



UTE INDIAN TRIBE

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February 5, 2007

Via E-mail and U.S. Mail

Office of Indian Energy and Economic Development
Attn: Section 1813 ROW Study
Room 20, South Interior Building
1951 Constitution Avenue NW
Washington DC 20245

Re: Section 1813 Comments

Dear Sir or Madam:

For well over a year the Departments of the Interior and Energy (“Departments”) have undertaken the study required by Section 1813 of the Energy Policy Act of 2005. As the Departments recognized in their December 21, 2006 Report to Congress (“Report”), the Ute Indian Tribe of the Uintah and Ouray Reservation (“Ute Tribe”) has been an active participant in that study. Report at 20. Among other things, the Ute Tribe has testified at public meetings held across the country; made detailed presentations to the Departments and their consultants; provided the Departments with historical and analytical materials, including an extensive report prepared by the Ute Tribe’s consultant, The Analysis Group; submitted written comments to the Departments; and engaged in government-to-government discussions with the Departments. See, e.g., Ute Tribe submissions of May 11, 2006 and September 1, 2006.

After completing that exhaustive public consultation process addressing the state of energy rights-of-way in Indian Country, the Departments recommend to Congress that it maintain the “status quo with Congressional case-by-case intervention.” Report at 46, ll. 5-6. Specifically, the Departments recommend that (i) right-of-way valuation “should continue to be based upon terms negotiated between the parties” and (ii) if in the future a failure of negotiations can be demonstrated to have “a significant regional or national effect on . . . energy resources,” then “Congress [should] consider resolving such a situation on a case-by-case basis through legislation targeted at the specific impasse . . .” Id. at ll. 21-28. The Departments’ recommendation is consistent with the views the Ute Tribe has long expressed. See, e.g., May 11, 2006 letter from Ute Tribe Business Committee Chairman Maxine Natchees at pp. 1-2 and Attachment 2 to that letter at pp. 1-5.

The Departments' recommendation rests on a number of specific findings. First, the long-standing right of Tribes to consent to the use of their lands by third parties is an essential element of their sovereignty and critical to their self-determination. Report at p. 19, ll. 6-9; see also p. 11, ll. 10-17, p. 12, ll. 29-30, p. 13, ll. 19-20, p. 16, ll. 28-31, p. 17, ll. 28-37, p. 45, ll. 7-8. Second, contrary to contentions made by some early in the study process, the evidence before the Departments demonstrates that consideration paid for rights-of-way across tribal lands "have had no demonstrable effect on energy costs for consumers." Report at p. 45, ll. 23-24; see also p. 35, ll. 35-37, p. 36, ll. 6-8 and 17-21, p. 41, ll. 4-6. Third, the application of current law, including the right of tribal consent, has "had no demonstrable effect on . . . energy reliability[] or energy supplies." Report at p. 45, ll. 23-24; see also p. 9, ll. 37-38, p. 10, ll. 8-9, p. 36, ll. 20-21, p. 41, ll. 4-6. Fourth, through application of existing law, Tribes have become partners in increasing energy supplies to consumers. Report at p. 32, ll. 32-39; see also p. 24, ll. 13-15. Fifth, even if in the future things should change and it could be demonstrated that a failure of negotiations resulted in "a significant regional or national effect on the supply, price, or reliability of energy resources," then Congress should "resolve[] such a situation on a case-by-case basis through legislation targeted at the specific impasse, rather than making broader changes that would effect tribal sovereignty or tribal self-determination generally." Report at p. 46, ll. 25-29 (emphasis added). Sixth, there is no oil and gas industry position in support of changes to existing law; many oil and gas companies who testified at Section 1813 public meetings and submitted written comments to the Departments advocate the continuation of existing law, including the right of Tribal consent to the use of Tribal lands. Report at p. 24, l. 4; p. 26, l. 22; p. 32, l. 36; p. 37, l. 14; p. 38, l. 34.

To be sure, the Report is not perfect, and certain technical changes should be made. First, the Report suggests that Tribes object to obtaining "fair market value" for the grant of rights-of-way. See, e.g., Report at p. 25, l. 21. That is not true. Fair market value is determined through arm's length negotiations such as those that occur under existing law. See, e.g., Report at p. 27, ll. 37-38; Analysis Group Report, appended as Attachment 1 to Chairman Natchees' May 11, 2006 written submission, at pp. 13, 98-100. Second, the Report's discussion of the Department of the Interior's "approval authority," which could be construed as suggesting that that authority should be exercised in the manner antithetical to Tribal interests, should be deleted. See Report at p. 31, ll. 42-43 and p. 32, ll. 1-2. Third, the historical background of tribal consent as set forth in the Report is confusing. Report at 14-15. The essential point the Report should make is that from the time of enactment of the Indian Reorganization Act in 1934, Congressional and Executive Branch action and policy have consistently been to require Tribal consent before third parties can use Tribal lands. See, e.g., Attachment 2 to Chairman Natchees' May 11, 2006 written submission, at pp. 1-3. Fourth, the Report should make clear that the proposals set out at pages 31-32 are "best practices" and that the Departments are not recommending that Congress enact legislation to make them mandatory. Fifth, there is no factual predicate for the statements made at p. 45, ll. 28-32 and those sentences should be modified in accordance with the Departments' recommendation to state that if it could be demonstrated that a failure in negotiations would result in "a significant regional or national effect on the supply, price, or

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reliability of energy resources," then Congress could intervene on a case-by-case basis rather than through broader changes in existing law.

These technical faults notwithstanding, the Departments have done an excellent job in reaching their recommendation and making their findings. They have avoided what too often happens in such studies -- a mere recitation of the positions of various parties. The Ute Tribe thanks you.

Sincerely,



Maxine Natchees, Chairman
Ute Tribal Business Committee