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The National Congress of American Indians
Resolution #PSP-09-008

TITLE: Resolution of the National Congress of American Indians on President Barack Obama's First Annual Meeting with Tribal Leaders: Reaffirmation of the Nation-to-Nation Relationship

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, 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, Indian nations and tribes are recognized by the U.S. Constitution as prior sovereigns, with treaty protected rights to self-government and self-determination; and

WHEREAS, President Barack Obama has pledged to respect our Nation-to-Nation relationship with the United States, to respect our sovereignty, and honor our treaties; and

WHEREAS, the National Congress of American Indians commends President Obama for the White House meeting with Tribal leaders on November 5, 2009 and the announcement of the Obama Administration's Nation-to-Nation policy.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby request President Obama to issue a new Executive Order establishing his Administration's policy on Tribal Sovereignty and the Federal Trust Responsibility and promoting the new Native American Nation-to-Nation policy and announcing a special message to the 111th Congress; and

BE IT FURTHER RESOLVED that the NCAI requests that the Obama Administration Executive Order on Nation-to-Nation Relations address the following:

- Affirm the original, inherent sovereign status of Indian nations and tribes.
- Renew the United States' pledge to honor Indian treaties, respect Indian sovereignty and protect Indian lands as permanent tribal homelands.
- Explain and re-affirm the Constitution's provisions on Indian tribes and our Nation-to-Nation relationship.

- Affirm the principle that our Nation-to-Nation relationship is based upon mutual consent and mutual respect and direct Executive Departments, Agencies and Independent Agencies to apply that principle in their work with Indian tribes.
- Extend consultation and the Nation to Nation relationship to include state recognized tribes as supported by federal statutes.
- Authorize and direct each Department and Agency to establish a tribal government support office, reporting at least monthly to the appropriate Secretary, Attorney General, or Agency Head.
- Establish an Executive Branch Nation-to-Nation Council chaired by the Secretary of the Interior and co-chaired by another Secretary on a rotating basis to meet monthly with high level officials of Executive Departments and Agencies with Indian Country responsibilities.
- Establish a Deputy Director at the Office of Management and Budget to oversee accountability for the Executive Order and to coordinate policy, programs and funding for tribal governments and tribal citizens.
- Affirm the commitment to an Annual White House meeting with Tribal Leaders and direct the White House Chief of Staff to convene a bi-annual Cabinet Meeting with Indian Country.

BE IT FURTHER RESOLVED by NCAI that the Special Message to the 111th Congress on the Nation-to-Nation Policy should:

- Recognize that our Indian tribes are the original Native American nations endowed with inherent natural rights to self-government, self-determination and territorial integrity.
- Persuade and encourage Congress to respect the inherent sovereignty retained by Indian tribes pursuant to treaties, Executive Orders and course of dealings, and explain the functions of tribal governments, including public safety, police and fire protection, administration of justice, domestic relations, education, health care, housing, land use, environmental and natural resource management, economic development and regulation of trade and commerce; and
- Explain that through the Treaty, Commerce, Supremacy and Apportionment Clauses, the Constitution treats Indian tribes as sovereigns with rights to self-government guaranteed by treaty, establishes a Nation-to-Nation relationship based upon mutual consent, and acknowledges Native Americans as tribal citizens.
- Explain that the 14th Amendment affirms the original recognition of Indian tribes as sovereigns and status of tribal citizens through the Citizenship and Apportionment Clauses;
- Request that Congress direct Executive Departments and Agencies to work with Indian tribes within the framework of a Nation-to-Nation relationship, which gives due deference to our inherent and treaty protected rights to self-government and affirms the constitutional principle that the United States and its Agencies shall work with Indian nations and tribes on the basis of mutual consent in accord with our sovereignty.
- Request that Congress establish a Special Court of Appeals designed to recognize, protect and enhance the sovereign authority of Indian Nations.
- Encourage Congress to enact legislation in furtherance of our Nation-to-Nation relationship.

BE IT FURTHER RESOLVED by NCAI that the Obama Administration should immediately implement the reaffirmed Nation-to-Nation relations policy by doing the following:

- Treat Indian nations as governments in Federal legislation for government programs and purposes, including agriculture, commerce, contracting, bonds, credit and financing, education, energy, environmental protection, health and human services, housing, justice, labor, small business development, taxation, transportation, tribal colleges and veterans affairs.
- Fully fund Indian education, health care, housing, law enforcement and justice programs, transportation, and re-authorize the Indian Health Care Improvement Act.
- Include Indian nations and tribes in direct Federal funding in programs and services by establishing equitable set-asides, including a set-aside of the remaining stimulus funds.
- Support legislation to treat Indian tribes as governments and respect tribal authority under commerce, environmental and labor laws.
- Establish a comprehensive national study of Federal Indian policies modeled after the American Indian Policy Review Commission established by Congress in 1975-1977, including the provision of Indigenous rights.
- Convene a summit to stop teen suicide in Indian Country.
- Correct the erroneous interpretations of law regarding the rights of tribes to tax and regulate activities on tribal lands and stop IRS taxation of tribal government programs and services; and
- Delegate Federal authority to tribal governments and remove barriers to the exercise of Indian sovereignty.
- Reaffirm the Secretary of the Interior's authority to take land into trust for all Indian and Alaska Native tribes and expedite the processing of tribal applications.
- Affirm and clarify the United States' trust responsibilities and obligations.
- Enact legislation to authorize payments from the United States Judgment Fund to resolve the Cobell litigation and other trust fund litigation with a requirement of a report from Interior and Justice within 180 days.
- Issue an Apology to Native Americans for historical wrongs and establish a Presidential Reconciliation Commission with an equal number of Federal and tribal commissioners to recommend redress and reconciliation.
- Support the establishment of an Indian Development Finance Corporation and similar opportunities for increasing financing for Indian Country's economy.
- Convene an interagency Native American Task Force of politically appointed officials to enhance the federal programs and services to advance housing development in Native American communities.
- Establish a Presidential Commission to study making Native American Heritage Day a federal holiday, issue a Proclamation announcing Native American Heritage Day consistent with Public Law 111-33, and host a White House cultural event on that day.

BE IT FURTHER RESOLVED that NCAI requests that the first meeting with President Obama focus on three areas of immediate concern to both tribal leaders and the Administration:

1) Health Care and Education;
2) Public Safety and Crime Prevention;
3) Economic Development, Natural Resources Management and Taxation;

and that NCAI urges the Administration to consider the recommendations in these areas as follows:

HEALTH PRIORITIES IN INDIAN COUNTRY

The Federal government provides health care to American Indians and Alaska Natives based on its trust responsibility found in the U.S. Constitution and affirmed by treaties, federal court decisions, and federal law. Today, health care is provided to 1.9 million American Indians and Alaska Natives primarily residing on or near Indian reservations located in 35 states. Despite the Federal government's trust responsibility, Indian people suffer disproportionately high rates of illness, disease, and mortality compared to the general population.

While the health services delivered to American Indians and Alaska Natives has improved over time, the current service level is not adequately addressing the chronic need in the American Indian and Alaska Native population. To begin addressing the critical shortcomings in the health care of our Nation's first citizens, we recommend the following policy priorities:

1. **Indian Health Policy**
   - Issue an Executive Order or Department of Health and Human Services Secretarial directive reaffirming the government-to-government relationship, coordination and consultation between the United States and American Indians and Alaska Natives, and committing within that framework to support the ongoing trust responsibility to provide health care.
   - Commit the Secretary to take pro-active measures to eliminate American Indian and Alaska Native health disparities and to achieve the Indian health objectives articulated by Congress.
   - Commit the Secretary to identify and eliminate all federal policies, rules or practices that impede access by the Indian health care delivery system.
   - Support and strengthen efforts to protect and expand tribal self-determination.

2. **Funding Priorities**
   Tribal leaders are concerned that federal funding for Indian health care services continues to lose ground, compared to funding for the general U.S. population. The fulfillment of these responsibilities through appropriations is a top priority. Therefore, tribal leaders ask the Administration issue a "no harm" funding statement that will not subject tribal program funds to cuts, rescissions or other reprogramming actions that will further burden already strained and underfunded resources authorized for our health care systems.

3. **Elevate the Director of the Indian Health Service to Assistant Secretary – Indian Health within the Office of the Secretary of the Department of Health and Human Services**

YOUTH PRIORITIES IN INDIAN COUNTRY

The health, well-being, and success of our children are central to tribal sovereignty. Tribal governments are responsible for raising, teaching, and caring for children, who in turn form the backbone of future tribal success. However, our American Indian and Alaska Native children are in crisis. Our students are being left behind academically, face epidemic levels of suicide and teen pregnancy, and often live in some of the poorest most isolated communities in the nation. These problems must be addressed.

Our children need quality education, safe communities, and good health. Each of these basic needs depends on factors less obviously associated with children, such as access to affordable housing, the availability of healthy foods, and economic development to support community services. The priorities laid out below focus on an overall well-being approach that cuts across agencies and traditional funding streams.

