

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

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 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 Tribes and of the enrolled members thereof; and

WHEREAS, The Garrison Reformulation Act, Pub. L. 99-294, authorized the Secretary of the Interior to develop irrigation in the following project service areas within the exterior boundaries of the Fort Berthold Indian Reservation: Lucky Mound (7,700 acres) and Upper Six Mile Creek (7,500 acres).

WHEREAS, The Garrison Reformulation Act, Pub. L. 99-294, authorized and directed the Secretary of the Interior to construct, operate, and maintain such municipal, rural and industrial (MIR) water supply systems as he deems necessary to meet the economic, public health and environmental needs of the tribal people on the Fort Berthold Reservation;

WHEREAS, The Tribal Business Council directed the Legal Department, in conjunction with the BIA and Bureau of Reclamation (BREC), to develop a Memorandum of Understanding (MOU) between the respective authorities that would provide a time table and standards for the development of these authorized projects on the Fort Berthold Reservation;

WHEREAS, The Legal Department has submitted for Tribal Business Council review and approval the proposed final draft MOU to accomplish these identified purposes;

WHEREAS, The Tribal Business Council, after its review of the MOU, believes it provides the basis for the cooperative work of the Tribes, BIA, and BREC to carry out the projects authorized for development on Fort Berthold by Pub. L. 99-294;

NOW THEREFORE BE IT RESOLVED, That the Tribal Business Council hereby:

- (1) Approves the proposed MOU attached herein as Exhibit "A"; and

07-C

Exhibit "A"


UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Memorandum of Understanding
between
Bureau of Reclamation
and
The Three Affiliated Tribes
and
Bureau of Indian Affairs

The Bureau of Reclamation, hereafter referred to as "Bureau", the Three Affiliated Tribes, hereafter referred to as "Tribes" and the Bureau of Indian Affairs, hereafter referred to as "BIA" enter into this agreement effective _____ to define the working relationships and responsibilities of the Bureau, Tribes and BIA during the collection and analysis of data, design of irrigation and municipal, rural and industrial water systems, and the preparation of a report and EIS on the proposed systems for the Fort Berthold Reservation.

Signatures:

B.E. Martin, Regional Director
Bureau of Reclamation



Tribal Chairman
Three Affiliated Tribes

Area Director
Bureau of Indian Affairs

Article I. Authority

The Secretary of the Interior is authorized to develop irrigation in the following project service areas within the boundaries of the Fort Berthold Indian Reservation: Lucky Mound (7,700 acres), Upper Six Mile Creek (7,500 acres), except that, no funds are authorized to be appropriated for construction of these projects until the Secretary has made a finding of irrigability of the lands to receive water as required by the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. 390a). Repayment for the units authorized under this subsection shall be made pursuant to the Leavitt Act (25 U.S.C. 386a).

The Secretary is authorized and directed to construct, operate, and maintain such municipal, rural, and industrial water systems as he deems necessary to meet the economic, public health and environmental needs of the Fort Berthold Reservation.

The Tribal Business Council serves as the duly elected representative of the Three Affiliated Tribes whose homeland is the Fort Berthold Reservation and has the authority under Article VI, Section 3 of the Tribal Constitution to enter into agreements on behalf of the Tribes.

Article II. Scope of Work

Irrigation studies will involve a determination of irrigability as defined in PL 99-294 (land classification and drainage assessment); an engineering layout and design, a determination of capital cost and annual OM&R, an environmental assessment possibly leading to an Environmental Impact Statement, and a social analysis.

The municipal, rural and industrial water studies will involve a determination of need, an engineering design and layout to meet the needs, an assessment of construction and operating costs and a determination of environmental and social impacts.

Both the irrigation and municipal, rural and industrial analysis will be presented in a definite plan report.

Work was initiated in FY 1986 under the legislative authority and appropriations provided by the Garrison Diversion Unit and are identified as part of this MOU.

Responsibilities of the Bureau of Reclamation and the Three Affiliated Tribes for completion of the tasks and the budget is as follows.

Task	Budget	Completion Date	Responsible Party
I. <u>Irrigation Studies</u>			
A. Establish Gross Limits of Study Area to be Considered		9/86	Tribe (HKM)
1. Lucky Mound Area			
2. Upper Six Mile Area			
B. Identify Ownership		10/86	Tribe (HKM)
1. Trust Acreage			
a. Tribal Trust			
b. Allotted			
1. List of Allottees by Allotment Number			
2. Acreage			
3. Address/Phone Number			
2. Fee Patent Lands			
a. List of Owners as Per Assessors Records			
1. Legal Description/Acreage			
2. Identify Ownerships Exceeding Acreage Limits			
3. Document Lessees by Ownership			
3. Map Ownership			
C. Document Indication of Interest in the Project		9/87	USBR/Tribe
1. Develop Basic Informational Packet			
a. Coordinate with USBR			
1. Farm Budgets/Cost			
2. Project Drainage			
3. Power			
b. Indian Perspective			
c. Non-Indian Perspective			
2. Develop Expression Interest Form			
a. Number of Acres			
b. Conditions of Interest			

