



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #MOH-17-044

### **TITLE: Urging Federal Agencies to Adopt Policies and Procedures to Ensure Consideration of Federal Trust Responsibility when Permitting May Affect Tribal Lands, Waters or Resources**

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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 tribes are independent sovereigns and through treaties, agreements, statues and executive orders, Indian 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 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 tribes on a Nation-to-Nation basis founded on mutual respect, mutual consent, and deference to internal tribal self-governance; and

**WHEREAS**, subsequent case law has confirmed that the trust doctrine includes fiduciary obligations for the management of trust lands and natural resources. *Pyramid Lake Paiute Tribe of Indians v. Morton*, regarding a water infrastructure project in Nevada, found that the Federal trust responsibility created an obligation to protect the waters of Pyramid Lake for the Paiute Tribe. *Northern Cheyenne Tribe v. Hodel* found that “a federal agency’s trust obligation to a tribe extends to actions it takes off a reservation which uniquely impact tribal members or property on a reservation;” and

**WHEREAS**, this relationship necessitates that the United States consult with Indian 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**, in 1995, the Department of Interior adopted its “Departmental Responsibilities for Indian Trust Resources” in the Departmental Manual at 512 DM 2, and this policy has been significantly helpful in improving consultation and compliance with federal trust obligations by the Department; and

**WHEREAS**, the U.S. Department of the Interior, U.S. Department of the Army and the U.S. Department of Justice issued a report titled “Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions” which was the product of government-to-government consultation and comments received from fifty-nine Tribes and eight organizations representing tribal interests, that reflected the need to ensure that infrastructure projects are sited in a manner that lives up to the United States’ obligations to Tribes; and

**WHEREAS**, the report reflected the poor implementation of federal obligations under the federal trust responsibility, tribal treaties, poor implementation of tribal consultation policies, tribal obstacles to meaningful participation in federal decision making, and the importance of infrastructure to tribal standards of living and economic development opportunities; and

**WHEREAS**, the report articulates a set of principles that should inform agency practices in the realm of infrastructure considerations.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) does hereby encourage all federal permitting agencies to include in their policies and procedures the principles from the report “Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions;” and

**BE IT FURTHER RESOLVED**, that NCAI encourages all federal agencies to adopt policies which are similar to the Department of Interior’s Departmental Manual Part 512, Chapter 2, known as 512 DM 2, which has the purpose of establishing the policies, responsibilities, and procedures for operating on a government-to-government basis with federally recognized Indian tribes for the identification, conservation, and protection of American Indian and Alaska Native trust resources to ensure the fulfillment of the Federal Indian Trust Responsibility; 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