

Inventory of Tribal and Other Correspondence – BLM’s Hydraulic Fracturing Rule

Updated April 2, 2012

<u>ENTITY</u>	<u>DATE</u>
Southern Ute Indian Tribe	January 18, 2012
Governor Jack Dalrymple (ND)	February 8, 2012
Chairman Young, Rep. Boren (SIANA)	February 8, 2012
Ute Indian Tribe	February 9, 2012
IPAA, API, AXPC, UOGA, ANGA	February 15, 2012
State of Utah – Dept. of Natural Resources	February 21, 2012
National Congress of American Indians	March 7, 2012
Mandan, Hidatsa & Arikara Nation (Sec. Salazar)	March 9, 2012
Mandan, Hidatsa & Arikara Nation (Rep. Berg)	March 9, 2012
Rep. Rick Berg (ND)	March 15, 2012
Sen. John Hoeven (ND)	March 16, 2012
Navajo Nation Oil and Gas Company	March 20, 2012
Blackfeet Nation	March 21, 2012
Crow Nation	March 22, 2012

## EXECUTIVE BRANCH OF THE APSÁALOOKE NATION

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Crow Agency, Montana 59022

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Crow Country

Cedric Black Eagle, Chairman  
Calvin Coolidge Jefferson, Vice-Chairman  
Scott Russell, Secretary  
Darrin Old Coyote, Vice-Secretary

The Honorable Ken Salazar  
Secretary  
United States Department of Interior  
1849 C Street N.W.  
Washington, DC 20240

March 22, 2012

RE: Proposed BLM Regulations on Hydraulic Fracturing in Indian Country

Dear Secretary Salazar:

I am writing to express my concern regarding the Bureau of Land Management (BLM) proposed regulations for hydraulic fracturing, insofar as they are intended to apply to Indian lands. The BLM has not engaged in meaningful consultation with tribal governments, and the regulations as proposed could negatively impact development of Crow Tribal trust assets.

The BLM has hosted meetings in Oklahoma, Montana, Utah, and New Mexico to date, and has planned an additional meeting in Washington, D.C. next week. Unfortunately, many tribal leaders did not receive adequate notice of the past meetings and were unable to attend. Additionally, the meetings were structured as informational, rather than as a consultation with meaningful discussion of issues impacting tribal resources. Indeed, the draft regulations were not provided until the end of the meetings, and there was not adequate time provided to review the draft, comment, or ask questions during the meetings. Tribal consultation must consist of more than an opportunity to participate in the "notice and comment" period after draft regulations are published, especially when tribal trust assets are impacted.

Additionally, we do not agree with the inclusion of tribal lands as part of BLM's statutory authority over "public lands". Tribal lands are not "public lands", and we dispute that BLM has authority to regulate Indian lands as contemplated in the draft regulations.

The Crow Nation has seen the impact that short-sighted regulatory decisions have had on our oil and gas development efforts. Producers have left Crow Reservation projects to work on state fee lands adjacent to the Reservation because of the regulatory hurdles and inequitable fees required for permitting drilling on Indian lands under federal law. This continues to restrict the Crow Tribe's ability to provide services to the citizens of the Crow Nation, and to other members of the communities on the 2.4 million-acre Crow Indian Reservation. We are struggling to create new jobs in the energy development sector, and currently face an unemployment rate of around

Letter from Chairman Black Eagle to Secretary Salazar

March 22, 2012

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45% on the Crow Indian Reservation. The proposed hydraulic fracturing regulations will exacerbate a situation that has already been extremely detrimental.

I strongly believe that the BLM must engage in meaningful government-to-government consultation with Indian tribes, in conformity with Secretarial Order No. 3317, issued on December 1, 2011, before draft regulations on hydraulic fracturing are published. Thank you for your efforts to work collaboratively with tribal governments. I look forward to working with you and your able staff on this and other issues of concern to the Crow Nation.

Sincerely,



Cedric Black Eagle  
Chairman, Crow Nation

Cc: Senator Max Baucus  
Senator John Tester  
Congressman Denny Rehberg



## BLACKFEET NATION

P.O. BOX 850 BROWNING, MONTANA 59417  
Telephone (406) 338-7521 Fax: (406) 338-7530

EXECUTIVE COMMITTEE  
T. J. SHOW - CHAIRMAN  
PETER D. TATSEY - VICE CHAIRMAN  
REIS J. FISHER - SECRETARY  
KENNETH AUGARE - TREASURER

March 21, 2012

BLACKFEET TRIBAL BUSINESS COUNCIL  
T.J. SHOW  
PETER D. TATSEY  
REIS J. FISHER  
HENRY BUTTERFLY  
WILLIE A. SHARP JR.  
PAUL MCEVERS  
SHANNON J. AUGARE  
WOODBROW "JAY" WELLS  
JESSE "JAY" ST. GODDARD

The Honorable Ken Salazar  
Secretary of the Interior  
United States Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Re: **Proposed BLM Rule on Hydraulic Fracturing**

Dear Secretary Salazar:

This letter comes to you on behalf of the Blackfeet Tribal Business Council as a request for your Finding that the current proposed BLM Rule on Hydraulic Fracturing does not apply to Indian Tribes, and more especially to the Blackfeet Tribe. This rule is set up to apply to "public lands" not to Indian lands, which, as you are aware, are not public in nature, but rather lands set aside specifically for Indian Tribes and their members.

We also ask that once you make the Ruling that this particular BLM Rule does not apply to Indian Tribes that you set up a meaningful and transparent government-to-government consultation on the issue of hydraulic fracturing on Indian lands. Here, there may be brought to bear the expertise of your department as well as the input from various affected Indian Tribes as to the proper rules which should govern this type of drilling, allowing for expedient development while at the same time protecting the land and the people who live on the land.

The present rule has many problems for the Blackfeet Tribe. First and foremost is the requirement that State and other local laws be complied with when certificate of compliance are signed by the oil producer. The State has absolutely no jurisdiction over Indian land, and this provision, we view, as a direct incursion into the sovereignty of the Blackfeet Tribe. We also take exception to the additional burdens imposed upon the oil producer for repetitious paperwork, unreasonable weight and measurement requirements for the fracturing fluid, and the possible use of an appeal by outside persons which would disrupt the entire oil production process for months and possibly years.

This proposed rule seems to fly in the face of your edict some months ago to lessen the "red tape" that applied only to Indian lands in the development of tribal natural resources.

Letter to Secretary Ken Salazar  
March 21, 2012  
Page Two

In your statements, you seemed to grasp the fact that this type of development by Indian Tribes is stymied because of the excess of regulations, most of which are not required on lands off of Indian Reservations. This type of regulation only serves to hold down our Tribe, just at a time when we are in the very beginning stages of successful and profitable oil and gas development. To an outsider, it might appear as if the Federal Government wants to keep Indian Nations in poverty and therefore continues to have an assault on Tribal sovereignty and Tribal development.

We believe this Rule should not apply to our Tribal lands. We want the ability, and have begun to proceed forward with the making of our own Blackfeet Rules on oil and gas development, including rules on hydraulic fracturing. We would like the assistance of your Department and Agencies with their technical expertise so we can develop our own Rules which allow for expeditious drilling and also protect the land and its inhabitants.

We understand your trust responsibility toward Indian Tribes and individual Indian allottees. However, that responsibility should not be used to keep us crippled and living in poverty. Rather, Secretary Salazar, please see that such onerous rules as the proposed BLM Rule on Hydraulic Fracturing are not foisted onto Indian Tribes and Indian Lands. Let us have a meaningful government-to-government consultation without the fear of the imminent threat of some constricting, binding rule being brought down on our heads, just when our Tribe is beginning to see the fruits of our resource development.

The revenue generated from the royalties of oil and gas development will allow us to expand our function as a nation; giving us the ability to fund our own police force and courts, to train our own people for skilled jobs both on and off the Reservation; to educate our young and to provide for the health and safety of our people and fix our crumbling infrastructure, all without having to go "hat in hand" to the government for a grant or a loan. Finally, we will be able to take advantage of our sovereignty for the first time since our Treaty of 1855.

We are putting our trust in you, as our trustee, to see that we can go forward, regulating our resource development on our own terms, always being the careful stewards of our land. We will await your response to this letter. Our Resolution is attached to this letter.

