



Department of Energy
Western Area Power Administration
P.O. Box 281213
Lakewood, CO 80228-8213

JAN 23 2006

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

RE: Congressionally Mandated Study of Energy Rights-of-Way on Tribal Lands

To Whom It May Concern:

The Western Area Power Administration (Western) is pleased to provide the following in response to the December 29, 2005, *Federal Register* notice requesting comment about how to proceed with implementation of section 1813 of the Energy Policy Act of 2005.

Western is a Department of Energy power marketing administration and is responsible for ensuring the delivery of electric power to customers located in 15 western states. Western owns and/or operates over 17,000 miles of high-voltage transmission lines and numerous support facilities, including substations, communication sites, switchyards, and meter sites. This also includes thousands of miles of access roads needed to maintain the transmission lines and support facilities.

Tribal lands are scattered throughout the west, and with the breadth of Western's transmission system, it is inevitable that some of our rights-of-way traverse these tribal lands. Many of the tribal land rights-of-way date from the 1940s and were agreements entered into by the Bureau of Reclamation and the Bureau of Indian Affairs. Many of the older tribal land rights were term limited to 50 years, and over the next 15 years, Western will be renegotiating new rights-of-way on these tribal lands.

Western has always negotiated for tribal land rights based on an appraisal consistent with federal guidelines, which appraises just compensation based on the fair market value of the land rights, and their diminishment in value due to the Western project. The outcome of recent negotiations for renewal of existing rights-of-way on tribal lands, however, has been considerably more than fair market value. In a number of instances, the tribes have wanted to negotiate not on land value, but on electrical capacity, electrical improvements, a share of the transmission line revenue, and for one dollar less than the cost of relocating off tribal lands.

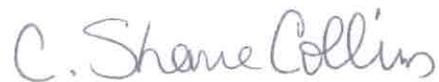
Western is also required to obtain rights-of-way issued in perpetuity, but the tribes have indicated an unwillingness for a non-term permit, and talk instead about a 10-year, 5-year, or even a 1-year term. Another concern is the length of time it can take to negotiate renewal of an existing right-of-way. Typically, negotiations for an easement

across private lands or a reservation on public lands can take 6 months, but we have already negotiated with some tribes longer than 5 years. One method for streamlining this process would be to develop timelines for any procedures and deadlines for responses, and also to set forth the consequences of a failure by either party to respond to an inquiry or to meet a deadline. For example, a failure to respond could be deemed concurrence.

Western is willing to participate in the scoping process, and can provide specific information about how negotiations have proceeded in the last decade. Valuation techniques, perpetual versus term rights, negotiation times, and response deadlines are our main concerns regarding rights-of-way on tribal lands and are areas where Western would like to provide input and help establish guidelines and procedures.

If you have any questions, or need additional information, please contact Susan Starcevich of this office at (720) 962-7275 or starcevi@wapa.gov.

Sincerely,

A handwritten signature in cursive script that reads "C. Shane Collins".

C. Shane Collins
Natural Resources Manager