

**Energy Policy Act of 2005, Section 1813 Study on Indian Land Rights-of-Way:  
Transcript of Comments made on the 1813 Draft Report at the August 30, 2006  
Public Meeting at Albuquerque**

BOB MIDDLETON: Thank you all for attending this morning. This is the fourth meeting that we've had after the release of the draft Section 1813 report. Last Thursday, we had a national meeting in Denver that was well attended. On Friday, we met in Salt Lake City for a government-to-government design meeting. On Monday, we met at Cabazon in California for a government-to-government meeting, and this is the third government-to-government design meeting that we're having on this issue.

The intent of this session is to have about an hour to two hours of open discussion for people who would like to speak, and then we'll break down into government-to-government consultations with individual tribes and the Department of Energy and the Department of Interior.

We have sign-up sheets out front, and if you didn't sign in as attendees, we'd appreciate if you would, because we're trying to keep an accurate record of the attendance at the various meetings. In addition, there are two other sign-up sheets. If you would like to say something during the open mike session, we have a sign-up sheet for that. And if you would like to have a government-to-government consultation, we have a sign-up sheet for that also. And we will list off the speakers in a few minutes as people sign in.

First of all, we'd like to thank everybody for all of their efforts and attendance at the various meetings and submitting written comments. I think both departments are really pleased at the quality of the comments that we received, as well as the thoughtfulness that went into preparing those comments, and I know the time and energy

that went in to provide us with information that we need to do the best job possible in our report to Congress.

I do have to make mention of one news report that is actually out there that has passed on some incorrect information. Our deadline for submitting written comments for the draft report is 10:00 a.m. on September 4. And I know that there were some reports out in the press that indicated that the deadline was September 29, but that is incorrect. September 29 is the deadline for us to provide Congress with our final report. And I know that this is an aggressive schedule, but the federal registered notice that we sent out indicates actually September 1 as the deadline for submitting written comments. But based upon some information that was provided to us, we decided to extend that to September 4. We realize that this is a holiday, but our original intent was to get all of the comments on September 1, have us have an opportunity to digest them and read them during the holiday weekend, and then hit the ground running, making preparations for the final report on Tuesday morning. But obviously we had some people that also desire to work on the holiday weekend, so we did extend the deadline to 10:00 a.m. September 4.

Now with that being said, that doesn't mean that if you submit after that, there's no possibility of comments being considered, but what we will guarantee is that if we received your comments by 10:00 a.m. September 4, we will have an opportunity to read, discuss, and incorporate your comments into our final report. Anything that comes in after that, we will attempt, to our best ability given the time and resources available, to also incorporate those comments. However, we just can't guarantee it.

You have to excuse me a little bit too. I've got a little bit of a sore throat after all these meetings, and I'm struggling a little bit.

I think everybody is aware that Congress asked us to take a look at essentially four parts of the issue. They asked us to do a historical analysis of compensation for rights-of-way, implications for tribal sovereignty of energy rights-of-way, implications on national transportation policies on rights-of-way, and then asked us to provide recommendations for how we could value energy rights-of-way across tribal lands.

For the historical analysis, after taking a look at the tens of thousands of energy rights-of-way that actually cross tribal lands and the amount of time that was available to us, the departments decided that we would take a case study approach, where we would select what we believe would be representative cases of energy rights-of-way and do a more detailed analysis and more detailed study of those. Of course, we immediately ran into some concerns, because many of these energy rights-of-way have proprietary information that neither the tribes nor the companies would like to have released in public domain, which basically short circuited our ability to be able to look in detail in depth of a lot of energy rights-of-way. However, when we asked for volunteers to come forward to provide—to allow us to look into the books so that we could verify the information that was being collected for the valuation of energy rights-of-way, we had four tribes step forward and one company. And the Northern Ute, Navajo, Morongo, and—oops, what was the other one, Dave? Do you remember?

**SPEAKER:** Southern Ute.

**BOB MIDDLETON:** Southern Ute stepped forward and allowed us to get into their books and review the rights-of-way—energy rights-of-way across their properties. In addition, El Paso Natural Gas provided us with one study opportunity.

We actually hired a consultant called Historical Research Analysts, which are forensic historians. They have expertise and the ability to go in and look at data historically and be able to track and trace the evolution of historical events that would then lead to what our modern day interpretation would be of the valuation of those rights-of-way. And we're very grateful to HRA, because I believe they did a very good, professional job. And if you'll notice in the draft report, we have an appendix, which is their study. I know that the appendix is rather large, but at the same time, I would suggest that if folks really want to get a good feel for how the study was conducted that you do take some time and go through the appendix and not just read the synopses that we have in the body of the report itself.

