



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ANC-14-011

TITLE: Supporting and Providing Additional Detail for New Bureau of Indian Affairs Regional Office to Serve Energy Producing 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 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, several Tribes located in the Phoenix Region, the Rocky Mountain Region, the Great Plains Region and the Southwest Region, as well as the Alaska Native communities, and are energy producing tribes or among those tribes with potential for energy production that rely or might rely in the future on mineral revenue income for infrastructure, economic development, jobs and income from the development of their mineral resources; and

WHEREAS, at the 2013 Annual Session of NCAI held at Cox Business Center from October 13 to 18, 2013 in Tulsa, Oklahoma with a quorum present, the General Assembly adopted Resolution #TUL-13-012 entitled "Requesting the Bureau of Indian Affairs Create a New Regional Office for Energy Producing Tribes;" and

WHEREAS, the United States Congress is currently considering and the Department of the Interior (DOI) and the Bureau of Indian Affairs (BIA) are currently developing a proposal for a new Indian energy office; and

WHEREAS, it is in the best interest of NCAI to provide the Congress, DOI and BIA with additional information and detail about the proposed office to ensure that the office will effectively serve Indian tribes; and

WHEREAS, NCAI proposes to amend Section 2602(a) of the Energy Policy Act of 1992 (25 U.S.C. 3502(a)) to create a new Indian Energy Regulatory Office (Office) that would be centrally located in Denver, Colorado and utilize and refocus the existing resources and office space of the Office of Indian Energy and Economic Development's (OIEED) Division of Indian Energy and Mineral Development; and

WHEREAS, establishing the Office in Denver, Colorado provides adequate housing and ease of recruiting new employees to a major metropolitan area, and proximity to other federal agencies involved in the energy permitting process; and

WHEREAS, the Office would be established within the Secretary's Office, similar to the Indian Water Rights Office, to ensure that the Director of the Office has authority over the various agencies involved; and

WHEREAS, the Office would replace current BIA Regional Office authorities and responsibilities for energy producing Indian tribes, and would not result in duplicative review and approval of energy projects; and

WHEREAS, the Office would provide energy resource assessments and feasibility studies, technical assistance and training in energy development proposal review, increase BIA permitting capacity and permit streamlining, support for permitting expertise within BIA Agency Offices, improved coordination with other agencies, technical assistance and training in the oversight and management of energy and financial resources, and ensure that Indian lands are not managed according to Federal public land management standards; and

WHEREAS, Indian tribes seeking greater BIA support in the areas of energy development, oversight, management, proposal review and financial assistance could elect to be served by this Office; and

WHEREAS, existing BIA Regional Offices would continue to provide Indian tribes utilizing the new Office with support and oversight for all non-energy related issues; and

WHEREAS, to coordinate and streamline permitting, the Office would also include staff from other DOI agencies and offices involved in energy permitting on Indian lands, including: the Bureau of Land Management, the Office of Mineral Evaluation, the Office of Natural Resources Revenue, the Fish and Wildlife Service, the Office of Special Trustee, the Office of the Solicitor; and

WHEREAS, the establishment of the Office would not increase the deficit because it would utilize existing Federal resources in Denver, Colorado and existing funding from each of the agencies and offices listed above; and

WHEREAS, the Office would enter into agreements with other Federal agencies to coordinate and streamline permitting, including: the Environmental Protection Agency, the United States Department of Agriculture, and the Army Corps of Engineers.

NOW THEREFORE BE IT RESOLVED, that NCAI requests that Congress pass legislation requiring the Secretary of the Interior to establish and implement an Indian Energy Regulatory Office as described in this resolution and as reflected in the attached legislative proposal; and

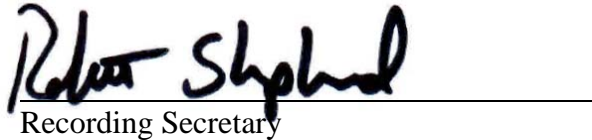
BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8-11, 2014 in Anchorage, Alaska, with a quorum present.


President

ATTEST:


Recording Secretary

**Proposed Legislative Language for Indian Energy Regulatory Office
Attached to NCAI Resolution #ANC-14-011**

Section 2602(a) of the Energy Policy Act of 1992 (25 U.S.C. 3502(a)) is amended—

- (1) by redesignating paragraph (3) as paragraph (4);
- (2) by inserting after paragraph (2) the following:

“(3) INDIAN ENERGY REGULATORY OFFICE.—

“(A) ESTABLISHMENT.—To assist the Secretary in carrying out the Program, the Secretary shall establish an ‘Indian Energy Regulatory Office’ within the Secretary’s Office to be located in Denver, Colorado. The Office shall utilize the existing resources of the Department’s Office of Indian Energy and Economic Development Division of Indian Energy and Mineral Development.

“(B) DIRECTOR.— The Office shall be led by a Director who shall be compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code and who shall report directly to the Deputy Secretary.