Sincerely yours,

  
T.J. SHOW, Chairman  
Blackfeet Tribal Business Council

Letter to Secretary Ken Salazar

March 21, 2012

Page Three

cc: Senator Max Baucus, Senator from Montana  
Senator Jon Tester, Senator from Montana  
Congressman Denny Rehberg, Representative for Montana  
Larry Echohawk, Assistant Secretary for Indian Affairs, DOI



# BLACKFEET NATION

P.O. BOX 850 BROWNING, MONTANA 59417  
Telephone (406) 338-7521 Fax: (406) 338-7530

EXECUTIVE COMMITTEE  
T. J. SHOW - CHAIRMAN  
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SHANNON J. AUGARE  
WOODROW "JAY" WELLS  
JESSE "JAY" ST. GODDARD

## EXECUTIVE RESOLUTION

No. EX140-2012

- WHEREAS,** The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation; and
- WHEREAS,** The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education, and resources of the Blackfeet Indian Nation; and
- WHEREAS,** Pursuant to the Constitution for the Blackfeet Tribe, Article VI, Section 1(g) and 1(h) respectively, the Blackfeet Tribal Business Council is empowered to manage all tribal enterprises and tribal affairs in an acceptable and businesslike manner and to regulate all businesses within the Blackfeet Reservation; and
- WHEREAS,** The Blackfeet Tribal Business Council has been advised that there is currently pending the approval of a regulation from the Bureau of Land Management (BLM) regarding Hydraulic Fracturing which is intended to apply to the Blackfeet Reservation as well as all other Indian Tribes; and
- WHEREAS,** The Blackfeet Tribal Business Council was not made aware of this proposed regulation until recently, since there was only one informational meeting in Montana, held in Billings, Montana, and even then, was not certain that it had the correct version of such regulation; and
- WHEREAS,** The Blackfeet Tribal Business Council is now conversant with this proposed BLM regulation on Hydraulic Fracturing and believes that it does not apply to the Blackfeet Tribe, since it refers to "public lands" and not Tribal lands; and
- WHEREAS,** The Blackfeet Tribal Business Council also finds this proposed regulation deficient in many ways, the first and foremost problem being that it does not recognize Tribal sovereignty, but rather incorporates the mandate to follow State and local laws, without taking into consideration that State and other local laws have no applicability within the exterior boundaries of the Blackfeet Reservation; and

**WHEREAS,** The Blackfeet Tribal Business Council also finds that this proposed regulation puts up even more impediments to the eventual drilling for oil than is now mandated, resulting in longer delays, unrealistic demands, and an even greater amount of paperwork which will result in oil and gas producers deciding to take their business off the Blackfeet Reservation to other areas in the State of Montana where such crippling regulations do not apply; and

**WHEREAS,** The Blackfeet Tribe is just now embarking on an extensive program of oil and gas development, and that this proposed BLM regulation on Hydraulic Fracturing will severely impact such development and cause the oil producers with whom the Blackfeet Tribe is now doing business to abandon the Tribal lands within the Reservation for other fee lands which will not be under this regulation; and

**WHEREAS,** The Blackfeet Tribe and its members have the expectation of receiving substantial revenue from oil and gas royalties from the drilling on Indian Land within the Reservation, which revenue, from the standpoint of the Tribal government will be used to fund the governmental operations of the Tribe, including all law enforcement and court services as well as job training and funds for needed infrastructure, all of which can enhance the Blackfeet Reservation which has been the victim of grinding poverty; and

**WHEREAS,** The additional and cumbersome regulations in this proposed BLM regulation on Hydraulic Fracturing can result in the loss of anticipated revenue from those oil producers who are currently spending large sums of money on the Blackfeet Reservation, leaving the Blackfeet Tribe without any means to create meaningful revenue for its governmental functions;

**WHEREAS,** The BLM has not engaged in any true government-to-government consultation with the Blackfeet Tribe or any of the other Indian Tribes prior to its push to finalize this regulation; now

**THEREFORE BE IT RESOLVED** as follows:

1. That the Blackfeet Tribal Business Council hereby states its disapproval of the proposed 2012 BLM Rules on Hydraulic Fracturing.
2. That the Blackfeet Tribal Business Council hereby demands a Ruling by the Secretary of the Interior that the proposed BLM Rules on Hydraulic Fracturing which are promulgated for public lands do not apply to Indian and Tribal lands which are not "public lands".



3. That the Blackfeet Tribal Business Council hereby requests an immediate and meaningful government-to-government consultation with the BLM on Hydraulic Fracturing within the Blackfeet Reservation, which recognizes the sovereignty of the Blackfeet Tribe and which will assist the Tribe to create its own regulatory scheme for this procedure which is now used consistently in the drilling for oil and gas.

4. That in the event this proposed BLM Rule on Hydraulic Fracturing goes forward with the plan to apply it to the Blackfeet Reservation, than the Blackfeet Tribal Business Council hereby demands that there be Congressional Hearings on this Rule since it impacts an industry through Indian Country which has, to this point generated over \$425,000,000 in the past fiscal year, thus requiring such a hearing before final approval and implementation.

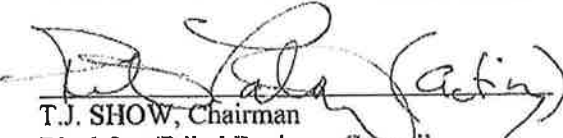
5. That a copy of this Resolution be sent immediately to Secretary of the Interior, Ken Salazar, to the Montana Delegation which includes Senators Max Baucus and Jon Tester and Congressman Denny Rehberg, and to Larry Echohawk, Assistant Secretary for Indian Affairs in the Department of the Interior.

6. That the Chairman or Vice-Chairman in the Chairman's absence, and the Secretary of the Blackfeet Tribal Business Council shall have the authority to sign this Resolution on behalf of the Blackfeet Tribal Business Council.

**ATTEST:**

**THE BLACKFEET TRIBE OF THE  
BLACKFEET INDIAN RESERVATION**

  
REISS J. FISHER, Secretary  
Blackfeet Tribal Business Council

  
T.J. SHOW, Chairman  
Blackfeet Tribal Business Council

CERTIFICATION

I hereby certify that the foregoing Executive Resolution was adopted by the Blackfeet Tribal Business Council during a duly called, noticed and convened Executive Session assembled for business the 21<sup>st</sup>. Day of March, 2012, with Four (4) members present to constitute a quorum, and Four (4) members voting FOR, Zero (0) members OPPOSED, and Zero (0) members ABSTAINING.

SEAL

  
REISS J. FISHER, Secretary

**NAVAJO NATION OIL & GAS COMPANY**

A Federal Corporation

Post Office Box 4439 • Window Rock, Arizona • 86515

Telephone (928) 871-4860 • FAX (928) 871-4862



March 20, 2012

Hon. Ken Salazar  
Secretary, U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

*Re: Bureau of Land Management's Proposed Hydraulic Fracturing Rule*

Dear Secretary Salazar:

On behalf of the Navajo Nation Oil and Gas Company (NNOGC), I am writing to express my concerns with the Bureau of Land Management's (BLM) evident decision to propose a rule to regulate the practice of hydraulic fracturing on public and Indian lands. This decision was confirmed yesterday when BLM Director Bob Abbey testified to the Senate Appropriations Committee that his agency will propose a rule on hydraulic fracturing in April 2012.

As you know, the NNOGC is a corporation wholly-owned by the Navajo Nation, and is a significant producer of oil and natural gas from Navajo Nation lands. With the largest reservation and tribal population in the U.S., NNOGC's energy-related activities represent a major source of revenues to the Navajo Nation and significant employment and income opportunities to Navajo people.

Tribal oil and gas producers around the country, including the Southern Ute Indian Tribe, the Ute Tribe of the Uintah and Ouray Reservation, the Mandan Hidatsa and Arikara Nation, use hydraulic fracturing and believe the practice necessary for the future development of their mineral resources. The NNOGC agrees with these sentiments, particularly with respect to the future development recently-acquired lands and mineral resources.

Should the department proceed with a rule regarding hydraulic fracturing, I strongly suggest it be guided by the following guideposts and suggestions.

