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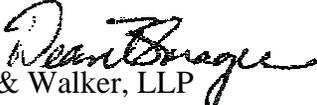
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May 15, 2006
Filed by E-Mail

To: David Meyer
U.S. Department of Energy

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U.S. Department of Interior

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St. Regis Mohawk Tribe
Three Affiliated Tribes

Subject: Section 1813 Energy Rights-of-Way Study:

This memorandum supplements comments that we filed on April 29, 2006, and also supplements comments filed on January 20 by or on behalf of each of the three tribes listed above in response to the proposed work plan that was published in the *Federal Register* on December 29, 2005. 70 Fed. Reg. 77178.

Those previously filed comments are posted on the web site for this study, and we will not repeat here what has already been said. We note that the comment memorandum filed on April 29 focused on implications for tribal sovereignty and self-determination interests. In that letter we made the point that federal statutes and regulations recognize that environmental protection and management of cultural resources are within the scope of inherent tribal sovereignty; we also said that tribal governments incur costs in fulfilling the responsibilities of sovereignty associated with environmental protection and cultural resources management and that, as an alternative to raising revenue through taxation, it is appropriate for tribal governments to include such costs when negotiating consideration for rights-of-way.

In response to the presentation made by DOI and DOE staff in the April public meeting regarding data gaps, we note that the comment memorandum filed on January 20 by the St. Regis Mohawk Tribe includes information about a right-of-way on tribal trust lands for electric transmission and distributions lines that was granted for nominal compensation (one dollar) for a term of 99-years, and without approval by an authorized designee of the Secretary of the Interior.

The main point of this memorandum is to recommend that the Departments of Interior and Energy request an extension of the statutory deadline for filing the report.

In the April public meeting, it was announced that the draft of the report to Congress was scheduled for release on June 15, but federal agency officials said that June 30 is a more realistic release date. Tribal consultation and public meetings are scheduled to occur between July 10 and July 19. Assuming that the draft report is in fact released on June 30 (the Friday before July 4th), tribal officials and the public would have only a few days to review the report before the consultation meetings. The current timeline sets July 24 as the deadline for filing comments on the draft report, which means that tribal officials and staff will have a three-week period in which to read and analyze the draft report, attend consultation meetings, and formulate comments. These dates have been set so that the final report can be submitted to Congress on August 7, the statutory deadline set in section 1813 of the 2005 Energy Policy Act.

We believe that this schedule does not provide a sufficient amount for tribal officials to review the draft report before the planned consultation meetings, nor does it allow enough time for DOI and DOE officials to engage tribes in meaningful government-to-government consultation on the draft report. We note that, in the original proposed scope of work, as published in the Federal Register notice of December 29, 2005, the draft report was scheduled for release in May, with tribal consultation to take place between May and mid July. A six to eight-week period for review of the draft report and tribal consultation might have been adequate, but three weeks is not enough time for meaningful consultation. We recognize that the agencies have made substantial efforts to engage in consultation with tribal governments in gathering information and discussion of the issues to be addressed in the report to Congress. Consultation with tribes *after* a draft report has been prepared, however, is critically important, and should not be shortchanged. It is really only after the draft report has been released that tribal representatives will be able to tell how well the agencies have listened during the consultation that has taken place to date.

We also doubt that two weeks is enough time for the agencies to respond to comments on the draft and make any revisions that may be appropriate. The unspoken message is that the agencies do not expect to receive many comments that would justify making changes in the draft.

Accordingly, we recommend that the agencies ask the congressional committees for an extension of the deadline in order to allow sufficient time to engage in meaningful consultation with tribal governments after the draft is released. We suggest that 90 days from the release of the draft report would be adequate, which would allow for a 60 day period for review of the draft and for consultation with tribes (and for the receipt of comments from the interested public), and 30 days to prepare a final report in response to comments that the agencies receive. If the draft report is in fact going to be ready for release on June 30, then the agencies should ask for the date for delivery of the report to Congress to be extended to September 30.