

**WRITTEN TESTIMONY OF
CHAIRMAN MARCUS D. WELLS, JR.
FOR THE THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD RESERVATION
TO THE COMMITTEE OF INDIAN AFFAIRS,
UNITED STATES SENATE**

May 1, 2008



**Oversight Hearing on Indian Energy Development
Regaining Self-Determination Over Reservation Resources**

My Name is Marcus Dominick Wells, Jr., Eh-Bah-Dah-Gish, (Bald Eagle) I am the elected Tribal Chairman of the Three Affiliated Tribes of the Fort Berthold Indian Reservation. I would like to thank Chairman Dorgan and the Members of this Committee for the opportunity to provide testimony on behalf of the Tribal Business Council of the Three Affiliated Tribes; the Mandan, Hidatsa and the Arikara.

The Three Affiliated Tribes has been poised at the brink of what could be the largest period of economic development in the history of the Tribe.

The surge in oil and gas exploration in the Bakken Formation has brought the promise of significant prosperity to the Fort Berthold Indian Reservation. However, even as some of our Tribal members are beginning to enjoy significant lease bonus payments, many of who have lived in poverty their entire lives, the Tribe and the Fort Berthold mineral owners

have been negatively impacted by the current delivery of trust responsibility by Fort Berthold Agency and the Aberdeen Area Office of the Bureau of Indian Affairs; specifically in the areas of administering the exploration and development of oil and gas within the exterior boundaries of the Fort Berthold Indian Reservation.

The Tribal Business Council negotiated three (3) IMDA's or Modified Oil and Gas Leases with Black Rock, LLC, JT Energy and Dakota 3, LLC that were presented for approval to the Bureau of Indian Affairs in Calendar Years 2005, 2006 & 2007 respectively. Collectively, the IMDAs took over three years to receive formal Secretarial approval, with the last IMDA receiving its final approval in February of this year.

The Mineral Owners of the Three Affiliated Tribes have also undergone the leasing process, through either private negotiation or in two formal Oil and Gas Bid Sales held by the Fort Berthold Agency in December 2006 and November 2007. However, an unacceptable number of those leases still remain to be approved and / or processed for payment of lease bonuses and to be moved forward to complete the Applications for Permits to Drill (APDs). The delays in lease approval and other bureaucratic hurdles have

not only caused untold harm on the Tribe and the Fort Berthold Mineral Owners but have utterly frustrated the Oil and Gas Industry as to the prospect of actual oil and gas exploration on the Fort Berthold Reservation. Representatives of the Oil and Gas Industry has visited and formally met with the Tribal Business Council to express those frustrations and to request our help in moving the Fort Berthold Agency and the entire BIA forward on completing their duties to the Three Affiliated Tribes and our respective membership.

The Three Affiliated Tribes have held our own Oil and Gas Industry meetings and listening sessions during the months of April 2007, July 2007, September 2007, November 2007, December 2007, January 2008, February 2008 and March 2008. The purpose of those meetings was to reassure the Oil and Gas Companies that the Three Affiliated Tribes were doing everything within our power to support the formal approval of their respective oil and gas leases. This was done for the benefit of the entire enrolled membership of the Three Affiliated Tribes of the Fort Berthold Indian Reservation that happens to be situated on the Bakken Shale Formation of Western North Dakota.

At heart of this sudden oil boom is the Bakken Formation, an oil shale formation located with the Williston Basin. The Bakken Formation was the subject of a April 2008 USGS report that stated, “Using a geology-based assessment methodology, the U.S. Geological Survey estimated mean undiscovered volumes of 3.65 billion barrels of oil, 1.85 trillion cubic feet of associated/dissolved natural gas, and 148 million barrels of natural gas liquids in the Bakken Formation of the Williston Basin Province, Montana and North Dakota.” The entire Fort Berthold Reservation lies within the Bakken Formation. While to the north, west and south of the Reservation has seen significant development, the BIA failures have left the Tribe, the Fort Berthold Mineral Owners and our entire membership looking out and wondering if we will ever see that type of activity.

While the Three Affiliated Tribes may be unable to stir any successful response from the Fort Berthold Agency and the Great Plains Region, we have begun to do what we can to encourage and support Oil and Gas exploration within the exterior boundaries of the Fort Berthold Reservation. The Tribe and North Dakota Governor John Hoeven’s Office have been actively negotiating a tribal state oil and gas tax agreement. While a tax agreement provides the oil and gas industry with some

certainty as to tax rates, the Tribe's share of any oil and gas taxes collected will provide a significant source of tax revenue to address federal funding shortfalls related to our 638 contracts for healthcare and law enforcement on the Reservation. Also, the surge in oil activity in and around the Reservation has also created millions of dollars of damage to our already insufficient road system, a system of BIA constructed roads that were not meant to sustain such heavy traffic or weight loads and that were already in disrepair before the influx of hundreds of oil and gas trucks and tankers. Therefore, I and the Tribal Business Council have specifically dedicated a significant amount of the anticipated oil and gas tax revenues for the specific tribal needs of healthcare, law enforcement and roads. We are extremely hopeful that the negotiations with Governor Hoeven will conclude with an amicable and respectful agreement that can benefit the Three Affiliated Tribes and all of North Dakota.

The Three Affiliated Tribes is also expanding our reach into the energy development through our proposed Clean Fuels Oil Refinery Project. The U.S. EPA – Region 8, in close coordination with the Tribe and BIA, have recently completed the draft Environmental Impact Statement (EIS) and were in the process of placing it in the Federal Register. However, after

over two years of planning and work, additional administrative hurdles were presented to us when the Department of the Interior Solicitor's Office has now stated that it will begin its own formal review of the draft EIS. This entire EIS project was done under the co-lead of EPA and BIA and we are confident that this draft EIS will withstand any legal challenge. That is why we are hopeful that our Clean Fuels Refinery Project will not suffer the administrative and bureaucratic delays that have thus far stymied oil and gas development on the Fort Berthold Reservation.

The Three Affiliated Tribes is also exploring other activities to develop our energy resources more effectively. The Tribe is reviewing the possibilities of a Tribal Energy Development Agreement or TERA to take over the duties of approving tribal leases and right-of-ways; the future development of large scale renewable energy projects such as wind farms; and the development of tribal owned and managed energy infrastructure to support oil and gas development both on and off reservation.

In closing, what is most apparent from the recent developments on the Fort Berthold Indian Reservation is that our success or failure in the development of our mineral resources lies almost completely in the hands

of the Bureau of Indian Affairs. The utter failure of the BIA to meet a basic duty of its trust responsibility to adequately administer the processing of oil and gas leases including payments owed to mineral owners and to complete its administrative responsibilities in the approving of drilling permits leaves the Three Affiliated Tribes, the Fort Berthold Mineral Owners and our entire enrolled membership asking why is this happening to us and why is it being allowed to continue. Due to the significant mistakes, errors in judgment and lack of trained staff by the BIA, the Fort Berthold Reservation may very well miss out on the economic boom that the rest of the North Dakota appears to be enjoying. I am hopeful that with my testimony today and with significant assistance from this Committee, the Three Affiliated Tribes may be finally given the opportunity to fully develop our oil and gas resources for the benefit of the Tribe, our enrolled members and all of North Dakota.

“Mod-zi-gidaz”. Thank you.
