



AUGUSTINE BAND OF CAHUILLA INDIANS

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Tribal Council Fax (760) 369-7161 Tribal Administration Fax (760) 369-9061
Tribal Chairperson: MaryAnn Green

September 1, 2006

Attention: Section 1813 ROW Study
Office of Indian Energy and Economic Development
Room 20 – South Interior Building
1951 Constitution Avenue, N.W.
Washington, D.C. 20245

RE: Comments to Section 1813 Rights-of-Way Draft Report

Dear Sir or Madam:

The Augustine Band of Cahuilla Indians (Augustine Band) submit this letter to comment on the *Draft Report to Congress: Energy Policy Act of 2005, Section 1813, Indian Land Rights-Of-Way Study*, dated August 7, 2006 (Draft Report).

The authority of tribes to prevent third parties from using tribal lands without the tribe's consent is a fundamental aspect of tribal sovereignty. The Augustine Band takes this issue very seriously, and strongly objects to any consideration of taking away this authority. It is this strong position that led the Augustine Band in June, 2006, to adopt a resolution that defends tribal sovereignty by approving the ten principles identified in the *Section 1813 Right-of-Way Study – Tribal Principles*. A copy of this Resolution is attached to this letter.

The Draft Report supports the finding that there is nothing wrong with the current environment in which tribes and energy companies negotiate rights-of-way issues. Therefore, the Augustine Band supports the adoption of **Option 4.4.2 (a)** of the Draft Report. This option acknowledges the fact that there is no problem with the current environment and proposes that no changes be made.

The Augustine Band also would like to express its strong opposition to the consideration of **Option 4.4.2 (e)** of the Draft Report. This option identifies the use of condemnation proceedings as an option for Congress to consider. The Draft Report provides no factual basis to support Congress even considering such an option. To impose such a drastic change to the current environment would constitute arbitrary and capricious action on the part of Congress. The Augustine Band vehemently opposes even the consideration of such an option and requests that it be eliminated from report prior to it being submitted to Congress.

Very truly yours,

AUGUSTINE BAND OF CAHUILLA INDIANS

Mary Ann Green
Tribal Chairperson



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RESOLUTION NO. 06-08

WHEREAS, the Augustine Band of Cahuilla Indians (“Tribe”) is a federally recognized Indian tribe; and

WHEREAS, the Augustine Band of Cahuilla Indians General Council (“Governing Body”) is empowered and authorized to act on behalf of the Tribe; and

WHEREAS, the Augustine Band of Cahuilla Indian Reservation was established by Executive Order on December 29, 1891, and the Base Roll of the members of the Augustine Band of Cahuilla Indians was approved by the Commissioner of Indian Affairs on April 13, 1956;

WHEREAS, Section 1813 of the Energy Policy Act of 2005 requires the Departments of Energy and Interior to prepare a study on the compensation practices and policy implications associated with the issuance of tribal consent for energy-related rights-of-way crossing tribal lands (“Right-of-Way Study”); and

WHEREAS, the Right-of-Way Study is a matter of great importance to the Tribe and to all tribes and may have significant implications regarding future legislation and tribal sovereignty; and

WHEREAS, under longstanding law, the consent of the governing body of a tribe must be obtained as a condition for the grant or renewal of a right-of-way across tribal lands; and

WHEREAS, the tribal consent requirement is a critical aspect of tribal sovereignty that allows tribal governments to negotiate acceptable terms, including those related to duration and compensation, for the use of tribal lands; and

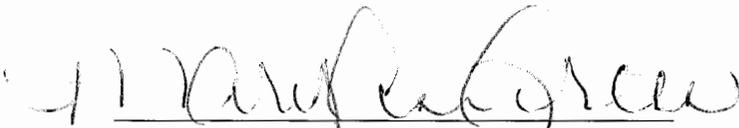
WHEREAS, Governing Body has reviewed the attached statement of principles and has determined that these principles should be incorporated in the Right-of-Way Study and maintained as a matter of federal law and policy.

NOW, THEREFORE, BE IT RESOLVED, that the Governing Body hereby approves the attached statement of principles and authorizes distribution of this Resolution as an official policy statement of the Tribe.

BE IT FURTHER RESOLVED that the Governing Body directs that a copy of this Resolution be forwarded to the Departments of Energy and Interior for inclusion in the record related to the Right-of-Way Study.

CERTIFICATION

This is to certify that the foregoing Resolution was adopted by the General Council of the Augustine Band of Cahuilla Indians, on the 1 day of June, 2006, by a vote of 1 in FAVOR, 0 OPPOSED, 0 ABSTAINING.



Mary Ann Green, Tribal Chairperson

 6/1/06
Date

INDIAN TRIBES – PARTNERS IN AMERICA’S ENERGY FUTURE
SECTION 1813 RIGHT-OF-WAY STUDY – TRIBAL PRINCIPLES

1. **Tribal Sovereignty and Consent.** The power of tribes to prevent third parties from using tribal lands without tribal consent is a critical element of tribal sovereignty that has been established in Federal law and policy for over 200 years. The tribal consent requirement to the use of tribal lands should be honored and preserved.
2. **Conditions to Consent.** The tribal consent requirement includes the power of tribes to place conditions on the use of tribal lands, including conditions related to tribal jurisdiction, preservation of environmental and cultural resources, duration of use, and compensation.
3. **No Negative Effects.** Adherence to the tribal consent requirement has resulted in greater energy production in Indian country and lower energy costs to consumers. The tribal consent requirement for rights-of-way has not had a noticeable negative effect on the availability or cost of energy to consumers.
4. **Preservation of Tribal Jurisdiction.** No right-of-way agreement or other business arrangement that permits third-party use of tribal land should reduce the sovereign power of a tribe over its lands or the activities conducted on its lands in the absence of the specific consent of the tribe.
5. **Restricted Duration of Rights-of-Way.** Federal law and policy should not be changed to require perpetual rights-of-way or automatic renewals of rights-of-way because such changes would deprive tribes of management and control of their lands.
6. **Negotiated Compensation.** Tribes should continue to have the right to negotiate compensation for the use of tribal land that gives tribes a fair share of the economic benefits produced by use of their lands. Such revenues sustain tribal governments and cultures.
7. **National Security.** Indian nations are an integral component of energy security of the United States, not a threat to that security. History demonstrates that tribes have permitted critical energy facilities to be used pending compensation negotiations even in cases where tribal rights-of-way have expired.
8. **Industry Partnerships – Best Practices.** Federal law and policy should provide positive incentives to tribes and industry to foster partnerships and the mutual alignment of economic interests related to energy development, transmission and distribution.
9. **Appropriate Deference.** As reflected in the Indian Tribal Energy Development and Self Determination Act of 2005, deference to tribal decision-making should remain a fundamental component of Federal Indian energy policy.
10. **Allottee Experience.** The creation of a Federal administrative valuation process for fixing tribal right-of-way compensation would be an affront to tribal sovereignty and, as shown by the disastrous Federal management of Indian allottee resources, would be a mistake.