Task	Budget	Completion Date	Responsible Party
<ul style="list-style-type: none"> 1. Indian Ownership <ul style="list-style-type: none"> a. Individual Operation b. Corporate Operation 2. Non-Indian <ul style="list-style-type: none"> a. Desire to participate b. Willing to Sell Property for Indian Development 3. Prepare For/Hold Public Meeting <ul style="list-style-type: none"> a. Tribal Interests b. Non-Indian Interests 4. Send Out Forms 5. Make Follow-Up Contacts for Delinquent Forms 			
<ul style="list-style-type: none"> D. Modify Configuration of Project <ul style="list-style-type: none"> 1. Delete Owners Who Have No Interest 2. Evaluate Excess Lands Problem 3. Research in Lieu of Lands 4. Develop Modified Study Area Boundaries 		9/87	USBR/Tribe
<ul style="list-style-type: none"> E. Obtain Access <ul style="list-style-type: none"> 1. Develop Form <ul style="list-style-type: none"> a. Access for Identified Multiple Purposes b. Write Damage Clause 2. Trust Land Case <ul style="list-style-type: none"> a. Tribal Resolution b. Letter From BIA c. Identify Contact Person d. Troubleshoot Problems 3. Non-Indian Ownership Case <ul style="list-style-type: none"> a. Send Out Form <ul style="list-style-type: none"> 1. Owner 2. Lessee 		11/86	Tribe (HKM)

Task	Budget	Completion Date	Responsible Party
<ul style="list-style-type: none"> b. Make Follow-Up Contacts <ul style="list-style-type: none"> 1. Telephone 2. Visit by Appointment 4. Map Study Area for Land Classifiers 			
F. Coordinate Programs/Schedule With USBR		continuous	
<ul style="list-style-type: none"> 1. Meetings 2. Scheduling 3. Contact Person Coordination 			
G. Prepare Land Class Budgets		10/86	USBR
H. Perform Land Classification		9/87	USBR
I. Perform Drainage Investigation		9/87	USBR
J. Develop Decision Document		2/87	USBR/Tribe
<ul style="list-style-type: none"> 1. Develop Initial Cost Estimate of Development 2. Financial Analysis of Development <ul style="list-style-type: none"> a. Traditional Bureau Evaluation b. Alternative Approaches Per Tribal Request <ul style="list-style-type: none"> 1. Onfarm Sprinkler Systems Project Costs 2. Pick-Sloan Power Provided for Sprinkler Pressure 3. All Electrical Transmission Costs Considered as Project Costs 4. Land Acquisition 5. Address Assigned Costs 6. Tribal Corporate Enterprise 7. Design and Construction by No Federal Forces 3. Address a Development Period <ul style="list-style-type: none"> a. Phased Approach of Transferring Operation of Facilities from Bureau Responsibility to Indian Responsibility 			

Task	Budget	Completion Date	Responsible Party
<ul style="list-style-type: none"> b. During Development Period Consider Operational Costs as Non-Indian Responsibility 4. Discuss Present Authorities and/or Needed Authorities to Consider Alternatives to Traditional Bureau Development 5. Address Assigned Costs 			
K. Definite Plan Report/Environmental Assessment			
<ul style="list-style-type: none"> 1. Final Plan Formulation and Cost Estimates 2. Complete all Necessary Environmental Studies as Required <ul style="list-style-type: none"> a. FWS Coordination Act Consultations Which Assess Any Project b. Induced Losses and Recommend Mitigation c. Endangered Species Consultations d. Environmental Assessment e. FONSI or Environmental Statement f. Executive Order Compliance g. Cultural Resource Requirements <ul style="list-style-type: none"> 1. Survey and Evaluation 2. Mitigation 3. AIRFA Compliance h. Permits <ul style="list-style-type: none"> 1. 404 Permit 2. River and Harbor Act 3. Social Considerations <ul style="list-style-type: none"> a. Tribal Employment <ul style="list-style-type: none"> 1. Construction 2. Long Term b. Potential Other Industries 		12/87	USBR

