

## **State of the Tribal-State Relationship**

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### **Tribal and State Relations, a New Path**

Greetings Governor Jack Dalrymple, Lieutenant Governor Drew Wrigley, distinguished legislators, our military other elected officials, and fellow citizens of North Dakota. It's an honor and a privilege for me to address this joint session of the 62nd Legislative Assembly. I would also like to recognize the Sovereign Native Nations of North Dakota, and their Chairpersons. They are Chairwoman Myra Pearson, Spirit Lake Nation, Chairman Merle St. Claire, Turtle Mountain Band of Chippewa, Chairman Charles Murphy, Standing Rock Sioux Nation, Chairman Robert Shepherd, Sisseton Wahpeton Oyate, and Chairman Walter Moran, Trenton Indian Area Service. I would like to take this time to acknowledge our Tribal Veterans, Drum group, Tribal Council, Management Team, and my family for their representation, and service.

I was elected to the Office of Chairman of the Mandan, Hidatsa & Arikara Nation for a precedent-setting third term this past November. As many of you know as leaders of your respective communities, North Dakotans are never afraid to step up to the challenge of serving their fellow citizens and I want to personally congratulate each and every one of you for your continued civil service. It would not be fitting if I did not mention at this time true examples of premiere leadership, and a legacy of self-sacrifice, for the betterment of the whole State, as well as the Nation. I would like to acknowledge retiring Senator Byron Dorgan, who leaves a history of being a true champion for North Dakota citizens, who will I hope, continue to serve in some capacity to help the people of North Dakota. Congressman Earl Pomeroy also deserves a big thank you, and I would like to acknowledge his public service, and continued support for the betterment of the State of North Dakota.

I would like to congratulate newly elected Senator John Hoeven, who is no stranger to serving in a leadership position for the great state of North Dakota. I would also like to congratulate Congressman Rick Berg, who will also serve the people of North Dakota in a professional and motivated manner. I have had the pleasure of working with both of these men in the past and I look forward to working with them in the future to make our great State of North Dakota better for all our citizens and our future generations to come.

I would like to begin by saying; our ultimate goal should be to implement a comprehensive plan that includes all of our citizens, Native and Non-Native alike. One of my main concerns is that as the State of North Dakota has prospered as a whole, our Native Populations have not, with limited overall economies and resources, and a standard of living that lags far behind that of the average citizen of the State of North Dakota.

The MHA Nation is the homelands of my people, the Mandan, Hidatsa and Arikara. The reservation was established by the Fort Laramie Treaty of 1851. But long before the treaty - for centuries, my ancestors lived here along the river. They told us the earth is our mother and the river is our father and that we are the keepers of the earth. We still believe this and our commitment to care for lands is life-long. According to the Fort Laramie Treaty, our homelands stretched all the way down in to what is now South Dakota and over on in to Montana and Wyoming. But executive orders and other proclamations whittled down the reservation to the one million acres today known as Fort Berthold Reservation. Long before North Dakota became a State, the Ft. Laramie Treaty established boundaries for us and recognized those Tribes who signed the treaty as Sovereign Nations. We are also recognized by the Constitution of the United States as sovereign governments. This background is critical to the issues that I will speak about today and it directly affects the Tribal-state relationships here in North Dakota.

There are a number of things that I would like to address today with the 10 points outlined by my Administration and Tribal Council, to ensure that these priorities are clearly defined for the Governor's Office and the legislators as well, so when they meet with their committees, they will have a road map for improving relations between Tribal and State Governments.

