



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

A Tribal Resolution entitled "Acceptance of the terms and conditions contained in the Government's October 18, 2007 revised draft of the Joint Stipulation of Settlement and [Proposed] Order, Which Was Provided in Response to Tribal Resolution No. 07-0128-VJB, dated June 15, 2007, and the Tribes' August 30, 2007 Responses/Comments to an August 18, 2007 draft Joint Stipulation of Settlement and [Proposed] Order in connection with 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.1: 06-cv-00904-LJB (U.S. Court of Federal Claims.)"

WHEREAS, All the Recitals ("WHEREAS" provisions) contained in Tribal Resolution No. 07-0128-VJB, which is dated June 15, 2007, are repeated and incorporated by reference herein; and

WHEREAS, Subsequent to the Tribal Business Council's passage of Tribal Resolution No. 07-0128-VJB (on June 15, 2007), which resolution was transmitted to the U.S. Department of Justice on or about June 20, 2007, the Government responded by submitting for the Tribes' review and consideration a draft Joint Stipulation of Settlement and [Proposed] Order, dated August 18, 2007; and

WHEREAS, On or about August 30, 2007, comments and responses were submitted on behalf of the Three Affiliated Tribes to the U.S. Department of Justice regarding the terms and conditions contained in the August 18, 2007 draft Joint Stipulation of Settlement and [Proposed] Order; and

WHEREAS, On or about October 18, 2007, the Government responded to the above-referenced August 30, 2007 comments made on behalf of the Three Affiliated Tribes (in response to the August 18, 2007 draft of the Joint Stipulation of Settlement and [Proposed] Order) by submitting a revised draft of the Joint Stipulation of Settlement and [Proposed] Order, dated October 18, 2007; and

WHEREAS, After full consideration of this matter, including, but not limited to, consideration of such factors as the history of the settlement negotiations, the language contained in prior Tribal Resolutions and in the Government's settlement communications relative to this matter, the language contained in the Government's August 18, 2007 draft Joint Stipulation of Settlement and [Proposed] Order and the Tribes' August 30, 2007 response thereto, and the language contained in the October 18, 2007 revised draft of the Joint Stipulation of Settlement and [Proposed] Order, and after further 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 Three Affiliated Tribes and its members to conclude this matter and the related lawsuits by accepting the terms and conditions contained in the October 18, 2007 revised draft of the Joint Stipulation of Settlement and [Proposed] Order, as drafted and submitted on behalf of the defendants in connection with settlement of the lawsuits identified above; and

WHEREAS, The Three Affiliated Tribes and their counsel have agreed to revise their contingent fee agreement so that said counsel shall be paid 8%, instead of 10%, of the settlement proceeds in full payment of counsel's fees and expenses; and

WHEREAS, The Three Affiliated Tribes and their attorneys agree that the attorneys' fees and expenses of eight percent (8%) of the settlement proceeds shall be paid to the Three Affiliated Tribes' counsel by wiring the settlement payment of ten million dollars (\$10,000,000.00) to the Conlon, Frantz, Phelan & Pires, LLP Trust Account, Account No. 00004209052, Bank of America, N.A. (3 Dupont Circle, NW, Washington, DC 20036), ABA No. 026009593 (Tax ID 52-15375945), which sum, within twenty-four hours of counsel's receipt of said wire transfer, shall be wired by counsel, less the agreed upon attorneys' fees and expenses of eight hundred thousand dollars (\$800,000.00), or nine million two hundred thousand dollars (\$9,200,000.00), to a Tribal account specified by the Tribal Business Council.

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes does hereby authorize, approve and accept the terms and conditions contained in the Government's October 18, 2007 revised draft of the Joint Stipulation of Settlement and [Proposed] Order, which is appended hereto and herein incorporated by reference;

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Tribal Business Council of the Three Affiliated Tribes does hereby authorize its Chairman and its Secretary, to execute the October 18, 2007 revised draft of the Joint Stipulation of Settlement and [Proposed] Order, which is appended hereto and herein incorporated by reference; and

NOW, THEREFORE, BE IT FINALLY RESOLVED that the Tribal Business Council of the Three Affiliated Tribes does hereby authorize and agree to the addition and inclusion of numbered Paragraph 17 in the attached October 18, 2007 revised draft of the Joint Stipulation of Settlement and [Proposed] Order in order to assure that counsel representing the Three Affiliated Tribes in connection with this matter are paid their eight percent (8%) contingency directly.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THREE AFFILIATED TRIBES OF THE)
FORT BERTHOLD RESERVATION,)

Plaintiff,)

v.)

