On February 24, 2023, Plaintiffs Good Bear and Fredericks sent additional correspondence addressed to Chairman Fox and Treasurer Packineau requesting financial information for business organizations chartered by the Council, namely: 1. A list of all non-Section 17 Chartered business

entities and the date of their formation; 2. A report listing all monies the Tribe has invested in such entities from 2000 through 2022; and, 3. A report listing the monies received by the Tribe as a return on investments in those entities from 2000 through 2022. Exh. H. Chairman Fox and Treasurer Packineau never responded to those requests.

[¶100] On February 27, 2023, Plaintiffs Good Bear and Fredericks sent additional correspondence addressed to Chairman Fox and Treasurer Packineau requesting financial information regarding the operation of 4Bears Casino & Lodge, namely: 1. The monies received from and paid to the 4Bears Casino & Lodge from 2010 through 2022; 2. The monies loaned to the 4Bears Casino & Lodge from 2010 through 2022, if any, and the balance due as of January 1, 2023, on any loans; 3. The profit and loss reports for the 4Bears Casino & Lodge from 2010 through 2022; 4. The balance sheet for the 4Bears Casino & Lodge as of December 31, 2023; and, 5. All audits for the 4Bears Casino & Lodge from 2010 through 2022. Exh. I. Chairman Fox and Treasurer Packineau never responded to those requests.

[¶101] On March 8, 2023, Plaintiff Terry Fredericks attended a Tribal Business Council meeting and distributed a letter stating he was there to present the resolutions that he and Carol Good Bear submitted to the Council for its consideration and potential referendum vote. Exh. J. The Council heard Mr. Fredericks in a closed session as its first order of business. During that closed session, Councilman Packineau crumpled up Mr. Fredericks letter and threw it in the garbage. Chairman Fox specifically told Mr. Fredericks that they would have the Tribe's legal department review the resolutions and get back to him. Terry Fredericks has not heard anything from Chairman Mark Fox or Secretary Fred Fox since that closed session meeting.

[¶102] Plaintiffs Good Bear and Fredericks have also attempted to obtain relief, financial transparency, and accountability through the referendum process provided for by Article VIII of

the Constitution. Plaintiffs Good Bear and Fredericks have drafted a number of petitions for distribution to enrolled members of the Tribe for their signatures as required by Article VIII. However, Article VIII's provision requiring signatures of ten percent of qualified voters of "each community" includes individuals not living on the reservation. According to the Tribal Enrollment website, approximately 8,135 voters live off-Reservation while just 3,661 voters live on-Reservation. Plaintiffs Good Bear and Fredericks require a mailing list for qualified voters of the Tribe in order to meet the ten-percent signature requirement especially when it comes to reaching out to off-Reservation voters.

[¶103] The Tribe has more than 11,796 qualified voters, with less than 3,700 of those enrolled living on Fort Berthold. There are more than 8,100 off-Reservation voters who live in every state and Canada, and the only practical method of contact for these qualified voters to consider referendum is via mail. As a result, neglecting to provide Plaintiffs with eligible voter information frustrates the process outlined for referendum in Article VIII and unconstitutionally denies Plaintiffs their right to redress against the Council. It is also a violation of due process rights of all qualified Tribal voters.

[¶104] On May 25, 2023, Plaintiffs Good Bear and Fredericks sent to Secretary Fox a letter requesting voter information so they could comply with the requirements of Article VIII of the Constitution regarding their draft petitions. Plaintiffs Good Bear and Fredericks did not receive a response from Secretary Fox.

[¶105] Plaintiffs have a vested communal interest in the Fund and any property owned by the Tribe because the Tribe has long embraced the communal concept of ownership of tribal property. *See Bordeaux v. Wilkinson, et al.*, 21 ILR 6131, 6132 (Ft. Bert. Tr. Ct. 1993) ("The Plaintiff and the Defendant Officers] have the right to sit at the same table, because they are all enrolled tribal

members. The Defendants have the right to decide whether and how to distribute what is on the table, because that is one of their duties as Council members. But, when they make rules on how to distribute things, they have to follow those rules. When the rules are broken, they can be enforced by anyone sitting at the table.”) (Emphasis added). A number of the Plaintiffs are also trust allottees.

IV. CAUSES OF ACTION

**FIRST CAUSE OF ACTION - VIOLATIONS OF THE CONSTITUTION
(ASSERTED AGAINST DEFENDANTS CHAIRMAN FOX, VICE-CHAIRMAN SPOTTED BEAR,
TREASURER PACKINEAU, SECRETARY FOX, COUNCILMAN WHITE, COUNCILWOMAN TURNER-
LONE FIGHT, & COUNCILWOMAN MAYER)**

[¶106] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶107] Under Article VI, Section 5(c) of the Constitution, Chairman Fox, Vice-Chairman Spotted Bear, Treasurer Packineau, Secretary Fox, Councilman White, Councilwoman Turner-Lone Fight, and Councilwoman Mayer (collectively, “the Council Members”) are prohibited from taking executive action to make expenditures and are afforded a power to make expenditures only through resolutions.

[¶108] Under Article VI, Section 5(c) of the Constitution, the Council Members must ensure that any expenditures or disbursements from Tribal funds were made only pursuant to a resolution duly passed by the Council before the Tribe makes expenditures and disbursements.

[¶109] Under Article VI, Section 5(c) of the Constitution, the Council Members must make any and all amounts paid from Tribal funds matters of public record.

[¶110] Under Article VIII of the Constitution, enrolled members of the Tribe have the right to a referendum upon presenting a petition signed by ten percent of the qualified voters of each community.

[¶111] The Council Members' engagement in and ratification of executive committee actions for expenditures are direct violations of Article VI, Section 5(c) of the Constitution.

[¶112] The Council Members' blanket ratification of any unilateral "Executive Actions" by Chairman Fox are direct violations of Article VI, Section 5(c) of the Constitution.

[¶113] The Council Members' disbursement of approximately \$93,293,382.00 to purchase a property in Las Vegas, Nevada, was made absent any resolution passed by the Council which directly violates Article VI, Section 5(c) of the Constitution.

