

**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, including management of the economic affairs of the Tribe; and
- WHEREAS,** It is well documented that the U.S. Department of Interior, the agency responsible under law and Treaty for fulfilling the trust obligations of the United States to its Indian citizens, has grossly mismanaged the administration of trust funds and trust resources belonging to Indian tribes and individual Indians; and
- WHEREAS,** While the Department of Interior is claiming that it is reforming its management of tribal and individual Indian resources, every outside expert that has reviewed the Department of Interior's efforts has concluded that these efforts are seriously flawed and are designed to perpetuate the Department's power over Indians rather than make the Department an accountable trustee; and
- WHEREAS,** That for real trust reform to occur, it must be carried out by an entity that is independent of the Department of Interior; and
- WHEREAS,** Over the objection of over 40 tribal leaders, the BIA has proceeded to publish proposed Leasing, Grazing, Probate and Trust Fund regulations that an NCAI-ITMA workgroup has concluded are "fatally flawed", and that were published in violation of Executive Order No. 13084, which calls for negotiated rulemaking for new regulations involving trust management; and
- WHEREAS,** While President Clinton has brought substantial moral pressure on the Swiss banks to fairly compensate the Holocaust victims for the monies they lost as a result of dishonorable dealings by those banks, the Administration has been unwilling to put forth fair and honorable proposals to compensate tribes for the monies they lost as a result of the United States' gross mismanagement of their trust funds and resources over the past 150 years; and
- WHEREAS,** The tribes need to join with IIM account holders who have courageously filed a breach of trust lawsuit against the United States, since the decisions in that case, Cobell, et al. v. Babbitt, et al., will be making critical legal decisions involving how Interior will manage trust funds and trust assets in the future; and

**WHEREAS,** Arnold Porter, a 500 member law firm with headquarters in Washington, D.C., and which has a large administrative law practice, is willing to handle on a contingency fee basis a multi-tribe lawsuit against the Federal government for breach of the government's trust responsibility to manage Tribal trust assets according to normal standards applicable to trustees managing other assets on behalf of the intended beneficiary; and

**WHEREAS,** Arnold Porter needs a significant number of Indian tribes, approximately 25, committed to going forward with the lawsuit before the initial work can begin that would lead to the filing of a complaint on behalf of each individual tribe that wishes to litigate and use Arnold Porter as the lead law firm; and

**WHEREAS,** The anticipated duration of this lawsuit will depend on the efforts made legislative and legally to reach a settlement of all issues relating to trust asset management to the satisfaction of the tribes who are part of the lawsuit; and

**WHEREAS,** The estimated recovery for poor management of assets owned by a tribe, if all tribes were to join in this lawsuit could be several billion dollars or more, depending on how far back in time the court is willing to hold the United States responsible; and

**WHEREAS,** Arnold Porter also recognizes the importance of working legislatively through Congress to achieve the results desired by filing the breach of trust lawsuit described above, and has pledged to assist in the legislative effort along with the litigation effort in Federal court; and

**WHEREAS,** Arnold Porter is anticipating that provided at least 25 tribes join together to file the breach of trust lawsuit against the Federal Government, each tribe that is filing the lawsuit and using Arnold Porter as lead counsel will contribute \$25,000 or less annually to the cost of the lawsuit for the purposes of retaining experts, doing the necessary discovery and providing for other necessary costs of litigation, other than attorney's fees;

**NOW THEREFORE BE IT RESOLVED** that the Tribal Business Council of the Three Affiliated Tribes hereby authorizes the Chairman, Vice-Chairman or the Treasurer to negotiate with Arnold Porter for an agreement between Arnold Porter and the Tribe authorizing the commencement of a lawsuit alleging breach of the Federal Government's trust responsibility to the Three Affiliated Tribes under all applicable treaties and laws, to be filed if possible in the same court as the Cobell case, with the understanding that any such agreement negotiated will not be effective, and no funds will be required to be tendered to Arnold Porter for expenses, unless and until a sufficient number of tribes have agreed to have Arnold Porter as lead counsel such that the litigation costs to be absorbed by each

Tribe annually will not be greater than \$25,000 or such lesser sum as may be agreed to by the Tribe, it being understood that the Tribe would prefer an amount not greater than \$15,000 annually, and it being understood that the contingency fee award to be negotiated shall be no greater than 10% of the total award to all tribes; and

**NOW THEREFORE BE IT FURTHER RESOLVED** that provided an sufficient number of Tribes have agreed to have Arnold Porter as lead counsel in the above described breach of trust lawsuit, the Tribal Business Council hereby authorizes an amount up to \$25,000 annually or such other amount as may be negotiated between the parties, to be spent on such lawsuit for costs associated with the litigation, provided that the final agreement does not call for a contingency fee award of greater than 10% of the award provided to all tribes, with the further understanding that the final agreement negotiated between the Tribe and Arnold Porter is subject to approval by the Tribal Business Council.

#### 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, 6 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 21<sup>st</sup> day of August, 2000; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 1 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 21<sup>st</sup> day of August, 2000.

Daylon Spotted Bear  
Daylon Spotted Bear  
Secretary, Tribal Business Council

ATTEST:

Tex G. Hall  
Chairman, Tribal Business Council