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August 31, 2006

Via Electronic Mail: IEED@bia.edu

Section 1813 ROW Study
Office of Indian Energy and Economic Development
Room 20 - South Interior Building
1951 Constitution Avenue, NW
Washington, DC 20245

Re: Section 1813 Right of Way Study Comments

Dear U.S. Department of Energy and U.S. Department of the Interior:

We are writing in response to the solicitation for comments regarding the **ENERGY POLICY ACT OF 2005, SECTION 1813, INDIAN LAND RIGHTS-OF-WAY STUDY** draft report dated August 7, 2006.

Our law firm represents several tribal governments, numerous individual tribal agencies and related entities. However, we are not responding on behalf of any particular tribe or entity but submit these comments from our vantage point as a legal advisor for tribes in their economic development activities.

There should be no serious debate that tribal governments can and should exercise paramount control concerning their lands. Thus, we anticipate our clients would steadfastly oppose any proposal to give industry or the federal government increased authority to condemn tribal lands for the purposes of constructing pipelines or erecting power lines. Many, if not all, tribal governments are active land managers and should not be cut out of the right-of-way process at the behest of the energy industry.

ANDREWS DAVIS

Section 1813 ROW Study Comments

August 31, 2006

Page 2

There is simply no legitimate reason to allow industry or the federal government to do an end-run around tribes on this issue. Tribes are more familiar with their lands and the needs of their members than anyone else. Removing tribal governments from the equation would diminish the opportunity for tribes and industry to become partners and develop projects that benefit both in ways that transcend mere right-of-way issues. It would also hinder the ability of tribal governments to block projects that could prove harmful to their members.

However, we also understand the industry's frustration with a lack of uniformity, or at least clearly articulated procedures, in both the process for obtaining rights-of-way across tribal lands and the methodology used to value the land involved in these transactions. We also believe that many tribes – particularly those without the necessary personnel and resources – would appreciate some form of objective guidance on these issues to assure they receive fair compensation and handle the transactions appropriately.

One possible solution would be for the Bureau of Indian Affairs to study this issue in more detail with the goal of establishing standards that, at the option of the parties involved, could be used to guide the parties through the transaction. The standards could take the form of regulations. If the parties to the transaction so chose, their negotiations could be governed by the regulations. Otherwise, the parties would negotiate as they always have. The problem with this approach is that right-of-way issues may not lend themselves to a one-size-fits-all solution, and the regulations may go unutilized.

Alternately – and perhaps preferably – tribal governments could work together to develop a model code governing right-of-way issues. Attorneys from our firm are currently participating in a similar project in Oklahoma to develop a model tort claims code that tribal governments may then tailor to their own needs and adopt as tribal law. The process is working well, and the exchange of ideas and expertise is invaluable. There is likely no single solution that would work for all the tribal governments in Oklahoma, but it provides a starting point for the development of individual tribal enactments.

The benefits of the model code are clear: Tribal governments would be free to alter and amend the model right-of-way code as they saw fit based on their individual needs and priorities, or not enact the code at all. Those who adopted such a code could clearly communicate to industry partners what can be expected and how negotiations will take place.

Above all, the model code approach would place the resolution of these significant issues squarely with the appropriate party, tribal governments.

ANDREWS DAVIS

Section 1813 ROW Study Comments
August 31, 2006
Page 3

Very truly yours,

ANDREWS DAVIS, P.C.

A handwritten signature in black ink, appearing to read "K Bellmard II". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Kennis M. Bellmard II

KMB:mdm

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