These matters are not in order of importance but I would like to clearly state for the record the following points:

- First of all, I would like to thank the 60th Session of the State Legislature for supporting and approving Senate Bill 2419, our Tribal State Tax Agreement. This was introduced by Senate Majority Leader Stenehjem, and Representative Rick Berg. This agreement has provided much needed revenue for the Tribe. We would like to ask that Senator Majority Leader Stenehjem please stand up and be recognized.
- While this agreement served its purpose in 2007, our roads are in very poor shape due to intense oil and gas traffic, which was unpredicted just a few years ago, and has hit us like a tsunami. We will experience record number of oil well drilling activity within the next few years. We do not have adequate funding from the BIA, State, and or Tribal funds to repair these roads, so we would like to reexamine our existing agreement.
- We are asking the State of North Dakota to acknowledge the ownership of the Missouri River Bed as the MHA Nations, which is outlined in our 1851 Ft. Laramie Treaty.
- We the Tribes of North Dakota would like to pursue an economic plan and policy with the state of N.D. to help with our huge unemployment rates, as high as 70% on some of our Native Communities.
- Our Tribal Colleges have been a huge success for training our Tribal members and will be a great resource as we move into developing viable economic plans to put our people to work.

## **1. Oil & Gas Development**

Our new Tribal Administration has been working hard to revamp our oil and gas division to become more proactive, while taking an active role in our oil and gas development, including exploration, production, infrastructure, and a better price.

We are of the firm belief we will become more sovereign by the barrel.

The lack of basic infrastructure is the number one priority for the MHA Nation Energy Division. We currently have 87 active wells producing on the reservation with another 11 wells drilling and an additional 41 wells waiting on completion of a pipeline system.

Without proper road maintenance the current system cannot keep up with the increased volume of traffic in our area. Safety is also a concern that must be closely examined not only for Tribal members and non-Tribal members but for safety of the environment.

Current economic indicators and forecasts predict that we have yet to witness even higher levels of development. According to recent data, the Bakken has one well which has been producing more than 3,000 barrels a day. The formation is located in the counties of Mountrail, McKenzie, and Dunn, which all lie within the boundaries of the Fort Berthold Reservation. In an effort to produce safe, responsible energy development plans, we will maximize the development of our resources, but more importantly we will safeguard our environment for the future health and welfare of our Tribal members. Currently, environmental statutes stifle energy development.

Funding is vital for new infrastructure. Due to lack of infrastructure, all the flaring releases harmful toxins into the air, when the MHA Nation could increase revenue and protect the environment if it had the infrastructure to collect natural gas from the well head to a pipeline. The transportation of oil utilizing a pipeline would reduce traffic and improve the safety of our roads. There are over 100 wells on our Reservation so far, and we expect over 1000 more. But we don't have the infrastructure or the staffing to support maximum and planned development endeavors. If this funding is not provided, the Tribe will not

be able to sustain this oil and gas development and this will stop our growing economy in its tracks. There is a critical need for pipeline infrastructure on the Reservation to transport oil, natural gas, and natural gas liquids to market. Oil production outside the Reservation has grown exponentially over the past several years and is taking up most of the existing pipeline capacity within North Dakota. In particular, the absence of a natural gas pipeline on the western portion of the Reservation has caused the natural gas produced from these wells to be lost into the atmosphere rather than being gathered and transported to market. This lack of infrastructure is resulting in a significant loss of revenue, taxes, and royalty payments. The lack of infrastructure is detrimental to the Tribe, the allottees, and the operators on the Reservation. The MHA Nation supports a comprehensive infrastructure solution that will serve all needs of oil activity, in particular the allottees on the Reservation, in gathering and transporting oil and gas from individual wells.

We thank the State of North Dakota for their efforts to work with us in order to further our development. We currently are implementing systems of regulations and ensuring that these regulations will safeguard the environment, but also will allow for meaningful enhancement for our economic growth and development for the MHA Nation. As a sovereign Nation, the MHA Nation should benefit from the oil and gas development by participating in the working interest side of oil and gas development, and not just getting royalties and taxes. We currently have to negotiate through a multitude of governmental agencies, including 49 steps to drilling an oil well. We are looking to streamline this process.

## **2. Tax Agreement**

The rapid exploration and development of the oil and gas industry continues to have a major economic and social impact to our Reservation. The Tribal government and the State of North Dakota have realized significant direct and indirect revenues for governmental support. Our Tribal government has seen a dramatic and substantial increase of revenue provided by the current taxation system of the oil and gas industry. The agreement provides a tax rate attributable to the production and extraction of oil at 11.5%. The agreement provides that the State shall administer and pay the Tribe fifty percent (50%) of tax proceeds on Trust land and twenty percent (20%) of the same on Non-Trust Land.

