Oil and Gas Tax Agreement Between The Three Affiliated Tribes And State of North Dakota

This Oil and Gas Tax Agreement ("Agreement") is between the State of North Dakota and the Three Affiliated Tribes ("Tribes"). The State through its Office of the Governor ("the State") and the Tribes through their Tribal Business Council, the duly established governing body of the Tribes, hereby agree to the following:

A. Statement of Intent

The intent of this Agreement is to:

1. Provide for the mutual recognition and respect by the State and Tribes of one another's sovereignty;

2. Give recognition to the respective tax jurisdiction of the State and Tribes in a mutually beneficial way that does not compromise either party's right to assert a position upon termination of the Agreement;

3. Provide for an efficient method of taxation and regulation of oil and gas production and extraction within the exterior boundaries of the Fort Berthold Reservation including lands held in trust by the United States and lands held in fee simple status;

4. Distribute the revenue from those taxes in an agreed upon manner that reflects the governmental roles of the State and the Tribes as sovereign parties to this Agreement; and

5. Avoid litigation relating to each party's jurisdiction to impose its taxes on oil and gas production and extraction within the exterior boundaries of the Fort Berthold Reservation.

B. Sovereign Immunity

Nothing in this Agreement shall be interpreted as diminishing or enhancing the sovereign rights of the parties, including the sovereign immunity of the parties, except as may be specifically provided herein, nor shall this Agreement be permitted to be used in any way by either party in any litigation brought by any person including the parties to this Agreement other than with respect to enforcement of this Agreement. In the event of a conflict with any other provision of this Agreement, the terms of Paragraph B shall prevail and control.

C. Acknowledgment of Authority

1. Tribal Authority

   a. The Tribes have jurisdiction to impose certain taxes on the Fort Berthold Indian Reservation.

   b. The Tribal Business Council, under § 5 (d) of Article VI of the Constitution and Bylaws of the Three Affiliated Tribes, has authority to enter into this Agreement with the State of North Dakota.

   c. The parties specifically acknowledge that the Tribes have jurisdiction to impose production and extraction taxes on oil and gas activities on trust lands within the exterior boundaries of the Fort Berthold Reservation.

2. State Authority

   a. The State, subject to inherent limitations on Indian Reservations, asserts jurisdiction to tax oil and gas activities on the Fort Berthold Reservation.

   b. The Governor, under North Dakota Century Code § 57-51.2-01, has authority to enter into this Agreement with the Tribes relating to the taxation of oil and gas production and extraction within the exterior boundaries of the Fort Berthold Reservation.

   c. The parties specifically acknowledge that the State has jurisdiction to impose production and extraction taxes on oil and gas activities on lands within the exterior boundaries of the Fort Berthold Reservation.

D. Oil and Gas Taxes included in this Agreement.

For the purposes of this Agreement, the following provisions apply:

1. The total Tribal and State tax rate attributable to production and extraction of oil from Trust Lands must be eleven and one half percent (11.5%). The total Tribal and State tax rate attributable to production of gas from Trust Lands must be the rate provided in N.D.C.C. § 57-51-02.2.

2. The total State tax rate attributable to production and extraction of oil from Non-Trust Lands must be eleven and one half percent (11.5%) subject to applicable exemptions in N.D.C.C. chapters 57-51 and 57-51.1. The total State tax rate attributable to production of gas from Non-Trust Land must be the rate provided in N.D.C.C. § 57-51-02.2.

3. Exemptions

   a. All exemptions under the United States Constitution, North Dakota Constitution, or federal law, apply to oil and gas production and

extraction from wells located within the exterior boundaries of the Fort Berthold Reservation.

b. Oil and gas production and extraction from wells located on Trust Lands within the exterior boundaries of the Fort Berthold Reservation are entitled to all exemptions in N.D.C.C. chapters 57-51 and 57-51.1 except for those in subsections 8 and 9 of N.D.C.C. § 57-51.1-03 (Supp. 2007).