- (1) The expressed justification for the rule is to "protect the larger public's interest in the public domain," and as Indian lands cannot remotely be considered "public lands," the rule should not apply to Indian lands in the first instance.
- (2) If the department, nevertheless, decides to proceed with a rule and intends the rule to have application in Indian Country, the rule should not include reference to state and local rules or jurisdiction over activities and persons on Indian tribal lands, see e.g., 25 CFR 1.4.
- (3) Departmental officials have cited environmental protection, and specifically water quality measures, as justifying the need for a Federal rule to regulate activities related to hydraulic fracturing. The reality is that best management practices have been successfully developed in

the oil and gas industry relating to the hydraulic fracturing process, the construction and monitoring of wells and wellbore integrity, groundwater sampling and protection, and others, all of which minimize the types of environmental degradation that is at the heart of the argument for a Federal rule.

(4) Unlike all other landowners in the U.S., Indian tribes and their development corporations such as NNOGC face unique hurdles in their efforts to identify and develop conventional energy resources. These hurdles include significant delays in securing Federal approvals for land leasing and related permitting, an untimely Federal appraisal process, fees for applications for permits to drill and other Federal fees, NEPA compliance, and other challenges which, taken together, result in under-investment in energy resource development on tribal lands.

A new rule relating to hydraulic fracturing, will result in additional and extraordinary delays in getting tribal projects moving because the need for new BLM approvals will likely foster appeals that could take the IBLA a year or two to decide.

(5) Imposing a new and burdensome rule on tribal energy producers is contrary to the essential thrust of legislation now pending in the House of Representatives and the Senate that are intended to remove unreasonable, uneconomic, or anachronistic barriers to more vigorous energy production on Indian lands and to promote tribal self-determination and self-sufficiency. The BLM's proposed HF regulation will place additional burdens on an already over-regulated industry and will harm Indian tribes, their members and surrounding communities, many of which depend on energy production to drive the regional economies.

To-date, the BLM has held four regional meetings to discuss a draft rule informally shared with tribes earlier this year. I am reliably informed that a second draft rule has been developed but has not been circulated to any tribes. Given there is a second draft rule extant, and as various Indian tribes, the National Congress of American Indians, and Members of Congress have already noted in correspondence to you, the breadth and depth of BLM outreach and consultation with Indian Country has been insufficient given the potential impact the rule could have on tribal energy resources and economic development.

I urge you to undertake a more vigorous consultation with the tribal community consistent with President Obama's pledge and Secretarial Order 3317, in which you announced a policy of "enhanced communication" when it comes to decisions that impact Indian tribes and their members.

Thank you for your consideration of my request and your ongoing support of Indian Country.

Sincerely,



WILSON GROEN  
President and CEO

**Attachments** Southern Ute Indian Tribe Letter, Jan. 18, 2012  
State of North Dakota Governor Letter, Feb. 8, 2012  
Reps. Don Young Dan Boren Letter, Feb. 8, 2012  
Ute Indian Tribe Letter, Feb. 9, 2012  
Energy Industry Associations Letter, Feb. 15, 2012  
State of Utah Dept. of Natural Resources Letter, Feb. 21, 2012  
NCAI Letter, Mar. 7, 2012, and Resolution #ECWS-12-005  
Mandan, Hidatsa & Arikara Nation Letter, Mar. 9, 2012

end

JOHN HOEVEN  
NORTH DAKOTA

120 RUSSELL SENATE OFFICE BUILDING  
TELEPHONE: (202) 224-2551  
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[hoeven.senate.gov](http://hoeven.senate.gov)

## United States Senate

WASHINGTON, DC 20510

COMMITTEES:  
AGRICULTURE  
APPROPRIATIONS  
ENERGY AND NATURAL RESOURCES  
INDIAN AFFAIRS

March 16, 2012

The Honorable Ken Salazar  
Secretary of the Interior  
United States Department of the Interior  
Office of the Secretary  
Washington, DC 20002

Dear Secretary Salazar:

I am writing you to express my concern with the proposed Bureau of Land Management's (BLM) Hydraulic Fracturing (HF) rules for oil and gas development on public lands and tribal lands.

Your department is looking at three key issues with the HF process: wellbore integrity, disclosure and flowback water. As you are well aware, states have been regulating the oil and gas industry for decades. Their agencies, like the North Dakota Industrial Council, have numerous regulations to adequately cover the issues raised in the BLM rules. I am concerned the new regulations will be duplicative and will add unnecessary burdens that slow economic development in our states. For example, your rules are considering not using FracFocus.org for chemical disclosures. This would be unfortunate as FracFocus.org has been a very effective partnership between the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.

In addition to my concerns with the HF rules impacts on the states are also my concerns on what it could mean by curtailing development on Indian Country. The Fort Berthold Reservation is located at the heart of the Bakken formation and has seen a dramatic increase of oil and economic activity the past several years. Oil development on the Fort Berthold Reservation currently faces numerous permitting challenges because of the overlap with the BLM and BIA. While those agencies are working hard to stay on top of permits, additional and redundant rules will only slow things down for development on Indian Country. These rules could have the impact of pushing investment off of Indian Country, which would create an economic and job disparity based largely on the proposed rules.

I recently received a letter from the Chairman of the Three Affiliated Tribes wherein he said he did not believe the BLM has engaged in meaningful consultation before proceeding with the rule. Chairman Hall said the rule may delay, interrupt, and discourage oil and gas production on the Reservation. This is a significant concern because oil and gas development has become a major economic engine for the Tribes.

For these reasons, I have significant concerns with the proposed BLM HF regulations. State regulation does and will continue to adequately regulate the industry. Before the BLM moves forward with any regulation, I urge the agency to consult with the Tribes and States. In the end, I hope you will recognize that your proposed rules are unnecessary and duplicate to what is already being handled by the states.

Sincerely,



John Hoeven  
U.S. Senator

10:25

CC: Mr. Rollie Wilson  
Fredericks Peebles & Morgan LLP  
1301 Connecticut Ave. NW Suite 450  
Washington, D.C. 20036

Enclosures

RICK BERG  
NORTH DAKOTA

COMMITTEE ON  
WAYS AND MEANS  
SUBCOMMITTEE ON  
SELECT REVENUE MEASURES

SUBCOMMITTEE ON  
HUMAN RESOURCES

SUBCOMMITTEE ON  
SOCIAL SECURITY

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-3401

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FAX: (701) 224-0431

[www.berg.house.gov](http://www.berg.house.gov)

March 15, 2012

The Honorable Sec. Ken Salazar  
Secretary  
US Department of Interior  
1849 C Street, N.W.  
Washington, DC 20240

Dear Secretary Salazar,

In a letter dated February 17, 2012, several of my House colleagues and I expressed our concerns with the Bureau of Land Management's (BLM) decision to move forward with proposed new regulations on Hydraulic Fracturing. In our letter we respectfully requested that BLM not move forward with the development of rules for Hydraulic Fracturing on public lands. I remain concerned that the draft rule closely resembles state oil and gas commission rules on well completion. While I support practices that protect the environment and enable North Dakota to continue growing its contribution to our country's energy security, it is state regulatory authorities that are best suited to continue managing these issues.

Additionally, I have now been contacted by Fort Berthold Indian Reservation Tribal Chairman, Tex Hall, requesting that I join in expressing the concerns of the Mandan, Hidatsa and Arikara (MHA) Nation over these proposed regulations and ask you to do not move forward with such regulations until, at minimum, BLM engages in meaningful tribal consultation.

Like many reservations, Fort Berthold has suffered historically high unemployment rates because of federal policies that deter badly needed private investment. However, over the past several years; energy production has provided a significant economic impact. In January 2012 alone, Ft. Berthold Indian Reservation raised over \$6 million in tax revenue on energy production. Energy production on these lands has added high-wage jobs with good benefits and increased revenue for the MHA Nation to move forward with necessary improvements to their communities. As Chairman Hall states in his letter to me, the proposed rules from BLM would delay resource development for a minimum of 30 days. This delay alone could cost the MHA Nation between \$1.4 million and \$2 million per month in royalty revenues per well. Additionally, placing barriers to energy development on tribal lands that do not exist on private or state lands will disadvantage the ongoing economic development at Fort Berthold.

Chairman Hall feels that BLM has failed in their responsibility to honestly and openly conduct tribal consultation in a manner that respects the relationship between the respective governments and maintains the integrity of a relationship built upon trust. I share in these concerns. The tribal

consultation process is not a one way street. It is the duty of the agencies in question to inform the tribes of all aspects and impacts of a proposed rule or statute. Therefore, while I reiterate my request that BLM not move forward with the development of regulations for Hydraulic Fracturing on public lands, at minimum, I respectfully request that you do not move forward in issuing the proposed regulations without engaging in meaningful consultation with the MHA Nation.