There are several points of concern that I have with regard to the current circumstances that the MHA Nation now faces. These concerns are as follows:

1. Increased structural damage to land and roadways due to heavy oilfield traffic.
2. Negative environmental impact.
3. Increased risk of traffic injuries and deaths.
4. Increase in population with attendant increase in crime, violence, illegal drug trafficking, reservation-wide demand for housing and costs of living increase.
5. Increased and unreasonable demand on a law enforcement system with inadequate resources and jurisdictional concerns over non-Tribal members.

In summary, I strongly recommend that we diligently explore any opportunity to re-examine the current Tax Agreement with the State of North Dakota. We need a more equitable and effective agreement. Although increases in revenue are evident, there is a shortfall of monetary resources to adequately address the impact of increased oil and gas development.

## **3. Roads**

Our Nation covers about 1,544 square miles, covers six counties, and according to the most recent BIA inventory of Indian Reservation Roads, it shows that we have approximately 1,097.7 miles of road. An additional 664.4 miles of county roads and 150 miles of state-owned roads are located within the boundaries of the reservation. The increased activity which includes heavy truck traffic and pedestrian vehicles has already resulted in a higher number of traffic fatalities in the past two years alone. The current roadbed system located within the reservation was not constructed to withstand and bear the weight and volume of traffic associated with an oil boom. One of my Council members estimated that nearly \$350 million is needed to meet the demands of the activity taking place on the reservation. We have requested that the regional office in Aberdeen support an engineering study to assess and estimate

factual costs for building this road system to support current traffic. The current BIA Highway system is beyond its life span and the list for improvements and repair jobs far exceed the amount of revenue generated.

#### **4. Government to Government Consultation**

As Tribal Leaders, we are aware of our unique relationship with Federal, State and local governments set forth in the Constitution of the United States, treaties, statutes, court decisions, and executive orders and memorandums placed on us. Similar to the Presidential Executive Order May 14, 1998, that requires every federal agency to consult with Indian Tribes prior to any adverse action that would affect them - we the Tribes of North Dakota are requesting a consultation policy with the State of North Dakota.

#### **5. Economic Development**

Economic development is very crucial to the longevity of our people. Our ancestors planned with seven generations in mind as they progressed as Nations and brought their Tribal membership thru ever-changing times and difficulties.

North Dakota Tribes have huge economic potential including energy, oil and gas, wind, hydro power, biomass, grazing, farming and businesses including Lakota Technology; MHA Systems; Standing Rock Wireless; Sioux Manufacturing; Chippewa Technology and the Inter-Tribal Economic Alliance.

However, our Tribes of North Dakota have the highest unemployment and poverty rate in the United States and in Indian Country. The figures indicate a 50% unemployment rate and a 33% poverty level rate. This is a huge waste of human capital.

As North Dakota Tribes, we intend to change these circumstances and statistics. The MHA Nation plans to create a business development office on the Fort Berthold Reservation. Tribal Leadership, including myself, meets with President Obama to present our priorities that include economic development efforts, and the need for developing a comprehensive plan.

The Tribes of North Dakota will work to develop an economic plan that may include legislation in your upcoming session to support our efforts.

As Chairman, I filed the permit to build a refinery in 2003, and the permitting process is still moving toward approval, yet today, there is still no final outcome. Cumbersome regulations delay the progress of this project. Our Tribe has prioritized the MHA Nation Clean Fuels Refinery Project to obtain the EPA permit this year and we would welcome any support from the State of North Dakota.

These are the challenges that we face as Tribal Nations when we attempt to develop economically as a Nation. The clean fuels refineries permit needs to be approved and it's long overdue. A pipeline needs to be built to this refinery and development will be good for our economy and the sustainability of our roads. The Tribe has asked for quick action with regard to the regulatory issues we have encountered. The building of a pipeline to handle the natural gas emission is necessary. These economic ventures and similar activities will create jobs and revenue not only for our Tribe but for the State of North Dakota.