[¶114] The Council Members' disbursement of approximately \$93,293,382.00 to purchase a property in Las Vegas, Nevada, was made absent any public record of the amount expended for the property, in direct violation of Article VI, Section 5(c) of the Constitution.

[¶115] The Council Members' disbursement of \$10,302,250.00 to purchase an additional property in Las Vegas, Nevada, absent any resolution passed by the Council is in direct violation of Article VI, Section 5(c) of the Constitution.

[¶116] The Council Members' disbursement of \$10,302,250.00 to purchase an additional property in Las Vegas, Nevada, absent any public record of the amount to be expended for the property is in direct violation of Article VI, Section 5(c) of the Constitution.

[¶117] Any additional disbursements from Tribal funds made by the Council Members before the Council passes a resolution to such effect are direct violations of Article VI, Section 5(c) of the Constitution.

[¶118] Any additional disbursements from Tribal funds made by the Council Members without making the amounts expended matters of public record are direct violations of Article VI, Section 5(c) of the Constitution.

[¶119] Secretary Fox's failure to provide Plaintiffs Fredericks and Good Bear with the information required to collect signatures from qualified voters renders Plaintiffs Fredericks and Good Bear's referendum rights under Article VIII meaningless and therefore constitutes a violation of Article VIII. Secretary Fox's failures also disenfranchise all Tribal members from participating in the referendum process.

**SECOND CAUSE OF ACTION - VIOLATIONS OF THE BYLAWS
(ASSERTED AGAINST DEFENDANT TREASURER PACKINEAU)**

[¶120] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶121] Under Article I, Section 3 of the Bylaws, Treasurer Packineau had a duty to make and keep a faithful record of all funds kept by the Council, to report on all receipts and expenditures and the amount and nature of all funds in his possession at regular meetings of the Council, and to make those reports in writing and matters of public record.

[¶122] Under Article I, Section 3 of the Bylaws, Treasurer Packineau had a duty to refrain from disbursing monies from the Fund before a resolution being duly passed by the Council to such effect.

[¶123] Under Article I, Section 3 of the Bylaws, Treasurer Packineau had a duty to ensure that annual audits of Tribal books and records were conducted.

[¶124] Under Article I, Section 3 of the Bylaws, Treasurer Packineau is required to be under a surety bond satisfactory to the Council and to the Commissioner of Indian Affairs.

[¶125] Treasurer Packineau's failure to make and keep a faithful record of all funds kept by the Council is a direct violation of Article I, Section 3 of the Bylaws. Said failure is evidenced by Treasurer Packineau's inability to provide such records to Plaintiffs Good Bear and Fredricks upon reasonable request on February 16, 2023.

[¶126] Treasurer Packineau's failure to report on all receipts and expenditures and the amount and nature of all funds in his possession or custody at regular meetings of the Council, as evidenced by the minutes of the regular meetings of the Council, is a direct violation of Article I, Section 3 of the Bylaws.

[¶127] Treasurer Packineau's failure to make monthly written expenditure and receipt reports on all funds within his possession matters of public record is a direct violation of Article I, Section 3 of the Bylaws. This failure is evidenced by Treasurer Packineau's inability to provide said reports to Plaintiffs Good Bear and Fredericks on reasonable request.

[¶128] Treasurer Packineau's failure to make monthly written reports on receipts from the Tribe's for-profit business organizations matters of public record is a direct violation of Article I, Section 3 of the Bylaws. This failure is evidenced by the creation of the organizations through resolutions passed by the Council, but zero record of any receipts from those organizations being presented at the Council's regular meetings. This failure is additionally evidenced by Treasurer Packineau's inability to provide records of said receipts to Plaintiffs Good Bear and Fredericks on reasonable request.

[¶129] Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of approximately \$93,293,382.00 on or about December 30, 2022, for a property in Las Vegas, Nevada, is a direct violation of Article I, Section 3 of the Bylaws.

[¶130] Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of approximately \$10,302,250.00 in or about April of 2023, for an additional property in Las Vegas, Nevada, is a direct violation of Article I, Section 3 of the Bylaws.

[¶131] Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of unknown, undisclosed amounts for purchases of homes and other properties and services is a direct violation of Article I, Section 3 of the Bylaws.

[¶132] Treasurer Packineau's disbursement of approximately \$93,293,382.00 on or about December 30, 2022, for a property in Las Vegas, Nevada, absent any resolution to authorize the expenditure, is a direct violation of Article I, Section 3 of the Bylaws.

[¶133] Treasurer Packineau's disbursement of approximately \$10,302,250.00 in or about April of 2023, for an additional property in Las Vegas, Nevada, absent any resolution to authorize the expenditure, is a direct violation of Article I, Section 3 of the Bylaws.

[¶134] Treasurer Packineau's disbursement of unknown, undisclosed amounts for purchases of homes and other properties and services on numerous occasions, in the absence of resolutions authorizing said purchases, is a direct violation of Article I, Section 3 of the Bylaws.

[¶135] Treasurer Packineau's disbursement of any additional funds for expenditures in the absence of resolutions authorizing said expenditures is a direct violation of Article I, Section 3 of the Bylaws.

[¶136] Treasurer Packineau's failure to ensure that the books and records are audited annually is a direct violation of Article I, Section 3 of the Bylaws.

[¶137] Treasurer Packineau's failure to ensure that he was secured by a surety bond to the satisfaction of the Council and Commissioner of Indian Affairs is a direct violation of Article I, Section 3 of the Bylaws.

**THIRD CAUSE OF ACTION - VIOLATIONS OF THE CHARTER
(ASSERTED AGAINST DEFENDANTS CHAIRMAN FOX, VICE-CHAIRMAN SPOTTED BEAR,
SECRETARY FOX, AND TREASURER PACKINEAU)**

[¶138] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶139] Under Section 9 of the Charter, Chairman Fox, Vice-Chairman Spotted Bear, Secretary Fox, and Treasurer Packineau (collectively, “the Officers”) had a duty to maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments, and to furnish to the Bureau of Indian Affairs an annual balance sheet and report of the financial affairs of the Tribe.

