

**THE NATIONAL CONGRESS OF
AMERICAN INDIANS**

RESOLUTION #SPO-01-006

Title: Opposing Transfer of Trust Asset Management Responsibilities to the “Bureau of Indian Trust Asset Management” in the Absence of Tribal Consultation

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, 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, sovereign Indian tribes and the United States of America share a unique trust relationship, which is embodied in the Constitution of the United States, numerous court opinions, statutes, executive orders, and federal agency policies; and

WHEREAS, through the implementation of the Nixon Self-Determination Policy and the passage and implementation of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.) and similar legislation, the United States of America has recognized the need to work with Indian tribes on a government-to-government basis and to support Indian tribal self-determination and self-governance; and

WHEREAS, beginning with the Reagan consultation memorandum in 1984 and culminating in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (“Consultation Order”), Executive Branch agencies are required to consult with Indian tribes when formulating and implementing policies or other actions that have a substantial direct effect on any Indian tribe; and

WHEREAS, the Consultation Order and earlier executive orders and memoranda require that all Executive agencies ensure that there is “meaningful” and “timely” tribal input when formulating policies that have tribal implications; and

WHEREAS, in a November 14, 2001 filing in the *Cobell v. Norton* class action suit, the Secretary of the Department of Interior, Assistant Secretary for Indian Affairs, and other defendants notified the United States District Court for the District of Columbia that a reorganization of the Bureau of Indian Affairs (“BIA”) was already “underway” and that the BIA would be stripped of its Indian trust asset management functions; and

WHEREAS, in a sworn declaration attached to the notice of proposed reorganization, Department of Interior (“DOI”) Deputy Secretary J. Steven Griles claimed that DOI had already begun consulting with Indian tribes concerning the proposal to transfer all Indian trust management responsibilities to a new Bureau of Indian Trust Assets Management (“BITAM”); and

WHEREAS, on the following day, November 15, 2001, Secretary of Interior issued a news release announcing the reorganization effort and stating that BIA Assistant Secretary for Indian Affairs Neil McCaleb had already started the consultation process; and

WHEREAS, among the many questions raised by the proposed BIA/BITAM reorganization are: 1) Whether the reorganization is properly authorized by law; 2) Whether the reorganization is consistent with or in compliance with the orders of the court in the *Cobell* litigation; 3) Whether the proposed reorganization will allow DOI to safely and soundly manage Indian trust assets; 4) What effect the proposed reorganization will have on tribes who compact or contract for trust functions; and 5) Whether stripping trust management responsibilities from the BIA and placing these responsibilities into BITAM will reduce the services necessary to carry out the trust responsibilities which the United States owes to Indian tribes and their members; and

WHEREAS, in violation of the Consultation Order and the principles of self-determination, NCAI-member tribes received no advance notice of the proposed reorganization and transfer of management authority over tribal lands, other trust assets, and self-determination contracting to a new agency; and

WHEREAS, at the November 19-20, 2001 Western Region Joint BIA/Tribal Budget Meeting (“Budget Meeting”), attending tribes were informed that (1) BIA regional management had received little advance notice of the reorganization, (2) regional input was not incorporated into the reorganization plan, (3) DOI officials have indicated that the Department would be more “cautious” in approving self-determination contracts in the future, and (4) the reorganization would require reallocation of FY 2002 budget monies and reformulation of FY 2003 budgets; and

WHEREAS, no Indian tribe attending the Budget Meeting had received prior notice of the reorganization or had been consulted concerning the reorganization before the federal court notice or Secretary Norton’s November 15 announcement; and

WHEREAS, Indian tribes have been offered no guarantees that, like the BIA, the new

BITAM will honor the government-to-government relationship, Indian preference, or other fundamental principles that Indian tribes have worked hard to enforce within the existing BIA; and

WHEREAS, it appears that the DOI and BIA have chosen to reorganize without consulting or communicating with Indian tribes despite the fact that the planned reorganization would impact and likely reduce FY 2002 and future fiscal year funding that Indian tribes receive pursuant to their self-determination contracts as well as from other BIA and DOI funding sources; and

WHEREAS, it appears that the reorganization is scheduled to be implemented in a very short time frame without tribal consultation primarily in response to contempt proceedings brought against DOI officials in the *Cobell* litigation and without regard to the dramatic impact the reorganization would have not only on trust asset management, but on the trust relationship itself.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby disapprove of the BIA/BITAM reorganization proposal and urges that the Department of Interior withdraw the proposal due to the absence of meaningful tribal input; and

BE IT FURTHER RESOLVED, that NCAI hereby urges the United States Congress to reject reallocation of FY 2002 monies and appropriate no funds in FY 2002 or any subsequent fiscal year to accommodate the BIA/BITAM reorganization proposal; and

BE IT FURTHER RESOLVED, that the President of NCAI is hereby authorized and directed to execute and forward letters to President Bush, Secretary Norton, Assistant Secretary McCaleb, Special Trustee Tom Slonaker, Native American Rights Fund Senior Staff Attorney Keith Harper, and all members of the United States Congress

- (1) expressing NCAI's concerns regarding the reorganization,
- (2) urging that the Department of Interior withdraw the reorganization proposal and that no further action be taken without meaningful tribal consultation,
- (3) challenging the misleading statements of Department of Interior officials regarding the existence of tribal consultation,
- (4) urging Secretary Norton, Assistant Secretary McCaleb, and Special Trustee Slonaker to provide the written BIA/BITAM reorganization plan, Electronic Data Systems Corporation's November 12, 2001 "Interim Report and Roadmap for TAAMS and BIA Data Cleanup" report, and any other reports or documents relied upon in developing the reorganization plan to the NCAI Executive Committee and all federally recognized Indian tribes no later than December 5, 2001 to commence a meaningful consultation process, and
- (5) urging Secretary Norton, Assistant Secretary McCaleb, and Special Trustee Slonaker to attend the December 13, 2001 consultation and explain their actions; and

BE IT FURTHER RESOLVED, that the Department of Interior and BIA must, at a minimum, hold regional consultations before acting on the reorganization proposal; and

BE IT FURTHER RESOLVED, that the President of NCAI is hereby authorized to express

NCAI's concerns and positions to the United States District Court for the District of Columbia in *Cobell v. Norton*, CIV #96-1285; and

BE IT FURTHER RESOLVED, that NCAI urges all Indian tribes to express their concerns regarding the proposed reorganization and the lack of consultation to their respective congressional delegations; 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 at the 58th Annual Session of the National Congress of American Indians, held at the Spokane Convention Center, in Spokane, Washington on November 25-30, 2001 with a quorum present.

Tex Hall, President

ATTEST:

Colleen Cawston, Recording Secretary

Adopted by the General Assembly during the 58th Annual Session of the National Congress of American Indians, held at the Spokane Convention Center, in Spokane, Washington on November 25-30, 2001.