



Arlen P. Quetawki, Sr.  
Governor

Carmelita Sanchez  
Lt. Governor

Carleton Albert, Sr.  
Head Councilman

Arden Kucate  
Councilman

## ZUNI TRIBE

P.O Box 339  
1203-B State Highway 53  
Zuni, New Mexico 87327  
Phone: 505-782-7021  
Fax: 505-782-7202

Charlotte T. Bradley  
Councilwoman

Edward Wemytewa  
Councilman

Joseph C. Peynetsa  
Councilman

William Tsikewa, Sr.  
Councilman

May 11, 2006

David Meyer  
U.S. Department of Energy  
1000 Independence Ave, SW  
Rm. 8H033  
Washington, DC 20585  
Tele: 202.586.3118  
Fax: 202.586.1472  
E-Mail: [David.Meyer@HQ.DOE.gov](mailto:David.Meyer@HQ.DOE.gov)

Bob Middleton  
U.S. Department of Interior  
1849 C. Street, NW  
Mail Stop 2749-MIB  
Washington, DC 20240  
Tele: 202.219.0740  
Fax: 202.208.4564  
E-Mail: [IEED@BIA.EDU](mailto:IEED@BIA.EDU)

Dear Sirs:

The Zuni Tribe submits the attached documentation regarding the Rights-of-Way study required by Section 1813 of the Energy Policy Act of 2005. The Tribe submits: 1) A letter dated January 20, 2006 with the Tribes response and comments to the anticipated study. 2) A Tribal Resolution documenting the Zuni Tribe's statement regarding the 1813 Rights-of Way study. 3) A statement of principals.

In addition, the Zuni Tribe is requesting that the Department of Interior and the Department of Energy together make a request to the Congress for a one-year extension on Section 1813 Energy Rights-of Way Study deadline date of August 7, 2006.

We appreciate the support and fair consideration of our tribal comments. We look forward to a continued collaboration of progressive and thoughtful dialog to fairly meet the requirements of Section 1813 of the Energy Policy Act of 2005.

Respectfully,

ZUNI INDIAN TRIBE

A handwritten signature in black ink, appearing to read "Arlen P. Quetawki, Sr.", is written over a horizontal line.

Arlen P. Quetawki, Sr., Governor

Enclosures

cc: Gwen Salt NCAI ([gsalt@ncai.org](mailto:gsalt@ncai.org))  
Tweedie Doe CERT ([t DOE@certreearth.com](mailto:t DOE@certreearth.com))



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CARMELITA SANCHEZ  
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ARDEN KUCATE  
Councilman

## ZUNI TRIBE

P.O. Box 339  
1203-B State Highway 53  
Zuni, New Mexico 87327-0339  
www.ashiwi.org

505-782-7000 (☎)  
505-782-7202 (☎)

CHARLOTTE T. BRADLEY  
Councilwoman

EDWARD W. WEMYTEWA  
Councilman

JOSEPH C. PEYNETSA  
Councilman

WILLIAM TSIKEWA SR.  
Councilman

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Officially known as the Zuni Tribe of the Zuni Indian Reservation

January 20, 2006

Office of Indian Energy and Economic Development  
Attention: Section 503 Rulemaking  
1849 C St., NW., Mail Stop 2749  
Washington, D.C. 20240

To Whom It May Concern:

The Zuni Indian Tribe of New Mexico is responding to your request to provide written comments pursuant to Section 1813 of the Energy Policy Act of 2005 (Pub. L. 109-58). Section 1813 mandates a study and report on issues related to the granting, expansion and renewal of energy rights of way on and across Indian tribal lands. This narrow window of comment period is not conducive for meaningful consultations for Indian tribes.

It appears this Indian Energy Policy is strategically set to meet the bare minimum requirements on the government-to-government consultation process. There is no room for tribal consensus building to really understand the impacts of the Tribal Energy Resource Agreements. How can we be successful in Indian Self-determination if we are hindered with regulations that we do not understand? Given these circumstances, will tribal input be seriously considered by the Secretary?

Current law requires that Tribes be paid no less than fair market value for right-of-way across their lands. In 1934, Congress enacted the Indian Reorganization Act (25 U.S.C. 476(e)) "to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe." In 1948, Congress expressly reconfirmed the tribal consent requirement for rights of way on tribal land in 25 U.S.C. 325. Thus standards and procedures are already in place for determining compensation and requiring tribal consent.

The tribal consent requirement is a fundamental aspect of tribal sovereignty. Indian tribes hold no power that is more vital to their continued existence than the power to control their remaining lands. Second, the Department of Interior has historically grossly undervalued the compensation for rights of way on tribal land. The tribal consent requirement is a critical component of the federal policy of tribal self-determination that has been so successful in correcting the abuses that occurred under earlier paternalistic policies. We strongly believe that the Interior and Energy Departments have a trust and statutory obligation to conduct this study in a manner that will bring these concerns to the forefront of Congressional consideration.

We are doubtful that a full and fair study of the issues presented can be accomplished in the time allotted. We recommend that the Departments jointly request an extension from the Congress of at least an additional year in order to do the subject justice. When extension is granted the Department needs to begin accumulating as much data as possible for study and analysis.

The format for consultation, we recommend, begin at the local Regional Level. The BIA Office of Indian Energy and D.O.E. need to improve current consultation process which, in our opinion, is not meaningful. In addition the consultation process should be expanded.

Items 3 and 4 of the Dear Tribal Leader dated December 15, 2005 discuss the proposed 2-day scoping meeting in February 2006 to include broad discussions of the four divergent topics of the study and then it proposes to establish workgroups to further refine the subjects. One concern is that persons working on "tribal sovereignty concerns" for example may have information and valuable insights on one or more of the other topics. This linear approach might be avoided if all of the workshops are conducted at that same place at the same time so that interaction among the workgroups can also take place.

The Zuni Tribe does not agree that conducting only three regional tribal consultation meeting in the months of May through mid-July is sufficient to be able to get an accurate feedback from tribal governments on the draft report. Better planning of and more than three consultation meetings should be planned within the timeframe, and consideration of location of the meetings are important to ensure high attendance of Indian tribes.

Each Tribe and each reservation is unique in its history, culture, and politics, a case approach will not give a representative sample or produce meaningful results to determine national policy. We believe that the purposes of the rights of way would have to be understood before an evaluation could be made.

The Zuni Tribe is in need of more information to evaluate the use of "a National Laboratory" to conduct the analysis. The study should be conducted by a neutral party with experience in the subject matter of tribal government and energy rights of way. Some of the national laboratories are run by private contractors with strong connections to the energy industry. In addition, many national laboratories occupy former tribal lands that were taken from Indian nations in the last century for national security and development purposes. The national laboratories now assume ownership of the tribal lands upon and many tribal cultural and sacred sites. There are many examples that illustrate the lack of sensitivity of the national laboratories' officials and contractors. In recent years the Department of Energy was mandated to implement cultural resources protection plans. Only a few national laboratories have viable programs and the Department of Energy budget for historic preservation officers no longer exists. In short, tribes have reason to question whether a National laboratory will consider tribal concerns fairly, and we need to know more specific information.

The Zuni Tribe believe the time allotted for the study is far too short to produce a quality product, a product that would be useful to Congress and not be potentially detrimental to tribal interests. Federal law and policy on tribal consent for rights-of-way over tribal lands is well-established.

The Zuni Tribe is available to work with the Department as needed to secure a definitive and fair work product. We look forward to your decision to grant Indian tribes additional review time for a more meaningful consultation process.

Respectfully,

ZUNI INDIAN TRIBE

  
for Arlen P. Quetawki  
Governor

cc: Regional Director, SWRO



**ZUNI TRIBAL COUNCIL  
ZUNI, NEW MEXICO**

May 15, 2006

**RESOLUTION NO.** M70-2006-Q 050

**WHEREAS**, the Zuni Tribal Council consisting of the Governor, Lieutenant Governor, and six Tenientes is declared to be the legislative authority of the Pueblo of Zuni by Article V, Section I, of the Constitution of the Zuni Tribe; and

**WHEREAS**, the Zuni Tribal Council is empowered to represent the Tribe, and act in all matters that concern welfare of the Tribe pursuant to Article VI, Section 1 paragraph d, of the Constitution of the Zuni Tribe; and

**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 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.

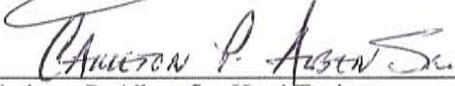
**BE IT FURTHER RESOLVED**, that the Governing Body directs that a copy of this resolution be forwarded to the Departments of Energy and Interior for inclusion in the record related to the Right-of-Way Study.

**BE IT FINALLY RESOLVED**, that the Governing Body recommends that the Department of Energy and Interior request a one-year extension from Congress on the Section 1813 Energy Rights-of-Way Study deadline date of August 7, 2006.

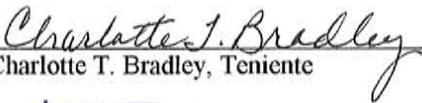
**ZUNI TRIBAL COUNCIL:**

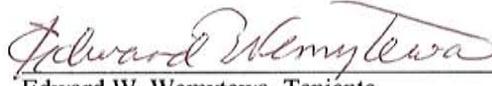
  
Arlen P. Quetawki Sr., Governor

ABSENT (Excused)  
Carmelita Sanchez, Lt. Governor

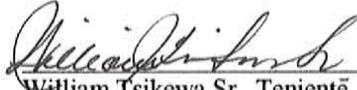
  
Carleton P. Albert Sr., Head Teniente

ABSENT (Excused)  
Arden Kucate, Teniente

  
Charlotte T. Bradley, Teniente

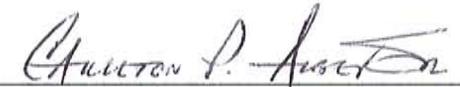
  
Edward W. Wemytewa, Teniente

  
Joseph Peynetsa, Teniente

  
William Tsikewa Sr., Teniente

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Zuni Tribal Council at a duly called meeting at Zuni, New Mexico where a quorum was present and that the matter was decided by a vote of 6 for and 0 against on MAY 15, \_\_\_\_\_, 2006.

  
Carleton P. Albert Sr, Tribal Secretary  
Zuni Tribal Council

APPROVED / DISAPPROVED

  
Arlen P. Quetawki Sr., Governor  
Pueblo of Zuni

5-15-06  
Date

## 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 2000 years. The tribal consent requirements 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 cost 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 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.