



**Resolution No. 03-117-RP**

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

*A Resolution entitled "Approval of Rural Development Loan in the amount of \$3.5 million for Rural Water Projects"*

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

**WHEREAS,** The Three Affiliated Tribes' Constitution authorizes and empowers the Mandan, Hidatsa & Arikara Tribal Business Council to engage in activity on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** The Three Affiliated Tribes and its members lost more than 155,000 acres of prime bottom lands along the Missouri River as a result of the construction of Garrison Dam in the early 1950's, forcing its members onto much less desirable lands away from the Missouri River, and which also meant the loss of immediate access by Tribal members to the good water of the Missouri River; and

**WHEREAS,** As documented in the Garrison Unit Joint Tribal Advisory Committee (JTAC) report issued in May, 1986, as a result of the Garrison Dam and the flooding of their prime lands, the Three Affiliated Tribes and its members were promised a water distribution system to allow all rural residents free access to the water of Lake Sakakawea, the reservoir behind the Garrison Dam; and

**WHEREAS,** In December, 2000, Congress enacted into law the Dakota Water Resources Act of 2000, which authorizes an additional \$70 million for MR&I projects on the Fort Berthold Reservation of the Mandan, Hidatsa and Arikara Nation and \$200 million over all for all Indian MR&I projects within the State of North Dakota, which will allow substantial completion of a rural water system serving all of the Tribal members residing on the Fort Berthold Reservation; and

**WHEREAS,** Congress has not appropriated sufficient funds for FY 2003 and it is likely it will not authorize sufficient funds in FY 2004 to satisfy the needs of the Three Affiliated Tribes concerning construction of the rural water distribution project, although engineering and construction designs for the initial elements of the project are completed and construction can begin as soon as funds are made available; and

**WHEREAS,** The Three Affiliated Tribes is eligible to apply for a loan from the United States Department of Agriculture in the amount of \$3.5 million to be used for the construction of selection water supply and distribution projects for the Fort

Berthold Rural Water System of the Three Affiliated Tribes, the principal terms of which are that the loan is amortized over 40 years at an approximate annual interest of 4.625%, provided that the Tribe must show a source of repayment for the loan, and which terms also include a provision for a deferral of principal payments on the loan for up to two years following the date of funding of the loan; and

**WHEREAS,** The Tribe has previously approved an application for a loan and grant for USDA for this purpose in Resolution No. 02-206-MWJR which funds are not available at this time; and

**WHEREAS,** The Tribe believes that the source of repayment of this loan should be funds appropriated by Congress and administered by the Bureau of Reclamation of the Department of Interior to fulfill the commitment made to the Tribe in the Dakota Water Resource Act of 2000; and

**WHEREAS,** The Tribe has already submitted all documents required by Rural Development regarding the pre-application process for the previous loan approved by Resolution No. 02-206-MWJR, and those documents should be sufficient for the application for the \$3.5 million loan described above; and

**WHEREAS,** The Tribe believes that in addition to funds appropriated under the Dakota Water Resources Act for water distribution projects, there are at least five other sources of repayment for the loan, upon which the Tribe will rely either in whole or in part or in combination with each other if appropriations under the Dakota Water Resources Act are insufficient to meet the need for repayment of this loan: 1) Other non-Tribal users of the water from the project who live off the Fort Berthold Reservation; 2) general funds available to the Tribe after all other current legal obligations of the Tribe have been met; and 3) other state and Federal programs made available to the Tribe for water development; and

**WHEREAS,** It is the intention of the Tribe in receiving this loan to make maximum effort to secure sufficient appropriations from the Dakota Water Resources Act to repay this loan without resorting to any of the other sources of repayment mentioned in the preceding paragraph; and

**WHEREAS,** the Tribe intends by this resolution to make a pledge for repayment of the above described loan of all of the above mentioned sources of repayment as may be necessary to secure this loan, but this pledge is contingent upon a favorable determination that funds appropriated pursuant to the authority granted in the Dakota Water Resources Act may be used for repayment of the loan.

**NOW THEREFORE BE IT RESOLVED,** that the Tribal Business Council hereby approves the application for a loan with the Rural Development program of the United States Department of Agriculture on the terms as described herein, including a 40 year amortization of the loan, an interest rate of approximately 4.625%, an up to two year deferral of the principal owing on the loan, and a pledge of the assets of the Tribe as mentioned above to secure the loan, which approval is contingent

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

**WHEREAS,** The Constitution and Bylaws of the Three Affiliated generally authorized 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 Three Affiliated Tribes is eligible to apply for a loan and grant from the United States Department of Agriculture, (USDA) Development, in the amounts of \$4,325,750, and \$3,539,250 respectively to be used for construction of selected water supply and distribution projects for the Fort Berthold Rural Water System of the Three Affiliated Tribes, the principal terms of which are that the loan is amortized over 40 years at an approximate annual interest rate of 4.75%; and

**WHEREAS,** This loan will be paid back from general funds of the Tribe as they become available; and

**WHEREAS,** This loan requires the Tribe to demonstrate the ability to identify and dedicate an amount of 10% of the annual loan payment to a loan reserve fund and an additional 10% of the annual loan payment to a emergency and extension fund, each such fund to remain the property of the Tribe and each such fund to be established and funded on an annual basis not to exceed 10 annual appropriations, or until the full amount of the loan is repaid to the USDA, and

