

**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(a) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to manage all economic affairs and enterprises of the Three Affiliated Tribes of the Fort Berthold Reservation; and
- WHEREAS,** Article VI, Section 5(c) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to administer the funds within the exclusive control of the Tribes and to make expenditures from available Tribal funds for public purposes of the Tribes; and
- WHEREAS,** Article I of the Constitution of the Three Affiliated Tribes expressly provides that the jurisdiction of the Three Affiliated Tribes shall extend to all persons and all lands, including lands held in fee, within the exterior boundaries of the Fort Berthold Reservation; and
- WHEREAS,** In the early 1990's, Indian Tribes of the Missouri River Basin engaged in certain efforts for the purpose of obtaining an equitable share of the hydropower benefits from the Pick-Sloan Missouri River Basin Program, which Program is operated by the Corps of Engineers and Bureau of Reclamation and which hydropower is marketed by the Western Area Power Administration; and
- WHEREAS,** In conjunction with other Tribes of the Missouri River Basin, the Three Affiliated Tribes presented testimony in Congressional oversight hearings held in June 1994, wherein the Tribes addressed the high cost of electricity on the Indian Reservations of the Missouri River Basin, the failure of the Western Area Power Administration to contract with the respective Tribes for low-cost electricity, and the proprietorship which the Missouri River Basin Tribes have in their rights to the use of the waters of the Missouri River and its tributaries and aquifers; and

WHEREAS, Additionally addressed in such testimony was the fact that the United States had committed the Tribes' reserved water rights in the Missouri River and its tributaries and aquifers to the generation of hydropower in the Upper Basin and to the conveyance of barge traffic in the navigation channel in the Lower Basin of the River; and

WHEREAS, As a result of the efforts of the Three Affiliated Tribes and other Tribes of the Missouri River Basin, the Congressional Oversight Committee directed the Department of Energy, in turn, to direct the Western Area Power Administration to allocate low-cost Pick-Sloan Missouri River Basin Program hydropower to the respective Tribes beginning January 1, 2001; and

WHEREAS, The Western Area Power Administration has made an allocation of hydropower to the Three Affiliated Tribes and to other Missouri River Basin Tribes for the period from January 1, 2001, through December 31, 2020; however, such allocation to the Three Affiliated Tribes is sufficient to serve as only a preliminary step toward an acceptable and adequate level of improvement in the economy and the quality of life of the residents of the Fort Berthold Reservation; and

WHEREAS, In the last session of Congress, there were at least four (4) bills introduced in the Senate and the House which proposed the sale of federal power marketing agencies, including the Western Area Power Administration, to electric cooperatives and other utilities and private entities; and

WHEREAS, The Missouri River Basin Tribes have proprietary interests in the facilities (i.e., generators and power lines) of the Eastern Division of the Pick-Sloan Missouri River Basin Program and perceive such facilities as a vehicle through which to increase income to and augment employment opportunities for the Tribes, at a time when federal funding for Indian tribes, including the Three Affiliated Tribes, continues to be periodically and sharply reduced; and

WHEREAS, Attached hereto is a copy of **draft** federal legislation proposing the joint purchase of the generation and transmission facilities of the Western Area Power Administration by the various Tribes of the Missouri River Basin, which **draft** legislation is based on the same principles as the federal bills referenced above and heretofore introduced in the Congress of the United States;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby authorizes and directs the joinder by the Three Affiliated Tribes with other Tribes of the Missouri River Basin in an effort to further the purpose and intent of this Resolution which includes, but is not limited to, the introduction of final

HR
105th CONGRESS
1st Session

To privatize the Eastern Division of Pick Sloan by Sale to Missouri River Basin
Tribes,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

January 26, 1997

Mr. _____ introduced the following bill; which was referred to the
Committee on Resources, and in addition to the Committee on Indian Affairs, for a
period to be subsequently determined by the Speaker, in each case for consideration
of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To privatize the Eastern Division of Pick Sloan by Sale to Missouri River Basin
Tribes, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of
America in Congress assembled,*

TITLE I--ESTABLISHMENT OF MISSOURI RIVER BASIN INDIAN UTILITY
CORPORATION AND TRANSFER OF TRANSMISSION AND GENERATION
FACILITIES OF EASTERN DIVISION PICK-SLOAN, MISSOURI RIVER
BASIN PROGRAM

SEC. 101. DEFINITIONS.

For purposes of this title:

- (1) The term 'Department' means the Department of Energy.
- (2) The term 'Secretary' means the Secretary of Energy.
- (3) The term 'Corporations' means the Corporations established under section 102.
- (4) The term 'transition date' means the date established under this title for the transfer of facilities to a Corporation.
- (5) The term 'member tribe' means a tribe that has ownership in the Corporation shares.

SEC. 102. ESTABLISHMENT OF CORPORATIONS.