I have enclosed Chairman Hall's letter to me for your review. I appreciate your attention to this matter and I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Berg". The signature is stylized and cursive, with a large initial "R" and "B".

Rick Berg  
Member of Congress





## MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes \* Fort Berthold Indian Reservation  
Tribal Business Council

Office of the Chairman  
Tex "Red Tipped Arrow" Hall

March 9, 2012

The Honorable Rick Berg  
Congressman  
United States House of Representatives  
323 Cannon House Office Building  
Washington, D.C. 20515

### **Re: New BLM Regulations on Hydraulic Fracturing are Premature**

Dear Congressman Berg:

In a couple of weeks, I understand that the Bureau of Land Management (BLM) plans to publish proposed regulations concerning Hydraulic Fracturing (Fracing) in the Federal Register. These new regulations will delay, interrupt and discourage the oil and gas production that has become an economic engine for the Fort Berthold Indian Reservation and western North Dakota. As Chairman of the Mandan, Hidatsa and Arikara Nation (MHA Nation) I respectfully request that you contact Secretary Salazar and ask him to delay publishing the proposed Fracing regulations until BLM engages in meaningful tribal consultation.

To date, BLM has hosted a handful of informational meetings throughout the West and has described that as tribal consultation. An informational meeting describing to tribes what BLM "plans to do" is not tribal consultation and is not in keeping with Secretary Salazar's recently released Secretarial Order No. 3317 "Department of the Interior Policy on Consultation with Indian Tribes." As set out in the Secretarial Order, effective tribal consultation is sitting down at the table with tribes to "collaborate" on proposed federal actions to ensure that those actions are "achievable, comprehensive, long-lasting and inclusive of tribal input." This has not happened.

The impending publication of the Fracing regulations was confirmed at the House Natural Resources Hearing on the Department of Interior budget held on February 15, 2012. Our energy industry partners are very concerned with the additional requirements that will be placed on them. They stated that added delays and uncertainty created by the proposed regulations would force them to consider pulling their drilling rigs off the Reservation. There are currently 22 drilling rigs operating on the Reservation.

Under the proposed rule all oil and gas operations requiring Fracing (including any kind of well stimulation) would be delayed at a minimum of 30 days, maybe longer. If Fracing plans are delayed by 30 days or more, \$1.4 million to \$2 million in royalty revenues per month will be lost by Indian

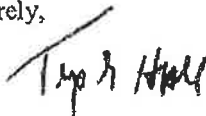
mineral owners. In addition, if drilling rigs leave the Reservation it could be some time before they return.

I hope that you will join me in contacting Secretary Salazar to express these concerns and request that he postpone publication of the proposed rule until BLM engages in meaningful government-to-government consultation with the MHA Nation as mandated by federal law. This will give the MHA Nation and other energy producing tribes the opportunity to sit down with the BLM and have a frank discussion regarding the economic and social impacts the proposed rule will have on the MHA Nation.

In addition, postponing the proposed rule will allow other federal agencies to finish on-going studies regarding Fracing. Any BLM regulation of Fracing is premature in advance of these studies and the BLM has offered no justification for proceeding with this new regulation without the benefit of these studies. Without clear demonstration of a problem with the Fracing process and without providing Tribes an opportunity to respond to any identified deficiencies the BLM regulation may very well be unnecessary.

I respectfully request that you reach out to Secretary Salazar to express these concerns. I would be happy to meet with you to discuss this further. My phone number is (701) 627-4781. My email is [redtippedarrow@rtc.coop](mailto:redtippedarrow@rtc.coop). Thank you for your attention to this matter.

Sincerely,



Tex "Red Tipped Arrow" Hall, Chairman  
TAT - MHA Nation



**MANDAN, HIDATSA & ARIKARA NATION**  
Three Affiliated Tribes \* Fort Berthold Indian Reservation  
Tribal Business Council

Tex "Red Tipped Arrow" Hall  
Office of the Chairman

March 9, 2012

The Honorable Ken Salazar  
Secretary  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Re: Proposed BLM Regulations on Hydraulic Fracturing in Indian Country

Dear Secretary Salazar:

I write to express my concerns with the Bureau of Land Management's (BLM) decision to persist with regulations for hydraulic fracturing (fracing) that will apply to Indian lands. I am concerned with BLM's lack of meaningful tribal consultation on the proposed regulations and the impact the regulations will have on energy development on the Mandan Hidatsa and Arikara Nation (MHA Nation).

First, I can find no authority for the BLM to implement regulations on Indian lands. Although the BLM has jurisdiction to regulate fracing on "public lands," Indian lands are not public lands. Indian reservation lands are set aside and reserved for the exclusive use and benefit of Indian tribes. The Federal Land Policy and Management Act of 1976 does not provide BLM with direct or delegated authority over Indian lands. Thus, I call into question the authority of the BLM to promulgate regulations for fracing on Indian lands.

Second, even if BLM has assumed or obtained the authority to regulate fracing on Indian lands, the development of any regulation must be consistent with the Department's tribal consultation policy and must fulfill the federal trust responsibility. BLM's actions to date are not consistent with either the consultation policy or the trust responsibility. On December 1, 2011, you issued Secretarial Order No. 3317 announcing the "Department of the Interior Policy on Consultation with Indian Tribes." This policy updated and expanded the Department's long-standing and on-going commitment to consultation with Indian tribes. A few months later, the BLM is on the verge of violating this new policy.

Third, the BLM may not, consistent with the trust responsibility and the MHA Nation's treaty rights, apply its public interest standards to our lands. In addition, the BLM's concerns with potential environmental effects arising from shallow fracing may not be consistent with the federal trust responsibility, the MHA Nation's treaty rights, or its rights under the United Nation's Declaration for Indigenous rights. The MHA Nation's Reservation was set aside for the exclusive use and benefit of the MHA Nation, in recognition of its sovereignty and its prior claim to its aboriginal territory. Consistent with this notion, the UN Declaration on Indigenous

404 Frontage Road \* New Town, North Dakota \* 58763-9402  
Phone: 701.627.4781 \* Ext. 8112 \* Fax: 701.627.3503

rights recognizes the authority of the MHA Nation to decide for itself how best to develop and regulate its resources. As you know, the President endorsed the UN Declaration in December, 2010.

Over the past couple of months, BLM hosted four meetings in Tulsa, Oklahoma; Billings, Montana; Salt Lake City, Utah; and Farmington, New Mexico. BLM is describing these meetings as a starting point for tribal consultation, but much more needs to be done. The content of these meetings was purely informational. Tribal leaders were not engaged in a meaningful discussion, instead they were merely informed of what the BLM plans to do. A draft of the proposed regulations was not available at all of the meetings, and when the draft regulations were available, they were handed out at the end of the meeting with no time to review or ask questions. This falls far short of the "exchange of information" and "enhanced communication" that your Secretarial Order requires.

I now understand that a draft of the proposed regulations is going through the review process for publication in the Federal Register in the near future. This is unacceptable. Indian tribes have not had an opportunity to review the proposed regulations and engage BLM in any communication about tribal specific issues that should be included in the regulations. The BLM's tribal consultation process to-date does not comply with your Order's requirement to involve tribes early in the planning process.

In addition, the BLM may not, consistent with the trust responsibility, apply its public interest standards to Indian lands. In contrast to oil and gas development on "public lands," royalties and taxes from drilling on tribal and allotted lands on the Reservation are a significant source of revenue for our tribal government and income for allottees on the Reservation. Adding additional burdens for the development of oil and gas on the Reservation could chill production and force operators to shift investment away from our Reservation to state and private lands where the regulatory burden is less onerous, thus depriving the Tribe of needed revenue.

After many years of economic hardship, the MHA Nation and its members are finally seeing improved economic conditions due to the oil and gas activity on the Reservation. New BLM rules on Hydraulic Fracturing would disproportionately impact the MHA Nation and its members due to our greater reliance on oil and gas development for economic growth and sustainability. Without proof that these rules are necessary to protect against an identified threat to the environment, deep well fracing on the Reservation should be exempt from the additional regulatory burdens that the proposed BLM rules would impose. At a minimum, BLM should explain how it is going to mitigate this disproportionate impact.

According to the draft regulations, the BLM plans to look at three key issues pertaining to the fracing process: wellbore integrity, disclosure, and flowback water. We know of no incidents on tribal lands, much less "public lands", that would precipitate federal regulation. While federal regulation of the shallow gas wells in Wyoming and Pennsylvania may be justified to protect ground water, I see no such justification for deep horizontal wells like those that are drilled on the Fort Berthold Reservation.

