



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

A Resolution Entitled: "Resolution Accepting Government's Settlement Offer of June 1, 2007, Which Responds to the Three Affiliated Tribes' Resolution No. 07-02-VJB, dated January 11, 2007, Offering Material Terms and Conditions for the Settlement of Three Affiliated Tribes v. Kempthorne, et al., Civil Action No. 1:02-CV-00253-JR (U.S. District Court for the District of Columbia) and Three Affiliated Tribes of the Fort Berthold Reservation v. United States, No. 06-cv-00904-LJB-MBH (U.S. Court of Federal Claims)."

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, LLP, 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 the attorneys for the Tribes have agreed that if a settlement can be achieved pursuant to the terms of this Tribal resolution, said counsel's contingency will be reduced to 8% of the funds recovered; 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 the attorneys 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 found that it was in the best interests of the Tribes and its members to continue settlement discussions or negotiations and decided to make another settlement offer; and
- WHEREAS,** While the Three Affiliated Tribes is required, by agreement, to pay its attorneys 10% of the settlement proceeds and to reimburse said attorneys for any outstanding reasonable expenses they incurred in connection with the Tribal trust litigation, in December of 2006, as part of an overall settlement proposal, said attorneys agreed with the Tribal Business Council to reduce their contingent fee from 10% to 8% of the settlement funds recovered, or to accept \$800,000 (instead of \$1,000,000) if the settlement were for \$10,000,000, and, furthermore, will agree to defray any of their presently outstanding expenses as a part of this specific and ongoing effort to facilitate a resolution in this matter and, in connection therewith, the Three Affiliated Tribes will authorize the government to pay said reduced contingent fee directly to Alex Pires (Conlon, Frantz, Phelan & Pires), who shall be responsible for payment of Richard Gladstone per their agreement, as full and complete payment of the attorneys' contingent fee in the above-referenced lawsuit; and
- WHEREAS,** By Resolution No. 07-02-VJB, dated January 11, 2007, the Three Affiliated Tribes offered to settle the Tribal trust litigation for Ten Million Dollars (\$10,000,000.00), provided that certain claims (e.g., relating to Garrison Dam takings and IIM claims) were excluded or excepted from the settlement; and
- WHEREAS,** On or about January 25, 2007, the lead attorney for the government requested further clarification regarding the bases of the settlement exceptions set forth in Section 1(c) through 1(i) of Tribal Resolution No. 07-02-VJB; and



- WHEREAS,** From about January 30, 2007 through February 26, 2007, the attorneys for the Tribes, in consultation with the Tribal Business Council and its counsel, provided extensive documentation and explanations to government counsel regarding the settlement exceptions set forth in Sections 1(c) through 1(i) of Tribal Resolution No. 07-02-VJB; and
- WHEREAS,** On about April 9, 2007, the attorneys for the government requested an additional 45 days, or until June 1, 2007, to respond to the Tribes' settlement proposal, as reflected in Tribal Resolution No. 07-02-VJB, with such additional time required in order to review and analyze the government's supplemental historical search results; and
- WHEREAS,** By Tribal Resolution No. 07-76-VJB, dated April 12, 2007, the Three Affiliated Tribes agreed to the aforementioned extension requested by the government by amending Tribal Resolution No. 07-02-VJB (1/11/07) to grant the government the requested additional time, or until June 1, 2007, to respond to the pending settlement offer; and
- WHEREAS,** By letter dated June 1, 2007, Anthony P. Hoang, Esquire, Senior Counsel at the U.S. Department of Justice, responded to the Tribes' most recent settlement offer in the Tribal trust litigation, by offering on behalf of the government, subject to terms and conditions stated in said correspondence (e.g., negotiation of final settlement language and approval by the U.S. Attorney General or his designee), to settle the litigation for the sum of Ten Million Dollars (\$10,000,000.00), the sum stated in Tribal Resolution No. 07-02-VJB, and, furthermore, by agreeing to accept some of the exceptions set forth in Tribal Resolution No. 07-02-VJB, rejecting others and requesting further definition, delineation and negotiation concerning others; and
- WHEREAS,** After full discussion with the attorneys 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 Tribal Resolution No. 07-02-VJB (January 11, 2007) and the language contained in prior Tribal Resolution; the government's June 1, 2007 response to Tribal Resolution No. 07-02-VJB and prior government responses; and, further, after considering the relative strengths and weaknesses of the legal and factual positions of the Tribes and the government in this matter, including, but not limited to, the time it would take, and the costs that would be incurred, until the matter could be fully adjudicated, including through appeals, the Tribal Business Council, on behalf of the Three Affiliated Tribes of the MHA Nation, finds that it is in the best interests of the Tribes and its members to agree to a settlement in the amount of Ten Million Dollars (\$10,000,000.00) consistent with the general terms, conditions and exceptions set forth in Tribal Resolution No. 07-02-VJB, as the those terms, conditions and exceptions have been further defined, modified, supplemented or revised by the government's June 1, 2007 letter from Anthony Hoang, Esquire, Senior Counsel at the U.S. Department of Justice, and subject to other terms and conditions specified in said June 1, 2007 letter, including, but not necessarily limited