(a) IN GENERAL- There shall be established a MISSOURI RIVER BASIN INDIAN UTILITY CORPORATION. Such corporation shall be established on the transition date. The Corporation shall be incorporated under the laws of the United States in cooperation with the Secretary of the Treasury.

(b) GOVERNMENT CORPORATIONS- The Corporation shall be treated as a wholly owned Government corporation subject to chapter 91 of title 31, United States Code (commonly referred to as the Government Corporation Control Act), except as otherwise provided in this title.

SEC. 103. POWERS OF THE CORPORATIONS.

In order to accomplish its purposes, the Corporation --

(1) shall, except as provided in this title or applicable Federal law, have all the powers of a private corporation incorporated under the laws of the United States;

(2) shall operate and maintain the electric power transmission and generation facilities transferred to it under this Act;

(3) market the transmission services provided by such transmission facilities; and

(4) own, operate and market the electric power generated by such generation facilities.

SEC. 104. TRANSITION.

(a) TRANSITION MANAGER- Within 30 days after the date of the enactment of this Act the President shall appoint, by and with the advice and consent of the Senate, a Transition Manager for the Corporation. The manager shall serve until a quorum of the Board of the Corporation has been elected in accordance with title II.

(b) POWERS- Until a quorum of the Board has been elected, the Transition Manager shall exercise the powers and duties of the Board and shall be responsible for taking all actions needed to effect the transfer of facilities to the Corporation on the applicable transition date. The Transition Managers shall operate the facilities in a prudent manner in order to maximize their value.

(c) TRANSITION MANAGER'S ACTIONS- All actions taken by the Transition Manager before the qualification of a quorum of the Board shall be subject to nullification by the President.

(d) RESPONSIBILITIES OF SECRETARY- Before the transition date, the Secretary shall--

(1) provide funds, to the extent provided in appropriations Acts, to the Transition Manager to pay salaries and expenses;

(2) delegate Department employees to assist the Transition Manager in meeting his responsibilities under this section; and (3) assist and cooperate with the Transition Manager in preparing for the transfer of facilities to the Corporation on the transition date.

(e) TRANSITION DATE- The transition date for each Power Administration shall occur within 60 days after the enactment of this Act, or such later date as the Secretary, for good cause, may fix.

(f) TRANSFER OF FACILITIES- On the transition date:

(1) All electric power generation facilities and transmission facilities, including all dams, locks, reservoirs, related transmission and generation structures, equipment, facilities and real property (including rights-of-way), and all other items of personal property, including without limitation spare parts, inventories, supplies and materials, and all related contract rights, manufacturers' warranties, permits, licenses, books and records, operator logs and other intangible assets related to or required for the operation of such facilities, that are owned by Federal departments and agencies under the supervision of, or coordination with, the Western Power Administration, Corps of

Engineers and Bureau of Reclamation in Eastern Division of Pick Sloan shall be transferred to the MISSOURI RIVER BASIN INDIAN UTILITY CORPORATION established under this title.

(g) TRANSFER OF FUNDS AND DEBT- Simultaneously with the transfer of the facilities referred to in subsection (f)--

- (1) the outstanding debt obligations attributable to such facilities;
- (2) all unexpended balances appropriated to any department or agency of the United States for purposes of operation and maintenance of such facilities and for the marketing of electric power generated by such facilities and for the provision of transmission services; and
- (3) all contract rights and obligations and all other legally binding obligations and rights of each Federal Power Marketing Administration, together with all revenues due and payable to the United States with respect to power sales and the provision of transmission services; shall be transferred to the Corporation. Any judgment entered against a Corporation imposing liability arising out of the operation of a facility transferred to the Corporation before the transition date shall be considered a judgment against and shall be payable solely by the United States.

(h) JUDGMENTS BASED ON OPERATIONS AFTER TRANSITION- Any judgment entered against a Corporation arising from operations of the Corporation on or after the transition date shall be payable solely by the Corporation from its own funds. A Corporation shall not be considered a Federal agency for purposes of chapter 171 of title 28, United States Code.

(i) TERMINATION OF POWER MARKETING ADMINISTRATION IN EASTERN DIVISION OF PICK SLOAN- Following the transfer of facilities that are owned by Federal departments and agencies under the supervision of, or coordination with the Western Area Power Administration, the Secretary shall complete the business of and close out such Administration and transfer the unexpended balances of funds appropriated for the Administration to the Corporation.

(j) PREPARATION- The Secretary is authorized to use funds appropriated to the Department for the Western Area Power Administration and funds otherwise appropriated to other Federal agencies for power generation and related activities in order to prepare facilities for transfer under this title. Such preparation shall provide sufficient title to ensure the beneficial use, enjoyment, and occupancy to the transferee Corporation and shall include identification of all associated laws and regulations to be amended for the purpose of such transfers.

