



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SD-15-019

### **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

**WHEREAS**, through treaties, agreements, statutes 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**, Indian nations and tribes cannot always count on the Administration to reaffirm the strong, long-standing policies of consultation; and

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

**WHEREAS**, one federal court has recently recognized the requirement for *meaningful* tribal consultation in federal rule-making, consistent with these strong consultation policies (Wyoming v. Department of the Interior, No. 15-CV-00041-SWS (D. Wyo.)); and

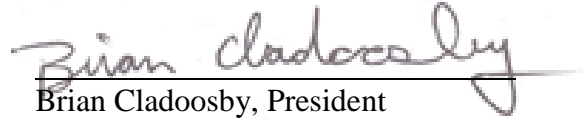
**WHEREAS**, government-to-government consultation procedures should be uniform and meaningful across all federal executive departments and independent agencies, and be made permanent as a matter of law.

**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 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 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.

  
Brian Cladoosby, President**ATTEST:**  
Aaron Payment, Recording Secretary