



# NATIONAL CONGRESS OF AMERICAN INDIANS

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### RESOLUTION #MSH-01-009

#### **Title: Opposition to H.R. 1647 and Calling Upon The United States to Protect Tribal Trust Resources in the Power 'Emergency'**

**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 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, largest, and most representative national American Indian and Alaska Native tribal government organization; and

**WHEREAS**, the member tribes of the NCAI have trust natural and cultural resources that are secured and protected by treaty, executive order, statute, regulations and numerous court opinions that are directly impacted by the actions of federal dams and Federal Energy Regulatory Commission licensed facilities within the Columbia Basin and the entire Northwestern United States; and

**WHEREAS**, the Affiliated Tribes of Northwest Indians passed resolution #01-22 during the 2001 Winter Conference in Portland, Oregon regarding "Protection of Tribal Rights and Resources in Addressing the Current Energy 'Crisis'"; and

**WHEREAS**, resolution #01-22 called upon "state and federal governments do develop, with tribal nations, a new energy plan that is not merely in response to a "crisis," and that does not ride on the backs of salmon and other fish and wildlife resources by disregarding measures to protect endangered and threatened species and tribal trust resources, but instead incorporates adequate protection and restoration of tribal and natural resources"; and

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Shoshone Tribe

SOUTHEAST  
A. Bruce Jones  
Lumbee

NCAI HEADQUARTERS  
1301 Connecticut Ave., NW  
Suite 200  
Washington, DC 20036  
202.466.7767  
202.466.7797 fax  
www.ncai.org

**WHEREAS**, resolution #01-22 was drafted because the United States failed to fulfill the duty to protect tribal trust resources in planning the operations of the federal hydropower system by placing a disproportionate burden of energy production on resources of central significance to those tribes, including, but not limited to, resident and anadromous fish, wildlife, native plants, traditional foods, sacred sites, and archaeological sites; and

**WHEREAS**, on May 1, 2001; H.R. 1647 was introduced in the House of Representatives entitled the "Electricity Emergency Relief Act" which seeks to address the power "emergency" by removing virtually all environmental constraints on the operation of federal and private electricity producing facilities such as dams and power plants; and

**WHEREAS**, H.R. 1647 would grant the authority to waive all existing environmental constraints under federal law on the operation of hydro-power dams and other electric generating units including the Endangered Species Act, the National Environmental Policy Act, the National Historic Preservation Act, the Clean Water Act, the Clean Air Act, individual agreements regarding environmental protections, court orders, and application of minimum flow requirements; and

**WHEREAS**, H.R. 1647 would allow Bonneville Power Administration (BPA) customers such as the Direct Service Industries including Aluminum Plants to re-sell their contracted power at market rates when BPA must sell power at cost, disproportionately benefitting a very small portion of BPA industrial customers; and

**WHEREAS**, on May 1<sup>st</sup> and May 3<sup>rd</sup>, 2001, the House of Representatives conducted hearings on H.R. 1647, to which tribal governments were not invited to participate in those hearings, which served to exclude significant tribal rights, interests, and concerns with regards to federal actions in the management of the resources impacted by federal and private power facilities within the Columbia Basin; and

**WHEREAS**, the BPA, the Corps of Engineers, nor any other federal agency involved in the operation of federal or private electric power facilities, has consulted with the tribal governments that will be most directly impacted by these agency decisions.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI strongly opposes H.R. 1647 because it directly conflicts with treaty rights, tribal trust natural and cultural resources protected by statute and Executive Order as well as the trust responsibility of the United States because it would place the burden of energy production on those resources; and

**BE IT FURTHER RESOLVED**, the NCAI urges the Bonneville Power Administration, the National Marine Fisheries Service, the Bureau of Reclamation, the Army Corps of Engineers, the Northwest Power Planning Council and the Bureau of Indian Affairs to immediately engage in Government-to-Government consultation with individual tribal governments effected by the power "emergency" pursuant to Executive Order 13175; and

**BE IT FURTHER RESOLVED**, the NCAI continues to support resolution #01-22 directing state and federal agencies to engage in meaningful consultation with tribes to address the power crisis without endangering tribal resources impacted by power generation; and

**BE IT FURTHER RESOLVED**, the NCAI calls on Congress and the Executive Branch to engage in a dialog with tribal governments in order to develop a strategy which addresses energy production, energy consumption, tribal trust resources, environmental mitigation and the obligation of the United States to fulfill the trust responsibility; and

**BE IT FINALLY RESOLVED**, that NCAI requests Congress reject H.R. 1647, or in the alternative convene hearings on H.R. 1647 that include tribal representation.


**CERTIFICATION**

The foregoing resolution was adopted at the 2001 Mid-Year Session of the National Congress of American Indians, held at Foxwoods Resort Casino in Mashantucket, Connecticut on May 13-16, 2001, with a quorum present.



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Susan Masten, President

**ATTEST:**

  
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Juana Moya, Recording Secretary

Adopted by the General Assembly during the 2001 Mid-Year Session of the National Congress of American Indians, held in Mashantucket, Connecticut on May 13-16, 2001.