



MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation
Tribal Business Council

Mark N. Fox
Office of the Chairman

July 16, 2018

Craig Boomgaard
Environmental Protection Agency
Region 8
Mail Code: 8P-W-UIC
1595 Wynkoop Street
Denver, Colorado 80202-1129

Re: Draft Class II UIC Permit No. ND22349-11250 for Red Murphy SWD No. 1

Dear Mr. Boomgaard:

Please find enclosed the Mandan, Hidatsa and Arikara Nation's ("MHA Nation") comments on the Draft Class II Underground Injection Control ("UIC") Permit No. ND22349-11250 for Red Murphy SWD No. 1 ("Draft Permit") to be operated by Goodnight Midstream Bakken, LLC within the Fort Berthold Indian Reservation. The Environmental Protection Agency ("EPA") issued a public notice for the Draft Permit on June 1, 2018.

EPA should deny the proposed permit until approval for waste disposal is obtained from the MHA Nation in accordance with MHA Nation laws. The use of underground disposal wells within the boundaries of the Reservation is prohibited without prior authorization from the MHA Nation. The MHA Nation enacted its waste disposal laws to protect tribal trust lands and ensure that the health and safety of our members and residents of the Reservation are not threatened by the disposal of harmful oil and gas byproducts on the Reservation.

Any permit issued by EPA must be directly coordinated with the MHA Nation. As highlighted in EPA's Policy on Consultation and Coordination with Indian Tribes ("Tribal Policy") issued on May 4, 2011, "EPA recognizes and works directly with federally recognized tribes as sovereign entities with primary authority and responsibility for each tribe's land and membership, ..." Denying or withholding the Draft Permit until approval is obtained from the MHA Nation is required by EPA's Tribal Policy, EPA's treaty and trust responsibilities, and the MHA Nation's sovereign authority to protect the health and welfare of its members and its homelands. Thank you for your consideration of the enclosed comments.

Sincerely,

/Mark N. Fox/

Mark N. Fox
Chairman



MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation
Tribal Business Council

Mark N. Fox
Office of the Chairman

Mandan Hidatsa and Arikara Nation Comments on Draft Class II UIC Permit No. ND22349-11250 for the Red Murphy SWD No. 1

July 16, 2018

I. Introduction

The Environmental Protection Agency (“EPA”) should deny the Draft Class II Underground Injection Control (“UIC”) Permit No. ND223490-11250 for Red Murphy SWD No. 1 (“Draft Permit”) sought by Goodnight Midstream Bakken, LLC (“Goodnight”). Currently, Goodnight’s application does not comply with applicable laws of the Mandan, Hidatsa and Arikara Nation (“MHA Nation”) governing waste disposal on the Fort Berthold Indian Reservation (“Reservation”). In addition, EPA’s assessment of the Draft Permit does not include the likelihood that waste disposed in the well will impact tribal trust lands and waters. At a minimum, EPA should withhold issuing any permit until Goodnight complies with MHA Nation law.

Goodnight is seeking a permit to operate a waste disposal well within the exterior boundaries of the Reservation. The Draft Permit was submitted for approval pursuant to the EPA’s Underground Injection Control program, as set forth under the Safe Drinking Water Act of 1974, 42 U.S.C. § 300f *et seq.* (“SDWA”), and Title 40, Part 144 of the Code of Federal Regulations. In addition to EPA’s requirements, MHA Nation law requires that Goodnight obtain approval for the disposal of waste and other hazardous substances associated with the exploration or production of oil and gas on the Reservation. Goodnight has not contacted the MHA Nation to obtain approval for waste disposal within the Reservation.

MHA Nation approval for waste disposal within the Reservation is required to protect tribal trust lands and the health and welfare of MHA Nation’s members, residents of the Reservation. The MHA Nation’s authority over Goodnight’s proposed activities within the Reservation stems from the MHA Nation’s federally approved Constitution and laws enacted pursuant to that Constitution. In addition, the United States Supreme Court recognizes and affirmed the inherent authority of Indian tribes to regulate such activities to protect the health and welfare of a tribe.

