

Resolution #05- 106 NH

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

A resolution entitled "Rejection of the Government's April 18, 2005 Counteroffer and Approval of Material Terms for the Settlement of Three Affiliated Tribes v. Norton, Federal Civil No. 1:02-cv-00253 (RCL)."

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 (the Tribe) 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 Tribe and of the enrolled members thereof; and

WHEREAS, For more than 115 years, the Bureau of Indian Affairs of the Department of Interior, as trustee, has managed lands held in trust for the benefit of the Three Affiliated Tribes, the Mandan, Hidatsa and Arikara Nation; and

WHEREAS, Following Congressional reports regarding mismanagement of trust assets held by the Department of Interior on behalf of Tribes, Congress passed the American Indian Trust Funds Management Reform Act of 1994, in an attempt to determine the extent of mismanagement and to determine the best course of action to ensure that the corpus of the trust held on behalf of Tribes and their members, and managed by the Department of Interior, would not be mismanaged in the future; and

WHEREAS, The 1994 trust reform legislation also required that to the extent possible, an accounting of or reconciliation of trust funds managed on behalf of Tribes by the Department of Interior be performed by a reputable accounting firm, and this effort was completed by early 1996; and

WHEREAS, The firm doing the accounting, Arthur Andersen, determined that a full accounting was not possible, but instead provided some documentation for what was called a "reconciliation" of accounts, and as a result of the so-called "reconciliation" done by Arthur Andersen, the Secretary of Interior offered a settlement regarding the trust accounts to a number of Tribal governments, including the Three Affiliated Tribes, and this settlement offer was rejected by the Three Affiliated Tribes; and

WHEREAS, In early 2002, the Three Affiliated Tribes engaged the services of the law firm of Conlon, Frantz, Phelan and Pires to file a case in Federal court against the Department of Interior alleging that the Department of Interior had mismanaged

the funds and resources of the Three Affiliated Tribes held in trust by the Department of Interior, with the understanding that if successful, the firm would be paid 10% of those funds recovered from the Department of Interior, in addition to certain litigation costs agreed upon by the parties; and

WHEREAS, On or about February 10, 2002, as authorized by Resolution No. 02-12-MWJR, passed by the Tribal Business Council on January 11, 2002, a lawsuit was filed on behalf of the Three Affiliated Tribes against the United States in U.S. District Court for the District of Columbia, Civil No. 1:02-cv-00253 (RCL), alleging, among other things, that the United States had mismanaged the resources of the Three Affiliated Tribes at least from the date of 1947 to the date of filing of the Complaint, and asking for an appropriate accounting of the funds and resources managed on behalf of the Three Affiliated Tribes by the Department of Interior; and

WHEREAS, Pursuant to a "settlement order" that allows the parties time to work out a settlement under the local rules of the U.S. District Court for the District of Columbia, the parties have been actively pursuing settlement of the Federal lawsuit over approximately the past 24 months; and

WHEREAS, On or about September 5, 2003, the government offered to settle the lawsuit for \$7,500,000 and, in response thereto, the Three Affiliated Tribes requested that the government increase its offer; and

WHEREAS, By letter dated January 8, 2004, government counsel presented a revised offer to counsel for the Three Affiliated Tribes to settle the lawsuit for \$10,000,000, provided, however, that \$2,500,000 of the \$10,000,000 would be dedicated solely and exclusively to addressing the issue of fractionation of land ownership interests on the Fort Berthold Reservation; and

WHEREAS, By Resolution No. 04-12-NH, dated November 10, 2004, the Three Affiliated Tribes, agreed to accept the government's revised offer to settle the lawsuit for \$10,000,000, provided, however, that \$2,500,000 thereof did not have to be dedicated solely and exclusively to addressing the issue of fractionation of land ownership interests and, provided further, that certain issues, such as the Garrison Dam takings, were reserved and/or excepted from the settlement;

WHEREAS, By letter dated April 18, 2005, the government treated Tribal Resolution No. 04-12-NH as a rejection of the government's offer of January 8, 2004, provided, however, that the government offered to settle the lawsuit for \$8,500,000 without any fractionation condition, to be paid into a trust fund for the benefit of the Three Affiliated Tribes for any and all claims the Three Affiliated Tribes may have against the Department for mismanagement of trust funds or other trust resources from the date of the establishment of the trust to the date of settlement, *excluding* any and all claims the Three Affiliated Tribes, or any of its members, have or may have against the United States that have arisen or may arise as a result of the

construction of the Garrison Dam along the Missouri River and other reservations of rights and/or exclusions or exceptions as the parties have agreed and/or may agree in the future to include in a settlement of the lawsuit; and

WHEREAS, After full discussion with counsel for the Three Affiliated Tribes in this matter, and after consideration of such factors as the relative strengths and weaknesses of the legal position of the Tribe in this matter, the Tribal Business Council finds that accepting a settlement in the above described matter in the amount of \$8,500,000 is in not in the best interests of the Tribe and its members and therefore desires to reject the Government's counteroffer and request that the Government consider the Tribe's settlement offer as provided below.

