



# MANDAN, HIDATSA & ARIKARA NATION

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

Mark N. Fox  
Office of the Chairman

September 10, 2015

The Honorable Rob Bishop  
Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Raul Grijalva  
Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, D.C. 20515

## **Re: Amend H.R. 538 to end Dual State Taxation of Indian Energy Resources**

Dear Chairman Bishop and Ranking Member Grijalva:

The Mandan Hidatsa and Arikara Nation (MHA Nation) generally supports H.R. 538, but asks that the Committee amend the bill to include more extensive and needed reforms to promote Indian energy development. In particular, the Committee should end dual state taxation of Indian energy resources so that tribes can maximize the economic benefits of their energy resources. It is time for tax policy to catch up with Congress' view of tribal sovereignty and self-determination.

The Congressional intent behind H.R. 538 and all other Indian energy legislation has been to maximize the economic benefits to tribes from the development of energy resources. Yet, allowing dual state taxation of Indian energy development significantly reduces the economic benefits to tribes because tribes are forced to accept lower royalty rates or less tax revenue in order to keep development on the reservation. In our case, the State takes more than half of the tax revenues and we are forced to use royalty earnings to mitigate the negative impacts from energy development.

The Governmental Accountability Office (GAO) studied the issue and reached the same conclusion. Just this summer, GAO found that "dual taxation of Indian energy resources by state governments" was one of the reasons why "Indian energy resources are underdeveloped relative to surrounding non-Indian resources." GOV'T ACCOUNTABILITY OFFICE, INDIAN ENERGY DEVELOPMENT – POOR MANAGEMENT BY BIA HAS HINDERED ENERGY DEVELOPMENT ON INDIAN LANDS (June 2015).

The case of the MHA Nation demonstrates the impact of dual state taxation. Job and development killing dual state taxation forced us into an unfair tax agreement with the State whose coffers are so full they created investment accounts whose funds cannot be spent until 2017. In addition:

- From 2008 to the present, the State has taken more than \$450 million in tax revenues from energy production on the Reservation.
- During this time period, the State took the majority of the tax revenues from energy production on the Reservation – over 51% of all of the tax revenues.
- From 2016 to 2020, the State will get about \$1 billion more in taxes from tribal resources.
- The State does not report how these funds benefit the Reservation.
- We do know that in 2011 the State collected about \$82 million in taxes from energy development on the Reservation, but spent less than \$2 million on state roads on the Reservation and zero on tribal and BIA roads.
- In addition, we do not collect a dime in taxes from pipelines that cross the Reservation, even though we bear the expense of cleaning up spills and regulating activity.

To make matters worse, in the Spring of 2015, the State legislature unilaterally voted to reduce tax rates which also lowers the revenues the MHA Nation will receive. We estimate that over the next 20 years we will lose \$497 million under the new lower tax. We are not running budget surpluses like the State. The MHA Nation needs these tax revenue to provide the infrastructure needed to support the energy industry.

Almost as important as the double taxation problem is a continued lack of Federal staff, expertise and coordination in the processing of Indian energy permits. H.R. 538 should include provisions to create a new Interior Indian Energy Regulatory Office that would co-locate all of the Federal agencies involved in energy permitting in a single location. H.R. 538 should also direct this Office to be guided by basic Indian trust principles that have been lost in the current unorganized Federal system for overseeing energy development on Indian lands. In particular, Indian lands are not public lands. This Office would treat Indian lands according to Federal trust management standards, and finally provide resources within Interior and BIA for the efficient processing of Indian energy permits and approvals.

There are many needed reforms that could be added to H.R. 538 to improve the bill and make real changes for Indian energy development. However, as long as state governments are allowed to take the tax revenues tribal governments need to manage and regulate Indian energy development, any progress will be limited and tribal sovereignty and self-determination will continue to be undermined. We ask that the Committee take a stand in support of tribal governments and make this important change.

Please contact our Washington, D.C. counsel, Rollie Wilson, at (202) 340-8232 if you have any questions or need any other information.

Sincerely,



Mark N. Fox  
Chairman