



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #KAN-18-013

### **TITLE: General Support for Bureau of Indian Affairs Rights-of-Way Regulations and Support for Tribal Control over Land Valuation under Such Regulations**

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**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**, NCAI recognizes the importance of tribal control over tribal lands, and hereby reaffirms Resolution #ATL-14-035, *General Support for Bureau of Indian Affairs Rights-of-Way on Indian Land Proposed Regulations*; and

**WHEREAS**, since enactment of Resolution #ATL-14-035 in 2015, the Bureau of Indian Affairs (BIA) finalized new regulations governing the approval of rights of way on tribal lands (25 CFR 169); and

**WHEREAS**, the BIA largely accepted the comments of Indian tribes and NCAI, and incorporated them into the final rule that was published in the Federal Register on November 19, 2015; and

**WHEREAS**, NCAI recognizes and commends the substantial effort of the Department of Interior and the BIA in finalizing regulations that strengthen tribal sovereignty and provide much needed updates and clarification to the out-of-date right-of-way process; and

**WHEREAS**, the final regulations unambiguously provide that tribal consent is required for granting or renewing a right-of-way on or across tribal trust land and thus tribal governments have the final say over if, when, and where a right-of-way may be granted or renewed on or across tribal trust lands; and

**WHEREAS**, the clear direction in the regulations empowers tribal governments to maintain sovereign control over their lands, hopefully ending a history of un- or under-compensated rights-of-way on tribal lands for non-tribal utilities, roads and rail roads, and other infrastructure; and

**WHEREAS**, NCAI commends the Department of Interior for requiring compensation that is just for Indian tribes that host rights-of-way for non-tribal entities at 25 C.F.R. § 169.110; and

**WHEREAS**, NCAI further commends the Department of Interior for refusing to put a ceiling on compensation a tribe may receive for a right-of-way, and recognizing that to “do so would unduly restrict landowners’ ability to get the maximum compensation for their land interest;” and

**WHEREAS**, 25 CFR 169, as revised, promotes tribal sovereignty by supporting the necessity of tribal consent to any right-of-way renewal or grant and promotes a tribe’s authority to use a valuation methodology that a tribal government deems appropriate to value its land.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) supports the Rights-of-Way on Indian Land regulations as written and as codified in 25 C.F.R. 169; and

**BE IT FURTHER RESOLVED**, that NCAI supports the right for tribal governments to seek compensation that is just and tribally determined in exchange for consent to use their land; and

**BE IT FURTHER RESOLVED**, that NCAI supports tribal governments that seek compensation based on a valuation methodology that the tribal government deems appropriate for use of its trust lands; and

**BE IT FURTHER RESOLVED**, that NCAI recognizes that where the Department of Interior conducts an appraisal on land subject to right-of-way negotiations, the resulting appraised value should be viewed by the Department of Interior only as the lowest possible amount that a tribe may receive in exchange for granting a right-of-way and such appraised value shall not supplant the compensation amount the tribe determines to be just and consistent with the tribe’s best interests; 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 Midyear Session of the National Congress of American Indians, held at the Marriott Kansas City Downtown, June 3-6, 2018, with a quorum present.

  
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Jefferson Keel, President

**ATTEST:**

  
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Juana Majel Dixon, Recording Secretary