“(C) FUNCTIONS.—The Office shall serve as a new Bureau of Indian Affairs (BIA) Regional Office that energy producing Indian tribes may voluntarily select to replace an Indian tribe’s existing BIA Regional Office for the following functions:

- (i) notwithstanding any other law, oversee, coordinate, process and approve all Federal leases, easements, right-of-ways, permits, policies, environmental reviews, and any other authorities related to energy development on Indian lands.
- (ii) support BIA Agency Office and tribal review and evaluation of energy proposals, permits, mineral leases and rights-of-way, and Indian Mineral Development Agreements for final approval, conducting environmental reviews, and conducting surface monitoring;
- (iii) review and prepare Applications for Permits to Drill, Communitization Agreements and well spacing proposals for approval, provide production monitoring, inspection and enforcement, and oversee drainage issues;
- (iv) provide energy related technical assistance and financial management training to to BIA Agency Offices and tribal;
- (v) develop best practices in the area of Indian energy development, including, standardizing energy development processes, procedures, and forms among BIA Regions and Agency Offices;
- (vi) minimize delays and obstacles to Indian energy development and,
- (vii) provide technical assistance to Indian tribes in the areas of energy related engineering, environmental analysis, management and oversight of energy development, assessment of energy development resources, proposals and financing, development of conventional and renewable energy resources.

“(D) RELATIONSHIP TO BUREAU OF INDIAN AFFAIRS REGIONAL AND AGENCY OFFICES.—

- (i) The Office shall have the authority to review and approve all energy related

matters without subsequent or duplicative review and approval by other BIA Regional Offices. Existing BIA Regional Offices shall continue to oversee, support and provide approvals for all other non-energy related matters.

(ii) BIA Agency offices and Bureau of Land Management (BLM) State and Field offices shall continue to provide regional and local services related to Indian energy development including, local realty functions, on-site evaluations and inspections, direct services as requested by Indian tribes and individual Indian and any other local functions to related to energy development on Indian lands.

(iii) The Office shall provide technical assistance and support to the BIA and BLM in all areas related to energy development on Indian lands.

“(E) DESIGNATION OF INTERIOR STAFF.—The Secretary shall designate existing staff and resources of the Division of Energy and Mineral Development, and other Interior staff and resources to the Office, including: Bureau of Land Management, Office of Mineral Evaluation, Office of Natural Resources Revenue, Bureau of Reclamation, Fish and Wildlife Service, Office of Special Trustee, and the Office of the Solicitor to provide for the review, processing and approval of:

(i) permits and regulatory matters under the Indian Mineral Leasing Act of 1938 (25 U.S.C. §§ 396a *et seq.*), the Indian Mineral Development Act of 1982 (25 U.S.C. §§ 2101 *et seq.*), the Indian Tribal Energy Development and Self-Determination Act, included as Title V of the Energy Policy Act of 2005 (25 U.S.C. §§ 3501 *et seq.*), the Indian Right-Of-Way Act of 1948 (25 U.S.C. § 323 to 328) and its implementing regulations at 25 C.F.R. Part 169, leasing provisions of 25 U.S.C. 415, and surface leasing regulations at 25 C.F.R. Part 162;

(ii) the consultations and preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) (ESA);

(iii) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA); and,

(iv) providing technical assistance and training in various forms of energy development on Indian lands.

“(F) MANAGEMENT OF INDIAN LANDS.— The Director shall ensure that all environmental reviews and permitting decisions comply with the United States’ unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions, and are exercised in a manner that promotes tribal authority over Indian lands consistent with the federal policy of Indian Self-Determination. The Director shall also ensure that Indian lands shall not be considered to be Federal public lands, part of the public domain or managed according to federal public land laws and policies.

“(G) TRANSFER OF FUNDS.—To establish the Office and advance these efforts, the Secretary shall authorize, for a period of not to exceed two years, the expenditure or transfer of such funds as are necessary from the annual budgets of:

(i) the Bureau of Indian Affairs;

(ii) the United States Fish and Wildlife Service;

- (iii)the Bureau Land Management;
- (iv)the Office of Natural Resources Revenue;
- (v) the Office of Mineral Valuation; and
- (vi)the Bureau of Reclamation.

“(H) BASE BUDGET.—Following the two year periods described in (G) above, the combined total of the funds transferred pursuant to those provisions shall serve the base budget for the Office.

“(I) APPROPRIATIONS OFFSET.—All fees generated from Applications for Permits to Drill, inspection, nonproducing acreage, or any other fees related to energy development on Indian Lands shall, commencing on the date the Office is opened, be transferred to the budget of the Office and may be utilized to advance or fulfill any of its stated duties and purposes.

“(J) REPORT.—The Office shall keep detailed records documenting its activities and submit an annual report to Congress detailing, among others:

- (i) the number and type of federal approvals granted;
- (ii) the time it has taken to process each type of application;
- (iii)the need for additional similar offices to be located in other regions; and,
- (iv)proposed changes in existing law to facilitate the development of energy resources on Indian lands, improve oversight of energy development on Indian lands.

“(L) COORDINATION WITH ADDITIONAL FEDERAL AGENCIES.—Within three years of establishing the Office, he Secretary shall enter into a memorandum of understanding for the purposes coordinating and streamlining energy related permits with—

- (i) the Administrator of the Environmental Protection Agency;
- (ii) the Assistant Secretary of the Army (Civil Works); and,
- (iii)the Secretary of Agriculture.