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January 31, 2007

Via E-Mail and First Class Mail

Attention: Section 1813 ROW Study
Office of Indian Energy and Economic Development
1849 C Street, N.W.
Mail Stop 2749 – MIB
Washington D.C. 20240
IEED@bia.edu

Re: Section 1813 Comments – Comments of the Quechan Indian Tribe on the Revised Draft Report to Congress Regarding Energy Rights-of-Way on Indian Lands

Dear Officials of the Departments of Interior and Energy:

On behalf of the Quechan Indian Tribe, we submit the following additional comments on the revised draft report to Congress regarding Energy Rights-of-Way on Indian Lands, published on December 21, 2006.

On May 15, 2006, the Tribe submitted comments on the earlier draft report issued by the Departments. The Tribe hereby incorporates its prior comments by reference, and has attached them hereto.

1. The Tribe Supports the Departments' First Concluding Recommendation.

The "recommendation" located in section 8.2(1) that energy rights-of-way on tribal lands should continue to be based upon terms negotiated between the parties is the appropriate recommendation. The Departments are correct that the circumstances in each right-of-way negotiation may vary substantially, that neither Indian tribes nor energy companies would benefit from legislation that required a uniform compensation formula in all cases, and that the status quo has been effective and remains the best method going forward.

2. The Departments' Second Concluding Recommendation Should be Recast to Include Consideration of Congress's Trust Responsibility toward Indian Tribes.

The "recommendation" located in section 8.2(2) that suggests potential Congressional intervention when a failure in negotiations has "a significant regional or national effect on the supply, price, or reliability of energy resources," should be rewritten. While the Tribe agrees that in rare circumstances it may be necessary for Congress to intervene and resolve a specific impasse, it should be recommended that Congress address any and all impasses in a way consistent with the United States' overarching trust responsibility. Congress has a fiduciary trust responsibility towards Indian tribes and a duty to ensure that federal licensees do not misappropriate, or cause harm to, tribal lands. Case-specific Congressional intervention should be consistent with this trust obligation. Case-specific legislation must preserve tribal sovereignty over tribal lands and ensure that past wrongs, including unauthorized trespasses on tribal lands, are adequately resolved in the best interest of the Tribe.

3. The Tribe Supports the Findings in Sections 2.4, 3.4, 6.1.3, 6.3.3, and 6.5.3.

The Tribe agrees that the "most recent of the federal government's statutory and policy expressions, EPart Title V, encourages tribes to assume greater decision-making control over energy ROWs." § 2.4. The Tribe agrees: that the Departments "have a duty to assure that management of trust assets is in accordance with the best interests of the tribes and tribal members"; that "[a] tribe's determination of whether to consent to an energy ROW across its land is an exercise of its sovereignty"; that "[a]ny reduction in the tribe's authority to make that determination is a reduction in the tribe's authority and control of its land and resources"; that "[g]ranting a ROW on tribal land only with the consent of a tribe is in accordance with the federal policy promoting tribal self-determination and self-governance"; and that "[t]he tribal consent requirement has been virtually unchanged since 1951." § 3.4. The Tribe agrees that "total energy transportation costs are a small component of overall consumer energy costs . . . and that . . . no difficulties associated with ROW negotiations have led to security or reliability impacts that affect consumer cost." § 6.1.3. The Tribe agrees that "the vast majority of energy ROW negotiations are completed to mutually agreeable terms and conditions." § 6.3.3. The Tribe agrees that any undepreciated assets that are on tribal land when a ROW expires and renewal negotiations are underway is the "result of a full and open prior contract negotiation that the company should have anticipated when it entered into the initial contract and made additional and subsequent investments." § 6.5.3.

4. Tribal Land Should Not Be Condemned For Energy Rights-of-Way.

It is hard to imagine a situation where condemnation of tribal land for private purposes contrary to the Tribe's wishes would not be a violation of the trust responsibility. If condemnation were to be used, it should only be done in the most extreme situations. As the findings of the report show, such an extreme emergency situation has never presented itself, and there is nothing suggesting such a situation will occur in the future.

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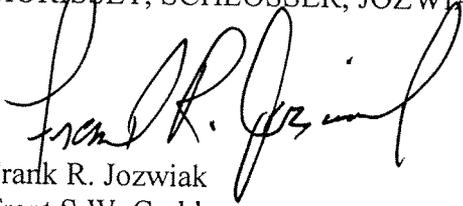
5. The Fifth "Departmental Observation" in Section 8 is Contrary to the Findings in the Rest of the Report, and Should be Stricken from the Report.

The "observation" in section 8.1(5), and the final sentence of section 6.4.3, are contrary to all the other findings in the report. Those statements are unsupported and should be stricken from the report.

Thank you for your consideration. The Tribe reserves the right to supplement these comments. Please include our office on all future notices and distributions of documents.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & MCGAW



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Trent S.W. Crable
Attorneys for the Quechan Indian Tribe

cc: President Mike Jackson Sr.
Vice President Keeny Escalanti Sr.
Members of the Quechan Tribal Council
Bridgett Nash-Chrabasz, Quechan Historic Preservation Officer

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May 15, 2006

Via E-Mail and First Class Mail

Attention: Section 1813 ROW Study
Office of Indian Energy and Economic Development
1849 C Street, N.W.
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Washington D.C. 20240
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Re: Quechan Tribe's Comments on Section 1813 Study of Energy Rights-of-Way
on Tribal Lands

Dear Officials of the Departments of Interior and Energy:

On behalf of the Quechan Indian Tribe ("Tribe"), we are filing the following comments on the study of energy rights-of-way on tribal lands under § 1813 of the Energy Policy Act of 2005.