As I mentioned earlier, the purpose behind the meeting today is to gather additional information for us to finalize the draft report and provide it to Congress on September 29. I realize that people would like to have more time in providing comments to us. However, if you take a look at the time schedule that we have, essentially we will have nine working days to digest and respond to the comments we have received on September 4. And then that gives us 10 working days once we have a draft final report together to move it through the review system over at the White House and OMB and within our departments. So it's a very aggressive schedule for us. We would appreciate everybody's understanding that essentially we have a schedule that dictates that we do things as quickly as we possibly can on both sides, both from your comments as well as our preparation of the final report.

One thing I do want to emphasize is that all comments are going to be weighed equally. We are recording all of the sessions and we will transcribe them. All of the

sessions will be—the transcripts of the sessions will be posted on our website where all of the information that we have gathered has also been posted. And if you haven't had a chance to look at this information, I'll give you the website address. It's <http://1813.anl.gov>. And essentially, everything that we have collected in response to this study is posted on that website, and we will be turning around the transcripts of these meetings as quickly as we can to get those posted as well.

All of the comments, whether you make a comment here verbally, or you submit comments in writing, will be weighed equally. We're taking extensive notes on all of the discussions that are being held, both in the government-to-government sessions, as well as in open session. And we will take all of these comments and evaluate them for our purposes when we move the report from a draft to a final version.

With that being said, there are things that you can do to help us. We appreciate the fact that people would like to talk and explain why things are important to them. However, if you could make the effort to let us know up front in any written comments that you have what is important to you, what you liked about the report, what you didn't like about the report, or any other suggestions, it helps us, because we will understand right away what is important to you and what you want to tell us in your written comments. And then we will continue to read on, if you would like to give us some additional information that forms the basis of this opinion that you have. But if you could up front tell us what is important to you, that helps us focus ourselves when we read through the report—your comments—and we don't have to go in and try and discern on our own what we believe is important to you.

Also, if you look at the report, you will notice that although Congress asked us for recommendations, we, between the departments, once we looked at the amount of time we had and the amount of information we had, and the resources we had to bring to bear on the study, we decided that our best path forward was, in fact, to provide options to Congress. And so the draft report contains five options that we believe run the spectrum, allowing Congress to discern what they would like to further investigate and what they would like to then pursue. We realize that these five options are options that we have developed between the departments and based upon discussions we had earlier in the two national meetings we held in Denver. However, it is highly likely that there may be other options out there that are just as viable. And if you believe that you have an option that you would like to see included, we would welcome the opportunity to take a look at that, and we invite you to submit any additional options to us in your written comments.

Essentially, since this is the third of three government-to-government meetings and the fourth of the meetings following release of the draft, it's the last meeting we're going to be having. The next steps are that we will travel back and we will, between the departments, review our notes. We'll have some early discussions on what we heard, what we believe are important issues that we need to address, how we're going to organize ourselves and get ourselves set up to address not only the comments we've received so far, but also the comments that we anticipate will be coming in by 10:00 a.m. on September 4. Our schedule, as I mentioned, is to complete a draft final report within the next two-week period after the 4th, and then start the draft report and the review process for the final two weeks of September and deliver a final report to Congress on

September 29, the last day that they're in session. Darryl, do you have the list? David, would you like to say anything from DOE's perspective?

DAVID MEYER: Well, Bob has covered the landscape pretty well, but I want to add my thanks on behalf of DOE to the people who have worked with us very systematically and thoroughly and provided us with an immense amount of useful and relevant information. Without that input, we wouldn't have been able to produce the report that Congress has asked us for. So I look forward to the discussion today and to hearing your views, and thank you for coming.

BOB MIDDLETON: And now, rather than us continuing to talk to you, we would like to have the opportunity to hear from you and hear your comments. I will—we have approximately 15 folks that would like to speak. So what I'll do is I'll read off three at a time, if you could be prepared to come up. We have a standup mike over here, if you would like that. The podium is available if you're more comfortable using the podium. And what we'd like to do is, Dave or Senator—Senator Campbell would like to say a few words prior to us starting. Then following Senator Campbell, Brian Collins would be first on the list. And the governor of Isleta Pueblo, Robert—I can't read the writing too well—Benavides. And then Rob Roberts from PNM will follow Senator Campbell.

SENATOR CAMPBELL: Thank you, and welcome to Albuquerque to our folks from Washington, DC. This is, I think, the sixth time that I've attended these meetings since they started, and frankly, I've spoken at each one. At each one I spoke and I've thought, "Well, I've said what I believe about it, and that's probably enough. I won't speak again." And then something kind of comes up and I end up speaking again. And I wanted to—I wasn't going to speak at this one, because I'm sure some of the things I'm

going to say are redundant and have already been made a part of the record, and it probably just, you know, may be more than our friends from Washington can bear to hear me talk again. But everywhere we go, there's a different group of Indian people in the room. And I think that's why it's important to repeat things over more than once, because the people who are attending in the room, some of them, this is the first and only time that they've dealt with this issue. So I hope other Indian people who have spoken at the other forums will also come forward and speak today.

