



TAX SHARING COMPACT BETWEEN THE MHA NATION AND THE STATE OF NORTH DAKOTA

Legal and Regulatory Affairs Committee
Interstate Oil and Gas Compact Commission

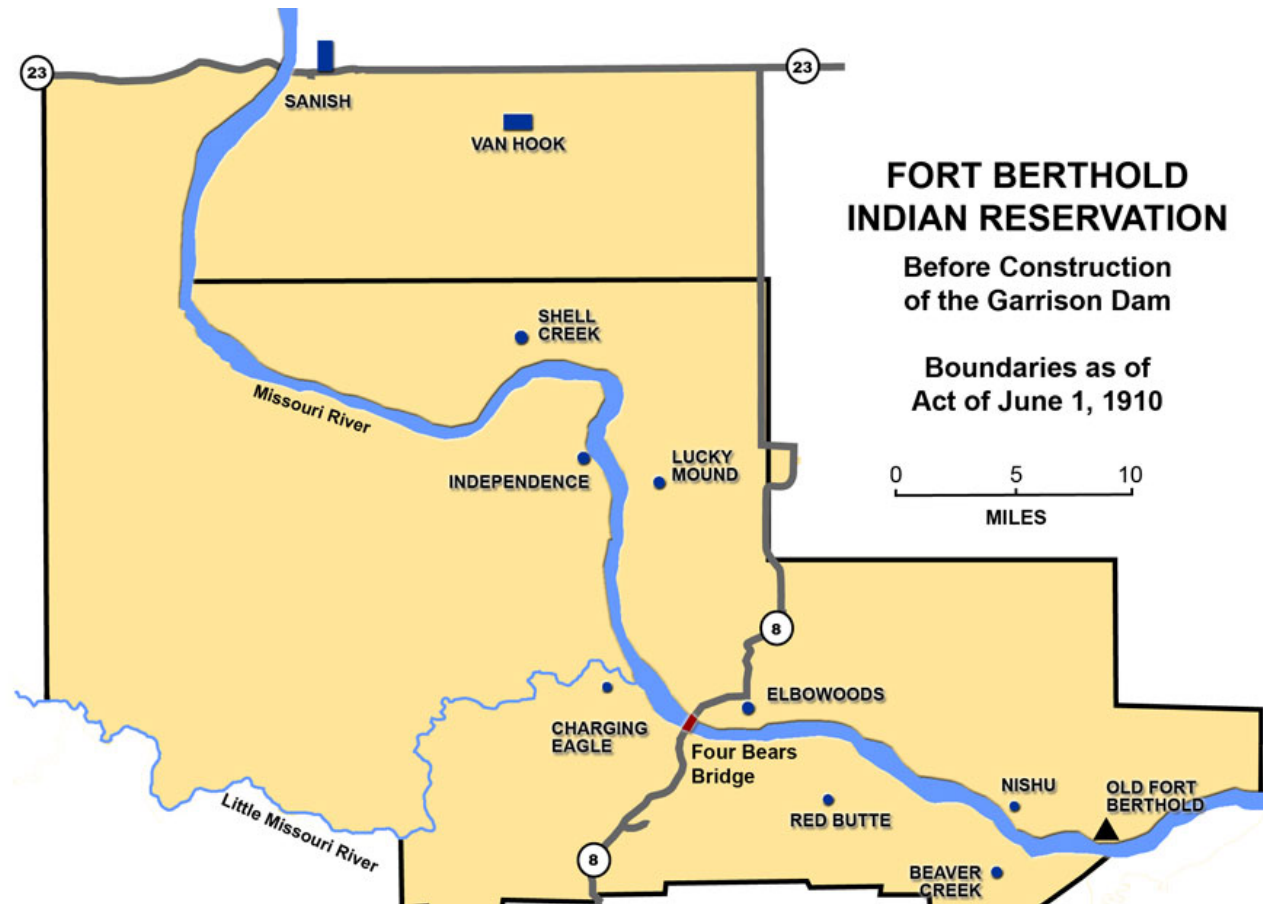
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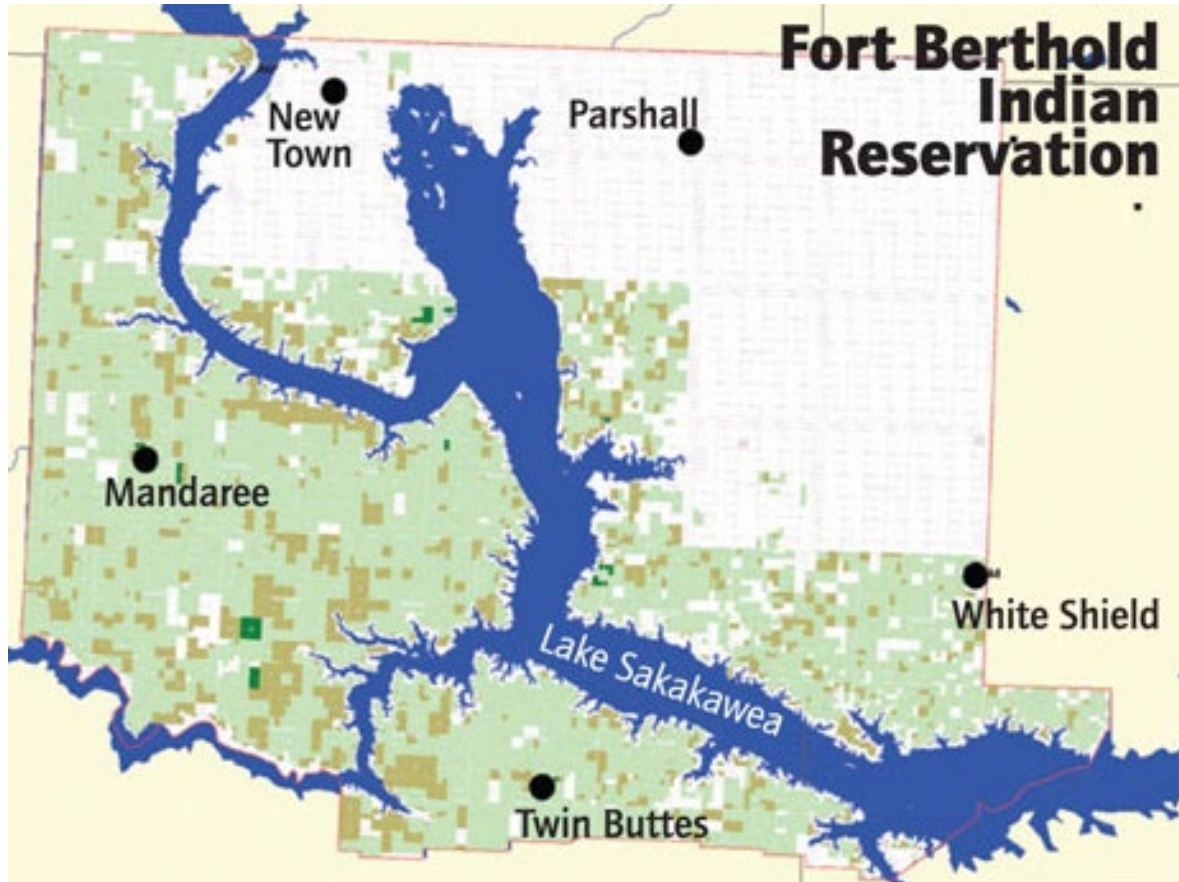
- Historical context
- Surface and mineral ownership
- Prior taxation agreements
- 2019 tax sharing agreement
- 2019-2021 study