Finally, EPA’s Policy on Consultation and Coordination with Indian Tribes (“Tribal Policy”) requires that that EPA work directly with the MHA Nation in the issuance of any permit as the sovereign entity with the primary authority over the Reservation. EPA’s Tribal Policy highlights the Guiding Principle that “EPA recognizes and works directly with federally recognized tribes as sovereign entities with primary authority and responsibility for each tribe’s

land and membership, ..." EPA Tribal Policy at 3 (May 4, 2011). This Guiding Principle implements and is required by EPA's treaty and trust responsibility to the MHA Nation. In light of MHA Nation's laws and EPA's requirement to coordinate with the MHA Nation any permit should be denied or withheld until Goodnight obtains approval from the MHA Nation.

II. MHA Nation Approval is Required Prior to Issuance of Any Permit

MHA Nation laws governing waste disposal within the Reservation require that Goodnight obtain approval from the MHA Nation. Goodnight has not contacted the MHA Nation for this approval. Approval is needed to comply with MHA Nation laws, to prevent the contamination of trust lands, and ensure the protection of the health and welfare of MHA Nation members, residents of the Reservation, and the Reservation itself.

As EPA is aware, the MHA Nation's Reservation is located in the heart of the Bakken Formation, which is the largest continuous oil accumulation in the lower 48 states. Oil and gas development within the Reservation significantly expanded over the past decade. While oil and gas development presents opportunities for economic growth, it also presents hazards to the health and safety of the members of the MHA Nation if not properly regulated. In order to protect the MHA Nation's members and residents of the Reservation from the harmful effects of oil and gas development, the MHA Nation enacted Resolution No. 11-75-VJB governing the disposal of waste associated with the exploration and development of oil and gas on the Reservation. Please see Resolution No. 11-75-VJB attached.

Resolution No. 11-75-VJB provides that "[a]ll waste or other hazardous substances associated with the exploration or production of oil and gas on the Fort Berthold Reservation must be disposed of in an authorized facility in accord with all tribal, local state, and federal laws and regulations." The Resolution defines "authorized facility" as a "waste management, storage, transfer or disposal site or facility which meets the requirements of applicable federal, tribal or state regulations and is approved by the Tribal Council as the place for such management or disposal of waste covered by this regulation." Accordingly, Resolution No. 11-75-VJB requires that the MHA Nation's Tribal Council approve any waste disposal facility.

The Draft Permit for Red Murphy SWD No. 1 fits squarely within the scope of facilities and activities regulated by the MHA Nation under Resolution No. 11-75-VJB. When enacting this Resolution, the MHA Nation was keenly aware that the waste injected into disposal wells, even on fee lands within the Reservation, contains harmful compounds that could contaminate trust lands and groundwater resources. Consequently, the MHA Nation required that such disposal wells be strictly regulated by the MHA Nation and obtain approval prior to construction or use.

The MHA Nation's regulatory authority over waste disposal wells stems from its federally approved *Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation* ("MHA Nation Constitution"). Please see MHA Nation Constitution attached. The MHA Nation drafted its constitution under to the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461 *et seq.* (IRA). Then, pursuant to authority delegated by Congress, the Secretary of the

Interior reviewed and approved the MHA Nation Constitution in 1936. *See* MHA Nation Constitution at 12.

Similar to the authority Congress delegated to EPA under the Clean Water Act or the Safe Drinking Water Act for the approval of tribal standards governing water quality within a Reservation, under the IRA, Congress delegated to the Department of the Interior the authority to approve tribal constitutions that would organize the tribal governing body and set out the authority of Indian tribes to govern their members, lands and resources. The MHA Nation utilized the authority provided in its Constitution to pass its laws regulation waste disposal facilities within its Reservation.

