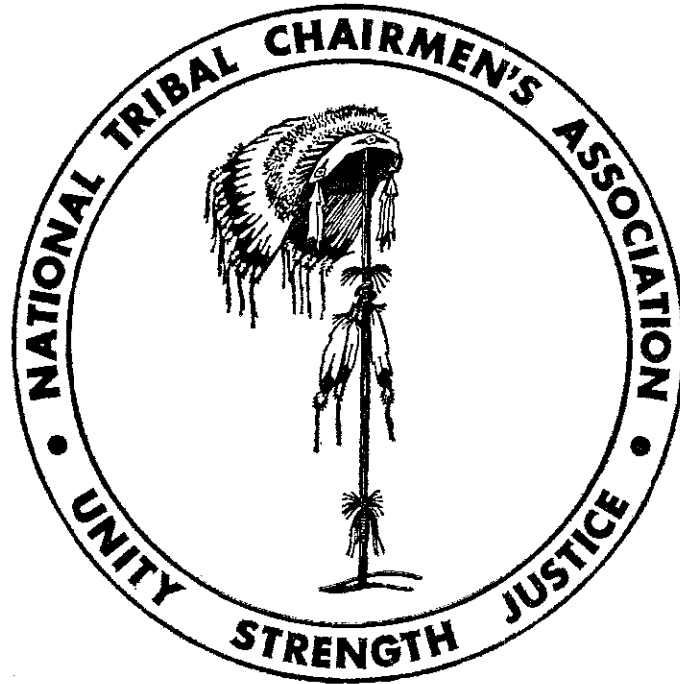


The AMERICAN INDIAN WORLD



NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 406 • 1701 Pennsylvania Avenue, N.W.

Washington, D.C. 20006 • (202) 343-9484

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FOREWORD

These are exciting but critical times for Indians in the United States in terms of the present and the future. Identification of Indian situations and expressions of what Indians want their life to be have become enmeshed in popular movements of contemporary America. This frequently obscures what Indians really want, what they really want their future to be, and how this is to be accomplished.

The United States Government has extended a legal and moral commitment to a special segment of this country's Indian population. President Richard M. Nixon, in his now historic message to the Congress, July 8, 1970, reaffirmed this commitment for all of the Federal Government. In that message, the President expressed the principles of self-determination and consultation for the Federally Recognized Indian. For the first time in history, this placed a responsibility upon Indian leadership to articulate what that leadership desired the Indian destiny to be and to provide the basis for consultation.

The *National Tribal Chairmen's Association* is comprised of leaders of Federally Recognized Tribal Governments. The accompanying position paper represents what the elected Indian leadership believes is needed to consummate the longstanding relationship of the United States of America with the Federally Recognized Tribal Governments. It establishes priorities and objectives both for the Federal Government and the Indian. It provides the initial basis for a dynamic and vital relationship, recognizing the need for amendments and modifications as necessitated by changing conditions and by time. It is to this principle and the promise of a better future for the American Indian that this paper is dedicated.

ROBERT E. LEWIS
President, NTCA

(1974)

THE POSITION
OF THE
NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

It is time for the legally constituted reservations and other Federally recognized governments of Indian Tribes elected by democratic processes, so sacred to all segments of society, to speak out for their tribal members and exercise their legal and rightful leadership role. Tribal officials should now ask the Federal Government, the Congress of the United States, and State and local governments to decide what consideration they will give to the elected representative voice of the Indian people. The *National Tribal Chairmen's Association* wants to know now if the people in all levels and all branches of government are going to be responsive to the elected tribal leaders as the official spokesmen for Indian tribes.

The *National Tribal Chairmen's Association* believes it to be morally wrong when resources are provided by anyone to a small minority to impose its will upon the majority, which the elected officials represent. It is wrong to expect elected officials to follow the will of anyone except the people they represent and who elected them. This wrong covers issues which enjoy the majority of community support for decisions made by their elected officials.

The *National Tribal Chairmen's Association* calls upon the states and local governments to concern themselves with Indian-identified needs as their responsibility, especially where funds are being received by these units of government for the purpose of meeting Indian needs.

