Resolution #01- 183MLWSR

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 Flood Control Act of 1944 authorized construction of five dams or reservoirs on the mainstream of the Missouri River which included the Garrison Dam, and

WHEREAS, Congress authorized the acquisition of Indian lands, and the Act of October 29, 1949, authorized the United States Government to acquire 156,000 acres of prime agricultural lands on the Fort Berthold Reservation providing 69.1% of the land required for the Garrison Dam; and

WHEREAS, The Mandan, Hidatsa, and Arikara Tribes lost the economic base where the tribes had lived for centuries and had established a flourishing agricultural economy and the key trade centers along the Missouri River for nomadic tribes and later the fur trade; and

WHEREAS, In May, 1985, the Joint Tribal Advisory Committee was established by the Secretary of the Interior Hodel as recommended by the Garrison Division Unit Commission in their final report when they found that the Three Affiliated Tribes and The Standing Rock Sioux "bore an inordinate share of the cost of implementing Pick-Sloan Missouri Basin Program mainstream reservoirs"; and

WHEREAS, In 1992, Congress passed Public Law 102-575 entitled "Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act," establishing an economic recovery fund of $149.2 million for the Tribes, a permanent trust fund with the interest to be used for educational, social welfare, economic development, and other programs; and

WHEREAS, The aforementioned recovery fund compensated for the loss of land only; and

WHEREAS, The Three Affiliated Tribes also suffered the loss of a Hospital, when the U.S. Government acquired Tribal lands in 1949 for the purposes of constructing a dam, and the Tribal Business Council believes that the Tribes should be compensated for the loss of the Hospital; and

VIA FAX 701-627-3805

April 24, 2001

Tex Hall
Chairman
Three Affiliated Tribes
Administration Building
Highway 22
New Town, ND 58763

RE: New Health Facility

Dear Tex:

As we move ahead on JTAC II, we need to have a general concept of the kind of health facility the Tribe is seeking. To get the process started, below is an outline of one possibility – a creative hybrid between a full hospital and an outpatient clinic. The concept is based on a report a health consultant did for another tribal client of mine that was being offered a clinic but wanted an inpatient facility.

The concept calls for the construction of an inpatient facility that is less than a full-scale hospital but much more than a clinic. It will have:

- a full outpatient facility and pharmacy;
- 24 hour emergency services;

- skilled nursing beds for patients who need regular nursing care but do not need to be in a hospital, such as patients recovering from surgery or accidents;
- a few acute care beds for emergencies;
- a mid-wife and birthing center that can handle uncomplicated births; and
- an attached long term care facility.

If the Tribe asks for a full-scale hospital, IHS will argue, correctly, that a hospital for a population of your size is not economically feasible and will not deliver good health care. The only alternative to a full-scale hospital IHS has offered tribes is an outpatient clinic like the one on Ft. Berthold. However, the model described above is a third feasible option. Many small rural towns around the country that were in danger of losing their hospitals have converted their facilities to this hybrid model – usually called a community health facility – and have found that it is both economically and medically viable.

Such a facility lets the large regional hospitals do what they do best – take care of acute care patients, complicated births, surgery and other serious medical problems. The community health facility provides inpatient and outpatient care for those who do not need to be in a full-scale hospital, providing them with care close to home at a much lower cost.

While IHS still has not accepted this hybrid model, it has been shown to work in non-Indian rural communities with populations no larger than Ft. Berthold's, so the Congressional delegation is probably familiar with it. It has numerous benefits to the Tribal members. It will provide 24 hour emergency services. Tribal members will no longer have to be sent off the reservation to a full scale hospital for less serious acute care problems. Even if they are treated at the full-scale hospital, it will, in many cases, allow them to recover from surgery or acute illness at a facility that is close to their homes. And of course it would provide a long term care facility, so elderly tribal members could be near their families while still receiving the care they need.

In addition to being more convenient for tribal members, it will help to address your present shortfall in contract care costs. Presently, some of the CHC money is going to pay the high cost of hospital rooms for tribal members who could be treated at or who can recuperate in the community health facility, which is funded

out of direct care dollars. It could also handle uncomplicated births, which eliminates those costs from the contract care budget. It will allow contract care funds to be focused on paying for those who are seriously ill and need to be in a full-scale hospital.