**WHEREAS,** The Tribe agrees to a limited waiver of sovereign rights applicable only to the facilities funded by this project and only to the extend that loan obligations are in effect between the Tribe and the USDA, and

**WHEREAS,** In order to obtain these funds, the Tribe must submit a variety of forms required by the USDA, as per the attached, including:

1. Notice of Intent to File an Application
2. Copy of Notice of Intent to File an Application as it will appear in the newspaper
3. Evidence of Solicitation of Engineering Services

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4. Articles of Incorporation and Bylaws/Certificate of Incorporation/Organizational Certificate
5. Attorney's opinion that applicant is a duly organized body politic
6. NDRUS Bulletin 1780-2 – Fact Sheet
7. Intergovernmental Clearance
8. RD Instruction 1900-D Documentation
9. RD 442-3, Balance Sheet/Current Financial Statement
10. Last years financial audit
11. Test for credit: RUS Bulletin 1780-22, Water and Wastewater Eligibility
12. Exhibit A-1 of RD Instruction 1940-Q, Restrictions on Lobbying
13. Notice of Eligibility Determination
14. SF 424.2 – Application for Federal Assistance

**WHEREAS,** The Tribal Business Council has determined that, based on the interest rate and long-term payback of the loan, and in order to obtain the necessary funding for selected water supply and distribution projects for the Fort Berthold Rural Water System, it is in the Tribes' best interest to enter into and execute the aforementioned documents and Agreements with the USDA;

**NOW, THEREFORE, BE IT RESOLVED** That the Tribal Business Council hereby approves a loan and grant with the U.S. Department of Agriculture in the amount of \$4,325,750, and \$3,539,250 respectively, to be used for selected water supply and distribution projects for the Fort Berthold Rural Water System, the principal terms of which are that the loan is amortized over 40 years at an approximate annual interest rate of 4.75%, with the final loan documents subject to approval of the Tribal Business Council; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED,** That the Tribal Business Council of the Three Affiliated Tribes hereby approves the following loan documents necessary to apply for the loan from Rural Development:

1. Notice of Intent to File an Application
2. Copy of Notice of Intent to File an Application as it will appear in the newspaper
3. Evidence of Solicitation of Engineering Services
4. Articles of Incorporation and Bylaws/Certificate of Incorporation/Organizational Certificate

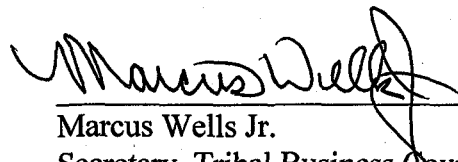
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13. Notice of Eligibility Determination
14. SF 424.2 – Application for Federal Assistance

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that the Tribal Business Council hereby authorizes the Chairman, Vice-Chairman, Secretary and Treasurer of the Tribal Business Council to execute the aforementioned documents, as may be necessary, on behalf of the Three Affiliated Tribes of the Fort Berthold Reservation, and to further execute such other documents as may be necessary to obtain the aforementioned loan.

#### 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 Regular Meeting thereof duly called, noticed, convened, and held on the 17<sup>th</sup> day of September 2002; that the foregoing Resolution was duly adopted at such Meeting by the Affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and said Resolution has not been rescinded or amended in any way.

Dated the 12<sup>th</sup> day of September 2002

  
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Marcus Wells Jr.  
Secretary, Tribal Business Council

ATTEST:

  
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Tex G. Hall,  
Chairman, Tribal Business Council

upon a determination being made by the appropriate Federal agencies that funds appropriated pursuant to the authority granted in the Dakota Water Resources Act may be used for repayment of the loan.

**NOW THEREFORE BE IT FURTHER RESOLVED**, that provided the determination mentioned in the preceding paragraph is satisfactory to the Tribe, and based on review of the loan by legal counsel for the Tribe, the Tribal Business Council hereby authorizes the Chairman, Vice-Chairman, Secretary or Treasurer of the Tribal Business Council to execute, on behalf of the Three Affiliated Tribes any and all documents that may be necessary to obtain this loan as described herein.

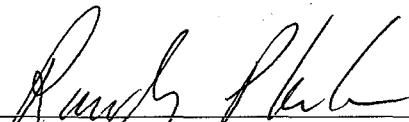
### CERTIFICATION

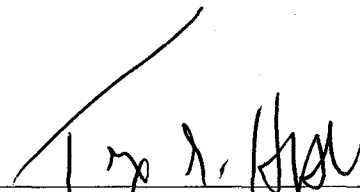
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum; 7 members were present at a Regular Meeting thereof duly called, noticed, convened and held on the 14<sup>th</sup> day of March 2003; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 members, 0 members opposed, 0 abstained, 0 members not voting; and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting  Not Voting

Dated this 14<sup>th</sup> day of March, 2003.

ATTEST:

  
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Randy Phelan, Executive Secretary  
Tribal Business Council

  
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Chairman, Tex C. Hall  
Tribal Business Council