No.: 1:02cv00253 (JR)

DIRK KEMPTHORNE,)
Secretary of the Interior, et al.,)

Defendants.)

JOINT STIPULATION OF SETTLEMENT AND [PROPOSED] ORDER

WHEREAS, on February 8, 2002, the Three Affiliated Tribes (Plaintiff or Tribe) filed this case for declaratory and injunctive relief against the Secretary of the Interior (Interior), the Secretary of the Treasury (Treasury), and the Assistant Secretary of the Interior for Indian Affairs (ASIA) (collectively, Defendants or United States);

WHEREAS Plaintiff is seeking an accounting of its trust fund accounts and trust assets in this case;

WHEREAS, on December 27, 2006, Plaintiff filed a case in the United States Court of Federal Claims, Three Affiliated Tribes of the Fort Berthold Reservation v. United States of America, No. 1:06-cv-00904-LJB (Fed. Cl.), seeking money damages for alleged breaches of trust duties, trust responsibilities, and trust obligations regarding the management by the United States of Plaintiff's trust funds and non-monetary trust assets or resources;

WHEREAS, since April 2003, Plaintiff and Defendants (Parties) have conducted settlement negotiations to address globally the trust accounting and trust mismanagement claims that Plaintiff has brought in this case and in Three Affiliated Tribes, No. 1:06-cv-00904-LJB (Fed. Cl.);

WHEREAS, Interior has provided informational briefings and copies of relevant documents to Plaintiff, its representatives, its legal counsel, and its experts regarding (1) the reconciliation or accounting statements and other information relating to Plaintiff's

trust fund account activities during the 1972-1992 time period, which were provided to Plaintiff in 1996; (2) the subsequent reconciliation efforts; and (3) the current accounting and trust fund management processes and statements, among other things;

WHEREAS the Parties have discussed settlement of Plaintiff's existing claims and issues relating to (1) Defendants' alleged failure to provide an accounting of Plaintiff's trust funds and assets; (2) Defendants' alleged mismanagement of Plaintiff's trust assets and natural resources, including but not limited to its grazing and agricultural lands; its mineral resources (including oil, gas, gravel, and coal); the cultivation of its drylands (including fallow); and its rights-of-way and other infrastructure; and (3) Defendants' alleged mismanagement of Plaintiff's trust funds; and

WHEREAS the Parties believe that it is in their best interests to enter into this Joint Stipulation of Settlement;

NOW, THEREFORE, IT IS HEREBY JOINTLY STIPULATED AND ORDERED AS FOLLOWS:

1. This Joint Stipulation of Settlement is the result of compromise and settlement between the Parties. It shall not constitute or be construed as an admission of liability or wrongdoing by any Party, and it shall not be utilized or admissible as precedent, evidence, or argument in any other proceeding, except as may be necessary to ensure compliance with its terms and conditions or to carry out the terms and conditions hereof.

2. Defendants will pay to Plaintiff the sum of ten million dollars (\$10,000,000.00), in full, complete, and final settlement of all claims, causes of action, obligations, or liabilities that Plaintiff has asserted or could have asserted—as well as all claims, causes of action, obligations, or liabilities for which a factual basis exists, regardless of whether the claims, causes of action, obligations, or liabilities have legally accrued as of the date of the Court's entry of this Joint Stipulation of Settlement as an Order—either in an administrative action before Interior or Treasury or in a case in the United States District Court or the United States Court of Federal Claims, relating to any of the following issues:

a. Defendants' obligation to provide a historical accounting of Plaintiff's trust funds and trust assets, and Defendants' fulfillment of such obligation;