1. Consultation. The government has failed to engage in government-to-government consultation with Indian tribes, which is required by the federal trust responsibility and applicable executive and secretarial orders. *See, e.g.* Executive Order 13175 (Nov. 6, 2000). Instead, the government is merely conducting public scoping meetings, open to the general public, to collect comments from the energy industry and others. This does not constitute meaningful government-to-government consultation, and fails to meet Indian tribes' specific needs. The need for specific consultation is particularly acute where, as here, tribal real property interests and tribal sovereignty over their lands are directly at stake.

2. True Agenda. It appears that the real agenda is to obtain eminent domain over tribal lands in favor of private energy companies. Energy-related rights-of-way run through many tribal reservations, including the Quechan's Fort Yuma Reservation. These rights-of-way traverse both tribal and allotted lands. Parties desiring a complete right-of-way usually need rights across both categories of lands. Congressional authority for condemning allotted lands already exists. 25 U.S.C. § 367. This study addresses only tribal lands, even though allotted lands are also affected. Congressional authorization to condemn tribal lands for private energy purposes would be a blatant violation of the United States' trust responsibility to the tribes and

the promise that tribal lands and tribal reservations will remain under the control and beneficial ownership of the tribes in perpetuity.

3. Tribal Consent to Rights-of-Way. Nothing in the comments submitted by non-tribal organizations, including the energy industry and others, address the fundamental issue of the tribes' right to deny rights-of-way across tribal lands. That right is inherent in due process and in the tribes' beneficial interest in tribal lands. The right is a function of tribal sovereignty and the right to self-governance. The United States cannot force Indian tribes to grant or deny a right-of-way. Congress should not overturn over 200 years of Indian policy and law to permit forced taking of tribal lands for private or governmental purposes.

4. Calculating Fair Compensation. Fair compensation for rights-of-way, when granted by the tribes, must include many factors beyond simply the fair market value of the lands taken. For example, in the case of pipelines, the government must consider the cost of environmental response, including personnel and equipment; the cost of degrading the reservation; the cost of destroying or impacting cultural resources; the comparative cost of alternate routes that would bypass tribal lands and tribal reservations; and the profits reaped by the government or energy companies. Further, in calculating compensation for future rights-of-way, tribes must take into consideration the unconscionable compensation paid in the past for many energy and other rights-of-way across Indian reservations.

5. Other Considerations. Money is not the only issue for tribes. Indian reservations are not for sale. There are impacts beyond the narrow strip of land comprising the right-of-way, such as impacts on tribal culture, tribal history, tribal society, tribal community, tribal sovereignty and tribal self governance. Indian tribes must remain in control of their lands, not private industry. The tribes must continue to have the right to withhold consent to rights-of-way when the non-monetary costs outweigh the benefits as perceived by the tribes.

6. The Study is Unnecessary. To our knowledge, no tribe has ever disrupted the flow of energy by failing to grant a necessary right-of-way across tribal lands. We are also unaware of an energy company having suffered serious economic harm because of right-of-way payments made to Indian tribes. In fact, the opposite is probably true.

7. Cost of Reservation Rights-of-Way. One industry commentator at the Denver meeting argued that energy companies pay more for Indian rights-of-way than for rights-of-way over state and private lands. If that is the case, the energy companies should simply bypass reservations and operate energy facilities on state, federal, or private land.

8. Experiences of the Quechan Indian Tribe. The Tribe has experienced negative past experiences from energy rights-of-way across the Fort Yuma Reservation. For example, it is unclear as to whether the Western Area Power Administration ever compensated the Tribe and allottees for constructing a power transmission line that crosses the Reservation. Moreover, Western's unsupervised maintenance of the powerline has destroyed the Tribe's cultural resources, *See, e.g., Quechan Indian Tribe v. United States*, No. 02cv1096 (S.D. Cal.).

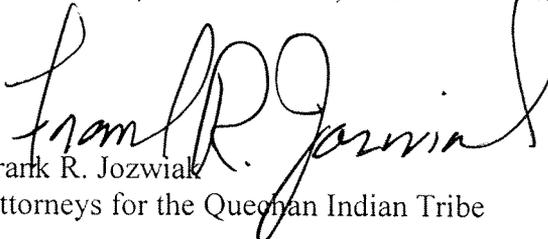
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Accordingly, it is not only the initial construction that harms Reservation lands, but also the continuing impacts throughout the life of the rights-of-way.

Thank you for your consideration. The Tribe reserves the right to supplement these comments as more information becomes available. Please include our office on all future notices and distributions of documents.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & MCGAW



Frank R. Jozwiak
Attorneys for the Quechan Indian Tribe

cc: President Mike Jackson Sr.
Vice President Keeny Escalanti Sr.
Members of the Quechan Tribal Council