



## UNITED SOUTH AND EASTERN TRIBES, INC.

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USET Resolution No. 2003:043

### INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENT

- WHEREAS,** United South and Eastern Tribes, Incorporated (USET) is an intertribal organization comprised of twenty-four (24) federally recognized tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and
- WHEREAS,** the Indian Self-Determination and Education Assistance Act of 1975 (ISDEA) has for over 30 years defined the United States' modern federal Indian policy with Tribal governments; and
- WHEREAS,** the ISDEA repudiated the failed terminationist policies of the past and promised a new era of maximum tribal self-determination and self-governance; and
- WHEREAS,** despite the ISDEA's many successes, in 1988 Congress was compelled to massively rewrite the Act in order to overcome entrenched resistance by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) to the mandates of the Act; and
- WHEREAS,** Congress in 1988 recognized that the single greatest impediment to full realization of the Act's goal was the failure of the BIA and IHS to pay the fixed contract support costs required for Tribes to administer contracted federal Indian trust programs; and
- WHEREAS,** Congress in 1988 recognized that the agencies' past failures to pay the Tribes' fixed contract support costs had compelled corresponding reductions in contracted federal Indian trust programs; and
- WHEREAS,** in amending the Act Congress in 1988 sought to guarantee Tribes full contract funding, while also conferring upon Tribes legally enforceable rights to remedy any further agency under-payments; and
- WHEREAS,** notwithstanding Congress' 1988 reforms, reinforced through additional 1994 reforms, three federal courts of appeal have now ruled that the IHS and BIA can, with impunity, enter into self-determination contracts that the agencies have absolutely no intention of honoring [*Cherokee Nation and Shoshone-Paiute Tribes v. United States*, 311 F.3d 1054 (10<sup>th</sup> Cir. 2002); *Babbitt v. Oglala*, 194 F.3d 1374 (Fed. Cir. 1999), *cert. denied* 530 U.S. 1203 (2000); and *Shoshone-Bannock Tribes v. Secretary*, 279 F.3d 660 (9<sup>th</sup> Cir. 2002)]; and
- WHEREAS,** these rulings effectively permit the BIA and IHS to engage in the very conduct that the ISDEA expressly prohibits, such as diverting self-determination contract funds to pay for the federal government's own bureaucracy; and
- WHEREAS,** nothing in the legislative history statutory provisions relied upon by federal courts (section 106's concluding clause) indicates any congressional intent whatsoever in ISDEA to eliminate the tribal right to full contract funding; and
- WHEREAS,** these court rulings have placed at risk the core policy of the ISDEA – tribal self-determination without termination – by requiring tribes to reduce contracted federal Indian trust programs to cover IHS and BIA contract funding shortfalls; therefore, be it

***“Because there is strength in Unity”***

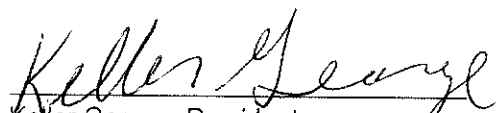
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**RESOLVED** that the USET Board of Directors call upon Congress to:

1. amend the Indian Self-Determination Act to guarantee Tribes enforceable rights to full funding to carry out their self-determination contracts and compacts;
2. amend the Indian Self-Determination Act to establish a permanent appropriation for contract support costs; and
3. either (a) confer upon the United States District Court for the District of New Mexico jurisdiction in *Pueblo of Zuni v. United States* No. CIV 01-1046 LH, and *Ramah Navajo Chapter v. Norton*, No. CIV 90-0957 LH, to consider past damage claims for the failure of the Indian Health Service and the Bureau of Indian Affairs to pay full contract support costs during the years covered by those suits, without regard to the last sentence of section 106(b) of the Act, or (b) otherwise make tribes whole for their un-reimbursed past contract support costs shortfalls.

**CERTIFICATION**

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present, in Arlington, VA, Thursday, February 6, 2003.

  
Keller George, President  
United South and Eastern Tribes, Inc.

  
Beverly M. Wright, Secretary  
United South and Eastern Tribes, Inc.