(k) ASSISTANCE AND COOPERATION OF OTHER AGENCIES- The heads of other affected Federal departments and agencies shall assist the Secretary and the Corporation in implementing the transfers authorized by this title.

SEC. 105. CAPITAL STRUCTURE OF CORPORATION AND EXISTING CONTRACTS.

(a) CAPITAL STOCK-

(1) ISSUANCE TO SECRETARY OF THE TREASURY- On the transition date, and in consideration for the assets to be transferred on

such date to the Corporation, the Corporation shall issue all of its authorized shares of common stock to the Secretary of the Treasury. For purposes of this section, the value of the assets (net of liabilities) to be transferred on the transition date shall be deemed to be that part of \$2,603,000,000 for all of the Western Area Power Administration that represents Eastern Division of Pick Sloan; provided, however, that any benefits of accounting that will produce rate neutral revenues shall be applied to the purchase price. The Secretary of the Treasury shall hold such stock in trust for the Indian Tribes of the Missouri River Basin forming and participating as members in the MISSOURI RIVER BASIN INDIAN UTILITY CORPORATION. All rights and duties pertaining to management of the Corporation shall remain vested in the Transition Manager.

(2) WARRANTS- Immediately upon the enactment of this Act, the Secretary of the Treasury shall initiate the process of issuing warrants to the tribes forming the MISSOURI RIVER BASIN INDIAN UTILITY CORPORATION and enabling the holders to purchase the shares of the Corporation from the Treasury at a price equal to the net asset value of the assets to be transferred to the Corporation divided by the number of shares of common stock to be issued. Such warrants shall be allocated among the member tribes in accordance with a formula under which each ultimate member tribe will receive a warrant allowing the bearer to acquire a number of shares equal to $N \times S$, where N is the total number of shares of the Corporation concerned and S is the electrical power share of each member tribe. In allocating

the warrants, the Secretary of the Treasury is permitted to use valid statistical estimation techniques and shall develop a plan in conjunction with the tribes for determining the respective shares of each individual tribe. The issuance of warrants shall be completed within 12 months of enactment of this Act, and administrative efforts must be consistent with the above date certain and not result in any delay. **Recipient Tribes will submit an annual business plan for approval by the Secretary of the Treasury on use of revenues received from the sale of power.** The Secretary of the Treasury shall publish in the Federal Register a list of recipients of the warrants, their addresses, and the number of warrants received by each member tribe. Recipient data and addresses shall be made available via means which include electronic subscription (at cost) databases.

(3) **CONTRACTS-** Nothing in this Act shall affect existing allocations of power to ultimate electric power users. So that the affected consumers served by existing contracts are not impacted by severe rate increases, the Corporation shall insure that the price at which electrical power is sold to existing contractors does not increase above the base line price at a rate greater than 10% annually where the base line price is the price at the time of sale.

(4) **RESTRICTION ON TRANSFERS OF STOCK BY UNITED STATES-** The capital stock of a Corporation shall not be sold, transferred, or conveyed by the United States, except to carry out the privatization of the Corporation under title II.

(b) PROHIBITION ON ADDITIONAL FEDERAL ASSISTANCE- Except as otherwise specifically provided in this title, the Corporation shall receive no appropriations, loans, or other financial assistance from the Federal Government.

(c) SOLE RECOVERY OF UNRECOVERED COSTS- Receipt by the United States of the proceeds from the sale of stock issued by the Corporation under subsection (a)(1) shall constitute the sole recovery by the United States of previously unrecovered costs that have been incurred by the United States with respect to the facilities transferred to the Corporations under this Act.

(d) APPLICATION OF SECURITIES LAWS-

(1) The issuance of warrants and the sale of stock under this Act, and any other offering or sale of securities by the Corporations created under this Act shall be subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(2) The Corporation shall not be considered an electric utility company under section 2(a)(3) of the Public Utilities Holding Company Act of 1935 ('PUHCA') (15 U.S.C. 79a et seq.), and, whether or not a subsidiary company, an affiliate, or an associate company of a holding company shall be exempt from all provisions of the Public Utilities Holding Company Act. Further notwithstanding any provision of the Public Utilities Holding Company Act, a

registered holding company shall be permitted (without the need to apply for, or receive, approval from the Securities and Exchange Commission) to acquire and hold the securities of one or more corporations.

(e) DEFINITIONS- For purposes of this section:

(1) The term 'ultimate electric power user' means an individual, firm, State, **tribal** or other non-Federal public or private agency that purchased for ultimate consumption, electric energy generated at facilities transferred, or to be transferred, to a Corporation under this title during the calendar year 1995 **or has received or will receive an allocation of electrical energy in the post 2000 contracts.**

(2) The term 'electric power share' for any ultimate electric power user means the percentage of electric power purchased during the calendar year of 1995 or to be allocated in post-2000 contracts. In determining the electric power share calculations shall be based on energy units.

