



SAN XAVIER DISTRICT
OF THE
TOHONO O'ODHAM NATION

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May 15, 2006

Sent by email: IEED@bia.edu

Bob Middleton

U.S. Department of Interior

1849 C Street, NW, Mail Stop 2749-MIB

Washington, DC 20240

Sent by email: David.Meyer@HQ.DOE.gov

David Meyer

U.S. Department of Energy

1000 Independence Ave., SW

Rm 8H033

Washington, DC 29585

Re: RESPONSE TO REQUEST FOR PUBLIC COMMENT
Energy Policy Act 2005, Section 1813 Study

Greetings:

I am Chairman of the San Xavier District Council, a political subdivision of the Tohono O'odham Nation, and write on behalf of the Council. The District is co-extensive with the San Xavier Indian Reservation, which is adjacent to the City of Tucson. Several natural gas, electric power lines and water lines cross tribal and allotted lands under the jurisdiction of the District. I write to outline for you some of the problems we have had with energy companies seeking rights-of-way across our lands.

In 1992, the Bureau of Reclamation acquired an easement along Valencia Road in the City of Tucson for a high voltage power line to connect to the Central Arizona Project pumping station. Valencia Road crosses the San Xavier District for a distance of about 1 mile. Land to the east of the district was acquired from the City of Tucson for \$7.50 per square foot. BOR acquired land to the west of the District from Pima County for the same price. This offer was apparently based on an internal appraisal, which was so generous that neither the City nor the County prepared its own appraisal from which to negotiate. When it came to the Indian land in between these two other easements BOR offered the tribe and its allottees \$1.76 per square foot and reduced the width of the easement from 60 to 30 feet.

In other words, BOR offered to the Indian landowners one-eighth of the compensation it paid to the City and the County for contiguous land. The power line has long since been constructed, yet we are still mired in the negotiation process for an appropriate compensation to our allottees and for the tribal land.

I am enclosing an editorial from the Tucson Citizen contemporaneous with the above right-of-way acquisition. The editorial writer was concerned not only with the discrepancy between the amounts offered for Indian and non-Indian land, but also with the secrecy with which the government attempted to keep the parties from seeing the agency's appraisal and learning the amounts paid the others.

The Western Area Power Administration of the Department of Energy operates a transmission line across 11 separate parcels on the eastern portion of the San Xavier Reservation. The 50 year term of the easement for that power line expired in March 2000. At about that time, WAPA requested a perpetual easement across those parcels and offered compensation ranging between \$1000 and \$13,400 for permanent rights. An independent appraisal performed at the request of the District came up with appropriate rental values ranging from \$5150 to \$68,100 for a lump sum rental on a 20-year term. The offer of the agency was grossly inadequate given their request for a permanent property right. Our negotiations with WAPA have again stalled. Because the lease expired six years ago, WAPA is presently trespassing.

We have also historically had problems with the BIA undervaluing allotted and unallotted land on the San Xavier Reservation for an El Paso Natural Gas pipeline and a BOR Central Arizona Project water pipeline. The BIA appraisals take too long to complete, and do not represent fair market value. The District has gone to independent appraisals to attempt to rectify these problems.

In conclusion, our experience is that even a government agency acquiring rights-of-way across Indian lands will discriminate in the compensation offered for those Indian lands. Even in the face of independent fair market value appraisals, it is difficult to convince the energy operations to pay fair market value of the lands they intend to acquire. We believe that the undervaluation is historical, and that reliance in your report upon historic rates of compensation will merely perpetuate this condition of undervaluation. We object to any procedure which will ignore the rights of Indian land holders and allow the Secretary to grant rights-of-way without their permission or fair market compensation.

Thank you for this opportunity for comment.

Sincerely,

Austin Nunez, Chair
Austin Nunez, Chair
SAN XAVIER DISTRICT COUNCIL,
Tohono O'odham Nation

Feds use double standard on CAP power easements

The federal government has clammed up completely about a series of local land transactions involving the Central Arizona Project. But information pieced together from city, county and tribal officials paints a distasteful picture of government wheeling and dealing at its worst.