The *National Tribal Chairmen's Association* welcomes and appreciates the cooperation and support of everyone who has the welfare of Indian people at heart in its effort to secure self-determination and sovereignty for Indian people, which is the purpose of this paper.

From this general but important position, the *National Tribal Chairmen's Association* can then move in more specific ways:

I. DELIVERY OF SERVICES TO INDIAN TRIBAL MEMBERS

The commitment of the Federal Government to provide normal community services to Indian tribal members is and must remain a continuous one. The delivery of these services has been provided historically by employees of the Federal Government. Since 1834 various acts of Congress have been adopted but have never been fully implemented to allow alternative ways to deliver these services.

The *National Tribal Chairmen's Association* proposes that the commitment of the Federal Government for normal community services to Indian

communities be implemented by providing the necessary and adequate financial resources. These resources should be made available to Tribal Governments, organizations, or individuals chartered or licensed by them. Such services should be delivered directly to the Indian people by a system sanctioned by these Tribal Governments.

If this approach were accepted, the major service functions of the Bureau of Indian Affairs would be to channel funds to the tribes for the delivery of services, to provide technical assistance and advice when requested, and to monitor the delivery system. One way that this could be handled in a practical manner is to transfer the delivery system to the Tribal Governments on a gradual basis, as positions become vacant. This would avoid, in large measure, adverse effects on employees with civil service status. The BIA would then be able to focus its full attention and resources on the main thrust of the Federal Government's responsibility, which is the **Trust Responsibility for Indian-Owned Natural Resources**.

It is apparent to the *National Tribal Chairmen's Association* that an ever-increasing number of organizations are being funded to provide services on an unprecedented scale to Indians. This distorts those resources and causes duplication of services. These programs must be brought into focus and managed to maximize benefits to Indian people. The *National Tribal Chairmen's Association* supports sincere efforts to assist Indian people in both the Indian communities and in the urban areas, but there needs to be coordination with elected Indian officials and Tribal Governments on all of the proposals being funded in the name of Indians.

As Federal Policy requires any organization, including Indian Tribes and communities, to submit their proposals for Federal funding to State Planning Agencies for approval, the *National Tribal Chairmen's Association* proposes:

- (a) All proposals for Federal funding of programs affecting one tribe must be endorsed or approved by the elected Tribal Government of the tribe affected, or
- (b) In case more than one tribe is affected, by the duly authorized representatives of those tribes.

The endorsement or approval of proposals for Federal funding by local Tribal Councils or their duly authorized representatives will provide the needed coordination and required approval by the Tribal Governments before funds are made available and programs are started.

II. APPROPRIATE EXERCISE OF TRIBAL GOVERNMENT FUNCTION

Tribal Governments, to whom have been delegated the inherent sovereignty of tribes, have all of the powers of other local governments. This

power includes, but is not limited to, police power and the power to tax to raise revenues for the government to function. The assertion of tribal sovereignty includes territorial jurisdiction over the reservation and over all persons within it. It means the tribal council should be able to govern the Indian reservations just as states govern the territory over which they have jurisdiction. No longer will Tribal Governments accept administrative restrictions on their governmental authority, because Congress has guaranteed the sovereign and inherent powers of the tribe, and only Congress can restrict these powers.

III. APPROPRIATIONS FOR INDIAN PROGRAMS

The *National Tribal Chairmen's Association* directs the Congress to place a high priority on appropriations for purposes of carrying out the trust responsibility as follows, to wit:

- (1) For the delivery of services to Indian people.
- (2) For development and enhancement of the economic base for Indian tribal society.
- (3) To protect Indian-owned natural resources.

The *National Tribal Chairmen's Association* recommends that hearings by Congress, Executive Agencies, and Commissions be held upon request of the affected Tribal Governments. It is now time for Congress, the Executive Agencies, and Commissions to show their good faith by providing funds for existing programs at an adequate level to meet the Indian needs, which are well documented and which are already on file in the Congress, with the Executive Agencies, and with the several Commissions. However, Tribal Governments should be notified and meaningful consultation held on any Federal plans prior to their authorization, execution, or implementation.

