

MORONGO  
BAND OF  
MISSION  
INDIANS



A SOVEREIGN NATION

February 5, 2007

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

**VIA FEDERAL EXPRESS  
AND E-MAIL:  
IEED@bia.edu**

RE: Comments on Section 1813 Rights of Way Study (December 21, 2006)

Dear IEED:

The Morongo Band of Mission Indians (hereinafter “Morongo”) was pleased that the December 21, 2006, draft of the 1813 Rights of Way Study to Congress incorporated many of our previous comments. Specifically, we are encouraged to see the Departments of Interior and Energy (hereinafter “the Departments”) acknowledge that deference to tribal control, consent, and self-determination is necessary in order to fulfill the federal government’s trust responsibility. Morongo also supports the Departments’ findings that the negotiation of rights of way across tribal lands between Indian tribes and energy companies does not result in any significant increase to energy costs to consumers nor is the existing policy of negotiation a threat to the reliability of national energy supplies, or national security. Morongo is generally satisfied with the draft report and its findings. Morongo’s previously submitted written comments, as well as presentations and remarks made at the public meetings are incorporated herein by reference.

On behalf of Morongo we would like to submit the following specific comments to the Section 1813 Draft Report to Congress dated December 21, 2006.

**Section 2 National Energy Transportation Policies Related to Grants, Expansions, and Renewals of Energy ROWs on Tribal Land**

Comment: Morongo agrees with the Departments’ discussion of eminent domain and the specific statutory exclusions of tribal lands from the exercise of eminent domain for energy rights of way. Congress’ continued exemption of tribal lands from legislation regarding the exercise of eminent domain further supports the Departments’ recommendation to maintain the current policy of negotiation between Indian tribes and energy companies. Morongo also applauds the Departments discussion of the Energy Policy Act of 2005 (hereinafter “the EPAct”) and the interplay between Title V of the EPAct , sections 368 and 1221.

**Section 3      The statutory and regulatory framework for granting, expanding, or reviewing energy ROWs on tribal land and the associated tribal sovereignty and self-determination interests.**

Comment: Morongo supports the Departments’ analysis and findings regarding the importance of tribal sovereignty and tribal consent to energy ROWs. We agree with the Departments that the federal trust relationship with Indian tribes is complex, and support the Departments’ finding that “the proper discharge of the federal responsibility to manage Indian trust assets also includes deference to and promotion of tribal control and self-determination.”

**Section 4      Analyses of Historical Compensation Paid for Energy ROWs on Tribal Land**

Comment: Morongo agrees with the Departments’ findings that a standard market valuation analysis for all energy ROWs on tribal lands is not desirable and that Indian tribes and energy companies may use alternative forms of compensation to address the specific needs of the Indian tribe and its members. Such alternatives to compensation may include tribal energy development and the provision of energy services to tribal members.

**Section 5      Standards and Procedures for Determining Compensation for Energy ROWs on Tribal Land**

Comment: Morongo agrees with the Departments that the appropriate method for determining compensation for a ROW is through negotiation between the interested parties. The Department's inclusion of several suggestions to aid negotiations is helpful and Morongo has already implemented some of the suggestions, including an Ordinance setting forth the process and procedure for energy ROW negotiations at Morongo, and development of a comprehensive ROW inventory for the Morongo Indian Reservation.

**Section 6      Issues Raised During the Study**

Comment: Morongo is satisfied with the Departments’ findings that “no difficulties associated with ROW negotiations have led to security or reliability impacts that affect consumer cost.” That the Departments were able to confirm and reinforce what Indian tribes have been saying all along – that there is only negligible impact to consumers’ energy costs from increased compensation for ROWs on tribal lands – is encouraging to say the least. We think it is important to note that the uncertainty that is a factor in energy ROW negotiations on tribal lands is no different than the uncertainty faced by the same energy companies when negotiating with any other local, county, or state governments. The uncertainty in the market price of energy resources, such as oil, has more impact on consumers, businesses, and the energy industry than any uncertainty experienced by energy companies when dealing with Indian tribes.

## **Section 7 Congressional Approaches to Address the Issue**

Comment: Based on the findings of the Departments as stated in previous sections, we find it curious that the title to Section 7 refers to approaches that Congress can take to address the issue. If the Departments' findings are that there is no evidence to support a significant increase in costs to consumers, a threat to national energy supplies or national security as a result of tribal consent and negotiation of ROWs on tribal lands, then there is no actual issue to be addressed. Morongo feels Section 7 attempts to address the energy industry's biased, skewed, and self-serving opinion that the difficulties experienced by energy companies (i.e. higher costs of doing business for energy companies) in negotiating ROWs with Indian tribes necessitates a Congressional legislative solution.

Although the Departments narrow the approaches that Congress may consider, and recommend further analysis of each approach prior to Congressional consideration, the mere inclusion of any approaches or options for Congress suggests that there is an issue that needs to be resolved. To clarify this section, we recommend that the title to Section 7 be changed to reflect that there is no current issue and that the options or approaches identified in the section would be to address future issues/problems should any ever arise.

## **Section 8 Recommendation of the Departments**

Comment: Morongo agrees with the Departments' observations. We note that the Departments correctly classified renewals as essentially new contracts and that energy companies should have anticipated contract renegotiation at the time they entered into the original contract.

Morongo generally supports the final recommendation of the Departments in Section 8.2; however, it is important to note that in considering Congressional legislation on a case-by-case basis, Congress must keep in mind the federal government's unique relationship with, and responsibility to, Indian tribes, and the considerable resources energy companies can expend, in comparison to individual Indian tribes, to influence legislation for their benefit. Any legislation benefiting an energy company in a case where negotiations are at an impasse may encourage other energy companies to negotiate in bad faith and not to deal fairly with Indian tribes with the expectation that Congress will step in to resolve any impasse.

Overall, Morongo is very pleased with the Departments' findings and recommendations in the December 21, 2006, draft of the 1813 Rights of Way Study to Congress. We appreciate the Departments' tremendous efforts in completing the 1813 Rights of Way Study and thank the Departments for their time and effort in meeting with

Morongo for government-to-government consultation and incorporation of comments into the final draft. Should you have any questions, please direct them to our legal counsel, Barbara Karshmer or Melissa Schlichting of Karshmer & Associates, at (510) 841-5056. Thank you.

Sincerely,

Robert Martin, Chairman  
Morongo Tribal Council