

**ARIZONA
TRIBAL ENERGY ASSOCIATION**

Sent via electronic mail to IEED@bia.edu

September 1, 2006

Attention: Section 1813 ROW Study
Office of Indian Energy and Economic Development
Room 20 – South Interior Building
1915 Constitution Ave. NW
Washington, DC 20245

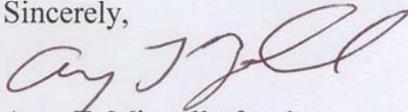
Re: Section 1813 Draft Report Comments of the Arizona Tribal Energy Association

To Whom It May Concern:

Please see the attached Section 1813 draft report comments on behalf of the Arizona Tribal Energy Association. As a reminder, the Arizona Tribal Energy Association includes Ak-Chin Energy Services, the Gila River Indian Community Utility Authority, the Navajo Tribal Utility Authority, the Tohono O'odham Utility Authority and the White Mountain Apache Tribe.

Thank you for your consideration of these remarks.

Sincerely,



Amy T. Mignella for the
Arizona Tribal Energy Association

**COMMENTS OF THE ARIZONA TRIBAL ENERGY ASSOCIATION
ON THE SECTION 1813 DRAFT REPORT**

SUMMARY

- 1) Expand on the references to treaties
- 2) Add a “Conclusions” section
- 3) Add a “Recommendation” as required by Section 1813(b)(2) that:

“The Departments recommend that no changes be made to the current standards and procedures for compensating tribes for energy rights-of-ways.”

- 4) Reword the final sentence of the final paragraph of Section 4.2 to read:

“This is true even if the negotiations are protracted and the method is perceived by some to generate compensation that is above conventional market value.”

- 5) Delete Section 4.4
- 6) Provide an additional comment period if new sections are added to the report

The Arizona Tribal Energy Association submits the following comments regarding the Section 1813 draft study, released by the Departments of Energy and the Interior on August 7, 2006. The Association provides the following changes to the report as currently written:

1. The report lacks any analysis of treaties and their potential implications/significance. Treaties are noted in Paragraph 3 of Section 1.3.8 and Paragraph 3 of Section 2.4 but not otherwise referenced, even by single-case example. This summary and analysis should be added.
2. The report includes but does not specifically identify conclusions the agencies have reached in reviewing the compiled information. The Association provides the following language excerpts from the existing draft that should be identified as a “conclusions” section:

- a. No data was provided to suggest the need for any reform to the existing regulations governing negotiation of rights-of-way across Indian lands. [See Section 1.3.7, final paragraph]. In addition, tribes and others provided data showing that the current process is generally successful. [See Section 4.2, final paragraph].
 - b. Relevant Federal laws and policies require that tribes provide consent for rights-of-ways across their lands. [See Section 2 and Section 3, Paragraph 2]. Information compiled persuasively illustrates the benefits of this practice to tribes as well as the nation’s general population. [See Sections 2 and 3.]
 - c. Federal emergency authority over energy transportation already exists in two Federal statutes. In addition, the agencies’ information review failed to confirm any instance of a tribe “causing” an energy transportation emergency. [See Section 3.2.2, Paragraph 3]. In conclusion, tribes do not represent any threat to the nation’s energy security.
3. The report lacks a “recommendation” as is required by Section 1813(b)(2). The following language should be repeated from the existing draft as a “recommendation:”

The Departments recommend that no changes be made to the current standards and procedures for compensating tribes for energy rights-of-ways.

4. The final sentence of the final paragraph of Section 4.2 should be deleted.

It reads:

“This is true even if the negotiations are protracted and the method results in compensation that sometimes greatly exceeds the market value of the land.”

The Departments have no basis to make the conclusion that compensation has ever exceeded the “market value” of the land since one point of the study, and that same section, was to discuss different valuation methods and discuss the premise that tribal lands are unique, thereby not squarely within conventional appraisal methodologies.

A substitute reference could read:

“This is true even if the negotiations are protracted and the method is perceived by some to generate compensation that is above conventional market value.”

5. Section 4.4 should be deleted in its entirety because it is largely inconsistent with the entire content and conclusions of the preceding sections. In addition, Section 4.4(e) suggests that current law could be utilized to condemn Indian lands, despite the proviso that “no legislation authorizes the condemnation of Indian . . . lands in specific terms.” This is underscored by the subsequent sentence that reads “Congress may exercise its plenary power over Indian affairs and manifest its intent to impose projects on Indian lands thereby effectuating a condemnation.”

This provision is inconsistent with the content and conclusions provided in the prior portions of the report and by its inclusion supports such action against the nation’s tribes. The Association views the points included in Section 4.4(e) as misrepresentative of Federal Indian law and misleading to Congress and hereby calls for their complete deletion.

6. Any new topics added to the draft report should prompt an additional comment period.