While the city and county are raking in big bucks for easements across their land, the Tohono O'odham living on the San Xavier Reservation are being offered small change.

The federal Bureau of Reclamation is in the process of acquiring rights to run power lines from Interstate 19 to a CAP water treatment plant in the Tucson Mountains. The so-called Del Bac transmission line will cross city, county and reservation land.

The city sold the feds 5½ acres of commercial land east of the reservation for \$1.6 million. The county sold the feds 11½ acres of commercial and residential land west of the reservation for \$1.4 million.

The commercial portions of the city and county property, which lie on opposite sides of the reservation, sold for the same amount — \$7.50 per square foot.

In other words, the feds agreed to pay the city \$7.50 per square foot for land along Valencia Road directly east of the San Xavier Reservation. It agreed to pay the county the same amount for land directly west of the reservation. Yet it is offering the Indians "substantially less" for their land in between.

Louis Barassi, a lawyer who is representing the Indians in their negotiations with the federal government, won't say exactly how much less — only that it's less than half.

There's no reason why the Indians shouldn't get



Jill Blondin

the same amount, he said, but the government creates reasons.

"Whenever it comes to appraising Indian land, a different standard is used," Barassi said.

He's more concerned, however, that the feds won't address the possible health hazards of living in the shadow of high-voltage power lines — a situation that would affect at least four Indian families. The Bureau of Reclamation claims there's no real proof of a health hazard, but they should err on the side of caution, Barassi said.

"This type of power line may throw off non-ionized radiation that can cause leukemia and cancer," Barassi said. "It's shockingly insensitive to human safety."

The government wants to buy an easement for the power lines that's only 30 feet wide. The Indians want it to be at least 150 feet wide.

"We'll talk money after we resolve the issue of human safety," said Barassi, who will be meeting with federal officials later this month to discuss the issue.

The feds refuse to discuss their offer to the Indians, or anyone else, saying they want to main-

tain their "competitive" advantage in land negotiations.

If they're so concerned about getting the best possible price, why did they offer the city such a sweetheart deal that it was snapped up with no questions asked?

Normally, the city does its own appraisals before selling any land. In this case, the feds' offer was so good, they didn't bother. In fact, city and county records indicate that the sale price of \$7.50 per square foot for land in that area is excessive.

Commercial land along Valencia Road generally has been selling for much less, according to the Pima County Assessor's Office. And city records indicate there were flaws in the federal appraisals, including inadequate sales comparisons.

When I asked the feds for an explanation, they refused to discuss it or hand over any records.

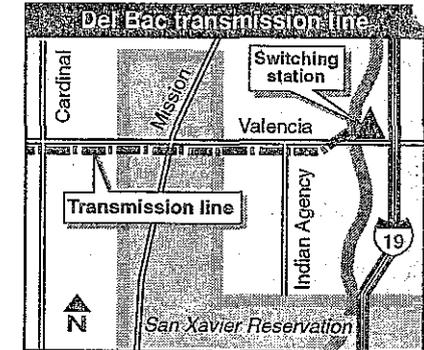
I'm not the only one who has been subjected to such stonewalling. City officials who approved the land deals were allowed to review the federal appraisals for only 30 minutes. County officials requested copies of the federal appraisals, but were given only portions of them.

It's bad enough that the feds insist on keeping their business secret from the general public. They also supply limited information to the people they do business with.

Furthermore, the city and county consider appraisals to be a matter of public record once land sales are approved. They supplied their limited information to the Tucson Citizen, but the feds won't budge.

Barassi said he believes the records should not only be made available to the targeted land owners, but the general public as well.

The Tucson Citizen filed a Freedom of Informa-



Tucson Citizen

tion request for the federal appraisals and related documents involving land needed for the power lines.

The request was denied because the appraisal reports "contain information generated in the acquisition process" and "premature release of such information would put the government at a competitive disadvantage."

The Tucson Citizen has appealed the Bureau of Reclamation's decision.

It makes no sense that documents considered public records by city and county officials could be considered a secret at the Bureau of Reclamation.

And it's hard to defend a "competitive" advantage that enables the federal government to exploit others, in this case, the Tohono O'odham.

Jill Blondin is a Citizen editorial writer.