b. Defendants' alleged mismanagement of Plaintiff's trust assets and natural resources, including but not limited to any existing claim or allegation that Defendants (1) failed to make Plaintiff's trust assets or natural resources productive; (2) failed to obtain an appropriate return on, or appropriate consideration for, Plaintiff's trust assets or natural resources; (3) failed to collect, fully or timely, rents, fees, or royalties, or other payments for the transfer, sale, encumbrance, or use of Plaintiff's trust assets or natural resources; (4) failed to preserve, protect, or maintain the assets or natural resources; (5) permitted the misuse or overuse of Plaintiff's trust assets or natural resources; (6) failed to enforce the terms of any permits, leases, or contracts for the transfer, sale, encumbrance, or use of Plaintiff's assets or natural resources; (7) failed to prevent trespass on Plaintiff's trust assets or natural resources; and (8) failed to report or provide information about Defendants' actions or decisions relating to Plaintiff's trust assets or natural resources. Also included in this category are any existing claim or allegation relating to Defendants' transfer, sale, encumbrance, or use of Plaintiff's trust assets and natural resources (including but not limited to any of Plaintiff's lands or minerals held in trust by Defendants, for the purposes of grazing, agricultural, rights-of-ways, or exploitation of oil, gas, sand, gravel, coal, or other mineral deposits); Defendants' management of the coal, oil, gas, sand, gravel, and/or other mineral interests in 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; and Defendants' allowance of the possible drainage, depletion, or exploitation of oil and gas, into contiguous wells, reservoirs, or lands of third parties, whether deliberately or unintentionally;

c. Defendants' alleged mismanagement of Plaintiff's trust funds, including but not limited to any existing claim or allegation that Defendant (1) failed to invest any tribal income in a timely manner; (2) failed to obtain an appropriate return on any invested funds; (3) failed to deposit monies into trust funds or disburse monies from trust funds, in a proper manner; and (4) failed to report or provide information about Defendants' actions or decisions relating to Plaintiff's trust fund accounts. For purposes of this Joint Stipulation of Settlement, Plaintiff's trust funds include but are not limited to the monies that have been received by Plaintiff in compensation for or as a result of the construction

and/or operation by the United States of the Garrison Dam and the associated Pick-Sloan project. Also, for purposes of this Joint Stipulation of Settlement, Plaintiff's trust fund accounts include, but are not limited to, any Tribal-related accounts that are established pursuant to federal legislation and that are maintained, managed, invested, or controlled by either Interior or Treasury; any proceeds-of-labor accounts; any special deposit accounts; any Treasury accounts (principal and interest); any third-party bank accounts; any legislative settlement or award accounts, including those arising out of the construction and/or operation by the United States of the Garrison Dam and the associated Pick-Sloan project; and any judgment accounts; and

d. Except as provided in Paragraph 4 below, Defendants' alleged failure to perform any trust duty owed to Plaintiff, at any time up to the date of the Court's entry of this Joint Stipulation of Settlement as an Order.

3. In consideration of the payment of ten million dollars (\$10,000,000.00) by Defendants and for other valuable consideration, and upon the Court's entry of this Joint Stipulation and Settlement as an Order, Plaintiff releases Defendants from, and Plaintiff covenants not to sue on, all claims, causes of action, obligations, or liabilities that Plaintiff has asserted or could have asserted—as well as all claims, causes of action, obligations, or liabilities for which a factual basis exists, regardless of whether the claims, causes of action, obligations, or liabilities have legally accrued as of the date of the Court's entry of this Joint Stipulation of Settlement as an Order—either in an administrative action before Interior or Treasury or in a case in the United States District Court or the United States Court of Federal Claims, relating to the issues set forth in Paragraph 2 above. Further, Plaintiff waives any other claims, causes of action, obligations, or liabilities that Plaintiff has asserted or could have asserted—as well as any other claims, causes of action, obligations, or liabilities for which a factual basis exists, regardless of whether the claims, causes of action, obligations, or liabilities have legally accrued as of the date of the Court's entry of this Joint Stipulation of Settlement as an Order—either in an administrative action before Interior or Treasury or in a case in the United States District Court or the United States Court of Federal Claims, relating to Defendants' management of Plaintiff's trust funds, trust assets, or natural resources.

4. Specifically excluded from the scope of this Joint Stipulation of Settlement are the following claims:

a. Except for those claims described in Paragraph 2 above, any claim that Plaintiff or its individual members may have against Defendants that may have arisen or may arise as a result of damages to Plaintiff or its members as a result of the construction and/or operation by the United States of the Garrison Dam and the associated Pick-Sloan project;

b. Any claim that Plaintiff's individual members have or may have against Interior and Treasury, regarding their Individual Indian Money (IIM) accounts, that are subject to Cobell v. Kempthorne, No. 96-01285 (D.D.C.) (JR);

