



## Interior Rejects North Dakota’s Mineral Ownership Claims under the Missouri River

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On January 18, 2017, the Solicitor for the Department of the Interior (“Interior”) issued a formal legal opinion—called an “M-Opinion”—concluding that the minerals underlying the portion of the original Missouri River bed within the Fort Berthold Indian Reservation (“Reservation”) are held in trust by Interior for the Mandan, Hidatsa, and Arikara Nation (“MHA Nation” or “Tribes”).

The detailed Solicitor’s Opinion rejects the notion that the State of North Dakota obtained title to the minerals beneath the Missouri River upon becoming a state or at any time thereafter. The obvious implication of the Solicitor’s Opinion is that any oil and gas lease issued by North Dakota encompassing the Missouri River within the Reservation is void in the eyes of Interior.

The Solicitor’s Opinion follows recent efforts by North Dakota to quiet its claim to the minerals beneath the Missouri River elsewhere in the State. The Solicitor was careful to avoid expanding its analysis to include any other portion of the Missouri River. Nevertheless, the Opinion effectively establishes Interior’s legal approach for challenging state efforts to use the Equal Footing Doctrine to claim ownership to the minerals underlying the navigable waters, such as the Missouri River, within its borders, at least where the navigable water is located within or is abutting an Indian reservation.

Thus, the Solicitor’s Opinion injects another variable into the ongoing dispute among North Dakota, MHA Nation, and Interior regarding mineral ownership underlying the Missouri River. Because title to the bed of the Missouri River within the Reservation has not been judicially determined, operators remain confronted with the issue of whether to obtain a lease from the Tribes (via Interior who holds the minerals in trust), North Dakota, or both; and, whom to pay royalties or otherwise reach agreements to escrow royalties pending resolution of this dispute.

Solicitor Opinions are binding on “all Departmental offices and officials,” 209 DM 3, and can only be modified or overruled by three individuals: (1) the Solicitor; (2) the Deputy Secretary; or (3) the Secretary. 209 DM 3.2(A)(11).

For more information regarding the Opinion, available [here](#), contact [Bret Sumner](#) or [Andrew Glenn](#).