

ASSOCIATION OF OIL PIPE LINES

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January 20, 2006

**VIA FIRST CLASS MAIL
and E-MAIL (ieed@bia.edu)**

Section 1813 ROW Study
Office of Indian Energy & Economic Development
U.S. Department of the Interior
1849 C Street, N.W.
Mailstop 2749-MIB
Washington, DC 20240

Re: Comments on Congressionally Mandated Study of Energy
Rights-Of-Way on Tribal Lands

Dear Sir or Madam:

The Association of Oil Pipe Lines (AOPL) is an unincorporated trade association that represented the owners and operators of pipelines carrying crude oil and refined petroleum products throughout the United States and Canada. AOPL's 50 members represent the majority of the oil pipeline industry and are responsible for transporting over 85% of the crude oil and petroleum product moved in the United States measured in barrel miles. Our members' facilities are long and relatively narrow, but run thousands of miles. There are nearly 200,000 miles of oil pipelines in the United States. Needless to say, several AOPL members' facilities cross Native American tribal

lands and they are very interested in the effort by the Department of Interior and the Department of Energy to resolve issues involving valuation of right-of-way across tribal lands. AOPL submits these comments in response to the request for public comments in the *Federal Register* Notice published December 29, 2005. A number of AOPL's members are also expected to individually comment.

The *Federal Register* Notice scoped out four issues to be included in the congressionally requested study. In addition to the four stated issues, AOPL suggests including in the study a review of the range of compensation paid for right-of-way on non-tribal lands in the same geographic area and of the same land type as the tribal lands. Although there are many different ways in which land can be valued, most oil pipeline right-of-way throughout the country is valued using "across the fence" valuation. In other words, how is property next door which is put to the same use as the acquired land valued? AOPL believes it would be appropriate for the study to include a review of compensation paid for right-of-way acquired from private landowners in the vicinity of the tribal lands and the scope of the legal interest obtained. In most cases, right-of-way interests obtained from private landowners is acquired in perpetuity or until the right-of-way is no longer needed for its stated purpose, but tribal right-of-way is acquired for a limited time, a difference that necessarily affects the value of the interest acquired. The study must include a review of these issues to be complete.

The suggested work scope for the study in the *Federal Register* Notice proposes an analysis of historical rates paid by pipelines crossing tribal lands through a case study approach. Certainly, case studies can be very helpful to understanding the dynamics and outside factors affecting the ultimate price paid for and conditions of the

acquired easement. However, given the national scope of this issue and the fact that rates paid can vary tremendously depending upon a) the geographic area of the country, b) the point in time when the easement value was determined, and c) the use to which the land was then put, among other factors; a more balanced and comprehensive approach would be to conduct a survey of historical rates paid for pipeline right-of-way across tribal lands that would also include information on the three points mentioned above as well as the nature of the easement acquired. Was it for 10 years, 20 years or 100 years? Was it limited to a single pipeline or could multiple pipelines be placed in the right-of-way? Did the easement entitle limit the use to which the pipeline could be put, e.g. just crude oil, or might it be used for any purpose, e.g. crude, product, natural gas, other? All of these factors will affect the value of the easement to the easement holder and should certainly be included in the scope of the study or the study will be incomplete.

AOPL is mindful of the August 7, 2006 deadline by which the study is to be submitted to Congress and believes the timely submission is critical to appropriate resolution of these issues as the energy industry seeks to replace and expand lines throughout the country to ensure safe operation and to meet the Nation's growing energy needs. However, AOPL has some concern with the time allocated to various steps in the study as proposed in the Notice. After submission of comments on January 20, 2006 when the majority of interested parties are expected to self-identify, pre-scoping phone calls and meetings of interested groups are suggested which are intended to provide direction and scope to the study. In February 2006, the Notice anticipates "DOI and DOE plan to jointly conduct a 2-day nationwide scoping meeting with

presentations from all affected groups, soliciting input on the appropriate standards and procedures for determining fair and appropriate compensation, tribal self-determination and sovereignty interests, and relevant national energy policies.” This step is critical to the success of the entire effort. AOPL suggests that 30 days or less to identify key participants, conduct the scoping calls and meetings, plan the 2-day meeting details and prepare presentations for such an important event is an insufficient amount of time. Rather, AOPL suggests that 60 days be devoted to this effort. If it is well done, the information garnered from the meeting will shorten the amount of work to be done later in the study and the study will be better focused for the effort. AOPL also suggests that the scoping session include a review of anticipated future energy needs in relevant parts of the country, not just energy policies. This information is already part of the DOE’s portfolio and should be brought into the discussion.

AOPL would be pleased to lend support to this study and to solicit participation to the various requests for information from the agencies and input into the meetings contemplated by the work plan. To that end, please include us on any notices that you send in regard to your work plan and as it progresses so that we may inform our members and encourage them to participate as well. Future notices should be sent to:

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AOPL is hopeful that this study will clarify the various rights, responsibilities and needs of the parties involved in these important land use decisions. Our members

value their relationships with tribal governments and tribal communities. We believe it is in the interest of both the tribes and our members to clarify expectations and to stabilize the relationship between them as it relates to oil and gas pipeline and other energy rights-of-way. Our members' ability to move energy efficiently is essential to the national energy security critical to the tribes, our members companies and the nation as a whole.

Sincerely,

A handwritten signature in black ink, appearing to read "Michele F. Joy". The signature is fluid and cursive, written in a professional style.

Michele F. Joy
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