1. **White House Conference on Indian Youth Issues**
   Indian students face a number of challenges in their young lives. Our rates of substance abuse, suicide, teen birth, and poverty are all higher than the national average. They are also more likely to face emotional and mental health issues and suffer from higher rates of type 2 diabetes and obesity. Our students drop out of school at an alarming rate and we have the lowest college graduation rates in the nation. Given the current status and situation of our Indian children, their wellbeing should be a national priority. A national conference on Indian youth is needed to develop an overall strategy on ways to cut across agencies and establish collaborative partnerships within the Administration and Indian Country.
2. **Executive Order on the State of Indian Education**
   A new Executive Order (EO) should be implemented that provides national guidelines to improve coordination between federal agencies and Indian education programs. The EO should also promote research on the use of culturally based education and academic achievement for American Indian and Alaska Native students.
3. **Formal Consultation Policy with Department of Education**
   Based on Executive Order 13175 on Federal consultation with Indian tribal governments, the Department of Education needs to establish formal consultation with Indian tribes. The Department has a number of policies, particularly including the implementation of the No Child Left Behind Act, that directly affect the tribes. As such, there should be a formal process through which the Secretary of Education will consult and collaborate with elected tribal officials.
4. **Deputy Assistant Secretary of Indian Education**
   Indian students are affected by policies throughout the Department of Education, not just those established through the Title VII programs and operated from the Office of Indian Education. The establishment of a Deputy Assistant Secretary of Indian Education would enable the coordination of all education programs within the department, ensuring that policies and regulations being enacted would not inadvertently harm or create unnecessary challenges to our Indian students and tribal schools.

PUBLIC SAFETY AND CRIME PREVENTION IN INDIAN COUNTRY

The United States government has created an unworkable system for administering justice in tribal communities. Federal law simultaneously prevents tribal governments from administering justice on their own lands while forcing them to rely on the Department of Justice for investigation and prosecution of violent crimes and other felonies committed on Indian reservations. For too long the DOJ has had, at best, a culture of apathy toward its responsibilities in Indian Country. As a result, crime rates on Indian reservations continue to grow even while crime rates in the rest of the country have dropped. The Obama Administration has an opportunity to reverse this trend with swift action that will restore public safety in tribal communities and confidence among tribal members in the federal government's commitment to providing justice for all Americans. The following recommendations articulate actions that the Obama Administration can take to begin restoring justice and safety to tribal communities.

DEPARTMENT OF JUSTICE – IMMEDIATE RECOMMENDATIONS

1. **Request and advocate for adequate funding for law enforcement, tribal courts, and detention facilities.**
2. **Support swift passage of the Tribal Law and Order Act, S. 3320 in the 110th Congress.** This legislation addresses critical shortcomings in federal support for tribal criminal justice, including an increase in the sentencing powers of tribal courts.
3. **Instruct U.S. Attorneys with Indian Country jurisdictions to increase the priority given to prosecutions of Indian Country crime**. U.S. Attorneys should also be required to issue declination letters and maintain data on declinations of Indian Country cases.
4. **Increase the number of FBI agents assigned to Indian Country**.
5. **Establish an Office of Indian Country Crime in the Criminal Division**. The Criminal Division has a dedicated section and prosecutors assigned to many types of federal crime but not Indian Country crime, reflecting a low priority within the DOJ.
6. **Establish the Chair of the Native American Issues Subcommittee as a permanent seat on the Attorney General's Advisory Committee of United States Attorneys**.
7. **Expand the Role of the Tribal Justice Advisory Committee** composed of tribal leaders from across the country to advise the Department and the Attorney General on the full range of issues impacting tribal governments and Native people.
8. **Support immediate amendments to the Adam Walsh Act to relieve the inequitable treatment of tribal governments and create an effective sex offender registration system on Indian reservations**. Until then, the Bureau of Prisons should fully comply with its statutory duty to register sex offenders released from federal prisons.
9. **Fulfill Consultation Requirements under the Violence Against Women Act of 2005.** The Attorney General should send an official with decision-making power to all future consultations and should respond to the outstanding concerns and recommendations from past consultations.

10. **Give Tribes Access to Federal Criminal Information Databases.** Section 905(a) of VAWA 2005 requires the Attorney General to permit tribal law enforcement agencies to enter data and obtain information from these databases. The Attorney General should direct the NCIC to facilitate access to these federal databases.
11. **Streamline VAWA 2005 Grant Management**. VAWA 2005 combines seven programs in order to create the Grants to Indian Tribal Government Program. Despite the statute, the Department of Justice has required that the funds be tracked according to the seven original programs. The Attorney General should immediately remove these burdensome obstacles to the full implementation of this grant program.
12. **Increase Support for the Tribal Deputy in the Office on Violence Against Women.** No legal or policy personnel have been assigned to the Deputy. The Attorney General should provide additional personnel to the Tribal Deputy, particularly in light of the large responsibilities assigned to the unit.
13. **Increase federal prosecutions of misdemeanor domestic violence crimes.** Section 909 amends the federal criminal code to impose enhanced criminal penalties upon repeat offenders who commits a domestic assault in Indian country. This provision has only been used twice since it was passed in 2005. The Attorney General should mandate training to increase awareness of the provision.