SEC. 106. ENABLING FEDERAL STUDIES.

Section 505 of the Energy and Water Development Appropriations Act of 1993 (Public Law 102-377) is hereby repealed.

TITLE II--PRIVATIZATION OF CORPORATIONS

SEC. 201. DEFINITIONS.

For purposes of this title:

- (1) The term 'Department' means the Department of the Treasury.
- (2) The term 'Secretary' means the Secretary of the Treasury.
- (3) The term 'Corporation' means the Corporation established under title I.
- (4) The term 'transition date' means the date established under title I for the transfer of facilities to a Corporation.
- (5) The term 'co-lead managers' means the investment banking firms retained to serve as co-lead managers under this title.
- (6) The term 'United States share' means a share of common stock of a Corporation held by the United States Government as provided in title I.
- (7) The term 'Tribal sale' means the sale of stock in the Corporation pursuant to a Tribal offering under this title. If there is more than 1 Tribal offering for the Corporation, such term means the sale pursuant to the initial tribal offering.
- (8) The term 'tribal offering' means an underwritten offering to the Missouri River Basin Tribes of such common stock of the Corporation as the Secretary determines to sell under this title.
- (9) The term 'sale date' means the date on which the initial tribal offering is closed.

SEC. 202. PREPARATION FOR TRIBAL OFFERING.

(a) TRIBAL OFFERING MANAGERS- Within 30 days of the enactment of this Act, the Secretary shall retain the services of investment banking firms to serve jointly as co-lead managers of the Tribal offering for each

Corporation and to establish a syndicate to underwrite the Tribal offering.

(b) DETERMINATION OF ASSETS OF CORPORATIONS- Prior to the public offering the Secretary, in consultation with the co-lead managers and the transition managers, shall determine which facilities shall be retained by the Corporation upon the sale of the United States shares of the Corporation:

(1) When determining which assets will be retained by the Corporation, the Secretary shall, taking into account the multiple use nature of some of the facilities, seek to maximize the market capitalization of the Corporation.

(2) The Corporation shall retain all facilities and parts of facilities used exclusively for the generation and transmission of electric energy, including turbines, generators, controls, substations, and primary lines.

(3) The Secretary may divest the Corporation of any portion of a facility not used exclusively for the generation and transmission of electricity, including portions used for navigation, flood control, irrigation, water supply, or recreation. The Secretary may transfer or sell divested assets to other Government Corporations, consortia of users, the Tribes, States, or other organizations.

(4) Nothing in this Act shall be construed to prohibit the sale or transfer of other facilities of the Corporation, or the purchase of

facilities by the Corporation after the sale of the United States shares.

(5) The Secretary shall submit a complete list of the divestment decisions to the Congress within one year after the enactment of this Act. The Secretary's decisions shall go into effect if no action is taken by the Congress within 30 days of submission.

(c) REGISTRATION STATEMENT- The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

SEC. 203. TRIBAL OFFERING.

(a) STRUCTURE OF TRIBAL OFFERING- After the registration statement referred to in section 202 is declared effective by the Securities and Exchange Commission for any Tribal offering under this title, the Transition Manager for the Corporation concerned, and the co-lead managers, shall--

(1) offer the United States shares of such Corporation for which warrants were issued under title I for sale to the holders of such warrants at the price as determined under title I.

(b) TIME OF SALES- The sale of all United States shares of each Corporation shall be completed within 18 months of the enactment of this Act. Unredeemed warrants shall no longer be valid after this time.

(c) INVESTMENT BANKING FIRM REQUIREMENTS- The level of any investment banking firm's participation in the public offering shall be consistent with that firm's financial capabilities.

SEC. 204. FEES.

All costs of the Tribal offering payable by the Secretary shall be paid from the proceeds of the public offering.

SEC. 205. BOARDS OF DIRECTORS.

After 60 percent of the interest of the United States in a Corporation has been sold, a Board of Directors shall be elected by shareholders of the Corporation.

SEC. 206. STATUS OF THE CORPORATIONS.

After 60 percent of the interest of the United States in a Corporation has been sold, the Corporation shall cease to be an agency, instrumentality, or establishment of the United States, a Government corporation or a Government controlled corporation. It shall have all the powers of a private corporation under the laws of the United States and the Tribes.

legislation in the Congress of the United States proposing the joint purchase of the generation and transmission facilities of the Eastern Division of the Pick-Sloan Missouri River Basin Program by such Tribes of the Missouri River Basin as may ultimately join in such legislative undertaking.


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, 7 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 13th day of February, 1998; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 13th day of February, 1998.

Daylon Spotted Bear
Secretary, Tribal Business Council

ATTEST:



Chairman, Tribal Business Council