



**A RESOLUTION OF THE TRIBAL COUNCIL OF THE
DELAWARE TRIBE OF INDIANS REGARDING
RELEASE AND DISTRIBUTION OF FUNDS RELATING
TO THE FEDERAL "AFTERBORN" ACTION IN THE
UNITED STATE DISTRICT COURT FOR THE
DISTRICT OF IDAHO**

RESOLUTION 2019-31

WHEREAS, the Delaware Tribal Council is authorized by Article V of the Constitution and Bylaws of the Delaware Tribe of Indians to represent and act in all matters that concern the general welfare of the Tribe; and,

WHEREAS, in 1984, the United States District Court of Idaho entered a judgment in favor of certain "afterborns," members of the Tribe and enrollees of the Idaho and Kansas Delawares born after October 3, 1972 but on or before August 1, 1980 who were entitled to special computation of per capita payments due under Pub.L. 96-318, 94 Stat. 968 (Aug. 1, 1980) ("1980 Act"), and

WHEREAS, pursuant to an October 31, 2006 order of the Court, the United States paid \$1,186,964.08 into the Court's registry to pay the pro rata share of the judgment to some 1,372 afterborn members of the Tribe who appeared on the 1980 Act roll prepared by the United States, and

WHEREAS, in the years following that order, the Tribe worked diligently to locate those members and provided the addresses of those afterborn members to the Court for payment, and

WHEREAS, over 1,100 Tribal members received payments of some \$900, but because some members were not located and others' checks were returned to the Court, roughly 260 remain unpaid, and

WHEREAS, because of the difficulties inherent in locating members and paying them through the Court, and because of the passage of time, the United States and the Tribe believe the Court would be amendable to turning the remaining funds to the Tribe to attempt one final distribution to unpaid afterborns and then to use the remaining funds for Tribal purposes, and

WHEREAS, the Tribe's counsel in this matter, Tom Peckham of the Nordhaus Law Firm, has worked with the attorneys for the United States to draft a joint motion seeking that result from the Court, which the Council has had an opportunity to review, and

WHEREAS, the Tribal Council believes that it is in the best interest of both the unpaid afterborns and the Tribe as a whole to secure the funds from the Court, make one last attempt at paying unpaid afterborns, and direct any funds remaining after one year from the date the funds are received by the Tribe to the specific Tribal program(s) identified below, and

WHEREAS, the Tribal Council also concludes, however, that it is not in the best interest of the Tribe to become embroiled in a complex process to make distributions, or in disputes stemming from that process, and therefore seeks to establish an administrative distribution process that is straightforward, final, and not subject to an appeal of any kind.

NOW THEREFORE BE IT RESOLVED THAT, the Tribal Council authorizes the Nordhaus Law Firm to file a Joint Motion to Release Funds and Close Case in the Idaho action that would accomplish the intent of this Resolution, and

BE IT FURTHER RESOLVED THAT, if that motion is granted, the Tribal Council authorizes the Chief and Mr. Peckham, in coordination with the Tribal Manager, to develop procedures providing, at a minimum:

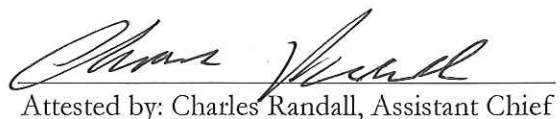
- 1) That a list of unpaid afterborn Tribal members who were on the 1980 Act roll will be published once in *The Delaware Indian News*, along with the name of a Tribal employee who may be contacted by unpaid afterborns regarding requests for payment, and
- 2) The Tribe shall not be required to formally or informally conduct probate proceedings regarding any right to payment of a deceased afterborn Tribal member, and
- 3) For prompt payment of a pro rata share to each afterborn Tribal member whose request for a payment is received within one year of the date the funds are received by the Tribe from the Court and subsequently verified according to the procedures to be developed, and
- 4) That the resulting decision regarding any request for payment is final and unappealable, and
- 5) That any funds remaining after all timely requests for payment are resolved shall be allocated to higher education scholarship and/or elder assistance programs as the Tribal Council may direct at that time.

BE IT FURTHER RESOLVED THAT, the Chief, relevant Tribal employees as identified in the procedures, and Mr. Peckham are authorized and directed to take such actions, including issuing payments and denying requests for payments, consistent with the purposes of this Resolution and in accordance with procedures consistent with this Resolution.

CERTIFICATION

I hereby certify that the foregoing was considered by the Delaware Tribal Council of the Delaware Tribe of Indians and adopted this 19 day of June 2019 with a vote of 5 yes, 0 no, and 0 abstaining.


Chester "Chet" Brooks, Chief


Attested by: Charles Randall, Assistant Chief