Oil and gas operators seeking permits to drill on "public lands" and Indian lands already undergo an extensive environmental review process before they can begin drilling activities. This process has become lengthy, time consuming and costly. These delays and costs are one of

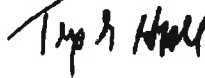
the primary reasons why oil and gas developers look just over the Reservation boundary for cheaper and quicker development opportunities on private lands. We need to remove road blocks to Indian energy development, not increase them.

The process has become so time consuming that in certain parts of Indian country, a backlog of hundreds, if not thousands, of permits exists. BLM Field Offices already cannot keep up with the processing of applications for permits to drill. Additional regulations will only make the problem worse. BLM does not have the capacity, staff or technical expertise, needed to implement the rule.

The Environmental Protection Agency and other federal agencies are currently conducting scientific studies on fracking. BLM regulation is premature in advance of the EPA study, and BLM has offered no justification for proceeding with this new regulation without the benefit of these studies. Without clear demonstration of a problem with the fracking process and without providing tribes an opportunity to respond to any identified deficiencies, we feel the BLM regulation is unnecessary.

For these reasons, I request that the BLM not move forward at this time with the publication of regulations for Hydraulic Fracturing in the Federal Register. The BLM needs to restart its consultation process to properly engage tribes. I would be happy to discuss this matter in more detail with you or representatives of the BLM. I look forward to your response. You may contact me at 701.627.4781 or via email at [redtippedarrow@rtc.coop](mailto:redtippedarrow@rtc.coop).

Sincerely,



Tex "Red Tipped Arrow" Hall, Chairman  
TAT - MHA Nation

Cc: Larry Echo Hawk, Assistant Secretary for Indian Affairs  
Bob Abby, Director, Bureau of Land Management



## NATIONAL CONGRESS OF AMERICAN INDIANS

March 7, 2012

The Honorable Ken Salazar  
Secretary of the Interior  
United States Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

The Honorable Wilma Lewis  
Asst. Secretary for Land & Minerals  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

### RE: Tribal Consultation on BLM Hydraulic Fracturing Regulations

Dear Secretary Salazar:

On behalf of the National Congress of American Indians, I am writing to request that the Department of Interior and the Bureau of Land Management engage in government-to-government consultation with Indian tribes regarding the BLM's proposed hydraulic fracturing ("HF") regulations.

On December 1, 2011, Secretary Salazar issued Secretarial Order No. 3317 announcing the "Department of the Interior Policy on Consultation with Indian Tribes." This policy updated and expanded the Department's long-standing and on-going commitment to consultation with Indian tribes. We urge that the BLM engage in consultation with tribal governments on the HF regulations.

Over the past couple of months, BLM hosted four meetings in Tulsa, Oklahoma; Billings, Montana; Salt Lake City, Utah; and Farmington, New Mexico. Many tribal leaders became aware of these meetings after they took place, but we understand that BLM is describing these meetings as a starting point for tribal consultation. Indeed, much more needs to be done.

The content of these meetings was purely informational. Tribal leaders were not engaged in a meaningful discussion, instead they were informed of what the BLM plans to do. A draft of the proposed regulations was not available at all of the meetings, and when the draft regulations were available, they were handed out at the end of the meeting with no time to review or ask questions. This falls short of the "exchange of information" and "enhanced communication" that the Secretarial Order requires.

At these meetings, BLM stated that the consultation process would continue through the public comment period, but the consultation policy and the federal government's trust responsibility requires more than merely allowing tribes to participate in the public comments period. Outreach to Indian country is needed. BLM stated that its field offices would be the lead for further consultation. While we are pleased that field offices would be involved, consultation with tribal governments should occur at policymaker levels. In addition, BLM State Directors should engage the tribes in their states so that tribes can be assured that their comments and concerns will reach policymakers in Washington, D.C.

#### EXECUTIVE COMMITTEE

PRESIDENT  
Jefferson Keel  
*Chickasaw Nation*

FIRST VICE-PRESIDENT  
Juana Majel Dixon  
*Pawnee Band of Northern Plains Indians*

RECORDING SECRETARY  
Edward Thomas  
*Central Council of Tlingit & Haida  
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PACIFIC  
Don Arnold  
*Scotts Valley Band of Pomo Indians*

ROCKY MOUNTAIN  
Scott Russell  
*Crow Tribe*

SOUTHEAST  
Larry Townsend  
*Lumbee Tribe*

SOUTHERN PLAINS  
Robert Tippecanoe  
*Comanche Nation*

SOUTHWEST  
Joe Garcia  
*Ohkay Owingeh*

WESTERN  
Ned Norris, Jr.  
*Tolleno O'odham Nation*

EXECUTIVE DIRECTOR  
Jacqueline Johnson Pata  
*Thlingit*

NCAI HEADQUARTERS  
1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
www.ncai.org

A significant issue is the BLM is proposing these regulations under its authority over “public lands.” Indian lands are not “public lands” and should not be included within the proposed regulations. Indian lands are lands held for the use and benefit of tribes and their members, not the public. Instead, the BLM should consider the unique aspects of Indian lands.

Consultation with tribal governments is the only way for BLM to take into account the impacts of its proposed regulation on tribal energy and economic resources. This permitting process for oil and gas developers on Indian lands is already lengthy, time consuming and costly. The proposed HF regulations will require oil and gas operators to seek yet another round of permits for all well stimulation activities leading to further delay. The added delay will cause oil and gas operators to leave Indian country for state and private lands, a fact that is occurring under current permitting requirements.

Tribes and tribal members cannot afford the flight of oil and gas operators from their lands. Oil and gas royalties from drilling on Indian lands are a significant source of revenue for tribes and tribal members. The proposed BLM HF regulations will severely and disproportionately impact tribal economies because of their greater reliance on oil and gas development for economic growth and sustainability.

At the same time, Indian tribes are interested in learning about the potential impacts of hydraulic fracturing on their lands, waters and the surrounding environment. This discussion needs to include tribes because the Department has a trust responsibility to protect tribal resources and tribal communities, and the tribal leaders also have a duty to care for the best interests of their lands and people.

NCAI strongly supports your Secretarial Order on Tribal Consultation and asks Interior engage in consultation on the BLM HF regulations. We greatly appreciate all of your efforts to support tribal governments and we look forward to talking with you about this issue and other pressing issues throughout Indian Country.

Sincerely,

A handwritten signature in black ink that reads "Jefferson Keel". The signature is written in a cursive, flowing style.

Jefferson Keel



## NATIONAL CONGRESS OF AMERICAN INDIANS

### The National Congress of American Indians Resolution #ECWS-12-005

#### TITLE: Seeking Meaningful Tribal Consultation on the Bureau of Land Management's Proposed Hydraulic Fracturing Regulations

##### EXECUTIVE COMMITTEE

**PRESIDENT**  
Jefferson Keel  
Chickasaw Nation

**FIRST VICE-PRESIDENT**  
Juana Majel Dixon  
Pauma Band of Mission Indians

**RECORDING SECRETARY**  
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Pokagon Band of Potawatomi

**NORTHEAST**  
Lance Gumbs  
Shinnecock Indian Nation

**NORTHWEST**  
Fawn Sharp  
Quinault Indian Nation

**PACIFIC**  
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Scotts Valley Band of Pomo Indians

**ROCKY MOUNTAIN**  
Scott Russell  
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Ned Norels, Jr  
Tohono O'odham Nation

**EXECUTIVE DIRECTOR**  
Jacqueline Johnson Pata  
Tlingit

**NCAI HEADQUARTERS**  
1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
www.ncai.org

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the NCAI seeks meaningful tribal consultation on the Bureau of Land Management's (BLM) proposed regulatory scheme regarding Hydraulic Fracturing (HF); and

**WHEREAS**, the BLM hosted only four informational meetings throughout the West and is describing these meetings as tribal consultations; and

**WHEREAS**, the BLM's proposed HF regulations were only available at one of these informational meetings; and

**WHEREAS**, the BLM proposes conducting tribal consultation through its field offices while Indian tribes should address policy makers in Washington, D.C. for true government-to-government consultation; and

**WHEREAS**, Indian lands are not "public lands" therefore, the tribes deserve a regulation that deals with Indian lands only; and

**WHEREAS**, tribes are also interested in consultation on the impacts of hydraulic fracturing on the environment, land and human health; and

**WHEREAS**, the BLM should consider that oil and gas operators seeking permits to drill on lands held in trust by the federal government already undergo an extensive environmental review process before they can begin drilling activities; and



**WHEREAS**, the BLM should consider that the permitting process has become lengthy, time consuming and costly, so much so that there is a backlog of hundreds, if not thousands, of applications for permits to drill that have not been processed by the BLM; and

**WHEREAS**, the proposed BLM regulations will require oil and gas operators to seek another round of permits for all well stimulation activities leading to further delay; and

**WHEREAS**, this added delay will cause oil and gas operators to leave Indian lands for state and private lands, a fact that is occurring under the Application for Permit to Drill scheme; and

**WHEREAS**, the BLM should balance regulatory concerns with the needs of Indian tribes to develop their energy resources to provide long-term economic resources for tribal communities; and

**WHEREAS**, oil and gas royalties from drilling on Indian lands are significant sources of revenue for the tribes and tribal members and the proposed BLM HF regulations will severely and disproportionately impact tribal economies because of their greater reliance on oil and gas development for economic growth and sustainability.