DEPARTMENT OF INTERIOR – IMMEDIATE RECOMMENDATIONS

1. **Request and advocate for adequate funding for law enforcement, tribal courts, and detention facilities.**
2. **Modify BIA law enforcement training policies to provide maximum flexibility for law enforcement and detention officer training**. The BIA trains police on an irregular basis at only one facility in New Mexico. The long distances are a barrier to recruitment, and the training is often duplicative of the training that tribal officers must receive under state-tribal agreements. The BIA should change its policy to offer the unique "Indian Country" components of training as a supplement to locally available training that meets National Peace Officer Standards.
3. **Expand the Provision of Federal Law Enforcement Special Commissions to Tribal police officers.**
4. **Partner with Tribes to Increase Recruitment and Retention of BIA and Tribal Police officers.**
5. **Modify existing policy to allow juvenile justice program funding to be used for services other than detention.**

LONGER TERM RECOMMENDATIONS:

1. **Consolidate and streamline federal law enforcement funding sources to tribes.** Move away from the "grant" model towards tribal self-determination in law enforcement funding providing maximum flexibility to tribal governments in program administration.

2. **Support Congressional reaffirmation of tribal authority to prosecute domestic violence crimes against non-Indians who are members of an Indian family.** This authority should reach persons who are married to or co-habitate with a tribal member in Indian Country, or persons who violate a protective order.
3. **Support Congressional reaffirmation of tribal inherent criminal jurisdiction over all persons within Indian Country.** An increasing number of prominent state and federal law enforcement officials support this view because Indian tribal governments are the only entities that have a full and sustained interest and ability to carry out law enforcement on Indian reservations.
4. **In consultation with tribes, expand tribal and Bureau of Indian Affairs authority to address misdemeanors and "victimless" crimes committed by non-Indians.**
5. **Support an amendment to the Indian Civil Rights Act to reform the overly burdensome jury trial requirement.** The ICRA requires Indian tribes to provide juries to anyone accused of an offense punishable by imprisonment. This requirement should be changed to match the jury requirement in the U.S. Constitution, which only applies to those offenses which carry a prison term of greater than six months.
6. **Support an amendment to Public Law 280 to affirm tribal concurrent jurisdiction and allow tribes to initiate retrocession of jurisdiction from the state to the federal government**.
7. **Create programs to encourage state-tribal cooperation.** There are already hundreds of cooperative law enforcement agreements between tribes and their neighboring jurisdictions. Although law enforcement cooperation is common, it is not found everywhere. The federal government should provide incentives for further law enforcement cooperation among states, counties and tribes. The administration should establish a pilot project for the FBI and U.S. Attorneys to Develop "Indian Country Community Law Enforcement Response Plans."
8. **Require all federal law enforcement officers to coordinate in the development of a uniform system of collecting and reporting data**. The Bureau of Indian Affairs and the Department of Justice should devise a "Tribal Category" and coordinate to produce Indian Country crime data and statistics comparable to data collected from state law enforcement by the Bureau of Justice Statistics. This effort should include state and county crime data from P.L. 280 and similar jurisdictions.
9. **Support the creation of a stable source of funding for tribal juvenile justice programs in the re-authorization of the JJDPA.** Support the creation of tribal set-asides in the existing grant programs and authorization of the Tribal Youth Program, which currently is funded each year in the appropriations process**.**

NATURAL RESOURCES AND ECONOMIC DEVELOPMENT IN INDIAN COUNTRY

There are nearly 60 million acres of Tribal Nation land – an area the size of Nebraska – and the land and natural resources are fundamental to the tribal cultures and economies. Indian land is the primary source of economic activity for Indian communities and provides vast potential for creating jobs and development across the country. However, actions are needed by the federal government that will make the federal government a partner in tribal economic development and natural resources protection, rather than a bureaucracy that stands in its way. We need to increase the efficiency of trust administration, improve returns on trust resources, and redirect trust administration to increase support for tribal development and resource protection initiatives.

1. **Restructuring Bureau of Indian Affairs and Office of Special Trustee**
   Transfer the functions of the Special Trustee for American Indians to a Deputy Secretary for Indian Affairs. Create a single line of authority for all functions under the Deputy Secretary of Indian Affairs - to have the responsibility to supervise any activities related to Indian affairs that are carried out by any branch of the Department of Interior. Increase funding and streamline the process to eliminate bureaucratic obstacles.

2. **Tribal Trust Asset Management**
   Expand Tribal Self-Government over natural resources to enable Indian tribes to control resource management on the reservation. Provide for comprehensive land use planning and a trust asset management agreement authorizing the tribe to lease land without the approval of the Secretary.

3. **Resolve Trust Litigation**
   Resolve the *Cobell* litigation and tribal trust funds litigation to bring an honorable conclusion to the historic mismanagement of trust funds and set the foundation for a more productive Nation to Nation partnership on trust resource management.

4. **Fractional Interest Purchase and Consolidation Program**
   Fractionation of land ownership is one of the root causes of trust mismanagement. Amend the Indian Land Consolidation Act to streamline land acquisition procedures and create incentives for voluntary sales of fractionated interests by allowing the Secretary to offer more than fair market value. Fully fund the Indian Land Consolidation Program, and work directly with the tribal governments on the reservations where the fractionation exists.

5. **Audit of Trust Funds**
   Provide for the Inspector General of the Department of Interior to hire an independent auditor to conduct an audit of the Secretary's financial statements and report on the Secretary's internal controls. The Comptroller General should conduct a review of the audit.