The MHA Nation Constitution provides in Article I that the jurisdiction of the MHA Nation “shall extend to all persons and all lands, including lands held in fee, within the exterior boundaries of the Fort Berthold Reservation...” MHA Nation Constitution at 1 (emphasis added). In addition, Article VI § 3 empowers the MHA Nation’s governing body, the Tribal Business Council, with “all necessary sovereign authority - legislative and judicial - for the purpose of exercising the jurisdiction granted ... in Article I of this Constitution.” *Id.* at 6. Article VI § 5 (j) provides the MHA Nation’s governing body with authority over “natural resources” which includes land, water and groundwater resources. *Id.* at 8.

The MHA Nation’s regulation of waste disposal wells pursuant to its authority under its Congressionally authorized and federally approved Constitution is similar to tribal authority exercised under the Clean Water Act. For example, in *Montana v. EPA*, 137 F.3d 1135, 1141 (9th Cir. 1998), the Court upheld EPA’s approval of tribal regulation of reservation water resources pursuant to the Clean Water Act even when that regulation affects non-Indians—such as Goodnight in this case. The Court’s affirmation of tribal authority was based in part on EPA’s “generalized finding that due to the mobile nature of pollutants in surface water it would in practice be very difficult to separate the effects of water quality impairment on non-Indian fee land from impairment on the tribal portions of the reservation....” *Id.*

Similarly, the MHA Nation took action to protect its members and Reservation lands, waters and groundwater from waste disposal associated with oil and gas activities. Whether under the Clean Water Act or the Indian Reorganization Act, in both cases federal officials approved the tribal enactments, the tribes took action to protect their land and water resources, and the approved tribal authority extends to both Indians and non-Indians within the boundaries of the respective reservations. As the Ninth Circuit noted it would be practically impossible to separate damage to water resources on “non-Indian fee land from impairment on the tribal portions of the Reservation.” *Id.* The same is true for waste injected into fee lands as it migrates or trespasses onto trust lands and could contaminate groundwater and drinking water through cracks in the well.

The MHA Nation also has inherent authority over non-Indian activities on fee lands within the Reservation. While it is not necessary for the EPA to reach this issue, given the Federal government’s affirmation of the MHA Nation’s authority in the MHA Nation Constitution, the MHA Nation’s inherent authority provides for the regulation of all waste

disposal facilities within the Reservation including facilities operated by non-Indians on fee lands.

The U.S. Supreme Court recognized and upheld the inherent authority of Indian tribes to regulate the activities of non-Indians on fee lands within reservations. In *Montana v. United States*, the Supreme Court held that tribes retain inherent civil authority “over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Montana v. United States*, 450 U.S. 544, 566 (1981). Underground disposal of oil and gas waste products, including hazardous waste, is exactly the kind of non-Indian activity that threatens the “health of welfare” of an Indian tribe.

Oil and gas operations, including waste disposal, is an inherently dangerous activity that results in numerous spills and leaks of hazardous fluids. In the last 12 months, oil and gas companies operating in North Dakota reported 300 “general” spills outside of the oil field. Many of these spills occurred during activities related to waste disposal. See <https://deq.nd.gov/FOIA/Spills/default.aspx/> (accessed on June 30, 2018). All of these spills threatened the “health and welfare” of the MHA Nation, its members, residents of the Reservation and Reservation lands and waters. When a spill occurs within the Reservation, in most cases it is the MHA Nation, not EPA and not the State of North Dakota that responds.

III. EPA Regulations Implementing the Safe Drinking Water Act Recognize Tribal Authority Over Waste Disposal Wells

Consistent EPA’s treaty and trust responsibility to Indian tribes and its Tribal Policy, the regulations implementing the SDWA affirm that EPA should consider tribal authorities and interests in overseeing and permitting Class II wells in Indian Country like the Red Murphy SDW No. 1 disposal well under consideration here. EPA regulations provide that the Administrator “may promulgate an alternate UIC Program for Class II wells on any Indian reservation or Indian lands.” 40 C.F.R. § 144.2. In its oversight and permitting, EPA is further directed to consider “[t]he interest and preferences of the tribal government having responsibility for the given reservation or Indian lands.” 40 C.F.R. § 144.2 (a).