**WHEREAS**, the NCAI requests that BLM engage in true government-to-government consultation with the tribes regarding the HF regulations.

**NOW THEREFORE BE IT RESOLVED**, that NCAI seeks meaningful government-to-government consultation on the Bureau of Land Management's proposed Hydraulic Fracturing regulations so that the regulations will better meet the needs of the tribes.

**BE IT FURTHER RESOLVED**, that the Secretary of the Interior should declare that the proposed BLM Hydraulic Fracturing regulations do not apply to Indian lands because Indian lands are not "public lands" and are for the use and benefit of the tribes and tribal members.

**BE IT FURTHER RESOLVED**, that NCAI supports the Bureau of Land Management proposing a rule specifically for the Indian lands which should be developed with input from the tribes.

**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until is withdrawn or modified by subsequent resolution.

#### **CERTIFICATION**

The foregoing resolution was adopted by the Executive Committee at the 2012 Executive Council Winter Session of the National Congress of American Indians, held at the L'Enfant Hotel and Conference Center in Washington, DC, with a quorum present.

  
President

**ATTEST:**  
  
Recording Secretary



GARY R. HERBERT

*Governor*

GREGORY S. BELL

*Lieutenant Governor*

## State of Utah

### DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER

*Executive Director*

#### Division of Oil, Gas and Mining

JOHN R. BAZA

*Division Director*

February 21, 2012

### Notice to Oil and Gas Operators

Re: Hydraulic Fracturing/FracFocus.org

Although the process of hydraulic fracturing has been a commonly used method for obtaining production from oil and gas wells for many years in Utah and worldwide, this process has become an increasingly controversial issue with the public. Currently there are no conclusive studies that show examples of ground water contamination or public health issues resulting from hydraulic fracturing. However, there is still a great amount of public debate concerning the subject. The Division of Oil, Gas and Mining believes that in order to address some of the public anxiety concerning the process of hydraulic fracturing, it would be beneficial to the petroleum industry in Utah to voluntarily report the chemical content of hydraulic fracturing fluids to the website FracFocus (<http://fracfocus.org>).

FracFocus is the national hydraulic fracturing chemical registry website. This website is a joint project of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. The website is both educational and informative and an excellent resource for those seeking information on hydraulic fracturing.

After a hydraulic fracture stimulation is performed, the Division would ask the operator to post on the FracFocus Chemical Disclosure Registry the following stimulation detail:

Fracture date, state, county, API number, operator name, well name, location, production type, true vertical depth, total water volume, and hydraulic fracturing fluid composition as follows:

- (1) Trade name
- (2) Supplier
- (3) Purpose
- (4) Ingredients
- (5) Chemical abstract number
- (6) Maximum ingredient concentration in additive
- (7) Maximum ingredient concentration in hydraulic fracturing fluid

Page 2  
Notice to Oil and Gas Operators/Hydraulic Fracturing  
February 21, 2012

On this website, the public can search for information about the chemicals used in the hydraulic fracturing of oil and gas wells by specific well and location. If you are not familiar with the FracFocus website, the Division encourages you to visit the website to acquaint yourself with the information that is being reported. Other oil and gas producing states have made similar requests or established regulatory requirements concerning hydraulic fracturing and the use of the FracFocus website. The Division strongly believes that through the openness of this request that it will promote the public's trust of the petroleum industry. This will continue to enhance a strong community support for the development of oil and gas, educate the public, and alleviate some of the so-called "mysteries" surrounding hydraulic fracturing. If you have any questions about this request for the voluntary efforts of Utah's petroleum industry, please direct them to the Utah Division of Oil, Gas and Mining at [OilGasMining@utah.gov](mailto:OilGasMining@utah.gov).

Sincerely,



John R. Baza  
Director

*The first attachment contains the following content. The second attachment contains the Governor's letter to Secretary Salazar referenced below.*

**For Immediate Release**  
March 2, 2012

Contact: Ally Isom  
Deputy Chief of Staff  
801.538.1503 desk  
801.864.7268 cell  
[aisom@utah.gov](mailto:aisom@utah.gov)

### **Governor Urges Interior to Reconsider Proposed Rule**

SALT LAKE CITY— Referring to hydraulic fracturing of oil and gas wells as “a process used responsibly for more than 60 years,” Utah Governor Gary R. Herbert strongly urged the head of the U.S. Department of the Interior to reconsider and reject the need for new regulatory requirements, calling them a “redundant, burdensome and costly layer of federal approval” for routine operations.

The Governor’s letter to Interior Secretary Ken Salazar, dated March 1, 2012, urges the federal agency head to consider whether the proposed rule is antithetical to President Barack Obama’s remarks in the 2012 State of the Union address, “promising a commitment to ‘take every possible action to safely develop’ domestic natural gas.”

“Because hydraulic fracturing has been safely used for decades in the responsible development of oil and gas in this nation, and the proposed regulation does nothing but add unnecessary red tape, decrease investment and jobs in rural western states, and increase the amount of energy the United States imports from foreign energy sources,” Governor Herbert wrote, “we are hard-pressed to understand how the draft regulation supports the President’s statement.”

Copies of the Governor’s letter to Salazar were also sent to members of Utah’s congressional delegation; Bob Abbey, Bureau of Land Management Director; and state officials over energy, environment and public lands.

###



February 15, 2012

The Honorable Doc Hastings  
Chair  
Committee on Natural Resources  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Hastings:

At the Committee hearing on the Department of Interior budget, Secretary Ken Salazar responded to a question from Representative Scott Tipton, in part, with the following comment regarding the Department's intent to develop regulations related to hydraulic fracturing:

Your question really goes to the fact that if you have states now coming on board and saying that they are going to develop their own regulatory regime, why is it necessary for the United States to develop its regulatory regime on public lands? My answer is to that is I think we have a responsibility; I believe we have a responsibility under laws of this country to make sure that the 700 million acres of the American citizen owned public estate that we are taking care of those lands in a way that any land manager or any land owner would do. In addition to that ... I would also add that I think there are many in the industry who have spoken to me who have said they would rather have a standard that they can follow from state to state, so they aren't subjected to ... most of the companies that are involved in hydraulic fracturing and natural gas production operate across many state lines and what I always hear from industry is that they don't like to deal with a patchwork of regulations; it makes it difficult for them to address different sets of regulations. Our regulations will deal only with the public estate, but it also seems to me that it may create the template for what ought to be happening across the country as well.

We, the undersigned organizations, want to explicitly state that our member companies support the current state processes for regulation of hydraulic fracturing. More importantly, we have repeatedly requested that the Department of Interior utilize the state operated FracFocus reporting system instead of attempting to create a different, costly and unnecessary new reporting process.

While we plan to continue to press for a FracFocus approach, we want to dispel any suggestions that there is a need for a new federal framework to address the fracturing chemical disclosure issue or to develop a national well construction model. Such a framework or model would be counterproductive given the efforts by state governments to tailor regulation to local demands.