6. **Regulations, Policies and Systems**
   The Interior Department is struggling to update many old regulations and systems that date back as far as the 1930's. The Department has begun these efforts, but much more work is needed. Tribal governments must be deeply involved in development so that the new systems and regulations meet tribal needs both now and in the future.

INDIAN TRIBAL GOVERNMENT PARITY TO PROMOTE ECONOMIC DEVELOPMENT
Meaningful Recognition of the Tribal-Federal Nation-to-Nation Relationship

Duly elected and appointed tribal leaders are charged with the responsibility of meeting and advancing the needs of their citizens under challenging and exceptional conditions. However, tribal leaders do not receive the benefit of federal policies developed to assist state and local governments to promote local autonomy, citizen welfare, and necessary economic growth. The Administration, in its effort to honor the tribal-federal government relationship, should present tribal leaders with the same autonomy, tools and opportunities to meet the compelling needs of their respective communities.

Federal agencies are interpreting their policies without the full context of the tribal-federal relationship built on the foundation of Treaties, the U.S. Constitution and a body of federal Indian law. The Administration can move to honor sovereignty by immediately advancing tax, finance and labor policy in a manner that provides parity with other governments.

1. **Tax Policy**
   The Department of Treasury, through the Internal Revenue Service has failed to acknowledge the sovereign status of tribal governments, through actions such as a broad and unprecedented effort to audit tribal governments that are providing for the general welfare of their citizens. These are the same services, including healthcare, that the federal government through its treaty obligations has neglected to provide to Indian nations. The Administration should provide clear policy guidance to the Department of Treasury in regard to healthcare and other general welfare benefits.
2. **Finance**
   State and local governments, in an effort to advance the quality of life for their citizens, are authorized to use tax-exempt bond financing to promote tourism, create jobs, and promote businesses development. Tribal autonomy is constrained by current policy, which restricts tribal use of government financing to "essential government functions." The Administration should authorize tribal governments to advance the quality of life of their citizens in a similar manner as other governments by providing for the full use of this government financing tool.
3. **Labor**
   Tribal governments should be treated the same as state and federal governments, which have the autonomy to establish labor policies under federal law. The Administration should treat tribes as government employers in a similar manner and recognize the need for tribal governments to develop their own labor policies that are tailored to their specific needs. Appointing members to the National Labor Relations Board that are familiar with tribal governments would help support tribal autonomy in labor practices.

ECONOMIC DEVELOPMENT IN INDIAN COUNTRY

Tribes and Alaska Native villages occupy the low end of the socio-economic scale. Remote locations and marginal lands among other conditions make it difficult to attract capital and develop a sustained economy. Limited tribal tax bases and an under-funded federal budget often mean that tribal governments can not provide basic community infrastructure, citizen programs, and services. Tribal governments recently received substantial program funding in the comprehensive American Recovery and Reinvestment Act (Recovery Act). With this funding, roads, schools and health centers are being built and jobs are being created. However, not all tribes were able to benefit and substantial needs remain unmet. Further support is necessary to spur tribal economic development and to supplement tribal government revenues. The Administration should make a concerted effort to support existing programs that work, and it should ensure that tribes are included in initiatives that offer sustained future development like telecommunications and energy.

Programs and policies are needed to create opportunities, and federal assurances are needed to ensure participation in key Administration initiatives.

1. **Government Contracting**
   Very few economic development programs are successful in remote communities and across a broad spectrum of tribal governments. The SBA 8(a) government contracting program uses the formidable purchasing power of the federal government to help bring tribes into the mainstream economy. The SBA needs Administration support to create more accountability for the program and to ensure greater and more effective tribal participation. In addition, the Administration should defend the program against attempts by a few members of Congress to diminish the program.
2. **Broadband Communications**
   The Administration has embarked on an effort to pour billions of dollars, through the Recovery Act, into broadband communications networks for un-served communities. Including tribal governments in these efforts will allow tribal governments to provide distance medicine and distance learning to their communities as well as spurring local economic development. Tribal applicants have not been assured inclusion in the effort, and the application process makes it extremely difficult for tribes to receive funding. The agencies responsible for funding should be instructed by the Administration to provide priority funding for tribes based on their political status and historic challenges. The Administration should include a tribal broadband plan in the national broadband priorities. The opportunity is short lived and immediate.
3. **Energy**
   Tribes are willing partners in meeting our domestic energy needs through both alternative and traditional energy sources. Tribes are strategically positioned to produce solar and wind energy and to offer increased domestic energy production through oil, coal and natural gas development. It is important for the Administration to form policies and incentives to fully include tribal governments as partners in domestic energy development. For example, government programs to increase domestic energy capacity and domestic energy production as well as the green energy jobs initiative should all have a tribal component. Financial incentives like production tax credits, accelerated depreciation, employment tax credits should be aligned to encourage this federal tribal partnership and to favor long-term tribal development.