c. Except for those claims described in Paragraph 2 above, any claim that Plaintiff has or may have or that Plaintiff's individual members have or may have regarding rights to any or all of the Lake Sakakawea shoreline; mineral rights under Lake Sakakawea; the western and southern boundaries of the Fort Berthold Indian Reservation; and to the extent that the existing boundaries of the Fort Berthold Indian Reservation are challenged or otherwise contested by the United States, by State, county or local governmental instrumentalities, or by third parties, whether governmental or private;

d. Except for those claims described in Paragraph 2 above, any claim that Plaintiff has or may have (as a sole plaintiff, a member of a certified class, or a class representative) with respect to the determination and/or payment or reimbursement of allowable contract support costs, including but not limited to direct costs, indirect costs, start-up costs and/or other contract support costs, in connection with federal contracts or grants, whether entered into or provided pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (ISDEA) (P.L. 93-638) or any other legislation;

e. Except for those claims described in Paragraph 2 above, any claim that Plaintiff has or may have or that Plaintiff's individual members have or may have regarding the funding, construction, operation, maintenance or location (site selection) of a hospital or health care facility to be established on the Fort Berthold Indian Reservation or elsewhere, pursuant to the Three Affiliated Tribes Health Facility Compensation Act (P.L. 108-437) or to other legislation;

f. Except for those claims described in Paragraph 2 above, any claim that Plaintiff has or may have or Plaintiff's individual members have or may have to preserve, maintain, or otherwise exploit existing or subsequently acquired ownership rights regarding, and/or existing entitlement to, coal, oil, gas, sand, gravel, and/or other mineral interests; rights of way; and land, whether within the portion of the Fort Berthold Indian Reservation lying east and north of the Missouri River (also referenced as the "Northeast Quadrant"), under the Missouri River, or elsewhere on the Fort Berthold Indian Reservation; and

g. Except for those claims described in Paragraph 2 above, any claim that Plaintiff has or may have regarding damages and/or enforcement of contracts, agreements, leases, permits, and rights of way against third parties or that is the subject of an existing lawsuit filed by or on behalf of Plaintiff and that is other than the lawsuits identified in this Joint Stipulation of Settlement (see, e.g., Exhibits 2 and 3 hereto).

5. The parties agree that the terms and conditions of this Joint Stipulation of Settlement shall not operate in any way to preclude Plaintiff or its individual members from obtaining or seeking to obtain compensation, damages, grants, and/or other monetary or non-monetary relief (regardless of the nature), through non-judicial means (regardless of the form or type), for any purpose other than those based on or related to the claims described in Paragraph 2 above. The parties further agree that the terms and conditions of this Joint Stipulation of Settlement shall not operate in any way to preclude Plaintiff or its individual members from enforcing or seeking to enforce, through the judicial system, any relief obtained by Plaintiff or its individual members in the foregoing manner.

6. In consideration of the payment of ten million dollars (\$10,000,000.00) by Defendants and for other valuable consideration and upon the Court's entry of this Joint Stipulation of Settlement as an Order, Plaintiff undertakes the following:

a. Plaintiff accepts as accurate the balances of Plaintiff's trust fund accounts, as those balances are stated by the Office of the Special Trustee for American Indians (OST) of the Department of the Interior on the date of the Court's entry of this Joint Stipulation of Settlement as an Order;

b. Plaintiff accepts the periodic Statements of Performance provided to Plaintiff by OST as constituting the accounting of Plaintiff's trust fund accounts that is required by law. A periodic Statement of Performance is that which is transmitted by OST in conformance with its policies and practices, as well as with applicable laws and regulations, and which provides Plaintiff with information about Plaintiff's trust fund accounts for a particular period. Further, Plaintiff agrees that, after the date of the Court's entry of this Joint Stipulation of Settlement as an Order, Plaintiff shall waive any claims that it may have about the accuracy or sufficiency of the periodic statements of accounts if Plaintiff does not assert those claims within 90 days of OST's transmission of the statements to Plaintiff; and

c. Plaintiff agrees that Treasury's limited role in the management of Plaintiff's trust funds is wholly defined by 25 U.S.C. § 161(a).

7. This Joint Stipulation of Settlement is the entire agreement between the Parties in this case. All prior conversations, meetings, discussions, drafts, and writings of any kind are specifically superseded by this Joint Stipulation and Order. The terms of this Joint Stipulation of Settlement may not be changed, revised, or modified, except as provided by a written instrument that is signed by the Parties to this Joint Stipulation of Settlement and that is approved and entered by this Court as an Order. This Joint Stipulation of Settlement shall be effective upon the date of the Court's entry of the Joint Stipulation as an Order.

