

**THE NATIONAL CONGRESS OF
AMERICAN INDIANS**

RESOLUTION #SPO-01-030

**Title: Tribal Trust Funds Mismanagement Claims - Support for Enactment
of Legislation to Protect Claims from Statute of Limitations**

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, it is well documented that the Department of the Interior (“Interior”) has a longstanding history of mismanaging Indian trust funds; and

WHEREAS, Interior has never properly fulfilled its obligation as trustee to the tribes to provide an accounting of tribal trust funds; and

WHEREAS, some years ago, Interior retained the accounting firm of Arthur Andersen to undertake a series of “reconciliations” regarding tribal trust funds; and

WHEREAS, those trust fund “reconciliations” were not proper accountings, as Arthur Andersen itself admitted, and those “reconciliations” did not provide information sufficient to enable the tribes to know their proper account balances, or to determine the extent to which there were losses in their trust funds; and

WHEREAS, unless tribes are provided with full accountings of their trust funds, there is no way tribes can fully identify the claims they may have regarding the Department’s mismanagement of trust funds; and

WHEREAS, Congress has recognized that it would be unfair for tribes to lose their trust fund mismanagement claims through the passage of time, in the absence of a meaningful accounting of their trust funds; and

WHEREAS, in every Interior Appropriations Act since 1990, Congress has included language providing that the statute of limitations does not begin to run on trust fund mismanagement claims until the trust beneficiary has received an accounting of its trust funds, from which losses may be determined; and

WHEREAS, the Department has asserted in various connections that the Arthur Andersen “reconciliations” are in effect accountings; and

WHEREAS, it is expected that the Department, consistent with its prior position, will advance the argument in litigation that the “reconciliations” are sufficient to trigger the statute of limitations under existing law, so that, under the Department’s argument, any tribe’s claims would be barred six years after that tribe received its “reconciliation” report; and

WHEREAS, while such an argument by the Department should not be accepted, it would place in jeopardy trust fund mismanagement claims by tribes in a most unfair manner; and

WHEREAS, since the Arthur Andersen “reconciliation” reports were allegedly provided to tribes beginning in February, 1996, the Department’s argument would mean that tribal claims for trust fund mismanagement would soon be barred; and

WHEREAS, this situation places tribes in an untenable position, as the tribes will soon be forced to chose between filing burdensome litigation to protect their trust fund claims, or risking the loss of those claims because of the statute of limitations; and

WHEREAS, to avoid such an unfair situation, Congress should enact legislation, to protect tribal trust fund claims and to clarify that those claims are not barred by limitations as a result of the “reconciliation” reports.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the right of tribes to bring claims for trust fund mismanagement against the Department of the Interior, and to have a full accounting of their trust funds; and

BE IT FURTHER RESOLVED, that NCAI urges Congress to enact legislation, as soon as possible, that would 1) reaffirm that tribal trust fund mismanagement claims may be filed, and that no statute of limitations begins to run on such claims, until a full accounting is provided, and 2) clarify that the Arthur Andersen “reconciliations” are not accountings, and so those “reconciliations” do not begin the running of any statute of limitations; and

BE IT FINALLY RESOLVED, that the NCAI staff is instructed to transmit this Resolution to the appropriate members of Congress and to undertake such other tasks as may be necessary to protect the interests of the Tribes on this issue.

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.