4. Housing

The *Native American Housing Assistance and Self-Determination Act* is the main source of authority under which the United States provides housing and housing-related programs for Native Americans. The bulk of Federal housing programs for American Indians, Alaska Natives and Native Hawaiians is administered by the U.S. Department of Housing and Urban Development (HUD). Since several federal agencies administer programs to provide and enhance the ability of tribes to advance affordable and quality housing for Native communities, Native American housing needs to be addressed with a multi-agency approach. The Department of the Interior administers the Indian leasing regime including residential leases; Indian Health Services administers the sanitation construction facilities program for water and wastewater systems; and USDA administers rural housing and development programs which provide critical resources for housing, infrastructure and community development in Indian Country.

CLEAN ENERGY AND ENERGY EFFICIENCY IN INDIAN COUNTRY

Tribal lands have vast renewable energy potential. Tribal lands comprise four percent of the United States land base and a significant percentage of the nation's energy resources. According to the U.S. Department of Energy (DOE), tribal wind and solar potential can provide a large amount of the nation's electricity needs. Yet, at the same time, over 14 percent of tribal homes lack access to electricity, and tribal households pay a higher amount of their income for energy than other households. Tapping this potential would make meaningful contributions to the nation's clean energy transition, develop tribal economies, generate green jobs, and provide tribal homes with electricity at reasonable rates. However, tribal renewable energy projects are hampered by obstacles at every stage of the process that must be overcome.

1. **Tribal Participation in Transmission Planning**
   Tribes must be involved, and tribal lands considered, in national and regional transmission planning efforts. Without access to transmission, large-scale renewable on tribal lands will be impossible. On some reservations in the West, transmission lines go around their boundaries, due to a lack of consultation and collaboration with tribes in transmission plans.

2. **Building Tribal Institutional Capacity**
   Tribes should receive 5% of the allowances provided to states and tribes for renewable energy and energy efficiency activities under current climate legislation (HR 2454 and S 1733) to build tribal institutional capacity, engage in feasibility studies, demonstration projects, and other building blocks to deployment. Much of this funding can be directed to existing programs enacted under the Indian Tribal Energy Development and Self Determination Act (Title V of the Energy Policy Act of 2005), that to date have either not been funded or only minimally so.

   DOE has provided states with $7.2 billion in funding under their State Energy Programs since 1975, including $3.1 billion under the Recovery Act to engage in these activities. In contrast, the DOE's Tribal Energy Program has received $22.5 million since 2002 and $0 under the ARRA. The current climate legislation provides at most 1% to the tribes, and 99% to the States, despite the fact that tribal lands hold 10% of the nation's energy resources and vast renewable energy potential.

3. **Renewable Energy Incentives**
   Tribes must be provided equitable access to financial incentives for renewable energy production, including the transfer of production and investment tax credits, an extension of the accelerated depreciation allowance, and loan guarantees. Many of these incentives, particularly the tax credits, are critical elements to many entities seeking to develop renewable energy projects. Tribes must be allowed to compete on a level playing field. Without access to these incentives, tribes will be left at a competitive disadvantage against projects on non-tribal lands. One action the Administration could undertake at this time would be for the Treasury to provide tribal joint venture waivers in the allocation of the production and investment tax credits.

4. **Streamlining Governmental Reviews Consistent with the Trust Responsibility**
   Governmental processes unique to tribal lands hamper tribal governments' ability to engage in economic development, including renewable energy projects. Because of these processes, the time frames for renewable energy projects on tribal land can take twice as long as those on similarly situated non-tribal land. Many of these processes must be reformed and streamlined such as land appraisals, leasing, rights of way, and environmental reviews in a manner consistent with the nation's trust responsibility to Indian tribes.

5. **Power Marketing Administrations**
   Tribes should be deemed as preference venders with tribal projects as "government instrumentalities" for preference access to the federal grid capacity to supply supplemental power to decarbonizes the federal grid. This could be done by directing the PMAs to secure federal supplemental power purchases from Tribal renewable energy projects. Tribal governmental preference should be extended to transmission upgrades and reconductoring of the federal grid to provide access and integration of tribal renewable energy projects with the federal hydropower system. One Executive action that could be undertaken now would entail the issuance of appropriate directives to the Department of Energy's Power Marketing Administration, for example to undertake demonstration project implementing the intent of the Section 2606 Wind Hydropower Feasibility Study.

6. **Energy Efficiency**
   The single most immediate and cost effective way to reduce greenhouse gas emissions and generate green jobs is through by making tribal homes and buildings more energy efficient. However, tribes are not included in the programs and funding in the climate legislation (HR 2454 and S 1733) for state and local governments to vastly improve the energy efficiency of homes and buildings. Tribes already experience difficulties in shortages in tribal homes, and participation in existing weatherization programs. There is no reason why tribes should be left even further behind by exclusion from the new national programs, which heavily involve states and local governments, in the implementation of building codes, building of energy efficient homes, and retrofitting of existing homes. One action that could be undertaken by the Administration right now would be to issue directives to Housing and Urban Development, Department of Interior, Department of Energy and the Department of Agriculture to meet the housing shortage of 250,000 homes in Indian Country, and for them to be designed and built in energy efficient manner.