THREE AFFILIATED TRIBES SETTLED TOGETHER ON FORT BERTHOLD INDIAN RESERVATION



- 1851: Fort Laramie Treaty recognizes territory of Northern Plains Tribes
- 1862: Arikara join alliance with the Mandan and Hidatsa, creating the MHA Nation
- 1870: Executive Order establishes Fort Berthold Indian Reservation
- 1891: Allotment act granted title of lands within the reservation to individuals
- 1910: Unallotted townships in the Northeast ceded from reservation

FRACTIONATION OF SURFACE AND MINERAL OWNERSHIP



- Trust: Lands held by Department of the Interior for benefit of the tribe
- Tribal jurisdiction and responsibility for infrastructure
- No property taxes

- Fee: Individual ownership within the reservation
- Still within Tribal jurisdiction, but also subject to some State jurisdiction
- Property taxes assessed, state and local responsibility for infrastructure

DUAL TAXATION AND MINIMAL PRODUCTION PRIOR TO TAX SHARING AGREEMENT



- 1989: *Cotton Petroleum Corp. v. New Mexico*: States may collect taxes from on-reservation production
 - MHA Trust Lands Tax: 5%
 - State Tax: 11.5%
- 1997: Federal requirement of 100% allotted landowner consent changed to 51%
- 2007: SB 2419 granted Governor authority to negotiate tax sharing agreement with the tribes
- 2008: Initial tax sharing agreement signed between then-Governor Hoven and Chairman Marcus Wells
 - Trust Lands: 50/50 split
 - Fee Lands: 80/20 split in favor of State

