



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #ABQ-19-032

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TITLE: Calling on the Department of Interior to Adopt Tribal Energy Resource Agreement Regulations that Respect Tribal Sovereignty and Self-Determination

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 and the United Nations Declaration on the Rights of Indigenous Peoples, 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 lands contain vast mineral, solar, wind, and other natural resources that provide funding for the well-being of tribal citizens and tribal programs, as well as economic development within Indian Country; and

WHEREAS, the development of natural resources on tribal lands are governed by federal statutes and regulations that impose bureaucratic barriers to permitting the use of these natural resources in a timely, efficient and cost-effective manner; and

WHEREAS, the delays associated with developing natural resources on tribal lands are responsible for the loss of millions of dollars in economic development and growth in Indian Country; and

WHEREAS, Congress acknowledged the barriers to developing natural resources on tribal trust lands when it enacted the Indian Tribal Energy Development and Self-Determination Act (ITEDSDA), Title V of the Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 501-506, 119 Stat. 763 (codified at 25 U.S.C. §§ 3501-3506), which included a provision for Tribal Energy Resource Agreements (TERA); and

WHEREAS, the 2005 TERA provisions were intended to, in part, address concerns related to federal laws governing the development of tribal energy resources that lead to significant cost, delay and uncertainty by “shifting the approval requirements for these transactions from the Secretary of the Interior to Indian Tribes;” and

WHEREAS, since the 2005 TERA was enacted, no tribal nation has entered into a TERA with the federal government due to bureaucratic hurdles to implementing TERAs that presented uncertainties to tribal nations; and

WHEREAS, in 2018, S.245, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 became law and in passing this Act Congress acknowledged tribal concerns with the 2005 TERA and its implementing regulations, stating that “implementation of Title V [of the Energy Policy Act of 2005] was more burdensome than Congress intended” and amended the TERA “to provide direction and clarity in implementing Title V [of the Energy Policy Act of 2005,] . . . remove some of the disincentives to developing tribal trust energy resources and assist Indian tribes interested in pursuing the development of these resources consistent with the policy of Indian self-determination;” and

WHEREAS, the 2018 TERA amendments require the Department of the Interior (DOI) to issue amended TERA regulations that are to “further enhance the ability of Indian tribes to exercise self-determination over the development of energy resources located on tribal lands;” and

WHEREAS, DOI has held four consultations concerning proposed changes to the TERA regulations; and

WHEREAS, during consultations with tribal nations, DOI indicated that they had not decided whether the regulations would provide tribal nations with the authority to govern permitting procedures, such as applications for permits to drill, stating that such authority may be deemed an inherently federal function; and

WHEREAS, the 2005 TERA and the 2018 TERA amendments do not include any provision limiting the activities a tribal nation may assume under a TERA based on the terminology “inherent federal function;” and

WHEREAS, the DOI proposed changes to the TERA regulations fail to provide a formula to calculate the amount of funding that is to be provided to a TERA-implementing tribal nation, as required by the 2018 TERA amendments.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls on the Department of the Interior to:

1. implement TERA regulations that are consistent with the intent of Congress in enacting the 2018 TERA amendments,
2. remove DOI developed language concerning “inherently federal functions,”
3. authorize tribal nations to conduct permitting procedures for all energy development on tribal lands, including applications for permits to drill, and
4. adopt regulations that includes a funding formula for those tribal nations that enter into TERA agreements with the federal government; 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 2019 Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, October 20-25, 2019, with a quorum present.



Fawn Sharp, President

ATTEST:



Juana Majel Dixon, Recording Secretary