



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #DEN-18-004

### **TITLE: Requesting the Department of Interior to Lift the Morton Moratorium on Approval of Tribal Water Ordinances, Codes, or Resolutions**

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#### NCAI HEADQUARTERS

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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**, since its founding, NCAI has promoted the policy of tribal self-determination, while opposing initiatives that threatened it; and

**WHEREAS**, Indian tribes have quantified or are seeking to quantify and preserve their Indian reserved water rights, as recognized by the United States, *Winters v. United States*, 207 U.S. 564 (1908), in connection with land reservations set aside for Indian tribes in exchange for ceding significant tracts of their land for non-Indian settlement; and

**WHEREAS**, Indian reserved water rights are a valuable tribal natural resource under federal law, essential to the life, future well-being, and perpetual existence of a tribe through the sustenance and continuing development of a permanent tribal homeland; and

**WHEREAS**, the administration, regulation, and enforcement of the development and use of Indian reserved water rights are an essential characteristic of tribal sovereignty, consistent with tribal governance and self-determination through tribal laws that promote the protection of Indian reserved water rights; and

**WHEREAS**, the United States has embraced and adhered to the policy of self-determination for Indian tribes for half a century; and

**WHEREAS**, the U.S. Department of Interior has continued to enforce a 40 year-old policy, known as the “Morton Moratorium,” Memorandum from Secretary of the Interior, Rogers C.B. Morton, to Commissioner of Indian Affairs (Jan. 15, 1975) (attached), that requires “all agency superintendents and area directors disapprove any tribal ordinance, resolution, code, or other enactment which purports to regulate the use of water on Indian reservations and which by the terms of the tribal governing document is subject to such approval or review in order to become” tribal law; and

**WHEREAS**, the Department’s policy inhibits many tribes from implementing tribal water codes critical to not only tribal self-governance, but also to the protection and preservation of Indian reserved water rights, and is contrary to the trust relationship between the United States and Indian tribes; and

**WHEREAS**, numerous Indian tribes that have settled their water rights through Congressional legislation have been able to secure Congressional recognition and approval for their adoption of tribal water codes, other tribes have no opportunity to obtain Secretarial review of proposed tribal water codes, where required, because of the Morton Moratorium; and

**WHEREAS**, the 1975 Morton Moratorium has effectively frustrated its original purpose, that is, to support the adoption of federal regulations providing for the adoption of tribal codes because the Department has never enacted such regulations as anticipated; and

**WHEREAS**, the use and protection of Indian reserved water rights has become critical as state water users realize water shortages and look to secure rights to more sources of water, leaving tribes vulnerable to misuse and misappropriation of tribal water without a means to enforce their water rights on their reservations; and

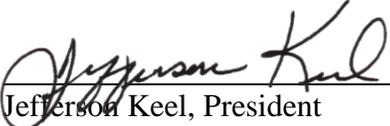
**WHEREAS**, it is in the best interest of the federal government and tribes to be able to develop and implement tribal water codes in order to support tribal self-determination and self-governance over their most significant tribal natural resource—water—in order to provide a sustainable homeland for tribes and their members.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) calls for the Department of Interior to lift the Morton Moratorium as it is inconsistent with the federal government’s trust responsibility to Indian tribes, and to revoke any policy that denies tribes the opportunity to seek Secretarial review and approval of their tribal water ordinances, codes, or resolutions, so that tribes can effectively regulate the use of water on their homelands; and

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

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2018 Annual Session of the National Congress of American Indians, held at the Hyatt Regency in Denver, Colorado October 21-26, 2018, with a quorum present.

  
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Jefferson Keel, President

**ATTEST:**

  
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Juana Majel Dixon, Recording Secretary