2013 AGREEMENT CHANGED TO EVEN SPLIT OF TAX REVENUE



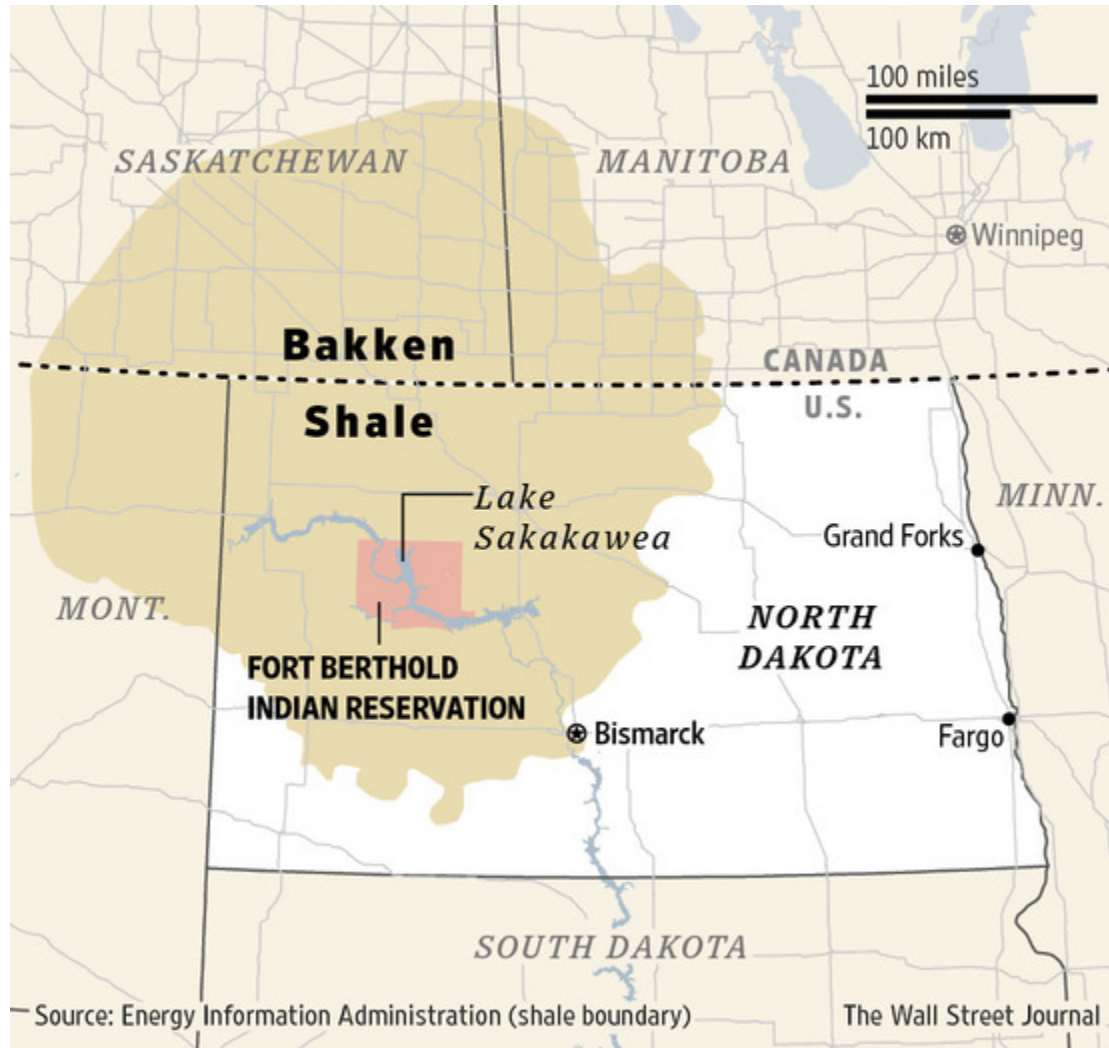
- Between original agreement in 2008 and 2013, number of wells increased from less than 400 to 1,370
- Tribe concerned with cost of development, infrastructure
- State collections since 2008=\$43.7 million
- Tribal collections since 2008=\$19.1 million
- 2013 change: Fee land cost-share changed from 80/20 to 50/50
- Trust land cost-share remained at 50/50

2019 AGREEMENT CHANGED TAX REVENUE SPLIT TO ACCOUNT FOR TRUST/FEE DIFFERENCES



- 2015: Legislature reduced oil production and extraction taxes from 11.5% to 10%
- Concerns about tribal funding availability for infrastructure continued
- 50/50 split did not account for infrastructure responsibility on Trust lands
 - State had little responsibility on Trust lands, but received 50% of revenues
- SB 2312 passed in 2019 authorizing change to 2013 agreement
- Change in tax-sharing for new wells:
 - Trust lands: 80/20 split in favor of Tribe
 - Fee lands: 80/20 split in favor of State
- Projected to increase tribal revenue by \$33.6 million