In this case, EPA should promulgate “an alternative UIC Program” to manage the large number of disposal wells proposed for the Reservation and prevent impacts to tribal trust lands and waters. This alternative UIC program should be developed in consultation to include the “interest and preferences” of the MHA Nation. As set out in Resolution No. 11-75-VJB, EPA’s alternative UIC Program for the Reservation should include coordination with and the approval of the MHA Nation.

EPA’s regulation of Class II wells and EPA incorporation of tribal “interests and preferences” extends to all lands and persons within the Reservation. EPA regulations define “Indian lands” to mean “‘Indian Country’ as defined in 18 U.S.C. 1151. That section defines Indian country as: (a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;...” 40 C.F.R. § 144.3.

Red Murphy SDW No. 1 is within the Reservation and within Indian Country as defined by EPA. As a result the Red Murphy SDW No. 1 is subject to EPA's requirements in 40 C.F.R. § 144.2 for the consideration of the MHA Nation's "interests and preferences." The MHA Nation expressed its interests and preferences in Resolution No. 11-75-VJB and EPA should abide by this clear expression of the MHA Nation's interests and preferences.

IV. EPA Must Assess Impacts to Trust Lands and Waters from Waste Disposal Wells

Red Murphy SWD No. 1 must also be assessed for its likely impact to tribal trust lands and waters. As a result of disastrous federal allotment policies in the late 1800's and early 1900's the MHA Nation's Reservation is a checkerboard of fee, allottee and trust lands. Oil and gas activities on any of these lands will have an impact on neighboring lands. Red Murphy SWD No. 1 and any other disposal well within or near the Reservation must be assessed for its impacts on trust lands and waters. This is one of the obvious reasons why the MHA Nation's authority and EPA's SDWA authority cover the entire Reservation or Indian Country and not specific types of parcels.

EPA should obtain and include in its assessment of Red Murphy SWD No. 1 and other UIC wells, an August 15, 2017 analysis by Bureau of Land Management's (BLM) Branch of Fluid Minerals in the Montana/Dakotas State Office entitled "Reconnaissance Study of the Potential Area and Radius of Influence from Saltwater Disposal Wells Within and Near the Fort Berthold Indian Reservation, North Dakota." This analysis shows that a number of disposal wells on the Reservation, whether on fee or allottee lands, are already impacting neighboring tribal trust lands. While this report is marked "confidential," EPA should obtain this report from its sister Federal agency as a starting point for its assessment of disposal wells within the Reservation

Even using BLM's overly conservative assumptions regarding substrate pore space and despite BLM's lack of site specific geological analysis, BLM's results show that many disposal wells within the Reservation are being injected with waste at a rate and volume that is already resulting in migration of waste on to trust lands. In addition, a recent review of the wells assessed by BLM in this analysis shows that current disposal volumes, less than a year later, can be as high as eight times (8x) the amounts assessed by BLM. EPA must consider these impacts in assessing Red Murphy SWD No. 1 as well as the potential for waste, injected at high volumes and pressures to fracture or breakthrough the well and impact the MHA Nation's groundwater and drinking water resources.

Even a brief geologic analysis shows that the Draft Permit proposes drilling Red Murphy SWD No. 1 in one of the poorest sandstone intervals on the Reservation. This means that the disposed waste will migrate far from the injection site and contaminate MHA Nation trust lands only about 700 feet away. For example, assuming an injection rate of 15,000 barrels per day, the waste disposed in Red Murphy SWD No. 1 will infiltrate trust lands in 3 years. Consistent with its trust responsibility, EPA must, in consultation with the MHA Nation, study the geological characteristics of waste disposal sites and determine an acceptable injection rate prior to issuing waste disposal permits.

