

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MANDAN, HIDATSA, AND ARIKARA	)	
NATION,	)	
	)	
<i>Plaintiff and Intervenor</i>	)	
<i>Crossclaim Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. 1:20-cv-01918-ABJ
	)	
UNITED STATES DEPARTMENT OF	)	
THE INTERIOR, <i>et al.</i>	)	
	)	
<i>Defendants and</i>	)	
<i>Crossclaim Plaintiffs,</i>	)	
	)	
and	)	
	)	
The State of North Dakota,	)	
	)	
<i>Intervenor Defendant and</i>	)	
<i>Crossclaim Defendant.</i>	)	
	)	

**PLAINTIFF MANDAN, HIDATSA AND ARIKARA NATION’S COMPLAINT IN  
INTERVENTION AS TO CROSSCLAIM**

Defendants/crossclaim plaintiffs United States Department of Interior and, in their official capacities, Secretary Deb Haaland and Solicitor Robert Anderson and the United States of America (collectively, the “Federal Defendants”) filed a crossclaim against Intervenor Defendant the State of North Dakota (the “State”). (ECF No. 97.) At a status conference, Plaintiff Mandan, Hidatsa, and Arikara Nation (the “MHA Nation” or “Nation”) made an oral motion to intervene, which the State did not oppose and the Court granted by minute order on July 24, 2024. The MHA Nation now submits this complaint in intervention against the State, and alleges as follows:

1. This Court has jurisdiction over the Federal Defendants’ crossclaim and the MHA Nation’s complaint in intervention against the State pursuant to 28 U.S.C. §§ 1331 and 1345.

2. This Court can grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2201 *et seq.*

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because the property in dispute is the subject of the pending complaint originally filed by the MHA Nation in this Court, and under Fed. R. Civ. P. 13(g).

4. The United States holds legal title to land in trust for the MHA Nation. This includes the Missouri riverbed and its underlying minerals within the Fort Berthold Reservation.

5. The MHA Nation is a federally recognized Tribe. The Fort Berthold Reservation (the “Reservation”) and the Missouri riverbed within it are part of the MHA Nation’s aboriginal territory. The Reservation was set aside for the MHA Nation before the State was created and admitted to statehood. The tribes that comprised the MHA Nation possessed the Reservation and much other land well before the United States or the State existed. *See, e.g.*, AR 346, 350.<sup>1</sup>

6. Following the Arikara War of 1823, the United States sent a delegation up the Missouri River to the villages of the three tribes that now comprise the MHA Nation to negotiate peace. In 1825, all three tribes entered into peace treaties with the United States. In the treaties, the United States acknowledged the tribes’ “country” (Articles 5) and took the tribes under their protection (Article 3). Treaty with the Arikara, 7 Stat. 259; Treaty with the Mandan, 7 Stat. 264; Treaty with the Hidatsa, 7 Stat. 261.

7. The three tribes of the MHA Nation entered into a second treaty with the United States in 1851, the Treaty of Fort Laramie, which described the territory of the MHA Nation

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<sup>1</sup> “AR” citations refer to the administrative record in this proceeding.

south and west of the Missouri River as extending up the Missouri River from the Heart River to the Yellowstone River, and extending south and west from there. Treaty of Fort Laramie with Sioux, Etc., Sept. 17, 1851, art. 5, 11 Stats. 749. The 1851 Treaty did not attempt to define or limit the MHA Nation's territory north and east of the Missouri River.

8. On April 12, 1870, President Grant signed an Executive Order setting land apart as a reservation for the three tribes, which diminished the tribal territory recognized in the 1851 Treaty, added lands north and east of the river, and expressly included the entirety of the Missouri River within the Reservation boundaries. Exec. Order (Apr. 12, 1870).

9. In 1880, President Hayes signed another Executive Order that altered the boundaries of the Reservation but again expressly included the Missouri River within the Reservation. Exec. Order (July 13, 1880).

10. In 1886, the United States negotiated another agreement with the MHA Nation that diminished the western portion of the Reservation but left the Missouri riverbed within its new boundaries. Congress ratified this agreement in 1891. Act of Mar. 3, 1891, ch. 543, § 23, 26 Stat. 989, 1032 (1891).

11. Upon its admission to the Union in 1889, the State disclaimed all right and title to "Indian lands." N.D. Const., art. XVI, § 203 (1889).

12. The legislation that authorized North Dakota's entrance into the Union required that North Dakota disclaim title to Indian lands. Omnibus Statehood Act, ch. 180, 25 Stat. 676, § 4 (1889) (requiring that each prospective state must enact an "ordinance[] irrevocable without the consent of the United States" that "the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to ... all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished

by the United States, ... said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.”).