[¶140] The Officers have failed to maintain accurate and complete accounts of the financial affairs of the Tribe clearly showing all credits, debts, pledges, and assignments, specifically evidenced by: (1) A \$93,293,382.00 expenditure for a property in Las Vegas on or about December 30, 2022, with zero record of the amount paid outside of local news media reports; (2) The absence of any written or verbal reports of expenditures and receipts of the Tribe, either at the regular meetings of the Council, or available for inspection elsewhere; (3) The Officers’ failure to provide records of the expenditures, receipts, assets, and liabilities of the Tribe to Plaintiffs Good Bear and Fredericks upon request; (4) The disclaimed opinions as laid out in the 2018 Audit, citing lack of financial records or generally accepted accounting principles as the basis for an inability to draw conclusions from the Tribe’s records; and, (5) The adverse opinions as laid out in the 2018 Audit, citing lack of financial records or generally accepted accounting principles as the basis for disproportionate assets, liabilities, receipts and expenditures as they relate to the 4Bears Casino & Lodge.

[¶141] The Officers’ failure to maintain accurate and complete accounts of the financial affairs of the Tribe clearly showing all credits, debts, pledges, and assignments is a direct violation of Section 9 of the Charter.

[¶142] Upon information and belief, the Officers have failed to furnish to the Bureau of Indian Affairs an annual balance sheet and report of the financial affairs of the Tribe since fiscal year 2019.

[¶143] The Officers' failure to furnish to the Bureau of Indian Affairs an annual balance sheet and report of the financial affairs of the Tribe since fiscal year 2019 is a direct violation of Section 9 of the Charter which could or will have an impact on Tribal funds due to penalties involving the loss of contract support costs.

**FOURTH CAUSE OF ACTION - VIOLATIONS OF ICRA
(ASSERTED AGAINST THE COUNCIL)**

[¶144] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶145] The Council had a duty under ICRA to refrain from depriving any persons of property without due process of law.

[¶146] Plaintiffs have a vested communal interest in the money contained in the Fund, as well as any other property of the Tribe, under the Tribe's long-recognized communal concept of ownership of tribal property. *See Bordeaux*, 21 ILR 6131, 6132 (Ft. Bert. Trib. Ct. 1993).

[¶147] The Constitution and Bylaws explicitly outline the procedural due process required before making expenditures from the Fund, with both expressing that no expenditure may be made absent a resolution duly passed by the Council to such effect. *See* Constitution, Article VI, Section 5(c); Bylaws, Article I, Section 3.

[¶148] The Council's disbursement from the Fund of approximately \$93,293,382.00 to purchase a property in Las Vegas, Nevada, was made absent any resolution passed by the Council which directly violates Article VI, Section 5(c) of the Constitution and Article I, Section 3 of the Bylaws. Said violation constitutes deprivation of communal property without due process of law.

[¶149] The Council's disbursement from the Fund \$10,302,250.00 to purchase an additional property in Las Vegas, Nevada, absent any resolution passed by the Council is in direct violation of Article VI, Section 5(c) of the Constitution and Article I, Section 3 of the Bylaws. Said violation constitutes deprivation of communal property without due process of law.

[¶150] The Council's expenditure of unknown, undisclosed amounts for purchases of homes and other properties absent any resolutions duly passed by the Council to such effect are direct violations of Article VI, Section 5(c) of the Constitution and Article I, Section 3 of the Bylaws. Said violations deprive Plaintiffs of communal property interests without due process of law.

[¶151] Any additional disbursements from the Fund made by the Council before passing a resolution to such effect are direct violations of Article VI, Section 5(c) of the Constitution and Article I, Section 3 of the Bylaws. Said violations constitute deprivations of communal property without due process of law.

**FIFTH CAUSE OF ACTION - WRITS OF PROHIBITION AND INJUNCTION
(ASSERTED AGAINST ALL DEFENDANTS)**

[¶152] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶153] As set forth above, each of the Defendants' actions are illegal and constitute violations of the Constitution, Bylaws, Charter, and ICRA, and permanently impact the Plaintiffs' vested interests in Tribal funds and property by virtue of the recognition of communal property rights by the Tribe.

[¶154] Because the Defendants' actions permanently impact the Plaintiffs' vested interests in Tribal funds and property, in addition to Plaintiffs' due process rights under the Constitution, Bylaws, Charter, and ICRA, Defendants' continued illegal actions will cause irreparable harm to Plaintiffs and the Tribe.

[¶155] Given the explicit commands, duties, and obligations laid out by the Constitution, Bylaws, Charter, and ICRA, and the Defendants' failure to obey those commands, duties, and obligations, the Plaintiffs have a substantial likelihood of success on the merits before this Court.

[¶156] Additionally, because Defendants' illegal actions contravene duties and obligations set forth in constitutional and other legal documents explicitly passed by enrolled Tribal members, the public interest factor strongly favors Plaintiffs.

[¶157] As noted above, Defendants' continued illegal actions will result in continued and further permanent and irreparable harm to Plaintiffs. In contrast, enjoining Defendants from continuing to engage in their illegal actions and/or reversing harm done by said illegal actions simply returns Defendants to the status quo – that is, fulfilling the obligations and duties set forth by the Constitution, Bylaws, Charter, and ICRA. Thus, the balance of the harms strongly favors Plaintiffs as well.

[¶158] Plaintiffs' need for immediate relief based upon the above factual allegations is clear.

**SIXTH CAUSE OF ACTION – WRIT OF MANDAMUS
(ASSERTED AGAINST THE COUNCIL AND TREASURER PACKINEAU)**

[¶159] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶160] Under Article I, Section 3 of the Bylaws, Packineau has the following duties:

The Treasurer of the Tribal Business Council shall accept, receipt for, keep and safeguard all funds in the custody of the Council, whether they be Tribal funds or special funds for which the council is acting as trustee or custodian. He shall deposit all such funds in a bank or elsewhere as directed by the council and shall make and keep a faithful record of such funds, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody to the council at regular meetings and at such other times as requested by the council, his reports to be in writing and matters of record. He shall not expend or otherwise disburse any funds in his possession or in the possession or custody of the Tribal Business Council except when he is authorized to do so by resolution duly passed by the council.

