



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

*A Resolution Entitled: "Amendment of the Three Affiliated Tribes' Resolution No. 05-175-NH, dated December 2, 2005, which was entitled 'Amendment of The Three Affiliated Tribes Resolution No. 05-106-NH, dated July 15, 2005', Offering Material Terms for the Settlement of Three Affiliated Tribes v. Kempthorne, et al., Civil Action No. 1:02-CV-00253(RCL)(U.S. District Court for the District of Columbia).'"*

**WHEREAS**, This Nation having accepted the Indian Reorganization Act of June 18, 1934 and the authority under said Act, and having adopted a Constitution and By-laws pursuant to said Act; and

**WHEREAS**, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

**WHEREAS**, The Constitution of the Three Affiliated Tribes 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**, Article VI, Section 5(c) of the Constitution of the Three Affiliated Tribes provides the Tribal Business Council has the power to negotiate with the Federal government on behalf of the Tribes and consult with representatives of the Interior Department and other departments and agencies on all activities that may effect the Fort Berthold Indian Reservation; and

**WHEREAS**, For more than 115 years, the Bureau of Indian Affairs of the Department of Interior, as trustee, has managed lands and funds 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 funds and 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 offer, which noted approximately \$193,000 owed to the Tribes, 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, LLP 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 attorneys would be paid 10% of those funds recovered from the Department of Interior, in addition to certain litigation costs agreed upon by the parties; provided, however, that counsel for the Tribes agrees that if a settlement can be achieved pursuant to the terms of this Tribal resolution, said counsel's contingency shall be reduced to 8% of the funds recovered; and

**WHEREAS**, The law firm of Conlon, Frantz, Phelan and Pires will receive from this settlement, if approved upon the terms herein specified, the amount of \$ 800,000 as their attorney's fees, in accordance with the retainer agreement executed by the Three Affiliated Tribes and the law firm, and the Tribe will further be responsible for any of those fees of Dr. Jay A. Leitch, hired as an expert in this matter on behalf of the Tribe, which have not heretofore been paid; and

**WHEREAS**, On or about February 10, 2002, as authorized by Resolution No. 02-12-MWJ, 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 several years; and

**WHEREAS**, On or about September 5, 2003, the government offered to settle the lawsuit for \$7,500,000 and, in response thereto, counsel for the Three Affiliated Tribes, after appropriate consultation, 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; and

**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, in lieu thereof, 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 all 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**, On July 15, 2005, the Tribal Business Council rescinded Tribal Resolution No. 04-12-NH and passed Resolution No. 05-106-NH, in part rejecting the government's offer to settle the lawsuit for \$8,500,000.00 and offering instead that the lawsuit be settled for "[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"; and

**WHEREAS**, On December 2, 2005, the Tribal Business Council rescinded Tribal Resolution No. 05-106-NH, because it appeared that the phrase "*up to Fifteen Million Dollars (\$15,000,000.00)*" contained in Resolution No. 05-106-NH was ambiguous or inconsistent with the position previously adopted by the Tribal Business Council in Resolution No. 04-12-NH (November 10, 2004), and offered instead, in Tribal Resolution No. 05-175-NH, that the lawsuit be settled generally for a monetary value of \$10,000,000.00, without the fractionation condition and subject to certain non-monetary conditions stated herein; and

**WHEREAS**, By letter dated March 1, 2006, government counsel responded to Tribal Resolution No. 05-175-NH (December 2, 2005), agreeing to some terms, including a settlement in the amount of \$10,000,000.00 without any fractionation condition, and rejecting other terms; and

**WHEREAS**, By letter dated March 29, 2006, government counsel transmitted a proposed Draft Joint Stipulation of Settlement and [Proposed] Order, which the Tribal Business Council was asked to consider and respond to by July 3, 2006; and

**WHEREAS**, On about June 28, 2006, the parties agreed that the Tribes would have until August 18, 2006 to respond to the government's March 1, 2006 counter-offer and the proposed Joint Stipulation of Settlement and [Proposed] Order, transmitted on March 29, 2006; and

**WHEREAS**, On August 31, 2006, the government, after considering a request by the Tribes for an additional extension of time, to and including November 22, 2006, to respond to the government's March 2006 counter-offer and proposed Joint Stipulation of Settlement, declined that request, thus allowing its March 2006 counter-offer to expire; and



**WHEREAS**, The government, despite allowing its March 2006 counter-offer to expire on about August 31, 2006, expressed its continuing commitment to the settlement process, including further negotiations, and urged the Tribal Business Council to present a settlement offer; and

**WHEREAS**, After full discussion with counsel for the Three Affiliated Tribes in this matter and after consideration of such factors as the history of the settlement negotiations; the language contained in Resolution No. 05-175-NH (December 2, 2005) and the language contained in prior Tribal Resolutions; the language contained in the government's March 1, 2006 response to Resolution No. 05-175-NH and its March 29, 2006 proposed Joint Stipulation of Settlement and [Proposed] Order; and, further, after considering the relative strengths and weaknesses of the legal positions of the Tribes and the government in this matter, including, but not limited to, the time it would take until the matter could be fully adjudicated, including through appeals, the Tribal Business Council finds that it is in the best interests of the Tribes and its members to continue settlement negotiations and makes the following settlement offer.