A consultant will need to conduct an analysis of the existing utilization at your service unit in order to determine the exact number of beds the facility can justify. The analysis that was done for my other client, which had an on-reservation population similar to yours, concluded that the population could support 8 acute care beds and 10 skilled nursing beds. These would be "swing beds" in that some of the acute care beds could become skilled nursing beds and visa versa, depending on demand. Because IHS will not deliver care in these ways, this model works only if the Tribe contracts the facility under the provisions of the Self-Determination or Self-Governance Acts. These Acts give a tribe the flexibility to manage the facility according to this model

Since IHS does not provide long term care, the long term care facility, providing residential care, would be a separate facility that is physically connected to the community health facility. The number of long term care beds would depend on need, which can be initially be determined by the number of tribal members now living in such facilities off the reservation who would like to come home. (Some of the skilled nursing beds would be used by elderly who need more than just residential care.) The medical director of the health facility would also serve as the medical director of the long term care facility. However, he or she can only have this expanded role if the Tribe contracts for the health facility under the Self-Determination Act or the Self-Governance Act, since an IHS employee may not work in a long term care facility.

According to the study done for the other tribe, a facility like the one described can operate on the same direct care budget as the typical IHS clinic, but only if:

1. The Tribe contracts the facility and introduces management efficiencies.
2. The facility aggressively bills Medicare, Medicaid and other third party reimbursement sources, since the financial model assumes that about 25% of the total budget will come from non-IHS sources.
3. The present barrier to new nursing homes in North Dakota is lifted for

the Reservation, since most of the long term care facility costs need to be paid for by Medicaid. (It may also require a tribal subsidy for those members who are not Medicaid eligible.)

4. Non-Indians are permitted to use the facility as paying customers, in order to produce the additional income needed to make the model cash-flow. Assuming there is inadequate health care for non-Indians on the Reservation, this also can produce additional political support for the facility.

The financial analysis for the other tribe were done ten years ago. Medicare and Medicaid rates have changed substantially since this other study was done, so a new study, using Ft. Berthold Service Unit data, is needed to confirm these conclusions regarding financial viability. It is possible that Congress would require that the Tribes pay for the cost of constructing the attached long term care facility, since it may be reluctant to set a precedent of funding long term care construction.

Please have this reviewed by your health experts. If you think it is an acceptable starting point for our discussions with Congress, I will prepare a short memo describing the facility that we can hand out to the North Dakota Delegation. You had also mentioned the idea of holding a community hearing on the Reservation's health facility needs. If you would like to introduce this community health facility concept at such a hearing in order to get comments from the community, I could try to locate the consultant who did the other study and see if he would do a presentation on the concept at the hearing.

Sincerely yours,

Daniel S. Press

Resolution #01- 183 MW 5r.

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby establishes the JTAC II Task Force Committee to develop a plan to pursue compensation for the Hospital that was lost in the acquisition of Tribal land by the U.S. Government in 1949 and to also pursue funding for the establishment of a Three Affiliated Tribes comprehensive healthcare facility.

BE IT FURTHER RESOLVED, That the JTAC II Task Force Committee that will pursue compensation for the loss of the Hospital shall be comprised of the following:

(1) Tribal Chairman Tex G. Hall (Red Butte) and Tribal Business Council Members Austin Gillette, Marcus Wells, Jr. and Mark Fox;
(2) Health & Human Resource Committee Members Randy Phelan, (Chairman), Daylon Spotted Bear, and Malcolm Wolf;
(3) The Director of the Three Affiliated Tribes Kidney Dialysis Unit;
(4) The Tribal Health Administrator of the Three Affiliated Tribes;
(5) One board member from each of the six segment boards; and
(6) One member of the Mandan, Hidatsa, Arikara Elders Organization.

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 Reg. Meeting thereof duly called, noticed, convened, and held on the 19 day of July, 2001; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 1 members abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 19 day of July, 2001.

Chairman (X) voting ( ) not voting.

Marcus Wells

Secretary, Tribal Business Council

ATTEST:

Tex G. Hall

Chairman, Tribal Business Council