[¶161] Under Article I, Section 3 of the Bylaws, the Council has the duty to employ a competent auditor to audit the books and records of the Treasurer, and this audit is required at least annually.

[¶162] Under Article VI, Section 5(c) of the Constitution, the Council and Packineau have a duty to, among other things, administer any funds or property within the exclusive control of the Tribes.

Also, “[a]ll expenditures from the Tribal Business Council fund shall be by resolution duly passed by the council to such effect, and the amounts so paid shall be matters of public record at all times.”

[¶163] The Council and Packineau have breached their duties to the tribal members by keeping accounting activities secret from the public.

[¶164] This Court should issue a writ of mandamus to command the Council and Packineau to produce a full list of all accounts that contain Tribal funds or special funds, and all accounts that the Council and Packineau have access or control to, including at a minimum, the following accounts:

1. All accounts regarding each of the for-profit Tribal enterprises;
2. All accounts regarding each of the non-profit development organizations, corporations, or authorities, created and maintained by the Council;
3. All accounts regarding the operation of 4Bears Casino & Lodge;
4. All accounts regarding the People’s Fund, including the Proceeds of Labor Account PL10017014;
5. All accounts containing revenue from the Tribe’s non-renewable oil and gas resources, including account PL7228700;
6. All accounts regarding the Tribal Business Council Fund;
7. All accounts regarding the General Fund;
8. All accounts regarding revenue and expenditures;
9. All accounts regarding assets and investments of the Tribe; and
10. All accounts regarding credits, debts, loans, obligations, pledges, and assignments of the Tribe.

(hereinafter “All Tribal Accounts”).

[¶165] This Court should issue a writ of mandamus to the Council and Packineau to command them to produce detailed statements for All Tribal Accounts.

[¶166] This Court should issue a writ of mandamus to the Council and Packineau to command them to retain a competent auditor to audit the books and records of the Treasurer for all years in which an audit has not been performed.

[¶167] This Court should issue a writ of mandamus to the Council and Packineau to conduct and submit a federal program audit for all years in which an audit has not been conducted or submitted, including 2020, 2021, and 2022, at a minimum.

[¶168] This Court should issue a writ of mandamus to the Council and Packineau to command them to produce annual profit and loss statements for the Tribe's Corporation since 2010; annual balance sheets for the Tribe's Corporation since 2010; and, annual ledgers showing all receipts and expenditures of the Tribe's Corporation since 2010.

**SEVENTH CAUSE OF ACTION – WRIT OF MANDAMUS
(ASSERTED AGAINST SECRETARY FOX AND THE COUNCIL)**

[¶169] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶170] Under Article I, Section 2 of the Bylaws imposes upon Secretary Fox the duty to “keep . . . an accurate roll of members by communities.”

[¶171] Secretary Fox also has a duty to “receive all petitions, applications, and other papers, and prepare them for the action of the council.”

[¶172] Plaintiffs have a right to a referendum process under Article VIII of the Constitution.

[¶173] On May 25, 2023, Plaintiffs Good Bear and Fredericks sent to Secretary Fox a letter requesting voter information so they could comply with the requirements of Article VIII of the Constitution regarding their draft petitions.

[¶174] To date, Secretary Fox has failed and refused to comply with Plaintiffs' requests, which is a violation of the Bylaws and Constitution. It is also a violation of Plaintiffs' due process rights.

[¶175] This Court should issue a writ of mandamus to Secretary Fox to command him to produce the complete and accurate roll of all members, by their respective communities. The roll should include all members' names and last known mailing addresses.

[¶176] This Court should issue a writ of mandamus to Secretary Fox, and the Tribal Council, commanding that a neutral third-party oversee the referendum process. This writ should include a command that Secretary Fox and the Tribal Council are not to be involved in the referendum process in any way, other than providing a complete and accurate roll of all members.

**EIGHTH CAUSE OF ACTION – CONSTRUCTIVE TRUST AND ACCOUNTING
(ASSERTED AGAINST THE COUNCIL AND TREASURER PACKINEAU)**

[¶177] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶178] The Constitution and Bylaws explicitly outline the procedural due process required before making expenditures from the Fund. No expenditure may be made absent a resolution duly passed by the Council authorizing the expenditure. All of which is for the purpose of transparency of the public funds.

[¶179] In addition to the Constitution and By-laws, the Tribal Business Council is governed by the Charter, Section 9 of which explicitly provides “The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments.”

[¶180] The Council and Treasurer Packineau have control and access to all accounts that contain tribal funds, including All Tribal Accounts.

[¶181] The Council and Treasurer Packineau owe a fiduciary duty to the Tribal members relative to all of these accounts.

[¶182] The Council and Treasurer Packineau owe a duty to render an account for each of these accounts to the Tribal members.

[¶183] The Tribal members do not have access to these accounts, and do not have knowledge of the assets, debits, and credits of these accounts.

[¶184] The Council and Treasurer Packineau have kept secret the assets, debits, and credits of these accounts.

[¶185] There is a need for discovery as to the existence of all accounts to which the Council and Treasurer Packineau have access, possession, custody, or control.

[¶186] There is a need for discovery as to the existence and contents of all accounts that contain funds of the Tribe, and all accounts to which the Tribe has an interest.

[¶187] The Council must account for, and pay distributions to the Tribal members, in order to restore what is rightfully theirs relative specifically to the People's Fund. A constructive trust should be imposed to prevent the Council and Treasurer Packineau from expending what is rightfully due to the Tribal members. The amount of any distributions will need to be determined within a reasonable time after disclosure and review.

**NINTH CAUSE OF ACTION – DECLARATORY JUDGMENTS
(ASSERTED AGAINST ALL DEFENDANTS)**

[¶188] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶189] An actual controversy has arisen amongst the interested parties.

[¶190] Under the Tribal Constitution, Bylaws, Charter, and ICRA, 28 U.S.C.A. § 2201, N.D.C.C. § 32-23-01, and other applicable laws, this Court has the power to declare the rights, status, and other legal relations of the Parties and the Tribe.