V. Draft Permit Violates EPA's Trust Responsibility to the MHA Nation and EPA's Tribal Policy

In administering the UIC program under the Safe Drinking Water Act, EPA retains its fiduciary obligation to “safeguard Indian interests in land.” *HRI Inc. v. Environmental Protection Agency*, 198 F.3d 1224, 1245 (10th Cir. 2000) (citing *Drummond v. United States*, 324 U.S. 316, 318 (1945)). Therefore, when overseeing and permitting underground injection wells located in Indian country, or otherwise having a potential impact on Indian lands, EPA's duties extend beyond ensuring that drinking water sources remain untainted. EPA, as trustee for the MHA Nation and its members, must also protect against other adverse impacts on Indian lands. The Draft Permit, as currently written, does not adequately monitor and protect against potential harms to MHA Nation lands and waters, including the infiltration of contaminated waters into tribally owned pore space.

Each underground injection well has an associated “injection zone” defined as “a geological ‘formation,’ group of formations, or part of a formation receiving fluids through a well.” 40 C.F.R. § 146.3. The injection zone for the Red Murphy SWD No. 1 is a sandstone formation known as the Inya Kara formation. Because of the sandstone lithology of the Inya Kara formation, contaminated fluids can percolate through the formation and enter into pore space owned by the MHA Nation. Any such infiltration of contaminated fluids would constitute a trespass on the part of the well operator and a breach of trust on the part of the EPA. The Draft Permit does not contain measures to prevent this harmful phenomenon from occurring.

Review of the Draft Permit reflects that the injection zone underlies the MHA Nation's trust lands. The Draft Permit identifies an Area of Review (“AOR”), consisting of lands within a fixed three quarter mile radius of the proposed Red Murphy SWD No. 1. Lands comprising this AOR include MHA Nation trust lands. Pursuant to federal regulations, the purpose of the AOR is to establish an estimated perimeter within which injected fluids could potentially migrate into drinking water sources. *See* 40 C.F.R. § 146.6. Thus, the Draft Permit acknowledges the potential for injected fluids to infiltrate portions of the injection zone underlying MHA Nation trust lands, yet fails altogether to establish any mechanism to prevent this infiltration. In fact, the Draft Permit provides for an unlimited volume of fluid to be injected into the Red Murphy SWD No. 1, meaning that an unlimited quantity of contaminated water is likely to permeate MHA Nation trust lands.

The Draft Permit must contain adequate mechanisms to monitor the volume of contaminated fluid flowing into portions of the injection zone underlying MHA Nation's trust lands. The Draft Permit must also establish a maximum injection volume, as is necessary to prevent infiltration into tribally owned pore space. These additional terms must be developed with reliance on empirical studies performed in consultation with the MHA Nation. The Draft Permit should also establish penalties for injection of fluids in excess of the maximum volume, including, without limitation, forced shutdown of the injection well and the payment of fines for any violation to provide for any needed remediation.

In addition, EPA's Tribal Policy highlights the Guiding Principle that "EPA recognizes and works directly with federally recognized tribes as sovereign entities with primary authority and responsibility for each tribe's land and membership, ..." EPA Tribal Policy at 3 (May 4, 2011). This Guiding Principle implements and is required by EPA's treaty and trust responsibility to the MHA Nation. In light of MHA Nation's laws and EPA's requirement to coordinate with the MHA Nation any permit should be denied or withheld until Goodnight obtains approval from the MHA Nation.

