

Tribal and State Relations Committee

September 2, 2014

Testimony presented by Mark N. Fox, Director
Three Affiliated Tribes Tax Commission
and Tribal Water Development Corporation (Sect. 17)

Greetings Chairman Johnson and members of the Tribal and State Relations Committee. I am providing the following information and concerns on behalf of our tribal nation in the area of taxation and water development, as well as applicable regulation and law.

Tribal-State Oil and Gas Tax Agreement

More than one year has passed since our tribal nation and the state amended and approved of the new tax agreement. The Mandan, Hidatsa, and Arickara nation has and continues to fulfill its obligations under the Agreement, in particular to the requirement of utilizing a percentage of tax received for roads and infrastructure. We look forward to a positive and productive discussion with the State, its government officials, and Governor in regards to the overall impact of the agreement and related issues or concerns relative to oil and gas development on the Fort Berthold Reservation!

Concerns Related to State Taxation of Enrolled Members

As I have presented in the past to this Committee, our nation has a number of concerns related to state taxation of tribal individuals and businesses within our boundaries. I would like to share information on two particular areas.

1) **Collection of Sales Tax from Enrolled Members:** Its is established under federal case law that state taxation of sales to tribal members within our boundaries is prohibited. Yet, through procedures established by entities doing business on Fort Berthold, unlawful taxation is occurring daily. This is especially so with non-tribal business owners. The typical procedure for identifying tribal individuals for tax exemption is affirmative proof of enrollment, usually a sign sometimes posted in an inconspicuous place asking tribal members to present their identification prior to sale. This places an unfair burden of proof for tax exemption, especially on minors and elders not as fluent, or those without tribal enrollment identification. The end result of this unfair and impractical process by businesses on Fort Berthold is a windfall of tax revenue to the State, in violation of federal and tribal law. We request that the Committee review this situation and require the State Tax Commission, director, and staff to work closely with our nation to correct this situation in the most practicable and effective manner possible!

2) **Taxation of Businesses Tribally-Owned:** Our nation and I are aware of the legal arguments and federal case law that would support the State's assertion that businesses tribally-owned do not possess the state taxation immunity that the Tribe and individuals may assert. But the practical application of state taxation to those businesses owned by tribal members and doing business within the

boundaries of the Fort Berthold Reservation. In particular, we are greatly concerned that both income and sales taxes collected by the State are not used to provide direct services to the tribally-owned businesses taxed. We would like the committee to consider further government to government discussion on this matter to seek a solution for a more practical and useful taxation scenario that would better fit its purpose than is currently provided under law.

Concerns on State Assertion of Civil Jurisdiction on Fort Berthold

There is a great increase of concern by the Mandan, Hidatsa, and Arickara Nation regarding assertion of state jurisdiction in this area. We understand the legal assertion placed by the State on our reservation, particularly in regards to activities occurring on lands held in Patent in Fee status owned by non-tribal entities or individuals. But our nation has never surrendered, or by agreement relinquished, its lawful civil authority on all lands and waters within our reservation. This is especially so, with the area of water regulation and permitting! Water resources on or near our reservation are not restricted to specific boundaries, and activity in one area can and has impacted water in other areas, all of which is the primary responsibility of our nation to protect and utilize for our collective benefit under law! We have had initial and productive discussions with the State Water Commission and its staff. But we believe it behooves us to discuss this and related issues with this Committee to further solutions and address our concerns.

I thank you for this time and opportunity to present to the Tribal-State Relations Committee, and I stand ready to address any questions you may have.