AGRICULTURE IN INDIAN COUNTRY

Introduction

Agriculture is the second leading employer in Indian Country and is the backbone of the economy for about 130 Native American Tribes. In 2002, American Indians operated 56.8 million acres of land and sold $1.64 billion of agricultural products, including $781 million of crops and $857 million of livestock. Because 36% of Native Americans live in rural areas and one in four Native Americans lives below the poverty line, tribal governments and farmers look to active partnerships with the United States Department of Agriculture (USDA) to sustain and advance common interests across the broad array of services that USDA provides to tribal governments, farmers, natural resource managers, colleges, water infrastructure providers, energy suppliers, and others. The Tribes top thematic requests are:

To significantly bolster USDA-tribal relationships by: appointing qualified Native individuals to the USDA positions; weaving tribal considerations into the institutional decision-making processes; ensuring compliance with USDA Department Regulation #1350-001 on tribal consultation which first requires fulfillment of the 1990 Farm Bill mandatory presence on Indian Reservation requirements; and affirmative outreach by critical offices like the Farm Service Agency (FSA), Food and Nutrition Service (FNS), Rural Development (RD) and the Natural Resources Conservation Service (NRCS).

To implement the statutory provisions in the Food, Conservation, and Energy Act of 2008 (Farm Bill), the American Recovery and Reinvestment Act (ARRA), and other programs critical to tribal interests.

Specific requests include:

1. **Native American Appointments and Offices.** NCAI recommends that appointment of qualified Native individuals to the following positions: Director of Native American Programs, to report directly to the Secretary, and be provided adequate staffing;Office of General Counsel; State Directorships in FSA and RD NCAI recommends that the Senior Advisor for Tribal Affairs in RD report directly to the Under Secretary.

2. **The Food Distribution Program on Indian Reservations (FDPIR)** allows for the purchase of bison meat from Native American bison producers; establishes a "Traditional and Locally Grown Food Fund", and supports the procurement of the foods from Native American farmers and ranchers up to 50%. Implementation would help address the disproportionate rates of hunger, diabetes and obesity among Native Americans, and provide economic development opportunities for tribal producers of traditional foods. (Section 4211 of the Farm Bill).

3. **FNS's FDPIR nutrition education program** should be funded at the same level as the comparable FSA program. In 2007, the FSA national program budget of $233 million for nutrition education served 24 million participants, or $9.71 per participant. The FNS's Food FDPIR nutrition education provided $1.93 per participant, or 5 times less.

4. **The Persistent Poverty County Provision of ARRA** (Sec. 105) states that at least 10 percent of the over $1.6 billion appropriated to USDA rural programs related to housing,

community facilities, business development, utilities, drinking water and waste disposal, be allocated in the form of loans and grants to persistent poverty counties. Many Indian tribes are in, or contain persistent poverty counties, including 8 of the 10 poorest counties in America. Sec. 105 uses county boundaries as the basis for program administration, creating an inherent challenge for USDA seeking to ensure the provision's implementation on tribal lands. With the exception of one tribe, tribes are parts of one or more counties. Tribes urge that USDA's Rural Development affirmatively reach out to tribes, and create administrative flexibility to ensure that qualifying tribes benefit equitably from the the $166,000,000 set-aside for persistent poverty counties.

5. Though Congress mandates research and extension services in every county in the nation, this reality does not extend to Indian Country. Funded since 1914, USDA's extension program exists in over 97% of America's counties, comprising over 3,100 extension offices. In contrast, the **Federally Recognized Tribal Extension Program (FRTEP)** currently consists of 30 extension agents on Indian reservations, serving less than 4% of reservation members. Current funding is $3 million. FRTEP should be provided at least $15 million annually for FRTEP to create up over 100 offices that will bring the extension program into Indian Country. In addition, a needs analysis and program design to implement this program should be completed prior to the 2011 budget.

6. NCAI recommends that FDA develop statutes and/or regulations regarding **labelling of products that are American Indian grown or raised** to ensure that consumers clearly know who the producers are. For example, non-Native producers of cultivated, paddy grown rice have used American Indian imagery and tribal names to market their commercially-cultivated rice in manner that confuses consumers and diminishes the distinction between cultivated rice and naturally occurring wild rice. These practices diminish the cultural, nutritional, unique and economic value of Native products.

7. Sec. 6105 of the Farm Bill creates a discretionary initiative to improve services and programs in a "**Substantially Underserved Trust Area**" by: making Rural Utility Service loans available with interest rates as low as 2 percent; non-duplication restrictions and matching funds requirements may be waived by the Secretary; and the Secretary may give the highest funding priority to designated projects in SUTAs. This section should be implemented to address the persistent poverty confronting many tribes.