The first couple times I spoke, the summary of 1813 was not done yet. The last time—last two times I've spoken, it was done, so I had a chance to look at the summary a little bit. And I'd like to just reflect a little bit on the summary too. Many of you know that I was very active in writing the—I should say, through our terrific staff—in writing the Indian section of the Energy Bill, which is now the law of the land. But unfortunately, that bogged down in conference two times while I was still the chairman of the Indian Affairs Committee. It didn't get passed, and to our benefit, Senator Domenici, our great senator from New Mexico who has always in the past been so good on Indian issues, picked up that Indian section and included it in the Energy Bill, and it did pass. But as you know, this Section 1813 was not part of the Indian section. It was put in there kind of at the last minute in conference, as I understand it, and here we are living with it. But it points out, from a general standpoint, why Indian people have got to be more involved, because even this day and age, after all the bad things that have happened to our people in the history of this nation, we've still got things being snuck through in the United States Congress that land on us without us knowing it's coming, just blindsiding us once again. And I get very upset with that, as you do too.

In looking at the report, though, that will be turned into final report—this is the draft report—I think there are probably some things in there that we could sigh a little bit of a sigh of relief about and probably some things that could have been improved. And I don't want to sound too negative, but unfortunately, I have focused on some of the things I thought could have been improved.

You know, we live in what most of us believe is a free market society. And we always hear that: Let the market decide. If it's not good, people won't buy the thing, and that's the way it'll work. We don't need to legislate from Congress price fixing or what you can charge for your motels or your meals in a restaurant, or things of that nature. We let the market decide. And the free market and the competition within the market usually keeps the price down to a level that people can afford. I keep thinking that why shouldn't it be that way with pipeline companies too? It's generally that way with the energy companies. Free market tends to decide, although as the big ones gobble up the little ones and there's less and less competition, sometimes that doesn't work quite as well as the concept of it. But it seems to me with these huge prices that energy companies are making in the last couple of years—my gosh, stop at any gas pump, even though that doesn't deal directly with our pipeline issue across reservations. It certainly tells you that energy companies are not hurting. And so, certainly, some of the fallacies that were promoted first in the first couple of meetings that somehow Indian tribes might be responsible for any kind of any increase to the end buyer in New York City for natural gas, I think that's been pretty well disproved in this study and should have been, because most of us right from the very beginning thought that was a red herring, and it should not have even been discussed as it was the first couple of meetings that we went to.

But there were some weaknesses in it. I guess it was really brought—one of them—to my mind just a little while ago when we were having breakfast and the president of the National Congress of American Indians, Joe Garcia right here from New Mexico, told us in his Pueblo that years and years ago, a highway went through, and they were paid the magnificent sum for that right-of-way of \$1.00. One dollar. Not cost-of-living added to it every year up until now. One dollar is what they got and \$1.00 is what they're stuck with.

And unfortunately, you might ask, “Where the heck was the BIA?” Where was the Bureau during those days when their responsibility was to try to protect us from that being used by outside industry? Well, they were absent. They were AWOL. They weren't there in the case of Joe's Pueblo, and very frankly, I don't think they were there in most of our so called negotiated rights-of-way with pipeline companies. They weren't there. And in fact, unfortunately in some cases, they were kind of equal partners to writing the agreement with the pipeline companies without any input from the tribe whatsoever. I don't think that this report reflected that very well. It should have. There should have been some footnotes about the historical malfeasance of the Bureau, or certainly how we got taken to the cleaners on some of these rights-of-way, whether it was pipelines or any other—power lines, or you name it. Roads, in the case of Joe Garcia's Pueblo. There should have been something to reflect how bad it was and how badly we got used in our history. That wasn't in there, but certainly, it's our responsibility, I think, to bring that out.

I don't think there was anything in there that really referred to any of the acts going clear back to the 1887 General Allotment Act, or any succeeding ones right up to

the Self-Determination Acts that really reinforced tribal sovereignty and the right to make determinations of who comes on their land. That's been reinforced over and over in succeeding legislation after 1887, but it was not reflected, I don't believe, in this study. I think it should have been.

I don't think that the market value of determining value for a right-of-way reflected the difference between Indian peoples' feelings, Indian peoples' beliefs and the outside world, which is sometimes based on what they call fair market value. Even with the federal government—you know, if the federal government buys a piece of land from a private party, the government is supposed to look at other pieces of land around it and say, "Well, the other pieces sold for x amount of money. Therefore, that's what this piece ought to sell for too." That's what they call fair market value in federal terms when they're going to buy land. You can't apply that logic to Indian country. You can't apply it primarily because of our religious beliefs. And you know as well as I do when a right-of-way—whether it's a highway, a pole line or whatever, a pipeline or whatever—the quickest and easiest and most inexpensive way to build that thing is a straight line between point A and point B. But what if it goes through a graveyard? Well, you know, in the non-Indian world, they move the graveyard. We don't do that in Indian country. Our ancestors and our people that have been returned to Mother Earth, that's where they're supposed to stay. And I think that the report did not reflect, you can't put a dollar value on that and should not put a dollar value on that. It has nothing to do with market value. It has to do with inherent and historic religious beliefs of our people.