Sincerely,



Barry Russell  
President and Chief  
Executive Officer  
IPAA



Jack N. Gerard  
President and Chief  
Executive Officer  
API



Bruce Thompson  
President  
AXPC



Albert Modiano  
President  
USOGA



Regina Hopper  
President and Chief  
Executive Officer  
ANGA



**UTE INDIAN TRIBE**  
P. O. Box 190  
Fort Duchesne, Utah 84026  
Phone (435) 722-5141 • Fax (435) 722-5072

February 9, 2012

The Honorable Ken Salazar  
Secretary  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Dear Secretary Salazar:

The Ute Tribal Business Committee (UTBC) on the behalf of the Ute Indian Tribe (the "Tribe") of the Uintah and Ouray Indian Reservation (Reservation) writes to express its concern with the Bureau of Land Management's (BLM) decision to persist with rule and regulations for hydraulic fracturing (Fracing) activities on Indian (Federal) lands. We are not only concerned with the process by which the BLM plans to develop the rule but also the impact it will have on the oil and gas industry on the Reservation.

To date, the BLM has hosted a handful of informational meetings throughout the West and describing that as tribal consultation. An informational meeting describing to tribes what the BLM plans to do is not tribal consultation. Effective tribal consultation is sitting down at the table with tribes to discuss the proposed rule and its effects on the tribal economy and the social structure of the tribe. This has not happened.

According the draft regulations the BLM handed out in Salt Lake City, UT, the BLM plans to look at three key issues pertaining to the Fracing process: wellbore integrity, disclosure, and flowback water. We know of no incidents on Tribal lands that would precipitate federal regulation.

Oil and gas operators seeking permits to drill on "public lands" already undergo an extensive environmental review process before they can begin drilling activities. This process has become lengthy, time consuming and costly, so much so that there is a backlog of hundreds of permits to drill applications not having been acted upon by the BLM Field Office.

The Environmental Protection Agency, as well as other federal agencies, are currently conducting scientific studies on Fracing. BLM regulation is premature in advance of the EPA study, and BLM has offered no justification for proceeding with this new regulation without the benefit of these studies. Without clear demonstration of a problem with the Fracing process and without providing Tribes and states an opportunity

to respond to any identified deficiencies, we feel the BLM regulation is putting the horse before the cart.

According to BLM, Fracing is used in more than ninety percent of the oil and gas wells drilled on "public lands." Oil and gas royalties from drilling on public lands are significant revenue source for the federal government, the Tribe and Utah. Adding additional burdens for the development on Tribal lands could have an adverse effect of forcing operators to shift investment away from our Reservation, thus depriving the Tribe of needed revenue.

A significant effect in Utah would fall on the significant acres of trust lands managed by the Tribe on our Reservation. After many years of economic hardship, the Tribe and its members are finally seeing improved economic conditions on the Reservation due to the oil activity on the Reservation. New BLM rules on Hydraulic Fracturing would disproportionately impact the Tribe due to our greater reliance on oil and gas development for economic growth and sustainability.

For these reasons, the Ute Indian Tribe requests that BLM not move forward at this time with the development of regulations for Hydraulic Fracturing on public lands and more specifically Reservation lands.

Sincerely,

A handwritten signature in black ink, appearing to read "Irene C. Cuch", written over a horizontal line.

Irene C. Cuch, Chairwoman  
Ute Tribal Business Committee



BOC HASTINGS, WA  
CHAIRMAN  
DON YOUNG, AK  
JOHN J. DUNCAN, JR., TN  
LOUIE GONZALES, TX  
ROD BISHOP, UT  
DOUG LAMARCA, CO  
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MIKE COFFMAN, CO  
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STEVE SOUTHCOLE, IL, FL  
BILL FLORES, TX  
ANDY HARRIS, MO  
JEFFREY M. LANDRY, LA  
CHARLES J. "CHUCK" FLEISCHMANN, TN  
JOHN RUTAN, NJ  
BILL JOHNSON, OH

TODD YOUNG  
CHIEF OF STAFF

**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**  
**February 8, 2012**

EDWARD J. MARKEY, MA  
RANKING MEMBER  
PAUL E. SCHIFF, MI  
PETER A. DEFAZIO, OR  
ENI F.H. FAI FOMAVAGA, AS  
FRANK PALLONE, JR., NJ  
GRACE F. NAPOLITANO, CA  
RUSH D. HOFT, NJ  
HALEY M. GRIFFITH, AZ  
MADELYNE Z. BORDA, ID, GU  
JIM COSTA, CA  
DAN UDEN, OK  
CRISTIANO KILLI CAMACHO SARIAN, CHMI  
MARTIN HEINRICH, NM  
BEN RAY, LUJAN, NM  
JOHN P. SARBANES, MD  
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PEDRO R. PIERLUISI, PR  
JOHN GARAMENDI, CA  
COLLEEN W. HANABUSA, HI

JEFFREY DUNNAN  
DEMOCRATIC STAFF DIRECTOR

The Honorable Ken Salazar  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Dear Secretary Salazar:

It is our understanding that the Bureau of Land Management (BLM) is currently drafting regulations governing the production of oil and natural gas on Federal lands, including lands managed for the benefit of Indian tribes and their members. We further understand that as part of this regulatory process, the BLM is currently undergoing formal tribal consultations on the proposed rule which would further regulate and condition the use of hydraulic fracturing on Federal and Indian lands. As Chairman and Ranking Member of the Subcommittee on Indian and Alaska Native Affairs, we are committed to ensuring that tribal stakeholders with existing or potential interest in mineral development have a meaningful opportunity to be heard and, at the same time, receive from the Department of the Interior a clearly articulated demonstration of how the proposed regulations would impact their communities.

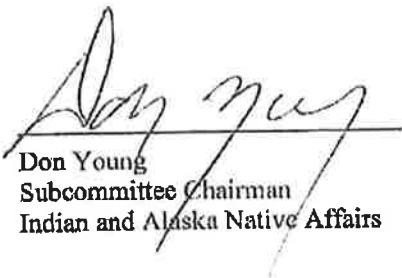
We recently received a copy of the draft regulation and our cursory review indicates that its contents could, on numerous levels, severely restrict the ability to effectively use hydraulic fracturing, a critical technology deployed at an overwhelming majority of all oil and natural gas exploration operations around the country. Furthermore, the additional data submission requirements and approval certification demanded by the rule will undoubtedly add significant delay to well operations, duplicate existing state regulations that effectively manage environmental risks, and in some cases could make it even more uneconomic for a tribe to develop a mineral resource on its own tribal lands.

We are committed to promoting tribal political sovereignty and more robust economic growth for all federally recognized tribes. No group of Americans has continually experienced more unwanted interference in their lives through layer after layer of laws, regulations, and policies than Native Americans. This is why we must give careful consideration to the unique


government-to-government relationship, and be diligent in enacting laws respecting each tribe's inherent sovereign powers over their own members and territory. We believe placing additional undue barriers and obstacles on top of the comparative disadvantages that already serve as major disincentives for tribal energy development is unwise and counterproductive.

For these and other reasons, and to ensure that each tribal stakeholder has an adequate opportunity to review and understand all aspects of the draft regulation, we respectfully request a comprehensive list of all tribes that you have approached during the current tribal consultation process as it relates to this rule, a copy of the documents you provided to them, and your proposed plan, including time frames, for moving forward in accommodating tribal concerns. We look forward to working with you to ensure that Indian tribes are being consulted in an appropriate and meaningful way.

Sincerely,



Don Young  
Subcommittee Chairman  
Indian and Alaska Native Affairs



Dan Boren  
Subcommittee Ranking Member  
Indian and Alaska Native Affairs



State of  
**North Dakota**

*Office of the Governor*

**Jack Dalrymple**  
*Governor*

February 8, 2012

The Honorable Ken Salazar  
Secretary  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Dear Secretary Salazar;

I am writing to express my concern with the Bureau of Land Management's (BLM) decision to persist with rules and regulations for hydraulic fracturing (HF) activities on federal lands.

As you are aware, North Dakota currently regulates HF on state, federal, and private lands. According to draft regulations we have seen, your agency plans to look at three key issues pertaining to the HF process: wellbore integrity, disclosure, and flowback water. I know of no incidents on public lands in North Dakota that would precipitate federal regulation redundant with our state procedures managed by the North Dakota Industrial Commission.

Oil and natural gas operators seeking permits to drill on public lands already undergo an extensive environmental regulatory process before they can begin drilling activities – a process that has become lengthy, time consuming, and costly. In addition, North Dakota is currently permitting wells and managing the environmental risks associated with oil and natural gas production. I believe additional regulations regarding these issues are unnecessary and redundant in an area that is already effectively regulated by the states.