to, the Tribes' articulating and specifying in further detail, during the settlement agreement drafting process, the terms and conditions relating to alleged Section 638 contract shortfalls; the contemplated construction, operation and maintenance of the hospital or health care facility to be constructed on the Reservation pursuant to P.L. 108-437; and the proposed construction of the Makoti refinery.

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes of the MHA Nation does hereby authorize and approve a full and complete settlement regarding Civil Action No. 1:02-cv-00253-JR (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, and regarding Civil Action No. 06-cv-00904-LJB-MBH (U.S. Court of Federal Claims), wherein the Three Affiliated Tribes is the named Plaintiff and the United States is the defendant, subject to the terms, conditions and exceptions as set forth in Tribal Resolution No. 07-02-VJB and, further, as defined, modified, supplemented or revised by the June 1, 2007 correspondence from Anthony P. Hoang, Senior Counsel at the U.S. Department of Justice, on behalf of the defendants in the above-referenced lawsuits, the final settlement agreement for which shall include, but not necessarily be limited to, the following terms, conditions and exceptions:

1. The Three Affiliated Tribes agrees, in consideration of a settlement payment of Ten Million Dollars (\$10,000,000.00), as set forth in the following Section 2, and other terms and conditions set forth below, to dismiss the aforementioned Tribal trust actions filed in U.S. District Court for the District of Columbia and in the U.S. Court of Federal Claims and to provide a full and complete release of the Tribes' trust accounting and trust fund and non-monetary trust asset (or trust resource) mismanagement claims in connection with said dismissals for events occurring prior to the date of entry of the parties' settlement agreement and to waive any claims for a historical trust fund accounting prior to said date of entry, provided that the following reservations of rights shall be excepted from said release and/or subject to further negotiation:

(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, which exception is generally set forth as Paragraph 1(a) of Tribal Resolution No. 07-02-VJB (January 11, 2007); and, furthermore, 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, provided, however, that the Tribes shall provide a waiver or release of any claims that the Tribes have or may have as of, that have accrued as of, or that arise from events prior to the date of the entry of the parties' settlement agreement and dismissal of the lawsuit by the U.S. District Court, regarding the management by the government of the monies that have been received by the Tribes in compensation for or as a result of the construction and operation of the Garrison Dam and the associated Pick-Sloan project;



(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 which are subject to *Cobell v. Kempthorne*, Civil No. 96-01285-JR (DDC) relating to the Individual Indian Money (IIM) accounts, which exception is generally set forth as Paragraph 1(b) of Tribal Resolution No. 07-02-VJB (January 11, 2007);

(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; *provided, however*, that this exception shall be limited solely to the government's agreement that the proposed settlement shall not affect whatever ownership rights or entitlements that the Tribes or the Tribes' individual members have or may have regarding coal, oil and gas, and/or other mineral interest in the Northwest Quadrant or elsewhere on the Reservation; and, *provided further*, that said exception shall not exclude from the proposed settlement any claims that the Tribes have or may have (i.e., Tribal claims) regarding the government's management of the coal, oil and gas, and/or other mineral interests in the Northeast Quadrant or elsewhere on the Reservation, which exception is generally set forth as Paragraph 1(c) of Tribal Resolution No. 07-02-VJB (January 11, 2007) and as further defined, modified, supplement or revised by the government's June 1, 2007 correspondence (paragraph 2 at p. 3);

(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, which exception is generally set forth as Paragraph 1(d) of Tribal Resolution No. 07-02-VJB;

(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 Sakakwea, which exception is generally set forth as Paragraph 1(e) of Tribal Resolution No. 07-02-VJB;

(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, which exception is generally set forth as Paragraph 1(f) of Tribal Resolution No. 07-02-VJB, which exception is generally set forth as Paragraph 1(f) of Tribal Resolution No. 07-02-VJB;

(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, which exception is generally set forth as Paragraph 1(g) of Tribal Resolution No. 07-02-VJB;

(h) Any and all claims for compensation or other relief, through non-judicial means, 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, which exception is generally set forth as Paragraph 1(i) of Tribal Resolution No.