I thought that also, as I've said at the last couple of meetings, there was a probably, in my view, a weakness on the study done by the Historical Research Analysis.

And I commend them for doing it. In fact, I commend the people that have had to sit through these meetings over and over and over, but they're mandated to do it by 1813, which is the law of the land now. That study is required by the law so they've got to be here. And they contracted with the Historical Research Analysis to deal with I believe it was five tribes, if I'm not mistaken. But when you have 565 and another who knows how many that want to be re-recognized from the rights that were taken away in the '50s under the Termination Acts—33 in California alone—when you have a sampling of less than one percent—in other words, five tribes out of well over 565, anybody that deals with statistics will tell you the narrower the sampling, the more invalid the thing is, the weaker it is. You have to have a pretty broad sampling—six or eight percent to get a—on almost any kind of a questionnaire, in fact, before you get a relative sampling of what is good for the whole groups that you're trying to study. So I'm not sure that that has a lot of validity. I'm sure they did their very best, but it just seemed to me that it was not taken into consideration.

There also wasn't taken into consideration—maybe it shouldn't have been. It probably wasn't. The DOE and DOI probably were not charged with this, but I need to tell you anyway because in Washington, everything that passes, there—it's like the laws of physics. There's an equal—you know, the theory of equal and opposite reaction. You've heard that one. And we call it the law of unintended consequences in Washington. Everything we put in place, since we don't have all the answers in Washington—no senator does, no congressman does, no one in the bureaucracy does. They do things on best available input, and they put something in place, and they wait, and boy, I'll tell you what. Guess what? After a few months, when it dribbles down to

the average guy in the street or the business or the farm or the Indian reservation, it doesn't fit very well. And so you get a reaction. They call that the law of unintended consequences.

And I can tell you right now, some of the unintended consequences of this study, number one, is going to be inflame the anger of tribes. I mean, they are of one voice on this right-of-way issue. That's been number one. And I think, number two, what it has done is jeopardize the ongoing dialogue between tribes and friendly pipeline companies, if I can use that word, who are now in the middle of negotiations, and it's kind of brought it to a standstill. Neither side is sure what they ought to do in their negotiations, because they don't know what this is going to lead to. And of course with the five options, one being do nothing, and the other option proceed with condemnation legislation, it puts everybody in kind of a limbo in our ongoing negotiations. And I can tell you that a lot more companies have had good working relationships with tribes than have had bad ones, and certainly, it's kind of poisoned the waters.

And I've mentioned this to the federal agents and mentioned it to tribal friends too that—I'll tell you, all the years I was back there, I was up to my neck in trying to find a solution for the Cobell lawsuit. They haven't found a solution for it yet, as you know. If I ever saw all the earmarkings of a future Cobell lawsuit, it's this right-of-way issue. I don't think tribes want that. I don't think the federal government wants it. I don't want it. I don't think the folks that are here representing DOE and DOI, they don't want that either. But when you drive people into a corner, I'll tell you, they'll fight back. And Indian people are no different than anybody else in that respect. They're going to fight back. They're not going to let this lie. They'll fight back. And if they don't get

satisfaction out of the hearings or the summary, or if there proceeds to legislation, I think the next logical stop is going to be the courts. I hate to see that happen. Thank you very much.

BOB MIDDLETON: If we could ask our next three speakers to be prepared, and first is Brian Collins, Robert Benavides, and Rob Roberts. I also ask—we have about 17 people who have signed up to speak. We ask that you try and keep your comments down to about 10 minutes if possible, and we more than welcome you to enhance any of those comments through the written word and submit it to us in written form. But we're trying to be fair to everybody. And in addition, if we look at about three hours of public comment time, that's really going to limit the time this afternoon we have for government-to-government consultation. So with that in mind, if we could have Brian come forward.

BRIAN COLLINS: Good morning. I appreciate the opportunity to present comments at this hearing. I am the senior tribal attorney for the Skokomish Indian tribe in western Washington. The tribal council felt strongly enough about the draft study and any future legislation concerning energy rights-of-way to send me down here to state its views. I have spent some time looking at the draft study. It contains some significant information. There is also significant information missing from that study. Now if you'll bear with me, I'll try to distill 82 years of history into 10 minutes.

One thing—I have to tell a story in order to make the tribe's point here. The Skokomish tribe is located—the reservation is located on Hood Canal, which is a 60-mile fjord coming off of Puget Sound. They're fishing people. They also hunt. In 1924, the city of Tacoma, Washington developed a hydropower project on the north fork of the

Skokomish River and for over 60 years dewatered that stretch of the river. The tribes relies on the fishery—on Chinook salmon, on Coho salmon, on chum salmon and sockeye. And the north fork of the Skokomish River is the most productive section of the river. All of the flows from the north fork were diverted over into a power plant operated by Tacoma Power. They killed the north fork of the river for 60 years or so.