13. Section 10 of the Act states that no “lands embraced in Indian, military, or other reservations of any character [shall] be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.”

14. The legislative history of the Omnibus Statehood Act underscores that the new states were not receiving any lands held or owned by Indians. The House Report highlighted that “there are in the Territory of Dakota large Indian reservations, which by the terms of the bill are excluded from the jurisdiction of the proposed State. The Indian reservations and the number of acres in each are as follows: ... Fort Berthold, 2,912,000 ... making a total of 26,847,115 acres. This is more than one fourth of the entire area of the Territory.” H.R. Rep. No. 1025, 50th Cong., 1st Sess., p. 8 (1888). Likewise, the minority view included in the report noted that “Another reason for opposing a division of Dakota, as provided in the pending bill, is found in the fact that there are in that Territory at this time nine Indian reservations, the jurisdiction over which is reserved to the United States, and excluded from the Territory and from the proposed State, so long as the Indian titles exist.” *Id.* at 24.

15. In 1936, the Department of Interior Solicitor Nathan Margold issued an M-Opinion determining that an island formed from the bend of the Missouri River subsequent to North Dakota’s statehood belonged to the MHA Nation, and not to North Dakota, because the Missouri riverbed itself was part of the Reservation prior to North Dakota’s statehood.

16. In 1949, the United States took title to more than 150,000 acres encompassing the Missouri River within the Reservation that would be flooded by the construction of the Garrison

Dam and the creation of Lake Sakakawea (the “1949 Takings Act”). Pub. L. No. 81-437, ch. 790, 63 Stat. 1026 (1949).

17. In 1979, the Interior Board of Land Appeals (“IBLA”) issued a final adjudication holding that the Missouri riverbed within the boundaries of the Reservation is a part of the Reservation and is not owned by the State. *Impel Energy Corp.*, 42 IBLA 105 (Aug. 16, 1979). The State had intervened in that action but did not seek review of that decision, making it *res judicata*.

18. In 1984, Congress restored the mineral interests taken by the 1949 Takings Act to trust status for the benefit and use of the MHA Nation in the Fort Berthold Reservation Mineral Restoration Act (the “Restoration Act”). Pub. L. No. 98-602, tit. 2, 98 Stat. 3149, 3152 (1984).

19. In 2017, Department of Interior Solicitor Hilary Tompkins issued M-37044 reaffirming the 1936 M-Opinion and concluding that the mineral interests underlying the original bed of the Missouri River within the Reservation are held in trust for the benefit of the MHA Nation.

20. In 2020, the then-DOI Solicitor issued M-37056. Contrary to all prior opinions and decisions, M-37056 concluded that the State owned the lands beneath the Missouri riverbed within the Reservation.

21. On March 19, 2021, M-37056 was permanently withdrawn by M-37066. Then, on February 4, 2022, the Department of Interior issued M-37073, which again concluded that the United States owns the Missouri riverbed within the Reservation and the underlying minerals in trust for the MHA Nation.

22. On April 4, 2022, the Bureau of Indian Affairs recorded title to the Missouri riverbed within the Reservation, identifying 123 tracts of land held by the United States in trust for the MHA Nation. (ECF No. 56.).

23. Nonetheless, the State has purported to issue leases to oil and gas producers to extract minerals from the Missouri riverbed within the Reservation. Indeed, the State has scheduled an auction for oil and gas exploration rights on recorded trust land held by the United States for the MHA Nation, to take place on August 14, 2024.<sup>2</sup>

24. The State has also demanded and collected royalty and/or other lease payments related to the extraction of minerals from the Missouri riverbed within the Reservation, despite the State's lack of ownership or right to the minerals or the payments. Some of these payments are held by the Bank of North Dakota. Similar payments on other leases issued by the State are being held by producers because of the State's conflicting claim of title to the Missouri riverbed, rather than being paid to the United States for the benefit of the MHA Nation.

25. The MHA Nation adopts by reference all allegations of the Federal Defendants' crossclaim not addressed herein except that it notes: (1) with regard to paragraphs 1 and 14, the land and minerals at issue are part of the MHA Nation's original territory, acknowledged by the United States in the treaties of 1825. Although formal boundaries of the Reservation were first established in the 1851 Fort Laramie Treaty, they were subsequently modified by the Executive Orders of 1870 and 1880; (2) with regard to paragraph 31, the current size of the Reservation is approximately 1,036,877.42 acres, with 481,215.07 acres held in trust by the United States for the benefit of the MHA Nation and its members. Of the trust acreage, approximately 20,624.75

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<sup>2</sup> See [https://www.energynet.com/property\\_information.pl?lot=119537](https://www.energynet.com/property_information.pl?lot=119537) (last visited August 1, 2024).

acres comprises the Missouri riverbed; and (3) the Bakken Three Forks Formation has been estimated by the U.S. Geological Survey to contain 7.4 billion barrels of oil and the MHA Nation believes that, with long term recovery techniques, it may contain between 12 to 40 billion barrels of oil. The MHA Nation also adopts by reference the Federal Defendants' prayer for relief.