The 1944 Flood Control Act, which took over 156,000 acres of land from the MHA Nation for the purpose of creating a dam, and which permanently inundated those lands, provided a promise to the Tribe and State of a federally funded irrigation project.

The original concept was for a project to encompass over 1 million acres of land. Now, nearly 70 years later from that Act, that promise is still unrealized. We have identified over 100,000 acres of highly potentially irrigable lands within the reservation adjacent to Lake Sakakawea.

The Tribe has performed preliminary studies which indicate that such a project would provide a huge and significant positive economic impact for both the reservation and the State of North Dakota. Additionally,

the potential irrigation project would encourage and allow for a beneficial use of water from the Missouri River system for our Tribe and the State of North Dakota.

We urge the State of North Dakota to continue to support the study and development of a Fort Berthold Irrigation Project. The Tribe understands that the State has significant water development funds available from oil development which is occurring in the northwest portion of the State, including the lands of the Mandan, Hidatsa and Arikara Nation. We believe that reinvestment of a portion of those revenues in an area irrigation project, for the benefit of residents of both the Reservation and the State, is appropriate and equitable.

## **6. Water Usage**

The recognition of reserved water rights and the Winters Doctrine must be acknowledged. The MHA Nation has Reserved Primary rights to our water and these rights must be acknowledged.

Most importantly, we strive to:

- provide practical strategies for protecting Tribal rights,
- implement on-reservation regulation of water use,
- Identify off reservation factors that affect the Tribe's water supply and future growth.

More importantly we also must pay special attention to the Army Corps of Engineers proposed System Storage Study.

The COE is proposing to impose a multi-year (up to 7 years) moratorium on allowing access to waters of Lake Sakakawea while they do a 'system storage study'. The intent of the study is to determine if there is available water in Lake Sakakawea for MRI (municipal, rural, and industrial) purposes.

If there is such available water, then the COE proposes to charge the users of such water a fee; such money to be used by the federal government to offset the initial costs of building the dam and for ongoing operational costs of the dam. The fee applies only to users taking water from Lake Sakakawea, which of course includes Tribal access and use of the water. Users downstream or upstream from the Lake (in the natural river channel) would not have a charge for using any water.

This is an issue in which the MHA Nation and State have common ground and common interests. The MHA and the State of ND has paid enough for the "privilege" of having the Garrison Dam. The Three Affiliated Tribes sacrificed over 156,000 acres of prime land for the Lake.

Additionally, the Tribe and State are treated collectively by the Corps as secondary beneficiaries of the Lake with our common interests subjugated to the interests of the downstream interests.

When downstream interests need water, they are provided such water even if it means economic, social, and cultural damage to the State and Tribe. Similarly, when the downstream interests have too much water, the State of ND and the Tribe are tasked with holding water even if such actions are to the disadvantage of the State and Tribe.

The MHA Nation joins the State of ND in opposing any moratorium of use of water from Lake Sakakawea and any imposition of federal fees for such water.

In recent years many Tribes of the western United States have entered into either negotiations or litigation with the federal government on defining and securing such water rights for the current and future needs of their respective reservations. In many instances an adversarial relationship develops because the water in the area, including both surface water and ground water, has been prior appropriated to non-Indian users, leaving little or no water for the Tribal needs. In the Fort Berthold Indian Reservation area, there currently is significant unappropriated water, with an apparent abundance of water for the foreseeable

needs of both Tribal and non-Tribal interests. The MHA Nation is looking at studying our current and future water needs.

The Tribe believes that sufficient water is available in Lake Sakakawea for the needs of all users of the State of North Dakota, including both Tribal users and non-Tribal users. However, we are concerned of requests for allocations of such water by downstream interests beyond the borders of the State of North Dakota. In order to establish a right for the waters of Lake Sakakawea which will have primacy over any downstream or non-Tribal water right, the Tribe intends to look at options that may include pursuing a federally authorized water quantification effort.