Now, one aspect of that project was to build power transmission lines, power structures, and a roadway to transport electrical energy across the reservation. The city of Tacoma went through condemnation proceedings in state court, and they got a conditional judgment from state court condemning a right-of-way across Indian lands, trust and restricted. And the conditional judgment was good, and the judge ordered the matter should be referred to the appropriate officials within the federal government. The Department of Interior subsequently approved the right-of-way, and since 1924, Tacoma has been running electrical power across Indian land on the reservation. I think they paid several thousand dollars but nothing to the tribe. In early 2000, the United States filed suit against Tacoma, and in 2003, the Ninth Circuit Court of Appeals held that these rights-of-way were unlawful. So you have power structures, power transmission lines, and a road crossing allotted lands on the reservation. They are in trespass, and the tribe owns undivided interests in trust lands that they're crossing.

Also, since the roadway crossed a bog, Tacoma couldn't access its power lines, so it used a roadway across, I believe, five additional allotments in order to get down there. They don't have a right-of-way.

The tribe has been in litigation with Tacoma. Their license was granted in 1924 for 50 years, a minor part [ph] license to flood 8.8 acres of land. It expired in 1974, and

the tribe has been in litigation with Tacoma and with the United States over damages, destruction of the fishery, destruction of the treaty right, and a number of other bases for damages. In addition, the tribe has been deeply involved in FERC proceedings, and last week, the DC Circuit issued a very significant opinion concerning this project.

There is a lot more to tell you, but the tribe's concern is that this report does not deal with issues like existing trespass, which the Skokomish tribe has been dealing with squarely and has spent millions of dollars trying to protect its interests. Skokomish contains about 5,000 acres, the reservation. There are about 750 or so members of the tribe. It's a small tribe, and the tribe has spent millions of dollars trying to protect itself. Now, the Cushman Hydroelectric Project has had other effects on dewatering the north fork of the river. It reduced the flows in the main stem of the river. The main channel filled up with gravel, and now the fish can't even ascend the main stem of the river during normal low water periods. In addition, there has been flooding on the reservation such that the tribes can't even build homes on a good part of the reservation. It's had to spend enormous amount of money in order to build up to 200 homes for its members who currently have no housing.

So when we're looking at the impacts from energy rights-of-way, I think it's appropriate to look at the overall impacts of the entire project. Here we have a continuing trespass. And I would hate to think a report would limit the study to the cases described in the draft report.

There's another story to tell, and Skokomish is not the only tribe that has suffered from intentional trespass by utility companies, and the damages are extraordinary. In addition, right now, Tacoma, under the law, can't get a right-of-way across tribal land

that is trust land in which the tribes owns an interest. They have to deal with the tribe. If the law is changed, then it would seriously impact the tribe. And Congress needs to hear this. In order for this report to provide a balanced point of view to the Congress, it just must contain information concerning willful, knowing, bad faith, trespass. And we have probably between 50 and 100 bankers boxes from this litigation. There is a lot of information available, and I have a very brief time to tell this story, and maybe I haven't told it well.

On a followup to what Senator Campbell said on just compensation, there are a couple of points I would like to make. Normally, just compensation for trespass is considered the rental value of the land, or at the extreme end of that, the value of the land that's being condemned. Well, there's an exception to that rule, and it's been recognized in the common law that when the trespass is knowing, in bad faith, and the land is used to make a profit from that trespass, that the measure of damage should be the profits derived from that illegal occupation of the land. Here we have 84 years of illegal occupation of Indian land on the Skokomish reservation. I would suggest that a measure of compensation should be the power site value of the trespass. In other words, a percentage, at least, of the profits generated from the trespass, rather than, you know, the value of grazing land, which is virtually nothing.

The other things are the factors that come into computing compensation. For example, there are fishing sites that have been destroyed. There is a village that has been destroyed. It's under the water of Lake Cushman. There are sacred sites that have been disturbed and no longer can be accessed. There is the destruction to the tribe's infrastructure. And when you start destroying things like the social institutions of the

tribe and changing the tribe's social structure and adversely affecting the customs and traditions of the people, I would agree with Senator Campbell that you can't put a dollar value on that. So rather than a cookbook approach to just compensation, I would suggest to you that the report should contain some discussion about that. That the utility company needs to come talk to the tribe and talk to the people and understand their concerns.

Unless Congress gets accurate information that includes far more than the draft report contains, it could make a terrible mistake and adversely affect the interests of tribes in a very horrible way. I've been thinking about a case called *United States v. Mitchell* (*Mitchell II*). Breach of fiduciary duties, trust responsibility—we have pending cases for damages in the—used to be called the Court of Claims, the Court of Federal Claims now. And we have common law claims on appeal in the Ninth Circuit.