The *National Tribal Chairmen's Association* stands ready and willing to help the agencies of the Federal Government establish the needs for appropriation of funds from the Congress and help establish priority of Indian needs. Furthermore, once appropriations are made, in whatever amount, the Federal agencies must work with Tribal Governments to allocate the funds on a priority basis upon which they were justified. The Tribal Governments must be provided the resources to evaluate programs for Indians funded by the Federal Government.

IV. FEDERAL ADMINISTRATION OF INDIAN PROGRAMS

Self-determination will become a real and sincere effort when the Federal Government gets back to the business at hand of providing adequate support and resources for programs as determined by Indian Tribes. The

National Tribal Chairmen's Association recommends that the Federal Government recognize that the line-staff concept in public administration is well accepted and should not be changed to any great degree. The Federal Government should quit "horsing" around with realignment and get down to the business of delivery of services and protection of Indian-owned natural resources.

The Federal Government is presently involving states and other units of government in the development of broad plans and programs. It must also involve the representatives of Tribal Governments in the development of plans and programs affecting Indians of Federally recognized tribes. Tribes are in a unique position when it comes to government programs, because the Federal Government does not have the same commitment to states and counties that it has to Indian Tribes. A number of Federal agencies have established Indian Desks, commissions, and similar planning groups. In order to make the programs of these agencies fully cognizant and responsive to Indian needs, it is essential that there be broad Indian representation on these various commissions, particularly in the area of Indian resources.

V. TRUST RESPONSIBILITIES

The Number One priority of the *National Tribal Chairmen's Association* is the protection of Indian-owned natural resources for which the Federal Government has a trust responsibility and to which it has a moral and legal commitment. It is recommended then that the Congress, through its authority, and the Federal agencies, through their programs and appropriated funds, now emphasize the protection of our natural resources.

The Federal Government, through the Bureau of Indian Affairs, as trustee, should place greater emphasis on its protection guarantees and leave more of the management functions to the Indian owners of these natural resources. This is consistent with the present Administration's doctrine of self-determination.

It is imperative that the Federal Government:

- (a) Secure and protect Indian-owned natural resources for its owners.
- (b) Not equate these resources with the public domain.
- (c) Protect them from exploitation.
- (d) Not proscribe public interest in the Indian-owned natural resources; for the Federal Government to do otherwise would be inimical to the concept of self-determination.
- (e) The Federal Government, through its judicial system, should now reassert its jurisdiction over legal issues which arise relative to Indian trust lands and resources.

The Federal Government's trust responsibilities are threefold:

First, there is a special relationship derived from the Constitution of the United States, various treaties, and statutes of the United States which recognizes tribal sovereignty. There is a trust responsibility in the United States to protect this sovereignty of Indian tribes, so there is no further erosion of tribal sovereignty and tribes are supported in their efforts to enhance this sovereignty.

Second, the trust responsibility of the United States should emphasize the protection of tribal assets and allow the Indian owners to assume a major role in the management of their funds and natural resources. The trustee should spend less time and energy protecting these resources from their Indian owners and more time protecting them from outside interests, including the Federal Government itself.

And third, flowing from the above, there is a trust responsibility for providing the means by which the tribes can provide community services to members of the reservation communities.

Inherent in the protection of Indian assets, in accordance with the trust responsibilities of the United States, is an obligation to fully, vigorously, and, without reservation, advocate the position of Indian Tribes when their assets are threatened, no matter what the source of the threat. In order to do this, the responsible government officials of the United States must be fully charged with this responsibility and must be freed of any constraints on full and vigorous advocacy. The efforts of the Federal Government to eliminate or minimize the conflict of interest are laudable. However, everything that could be done to eliminate or minimize the conflict of interest under existing law has not been done.

Concerning the point made above about allowing Indian owners opportunity to assume a major role in the management of their property, the *National Tribal Chairmen's Association* recommends that Federal regulations and the BIA manual be revised on a reservation-by-reservation basis, so that the regulations and the manual of procedures are tailor-made to fit the needs of the particular reservation. The regulations could then be adopted by the tribe as a tribal code and implemented under the sovereignty of the tribes. These regulations will be approved by the Secretary for the necessary support by the United States. Development of regulations and manuals of procedures on a tailor-made basis may lead to discovery by the tribes of the need for a change in Federal law, which then would be sought.