8. As soon as practicable after receiving notice of the Court's entry of this Joint Stipulation of Settlement as an Order, the Parties will execute and file joint stipulations or motions to dismiss this case and Three Affiliated Tribes, No. 1:06-cv-00904-LJB (Fed. Cl.), with prejudice (attached hereto as Exhibits 2 and 3).

9. No term or provision of this Joint Stipulation of Settlement will constitute or will be construed as a commitment or a requirement that Defendants obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, and any other applicable law or regulation. In the event that the Anti-Deficiency Act, any other applicable law, or regulation precludes Defendants from obligating or paying the sum of money set forth in Paragraph 2 above, this Joint Stipulation of Settlement, including its terms, conditions, releases, and dismissals, shall be deemed null, void and unenforceable.

10. The undersigned representative(s) for each party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of this Joint Stipulation of Settlement and to bind legally such party or parties to it. In particular, undersigned counsel for Plaintiff certifies that the Tribal Chairman and the Tribal Council have reviewed this Joint Stipulation of Settlement and that, by Tribal resolution, they have approved and authorized of the execution of the document by Plaintiff, by and through its counsel.

11. Each party shall be responsible for its own attorney's fees and costs, as well as any other fees and costs which may have accrued as of the dates of dismissal of Plaintiff's lawsuits referenced in Paragraph 3 above relating to the matters, claims, and issues settled in this case.

12. This Joint Stipulation of Settlement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute one and the same instrument. Facsimile signatures shall have the same effect as original signatures in binding the parties hereto.

13. If there is a dispute over compliance with any term or provision of this Joint Stipulation of Settlement and Order, the disputing party will notify the other party in writing of the dispute. The parties will attempt to work out the dispute informally before seeking judicial review by this Court.

14. The disputing party will engage the other party in informal dispute resolution. During this informal dispute resolution period, which will not exceed 90 days (unless the parties agree to an extension of the period), the parties will meet as many times as both deem necessary to discuss and attempt to resolve the dispute.

15. If the parties are unable to resolve the dispute through informal dispute resolution, either party may file a motion asking that the United States District Court for the District of Columbia enforce the relevant term(s) and provision(s) of the Joint Stipulation and Order. The parties hereby agree and stipulate that this Court shall have continuing jurisdiction only for the limited purpose of interpreting and enforcing the terms and conditions of this Joint Stipulation of Settlement.

16. Except as provided in Paragraph 6 above, nothing in this Joint Stipulation of Settlement shall have the effect of altering existing federal law or regulations relating to the relationship and dealings between the parties.

17. The settlement payment of ten million dollars (\$10,000,000.00) set forth in Paragraphs 2 and 3 of this Joint Stipulation of Settlement and [Proposed] Order shall be wired to the escrow account of Plaintiff's counsel, Conlon, Frantz, Phelan & Pires, LLP Trust Account, Account # 00004209052 (Tax ID 52-15375945), Bank of America, N.A. (3 Dupont Circle, NW, Washington, D.C. 20036), ABA #026009593, and said counsel shall wire, within twenty-four hours of receipt of said payment, the ten million dollars (\$10,000,000.00), less counsel's fee of eight hundred thousand dollars (\$800,000.00), or nine million two hundred thousand dollars (\$9,200,000.00), to a Tribal account specified by Plaintiff.

Respectfully submitted this _____ day of _____, 2007,

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OF COUNSEL:

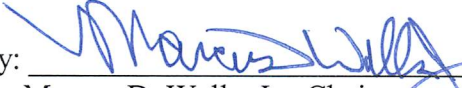
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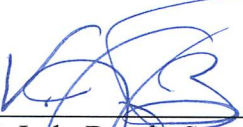
Washington, D.C. 20227

Attorneys for Defendants

SEEN AND AGREED TO BY AND ON BEHALF OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION, TRIBAL BUSINESS COUNCIL:

By: 

Marcus D. Wells, Jr., Chairman
Tribal Business Council
Three Affiliated Tribes of the
Fort Berthold Reservation
HC 3, Box 2
New Town, ND 38763

