



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #RAP-10-011

**TITLE: To Ensure that the United States Environmental Protection Agency (USEPA) Fulfills its Consultation and Trust Responsibilities in the Navajo Generating Station Rulemaking**

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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**, the President implemented an Executive Order on November 5, 2009 mandating the Executive Departments and Agencies to submit their plan of actions each agency will take to implement the policies and directives of Executive Order 13175; and

**WHEREAS**, the Environmental Protection Agency (EPA) is a federal agency that enforces federal regulations regarding environmental matters within the United States, including regulations that affect tribes within Arizona; and

**WHEREAS**, the EPA promulgates and enforces air quality regulations that govern and impact the operations of major coal-fired power plants within the United States including the Navajo Generating Station (NGS) in Page, Arizona; and

**WHEREAS**, the EPA published an Advanced Notice of Proposed Rulemaking for the *Assessment of Anticipated Visibility Improvement at Surrounding Class I Areas and Cost Effectiveness of Best Availability Retrofit Technology for Four Corners Power Plant and Navajo Generating Station*, ("Proposed NGS BART Determination"), 40 C.F.R. Part 49 (EPA-R09OAR-2009-0598); and

**WHEREAS**, EPA's Proposed BART Determination directly affects the economies and cultures of Arizona Tribes, the United States' trust responsibility to tribes, and rights that Arizona Tribes specifically bargained for and were granted in treaties, federal legislation, court decrees and contracts; and

**WHEREAS**, Tribes and the Bureau of Indian Affairs have submitted comments on the Proposed BART Determination informing EPA that a decision to implement the most stringent emissions control measure - known as selective catalytic reduction (SCR) could have significant adverse economic and cultural consequences for tribes, including loss of jobs and revenue; sharp increases in the cost of water that is guaranteed to Arizona Tribes under treaty and federal law; potential closure of large tribally-owned industrial enterprises, and the inability for tribal members to farm their lands; and

**WHEREAS**, EPA, as a Federal agency, has a trust responsibility to ensure that tribes' rights, guarantees, and benefits are protected and preserved in making agency decisions and determinations that could affect tribes; and

**WHEREAS**, the EPA's Administrator, Lisa Jackson, defined one of her main priorities as ensuring environmental justice, particularly with respect to environmental issues disproportionately affecting minority and/or low-income communities; and

**WHEREAS**, to ensure environmental justice for such communities it is essential for the EPA to reach out to affected communities to seek to gain a full understanding of proposed EPA regulatory actions and to determine how to address any adverse effect that may be found to result from such proposed EPA actions.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby request that the EPA make its BART Determination regarding the NGS with full recognition and consideration of its trust responsibility, to ensure that, as trustee of each Arizona Tribe, the EPA's actions and decisions preserve and protect tribal rights, interests, economies, benefits and guarantees; and

**BE IT FURTHER RESOLVED**, that the NCAI does hereby request that the EPA not require SCR as the BART for the NGS and Four Corners Power Stations because requiring SCR will have significant adverse effects on the economies and cultures of Arizona Tribes and is in conflict with rights that tribes specifically bargained for and were granted in treaties, federal legislation, court decrees and contracts; and

**BE IT FURTHER RESOLVED**, that the NCAI does hereby request that the EPA undertake an active and complete consultation process with each Arizona Tribe in making its BART Determination; and

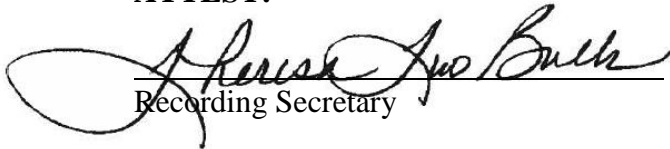
**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution or until the aforementioned proposal is withdrawn from consideration by the Administration.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2010 Mid-Year Session of the National Congress of American Indians, held at the Rushmore Plaza Civic Center in Rapid City, South Dakota on June 20-23, 2010, with a quorum present.

  
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President

**ATTEST:**

  
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Recording Secretary