4. Definitions. For the purposes of this Agreement, the following definitions apply:

a. "Non-Trust Lands" means all mineral acres in a producing Spacing Unit not classified as Trust Lands.
b. "Non-Trust Ratio" means the total mineral acres of Non-Trust Lands in a Spacing Unit divided by the Spacing Unit Acres.
c. "Spacing Unit" means the area in each pool assigned to a well for drilling, producing, and peroration purposes in accordance with the State Industrial Commission's rules or orders.
d. "Spacing Unit Acres" means the total mineral acres in a producing Spacing Unit.
e. "Trust Lands" means all mineral acres in a producing Spacing Unit that are owned by the United States in trust for the Tribes or for an individual tribal member. Trust Lands acreage in a producing Spacing Unit must be determined by the North Dakota Office of the State Tax Commissioner ("State Tax Commissioner") based on records obtained from the Bureau of Indian Affairs in Aberdeen, South Dakota.
f. "Trust Ratio" means the total acres of Trust Lands in a Spacing Unit divided by the Spacing Unit Acres.

5. Production from Trust Lands must be determined by multiplying the total production from a Spacing Unit times the Trust Ratio of the Spacing Unit.

6. Production from Non-Trust Lands must be determined by multiplying the total production from a Spacing Unit times the Non-Trust Ratio of the Spacing Unit.

7. The respective tax rate(s) for Trust Lands and Non-Trust Lands must be based on the Trust and Non-Trust Ratios of each producing Spacing Unit.

8. The tax rates and allocations for unknown or unidentified mineral ownership interests in a Spacing Unit must follow the larger of the identifiable Trust Ratio or Non-Trust Ratio in the Spacing Unit, subject to correction based on future identification of the mineral ownership interests. In the event that the identified Trust and Non-Trust Ratios in the Spacing Unit are equal, the tax rates and allocations for the unknown or unidentified mineral ownership interests are equal to the Trust and Non-Trust ratios, subject to correction by the State Tax Commissioner based on future identification of the mineral ownership interests

as the information becomes available. The revised tax rates will become effective and applied in the next production reporting period following revision.

9. No additional tax and fees will be imposed by the Tribes on any oil and gas activity or interest within the Reservation except for a one-time $60,000.00 Tribal Employment Rights Office ("TERO") fee on wells on Trust Land and a one-time Tribal Application Fee of $40,000.00 on wells on Trust Land. TERO employment regulations apply only to wells located on Trust Land. For the purposes of this subsection, a well is determined to be on Trust Land if the majority of the Spacing Unit is comprised of Trust Lands.

E. Administration and Collection of Taxes

1. The State Tax Commissioner is responsible for the administration of the taxes covered by this Agreement. The State Tax Commissioner may use production data by pool from the State Industrial Commission for Trust Lands and Non-Trust Lands covered by this Agreement in addition to other sources of information necessary to ensure compliance with the terms of this Agreement.

2. The Tribes retain exclusive jurisdiction and authority to file and prosecute civil and criminal enforcement actions as needed with respect to the tribal taxes, according to tribal and federal laws, and engage in any collection or enforcement action necessary to implement the requirements of this Agreement.

3. The State and Tribes agree to the imposition of the taxes at the rates set forth in this Agreement. Neither party will adjust, raise or lower the production and extraction taxes on oil and gas activities within the exterior boundaries of the Fort Berthold Reservation during the term of the Agreement.

4. The Tribes will not impose any additional tribal tax or fees on future production of oil and gas on the Fort Berthold Reservation during the term of the Agreement.

5. An oil or gas well drilled and completed during the time this Agreement is in effect will be subject to the terms of this Agreement for the life of the well.

6. The State Tax Commissioner has the authority to offset future distributions to the Tribes to address situations in which refunds of taxes are made to a taxpayer.

7. The Tribes, upon request of the State, may assist the State in the assessment and collection of any tax subject to this Agreement.

8. The State Tax Commissioner retains the authority to administer and enforce the provisions of N.D.C.C. chapters 57-51 and 57-51.1 not in conflict with this Agreement.

F. Remittance and Sharing of Tax Proceeds

1. Tax Proceeds

   a. The State agrees to remit to the Tribes its share of revenues collected in an amount equal to fifty percent (50%) of the total State and Tribal taxes assessed and collected under Subsection (D)(1) of oil and gas production and extraction on Trust Lands.

   b. The State agrees to remit to the Tribes its share of revenues collected in an amount equal to twenty percent (20%) of the total State taxes assessed and collected under Subsection (D)(2) of oil and gas production on Non-Trust Lands.

   c. Within thirty (30) days of the end of the calendar month during which collection of taxes occurs from oil and gas production and extraction covered under this Agreement, the State Tax Commissioner shall determine and certify the payments specified in this subsection to the Office of the State Treasurer. Unless otherwise requested in writing by the Tribes, the remittance must be by state warrant by the Office of the State Treasurer, payable to the order of the Three Affiliated Tribes.

   d. Within (30) days of the end of the calendar month during which collection occurs from oil and gas production and extraction covered under this Agreement, the State Tax Commissioner shall furnish the Tribes a list identifying the source of revenues remitted to the State Tax Commissioner intended for distribution to the Tribes.