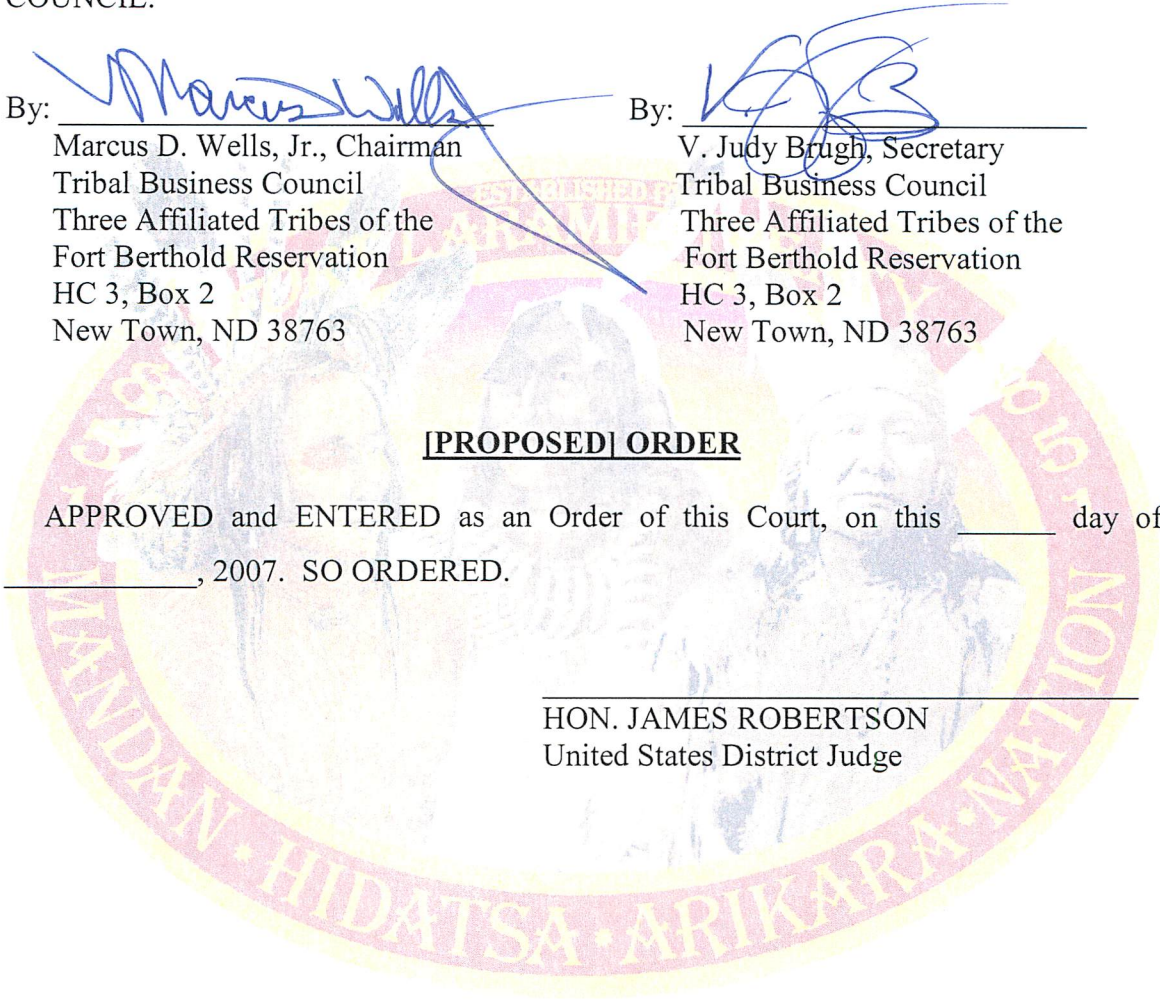
By: 

V. Judy Brugh, Secretary
Tribal Business Council
Three Affiliated Tribes of the
Fort Berthold Reservation
HC 3, Box 2
New Town, ND 38763

[PROPOSED] ORDER

APPROVED and ENTERED as an Order of this Court, on this _____ day of _____, 2007. SO ORDERED.

HON. JAMES ROBERTSON
United States District Judge






CERTIFICATION

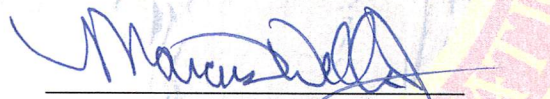
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 29th day of November, 2007; 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 that said Resolution has not been rescinded or amended in any way.

Chairman [] Voting. [] Not Voting

Dated this 29th day of November, 2007

ATTEST:


Secretary, Judy Brugh
Tribal Business Council


Chairman, Marcus D. Wells, Jr.
Tribal Business Council