



**SAN XAVIER DISTRICT**  
**OF THE**  
**TOHONO O'ODHAM NATION**

2018 WEST SAN XAVIER ROAD • TUCSON, ARIZONA 85746  
TELEPHONE: (520) 573-4000 • FAX: (520) 537-4089

January 18, 2006

Sent by email: [IEED@bia.edu](mailto:IEED@bia.edu)

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

Re: RESPONSE TO REQUEST FOR PUBLIC COMMENT  
Energy Policy Act 2005, Section 1813 Study

Greetings:

I am Chairman of the San Xavier District Council, a political subdivision of the Tohono O'odham Nation, and write on behalf of the Council. The District is co-extensive with the San Xavier Indian Reservation, which is adjacent to the City of Tucson. Several natural gas and electric power lines cross tribal and allotted lands under the jurisdiction of the District.

Initially, you should know that we strongly oppose any change in the law governing the acquisition of rights-of-way across Indian lands which would reduce the property rights and sovereignty of tribes and their members. We understand that Section 1813 requiring a study of these issues arose out of an attempt by "National Energy Interests" to vest the Secretary with authority to grant rights-of-way to energy interests without tribal consent. We view with great skepticism any process which gives to energy interests leverage or opportunity to seek regulatory or legislative changes for their benefit. From this basis, then, I submit the following comments addressed to your current question on the proposed work plan for the study required by Section 1813.

We believe that energy interests are resistant to current rates of compensation because tribes are now insisting more regularly that such compensation be fair market value. Tribes and allottees, particularly those with the sophistication and resources to retain independent appraisers, are finding that present market values are well above those to which the energy interests have become accustomed. Present law and practice is working in protecting all interests. Points 2 and 3 of your work plan appear to place



Section 1813 ROW Study  
January 19, 2006  
Page 2

emphasis on determining historical rates of compensation. My comment is this, that historical rates should not determine current fair market values for rights-of-way and other takings.

Secondly, I note that items 5 and 6 of the work plan calls for input and public hearing to receive tribal input. I would urge that you expand the opportunities for direct input from tribal interests, with more than three regional meetings. I am mindful that Congress has given you only a short time to accomplish this substantial project; however, with only three regional meetings, the opportunities for smaller tribes and bands to attend and comment is unfairly limited.

Thank you for this opportunity for comment.

Sincerely,

*Austin Nunez*

Austin Nunez, Chair  
SAN XAVIER DISTRICT COUNCIL,  
Tohono O'odham Nation