



## **2015 Annual Convention Spokane, Washington**

### **RESOLUTION #15 - 64**

#### **“SUPPORTING THE PUEBLO OF POJOAQUE AND ASKING THE SECRETARY OF THE INTERIOR SALLY JEWELL TO UPHOLD INDIAN GAMING REGULATORY ACT (IGRA) AND THE SECRETARIAL PROCEDURES”**

#### **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 to 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 the ATNI; and

**WHEREAS**, Indian tribes are recognized by the U.S. Constitution as prior sovereigns, with inherent and, executive order and treaty protected rights to self-government and self-determination; and

**WHEREAS**, Indian tribal governments turned to gaming in the late 1970's as a means of providing the essential governmental revenue that was needed to provide essential services for their tribal citizens; and

**WHEREAS**, in 1987, the United States Supreme Court issued its decision in *California v. Cabazon Band of Mission Indians*, which recognized the sovereignty of Indian tribes and confirmed that they retained their inherent right to pursue gaming as a form of economic development wherever it was not criminally prohibited; and

**WHEREAS**, in 1988 Congress responded to the pressure from state governments regarding the decision in *Cabazon* and passed the Indian Gaming Regulatory Act (IGRA) to establish a comprehensive regulatory scheme in which tribal governments are the primary regulators of tribal gaming; and

**WHEREAS**, IGRA anticipates the negotiation of a Class III compact as a meeting of two equal sovereigns and not as a group negotiation process; and

**WHEREAS**, IGRA upholds the longstanding federal policies of promoting self-determination and tribal sovereignty for Indian tribes; and

**WHEREAS**, IGRA promotes the independence and self-sufficiency of Indian tribes by encouraging economic development through gaming; and

**WHEREAS**, in 1996, the United States Supreme Court struck down IGRA's waiver of State sovereign immunity in *Seminole Tribe of Florida v. Florida*, and undermined the intention of the Congress to place Indian tribes and states on equal footing in the negotiation of compacts; and

**WHEREAS**, the Secretary of the Interior responded to the *Seminole* decision and issued the regulations in 25 C.F.R. Part 291 to provide a remedy for tribes when a state negotiates in bad faith and uses its sovereign immunity to prevent a tribe from implementing the remedial provisions of IGRA; and

**WHEREAS**, IGRA provides that a court "shall consider any demand by a State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith;" and

**WHEREAS**, the State of New Mexico has attempted to impose illegal revenue sharing and has otherwise negotiated in bad faith with the Pueblo of Pojoaque; and

**WHEREAS**, the State of New Mexico raised its sovereign immunity in an attempt to force a form compact on the Pueblo which contains illegal revenue sharing, and attempted to assert authority over issues outside the scope of compact negotiations expressed in IGRA; and

**WHEREAS**, a New Mexico federal district court judge ruled that the Secretary of the Interior (Secretary) did not have the authority to issue the regulations at Part 291; and

**WHEREAS**, the New Mexico federal district court judge enjoined the Secretary from establishing Secretarial procedures for the Pueblo, absent a judicial determination of bad faith, which will affect the ability of tribes across Indian country to negotiate a compact; and

**WHEREAS**, this decision puts the Pueblo of Pojoaque in an untenable position and leaves the Pueblo of Pojoaque with very few remedies; and

**WHEREAS**, the State's recalcitrance forced the Pueblo to choose between signing an unacceptable form compact or continuing to operate its gaming enterprises without a tribal-state gaming compact; and

**WHEREAS**, the New Mexico federal court decision disregards the legislative history of IGRA, the intention of Congress, the hard work of Indian tribes for many years to prevent amendment to IGRA even after the Seminole decision, and completely overturns the process envisioned by Congress in enacting IGRA; and

**WHEREAS**, the federal government in accordance with its trust responsibility should support tribes through any and all means in their efforts to resolve the inequities that arise from states that refuse to negotiate Class III gaming compacts, including bringing bad faith claims on behalf of tribes; and

**WHEREAS**, the Federal District Court's decision has far reaching implications for all of Indian country and the ability of Tribes to negotiate with states on a government-to-government basis.

**WHEREAS**, a negative decision from the 10<sup>th</sup> Circuit Court of Appeals following the 2007 5<sup>th</sup> Circuit Court of Appeals' decision in *Texas v. United States*, would embolden states in the absence of affirmative action from the Secretary of the Interior; and

**WHEREAS**, at the 2010 Mid-Year Conference ATNI passed Resolution #10-15 "Supporting Secretarial Procedures in Lieu of Compact;" and

**WHEREAS**, the Department of Justice and the National Indian Gaming Commission have both agreed to exercise their discretion and withhold any enforcement action during the pendency of the current litigation; and

**WHEREAS**, the State of New Mexico, through the New Mexico Gaming Control Board, is interfering with the ability of the Pueblo to do business with its vendors and attempting to illegally impose state regulation over gaming on Indian lands outside of a negotiated compact; now

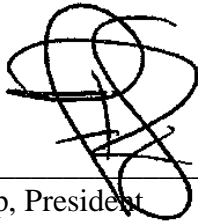
**THEREFORE BE IT RESOLVED**, that ATNI calls upon the Secretary of the Interior, Sally Jewell, to file suit against the State of New Mexico as trustee for the Pueblo of Pojoaque, to allow a federal court to rule on the Pueblo's assertion of bad faith negotiations; and

**BE IT FURTHER RESOLVED**, that ATNI calls upon the Secretary of the Interior to work cooperatively with the National Indian Gaming Commission to immediately reissue the regulations at 25 C.F.R Part 291 in their current form; and

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

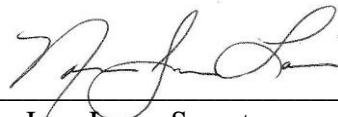
**CERTIFICATION**

The foregoing resolution was adopted at the 2015 Annual Convention of the Affiliated Tribes of Northwest Indians, held at Northern Quest Resort and Casino, Spokane, Washington on September 14-17, 2015, with a quorum present.



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Fawn Sharp, President



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Norma Jean Loue, Secretary