So this tribe is very active right now in protecting its interests, and it's taking a keen interest in the information going to the Congress. And so I hope that the Departments of Interior and Energy will include something in the draft report indicating that it doesn't tell the full story, not even a representative sample of the full story. There are a lot of tribes that have had similar experiences, and unless Congress hears that, they're not going to get a balanced view of what is really going on out there. Thank you.

**SPEAKER:** Governor Benavides.

**ROBERT BENAVIDES:** Good morning, governors, tribal leaders, visitors, DOI, and DOE. Welcome to New Mexico. Again, my name is Robert Benavides, and I am the governor of the Pueblo of Isleta. The Pueblo of Isleta has been involved in the study

process since the beginning. We presented two sets of written comments and attended the March and April scoping sessions.

We have several concerns about the draft report. First, let me say that the Pueblo supports the conclusion that there is no national level problem concerning energy rights-of-way on tribal land. The departments found no evidence that negotiations with the tribes have ever disrupted energy supplies or significantly increased consumer energy costs. They also found no reason to fear that the tribes might endanger energy security or cause significant increases in energy prices in the future. Unfortunately, this important conclusion is buried in the draft report. The final draft should state this clearly in the beginning of the report.

Second, tribal consent to any use of tribal land, including for energy rights-of-way, is a fundamental aspect of tribal sovereignty that has been recognized by laws, regulations, and Department of Interior practice for decades. The report must recognize that the tribal consent requirement is a long history.

Third, any change in the tribal consent requirement would be a major departure from this well-established policy. The evidence collected during the study does not justify a change like this. In the draft report, the departments included two options, option D and option E, that would authorize condemnation of tribal land and would do away with the consent requirement. In light of the conclusion that there is no national level problem requiring congressional action, there is no basis for including options D and E in the report.

Fourth, the draft report does not discuss the unique character of tribal land. It is not like the federal land or private land. Many tribes such as the Pueblo of Isleta have

lived on the same homeland for centuries. This land has cultural, historical, and religious significance. It contains sacred sites and natural resources that must be protected. This final report should fully discuss the differences.

Finally, plenty of the evidence was submitted by tribes to establish that the tribes have historically received unfairly low compensation. This was especially true when the BIA negotiated rights-of-way on behalf of the tribes. The draft report fails to conclude that tribes were under-compensated. In fact, it does not answer Congress's questions about historic rates of compensations for energy rights-of-way across tribal land. It is clear that tribes were grossly underpaid until the 1950's or later. The final report should say this clearly.

I am disappointed by the draft report because it shows that the department did not fully understand the concerns that they heard from tribes over and over again during the study period. [tape ends]

ROBERT BENAVIDES: ...will stand steadfastly on their positions of having to negotiate at the table as a fundamental right of our sovereign nations, as our friends in Washington make that same effort. Thank you.

BOB MIDDLETON: Now we have Rob Roberts. And I'll mention that now that Darryl has fulfilled his duties in helping people sign in and make sure people are aware of the process, he's now moving to his duties to help the speakers stay on time. Darryl will stand up at the end of 10 minutes, and we just ask people to be a little cognizant of it so that we can make sure we get to everybody and give everybody a fair chance. So when

Darryl stands, if people could just start wrapping up. And again, any written comments you submit will be weighed just as equally as the words that you speak. Thank you.

ROB ROBERTS: Thank you for giving me the opportunity to speak today. My name is Rob Roberts. I manage the right-of-way department for Public Service Company of New Mexico, also known as PNM. We're based here in Albuquerque. We are the largest provider of natural gas and electric services in the state. We have thousands of miles of transmission and distribution lines throughout the state, and many, many of those miles are located on tribal lands. We have right-of-way agreements with 17 different tribes that we deal with and that we have been dealing with. And I've been doing this for 20 years and working on these right-of-way matters, and I see a lot of familiar faces here in the room.

We also have 90 right-of-way renewals that we have coming up in the next 15 years, so we obviously have very keen interest in these proceedings and what the final product will be out of these proceedings. And I just want to make it clear from the outset that we have—PNM as a company, and myself individually—we have no desire to see eminent domain rights exercised over tribal lands. I'm a firm believer, as is our company, in the sovereign rights of the tribes, particularly when it comes to new right-of-way projects and pipelines and power lines on tribal lands.

What we would like to see, though, is some kind of certainty—a little bit more certainty in the right-of-way renewal process for all of the renewals that we have coming up ahead of us. My experience has shown each tribe is very unique and very different. They value right-of-way differently. They approach the negotiations differently, and their approval processes are all different. And so we never know and I never know what

the final outcome will be of a one- or two-year right-of-way negotiation until the final vote is taken in tribal council, because they are the defining authority with the tribes that we work with.

