

**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 5(j) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to protect and preserve the property, wildlife, and natural resources of the 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 the agencies of the government of the State of North Dakota on behalf of the Tribes; and
- WHEREAS,** Article VI, Section 5(b) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to create and maintain a Tribal Business Council fund by accepting grants and other forms of funding from the United States government; and
- WHEREAS,** It is the considered judgment of the Tribal Business Council that the Three Affiliated Tribes should recommence their discussions and negotiations with the State of North Dakota for the purpose of developing and finalizing a Tribal-State agreement, wherein the various Winters-based water rights claims of the Tribes would be recognized and protected; and
- WHEREAS,** The State of North Dakota has recently manifested its intent and strong desire to revive such negotiations in light of the pressure being exerted on North Dakota by downstream states to develop an interstate water compact allocating water use on the Missouri River mainstem system and has represented to the Tribes that it is essential that the water needs of the Tribes be specifically included in the State Water Plan which will serve as the basis for the strategy to be employed by the State of North Dakota in negotiating the proposed interstate compact; and

- WHEREAS,** Officials of the Three Affiliated Tribes have recently met with representatives of the Fort Berthold Agency, the Billings Area Office, the Aberdeen Area Office, the Bureau of Reclamation, and the Office of the Solicitor, and arising out of such meeting was a consensus among the various Interior representatives that Tribal-State negotiations should be revived and continued with the goal of realizing a final water rights agreement between the Tribes and the State, in an effort to avoid costly and time consuming litigation of the federal reserved rights of the Tribes; and
- WHEREAS,** In a previous meeting earlier in 1988 with the former Assistant Secretary-Indian Affairs, Mr. Swimmer assured the Tribal officials present at such meeting that the Interior Department would make available to the Tribes for their use federally appropriated funds necessary to enable the Tribes to pursue continued negotiations with the State in an effort to finalize the proposed water rights agreement; and
- WHEREAS,** It is clear that the resolution of the Tribes' water rights claims to surface and ground water sources on the Fort Berthold Reservation will involve a host of complex legal issues, including the special and significant federal legal and policy issues which arise out of the Tribes' claims relative to the Missouri River mainstem system, a major interstate system; and
- WHEREAS,** Such complex legal issues can be addressed, on behalf on the Tribes, only by the legal expertise inherent in the Legal Department of the Three Affiliated Tribes; however, the Tribes maintain absolutely no funds in the FY-89 Tribal Business Council Account or funds from any other Tribal source to compensate the Legal Department for the reasonable expenses which would be incurred in addressing such complex issues inherent in this special matter of water rights negotiations; and
- WHEREAS,** Based upon the absolute unavailability of Tribal funds for such purpose and the representation made by former Assistant Secretary Swimmer that federal funds would be made available for continued water rights negotiations between the Tribes and the State of North Dakota, the Tribal Business Council deemed it necessary that the Tribes submit a formal request, pursuant to 25 C.F.R. §89.40 et seq., for federally appropriated funds for payment of the legal services to be provided by the Legal Department of the Tribes in the continuation of water rights negotiations with the State; and
- WHEREAS,** The Three Affiliated Tribes did submit, on September 29, 1988, a timely request for such federally appropriated funds in the total amount of \$145,000 for a two (2)-year period (i.e., FY 89 and FY 90); and

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**WHEREAS,** On April 19, 1989, approximately seven (7) months from the date of submission of such request, the Tribes received formal notice of an Advice for Allocation for \$35,000, which amount constitutes the award made in response to the request for federally appropriated funds made pursuant to 25 C.F.R. §89.40 et seq.; and

**WHEREAS,** The Three Affiliated Tribes have been recently informed by officials of the Fort Berthold Agency of the Bureau of Indian Affairs that the Tribes are now required to submit to the Bureau of Indian Affairs a formal request that the Bureau enter into a P.L. 93-638 contract with the Tribes for the purpose of securing such award in the amount of \$35,000;

**NOW, THEREFORE, BE IT RESOLVED,** That the Tribal Business Council of the Three Affiliated Tribes, pursuant to 25 C.F.R. §271.18, hereby formally requests that the Bureau of Indian Affairs enter into a FY 89 P.L. 93-638 contract with the Three Affiliated Tribes, under which contract the Legal Department of the Tribes would provide the necessary legal assistance to Tribes in undertaking the continuation and completion of the pending discussions and imminent resurrection of formal negotiations between the Three Affiliated Tribes and the State of North Dakota relative to a proposed Tribal-State water rights agreement.

**BE IT FURTHER RESOLVED,** That the Tribal Business Council requests that the proposed P.L. 93-638 contract be supported by federally appropriated funds in the total amount of \$39,200, which amount would be constituted by the \$35,000 identified in the above-referenced Advice of Allocation and the supplemental amount of \$4,200 for indirect costs at the rate twelve percent (12%).

**BE IT FURTHER RESOLVED,** That the Tribal Business Council requests that the term of the proposed contract be established for a period of six (6) months, commencing on April 1, 1989, and terminating on September 30, 1989.

**BE IT FURTHER RESOLVED,** That the Tribal Business Council hereby authorizes and directs the Legal Department of the Three Affiliated Tribes to apply for and negotiate the proposed P.L. 93-638 contract with the Bureau of Indian Affairs and to negotiate any amendments thereto and requests that the Bureau of Indian Affairs direct all contract documents and related correspondence to the Supervising Attorney of the Legal Department of the Tribes.

**BE IT FURTHER RESOLVED,** That the Tribal Business Council represents that it will formally review any contract awarded and any and all subsequent amendments thereto prior to the execution thereof by the Chairman of the Tribal Business Council.

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, 5 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 20th day of April, 1988; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 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 20th day of April, 1988.

  
Secretary, Tribal Business Council

ATTEST:

  
Chairman, Tribal Business Council