**NOW, THEREFORE, BE IT RESOLVED**, that the Tribal Business Council of the Three Affiliated Tribes does hereby authorize and approve a Settlement Agreement regarding Civil Action No. 1:02-cv-00253-RCL, as filed in the U.S. 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 and other departments or agencies, is the defendant, provided that the Settlement Agreement contains the terms as stated below between the Three Affiliated Tribes and the United States:

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 Arthur Andersen Tribal trust fund accounting, up to and including the date of settlement, including any mismanagement claims relating to Tribal trust funds and Tribal trust resources from the period of 1947 to the date of the settlement in consideration for the terms and conditions generally stated in numbered paragraphs 2 through 5 hereof; and, provided further, that the following reservations of rights shall be excepted from said release:

(a) Any and all claims the Three Affiliated Tribes or its members may have against the United States or others relating in any way to the construction, creation and/or operation of the Garrison Dam and Lake Sakakawea along the Missouri River, including, but not limited to, the flooding of the Fort Berthold Indian Reservation, the loss of fertile bottomlands, and the severe and irreversible displacement of Tribal communities and Tribal members caused by the construction, creation and/or operation of Garrison Dam and Lake Sakakawea; and such reservation of rights shall include, but not necessarily be limited to, the right of the Tribes or its members to seek supplemental compensation, whether from the Judgment Fund, appropriations from Congress or other sources, in connection with said flooding, loss of lands, displacement and other damages relating thereto;



(b) Any and all claims individual tribal members of the Three Affiliated Tribes have or may have against the Department of Interior and other governmental department or agencies in connection with individual Indian trust accounts, whether pursuant to the *Cobell* litigation or otherwise;

(c) Any and all rights which the Three Affiliated Tribes, or any of its members, presently have to preserve, maintain or otherwise exploit existing ownership rights, and/or existing entitlement to, with respect 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 on the Fort Berthold Indian Reservation;

(d) Any and all claims which the Three Affiliated Tribes, or any of its members, have or may have with respect to rights to any or all of the Lake Sakakwea shoreline;

(e) Any and all claims which the Three Affiliated Tribes, or any of its members, have or may have with respect to mineral rights under Lake Sakakawea;

(f) Any and all claims which the Three Affiliated Tribes, or any of its members, have or may have with respect to western and southern boundaries of the Fort Berthold Indian Reservation;

(g) Any and all claims which the Three Affiliated Tribes, or any of its members, have or may have to the extent that the existing boundaries of the Fort Berthold Indian Reservation are challenged or otherwise contested by the Federal government, by State, county or local governmental instrumentalities or by other third parties, whether governmental or private;

(h) Any and all claims which the Three Affiliated Tribes, or any of its members, have or may have with respect to the possible drainage, depletion or exploitation of oil and gas, into contiguous wells, reservoirs or lands of third parties, whether deliberately or unintentionally; and

(i) To the extent not addressed in the preceding reservations of rights, any and all claims for damages or other relief, which the Tribes or its members may seek through 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 Ten Million Dollars (\$10,000,000) with no restriction on the use of the funds except as set forth in 3.a. below.

3. 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



4. 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; provided, however, if a settlement is not agreed to and approved, and the settlement amount set forth in numbered paragraph 2, supra, not paid, within ninety (90) days of the submission of this Tribal resolution, this resolution 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 paragraphs; and

**NOW, THEREFORE, BE IT FINALLY RESOLVED**, that Resolution No. 05-175-NH is hereby rescinded.


**CERTIFICATION**

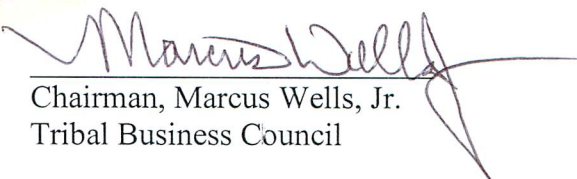
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Meeting thereof duly called, noticed, convened, and held on the 11<sup>th</sup> of January, 2007; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 1 members opposed, 0 members abstained or not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting. [ ] Not Voting.

Dated this 11<sup>th</sup> day of January, 2007.

**ATTEST:**

  
Secretary, V. Judy Brugh  
Tribal Business Council

  
Chairman, Marcus Wells, Jr.  
Tribal Business Council