And so I would like for the study committee and the draft report to include one more option, and this is an option that I presented in the first Denver meeting this spring. I call it kind of a compromise option, I guess. I don't know how else to qualify it. But what I would like to suggest is that for new projects—any new projects that we have as an industry—and I think I'm going to put myself at odds with other people in the industry when I propose this. But for new projects, the process stays the same. Nothing changes. If we go out and we try to negotiate an agreement with the tribe we're dealing with the best we can, and if we can reach an agreement that satisfies the tribe and us, then that is great, and we will do that. If we cannot reach an agreement, then we would explore a build-around alternative, and if that works, that's okay. If we can't reach an agreement or if we can't do a build-around alternative because it's just not feasible, then we're just going to have to live with that, and we're going to have to work with our commission, as far as our obligation to serve our customers. But for new projects, we're saying, status quo, just leave it the way it is. We see no real problem with that.

But for renewals, I would like to propose again—and I would like to see this included as an option—that in order to bring more certainty to the process and also, I think, still recognize the unique sovereign status of tribes, that we have a solution. There was one that was in the report, an option, which is binding arbitration, and that's fine. But I'd like to call this a multiple appraisal option. Where perhaps you have the tribe go out and get their own appraiser, and we would go out and get our own appraiser, and then

they would select a neutral appraiser, and whatever that appraised value would come in at, then we would be willing to pay a multiple of that. And the multiple is something that we can talk about with the tribes or with the parties that are involved in this, whether it's two, three, maybe even four times what the appraised value is. That would not even be for a perpetual easement. If we were dealing with the private landowner, that would be in perpetuity, but with the tribes, we are accepting of the fact that terms are real world today. And so if we could have a process that would allow us to pay a multiple of fee value for a 20- to 25-year term, we think that is fair. And we would just like to see that considered by the committee in their draft report.

I'd like to thank you again for giving us the chance to speak, and I appreciate being here. Thank you.

BOB MIDDLETON: Thanks for your comments. Next on the list, we have Governor Garcia, President of NCAI. That will be followed by David Lester, Executive Director of Council on Energy Resource Tribes. And then followed by Vice-Chairman Honyaoma. Did I pronounce that correctly?

JOE GARCIA: [Indiscernible—speaking a Native American dialect.] Good morning, everyone. [Indiscernible—speaking a Native American dialect.] With all due respect, I simply asked for permission to speak, and if you nod your heads yes, I will proceed, and if you don't, then I won't. Do I see a yes nod? Thank you.

Thank you so much. Welcome to Ohkay Owingeh and Pueblo country. This is the land of enchantment, and for those people that thought this was in the desert, you're proven wrong this year, anyway. But we still have a drought and so we've got to be

careful. Thank you for being here, and I want to thank the departments—Department of Interior and Department of Energy—for being here.

Just a couple of points that I need to expand on. Number one, I agree with Governor Benavides that the number one point—the number one option that ought to be listed in the report ought to be that there are no changes are required for the national level. It's kind of hidden in the current report as it is, so if we can kind of build on that, that might be the more appropriate approach.

The second thing I want to bring out is that there is no mention whatsoever in the report about the differences and the diversities from region to region. And Governor Benavides touched on that a little bit, and that has to do with the Pueblo lands. The Pueblos have been here since time immemorial, so we don't have established reservations. It's sort of a misnomer when they refer to our land base as a reservation. It's not defined that way. It's a land base, and the authority comes all the way from the Treaty of Guadalupe Hidalgo, at which time agreement between the United States and Mexico by virtue of Spain, lands were transferred over to Pueblo people and the Pueblo nations. That's not mentioned whatsoever in there, so I think it's important to understand that when Pueblo lands are talked about, the federal government has that responsibility to delineate that this is Pueblo lands and that they have a basic agreement—a treaty if you will. It's unlike treaties like some of the plains, South Dakota, North Dakota areas. They are different, so that needs to be delineated.

Number three is the sample size. I think—I know a little bit about statistics and about numbers and whatnot. And when you do a study, a sample size makes a big difference in how you reach conclusions or even halfway conclusions. And so with the

589 tribes, or plus tribes, if you take a sample size of five, it does not work. And so, how can you draw conclusions, especially if they aren't the diversified areas?

As I mentioned, the Pueblo is one region. Even our neighbors, the Jicarilla Apaches and the Mescalero Apaches—they are not Pueblos, but we have diversity in New Mexico, not to also mention the Dine Navajo Nation that exists here in part of New Mexico. But if you compare from here to the northwest to the northeast to the southeast to the plains country to Oklahoma, California—there's a wide, diverse situation. And somehow, the sample size has to reflect that in order for it to have any kind of validity. So I think when you do validity checks on sample size as related to statistics, that study kind of falls apart. So it's important to recognize that and maybe put that up front, that we only have a sample size of  $x$ , whatever  $x$  happens to be, or  $n$ , in this case. Important piece.

