



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #SAC-12-042

**TITLE: Supporting Solutions, Including Federal Legislation if Necessary, that Will Reverse or Mitigate the Effects of the 1989 Decision of the U.S. Supreme Court in the Case of Cotton Petroleum V. New Mexico**

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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**, Tribal Nations, as sovereign governments, and pursuant to numerous Treaties and the United States Constitution recognizing their separate sovereignty, have the right to tax their own citizens and the right to tax activities occurring within the boundaries of their reservations; and

**WHEREAS**, certain decisions of the United States Supreme Court have meant that states also have the right to tax specific activities of non-Indians that occur on Indian lands within the boundaries of Indian reservations, including the right to tax production of oil and gas by non-Indian companies that are producing oil and gas from wells drilled on trust lands managed for the benefit of Tribal citizens and Tribal Nations by the United States, a decision reached in the case of Cotton Petroleum v. New Mexico, announced by the U.S. Supreme Court in 1989; and

**WHEREAS**, the Cotton Petroleum case sets up a “dual taxation” regime in which both the state and the Tribe are permitted to tax oil and gas production occurring on trust lands within an Indian reservation; and

**WHEREAS**, a dual taxation system discourages oil and gas development on trust lands within an Indian reservation and generally disables a Tribe from realizing potential tax income from such activities; and

**WHEREAS**, Congress has the power to regulate matters relating to Indian Tribes pursuant to the so-called “plenary power” doctrine, and could enact legislation exempting oil and gas production occurring from Tribal lands from state taxation or pass other legislation that would allow Tribes that have oil and gas resources or other mineral resources subject to dual taxation to fully benefit from the development of those resources within their reservations.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI hereby urges Congress to study and develop legislation that would allow Tribes that have oil and gas resources or other mineral resources subject to dual taxation to fully benefit from the development of those resources within their reservations; 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 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21-26, 2012 in Sacramento, California, with a quorum present.

  
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President

**ATTEST:**

  
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Recording Secretary