VI. Environmental Appeals Board Decisions Do Not Limit Tribal Authority and EPA's Trust Responsibility in Issuing UIC Permits

The MHA Nation is not aware of any Environmental Appeals Board (EAB) decisions that would limit EPA's ability to consider and abide by MHA Nation Resolution No. 11-75-VJB when processing a UIC permit application. In consultation with the MHA Nation, EPA referenced five decisions potentially affecting EPA's ability to incorporate tribal law in its permitting decisions. Those decisions were:

- In Re: Envirotech, 6 E.A.D. 260 (EAB 1996)
- In Re: Beckman Production Services, 5 E.A.D. 10 (EAB 1994)
- In the Matter of Terry Energy Ltd., E.A.D. 159 (EAB 1992)
- In Re: Environmental Disposal Systems Inc., 12 E.A.D. 254 (EAB 2005)
- In Re: Core Energy LLC, Order Denying Review, UIC Appeal No. 07-02 (Dec. 19, 2017)

Each of these decisions involved an appeal by parties who argued that EPA failed to adequately incorporate limitations required by state and local law or ensure that property rights were adequately protected when issuing a UIC permit. The EAB denied all of these appeals on the basis that EPA is not authorized to consider factors beyond those specifically set forth in the SDWA and its regulations when deciding whether to issue a UIC permit.

None of these decisions considered the sovereign authorities of Indian tribes, EPA's government-to-government relationship with Indian tribes, EPA's ability to implement alternate UIC Programs on tribal lands, and EPA's Tribal Policy. EPA has a trust responsibility to administer its programs in compliance with EPA's Tribal Policy, in which EPA recognizes tribes as "sovereign entities with primary authority and responsibility for each tribe's land and membership." As this language reflects, EPA's trust responsibility includes administering its programs in a manner that acknowledges and respects tribes' "primary authority" over their reservation lands.

The SDWA and its regulations also do not circumscribe this trust responsibility in any way. To the contrary, by incorporating Tribe-specific provisions authorizing EPA to "promulgate an alternate UIC Program for Class II wells on any Indian reservation or Indian lands" and to consider "[t]he interest and preferences of the tribal government having responsibility for the given reservation or Indian lands," the applicable regulations acknowledge the unique trust relationship between federal agencies and Indian Tribes. 40 C.F.R. § 144.2.

Based on this review, there does not appear to be an EAB decision that would limit EPA's existing regulations, policy and responsibilities to defer to and coordinate with the MHA Nation.

VII. Conclusion

Pursuant to Safe Drinking Water Act regulations, EPA's Tribal Policy, and EPA's treaty and trust responsibility to the MHA Nation, EPA must deny or withhold the Draft Permit until Goodnight obtains approval for the proposed waste disposal pursuant to MHA Nation laws. MHA Nation laws governing waste disposal within the Reservation were enacted pursuant to the MHA Nation Constitution approved by the Secretary of the Interior. The MHA Nation has its own authority to regulate waste disposal on the Reservation and EPA regulations direct that EPA exercise its permitting authority in direct coordination with the MHA Nation and according to MHA Nation interests and preferences.



**RESOLUTION OF THE GOVERNING BODY OF THE
THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution Entitled: "Interim Regulation governing the disposal of Waste and other Hazardous substances Associated with the Exploration or Production of Oil and Gas on the Fort Berthold Indian Reservation"

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, Article VI, Section 5 (l) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies; and

WHEREAS, Article VI, Section 5 (j) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to protect and preserve the property, wildlife and natural resources of the Tribes; and

WHEREAS, The rapid development of the oil industry on the Fort Berthold Indian Reservation due to oil exploration and production has resulted in a myriad of environmental concerns including the disposal of wastes associated with oil and gas exploration and production on tribal and allotted lands; and

WHEREAS, there are currently no tribal or federal regulations that prohibit dumping, disposing or discharge of waste associated with the exploration or production of oil and gas on the Reservation; and

WHEREAS, certain companies doing business on the Reservation have engaged in the improper disposal of such wastes; and





WHEREAS, The United States Supreme Court held in *Montana v. United States* 450 U.S. 544, 1980, that Indian Tribes have inherent power to exercise civil authority over the conduct of non- Indians on fee lands within a reservation when that conduct threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the Tribe; and

WHEREAS, The Tribes' Environmental Division is the process of developing a Solid and hazardous waste management and remediation code for the Tribes however, those codes are in the preliminary stage of development; and

WHEREAS, The Tribal Business Council has determined that an interim regulation governing the disposal of waste associated with the exploration and production of oil and gas on the Fort Berthold Reservation should be adopted.

