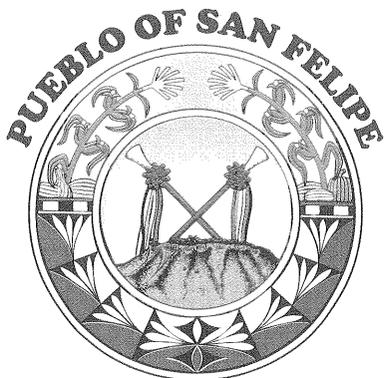


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Office of the Governor

September 1, 2006

Office of Indian Energy and Economic Development
Room 20 – South Interior Building
1951 Constitution Ave., NW
Washington, DC 20245

E-mail: IEED@bia.edu
RE: Section 1813 Comments

Dear Office of Indian Energy and Economic Development:

I write on behalf of the Pueblo of San Felipe to comment on and make recommendations to amend the Energy Policy Act, Section 1813 Draft Report to Congress.

Remove options for Consideration by Congress.

The Draft Report makes a number of findings and conclusions, which lead to one recommendation: that Congress should not amend the law or the current practice of requiring tribal consent for energy rights-of-way (ROWs) over Indian lands. Several of the “options for consideration” have no justification based on the findings and conclusions. Therefore, I recommend that Part 4.4.2 “Options for Consideration by Congress” be removed and replaced with a single recommendation to Congress not to amend the law to address this issue.

The Draft Report sets forth a sound background of the federal laws and regulations governing energy ROWs over tribal lands. It acknowledges the unambiguous requirement that “No right-of-way shall be granted over and across any restricted lands belonging to a tribe . . . without the prior written consent of the tribal council.” And it affirms that this consent policy aligns with the federal policies promoting tribal Self-Determination. As the Draft states:

A tribe’s determination of whether to consent to an energy ROW across its land is an exercise of its sovereignty and an expression of self-determination. The implication of any reduction in the tribe’s authority to

make that determination is that it would reduce the tribe's authority and control over its land and resources, with a corresponding reduction in its sovereignty and abilities for self-determination.

In addition, the Draft found "no evidence that tribal consent would be an issue in an emergency situation." This finding rejected the false allegations that tribal consent threatened National Security.

The Draft also found that "under existing law and regulations, difficulties arise in ROW negotiations from time to time that are sometimes very significant to the parties. At the same time, however, it appears unlikely that these difficulties could lead to significant cost impacts for energy consumers or to significant threats to the physical delivery of energy supplies to market areas."

However, without justification in your Report's findings your Draft suggests that Congress consider condemnation of tribal lands as an option. The option of condemnation of Indian lands lies in direct contradiction to the historical policies supporting Indian Self-Determination and economic self-sufficiency discussed in the Draft, which have been reinforced in Title V of the Energy Policy Act of 2005.

Our homelands are one of our most precious resources. They have provided for our people for centuries. Our ancestors fought and died to protect our lands and our way of life. To find that there are no problems with the current consent requirement, and then suggest that condemnation of tribal rights over our lands is an option is deeply offensive.

As a result, I again strongly recommend that you remove Part 4.4.2 "Options for Consideration by Congress" in include a Recommendation to Congress, based on the Report's findings, that it should make no change in the existing law of tribal consent over energy ROWs across Indian lands.

Expand Discussion of Policy Set Forth in Title V of the Energy Policy Act of 2005.

The Draft Report at Part 2.3 "Federal Policy of Tribal Self-Determination" cites Title V of the Energy Policy Act of 2005 for the fact that the Act directs the Departments of Energy and Interior to create Indian energy programs in accordance with "federal policies promoting Indian self-determination." In fact, this is Congress' most recent expression of Indian law and policy in the area of energy resource development on Indian lands.

The Interior Department is attempting to implement this policy in its recently issued proposed rule, which provides that "[t]he implementation of these regulations will further the Federal Government's policy of providing enhanced self-determination and economic development opportunities for American Indian tribes and support the national energy policy of increasing utilization of domestic energy resources."

I recommend that you amend the Draft Report to expand the discussion of the policy statements and the extensive legislative history behind Title V of the EPAct.

These policy statements and findings should serve as guidance and bolster your recommendation to Congress to make no changes to the current legal and policy regime, which requires open negotiations and tribal consent.

In closing, I thank you for this opportunity to submit the views of the Pueblo of San Felipe. Please contact me at (505) 867-3381 if you have any questions or need additional information.

Sincerely,

PUEBLO OF SAN FELIPE



Sam A. Candelaria
Governor

Cc: The Honorable Senator Pete Domenici
The Honorable Senator Jeff Bingaman
The Honorable Congressman Tom Udall
The Honorable Congresswoman Heather Wilson