

TESTIMONY OF: Chairman James Steele, Jr., Chairman,
Tribal Council

REPRESENTING: The Confederated Salish and Kootenai Tribes

DATE: March 7, 2006

FOR: U.S. Departments of Energy and Interior

TOPIC: National Energy Policy Act of 2005 Section 1813: Indian Lands
Rights-of-way Study

Good afternoon. On behalf of the Confederated Salish and Kootenai Tribes I want to thank you for the opportunity to comment. I am Brian Upton, I am speaking on behalf of Tribal Chairman James Steele, Jr., who was unable to attend today.

I want to make four points on behalf of the Tribes.

My first point is that the Section 1813 study should acknowledge Indian tribes as sovereign governments. The Confederated Salish & Kootenai Tribes formalized our relationship with the United States by entering into the Treaty of Hellgate on July 16, 1855. By the terms of the Treaty the Tribes ceded control of over 20 million acres of our Rocky Mountain aboriginal territory to the United States in exchange for certain reservations and guarantees. Preeminent among them was reservation of a designated homeland for the exclusive use and benefit of the Tribes, now referred to as the Flathead Indian Reservation. The Tribes took the United States at its word, when the U.S. promised to allow the Tribes to keep the Flathead Reservation homeland for their exclusive use and benefit. Great nations, like great men, should keep their word. Accordingly, the study should reflect that any action to divest the Tribes of their right to control rights of way on Indian lands within the Flathead Indian Reservation would be an abrogation of Treaty.

My second point is that the Section 1813 Study should acknowledge Indian tribes as landowners and land managers. The Flathead Reservation is located in the west central portion of territory that is now recognized as the State of Montana. The Reservation contains 1.3 million acres of mountains, valleys and waters that support rich forest, prairie, and aquatic ecosystems. Between 1906 and 1934, over one million acres of the Reservation land base had slipped from Tribal control by way of federal allotment and homesteading. Since 1935 we have diligently worked to regain control of those lands. Today we are proud to report that just over 800,000 acres, or approximately 62% of the Reservation land base, is again owned and managed by the Tribes. In reacquiring this land, we prioritize and aggregate our purchases so that we can cost effectively protect and manage our property. Federal law imposes significant management burdens on all trust lands. The Tribes need authority to direct and control establishment of energy rights of way on these lands in order to assure that we can continue to effectively protect and manage them.

of way for roads and highways through the Flathead Reservation. Currently, the State has over forty state highway projects under design and/or construction with an anticipated value in excess of \$200 million. The Tribes participate directly in the environmental review, right of way acquisition, design, and construction phases of each project. Most notably, we are in the midst of the US93 Evaro to Polson Project; a 56 mile National Highway System reconstruction project that has been designated as a priority transportation project under Executive Order 13274 and is subject to Cabinet level oversight by the President's Interagency Transportation Streamlining Task Force. The Montana Department of Transportation and the Tribes have worked closely and successfully since 2003 to timely convey necessary right of way for the project across numerous Tribal water bodies and over 170 individual Tribal and/or Indian parcels. To facilitate conveyance of these rights of way, we have negotiated numerous complex transactions by both sale and exchange, and have shared the burden for completing transaction functions including: survey, appraisal, environmental assessment, relocation assistance, production of documents, and recordation. Along the way we have also restored ownership of two significant pre-historic spiritual sites to the Tribes so that the sites can be appropriately managed and cared for in perpetuity, have jointly created a successful wetlands mitigation bank in consultation with numerous state and federal agencies and have jointly received a Strive for Excellence Team Award from the U.S. Department of Transportation / Federal Highway Administration.

My second example is with regard to federally-license hydropower project rights of way:

Congress created the law governing private hydropower projects by passing the Federal Power Act and establishing the Federal Energy Regulatory Commission. The FERC granted a license jointly to the Montana Power Company and the Tribes in 1985 for continued operation of the Kerr Project, a 180 megawatt hydropower project, located on the Flathead River and partially on lands within the Flathead Reservation. The Project includes a dam, powerhouse and reservoir that occupy over fifty thousand of acres of Tribal land. The Tribes and Montana Power Company successfully negotiated terms for use and occupancy of the Tribes' land in a FERC approved settlement. The Project also includes other "Kerr related facilities" including transmission lines, substations, access roads, and rights of way related thereto. In the joint license arrangement, MPC had the right to operate the Project for the first thirty years of the license term and the Tribes have the right to acquire the Project and operate it for the last twenty years. During the MPC's term, the Project has undergone deregulation, reapportionment of Project assets, sale, transfer of license, and bankruptcy of one of its subsequent purchasers. In response to these changes, the Tribes have repeatedly and successfully negotiated terms for transfer of all rights of way and in so doing have developed good working relationships with PPL Montana and Northwestern Energy, the current interest holders in all Kerr Project facilities and rights of way. We are currently active with PPL Montana in advocating to FERC for replacement of a worn turbine wheel in the Project powerhouse. We are jointly performing an appraisal, and independently preparing for negotiations, with NorthWestern Energy for renewal of right of way on forty parcels containing approximately 12 miles of the Kerr-Anaconda "B" 161 KV transmission line.