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes does hereby authorize and approve a Settlement Agreement regarding Case No. 02-cv-00253-RCL, as filed in the Federal District Court for the District of Columbia, wherein the Three Affiliated Tribes is the named Plaintiff and the United States, acting through the Department of Interior, the Department of the Treasury and the Department of Justice, is the defendant, provided that the Settlement Agreement contains the terms as stated below:

1. The Three Affiliated Tribes (the Plaintiff in Case No. 1:02-cv-00253, filed in U.S. District Court for the District of Columbia) agrees to a complete release of all claims set forth in the Plaintiff's Complaint pertaining to the accounting, up to and including the date of settlement, including claims for an accounting from the period of 1947 to the date of the settlement, excluding any and all claims the Three Affiliated Tribes may have against the United States that have arisen or may arise as a result of damages to the Tribe, or to any of its members, as a result of the construction by the United States of the Garrison Dam along the Missouri River; any and all claims individual tribal members of the Three Affiliated Tribes have or may have against the Department of Interior and other governmental agencies in connection with individual Indian Trust accounts, whether pursuant to the *Cobell* litigation or otherwise; any and all claims the Three Affiliated Tribes, or any of its members, have or may have with respect to the ownership of, and/or entitlement to, coal, oil and gas and/or other mineral interests, whether within the portion of the Fort Berthold Indian Reservation lying east and north of the Missouri River (sometimes referred to as the "Northeast Quadrant), under the Missouri River or elsewhere; any legislative enactments, including appropriations of any nature or form (e.g., supplemental appropriations) for any purpose; and/or any territorial or boundary claims.
2. A monetary amount of up to Fifteen Million Dollars (\$15,000,000.00) with no restriction on the use of the funds except as set forth in 3.a. below.
3. The Three Affiliated Tribes confirms and understands that approximately Ninety Percent of the agreed upon settlement amount shall be deposited into a trust fund to be maintained at a federally insured financial institution or institutions as selected by the Three Affiliated Tribes, subject to the following conditions for the trust:

- a. Proceeds from investment of the trust fund or distributions from the corpus of the trust may be used for any or all of the following purposes by the Tribes, to be determined in its sole discretion: (i) education; (ii) supplemental income payments to Tribal elders (the class of Tribal elders shall be defined by the Tribes); (iii) business or economic development; (iv) youth; and (v) other programs for the benefit of the Tribes and its members.
 - b. No more than 10% of the corpus of the trust may be made available to the Tribes in any one calendar year, but the Tribes may utilize the corpus or income of the trust as collateral for any loan obtained by the Tribes, provided that the proceeds of the loan are to be used for the purposes specified above.
 - c. Authorizations for disbursement from the trust or proceeds of the trust may be made by resolution of the Tribal Business Council on a semi-annual or annual basis and shall only be subject to the approval of the trust institution administering the trust.
4. Funds for this settlement shall come from the "Judgment Fund" of the United States as established pursuant to Title 31, Section 1304 of the United States Code, and shall not, in any event, come from appropriations made by Congress for the expenses of the United States Department of Interior; and
 5. The Three Affiliated Tribes understand that the settlement of the lawsuit described above may be subject to approval by the Attorney General of the U.S. Department of Justice and the Secretaries or heads of other Federal agencies, and if not approved by all requisite Federal agencies within ninety (90) days of the submission of the settlement document as agreed to by the Three Affiliated Tribes, this settlement agreement shall be void; and

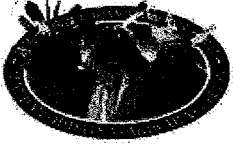
NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes does hereby authorize its Chairman and, if necessary, its Secretary, to execute the Settlement Agreement referenced in the preceding paragraph; and

NOW, THEREFORE, BE IT FINALLY RESOLVED, that Resolution No. 0-12-NH is hereby rescinded.

C E R T I F I C A T I O N

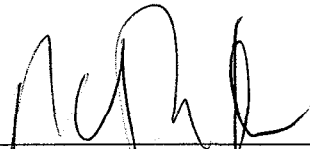
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 5 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 15th day of July, 2005; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] Voting. [] Not Voting.



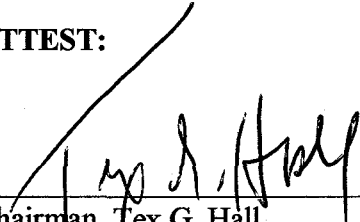
Resolution No. 05-106 NH

Dated this 15th day of July, 2005.



Secretary, Nathan Hale
Tribal Business Council

ATTEST:



Chairman, Tex G. Hall
Tribal Business Council