8. USDA National Agriculture Statistics Service states there are over 79,000 Indian producers, yet less than 10% are participating in USDA programs. The 10% was computed utilizing the 2002 NASS figure of 45,000 producers, which means the actual rate is far lower, and **data collection** needs to be improved. Sec.14006 of the Farm Bill which requires the Secretary to compile annual application and participation rate data for each county and state in the United States, organized by race, gender, and ethnicity, should be implemented.

ENVIRONMENTAL PROTECTION IN INDIAN COUNTRY

Tribal perspectives on the environment differ quite markedly from the approach that has been taken by the Federal government. There is no artificial separation drawn between air and water quality, between the "environment" and "natural resources" – all are seen as a whole which is connected, interrelated and participatory in nature. Protection and preservation of the environment is integral to the continued survival of tribal cultures and traditions. The relationship to the land, the water, the animals and plants is a central facet not only of tribal sovereignty, but also of tribal identity.

Although many of the lands traditionally used by Native Americans have been ceded to others, there is still a vested interest in the health and well-being of those lands and their ecosystems – as sources of traditional foods and medicines and sacred areas. Encompassed within the federal trust responsibility is a promise not only to clean up or restore those areas where balance has already been lost through environmental degradation, but also to preserve and protect those few remaining places that are have not yet been damaged and provide homes for the animals, medicines and sacred areas essential to the survival of tribal cultures.

With this said, the NCAI calls upon the Obama Administration to start anew. To provide direction to the various federal agencies who currently share the responsibility for stewardship of the environment to work with the original stewards of these lands in a fair, consistent and equitable manner. To listen to the wisdom accumulated over millennia and work together with tribes to develop better policies. And to hold those agencies to a higher standard, one that acknowledges the responsibility inherent in the treaties and executive orders, and that recognizes that in order to fulfill that responsibility, the natural and financial resources must be made available to tribes in a manner that allows tribes to define and meet their own priorities.

REQUESTS

1. **Include Tribal government representatives on US Delegation to Climate Summit in Copenhagen.** The UN IPCC recognizes that indigenous peoples are and will be disproportionately impacted by climate change. Indian Tribes are sovereign nations, to whom the US owes treaty and trust obligations to provide the natural and financial resources essential to continue tribal culture. It is right and necessary to include Tribal government representatives on the US delegation for the Copenhagen Climate Summit in December 2009, with full and effective participation in the climate negotiations.
2. **Provide guidance to all federal agencies regarding respect for existing treaty and trust rights to hunt, fish, and gather traditional foods and medicines on both reservation and "ceded" lands as an overlay for all discussion involving the environment.** Hunting, fishing and gathering are not merely "resources" issues to most tribes: they are issues that go to the heart of cultural identity, and thus of tribal sovereignty. The protection and preservation of these rights necessitates that the federal government recognize the need to go beyond the narrow confines of existing agency prerogatives and priorities, to recognize the need to consider the environment as a whole outside of the federal "stovepipes" created by federal law, as it goes beyond the consideration of impacts of human health to the health of the entire ecosystem.

3. **Create cross-Agency consistency and accountability when working with tribes.** The government-to-government relationship between Tribes and all federal agencies needs to be reformed so that it truly recognizes tribal sovereignty. One solution would be to provide direction to all agencies to provide accountability when complying with their own regulations, i.e. during the TAS process or when reviewing permit applications.
4. **Expand the self-governance model to environmental programs.** Too often, tribal environmental and natural resources programs are pieced together from a hodgepodge of short-term grant programs. This system places a prohibitive administrative burden on tribes, and often still does not allow them to meet their priorities. Application of the Self Governance model to environmental programs – across agencies – would allow for continuous and flexible funding that meets the needs and priorities of Tribes.
5. **Fix the Resource Conservation and Recovery Act (RCRA) to allow for delegation of authority over solid and hazardous waste to tribes**. There are currently over 3,000 open dumps on tribal lands, and solid waste is the highest priority issue for many tribes, yet there is no way for tribes to assume delegation of authority over solid or hazardous waste, as they are defined as "municipalities" under the existing law.
6. **Re-visit Executive Order 13175 re: Tribal consultation.** Consider changes to EO 13175 that would create a consistent approach to tribal consultation, such as the creation of a consultation clearinghouse, that would give the tribes the opportunity to decide when and in what manner consultation will occur.

BE IT FINALLY RESOLVED, that the NCAI offers these recommendations to President Obama and his Administration in the spirit of strengthening our Nation to Nation Relationship, with the purpose of building better lives and the common welfare for American Indian and Alaska Native people and all people of the United States, and urges all Tribal Nations to offer their prayers and support for the Obama Administration in its leadership of the United States of America.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2009 Annual Session of the National Congress of American Indians, held at the Palm Springs Convention Center in Palm Springs, California on October 11-16, 2009, with a quorum present.

President

ATTEST:

Recording Secretary