MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated MHA Nations * Fort Berthold Indian Reservation
404 Frontage Road New Town, ND 58763
Tribal Business Council

Office of the Chairman
Mark N. Fox

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Department of Treasury
Internal Revenue Service
Via https://www.federalregister.gov

Re: Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election to Treat Clean Hydrogen Production Facilities as Energy Property.

These comments are submitted on behalf of the Mandan Hidatsa and Arikara (MHA) Nation, on the Internal Revenue Service's (IRS) proposed rulemaking regarding tax credits for the production of clean hydrogen and the election to treat clean hydrogen production facilities as energy property. The MHA Nation is located on the Fort Berthold Reservation in North Dakota. We are one of the largest oil and gas suppliers in the country. The proposed Rule is important to us because the MHA Nation is seeking funding from the Department of Energy to construct and operate a clean hydrogen project on the Fort Berthold Reservation which will convert natural gas to hydrogen. The proposed Rule in its current form will likely derail those development efforts.

The proposed Rule must be modified to treat hydrogen developed from natural gas equally. The issuance of tax credits under 45V and governmental support for clean hydrogen is important to the long-term economic health of the MHA Nation and provides an opportunity for the MHA Nation to develop its significant trust resource, natural gas. However, for such development to occur the tax credit regulations must be modified so that hydrogen produced from natural gas (blue hydrogen) is treated as fairly as hydrogen produced from other sources. By not giving full tax credits to blue hydrogen the United States fails its trust responsibility to the MHA Nation by discouraging the efficient use of a trust resource. Putting blue hydrogen at a tax credit disadvantage also discourages the development of a robust national hydrogen infrastructure which will delay or prevent the reduction of carbon emissions from long haul trucking, power plants and other sources.

I. Tax Credits Will Encourage Development of the MHA Nation's Natural Resources and Support the Federal Government's Trust Responsibility to the MHA Nation.

The MHA Nation's oil and gas resources are held in trust by the United States for the benefit of the for the MHA Nation and its members. Because the MHA Nation's natural gas is a trust resource, the United States and its agencies are obligated to protect those resources and encourage and support the MHA Nation in its development efforts. The federal trust responsibility is a legal obligation that originates from the unique relationship between the United States and Indian Tribes. The trust responsibility consists of the highest moral obligation that the United States must meet to ensure the protection of tribal lands, assets, and resources. The protection of resources also includes finding ways to prevent the waste of those resources. Tax credits which provide support for blue hydrogen would support and reaffirm the federal government's trust responsibility to the MHA Nation by providing a local market for the gas resources and by helping to prevent waste of flared gas and to encourage clean use of natural gas.

The trust responsibility also requires the federal government to support and encourage tribal sovereignty. Development of natural resources held in trust helps the MHA Nation achieve economic independence. The sovereignty of the MHA Nation and the right for the MHA Nation to provide for its own members is highly dependent on economic development. Fairly treating blue hydrogen under the tax credit regime would be a significant boost to development of natural gas resources on the Fort Berthold Indian Reservation.

There is currently great difficulty in capturing and using all of the produced natural gas on the Fort Berthol Reservation in an economic manner. Natural gas which cannot be economically captured is instead flared into the air. Flared gas represents a waste of a trust resource. The MHA Nation loses a significant source revenue when natural gas is flared. Flared gas also contributes to pollution. The MHA Nation's hydrogen project is intended to eliminate the problem of flared gas by providing a local facility that can take that gas and convert it to clean hydrogen. But the proposed Rule in its current form would destroy the effort to prevent flared gas because the hydrogen project is simply not feasible without the full benefit of the tax credits.

II. Tax Credits Should Not Disincentive Blue Hydrogen Production

The proposed tax credit disincentives the production of blue hydrogen. Disincentivizing blue hydrogen defeats the stated purpose of the program and the federal government's commitment to a cleaner environment. Maximizing the efficient use of this country's abundant natural gas resources must be a priority because the gas is readily available while the country's green energy infrastructure will take years to develop. While wholly renewable energy sources are a lofty goal to which we should strive it is a goal that cannot be met currently.

Blue hydrogen and the use of existing energy sources are an important steppingstone to green energy. By preferring areas which can already access renewable energy, the federal government creates a two-tiered system. The regulations pit those with the resources and access to renewable energy against those trying to create or without access to a renewable energy infrastructure. Blue hydrogen production – due to the geographic location of most natural gas – does not have access to the same renewable energy resources as other hydrogen production techniques. If the regulations are passed as written many blue hydrogen projects will either be built on a smaller scale or abandoned completely. Smaller scale or abandoned projects will not help the United States move toward a greener future and will only serve to further widen the divide between those with access to renewable energy and those who do not.

