



NATIONAL CONGRESS OF AMERICAN INDIANS

THE NATIONAL CONGRESS OF AMERICAN INDIANS

RESOLUTION #PHX-03-039

Title: NCAI's Concerns with Title III and Commitment to Coordinating an Energy Workgroup

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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 and their way of life, 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 United States has a trust obligation to Indian tribes to honor the government to government relationship and tribal self determination, based on treaties, federal statutes and regulations, and judicial decisions; and

WHEREAS, the Indian Tribal Energy Development and Self-Determination Act of 2003 (Title III) was introduced last winter of 2002-2003 by Senator Ben Nighthorse Campbell; and

WHEREAS, Senator Campbell's Chairman mark of Title III of this legislation, known as the "Indian Title", was reported from committee on April 25th, 2003; and

WHEREAS, several provisions of the Chairman's mark caused some concern among tribal leaders, most notably the waiver of trust liability of the United States in the event tribes take over development and management of their energy resources; and

WHEREAS, the NCAI recognizes that the development of tribal energy resources is important to economic development in Indian country; and

WHEREAS, NCAI convened a series of conference calls and meetings with tribal leaders, tribal representatives and congressional staff to discuss the problematic language and negotiate language that will not compromise the

federal government's trust responsibility or delay tribal energy development; and

WHEREAS, Senator Campbell introduced an amendment to Title III on the Senate floor on June 12th, 2003 that contains some of the recommendations from the group of tribal representatives; and

WHEREAS, although the June 12th, 2003 amendments to the bill are an improvement on the April 25th Chairman's mark, several provisions contained within S. 14 continue to be of concern to tribal governments, including but not limited to the following:

- **Definitions:** tribes have expressed opposition to the current definition of 'Tribal Resource Energy Development Organization' which includes "two or more entities, only one of which needs to be an Indian tribe," because this will allow non-Indian entities to receive funding intended for tribes; or otherwise acquire controlling interest in tribal energy projects when funds and controlling interest should remain with tribes.
- **Definitions:** tribes have expressed opposition to S.14's current definition of 'Indian reservations' as including lands owned by a Native Corporation established under the Alaska Native Claims Settlement Act of 1971 [ANCSA] because it would allow much of federal funding available under this bill to Alaska's federally recognized tribes to be diverted to ANCSA for-profit corporations, thereby depriving the tribes of much needed economic development and capacity building;
- **Definitions:** tribes have also opposed the current definition in S.14 of 'Indian land' to include "land conveyed to a Native Corporation under the Alaska Native Claims Settlement Act [ANCSA]" of 1971, because under ANCSA's terms, Alaska Native corporations possess tribal assets and lands which are not under the direct control of Alaska's 229 federally recognized Tribes; and

WHEREAS, the NCAI has strong concerns with the inclusion of Section 2604(e)(6)(C) absolving the United States of liability regarding any losses incurred under Tribal Energy Resource Agreements because the United States government must continue to honor its trust obligation to Indian tribes, particularly when responsibility for tribal programs is so frequently shared between tribes and the United States; and

WHEREAS, Alaska tribes are federally recognized Indian tribes with the right of self-government and self-determination who have a distinct relationship with the United States and the corporate entities by the ANSCA do not have such status.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby commit to maintaining a trust relationship with the United States regarding development of energy resources on Indian lands; and

BE IT FURTHER RESOLVED, that the NCAI recognizes that it is imperative that the inclusive Energy Workgroup comprised of tribal leaders and Indian organizations continue to work together with congressional committees and staff to ensure that Title III does not disturb the trust responsibility of the United States to Indian tribes; and

BE IT FURTHER RESOLVED, that the NCAI opposes any relinquishment of United States trust liability and urges Senator Campbell to consider amending existing language to

address the above concerns and to explain how the amendment protects the trust responsibility;
and

BE IT FURTHER RESOLVED, that the NCAI shall continue to coordinate a workgroup of all interested tribal parties, to address energy issues as they pertain to the passage of Title III and its implementation; and

BE IT FINALLY 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 at the 2003 Mid-Year Session of the National Congress of American Indians, held at the Sheraton Wild Horse Pass Gila River Indian Community, in Phoenix, Arizona on June 18, 2003 with a quorum present.



Tex Hall, President

ATTEST:



Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2003 Mid-Year Session of the National Congress of American Indians, held at the Sheraton Wild Horse Pass Gila River Indian Community, in Phoenix, Arizona on June 18, 2003.