



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #DEN-18-019

TITLE: Urging the Department of the Interior to Complete Title and Mapping Work in the Missouri River Bed within the Fort Berthold Indian Reservation and to Withdraw Solicitor's Opinion M-37052

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Aaron Payment
Sault Ste. Marie Tribe of Chippewa Indians of Michigan

RECORDING SECRETARY
Juana Majel-Dixon
Pauma Band Mission Indians

TREASURER
W. Ron Allen
Jamestown S'Kallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Rob Sanderson, Jr.
Tlingit & Haida Indian Tribes of Alaska

EASTERN OKLAHOMA
Joe Byrd
Cherokee Nation

GREAT PLAINS
Larry Wright, Jr.
Ponca Tribe of Nebraska

MIDWEST
Roger Rader
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Leonard Forsman
Suquamish Tribe

PACIFIC
Willie Carrillo
Tule River Tribe of California

ROCKY MOUNTAIN
Darrin Old Coyote
Crow Nation

SOUTHEAST
Nancy Carnley
Ma-Chis Lower Creek Indians

SOUTHERN PLAINS
Zach Pahmahmie
Prairie Band of Potawatomi Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Franklin Pablo, Sr.
Gila River Indian Community

EXECUTIVE DIRECTOR
Jacqueline Pata
Tlingit

NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Mandan Hidatsa and Arikara Nation's (MHA Nation) culture and existence has always been integrally connected to the Missouri River, which has sustained the MHA Nation and provided it with trade, transportation and subsistence since time immemorial; and

WHEREAS, the MHA Nation's Fort Berthold Indian Reservation was carved out of its aboriginal territory on both sides of the Missouri River and included the Missouri River as recognized in the 1851 Treaty of Fort Laramie and subsequent Executive Orders including Orders in 1870 and 1880 describing the Reservation boundary as encompassing the Missouri River; and

WHEREAS, in 1936, Nathan R. Margold, Solicitor of the Department of Interior issued a Solicitor's Opinion determining that the bed of the Missouri River was part of the territory reserved to the MHA Nation prior to the admission of North Dakota to the Union; and

WHEREAS, in 1979, the Interior Board of Land Appeals (IBLA) reaffirmed Solicitor Margold's 1936 Solicitor's Opinion and rejected arguments by the State of North Dakota that the riverbed became the property of North Dakota when it became a state in 1889, a decision which North Dakota never appealed; and

WHEREAS, in 1984, Congress passed the Fort Berthold Reservation Mineral Restoration Act, P.L. 98-602, 98 Stat. 3152, which returned to the MHA Nation its rights to minerals underneath lands taken by the United States for the Garrison Project and its Reservoir; and

WHEREAS, on August 2, 2011, the MHA Nation requested that the Department of the Interior take immediate action to complete title documents and maps showing that the Missouri River bed is part of the Fort Berthold Indian Reservation; and

WHEREAS, the Bureau of Indian Affairs (BIA) was taking the necessary actions to implement the Department's prior decisions; and

WHEREAS, on January 18, 2017, following an extensive review of the history and law regarding the MHA Nation, the Missouri River and the riverbed, the Acting Solicitor of the Department of Interior again reaffirmed and elaborated on the conclusions reached in both the 1936 Solicitor's Opinion and the 1979 IBLA decision with Solicitor's Opinion M.37044; and

WHEREAS, on June 8, 2018, without any government-to-government consultation with the MHA Nation, the Principal Deputy Solicitor issued an Opinion numbered M-37052 that partially suspended and temporarily withdrew Solicitor Opinion M-37044 to further review and expand the historical record through a professional historian; and

WHEREAS, Solicitor's Opinion M-37052 specifically states that it has no effect on the longstanding and well-settled 1936 Solicitor's Opinion and the 1979 IBLA decision confirming that the Missouri River bed within the Fort Berthold Indian Reservation is owned by the MHA Nation; and

WHEREAS, Solicitor's Opinion M-37052 also has no effect on the longstanding Executive and Congressional actions declaring that the Missouri River bed within the Fort Berthold Indian Reservation is owned by the MHA Nation; and

WHEREAS, pursuant to the Department's well-settled and longstanding legal conclusions that the Missouri River bed within the Fort Berthold Indian Reservation is owned by the MHA Nation, the BIA should complete title documents and maps showing that the Missouri River bed is part of the Fort Berthold Indian Reservation; and

WHEREAS, the failure of BIA to complete this title and mapping work has a damaging effect on the MHA Nation's efforts to develop energy resources and promote economic development on the Fort Berthold Indian Reservation and contribute to the United States' domestic energy supply.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls upon the Department of the Interior to comply with the Department's 82 years of longstanding, well-settled and still applicable legal conclusions determining that the Mandan Hidatsa and Arikara (MHA) Nation owns of the Missouri River bed within the Fort Berthold Indian Reservation; and

BE IT FURTHER RESOLVED, that NCAI calls upon BIA to complete its title and mapping work showing ownership of the riverbed by the MHA Nation based on long standing, well-settled and still applicable legal conclusions of the Department; and

BE IT FURTHER RESOLVED, that NCAI calls upon the Department of the Interior to withdraw Solicitor's Opinion M-37052 to avoid the unintentional mismanagement of Indian trust resources and to affirm, in writing, that Solicitor's Opinion M-37052 does not restrict or otherwise effect the BIA's urgent obligation to complete its title and mapping work showing ownership of the riverbed by the United States in trust for the MHA Nation; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2018 Annual Session of the National Congress of American Indians, held at the Hyatt Regency in Denver, Colorado October 21-26, 2018, with a quorum present.



Jefferson Keel, President

ATTEST:



Juana Majel Dixon, Recording Secretary