### **COUNT I: DECLARATORY JUDGMENT**

26. The MHA Nation incorporates the preceding paragraphs as if fully set forth herein.

27. Title to the Missouri riverbed within the Reservation did not pass to the State under the Equal Footing doctrine.

28. The United States holds title to the Missouri riverbed within the Reservation in trust for the MHA Nation.

29. The State's claim of ownership interferes with the United States' legal title and impairs the MHA Nation's beneficial interest in the Missouri riverbed within the Reservation and its minerals.

30. Declaratory relief quieting title in the United States in trust for the benefit of the MHA Nation is appropriate and will definitively determine the rights of the respective parties to this claim.

31. The Federal Defendants and the MHA Nation are entitled to a declaratory judgment quieting title to the Missouri riverbed within the Reservation in the United States for the benefit of the MHA Nation.

### **COUNT II: INJUNCTIVE RELIEF**

32. The MHA Nation incorporates the preceding paragraphs as if fully set forth herein.

33. The MHA Nation has a beneficial interest in the protection of the Missouri riverbed within the Reservation and royalties generated from the underlying minerals.

34. The State has issued, and continues to issue, leases for oil and gas production on the Missouri riverbed within the Reservation. The State also has retained, and continues to retain, royalty payments from the production of those minerals.

35. The State's actions are in conflict with the United States' legal ownership of the Missouri riverbed within the Reservation and the MHA Nation's beneficial interest in that land.

36. The State's actions should be permanently enjoined. This Court should issue an injunction as set forth in the Federal Defendants' crossclaim.

#### **PRAYER FOR RELIEF**

WHEREFORE, the MHA Nation respectfully requests that this Court enter a judgment granting the following relief:

1. Declaring that the State did not receive title to the Missouri riverbed within the Reservation or the underlying mineral interests when the State entered the Union;
2. Declaring that the State has no right or title or interest in the Missouri riverbed within the Reservation or its underlying mineral interest and no right of possession of the same;
3. Declaring that the title to the Missouri riverbed within the Reservation is quieted in favor of the United States, including the underlying mineral interests, to be held by the United States in trust for the MHA Nation's exclusive use, benefit, occupancy, and enjoyment;
4. Declaring any State-issued leases to the Missouri riverbed within the Reservation to be void *ab initio*;
5. Permanently enjoining the State from asserting any right, title, or interest in or to the Missouri riverbed within the Reservation or underlying mineral interests, or otherwise



interfering in any way with the exclusive possession, use, and occupancy of such lands by the United States or the MHA Nation;

6. Permanently enjoining the State from issuing any new leases relating to the minerals underlying the Missouri riverbed within the Reservation;

7. Issuing an injunction cancelling any State-issued leases to the Missouri riverbed within the Reservation as unlawfully issued;

8. Compelling the State to remit to the United States as trustee for the MHA Nation, or directly to the MHA Nation, any royalty monies received by the State from the production of minerals underlying the Missouri riverbed within the Reservation, including pre- and post-judgment interest on all amounts at the maximum rate allowed by law;

9. Awarding the MHA Nation all costs in this action to the maximum extent permitted by law; and

10. Granting any and all other relief, including ejectment, deemed just and proper by the Court.

Dated this 16th day of August, 2024.

Respectfully submitted,

**ROBINS KAPLAN LLP**

**By:** /s/ Timothy Q. Purdon

Timothy Q. Purdon (D.C. Bar No. ND0007)  
1207 West Divide Avenue, Suite 200  
Bismarck, ND 58501  
Tel: (701) 255-3000  
Fax: (612) 339-4181  
TPurdon@RobinsKaplan.com

Timothy W. Billion (D.C. Bar No. SD0001)  
140 North Phillips Avenue, Suite 307  
Sioux Falls, SD 57104  
Tel: (605) 335-1300

Fax: (612) 339-4181  
TBillion@RobinsKaplan.com

*and*

**HOLLAND & KNIGHT LLP**

Steven D. Gordon (D.C. Bar No. 219287)  
Philip Baker-Shenk (D.C. Bar No. 386662)  
800 17<sup>th</sup> Street, N.W., Suite 1100  
Washington, D.C. 20006  
steven.gordon@hklaw.com  
philip.baker-shenk@hklaw.com  
Tel: (202) 955-3000  
Fax: (202) 955-5564

*Attorneys for Plaintiff Mandan, Hidatsa, and  
Arikara Nation*