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Officially known as the Zuni Tribe of the Zuni Indian Reservation

January 20, 2006

Office of Indian Energy and Economic Development  
Attention: Section 503 Rulemaking  
1849 C St., NW., Mail Stop 2749  
Washington, D.C. 20240

To Whom It May Concern:

The Zuni Indian Tribe of New Mexico is responding to your request to provide written comments pursuant to Section 1813 of the Energy Policy Act of 2005 (Pub. L. 109-58). Section 1813 mandates a study and report on issues related to the granting, expansion and renewal of energy rights of way on and across Indian tribal lands. This narrow window of comment period is not conducive for meaningful consultations for Indian tribes.

It appears this Indian Energy Policy is strategically set to meet the bare minimum requirements on the government-to-government consultation process. There is no room for tribal consensus building to really understand the impacts of the Tribal Energy Resource Agreements. How can we be successful in Indian Self-determination if we are hindered with regulations that we do not understand? Given these circumstances, will tribal input be seriously considered by the Secretary?

Current law requires that Tribes be paid no less than fair market value for right-of-way across their lands. In 1934, Congress enacted the Indian Reorganization Act (25 U.S.C. 476(e)) "to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe." In 1948, Congress expressly reconfirmed the tribal consent requirement for rights of way on tribal land in 25 U.S.C. 325. Thus standards and procedures are already in place for determining compensation and requiring tribal consent.

The tribal consent requirement is a fundamental aspect of tribal sovereignty. Indian tribes hold no power that is more vital to their continued existence than the power to control their remaining lands. Second, the Department of Interior has historically grossly undervalued the compensation for rights of way on tribal land. The tribal consent requirement is a critical component of the federal policy of tribal self-determination that has been so successful in correcting the abuses that occurred under earlier paternalistic policies. We strongly believe that the Interior and Energy Departments have a trust and statutory obligation to conduct this study in a manner that will bring these concerns to the forefront of Congressional consideration.

We are doubtful that a full and fair study of the issues presented can be accomplished in the time allotted. We recommend that the Departments jointly request an extension from the Congress of at least an additional year in order to do the subject justice. When extension is granted the Department needs to begin accumulating as much data as possible for study and analysis.



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The format for consultation, we recommend, begin at the local Regional Level. The BIA Office of Indian Energy and D.O.E. need to improve current consultation process which, in our opinion, is not meaningful. In addition the consultation process should be expanded.

Items 3 and 4 of the Dear Tribal Leader dated December 15, 2005 discuss the proposed 2-day scoping meeting in February 2006 to include broad discussions of the four divergent topics of the study and then it proposes to establish workgroups to further refine the subjects. One concern is that persons working on "tribal sovereignty concerns" for example may have information and valuable insights on one or more of the other topics. This linear approach might be avoided if all of the workshops are conducted at that same place at the same time so that interaction among the workgroups can also take place.

The Zuni Tribe does not agree that conducting only three regional tribal consultation meeting in the months of May through mid-July is sufficient to be able to get an accurate feedback from tribal governments on the draft report. Better planning of and more than three consultation meetings should be planned within the timeframe, and consideration of location of the meetings are important to ensure high attendance of Indian tribes.

Each Tribe and each reservation is unique in its history, culture, and politics, a case approach will not give a representative sample or produce meaningful results to determine national policy. We believe that the purposes of the rights of way would have to be understood before an evaluation could be made.

The Zuni Tribe is in need of more information to evaluate the use of "a National Laboratory" to conduct the analysis. The study should be conducted by a neutral party with experience in the subject matter of tribal government and energy rights of way. Some of the national laboratories are run by private contractors with strong connections to the energy industry. In addition, many national laboratories occupy former tribal lands that were taken from Indian nations in the last century for national security and development purposes. The national laboratories now assume ownership of the tribal lands upon and many tribal cultural and sacred sites. There are many examples that illustrate the lack of sensitivity of the national laboratories' officials and contractors. In recent years the Department of Energy was mandated to implement cultural resources protection plans. Only a few national laboratories have viable programs and the Department of Energy budget for historic preservation officers no longer exists. In short, tribes have reason to question whether a National laboratory will consider tribal concerns fairly, and we need to know more specific information.

The Zuni Tribe believe the time allotted for the study is far too short to produce a quality product, a product that would be useful to Congress and not be potentially detrimental to tribal interests. Federal law and policy on tribal consent for rights-of-way over tribal lands is well-established.

The Zuni Tribe is available to work with the Department as needed to secure a definitive and fair work product. We look forward to your decision to grant Indian tribes additional review time for a more meaningful consultation process.

Respectfully,

ZUNI INDIAN TRIBE

  
for Arlen P. Quetawki  
Governor

cc: Regional Director, SWRO