INCREASED INVESTMENT WITH TAX AND REGULATORY CERTAINTY



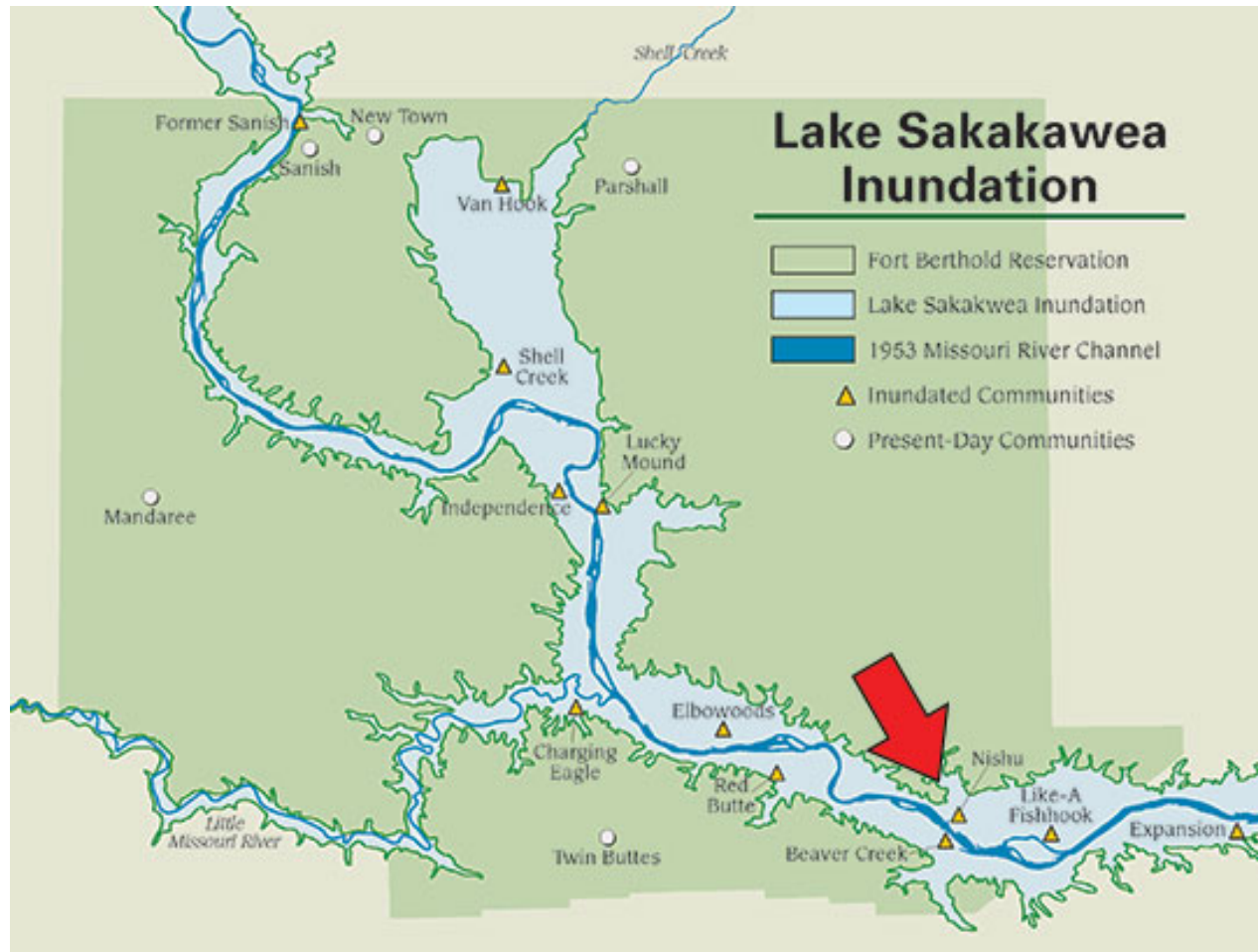
- 20% of North Dakota's production
- 292,000 bbls/day
 - Trust=205,434
 - Fee=86,819
- 2,450 active wells
 - Trust=1,828
 - Fee=622

2019-2021 STUDY: BORDER WELLS



- Oil production and extraction tax assessed at the wellhead
- 131 wellheads outside of Reservation drilling in
- 80 wellheads inside Reservation drilling out

2020 STUDY: HISTORIC RIVERBED MINERALS



- Equal footing doctrine: State ownership of surface and minerals below ordinary high-water mark (OHWM)
 - Waterbodies which were navigable in fact at Statehood
- Mineral royalties deposited in Common Schools Trust Fund to benefit public schools
- OHWM changed when Lake Sakakawea was created
- Many original surface owners retained mineral rights
- 2017: SB 2134 clarified State ownership did not change with artificial OHWM, confined to original riverbed at time of Garrison Dam closure
- Ownership of minerals below riverbed on Fort Berthold disputed



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