[¶191] This Court's declarations may be either affirmative or negative in form and effect.

[¶192] Plaintiffs are entitled to a declaration that the Defendants have violated the Constitution, Bylaws, Charter, and ICRA, as described in the previous allegations.

[¶193] Plaintiffs are entitled to a declaration that their Constitutional rights, and the Constitutional rights of all Tribal members, have been violated by the Council, as described in the previous allegations.

[¶194] Plaintiffs are entitled to all costs and attorneys' fees sustained in having to prosecute this action.

Attorneys' Fees and Costs Under Private Attorney General Doctrine

[¶195] Plaintiffs incorporate by reference the foregoing allegations as if fully stated here.

[¶196] Plaintiffs' success in this action benefits a broader, ascertainable class of people (enrolled members of the Tribe) in the same manner as themselves.

[¶197] Plaintiffs' success in this action promotes adherence to principles and policies which the people of the Three Affiliated Tribes and, more broadly, Congress, have identified as being of the utmost importance.

[¶198] Plaintiffs' success in this action will result in a substantial benefit to the Tribe and the Tribe's enrolled members and prevents an abuse which would be prejudicial to the rights and interests of both the Tribe and the Tribe's enrolled members.

[¶199] Requiring Plaintiffs to bear the burden of costs and fees in an action regarding the rights of thousands of other enrolled members and for which the causes arise out of improper actions of the Council, the Council's members, the Officers, or Treasurer Packineau, would be inequitable and result in a detriment to the ability of others to enforce their rights against the Council in the future.

V. PRAYER FOR RELIEF

[¶200] WHEREFORE, Plaintiffs request judgment as follows:

a. That a judgment be entered against the Council Members as follows:

i. Declaring that:

1. Under Article VI, Section 3 of the Constitution, the Council Members are prohibited from engaging in or ratifying executive

committee actions or unilateral “Executive Actions” taken by Chairman Fox;

2. Before making expenditures from the Fund, the Council Members have a duty under Article VI, Section 5(c) the Constitution to pass a resolution effectuating the expenditure, and that the amount of the expenditure must be a matter of public record at all times;
3. The Council Members violated the Constitution when they engaged in or ratified executive committee actions or unilateral “Executive Actions” taken by Chairman Fox;
4. The Council Members violated the Constitution when they purchased a Las Vegas property on or about December 30, 2022, because they failed to pass a resolution to that effect before the purchase and failed to make the amount so paid a matter of public record;
5. The Council Members violated the Constitution when they expended funds on an additional Las Vegas property on or about April 2023, because they failed to pass a resolution to that effect before the purchase and failed to make the amount so paid a matter of public record;
6. The Council Members violated the Constitution by making any expenditures pursuant to blanket ratifications of executive actions rather than resolutions;

7. The Council Members violated the Constitution by making any additional expenditures from the Fund absent a resolution passed to that effect and without making the amount paid a matter of public record at all times; and,

ii. Directing that:

1. Before making any expenditures from the Fund, the Council Members must pass a resolution to the effect of the purchase;
2. The Council Members must make each and every expenditure from the Fund a matter of public record, either before or immediately following the expenditure;
3. The Council Members must sell the Las Vegas property purchased on or about December 30, 2022, and return all funds expended to the Fund;
4. The Council Members must sell the Las Vegas property purchased in or about April 2023, and return all funds expended to the Fund;
5. The Council Members must refrain from making expenditures from the Fund pursuant to blanket ratifications of executive actions; and,
6. The Council Members must refrain from making any additional expenditures from the Fund before passing resolutions to the effect of said expenditures and without making the amounts paid matters of public record at all times.

b. That a judgment be entered against Treasurer Packineau as follows:

i. Declaring that:

1. Under Article I, Section 3 of the Bylaws, Treasurer Packineau has a duty to make and keep a faithful record of all funds kept by the Council, to report on all receipts and expenditures and the amount and nature of all funds in his possession at regular meetings of the Council, and to make those reports in writing and matters of public record;
2. Under Article I, Section 3 of the Bylaws, Treasurer Packineau has a duty to refrain from disbursing monies from the Fund before a resolution being duly passed by the Council to such effect;
3. Under Article I, Section 3 of the Bylaws, Treasurer Packineau has a duty to ensure that annual audits of his books and records were conducted;
4. Treasurer Packineau's failure to make and keep a faithful record of all funds kept by the Council is a direct violation of Article I, Section 3 of the Bylaws;
5. Treasurer Packineau's failure to make monthly written expenditure and receipt reports on all funds within his possession matters of public record is a direct violation of Article I, Section 3 of the Bylaws;
6. Treasurer Packineau's failure to make monthly written expenditure and receipt reports on all funds within his possession matters of public record is a direct violation of Article I, Section 3 of the Bylaws;

7. Treasurer Packineau's failure to make monthly written reports on receipts from the Tribe's for-profit business organizations matters of public record is a direct violation of Article I, Section 3 of the Bylaws;
8. Treasurer Packineau's failure to ensure his books and records were audited on an annual basis is a direct violation of Article I, Section 3 of the Bylaws;
9. Treasurer Packineau's failure to ensure he was under a surety bond satisfactory to the Council and Commissioner of Indian Affairs is a direct violation of Article I, Section 3 of the Bylaws;
10. Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of approximately \$93,293,382.00 on or about December 30, 2022, for a property in Las Vegas, Nevada, is a direct violation of Article I, Section 3 of the Bylaws;
11. Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of \$10,302,250.00 in or about April of 2023, for an additional property in Las Vegas, Nevada, is a direct violation of Article I, Section 3 of the Bylaws;
12. Treasurer Packineau's failure to publicly report, either in writing or verbally, on the expenditure of unknown, undisclosed amounts for purchases of homes and other properties and services is a direct violation of Article I, Section 3 of the Bylaws;