NOW THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby adopts the following interim regulations governing the disposal of waste associated with the exploration and production of oil and gas on the Fort Berthold Reservation:

1. DEFINITIONS: the following definitions apply to this regulation:

Authorized facility: means a waste management, storage, transfer or disposal site or facility which meets the requirements of applicable federal, tribal or state regulations and is approved by the Tribal Council as the place for such management or disposal of waste covered by this regulation.

Discharge: means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, injecting or dumping of waste into or on any land or water.

Disposal: means the discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any soil, air or water, intentional or otherwise.

Hazardous substances: means any substance which, because of its quantity, concentration or physical, chemical or infectious characteristics may pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged.

Remediate: means to abate, contain, or remove a hazardous substance from the environment.

2. DISPOSAL OF WASTE. All waste or other hazardous substances associated with the exploration or production of oil and gas on the Fort Berthold Reservation must be disposed of in an authorized facility in accord with all tribal, local, state and federal laws and regulations.





3. DISPOSAL ON RESERVATION LANDS PROHIBITED. The willful, negligent or accidental disposal of any waste associated with the exploration or production of oil and gas on any lands within the boundaries of the Fort Berthold Reservation that is not in compliance with section 1 of this regulation is strictly prohibited and shall result in civil penalties as set forth in section 6.
4. AUTHORITY TO AUDIT RECORDS. In order to ensure compliance with this regulation the compliance officers within the Tribes Energy Department and Environmental Department and Tribal Employment Rights Office (“TERO”) are hereby authorized to audit the records of companies who are in the business of removing, hauling and disposing of oil field waste to ensure that such companies are complying with the requirements of this regulation. Compliance audits shall be made upon 24 hour notice to the company provided however if the Tribe receives a report of any willful violation of this regulation, the audit shall be done immediately. Audits shall include checking records for the receipt of oil field waste against the records of the receipt of the authorized disposal site.
5. ENFORCEMENT. Enforcement of this Regulation shall be the joint responsibility of the Tribes’ Energy Department, Environmental Department, law enforcement services, TERO, Fire Management, and Game and fish Departments all of which are hereby authorized to issue citations for violations of this regulation. The Tribal Court shall have jurisdiction to hear all complaints and appeals of any citations issued pursuant to this regulation.
6. PENALTIES FOR VIOLATIONS. Any individual or company found to be in violation of this regulation shall be cited and fined as follows:
 - a. Willful violations:
First violation- \$10,000.00
Second violation: 25,000.00
Subsequent violation- \$1,000,000.00
 - b. Negligent violations
First violation: - \$5,000.00
Second violation: \$10,000.00
Subsequent violations: \$50,000.00
7. OTHER PENALTIES: in addition to the fines assessed above any individual or company found to be in violation of this Regulation shall be subject to the following remedies:
 - a. Suspension or revocation of the individual or company’s TERO license by the TERO Commission for repeated violations of this regulation, for failure to pay any fine assessed under Section 6 or for failure to comply with the remediation provisions of this regulation.





b. Any company or individual found to be in violation of this Regulation shall be required to remediate or pay for the cost of remediation of lands affected by the violation in order to prevent or minimize any environmental damages and minimize the risk to public health or to the environment. Remediation will be completed in accordance with standards set and determined by the Tribes.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 14 day of July, 2011, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] Voting. [] Not Voting.

Dated this 14 day of July 2011.

/Tribal Secretary V. Judy Brugh/

/Tribal Chairman Tex G. Hall/

Tribal Secretary V. Judy Brugh
Tribal Business Council
Three Affiliated Tribes

Tribal Chairman Tex G. Hall
Tribal Business Council
Three Affiliated Tribes



**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 Shield1 representative
Twin Buttes1 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.