G. Administration and Maintenance of Records

1. The Tribes agree to maintain accurate records setting forth information in sufficient detail to allow for verification that Tribally-owned entities are collecting and remitting the correct amount of tax due under this Agreement. The Tribes agree to furnish these records to the State Tax Commissioner upon request.

2. Upon reasonable request of the Tribes, the State Tax Commissioner must make available to the Tribes records of tax filings that relate to the taxes provided for under this Agreement.

3. If the State receives a request for information under the State's Open Records laws pertaining to this Agreement, the State will inform the Tribes of the request and information released.

4. The State agrees to provide the Tribes written notice of any pending changes to the State's taxes covered by this Agreement.

H. Effective Date, Duration, Application, and Termination of the Agreement

1. Effective Date

The parties agree the effective date of this Agreement is July 1, 2008.

2. Duration

This Agreement will remain in effect for a period of twenty-four (24) calendar months after July 1, 2008. The Agreement may be renewed for any period upon the written agreement of the parties.

3. Application

a. The production from wells located within the exterior boundaries of the Fort Berthold Reservation drilled and completed after the effective date and before the expiration of this Agreement is subject to the taxes imposed by this Agreement for the life of the well. The production from wells located within the exterior boundaries of the Fort Berthold Reservation drilled and completed before the effective date of this Agreement is subject to the taxes imposed by the terms of this Agreement for the duration of the Agreement and any extensions that may be agreed to by the parties under Subsection H(2).

b. An oil or gas well that is drilled and completed during this Agreement is in effect is subject to state regulatory provisions for the life of the well in addition to any other applicable regulatory provisions.

4. Termination

a. Either party may terminate this Agreement without cause and without liability, except as to any amounts collected and due to either party, upon thirty (30) days written notice to the other party.

b. Before the Agreement is terminated under this provision, the parties will meet and make a good-faith effort to resolve the differences leading to the Notice of Termination. A Notice of Intent to terminate on behalf of the Tribes must be executed by the Tribal Business Council. A Notice of Intent to Terminate of behalf of the State must be executed by the Governor's Office.

c. Within thirty (30) days of its receipt of a Notice of Termination, the State Tax Commissioner shall notify each known taxpayer affected by the termination by first class mail that it will no longer collect the taxes covered by this Agreement, and the taxpayer should no longer remit to it the affected taxes.

I. Amendments and Waiver

This Agreement may not be modified or amended, nor may compliance with any provision of it be waived except by an instrument or instruments in writing signed by the party against whom enforcement of any modification, amendment, or waiver is sought.

J. SEVERABILITY AND VENUE

Should any part of this Agreement be rendered or declared invalid by the federal District Court for the Western Division of North Dakota, the invalidation of any part or portion of this Agreement will not invalidate the remaining portions, which remain in full force and effect.

K. Notices and Payment

1. Notice

Notice required to be sent to the Three Affiliated Tribes under this Agreement must be sent to:

Tribal Chairperson
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota 58763-9402

Tribal Tax Department
Three Affiliated Tribes
404 Frontage Road
New Town, North Dakota 58763-9402

Notice required to be sent to the State under this Agreement must be sent to:

Office of the Governor
State of North Dakota
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0001

Office of the State Tax Commissioner
Supervisor, Oil and Gas Tax Section
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0599

2. Payment

Payment to the Three Affiliated Tribes under this Agreement must be sent to:

Three Affiliated Tribes
Tax Department
404 Frontage Road
New Town, North Dakota 58763-9402

Payment to the State under this Agreement must be sent to:

Office of the State Tax Commissioner
Supervisor, Oil and Gas Tax Section
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0599

Either party may change its Notice address by giving written notice of the changes to the other party.

IN WITNESS WHEREOF, the Three Affiliated Tribes and State of North Dakota have caused this Agreement to be executed and delivered by their respective officer, duly authorized.

6/10/08
Date

Marcus D. Wells, Jr., Chairman
Three Affiliated Tribes

6/17/08
Date

John Hoeven, Governor
State of North Dakota