13. Treasurer Packineau's disbursement of approximately \$93,293,382.00 on or about December 30, 2022, for a property in Las Vegas, Nevada, absent any resolution to authorize the expenditure, is a direct violation of Article I, Section 3 of the Bylaws;
14. Treasurer Packineau's disbursement of \$10,302,250.00 in or about April of 2023, for an additional property in Las Vegas, Nevada, absent any resolution to authorize the expenditure, is a direct violation of Article I, Section 3 of the Bylaws;
15. Treasurer Packineau's disbursement of unknown, undisclosed amounts for purchases of homes and other properties and services on numerous occasions, in the absence of resolutions authorizing said disbursements, is a direct violation of Article I, Section 3 of the Bylaws; and,
16. Treasurer Packineau's disbursement of any other funds for expenditures in the absence of resolutions authorizing said expenditures are direct violations of Article I, Section 3 of the Bylaws.

ii. Directing that:

1. Treasurer Packineau must prepare and keep a record of all funds kept by the Council;

2. Treasurer Packineau must create written reports for each regular meeting of the Council which show all receipts and expenditures of the Tribe and the amount and nature of all funds in his possession;
3. By a date reasonably set by the Court, Treasurer Packineau must provide written reports for each regular meeting of the Council which show all receipts and expenditures of the Tribe and the amount and nature of all funds in his possession dating back to 2010;
4. Treasurer Packineau's written reports and records regarding funds kept by the Council, funds in Treasurer Packineau's possession, and expenditures and receipts of the Tribe, must be matters of public record, accessible to enrolled members of the Tribe at all times;
5. Before making any expenditures from funds kept by the Council, Treasurer Packineau must ensure that a resolution authorizing the expenditure was passed by the Council;
6. Treasurer Packineau must ensure his books and records are audited on an annual basis;
7. At a date reasonably set by the Court, Treasurer Packineau must ensure his books and records from previous years are audited, dating back to at least 2010; and,
8. Treasurer Packineau must operate under a surety bond satisfactory to the Council and the Commissioner of Indian Affairs.

c. That a judgment be entered against the Officers as follows:

- i. Declaring that:

1. Under Section 9 of the Charter, the Officers had a duty to maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments, and to furnish to the Bureau of Indian Affairs an annual balance sheet and report of the financial affairs of the Tribe;
2. The Officers failed to maintain accurate and public accounts of the financial affairs of the Tribe clearly showing all credits, debts, pledges, and assignments, and said failure is a direct violation of Section 9 of the Charter;
3. The Officers failed to provide to the Bureau of Indian Affairs an annual report of the Tribe's financial affairs, and said failure is a direct violation of Section 9 of the Charter.

ii. Directing that:

1. The Officers must maintain accurate and public accounts of the financial affairs of the Tribe clearly showing all credits, debts, pledges, and assignments in accordance with Section 9 of the Charter; and,
2. The Officers must provide the Bureau of Indian Affairs an annual report of the Tribe's financial affairs.

d. That a judgment be entered against the Council as follows:

i. Declaring that:

1. The Council had a duty under ICRA to refrain from depriving any person of property without due process of law;

2. The Constitution and Bylaws explicitly outline the procedural due process required before making expenditures from the Fund, with both expressing that no expenditure may be made absent a resolution duly passed by the Council authorizing the expenditure;
3. The Council's disbursement from the Fund of approximately \$93,293,382.00 to purchase a property in Las Vegas, Nevada, was a deprivation of communal property without due process of law in violation of ICRA because it was an expenditure in the absence of a resolution authorizing the expenditure;
4. The Council's disbursement from the Fund \$10,302,250.00 to purchase an additional property in Las Vegas, Nevada, is a planned deprivation of communal property without due process of law in violation of ICRA because it is an expenditure in the absence of a resolution authorizing the expenditure;
5. The Council's expenditure of unknown, undisclosed amounts for purchases of homes and other properties absent any resolutions authorizing the expenditures are deprivations of communal property without due process of law in violation of ICRA; and,
6. Any additional disbursements from the Fund made by the Council before passing a resolution to such effect are deprivations of communal property without due process of law in violation of ICRA.

ii. Directing that:

1. The Council must comply with procedural due process requirements when expending communal funds;
 2. The Council must sell the Las Vegas property purchased on or about December 30, 2022, and return all funds expended to the Fund; and,
 3. The Council must refrain from purchasing an additional Las Vegas property unless and until a resolution is passed authorizing the expenditure before executing the purchase.
- e. That a judgment be entered against the Council as follows:
- i. Declaring that the Defendants have violated the Constitution, Bylaws, Charter, and ICRA, as described in the previous allegations.
 - ii. Declaring that the Constitutional rights, and the Constitutional rights of all Tribal members have been violated by the Council, as described in the previous allegations.
- f. That a judgment be entered against the Council and Treasurer Packineau as follows:
- i. Declaring that the Council and Treasurer Packineau must account for, and pay distributions to the Tribal members, in order to restore what is rightfully theirs relative specifically to the People's Fund. A constructive trust will be imposed to prevent the Council and Treasurer Packineau from expending what is rightfully due to the Tribal members. The amount of any distributions will need to be determined within a reasonable time after disclosure and review.
- g. A writ of mandamus be issued to Secretary Fox and the Council as follows:

- i. A writ of mandamus issued to Secretary Fox to command him to produce the complete and accurate roll of all members, by their respective communities. The roll should include all members' names and last known mailing addresses; and
 - ii. A writ of mandamus issued to Secretary Fox, and the Tribal Council, commanding that a neutral third-party oversee the referendum process. This writ should include a command that Secretary Fox and the Tribal Council are not to be involved in the referendum process in any way, other than providing a complete and accurate roll of all members.
- h. A writ of mandamus be issued to the Council and Treasurer Packineau as follows:
 - i. A writ of mandamus issued to command the Council and Packineau to produce a full list of all accounts that contain Tribal funds or special funds, and all accounts that the Council and Packineau have access or control to, including at a minimum, All Tribal Accounts.
 - ii. A writ of mandamus issued to the Council and Packineau to command them to produce detailed statements for All Tribal Accounts.
 - iii. A writ of mandamus issued to the Council and Packineau to command them to retain a competent auditor to audit the books and records of the Treasurer for all years in which an audit has not been performed.
 - iv. A writ of mandamus issued to the Council and Packineau to conduct and submit a federal program audit for all years in which an audit has not been conducted or submitted, including 2020, 2021, and 2022, at a minimum.

