



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MIC-06-003

TITLE: To Adopt Tribal Principles Regarding Energy Policy Act Section 1813 Energy Rights-of-Way Study

EXECUTIVE COMMITTEE

PRESIDENT

Joe A. Garcia
Ohkay Owingeh
(Pueblo of San Juan)

FIRST VICE-PRESIDENT

Jefferson Keel
Chickasaw Nation

RECORDING SECRETARY

Juana Majel
Pauma-Yuima Band of Mission Indians

TREASURER

W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA

Mike Williams
Yupiaq

EASTERN OKLAHOMA

Joe Grayson, Jr.
Cherokee Nation

GREAT PLAINS

Mark Allen
Flandreau Santee Sioux

MIDWEST

Robert Chicks
Stockbridge-Munsee

NORTHEAST

Randy Noka
Narragansett

NORTHWEST

Ernie Stensgar
Coeur d'Alene Tribe

PACIFIC

Cheryl Seidner
Wiyot

ROCKY MOUNTAIN

Raymond Parker
Chippewa-Cree Business Committee

SOUTHEAST

Leon Jacobs
Lumbee Tribe

SOUTHERN PLAINS

Steve Johnson
Absentee Shawnee

SOUTHWEST

Manuel Heart
Ute Mountain Ute Tribe

WESTERN

Kathleen Kitcheyan
San Carlos Apache

EXECUTIVE DIRECTOR

Jacqueline Johnson
Tlingit

NCAI HEADQUARTERS

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

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, the Energy Policy Act of 2005 requires the Department of Energy and Department of Interior to conduct a study of energy rights-of-way over tribal lands and to submit a report and recommendations to Congress on August 7, 2006, regarding (1) historic rates of compensation paid for energy rights-of-way on tribal land; (2) appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions, and renewals of energy rights-of-way on tribal land; (3) the tribal self-determination and sovereignty interests implicated by applications for the grant, expansion, and renewal of energy rights-of-way on tribal land; and (4) relevant national energy transportation policies relating to grants, expansions, and renewals of energy rights-of-way on tribal land; and

WHEREAS, NCAI previously enacted Resolution TUL-05-110, regarding the conduct of the study under Section 1813 of the Energy Policy Act of 2005 opposing any and all efforts that would result in the erosion of tribal sovereignty or authority over tribal lands; and

WHEREAS, the results of the rights-of-way study is a matter of great importance to all tribes and may have significant implications regarding future legislation and tribal sovereignty; and

WHEREAS, the tribal consent requirement is a critical aspect of tribal sovereignty that allows tribal governments to negotiate acceptable terms, including those related to duration and compensation; and

WHEREAS, the NCAI has reviewed the attached statement of principles and has determined that these principles should be adopted and communicated to Congress, Secretaries of Energy and Interior, and President Bush.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby adopt the attached statement of principles and authorizes distribution of this Resolution and the attached statement of principles as an official policy statement of the NCAI to Congress, Secretaries of Energy and Interior, and President Bush.

BE IT FURTHER RESOLVED, that the NCAI does hereby oppose any and all efforts to diminish tribal sovereignty by removing the absolute right of tribes to consent to rights-of-way across tribal lands; and

BE IT FURTHER RESOLVED, that NCAI does hereby request that Congress, the Departments of Interior and Energy, and President Bush refrain from passing or implementing any law or regulation that would delegate to any entity the authority to override a tribe's right to consent to a right-of-way across its lands, including the right of tribes to negotiate for compensation for such rights-of-way.

BE IT FINALLY RESOLVED, that this Resolution and the attached principles shall be the policy of the NCAI until it is withdrawn or modified by subsequent resolution.

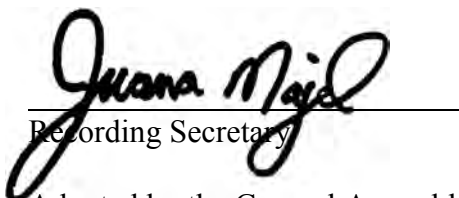
CERTIFICATION

The foregoing resolution was adopted at the 2006 Mid Year Session of the National Congress of American Indians, held at the Kewadin Hotel and Casino in Sault Ste. Marie, Michigan on June 21, 2006 with a quorum present.



President

ATTEST:



Recording Secretary

Adopted by the General Assembly during the 2006 Mid Year Session of the National Congress of American Indians held from June 18-21, 2006 at the Kewadin Hotel and Casino in Sault Ste. Marie, Michigan.

**INDIAN TRIBES – PARTNERS IN AMERICA’S ENERGY FUTURE
SECTION 1813 RIGHT-OF-WAY STUDY – TRIBAL PRINCIPLES**

1. **Tribal Sovereignty and Consent.** The power of tribes to prevent third parties from using tribal lands without tribal consent is a critical element of tribal sovereignty that is well-established in existing Federal law and policy. The tribal consent requirement to the use of tribal lands should be honored and preserved.
2. **Conditions to Consent.** The tribal consent requirement includes the lesser power of tribes to place conditions on the use of tribal lands, including conditions related to tribal jurisdiction, preservation of environmental and cultural resources, duration of use, and compensation.
3. **No Negative Effects.** In the absence of clear and convincing proof that the tribal consent requirement has had a substantial negative effect on the availability or cost of energy to consumers, Congress should not weaken the tribal consent requirement. There is no proof of such negative effects because they do not exist.
4. **Preservation of Tribal Jurisdiction.** No right-of-way agreement or other business arrangement that permits third-party use of tribal land should reduce the sovereign power of a tribe over its lands or the activities conducted on its lands in the absence of the specific consent of the tribe.
5. **Restricted Duration of Rights-of-Way.** Federal law and policy should not be changed to require perpetual rights-of-way or automatic renewals of rights-of-way because such changes would deprive tribes of management and control of their lands.
6. **Negotiated Compensation.** Tribes should continue to have the right to negotiate compensation for the use of tribal land that gives tribes a fair share of the economic benefits produced by use of their lands. Such revenues sustain tribal governments and cultures.
7. **National Security.** In the exceptional circumstance that national security would be threatened by the curtailment of use of a critical energy facility occasioned by expiration of a tribal right-of-way, corporate shareholders – not tribes and consumers – should bear the cost of trespass damages and continued emergency use of tribal lands.
8. **Positive Incentives.** Federal law and policy should provide positive incentives to tribes and industry to foster partnerships and the mutual alignment of economic interests related to energy development, transmission and distribution.
9. **Appropriate Deference.** As reflected in the Indian Tribal Energy Development and Self Determination Act of 2005, deference to tribal decision-making and free market principles should remain a fundamental component of Federal Indian energy policy.
10. **Allottee Experience.** The creation of a Federal administrative valuation process for fixing tribal right-of-way compensation would be an affront to tribal sovereignty and, as shown by the disastrous Federal management of Indian allottee resources, would be a mistake.