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Attorney for Intervenor Three Affiliated Tribes of the Fort Berthold Indian Reservation

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA, WESTERN DIVISION**

WESTERN ENERGY ALLIANCE,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR, SALLY JEWELL, in her official
Capacity as Secretary of the United States
Department of the Interior; BUREAU OF
INDIAN AFFAIRS; and MICHAEL S.
BLACK, in his official Capacity as Director of
the Bureau of Indian Affairs,

Defendants.

**Three Affiliated Tribes' Motion To
Intervene**

Case No. 16-cv-00050-DLH-CSM

Judge Daniel L. Hovland
Magistrate Judge Charles S. Miller, Jr.

The Three Affiliated Tribes of the Fort Berthold Reservation (the Tribe), by and through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 24, hereby appears specially and respectfully moves to intervene as a defendant in this action in order to:

(1) protect its sovereign immunity and challenge the court's jurisdiction over the action on the grounds that (a) the Tribe is a necessary and indispensable party to the plaintiff's action challenging its jurisdiction to regulate and tax the use of Reservation trust land who cannot be joined because it has not waived its sovereign immunity thus necessitating dismissal of the plaintiff's action, and (b) the plaintiff lacks standing to challenge the Tribe's jurisdiction to regulate and tax rights of way (ROWS) on Reservation trust land; and

(2) Alternatively and conditionally, and solely in the event that the Court first rejects the Tribe's motion to dismiss as stated in the preceding paragraph, the Tribe seeks intervention as a defendant to protect its jurisdiction to regulate and tax the use of ROWs on Reservation trust land by supporting the federal regulations recognizing its authority to do so. In this regard, the Tribe seeks limited intervention to support those aspects of the federal regulations which support its territorial jurisdiction.

The jurisdictional grounds, failure to join an indispensable party under Federal Rule of Civil Procedure 19 and standing, will be described more fully in the Tribe's Motion to Dismiss and Memorandum of Law in Support Thereof, which will be filed upon the Tribe's intervention.¹ The Tribes' Motion to Intervene is supported by a Memorandum of Points and Authorities filed herewith.

DATED this 8th day of April, 2016.

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¹ The Tribe has moved to intervene in this case for the initial limited purpose of filing a motion to dismiss on jurisdictional grounds and expressly reserves its immunity from suit. An accompanying Answer setting out the Tribe's jurisdictional defenses is appended to this Motion (Appendix 1) pursuant to Fed. R. Civ. P. 24(c) (the motion to intervene "must be accompanied by a pleading that sets out the claim or defense for which intervention is sought."). If the Court denies the Tribe's motion and finds it has jurisdiction, the Tribe will seek intervention in support of the regulations addressing its regulatory and tax jurisdiction.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2016, I electronically filed the foregoing **Three Affiliated Tribes' Motion To Intervene**, with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all parties of record as follows:

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