The proposed rule would essentially relegate production of clean hydrogen to renewable energy facilities and newly-developed sources of renewable natural gas. Both provisions significantly limit opportunity to receive credit for reducing the carbon intensity of natural gas feedstock for clean hydrogen production. The Environmental Protection Agency has long allowed for the use of RNG trading through Renewable Identification Numbers (RINs) under the Renewable Fuel Standard program. Trading of RINs has become a proven method for establishing greenhouse gas emissions reduction. There is no reason that the use of this book and claim system should not be continued to allow for production of clean hydrogen. In addition, there are limited options for largescale RNG production near the MHA Nation. Requiring a hydrogen facility to be the first productive use of a RNG facility, and have a pipeline connection, presents a significant logistical barrier to the MHA Nation's development of a clean hydrogen project.

Beyond creating a two tier system which shuts the MHA Nation out of hydrogen production, the proposed rule likely violates the trust responsibility of the federal government. The final rule should instead allow for all technologies that can meet the stated lifecycle GHG rate to be eligible for the tax credit. To do otherwise would require the MHA Nation to continue to flare its gas and waste precious trust resources. Tribal sovereignty and economic independence require fair rules which provide the MHA Nation a fair opportunity to develop its resources.

Blue hydrogen can play a unique key role in reducing carbon emissions. Hydrogen production is geared toward moving the nation toward a greener energy source. However, only blue hydrogen provides greener energy while diminishing carbon emissions due to its use of flared natural gas. As discussed earlier in this comment natural gas is usually flared. Flared gas has a significant impact on the environment through the release of CO2 and other pollutants into the air. Removing natural gas from flaring and dedicating it towards blue hydrogen is a major step in reducing CO2 emissions and securing a greener future. Providing an equal playing field for tax credits will assist in reducing pollution and moving toward a greener future.

III. Blue Hydrogen is a Vital Component of a National Hydrogen Infrastructure

Long haul trucking forms the backbone of the freight system in the United States. Over seventy percent of all freight payloads are moved by truck.[1] Long haul trucks are powered by fossil fuel engines. Even though long-haul trucks represent only 1 % of vehicles on the road they account for almost a third of on-road greenhouse gas emission and almost half of the on-road NO_x emissions.[2]

Converting long haul trucks from fossil fuel to hydrogen power can significantly reduce carbon emissions. However, a national infrastructure to produce, store, and sell hydrogen is imperative. Allowing for and incentivizing all forms of hydrogen production is necessary to create a national hydrogen infrastructure. If hydrogen production is overly localized, then it is likely that long haul trucking companies will not adopt the technology as it will be too expensive in areas where there is no local hydrogen production, and the technology will only be adopted for short haul and local trucking only. To fully realize the reduction in emissions a nationwide infrastructure is necessary.

Blue hydrogen is an important part of the national hydrogen infrastructure. Areas such as North Dakota where natural gas is flared do not have access to other forms of hydrogen production without significant and expensive investment into other technologies. However, states with significant natural gas resources can provide blue hydrogen at an effective rate with the help of the proposed tax credit. If blue hydrogen is treated differently than other methods, there exists a real possibility of significant gaps in the national hydrogen infrastructure.

IV. Conclusion

Hydrogen and its use as a fuel source represents an opportunity to create a greener future while also providing for the development of the natural resources of the MHA Nation. However, if the tax credits are enacted as written it will be much more difficult if not impossible for the MHA Nation to realize an opportunity to produce hydrogen. If the MHA Nation cannot participate in hydrogen production, then natural gas will continue to be flared on the Reservation. I encourage you to revisit the structure of the tax credits and to provide for fairer assessments for blue hydrogen.

Respectfully submitted,

Mark N Fox

Mark N. Fox, Chairman

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[1] Fan Tong, Alan Jenn, Derk Wolfson, Corinne D. Scown, Maximilian Auffhamer,, *Health and Climate Impacts from Long-Haul Truck Electrification*, 55 Environ Sci. Technol 8514, 8515-16 (2021). https://pubs.acs.org/doi/10.1021/acs.est.1c01273

[2] *Id.*