



NATIONAL CONGRESS OF AMERICAN INDIANS

THE NATIONAL CONGRESS OF AMERICAN INDIANS

RESOLUTION #MSH-01-018

Title: Reaffirming Opposition to Application of State Regulation, Taxes, and Jurisdiction to Lands Taken into Trust on Behalf of Indian Tribes

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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 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 United States government has a legal and moral trust obligation to protect the sovereignty of Indian tribes and foster tribal self-governance; and

WHEREAS, the preservation and enforcement of this trust relationship is essential to shield Indian tribes from the intrusion of state power over Indian tribal governments and lands; and

WHEREAS, past extensions of state authority and jurisdiction over Indian lands have resulted in the erosion of tribal sovereignty and dramatic losses of land, much of which had been in Indian possession from time immemorial; and

WHEREAS, only one such law allowing extension of state jurisdiction over Indian lands, the General Allotment Act of 1887 (24 Stat. 388), resulted in a reduction of Indian-held lands from 138 million acres in 1887 to only 48 million acres in 1934; and

WHEREAS, state authorities are again attempting to interfere with the federal-tribal trust relationship and attempting to severely restrict the Department of Interior's ability to take lands into trust for the benefit of Indian tribes; and

WHEREAS, the State of Arizona, along with numerous municipalities, irrigation districts, and other parties, is currently negotiating the settlement of Indian water rights claims with several Indian tribes; and

WHEREAS, on October 24, 2000, the Arizona Water Settlements Act of 2000 (the "Arizona Act") was introduced in the United States Senate (S. 3231) and House of Representatives (H.R. 5529); and

WHEREAS, included in the Arizona Act as Titles II and III, respectively, are water settlements for the (1) Gila River Indian Community (the "Community") designated as the Gila River Indian Community Water Rights Settlement Act of 2000 (the "Community Settlement Act") and (2) the Tohono O'odham Nation (the "Nation") designated as the Southern Arizona Water Rights Settlement Amendments Act of 2000 (the "Nation Settlement Act"); and

WHEREAS, the Nation Settlement Act is intended to implement the Southern Arizona Water Rights Settlement Act of 1982, Public Law 97-293 (96 Stat. 1261) and finally resolve the Nation's water claims in the Tucson basin; and

WHEREAS, Section 211 of the Community Settlement Act establishes certain preconditions to future acquisitions of trust lands outside the exterior boundaries of the Community's Reservation ("Future Trust Lands") which are implemented through Intergovernmental Agreements ("IGA's") between the Community and the State of Arizona, as well as Arizona Counties, Municipalities and Irrigation Districts; and

WHEREAS, Section 211 and the IGA's (1) impose Arizona laws to define and regulate the Community's water rights, land use, public services and certain other rights of the Community related to use of the Future Trust Lands; (2) provide for exclusive State Court jurisdiction over any disputes arising under the IGA's and require the Community to waive its immunity from suit in State Court; (3) mandate payment by the Community of State, County and Municipal property taxes; and (4) extinguish any Community claims to federal reserved rights on water resources associated with the Future Trust Lands; and

WHEREAS, Section 211 undermines the Federal government's trust relationship with Indian tribes as it provides that the Secretary of Interior is (1) bound by the IGA's; (2) foreclosed from abrogating the IGA's in administrative or judicial proceedings; (3) only authorized to intervene in State Court proceedings regarding disputes under the IGA's; and (4) prohibited from seeking to remove any dispute to Federal Court; and

WHEREAS, the Arizona Act was not passed during the 106th Congress, but is likely to be re-introduced in the 107th Congress; and

WHEREAS, during its 57th Annual Session, NCAI adopted a resolution sponsored by the Gila River Indian Community addressing the Arizona Act land into trust restrictions and resolving “that NCAI does hereby strongly urge the Administration and the Congress to actively oppose and reject efforts to restrict the placement of lands acquired by tribal governments into trust and efforts to impose state regulation and jurisdiction on such lands” (NCAI Resolution #STP-00-025); and

WHEREAS, within the same Resolution, NCAI did also resolve to “strongly support the Gila River Indian Community’s efforts to settle its water rights claims”; and

WHEREAS, the State of Arizona Department of Water Resources officials are now attempting to use the Section 211 trust land restriction terms as a precedent for negotiations with other Indian tribes; and

WHEREAS, application of these principles as a condition to securing the water settlements sets a dangerous precedent for all tribes and is (1) an unwarranted and selective modification of federal law on trust land acquisitions; and (2) a fundamental intrusion on the affected Indian nation’s sovereign rights of self-government which the United States, as trustee, is legally bound to foster, support and protect under longstanding Federal policy and law; and

WHEREAS, Arizona Water Settlements Act of 2000 co-sponsor United States Senator John McCain did not endorse the provisions restricting future off-reservation Indian trust land acquisitions; and

WHEREAS, the Tohono O’odham Nation Legislative Council, by Resolution No. 01-031, “opposes and will reject any application to the Southern Arizona Water Rights Settlement Amendments Act of 2000 of the provisions, or comparable provisions, of Section 211 of Title II of the Arizona Act and the related Intergovernmental Agreements”; and

WHEREAS, NCAI has previously opposed these same provisions by its adoption of Resolution DC-01-004 during the 2001 Executive Council Winter Session of the National Congress of American Indians held in Washington, D.C. on February 21-23, 2001.

NOW THEREFORE BE IT RESOLVED, that NCAI opposes the application of state regulation, taxes, and jurisdiction to future lands taken into trust on behalf of Indian tribes; and

BE IT FURTHER RESOLVED, that NCAI opposes efforts to extend state regulation, taxes, and jurisdiction to such lands as a precondition to settling tribal water rights claims; and

BE IT FURTHER RESOLVED, that NCAI hereby opposes the State of Arizona's effort to involuntarily extend these principles during the water rights settlement process to other Indian tribes without these tribes' consent; and

BE IT FURTHER RESOLVED, that NCAI hereby recognizes that incorporating these kinds of land into trust restrictions into federal law sets a dangerous precedent for all Indian tribes within the United States and is an invasion of the federal-tribal trust relationship; and

BE IT FURTHER RESOLVED, that NCAI does hereby strongly urge the Bush Administration and the Congress to actively oppose and reject efforts to restrict the placement of lands acquired by or on behalf of tribal governments into trust and efforts to impose state regulation, taxes, and jurisdiction on such lands; and

BE IT FURTHER RESOLVED, that NCAI does hereby reaffirm its support for all Indian tribes' efforts to settle their water rights claims; and

BE IT FINALLY RESOLVED, that NCAI does hereby urge the Bush Administration, the Department of Interior, and the United States Congress to assure that any amendments to the current procedures and standards in Federal law on taking lands into trust be accomplished in a manner which conforms to the United States' trust responsibility to Indian nations and allows meaningful consultation, comment, and participation by all Indian nations.

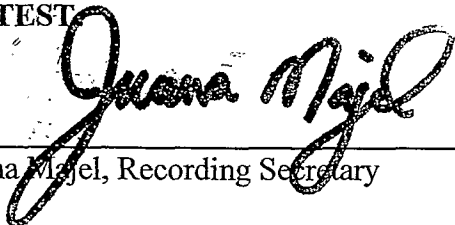
CERTIFICATION

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.



Susan Masten, President

ATTEST



Juana Majel, 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.