One further point needs to be made concerning the trust responsibility as to tribal assets. There is a need to get a clear understanding on the part of the United States, not just the Department of the Interior, that Indian assets held in trust are not assets of the public. This should lead to the

premise that the trust responsibilities to Indians are such that their interests are not to be subordinated in the name and emotion of some particular good of society for the moment.

The trust responsibility is the same as in any other trust and, as has been stated, includes, among other things, the duty on the part of the trustee to give full disclosure of information regarding the trust assets to the beneficiary. In order to fully implement this full disclosure and avoid the many instances in the past where the United States Government has taken action on behalf of the general public which adversely affects its trust responsibility for the property of Indian Tribes without full notification to, or consultation with, the tribes, it is suggested that the President of the United States by Executive Order require that any agency of the United States Government which plans to take any unilateral action which would affect the trust property of any Indian Tribe in any way must file an Indian Rights Impact Statement. This statement would be similar to the statement required under the National Environmental Protection Act and would be distributed to the Indian Tribe affected, the Department of the Interior, and any other governmental agency affected. It should include a complete analysis of the effect on the Indian trust property as well as an analysis of alternative methods of reaching the same goal. Such Indian Rights Impact Statement would not relieve the United States of any of its trust responsibility, but would be designed to more fully discharge this responsibility.

The primary responsibility of the trustee should be to spend more time and energy protecting Indian-owned natural resources from other parties. It also means that the trustee must act in any adversary role to those parties whose possession and control of property may be in conflict with Indian rights, even as this applies to the United States itself.

VI. INDIAN TRIBES AND THEIR FUTURE

Recognition of the sovereignty of Indian Tribes, trust protection of their natural resources, responsibility for a sound Indian economy, and delivery of community services on the part of the Federal Government must continue. It is recognized that some internal changes within the tribal structure may be necessary to accommodate changing events in the Indian communities. These changes would be contemplated to facilitate the role of Tribal Government in the management of their natural resources for the maximum benefit of their members.

The tribal governmental role must be exercised through processes which ensure continuous assertion of tribal sovereignty and extend equal rights to all tribal members. The Tribal Government will conduct its business of government and management for the best interest of its members. Tribes

must be ever watchful and alert to attempts at erosion of the Tribal Government decision-making process, both from without and within.

Tribal Governments must be prepared to face the reality of the future and to deal with these realities in a practical and statesmanlike manner. The Indian society must meet the challenges of the future and of survival with new methods, when past methods no longer serve the purpose.

Tribal leaders of the past have protected Indian society and it is to their credit that Indian society survives today. For this, all Indians should be grateful. The future survival of Indian society, however, depends upon its ability to project itself into the future. The development of our youth as tribal leaders and their response to the challenges of the future will determine the ultimate destiny of our society. They are the future hope, and it is to them that the present tribal leaders eventually will pass on the mantle of leadership and, with it, the responsibility for protection of Indian-owned natural resources and of Indian society itself.

As Indian Tribes face the future, the *National Tribal Chairmen's Association* advocates strong, meaningful training programs to enable Indian leaders to deal with the future, not only in terms of policy decisions, but in terms of the technical knowledge needed to implement the decisions, especially as they relate to the field of Indian-owned natural resources.

It is important therefore that Indian youth be encouraged to select fields of training so that they will be equipped with the technical knowledge to protect and manage these resources necessary for the survival of Indian society.

EPILOGUE

The *National Tribal Chairmen's Association* is committed to the progress of Indian tribal society and the protection of Indian-owned natural resources. To this end, the Association expects the Federal Government to honor its commitments to the American Indians in the tribal context. It expects all others who make a commitment to Indians to do the same, because Indian identity is based on tribal culture, traditions, and history.

Indian Tribes must endure forever, and that is what it is all about.

This position paper, in the present form, was finalized by the Board of Directors of NTCA on February 9, 1974. The position paper considered in draft form by the Second Annual Convention, December 1973, had been redrafted and unanimously adopted in principle by the convention. Member tribes were extended a period of time in which to offer modifications.



