



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #KAN-18-032

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### **TITLE: Support for Measures Necessary to Protect Transboundary Tribes' Communities and Environment from Potential Significant Adverse Impacts of Transboundary Mining Activities**

**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 and the United Nations Declaration on the Rights of Indigenous Peoples, 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**, in 2014 NCAI adopted ANC-14-013 which calls for consultation and engagement to protect the waters and lands of Southeast Alaska transboundary rivers and waterways; and

**WHEREAS**, eight Canadian provinces and territories (Yukon, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and New Brunswick), and thirteen U.S. states (Alaska, Washington, Idaho, Montana, North Dakota, Minnesota, Michigan, Ohio, Pennsylvania, New York, Vermont, New Hampshire, and Maine) are located along the international border; and

**WHEREAS**, there are hundreds of permitted tailings storage facilities and dams at metal and coal mines located near the U.S.-Canada transboundary region; and

**WHEREAS**, the headwaters of the transboundary watersheds in Canada contain numerous large-scale and other mines, including but not limited to hard rock and coal, and the Canada-US Transboundary region is facing rapid large-scale expansion and development - along with roads, large-scale hydrogeneration and diversion projects, transmission lines, and large scale mine facilities such as tailings and waste impoundments that are likely intended to be maintained into perpetuity (with or without treatment and with oftentimes insufficient monitoring/maintenance plans); and

**WHEREAS**, these active, expanding, and proposed Canadian mines collectively include sulfide mineralization associated with acid mine drainage and which directly and indirectly threaten water quality - and fish, wildlife, and human uses dependent on clean water - with mineral and chemical contaminants; and

**WHEREAS**, contaminants from numerous mines in Canada flow across the US-Canadian border and carry contaminants into the US and degrading US natural and cultural resources upon which US tribes rely; and

**WHEREAS**, the transboundary aquifers that underlie the surface boundaries of the United States and Canada is subject to multiple and possibly conflicting regulatory regimes, therefore it is important to establish legal principles through which potentially conflicting regulations can be reconciled; and

**WHEREAS**, the 1909 Boundary Waters Treaty (BWT) is a mechanism to protect the environment and economy of the United States through article IV of the BWT, which states: *“It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other...;”* and

**WHEREAS**, the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

*“i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*

*ii. Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

*iii. Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.*

*iv. Article 32 (1): Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*

*v. Article 32 (2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources;”* and

**WHEREAS**, indigenous nations on both sides of the colonial boundary are unifying and coordinating to include protection of indigenous rights and resources in the review and consideration of transboundary agreements regarding potential hazardous substances and pollutants with transboundary affect; and

**WHEREAS**, indigenous nations affected by contamination to ground and surface water must be represented during bi-lateral review meetings between the United States and Canada to discuss transboundary matters; and

**WHEREAS**, the indigenous nations assert that no transboundary mining project with implications for significant potential impact upon indigenous rights and resources should proceed without the free, prior and informed consent of the potentially impacted communities; and

**WHEREAS**, the indigenous nations seek to establish precedents set through the US-Canada bi-lateral meetings with respect to boundary waters and shared resources.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) calls on the Governments of the United States and Canada to:

(1) Provide for direct participation of indigenous nations in bilateral meetings concerning transboundary matters;

(2) Authorize, appropriate, and implement long-term environmental assessments of the transboundary ecosystem and the implications of mining activities to transboundary ecosystems, watersheds, aquifers, basins and waterways;

(3) Require and enforce best available practices for mining activities, strict liability of polluter pays requirements for operators and investors, state responsibility for prevention, remediation, and redress, and the enforcement of Article IV of the Boundary Waters Treaty of 1909 that prohibits transboundary pollution; and

(4) Review references to the International Joint Commission under Article IX or X of the Boundary Waters Treaty of 1909 pursuant to its Article IV if requested by indigenous nations to do so; and

(5) To recognize, respect, and implement the United Nations Declaration on the Rights of Indigenous Peoples.

(6) Respect any transboundary indigenous nation's decision to withhold their consent for a transboundary mining project.

(7) Withdraw its approval for transboundary mining projects unless they enter into a negotiated agreement to adopt best available practices, to fund strict liability and state responsibility, and to protect and restore cultural and sacred sites impacted by mining activities; and

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

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2018 Midyear Session of the National Congress of American Indians, held at the Marriott Kansas City Downtown, June 3-6, 2018, with a quorum present.

  
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Jefferson Keel, President

**ATTEST:**

  
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Juana Majel Dixon, Recording Secretary