

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,** Article VI, Section 3(a) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to present and prosecute any claims or demands of the Three Affiliated Tribes; and
- WHEREAS,** Article VI, Section 5(d) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to negotiate with agencies of the federal government on behalf of the Three Affiliated Tribes; and
- WHEREAS,** Article VI, Section 5(j) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to protect and preserve the natural resources of the Three Affiliated Tribes; and
- WHEREAS,** The Tribal Business Council has been informed by officials of the United States Department of Energy that Basin Electric Power Cooperative or its subsidiary, Dakota Gasification Company, (hereinafter referred to as "Basin Electric") will be required to either enter into a new industrial water service contract with the United States or, in the alternative, assume the rights and obligations of ANG Coal Gasification Company under the Industrial Water Service Contract between the United States and ANG (Contract No. 0-07-60-WS057), as the assignee of ANG; and
- WHEREAS,** The Three Affiliated Tribes will have a vested interest as a third party beneficiary in any industrial water service contract to which Basin Electric will become a party, comparable to that interest the Tribes have in Industrial Water Service Contract No. 0-07-60-WS057, in the contexts of (1) the acknowledgement and protection of the Tribal claim of "prior and paramount rights to the use of large quantities of water within the Missouri River Basin" under the long and well established Winters Doctrine and (2) the express provision for "preference in employment to Indian

residents of the Fort Berthold Indian Reservation" under 42 U.S.C. §2000e-2(i) and other governing federal law, in addition to the Tribal Employment Rights Ordinance of the Three Affiliated Tribes; and

WHEREAS, It is the intent of the Tribal Business Council to continue to protect, under a water service contract to which Basin Electric will become a party, the various federally reserved water rights of the Three Affiliated Tribes, as recognized by the U.S. Supreme Court in Winters v. United States, 207 U.S. 564 (1908) [the development of the concept of the long-standing and unwaivering Winters Doctrine having begun with the 1899 decision of the Supreme Court in United States v. Rio Grande Ditch and Irrigation Company, 174 U.S. 690 (1899), and having continued in a long line of subsequent cases]; and

WHEREAS, It is additionally the intent of the Tribal Business Council to continue to promote, under a water service contract to which Basin Electric will become a party, the policy of Indian preference in individual employment opportunities at the Great Plains Coal Gasification Plant, in addition to Indian preference in the award of contracts by Basin Electric in conjunction with the operation of said Plant; and

WHEREAS, Without presenting herein a lengthy dissertation addressing the myriad of federal common, statutory, and regulatory laws supportive of the policy of Indian preference in employment and contracting, it should be noted that the express provision for the grant of such Indian preference included in Industrial Water Service Contract No. 0-07-60-WS057 is legally supported directly by two federal laws, to-wit: (1) Title VII of the Civil Rights Act of 1964 [42 U.S.C. §2000e et seq.; see §2000e-2(i)] and (2) Office of Federal Contract Compliance Programs regulations [41 C.F.R. Part 60-1; see 41 C.F.R. §60-1.5 (a)(6)], each of which federal laws supports the grant by employers, doing business "on or near" an Indian reservation, of preference in employment opportunities to Indians living on or near the reservation; and

WHEREAS, Such claim of the Three Affiliated Tribes in the context of Indian preference in employment and contracting is further supported by the sovereign authority of the Three Affiliated Tribes in the area of Indian preference in employment and contracting recognized in and exercised through our Tribal Employment Rights Ordinance and supplementary laws, which legislative enactments require that certain employers grant preference to (1) qualified and available Indian individuals in employment opportunities and (2) qualified and available Indian owned and managed business entities in contracting and subcontracting; and

WHEREAS, It is the considered judgment of the Tribal Business Council that, in an effort to continue to protect the federally reserved water rights of the Tribes and to promote the policy of Indian preference in employment and contracting opportunities at the Great Plains Coal Gasification Plant, the Three Affiliated Tribes must forthwith become actively involved in the negotiation of the industrial water service contract to which Basin Electric will become a party;

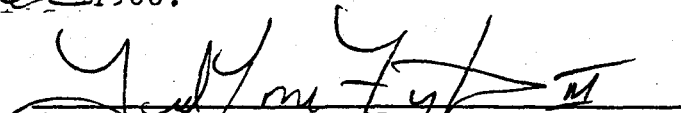
NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby authorizes and directs the Chairman of the Council, or his designated representative, to forthwith give formal notice to the appropriate officials of Basin Electric Power Cooperative and of the United States Department of Energy of the intent of the Three Affiliated Tribes to actively participate in the negotiation of the industrial water service contract to which Basin Electric Power Cooperative or its subsidiary, Dakota Gasification Company, will become a party with the United States of America.


BE IT FURTHER RESOLVED, That the Tribal Business Council hereby authorizes and directs the Legal Department of the Three Affiliated Tribes to forthwith commence the appropriate undertakings inherent in the preparation for said negotiations.

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, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 13th day of October, 1988; 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.

Dated the 13th day of October 1988.


Secretary, Tribal Business Council

ATTEST:

Chairman, Tribal Business Council