## **7. Missouri River Bed Ownership**

The Missouri River Bed, within the exterior boundaries of the Fort Berthold Indian Reservation, belongs to the Mandan, Hidatsa, and Arikara Nation. Any revenue generated from river bed oil leases belongs to the Tribe. The Missouri river is a trust asset and the MHA Nation views this trust asset as an important natural resource. When the United States flooded our homelands in 1948 as a result of the construction of the Garrison Dam, our reservation – our homelands were displaced. This flooding of our homelands placed the Missouri river bed in a trust asset status. Prior to the flooding, the Missouri river bed was our homelands. We will work towards resolving this very critical issue.

## **8. Transfer of Excess Lake Shore**

The return of the excess lands has been a political issue for many years. The sole purpose in requesting the transfer of the lakeshore is to hold the United States to the many promises it made to us in 1948, as our Tribe reluctantly agreed to the forced flooding of the most precious lands on our reservation. The MHA Nation is still waiting for the transfer of the lakeshore lands to the Tribes that are no longer needed for the Pick-Sloan and Garrison Diversion project.

We already manage contiguous Tribal lands. The return of the lands would assist in developing tourism, recreation and economic development opportunities for the MHA Nation. We look forward to working with the new congressional delegation for the return of our shorelines.

## **9. Tourism**

The mission of our Tribal tourism program is to protect, preserve and educate the world about the living culture, history and environment of our sovereign Nation- Mandan, Hidatsa and Arikara people. MHA Tribal Tourism will create economic development opportunities that promote Tribal tourism and create a sustainable economy for the people of the Fort Berthold Reservation. MHA Tribal Tourism will provide education and training while encouraging the understanding and acceptance of the Mandan, Hidatsa & Arikara people.

Recently the Tourism Director for our Tribe was elected as the Chairman of a newly established alliance of the North Dakota Tribes focused on bringing more visitors to the original inhabitants of this great land. We look forward to working with the State of North Dakota Tourism Office, in developing comprehensive tourism plans.

## **10. Education**

Today, there are over 10,000 Native American students in North Dakota schools with a graduation rate of only 57%. We can do better.

Some of the goals we have set for our students on Fort Berthold include:

- Create and develop a comprehensive education plan for all students, birth through adulthood
- Develop a Tribal and State task force to address Indian education
- Maintain and sustain Tribal Languages and the culture of North Dakota Tribes

- Work collectively with North Dakota Tribal Colleges, North Dakota University System, North Dakota Indian Affairs Office, and the North Dakota Department of Public Instruction (DPI) and create an Indian Education Office desk within DPI
- I commend the 61st Legislature's passage of HB 1394 which is providing much needed financial assistance to the Tribal Colleges in North Dakota. I would like the support of the 62nd Legislative Assembly to increase the funding from \$700,000 to \$1,00,000 that is included in the Governor's Executive Budget Recommendation for this biennium. Tribal Colleges provide educational opportunities for all citizens of North Dakota regardless of race, yet the only funding we receive from the Federal Government is for our Native American students.
- I would also like to applaud Governor Dalrymple for including a budget request increase of \$192,975 for the North Dakota Indian Scholarship Program. This increases the amount of the grant to each student from \$800 to \$1,200
- We would also like to see an increase in the CTE (Career and Technical Education) funding. With the increase of oil activity in our area there is more need for monies to support vocational programs in the oil industry. Currently Fort Berthold Community College receives approximately \$80,000 to support all vocational programs at our institution which is not enough considering the demands for increased training.

I would like to recognize the following legislators for their support and sponsorship of House Bill 1394 in 2009:

- Chairman of the House Education Committee - Representative RaeAnn Kelsch; Representative Jim Kasper; and Representative Dennis Johnson.
- Chairman of the Senate Education Committee - Senator Layton Freborg; Senator Tim Flakoll; and Senator Rich Wardner.

### **Closing Remarks**

In closing, I would like to thank Gov. Dalrymple and the North Dakota State Legislature for allowing me to present the State of the Tribes Address, and I look forward to working with all of you in this 62th Legislative Assembly on all of our issues.

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