

**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION**

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, The United States Congress passed the Transportation Equity Act for the 21st Century, ("TEA-21) which became P.L. 105-178 on June 9, 1998; and

WHEREAS, Section 1101(a)(8)(A) of TEA-21 (P.L. 105-178) authorized Congress to appropriate \$225 million for Indian Roads for Fiscal Year 1998 and \$275 million in each of Fiscal Years 1999-2003 and the Congress to appropriate \$275 million per year for the Indian Reservation Roads program, which represented an increase of nearly \$100 million dollars for the Reservation Roads Program from previous fiscal years; and

WHEREAS, Section 1115(b) of TEA-21, (P.L. 105-178, 23 U.S.C. Section 202(d)(2)(A)) as enacted by Congress, requires that the Secretary of the Interior develop a formula for distribution of the funds for FY 2000 and subsequent fiscal years under a negotiated rule making procedure allowed by the Federal Administrative Procedures Act;

WHEREAS, Section 1115(b) of TEA-21 (P.L. 105-178, 23 U.S.C. Section 202(d)(2)(B)) requires that the regulations developing the formula, and other regulations governing the Indian reservation roads program for Fiscal Years 2000 and each subsequent year were to be developed in final form on or before April 1, 1999 and should have taken effect no later than October 1, 1999; and

WHEREAS, Section 1115(b) of Tea-21 (P.L. 105-178, 23 U.S.C. Section 202(d)(2)(D)) requires that the basis for the funding formula to be developed under the negotiated rulemaking process "shall be based on factors that reflect –

(i) the relative needs of the Indian tribes, and reservation or tribal communities, for transportation assistance; and

(ii) the relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources.”

WHEREAS, On February 15, 2000, the Secretary of Interior (hereinafter the “Secretary”) has issued and published in the Federal Register an Interim Regulation, and solicited comments on the regulation, that requires the use of the old formula applied to the previous Transportation Act known as ISTEA, for Intermodal Surface Transportation Equity Act; and

WHEREAS, The Secretary has announced his intentions to go forward with the interim rule and distribute the funds for FY 2000 in accordance with the old formula, and has claimed that the Negotiated Rulemaking Committee for TEA-21 has reached consensus about using this formula for FY 2000; and

WHEREAS, As a result of the application of the old formula for FY 2000 funds, according to information obtained from the Aberdeen office of the Great Plains Region of the Bureau of Indian Affairs, Indian reservation roads funds that will be allocated to projects on the Fort Berthold Reservation, home to the Three Affiliated Tribes, will be cut approximately 53% for FY 2000, resulting in a loss of funding for road projects on the Fort Berthold Reservation in excess of \$1,000,000; and

WHEREAS, The loss of these funds will delay or cause the cancellation of one or more roads projects already scheduled to occur on the Fort Berthold Reservation in FY 2000, including a street improvement project scheduled for the community of Mandaree in the Mandaree Segment and a street improvement project scheduled for the Four Bears Segment, causing a loss of jobs for members of the Three Affiliated Tribes and a loss of income to contractors owned by Tribal members who could qualify to complete the roads projects planned for FY 2000 and a delay in street improvement projects, further degrading the quality of life of the members of the Tribe and the public that depend on such road improvements and who expected such road improvement projects to be completed this year; and

WHEREAS, There was no consensus by the TEA-21 negotiated rulemaking committee on the application of the old formula that would result in cuts in reservation roads funding of up to 53%, as several Tribes whose representatives sit on the Negotiated Rulemaking Committee, including the Three Affiliated Tribes and the Standing Rock Sioux Tribe, whose representative is the co-chair of the Committee, indicated to the Chairmen of the Committee in writing their disagreement with the use of the old formula in a way that would result in severe cuts in the Indian reservation roads funds that would be available to

various tribes; and

WHEREAS, That the biggest reason that reservation roads funds to be allocated to the Three Affiliated Tribes are scheduled to be cut 53% is that according to the information used in the formula, the cost to improve a mile of road in North Dakota, in which the Fort Berthold Reservation is located, has declined as much as 53% from the previous year's levels, although such information as was used in the application of the formula concerning the cost to improve a mile of road in North Dakota is grossly incorrect, not required to be used in the formula and is not subject to verification; and

WHEREAS, The Secretary of Interior has failed to develop regulations in accordance with Section 1115(b) of TEA-21, P.L. 105-178, 23 U.S.C. Section 202(d)(2), by October 1, 1999; and has failed to develop a formula for distribution of funds for FY Years 2000 and beyond that is based on the relative needs for roads of the various Indian reservations; and

WHEREAS, The Secretary has developed a formula which arbitrarily and capriciously has cut the reservation roads funds allocated to the Fort Berthold Reservation 53 percent from previous years levels, and such cut is not in any way rationally related to the need of the Fort Berthold Reservation for such Indian reservation roads funds; and

WHEREAS, Based upon the foregoing, it is in the best interests of the Three Affiliated Tribes to legally challenge in Federal court any final funding formula which results in cuts of such magnitude as are described above for the reservation roads program for FY 2000 on the Fort Berthold Reservation;

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby authorizes and the directs the Legal Department of the Three Affiliated Tribes to file a lawsuit on behalf of the Three Affiliated Tribes in the appropriate Federal court that would request, among other things, a temporary restraining order and preliminary injunction barring the United States Secretary of the Department of Interior from distributing any funds available for FY 2000 for the Indian reservation roads programs until a formula can be developed that will result in funds being distributed according to the relative needs of the various Indian reservations and that would not result in an arbitrary distribution of those funds; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby authorizes the Chairman and the Treasurer of the Tribe to spend such sums as may be necessary to pursue the federal lawsuit authorized above, including, but not limited to, filing fees, discovery fees, costs

of transportation to and from the place where the lawsuit will be filed and making payments to and executing attorney contracts with such local counsel in the District where the lawsuit may be filed as the Legal Department deems may be needed to assist the attorneys of the Legal Department, as provided by local rule, in the filing and completion of the lawsuit.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 4th day of May, 2000; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 4th day of May, 2000.

Daylon Spotted Bear
Daylon Spotted Bear
Secretary, Tribal Business Council

ATTEST:

Tex G. Hall
Tex G. Hall
Chairman, Tribal Business Council