07-02-VJB, to the extent that the government will agree that the terms of this settlement will not operate to preclude the Tribes' ability to seek and obtain such relief in this manner; and

(i) Any and all claims which the Three Affiliated Tribes, or any of its members, have or may have with respect to alleged shortfalls in payments pursuant to Section 638 contracts, funding for the construction, operation and maintenance of a hospital or health care facility on the Fort Berthold Indian Reservation pursuant to the Three Affiliated Tribes Health Facility Compensation Act (P.L. 108-437), and the proposed construction of an oil refinery in Makoti, ND, which proposed exceptions are generally set forth in e-mails dated February 19 and February 24, 2007 from the Tribes' attorneys; *provided, however*, that these proposed exceptions are more fully articulated and defined by the Tribes and the parties agree to the same during the drafting of the final settlement agreement.

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. Proceeds may be used for any or all of the following purposes by the Tribes: (a) education; (b) supplemental income payments to Tribal elders (the class of Tribal elders shall be defined by the Tribes); (c) business or economic development; (d) youth; and/or (e) other programs for the benefit of the Tribes and its members.

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 lawsuits described above shall require a formal recommendation and authorization process and shall be subject to the approval by the Attorney General of the U.S. Department of Justice, or his designee, and senior management of the Department of Justice, the Department of Interior and the Department of Treasury; and

6. The final settlement agreement will require inclusion of other written terms and conditions that address such matters as the periodic Statements of Performance provided by the Office of the Special Trustee (OST) and the future management of Tribal trust funds and non-monetary assets (see first full paragraph on p. 2 of June 1, 2007 letter from government), which terms and conditions, as generally set forth in the government's June 1, 2007 response (first full paragraph on p. 2 thereof) shall be more fully defined and negotiated as the terms and conditions of the settlement agreement are in the process of being finalized.

7. The Three Affiliated Tribes is required, by agreement, to pay its attorneys 10% of the settlement proceeds, or \$1,000,000, and to reimburse said attorneys for any outstanding reasonable expenses they incurred in connection with the above-referenced litigation; *provided, however*, in December 2006 said attorneys agreed with the Tribal Business Council, as part of an overall settlement proposal, to reduce their contingent fee from 10% to 8% of the funds recovered, or to accept \$800,000 (instead of \$1,000,000) as full payment of their fees; and, *provided further*, said attorneys have agreed to defray any of their presently outstanding expenses as a part of the overall settlement



proposal, all of which is being done to facilitate and achieve a resolution at this time; and, in connection therewith, the Tribes authorize the government, at the time of payment of settlement proceeds, to pay 8% of said settlement proceeds, or \$800,000, directly to Alex Pires (Conlon, Frantz, Phelan & Pires), who shall be responsible for payment of attorney Richard Gladstone per their agreement, as full and complete payment of the attorneys' contingent fee in the above-referenced lawsuits.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes of the MHA Nation does hereby authorize its Chairman, and, if necessary, its Secretary, to execute the Settlement Agreement referenced in the preceding paragraphs in accordance with the above (i.e., as set forth in Tribal Resolution No. 07-02-VJB and further defined, modified, supplement or revised by the government's June 1, 2007 response thereto).


CERTIFICATION

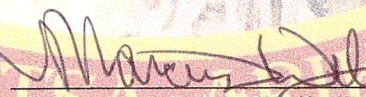
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 5 were present at a Meeting thereof duly called, noticed, convened, and held on the 15 of June, 2007; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 4 members, 0 members opposed, 1 members abstained or not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman Voting. Not Voting.

Dated this 15 day of June, 2007.

ATTEST:


Secretary, V. Judy Brugh
Tribal Business Council


Chairman, Marcus Wells, Jr.
Tribal Business Council