Similarly, disclosure of HF chemicals used on public lands is already underway. North Dakota has recently updated its HF rules, including new standards for disclosure. We have been successfully regulating wellbore integrity and other aspects of the drilling and completions process for decades.

The Environmental Protection Agency, as well as other federal agencies, are currently conducting scientific studies of HF. BLM regulation is premature in advance of the EPA study, and BLM has offered no justification for proceeding with new regulations without the benefit of these studies. Without a clear demonstration of inadequacy in the states' regulatory systems, along with an opportunity for the states to

Honorable Ken Salazar  
February 8, 2012  
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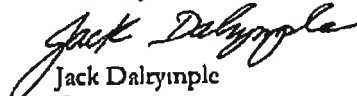
respond to any identified deficiencies, the states should not be expected to accept federal usurpation of state regulation.

According to the BLM, HF is used in more than ninety percent of oil and gas wells drilled on public lands. Oil and natural gas royalties from drilling on public lands are a significant revenue source for the federal government, the Tribes and North Dakota, and additional burdens for development on public lands could have the adverse effect of forcing operators to shift investment away from public lands, thus depriving the government of needed revenue.

A significant effect in North Dakota would fall on the 484,000 acres of trust lands managed for the Three Affiliated Tribes and individual allottees on the Fort Berthold Reservation. After many years of economic hardships, the Tribe and its members are finally seeing employment opportunities and economic development due to the oil activity on the reservation. New BLM rules on hydraulic fracturing would disproportionately impact the Tribe due to its greater reliance on oil development for economic growth.

For these reasons, I respectfully request that BLM not move forward at this time with the development of rules for HF on public lands.

Sincerely,

  
Jack Dalrymple  
Governor

37:74:58



# **SOUTHERN UTE INDIAN TRIBE**

January 18, 2012

Jim Stockbridge, Trust Liaison Officer  
Bureau of Land Management  
Denver Federal Center, Building 50  
P.O. Box 25047  
Denver, Colorado 80225-0047

**Re: Government-to-Government Consultation Concerning BLM Development  
of Hydraulic Fracturing Regulations for Federal and Tribal Trust Lands**

Dear Mr. Stockbridge:

I am writing in response to the letter from Michael D. Nedd, BLM's Assistant Director for Minerals and Realty Management, dated December 9, 2011, inviting the Tribe to engage in government-to-government consultation regarding BLM's intent to develop regulations governing hydraulic fracturing of oil and gas wells on federal and trust lands. At this initial consultation phase, we have broken our comments into three categories: (1) suggestions for process; (2) a summary of the importance of hydraulic fracturing to the Tribe and the development of the Tribe's minerals; and (3) a summary of the environmental concerns and protection measures associated with hydraulic fracturing. It is the Tribe's position that any new regulations regarding hydraulic fracturing should be cost effective, consistent with industry best management practices, and require full public disclosure of the chemical constituents of hydraulic fracturing fluids used by oil and gas operators.

## **I. Suggestions for Process.**

We appreciate that BLM appears to be requesting consultation with the Tribe at an early stage in the process of developing regulations. As an initial matter, we would suggest that the consultation process include not only an opportunity for comment on proposed BLM regulations but consultation on the formulation of proposed regulations. With that suggestion in mind, we are furnishing these initial comments which include several concepts that we believe should guide the development of any new hydraulic fracturing regulations. To ensure that the Tribe has an opportunity for meaningful input on the development of the regulations, we request that the BLM circulate discussion drafts of possible regulations for review and comment before any proposed

regulations are issued.

## **II. Tribe's Economic Interest in Hydraulic Fracturing.**

The Tribe has a significant interest in BLM's regulation of hydraulic fracturing operations based on the Tribe's interest in both oil and gas development and environmental protection. This historic well stimulation practice has been conducted on the vast majority of wells on the Reservation and is necessary for the continued development of conventional oil and gas resources as well as coalbed methane.

Advancements in oil and gas related technologies have created the potential for development of shale formations on the Reservation. In order to recover the hydrocarbon resource in these low permeability formations, hydraulic fracturing is a necessity. It is the hydraulic fracturing process that creates the permeability in shale formations and makes the extraction of oil and gas economically feasible. Preliminary studies indicate that there are significant recoverable reserves associated with several shale formations on the Reservation. The development of these shale plays could have substantial socio-economic benefit to the Tribe and these reservoirs could not be developed in the absence of hydraulic fracturing.

## **III. Environmental Concerns and Protection Measures associated with Hydraulic Fracturing.**

The major environmental concerns regarding hydraulic fracturing of oil and gas wells are related to water quality/quantity issues, air quality, worker safety, and the disclosure of chemicals used in hydraulic fracturing. The following section summarizes these concerns and the existing environmental protection and monitoring methods available to oil and gas companies conducting the stimulation process.

### ***Water Quality/Quantity***

With respect to water quality, the main concern is that hydraulic fracturing of oil and gas reservoirs could create preferential pathways connecting shallow aquifers with the hydrocarbon bearing zone and subsequently contaminate useable water supplies. The potential for hydraulic fracturing to impact shallow aquifers is dependent on the site specific geology and appropriate completion techniques, but is generally low. There is often a significant interval of low permeability strata between the shallow aquifers and the hydrocarbon bearing zones that retards the movement of fluids between these formations. An understanding of the local geology is crucial in evaluating the potential for hydraulic fracturing to impact shallow aquifers.

The potential for impacts to shallow aquifers can be minimized through proper casing and cementing procedures. Casing serves to isolate drinking water aquifers from fluids inside the wellbore and the cementation of the annulus between the formations and the

well casing prohibits the vertical and horizontal migration of fluids in the vicinity of the wellbore.

Another issue of concern is the demand that hydraulic fracturing could place on groundwater and surface water supplies. It is thought that the quantity of water required to conduct hydraulic fracturing operations on shale wells could deplete water supplies that will be needed for other uses. Operators should recycle water associated with hydraulic fracturing whenever possible. This best management practice will help minimize the impact on local water supplies.

### *Air Quality*

Air emissions associated with hydraulic fracturing and well completions have also been a topic of environmental concern. Operators should use appropriate best management practices and remain in compliance with the relevant rules and emission standards associated with the hydraulic fracturing operations.

### *Worker Safety*

Another major concern associated with hydraulic fracturing is that the chemicals used in the hydraulic fracturing process could be harmful to human health. Proper health and safety practices should be followed during the well stimulation process to minimize the potential for impacts to human health and the environment. These practices include the use of personal protective equipment, the availability of MSDS sheets onsite, and the proper containment of fluids and chemicals.

### *Chemical Disclosure*

As a matter of transparency and good environmental and health and safety practices, the Tribe believes that operators on federal and tribal trust land should participate in disclosure programs that track the chemicals used in the hydraulic fracturing process.

### *Environmental Protection Measures*

A variety of best management practices exist within industry to monitor the hydraulic fracturing process, wellbore integrity, and potential environmental impacts. These practices include pressure monitoring before and during the well stimulation, bradenhead testing, domestic water well sampling, and the collection of cement bond log data. Beyond the efforts of monitoring, proactive protection of groundwater and the surrounding environment can be accomplished through best management practices including successful completion techniques (casing and cementing), proper waste management, recycling of water, and spill prevention methods implemented for fluid and chemical storage vessels on the ground surface.

#### IV. Conclusion.

In conclusion, we appreciate the opportunity to engage in government-to-government consultation and request that the BLM circulate discussion drafts of possible regulations for review and comment before any proposed regulations are issued.

Hydraulic fracturing is vital to the production of oil and gas resources on the Reservation. In the absence of hydraulic fracturing, the commercial viability of current and future oil and gas development could be significantly compromised. Care must be taken, therefore, to ensure that any new regulations governing hydraulic fracturing are not overly burdensome.

Best management practices currently in use serve to ensure environmental, health, and safety protection for the general public and the Tribal membership. A variety of monitoring and environmental protection techniques are currently available to and being implemented by oil and gas companies. New regulations associated with hydraulic fracturing, therefore, should be cost effective and consistent with industry best management practices.

Thank you once again for the opportunity to submit these initial comments. We look forward to actively participating in the regulation development process and we expect that BLM will give our comments serious consideration.

Sincerely,



Jimmy R. Newton, Jr., Chairman  
Southern Ute Indian Tribal Council

cc: Charley Flagg, Justice & Regulatory Director  
Lena Atencio, Natural Resources Department Director  
Bruce Valdez, Growth Fund Executive Director  
Tribal Council Members