



2022 Virtual Winter Convention

RESOLUTION #2022 – 02

“CALLING UPON CONGRESS TO AMEND THE INDIAN SELF-DETERMINATION ACT TO PRESERVE TRIBAL RIGHTS TO FULL REIMBURSEMENT OF CONTRACT SUPPORT COST”

PREAMBLE

We, the members of the Affiliated Tribes of Northwest 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 rights secured under Indian Treaties, Executive Orders and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of ATNI; and

WHEREAS, the 1975 Indian Self-Determination and Education Assistance Act (ISDA) has been pivotal to the Federal government’s trust responsibility, and to the restoration of tribal self-determination and self-governance, by empowering tribal governments to contract for the operation of federal Indian programs otherwise operated principally by the Indian Health Service (IHS) or the Bureau of Indian Affairs (BIA); and

WHEREAS, since 1988 Congress has commanded that the IHS and BIA must reimburse in full contracting tribal governments for contract support costs reasonably and prudently incurred to carry out their self-determination contracts; and

WHEREAS, the reimbursement of contract support costs is pivotal to the success of tribal self-governance and self-determination, and to maintaining parity between IHS direct service programs and tribal compact and contract programs; and

WHEREAS, in 1994 Congress reinforced the contract support cost mandate by adding subsection 106(a)(3)(A) to the ISDA and clarifying the broad definition of contract support costs to include both direct support costs and indirect costs; and

WHEREAS, in 1994 Congress explained that its amendments would ensure that “In the event the [IHS program funding] proves to be insufficient in light of a contractor’s needs for prudent management of the contract, contract support costs are to be available to supplement such sums;” and

WHEREAS, for decades IHS has recognized in its agency policy manual that contract support costs will be fully reimbursed regardless of whether costs for the same activities were partially transferred to Tribes as part of the agencies’ program funding; and

WHEREAS, this recognition has been reflected in various IHS’s contract support cost duplication offset policies, such as the 80/20 rule for Area and Headquarters tribal shares, and the 97/3 rule for service unit shares; and

WHEREAS, IHS has never asserted in its Manual that a category of cost is ineligible to be reimbursed as contract support costs merely because that same category was partially funded in the Secretarial amount (including costs for fringe benefits; management and planning; financial, procurement, personnel, records and property management; data processing and IT services; facility costs; utility costs, building and grounds costs; janitorial services; and general support services); and

WHEREAS, in August 2021 the U.S. Court of Appeals for the District of Columbia—at IHS’s urging—ruled in *Cook Inlet Tribal Council (CITC) v. Dotomain* that a type of cost is ineligible as contract support costs if costs for that same activity would “normally” be spent by the agency in operating the program, regardless of how much or how little the agency actually paid to a tribal contractor in the Secretarial amount for such activities, and regardless of the tribal contractor’s actual costs in operating the contract; and

WHEREAS, the rule announced in *CITC v Dotomain* is an unprecedented interpretation of subsections 106(a)(2)(A) & (B) of the ISDA that could potentially wipe out most contract support cost reimbursements to tribal governments, which annually total \$880 million for IHS contracts and \$240 million for BIA contracts; and

WHEREAS, in December 2021, IHS reduced the Navajo Nation Fort Defiance Indian Health Board's contract support cost reimbursements by 90% (from \$18,774,229 to \$1,887,739), relying on and expressly citing the *CITC v Dotomain* decision, and threatening to file contract claims to recover contract support cost reimbursements paid in prior years; and

WHEREAS, the decision in *CITC* is contradicted by decades of agency practice, IHS and BIA manuals, court decisions, and congressional statements; and

WHEREAS, the consequences of this *CITC v Dotomain* decision will seriously undermine the Tribes' legal right to recover financial costs to administer federal programs, services and functions intended to benefit Tribes and their citizens; now

THEREFORE BE IT RESOLVED, that the Affiliated Tribes of Northwest Indians urgently calls upon Congress to immediately reverse the *CITC v Dotomain* interpretation of section 106(a)(2) of the ISDA, by replacing the word "but" with the words "including activities"; and

BE IT FURTHER RESOLVED, that ATNI directs that this Resolution be furnished immediately to the Chairman and Ranking Member of the Senate and House Appropriations Committees and their respective Subcommittees on Interior, Environment, and Related Agencies; of the House Natural Resources Committee and its Subcommittee for Indigenous Peoples of the United States; and of the Senate Indian Affairs Committee; and

BE IT FINALLY RESOLVED, that ATNI calls upon all Tribes, Regional and National tribal advocacy organizations to adopt similar resolutions, and to join in a joint letter to Congress conveying the urgent Tribal requests expressed in this Resolution.

CERTIFICATION

The foregoing resolution was adopted at the 2022 Virtual Winter Convention of the Affiliated Tribes of Northwest Indians, Portland, Oregon, on January 24-27, 2022, with a quorum approving.

Leonard Forsman, President

Norma Jean Louie, Secretary