The National Congress of American Indians  
Resolution #ATL-14-038

TITLE: Support of Federal Appeal on State Attempt to Significantly Narrow the Federal Definition of Indian Country

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, the Ute Indian Tribe of the Uintah and Ouray Reservation was a founding member of NCAI and has been an active member and participant since NCAI was first established; and

WHEREAS, since 1985, federal courts have recognized, and have repeatedly reaffirmed, that the Ute Indian Tribe’s Uncompahgre Reservation remains intact and the Tribe maintains jurisdictional authority over all “Indian Country” lands, including certain fee lands, within the exterior boundaries of the Tribe’s Reservation; and

WHEREAS, despite the binding effect of the federal court rulings that adjudicated the Tribe's reservation boundaries over the course of more than twenty years of protracted litigation, and notwithstanding other federal laws which recognize and confirm the parameters of Tribal jurisdiction in “Indian Country”, the Ute Indian Tribe’s authority has been repeatedly challenged by the state of Utah and local counties; and

WHEREAS, on April 17, 2013, the Tribe through its elected Tribal Business Committee filed a petition in the case of Ute Tribe v. State of Utah, Duchesne, County, Roosevelt City, Duchesne City, and Uintah County, (case no. 75-cv-00408), United States District Court for the State of Utah to protect both the integrity of the Ute Tribe's reservation boundaries and to seek an injunction to enjoin local county prosecutions of Ute tribal members for criminal offenses that have occurred inside the Tribe’s reservation boundaries in “Indian County;” and

WHEREAS, Ute Tribe v Utah is now on appeal before the United States Court of Appeals for the Tenth Circuit; and
WHEREAS, in the pending appeal the State and counties assert, directly contrary to the standard federal definition of “Indian County contained in 18 U.S.C. § 1151, that roadways and other rights of way through Indian reservations are generally not “Indian Country”; and that federal courts should conduct a particularized inquiry on the scope of federal and tribal exercise of jurisdiction on Reservation lands and of tribal and non-tribal interest and use of such land, and deprive the Tribe of criminal jurisdiction where the federal court deems the tribal activity to be insufficient; and

WHEREAS, applying the above argument, the State and counties assert that they have criminal jurisdiction to patrol, arrest, and prosecute Indians for alleged offenses on roadways on the Ute Reservation; and

WHEREAS, the State, counties and cities further assert that they have criminal jurisdiction to patrol, arrest, and prosecute Indians for alleged offenses on Reservation land held by the United States in trust for the Tribe and its members where that land was within areas originally set aside for possible federal town sites; and

WHEREAS, the loss of tribal jurisdiction over roadways and rights of ways passing through tribal reservations and land held in trust for tribes and tribal members would cause devastating harm to tribes nationwide; and

WHEREAS, the United States has a trust responsibility to tribes to provide law enforcement services in Indian Country or to provide funding to tribes for such law enforcement services, and the State of Utah and local counties are asking the federal courts to diminish the Reservation or to provide the State with criminal jurisdiction to patrol, arrest, and prosecute Indians for on-Reservation offenses, based upon the State’s claim that there is not adequate federal or tribal law enforcement on the Reservation; and

WHEREAS, the United States Department of Interior and Department of Justice have a trust obligation to the Ute Indian Tribe and other tribes throughout the United States to ensure that tribal lands and jurisdiction are protected and maintained against unreasonable interference by local state and county actions, including by actively protecting and defending Congress’ definition of “Indian Country” under 18 U.S.C. § 1151, a definition which is under attack in the pending appeal; and

WHEREAS, when this case was before the District Court, the Ute Indian Tribe requested the United States support it in Ute Tribe v. Utah, and the NCAI through Resolution Ren-13-080 requested that the United States either intervene at the trial court level in Ute Tribe v. Utah or institute a separate legal action to protect the Ute Indian Tribes’ reservation boundary and the finality of past federal court rulings adjudicating the Tribe’s reservation boundaries, but the United States refused at that time to intervene; and

WHEREAS, to date the federal government has fallen short of its trust responsibilities in the Ute litigation; and
WHEREAS, an adverse appellate court ruling in this matter would potentially undermine the sovereign authority of all tribes to enforce their laws with the jurisdictional boundaries of tribal reservations in “Indian Country” and would potentially limit the authority of tribes to make their own laws and be governed by them and would deprive tribes of jurisdiction over land held by the United States in trust for tribes; and

WHEREAS, NCAI believes that intervention on appeal by the United States is both appropriate and necessary pursuant to the trust responsibility owed to the Tribe and that these issues should be resolved in the Ute Indian Tribe’s favor to protect the sovereignty and jurisdiction of all tribes.

NOW THEREFORE BE IT RESOLVED, that the NCAI hereby supports the Ute Indian Tribe’s effort to ensure the Uncompahgre Reservation remains intact and the Tribe maintains authority over all “Indian Country” lands within the exterior boundaries of the Tribe’s Reservation; and

BE IT FURTHER RESOLVED, that NCAI requests the United States, by and through the U.S. Department of Interior and Department of Justice seek to either intervene on appeal in Ute Tribe v. Utah case and/or institute a separate legal action to protect both the Ute Indian Tribe's reservation boundary and the finality and binding effect of federal court rulings adjudicating the Tribe's reservation boundaries; and

BE IT FURTHER RESOLVED, that NCAI authorizes and directs its legal staff to work with the Ute Tribe to develop an amicus brief strategy addressing issues of national importance to tribes in the pending appeal; and

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

BE IT FINALLY RESOLVED, that the NCAI Executive Committee and Executive Director is empowered to take any action consistent with and in order to carry out the intent of this Resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Atlanta, October 26-31, 2014 in Atlanta, Georgia, with a quorum present.

ATTEST:

[Signature]
President

[Signature]
Recording Secretary