Task	Budget	Completion Date	Responsible Party
<ul style="list-style-type: none"> 1. Feedlots 2. Rendering c. Adverse Social Effects 4. Alternative Analysis 5. Operation and Maintenance 			
L. Construction Design and Specifications			
<ul style="list-style-type: none"> 1. First Specification 2. Second Specification 		9/89 9/90	USBR USBR
II. Municipal, Rural and Industrial Development			
A. Develop Decision Document		2/87	USBR/Tribe
<ul style="list-style-type: none"> 1. Identify Gross Limits of Study Area to be Considered <ul style="list-style-type: none"> a. Area of Reservation b. Indian c. Non-Indian 2. Identify Needs by Priority <ul style="list-style-type: none"> a. Indian b. Non-Indian c. Industry d. Livestock e. Recreation f. Environmental Enhancement 3. Identify Water Plan with Phased Development 4. Develop Initial Cost Estimate of Development by Phases <ul style="list-style-type: none"> a. Total Reservation b. Indian Users Solely <ul style="list-style-type: none"> 1. Eastern Segment 2. Upgrade Existing Facilities 3. Western Segment 4. Southern Segment 5. Financial Analysis <ul style="list-style-type: none"> a. Discuss Tribal Responsibilities versus Federal Responsibilities b. Funding Source 		9/86	USBR
B. Coordinate Programs/Schedule with USBR			
<ul style="list-style-type: none"> 1. Meetings 2. Schedules 3. Contact Person Coordination 			

Task	Budget	Completion Date	Responsible Party
<p>C. Definite Plan/Report Environmental Assessment</p> <ol style="list-style-type: none"> 1. Analyze Gross Limits of Study Area to be Considered <ol style="list-style-type: none"> a. Area of Reservation b. Indian c. Non-Indian 2. Analyze Needs by Priority <ol style="list-style-type: none"> a. Indian b. Non-Indian c. Industry d. Livestock e. Recreation f. Environmental Enhancement 3. Final Plan Formulation and Cost Estimates 4. Complete All Necessary Environmental Studies Required <ol style="list-style-type: none"> a. FWS Coordination Act Consultations Which Assess Any Project b. Induced Losses and Recommend Mitigation c. Endangered Species Consultations d. Environmental Assessment e. FONSI or Environmental Statement f. Executive Order Compliance g. Cultural Resource Requirements <ol style="list-style-type: none"> 1. Survey and Evaluation 2. Mitigation 3. AIRFA Compliance h. Permits <ol style="list-style-type: none"> 1. 404 Permit 2. River and Harbor Act 5. Social Considerations <ol style="list-style-type: none"> a. Tribal Employment <ol style="list-style-type: none"> 1. Construction 2. Long Term b. Potential Other Regional Benefits 		12/87	USBR

Task	Budget	Completion Date	Responsible Party
<ul style="list-style-type: none"> 1. Feedlots 2. Rendering 			
<ul style="list-style-type: none"> c. Adverse Social Effects 			
D. Construction Designs and Specifications			
<ul style="list-style-type: none"> 1. Phase I Development 		9/89	USBR

Article III. Funding

Funds for this investigation are subject to appropriation by the Congress of the United States and the availability of funds through direct contribution or inkind services by the Three Affiliated Tribes.

The estimated cost of the services described in this agreement is _____. Of that amount _____ will be provided as direct services by the Bureau and _____ will be provided as direct services of the Three Affiliated Tribes.

The funding requirements by fiscal year (October 1 - September 30) for an optimum development schedule are shown below.

<u>Fiscal Year</u>	<u>Bureau of Reclamation</u>	<u>Three Affiliated Tribes</u>	<u>Total</u>
1987			\$ 400,000
1988			1,300,000
1989			1,100,000
1990			300,000
			<u>\$3,100,000</u>

Article IV. Required Clause

During the performance of this agreement, the participants agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.

No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

Article V. Key or Responsible Personnel

The following people will be responsible for monitoring the study activities included in this agreement:

Bureau of Reclamation	<u>Robert H. Madsen, Regional Planning Officer</u>
Three Affiliated Tribes	<u>Legal Department</u>
Bureau of Indian Affairs	<u>Mr. William Collier, Assistant Area Director,</u>
Aberdeen Area Office	

Article VI. Amendments

Amendments to this understanding may be executed at any time by written, mutual consent of the designated representatives of the parties hereto.

Article VII. Termination

This agreement may be terminated after consultation between the parties hereto upon thirty (30) days written notice by either party. Upon

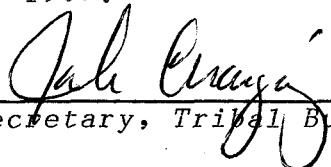
termination the Bureau of Reclamation and the Three Affiliated Tribes agree to notify the Governor of North Dakota, Secretary of the Interior and the North Dakota congressional delegation in writing of the reason(s) for termination and the status of the Federal funds provided.

- (2) Authorizes the Tribal Chairman to accept and sign the formal MOU when it is presented to the Tribal Business Council for signature.

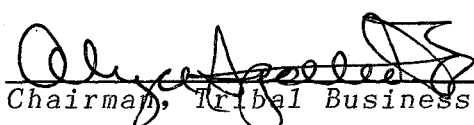
C E R T I F I C A T I O N

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 11 members of whom 7 constitute a quorum, 7 were present at a SPECIAL Meeting thereof duly called, noticed, convened, and held on the 23rd day of FEBRUARY, 1986; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 23rd day of February, 1987.


Secretary, Tribal Business Council

ATTEST:


Chairman, Tribal Business Council