- v. A writ of mandamus issued to the Council and Packineau to command them to produce annual profit and loss statements for the Tribe's Corporation since 2010; annual balance sheets for the Tribe's Corporation since 2010; and, annual ledgers showing all receipts and expenditures of the Tribe's Corporation since 2010.
- i. Awarding attorneys' fees and costs to the Plaintiffs under the private attorney general doctrine, and other applicable laws, with Defendants to be jointly and severally liable for payment of those costs and fees.

Dated this 5th day of September, 2023.

LARSON · KING, LLP

By 

Jack E. Zuger (ND #06987 and TAT #126)
30 E. Seventh Street
2800 Wells Fargo Place
St. Paul, MN 55101
(651) 312-6500
jzuger@larsonking.com
ATTORNEYS FOR PLAINTIFFS

25.1209.01001
Title.

Prepared by the Legislative Council
staff for Senator Walen
January 24, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2304

Introduced by

Senators Walen, Marcellais

- 1 A BILL for an Act to create and enact a new section to chapter 57-51.2 of the North Dakota
2 Century Code, relating to tribal oil and gas tax revenue allocation withholding.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 4 **SECTION 1.** A new section to chapter 57-51.2 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Oil and gas tax revenue allocation withholding - State treasurer - Escrow account.**

7 ~~The~~ Excluding any oil and gas tax revenue attributable to trust lands, the state treasurer
8 shall withhold all the allocation of oil and gas tax revenue allocations attributable to fee and
9 allottee lands under this chapter and shall deposit the withholdings in an escrow account at the
10 Bank of North Dakota beginning with allocations in August 2025. The withheld oil and gas tax
11 revenues may be allocated only after:

- 12 1. A tribal governing body and the governor modify the agreement signed in 2019 or
13 enter a new agreement under this chapter; and
14 2. A tribal governing body that enters an agreement under this chapter has submitted to
15 the federal bureau of Indian affairs all required audit reports and responses to audit
16 findings.

**Senate Bill 2304****Testimony of Ron Ness****Senate Finance and Taxation Committee****January 28, 2025**

Chairman Weber and members of the Committee, my name is Ron Ness, president of the North Dakota Petroleum Council ("NDPC"). The North Dakota Petroleum Council represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline development, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, South Dakota, and the Rocky Mountain region. I appear before you today in opposition of Senate Bill 2304, which poses a significant threat to the stability and continued development of oil and gas resources within and surrounding the Fort Berthold Indian Reservation ("FBIR").

North Dakota's oil and gas industry thrives under a framework of clear, predictable, and fair taxation. Since its inception, the State/Tribal Oil Tax Sharing Agreement ("Agreement") between North Dakota and the Mandan, Hidatsa, and Arikara ("MHA") Nation has served as a cornerstone of this framework. Senate Bill 2304 undermines this foundational agreement, introducing instability, eroding tribal sovereignty, and jeopardizing the significant progress that has been achieved through years of state and Tribal cooperation.

The current Agreement between the State of North Dakota and the MHA Nation establishes a clear and equitable allocation of oil gross production and extraction taxes for wells located on or extending into the exterior boundaries of the FBIR. This Agreement balances state and Tribal interests, fostering a cooperative environment that supports oil and gas development while respecting the sovereignty of the Three Affiliated Tribes.

Key benefits of this Agreement include:

1. **Tax Certainty:** A predictable tax structure reduces risks for operators, enabling continued investment in energy production.
2. **Shared Revenue:** The Agreement ensures that both the State of North Dakota and the MHA Nation receive equitable tax revenue to fund critical infrastructure, education, and community development.
3. **Streamlined Administration:** The Agreement outlines a formulaic allocation model for all oil and gas tax revenue generated from mineral development within FBIR, ensuring transparency and clarity in tax reporting and simplifying compliance for operators.

The State/Tribal Oil Tax Sharing Agreement is a model of how state and Tribal governments can collaborate to promote mutual economic benefit. Any disruption to this structure risks creating confusion, discouraging investment, and ultimately reducing production and tax revenues for all parties involved.

Beyond destabilizing the tax framework, Senate Bill 2304 introduces provisions that directly undermine the sovereignty of the MHA Nation. The requirement for the MHA Nation to conduct audits and submit audit reports to the Bureau of Indian Affairs (“BIA”) before tax revenues are released from escrow is a clear infringement on tribal self-determination. As a federally recognized Tribal nation, the MHA Nation has inherent sovereignty that includes the authority to govern its affairs, including the administration and oversight of oil and gas revenues. Requiring audits to be conducted at the direction of, and submitted to, the BIA inserts unnecessary federal oversight and undermines the MHA Nation’s ability to manage its financial and economic interests independently.

This requirement is not only an overreach but also sets a dangerous precedent by imposing undue federal involvement in a state/Tribal agreement that has historically functioned effectively. Such measures erode trust and cooperation between state and Tribal governments, disrupt established governance processes, and send a message that the sovereignty of the MHA Nation is secondary to bureaucratic oversight.

The oil and gas industry is a cornerstone of North Dakota's economy, generating billions of dollars in tax revenue and creating thousands of jobs. The State/Tribal Oil Tax Sharing Agreement has played a critical role in facilitating the responsible development of resources on the FBIR. Senate Bill 2304 jeopardizes this progress by introducing unnecessary complexity, eroding Tribal sovereignty, and destabilizing the foundation of trust and cooperation between the State of North Dakota and the MHA Nation.

On behalf of NDPC and its members, I urge you to oppose Senate Bill 2304 with a **Do Not Pass recommendation** and preserve the collaborative framework that has served our state and Tribal partners so effectively. Thank you for the opportunity to provide this information, and I would be happy to answer any questions.

