



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MOH-17-001

TITLE: A Call on Congress to Enact Legislation that Will Ensure Uniform, Effective and Meaningful Consultation with Indian Nations and Tribes whenever Federal Activities have Tribal Impacts

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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, 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 were independent sovereigns prior to the formation of the United States and through treaties, agreements, statues and executive orders, Indian nations and tribes were offered the protection of the United States, guaranteed the sanctity of our homelands, and reserved our original inherent rights to tribal self-governance; and

WHEREAS, the original policy of the United States was to respect Indian nations and tribes as sovereigns, with inherent rights to self-government, liberty, and possession and control of our Indian lands and territory and to deal with Indian nations and tribes on a Nation-to-Nation basis founded on mutual respect, mutual consent, and deference to internal tribal self-governance; and

WHEREAS, this relationship necessitates that the United States consult with Indian nations and tribes on a government-to-government basis whenever Federal activities have tribal impacts or the potential to impact tribal interests and seeking mutually agreed upon courses of action whenever possible; and

WHEREAS, effective and meaningful consultation is the process of seeking, discussing, and considering the views of the tribes in regards to Federal activities with tribal impacts; and

WHEREAS, in 2000, President Clinton issued Executive Order 13175, setting forth a policy mandating executive agency consultation with Indian nations and tribes; and

WHEREAS, President Bush reaffirmed the Federal commitment to this policy in a 2004 memorandum; and

WHEREAS, President Obama reaffirmed the Federal commitment to this policy in his November 5, 2009 Memorandum, while also directing each agency head to submit a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175; and

WHEREAS, President Obama's November 5, 2009 Memorandum was elevated to executive order status by Executive Order 13604, which mandated its implementation consistent with Executive Order 13175 and President Obama's November 5, 2009 Memorandum; and

WHEREAS, while this directive was noble in intent, it created a myriad of consultation procedures, each different from agency to agency, making the process cumbersome and fragmented, especially when multiple agencies are involved; and

WHEREAS, some executive agencies and independent agencies have espoused varying degrees of unwillingness to consult with tribes in a meaningful manner inconsistent with Executive Order 13175 and Executive Order 13604; and

WHEREAS, Congress has never established broad-based standards for the behavior of the Federal government in its interactions with tribes; and

WHEREAS, federal courts have routinely recognized the requirement for meaningful tribal consultation in federal decision-making, including in *Wyoming v. Department of the Interior*, No. 15-CV-00041-SWS (D. Wyo.); *Quechan Tribe of the Fort Yuma Indian Reservation v. Department of the Interior*, 755 F. Supp. 2d 1104 (S.D. Cal. 2010); *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768 (9th Cir. 2006); *Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995)); and

WHEREAS, government-to-government consultation procedures should be uniform and meaningful across all federal executive departments and independent agencies, and be made permanent as a matter of law; and

WHEREAS, government-to-government consultation should occur with representatives of federal agencies that are both informed about the tribal government's requests or critiques of a proposed federal action and empowered to make decisions about the scope of the proposed action; and

WHEREAS, federal agencies engaged in government-to-government consultation should review written and oral comments, and provide meaningful responses to the comments in writing, in a timely manner; and

WHEREAS, government-to-government consultation with Indian nations should not be limited to action that impact "Indian lands"; consultation should occur whenever an action impacts cultural or historic resources anywhere within the historic footprint of an indigenous group.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls on Congress to enact legislation that will ensure uniform, effective and meaningful consultation with Indian nations and tribes on a government-to-government basis, across all federal executive departments and independent agencies of the United States government, whenever federal activities have tribal impacts or the potential to impact tribal interests; and

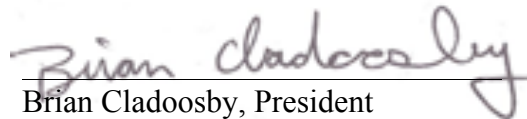
BE IT FURTHER RESOLVED, that NCAI calls on Congress to engage in oversight to ensure that tribal governments are fully informed and consent to any changes to federal laws affecting Indian tribes; and

BE IT FURTHER RESOLVED, that the NCAI supports individual tribal governments that exercise their sovereign right to set up internal processes that govern the government-to-government consultation process; 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 2017 Midyear Session of the National Congress of American Indians, held at the Mohegan Sun Convention Center, June 12 to June 15, 2017, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary