Leech Lake Band of Ojibwe
George Goggleye, Jr., Chairman
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January 9, 2006

Attention: Section 1813 ROW Study
Office of Indian Energy and Economic Development
1849 C. Street, NW, Mall Stop 2749-MIB
Washington, DC 20240

Re: Energy Policy Act 2005 Section 1813

To Whom it may concern:

The Leech Lake Band of Ojibwe is totally opposed to granting the Secretary of the Interior the authority to approve energy right-of-ways on the Leech Lake Reservation.

The Leech lake Band of Ojibwe (Band) as a sovereign government has the civil regulatory authority over all activities related to its land base including pollution sources that may potentially impact the health, welfare and economic well being of our population or the quality of our reservations environment. The Band's authority to regulate these activities is derived from two principal sources. One source is the Band's proprietary rights; the Band has all rights and powers of a property owner with respect to Tribal property. A more fundamental and pervasive source, however, is the Band's inherent sovereignty, which includes the power to regulate the use of property on the Reservation. *See Powers of Indian Tribes*, 55 I.D. 14 (1934), reprinted in I Opinions of the Solicitor 445, 467; Dept. of the Interior, *Federal Indian Law* 440 (1958).

Like any property owner, the Band may control activities on lands it owns in fee or which are held by the federal government in trust for the benefit of the Band. *See Morris v. Hitchcock*, 194 U.S. 384 (1904); *Barta v. Oglala Sioux Tribe*, 259 F.2d 553, 556 (8th Cir. 1958). The Band's holdings on the Reservation are, consequently, a significant source of regulatory power. As a proprietor, the Band may condition entry upon its lands in compliance with Tribal regulations. To the extent that the Band may choose to permit construction activities, mineral development, or other pollution-causing conduct to take place upon such lands, the Band may, by contract or otherwise, require compliance with Tribal pollution-control regulations.

Thus, if contracts are entered into, they may include mechanisms to implement pollution-control regulations. For example, the use of best management practices; submission to Tribal inspection and emergency measures, and agreement to pay fines for noncompliance can be made conditions of Tribal leases or other development agreements.

In addition to its proprietary rights, the Band derives regulatory powers from its sovereignty. "Perhaps the most basic principle of all Indian law" is that the powers of Indian tribes are the "inherent powers of a limited sovereignty which has never been extinguished." Powers of Indian Tribes, I Opinions of the Solicitor at 447. *See Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134, 152-54 (1980); *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 560-61 (1832). A Tribe's inherent sovereign powers extend to both its members and its territory.

There are already a number of gas and crude oil pipelines that traverse the Leech Lake Reservation. These pipelines are old and some have had a significant number of ruptures both on and near the Leech Lake reservation over the past couple of years.

Article I, Section 3 of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, approved by the Assistant Secretary of the Interior on March 3, 1964, empowers the Tribe "to conserve and develop Tribal resources and to promote the conservation and development of individual Indian trust property, to promote the general welfare of the members of the Tribe; (and) to preserve and maintain justice for its members."

Article III, Section 2 provides for the establishment of the Reservation Tribal Council (RTC) of the Leech Lake Band to serve as the governing body of the Leech Lake Reservation. The authority of the Reservation Tribal Council extends to the boundaries of the Leech Lake Reservation and the Territories ceded by the Treaties of 1837 and 1854 where hunting, fishing, ricing and gathering rights were reserved to the Leech Lake Band and its members.

To that end, in 2000, the Leech Lake RTC found that an environmental emergency existed and that a Tribal Hazardous Substance Control Act should be adopted. They also found that the proposed Act should contain hazardous waste clean-up standards that were sufficiently stringent to protect the health, welfare and economic well being of the Reservation Population and the quality of the Reservation Environment.

The RTC also determined that a Tribal Hazardous Substance Control Act would not adequately protect the health of the Reservation Population and the quality of the Reservation Environment unless it applied with equal force to both Band members and non-members, and addressed present releases of hazardous substances in addition to past releases of hazardous substances that continue to pose a substantial risk to human health and the quality of the land, waters and resources of the Leech Lake Reservation.

Accordingly, pursuant to its express authority under the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, its inherent sovereignty, and the powers afforded it under the statutory and common law of the United States, the RTC in 2000 adopted the HSCA as Tribal law.

The Band finds it unconscionable that Congress has through passing P.L. 109 –58, caved into the pressures of Corporate America. The energy company's proposal to amend 25, U.S.C. 324 and 25 C.F.R. 169 was clearly an attempt to circumvent Treaties between the Federal Government and Individual Tribal sovereign governments.

The trust responsibility owed by the Executive branch of the federal government to the Band requires that special consideration be given to the Band's interests and insures the close involvement of the Band in making decisions affecting Reservation lands. The trust responsibility doctrine derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. The doctrine imposes fiduciary

standards on the conduct of the executive, as carried out through executive agencies like the Department of Interior (DOI) and the Department Of Energy (DOE). The executive and its agencies must act with care and loyalty, make property held in trust for Indian Tribes income productive, enforce reasonable claims on behalf of Indians, and take affirmative actions to preserve trust property.

The Energy Policy Act of 2005 (P.L. 109-58) requires the secretaries of DOI and DOE to provide congress with a study regarding right-of-ways on tribal land by August 7, 2006. The methodology of this study is critical.

The Leech Lake Reservation concludes by stating that historically the Department of interior, Bureau of Indian Affairs has failed many times to carry out its fiduciary responsibility as evidenced locally by the loss of land, timber and proceeds from the Nelson Act cessions on the Leech Lake Reservation in the 1900 and by the Cobell case going on now.

We hope that you can understand our distrust that the Department of interior will look out for the best interests of the Leech lake Band or Tribes across the Nation.

Sincerely,

George Goggleye, Jr., Chairman
LEECH LAKE BAND OF OJIBWE