Testimony on Senate bill 2304
January 28, 2025
Sponsor Chuck Walen, Senator D4
cwalen@ndlegis.gov
701-421-2262

Chairman Weber and members of the committee

For the record my name is Chuck Walen Senator for District 4

I am here to sponsor and introduce Senate bill 2304 on behalf of several of my constituents.

Senate bill 2304 requests that the State of North Dakota negotiate the 2018 compact to include Allottees and Fee holders of land within the MHA tribal lands. It also requires the tribal government to conduct and submit their annual audits which has not been done since 2018.

For some definitions, there are 3 types of land holders on reservations. 1 are the Tribal lands, 2nd Allottees, and 3rd Fee holders. According to treaties and other agreements, a tribal council only has authority to tax tribal Lands and not Allottee or Fee holder lands.

The reason the state is involved with this situation is we collect and hold the funds from the Oil & gas taxes and distribute them as per agreements and any compacts we have should include all parties in the boundaries of a reservation.

Chairman Weber and members of the committee this concludes my testimony. I stand for any questions you may have

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

January 27, 202

Chairman Weber and members of Finance and Taxation;
Honorable Senator Wahlen
Honorable Senator Marcellais

Senator(s);

I am submitting written testimony in support of SB 2304; i am an enrolled member of the Three Affiliated Tribes, I am a landowner, i am also a rightful owner of inherited lands taken by the US Government for construction of the Garrison Dam....none of my maternal or paternal side of family sold the minerals of lands taken for the Garrison Dam.....my parents land taken is within Twp 147, Range 90W; Twp 150N, Range 92W, Sec 28 which the homeland's of my family's lies buried under what is now known as Lake Sacajawea.

Sadly, there has been no dialogue between the current Tribal Business Council and the membership, i cannot say what taxes have been paid to the State, landowner's, or even if such taxation is/was legal- therefore, i feel accountability is lacking, this is the bottomline! Therefore, i am in full support of SB 2304.

Truby (Smith) Stiffarm
ID # 3614001841
PO Box 1805 - 9568 Hwy. 23
New Town, ND 58763
Blood Quantum 4/4
Clan, Knife



SPIRIT LAKE TRIBE

P.O. BOX 359 • FORT TOTTEN, ND 58335 • PHONE 701-766-4221 • FAX 701-766-4126

Testimony of Chairwoman Lonna Street Opposing Senate Bill No. 2304

Date: January 28, 2025

To: Members of the North Dakota Legislative Assembly

Subject: Opposition to Senate Bill No. 2304

Esteemed Members of the North Dakota Legislative Assembly,

I am Lonna Street, Chairwoman of the Spirit Lake Tribe, a sovereign nation recognized under the treaties of the United States, federal law, and our own tribal law. I write to express our unequivocal opposition to Senate Bill No. 2304, which proposes withholding oil and gas tax revenue allocations to tribes pending new agreements and the submission of audit reports to the federal Bureau of Indian Affairs (BIA).

Assertion of Tribal Sovereignty

Our tribe's sovereignty is inherent and predates the formation of the United States. This sovereignty is recognized in treaties between our tribal nation and the U.S. government, affirmed in the U.S. Constitution, and protected by laws such as the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA). These legal frameworks empower tribes to manage their own affairs and resources free from undue federal or state interference.

Financial and Administrative Implications

The withholding of oil and gas tax revenues, as proposed in SB 2304, threatens to impose significant financial strain on our community. These funds are vital for providing essential services, including healthcare, education, and infrastructure development. Interrupting this revenue stream undermines our ability to self-govern and to fulfill the needs of our people.

Administratively, the bill's requirement for tribes to submit audit reports to the BIA disregards our sovereignty and creates unnecessary burdens. The Spirit Lake Tribe already enforces rigorous financial accountability through our own governance systems. Requiring federal oversight in this manner not only infringes on our autonomy but also delays critical funding that directly impacts our citizens.

Legal Considerations

SB 2304 conflicts with multiple legal precedents that uphold tribal sovereignty. Treaties between tribal nations and the United States establish that our government-to-government relationship is one of mutual respect and partnership. Federal laws such as the ISDEAA affirm our right to manage our own resources. Additionally, Executive Order 13175 mandates that meaningful consultation with tribal governments is required when drafting legislation or policies that affect tribes. The absence of such consultation in this instance undermines the state's relationship with tribes and violates the trust responsibilities inherent in these legal frameworks.

Call for Meaningful Consultation

The development and introduction of SB 2304 have proceeded without meaningful consultation with our tribal government. This violates the principles of Executive Order 13175 and undermines the government-to-government relationship between the State of North Dakota and sovereign tribal nations. It is imperative that tribes be included as partners in any discussions or legislation affecting our resources and our people.

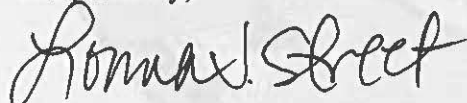
Potential for Legal Challenges

Should SB 2304 move forward without proper consultation and in contravention of treaties, federal laws, and executive orders, the Spirit Lake Tribe is prepared to challenge this legislation through all available legal channels. We will not stand by while our sovereign rights and our financial stability are jeopardized.

Conclusion

We urge the North Dakota Legislative Assembly to respect our sovereignty and reject SB 2304. We are committed to working collaboratively to address any concerns related to oil and gas tax revenues. However, we cannot support legislation that undermines our rights, disrupts our funding, and disregards the legal frameworks that define our government-to-government relationship.

Respectfully,



Lonna J. Street
Chairwoman
Spirit Lake Tribe

69th Legislative Assembly (2025-26)

Bill Actions for SB 2304

Introduced by [Sen. Walen](#), [Sen. Marcellais](#)

A BILL for an Act to create and enact a new section to chapter 57-51.2 of the North Dakota Century Code, relating to tribal oil and gas tax revenue allocation withholding.

DATE	CHAMBER	DESCRIPTION	VERSION	JOURNAL
01/20	Senate	Introduced, first reading, referred to Finance and Taxation	25.1209.01000	SJ 220
01/28	Senate	Committee Hearing 10:00		
01/29	Senate	Request return from committee		SJ 290
01/29	Senate	Withdrawn from further consideration		SJ 290