



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ECWS-10-011

TITLE: Calling on the NIGC to Develop and Adhere to a Tribal Consultation Plan

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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 are recognized by the U.S. Constitution as sovereigns, with inherent rights to self-government and self-determination; and

WHEREAS, the Constitution of the United States, through the Treaty, Commerce, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of Indian Tribes as Native nations established prior to the United States; and

WHEREAS, the Indian Gaming Regulatory Act (the "IGRA") acknowledged and confirmed the inherent sovereign powers of Tribal Governments; and

WHEREAS, the National Indian Gaming Commission (NIGC) is established by IGRA as a Commission "within the Department of the Interior," 25 U.S.C. § 2704, but NIGC is not designated by statute as an *independent* Federal regulatory agency or commission (although the Commission possesses certain independent decision-making authority in regard to Indian gaming pursuant to 25 U.S.C. sec. 2709); and

WHEREAS, NIGC claims exemption from Executive Order 13175, Executive Order 12866, the Unfunded Mandates Act, the Regulatory Flexibility Act, the Small Business Regulatory Flexibility Act, the Federal Advisory Committee Act, the mandates of the IGRA that protect tribal self-government, and Federal Indian Employment Preference laws; and

WHEREAS, Indian tribes have called upon NIGC to follow the IGRA and the statutes, regulations and executive orders for Federal agencies, including those referenced above, and the NIGC has failed to do so; and

WHEREAS, the NIGC continues to move forward collecting comments on new regulatory proposals, developing budgets for outlying years, hiring key personnel and reorganizing regional offices, in contravention of the directives of the Bush Administration, no oversight from the Obama Administration, and no real consultation with tribal governments; and

WHEREAS, in the 2006 IGRA amendments, NIGC fees were increased from an \$8 million annual cap to a \$0.80 per \$1000 of gross Indian gaming revenues, and at the same time, NIGC was directed to provide training and technical assistance to tribal regulators and tribal governments (which NIGC has done only at a negligible level).

NOW THEREFORE BE IT RESOLVED, that NCAI calls upon the Obama Administration to recognize that Indian gaming is the single largest governmental revenue generating activity in Indian country and to act expeditiously to name a new NIGC Chairman and Commissioner; and

BE IT FURTHER RESOLVED, that NCAI calls upon the Obama Administration to ensure that appointees to the NIGC will act with respect for tribal governments by adhering to the following:

- The recognition of tribal government, tribal law-making prerogatives and tribal regulatory and licensing authority in IGRA;
- Indian preference in hiring for positions at the NIGC, consistent with Federal laws establishing such rules for agencies within the Department of the Interior;
- Government-to-government consultation under Executive Order 13175;
- Respect for tribal government and law-making authority during agency rule-making as mandated by Executive Order 12866;
- The Unfunded Mandates Act, the Federal Advisory Committee Act, the Regulatory Flexibility Act, and the Small Business Regulatory Flexibility Act; and

BE IT FURTHER RESOLVED, that NCAI and Member Tribes call upon the NIGC to adhere to the principles of respect for tribal governments and Indian sovereignty reflected in the Constitution and the NIGC should work with Indian tribes on a basis of mutual respect and consent with regard to its development of regulations under IGRA through negotiated rule-making and other means; and

BE IT FURTHER RESOLVED, the new NIGC should change its focus from issuing Federal bureaucratic mandates to tribal governments (many of which contravene the language and spirit of the IGRA) and should emphasize training and technical assistance for tribal governments and tribal regulatory agencies; and

BE IT FURTHER RESOLVED, the new NIGC Chairman, when appointed by President Obama, should immediately follow the directives of the IGRA by appointing a Chief of Staff and a General Counsel; and

BE IT FURTHER RESOLVED, that the new NIGC Chairman and Commissioner should withdraw the NIGC's Class II Regulations and Facility License Regulations, which were promulgated with insufficient consultation, collaboration and consensus with tribal governments, and should thoroughly consult and development a new consensus with tribal governments on these regulations before re-issuing revised regulations, if necessary; now

BE IT FURTHER RESOLVED that the member Tribes of ATNI are encouraged to pass similar resolutions requesting the Obama Administration to take the actions outlined in this resolution; and

THEREFORE BE IT FINALLY RESOLVED that this resolution shall be the policy of ATNI until otherwise amended or rescinded.

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.