And then the other thing is that negotiations, I think, is what tribes are doing now. And the fact that we are negotiating to our best interests, it's held against us. In the business world, that's what you do. You negotiate prices. You negotiate terms. You negotiate terms of agreements, length of agreements, costs, price of agreements, and whatnot. And if that's how we do business, then it shouldn't be held against us. It ought to be—that's what self-determination is all about for Indian country. And I think that the fact that if forced negotiations are placed upon the Indian people by the bureaucracy, then it's completely contrary to self-determination, self-governance, and is completely contrary to the sovereignty that we so strongly believe in, that we fight for every day.

So I think those are important things to remember. If I can quote—I think this came from 25 CFR 169.3. I can't remember those numbers. It's the Indian Right-of-

Way Act of 1948. Specifically and explicitly, it says: No right of way shall be granted over and across any tribal lands without the prior consent of the tribe. And that remains a strong statement that I think we need to continue to support. We can't drift any less away from that concept. And so I—that's what really number one is all about. Support and no change required. And so I think if we open up that act or any other acts, then it's almost like—I'll speak about IGRA [ph]. It's open season, folks, and I think we need to continue to battle that that should not happen when it comes to our land bases and the land base of our future—our grandchildren, their grandchildren—because we have to protect.

And the final one is the terms. I know that business people want to make their money, and they want to also get their investments back, and more beyond that, the profits, if you will. And that drives the terms like 40-year leases, 50-year leases. And I think that a lot of the tribes have been able to negotiate lesser terms—10 years, extended 5-year terms, 10 years, 15 years, 20 years. But it's something we need to stand steadfast to, and it's all part of business negotiation, sovereign nation to another nation. And I think that if we hold steady to that, then we will accomplish a lot more.

Thank you for the time. Thank you for the opportunity. I wish you all well. Be safe, and let the Great Spirit take care of all of you. Thank you.

BOB MIDDLETON: Thank you. David?

DAVID LESTER: Thank you very much for allowing me to share some of our views, and I'm very honored to follow the Governor of Ohkay Owingeh, President of National Congress of American Indians, and member of the CERT Board of Directors, Joe Garcia.

I want to build on some of the remarks I've made at other meetings. Like some of the other spokespeople, I, too, have attended most of the meetings. I see many of my bosses in the audience, and I want to acknowledge that if I misspeak or say something inappropriate, forgive me from the beginning. I'm still a young man compared to some of these, my leaders.

I want to say up front that with all of the, you know, problems of the report, the things that it doesn't have that it should, it's very clear that those who advocated that this study take place have had ample opportunity through this process to make their case. And if you read the report or particularly the data behind it, you will see that they have not made their case. On the contrary, the tribal data clearly refutes the underlying assumption that there is a problem that rises to the level of a political policy solution.

It's clear that some companies have learned to work with tribes in this modern area of tribal self-determination and tribal sovereignty, have learned to partner with Indian tribes, making the pie that is divided between the tribe and the company larger than a winner-take-all strategy of the past. And it's clear that some companies have not. Those that have not proposed an extreme termination solution to their business problem—to terminate political rights of native nations to solve the business problem. It seems to me that business problems ought to be solved through business solutions, not policy solutions. And how are business problems resolved between entities? Negotiation.

It's very clear. As Senator Campbell said, we live in a free society and an open market—willing seller and willing buyer. I'm glad to see that the Public Service of New Mexico has not joined that extreme crowd and is looking for something in the middle.

And I think that, you know, again, talking to Indian tribes directly rather than through a filter of the Congress and the agencies is a much more direct way of finding solutions. And that if PNM wants that solution, they ought to talk to the tribes that it's working with, the tribes that it has rights-of-way with, rather than legislate that solution for all tribes and all companies.

The other thing that I'd like to build on is the comment that the research questions themselves that are contained in the Energy Act assume that a problem exists. Therefore, the study moves forward with that bias, and the options presented in the report, in spite of the data in which—it's clear to me, anyway, and my analysis, that the data and information in the report supports only one option: The option to leave the status quo; to do nothing. None of the other options are supported by the information and the objective, verifiable data. But they're there. What should be added, though, and what's absent are options to incentivize the process. What are the options that would encourage cooperation in the marketplace as opposed to encourage conflict and disruption in the marketplace? Because, clearly, all the other options except the one to leave things as they are would create disruption, create conflict, and add unnecessary legal expenses to the emergency of Indian energy with our resources and our strategic lands in the marketplace.

What might those look like? Well, we could start by looking at the Indian Tribal Energy Development and Self-Determination Act, title 5 of the same law that mandated the study. It expands tribal governmental powers and creates incentives through tribal energy resource development organizations for tribes and companies to partner, and for those partnerships, to be treated as if they were tribal. And that's a powerful incentive,

particularly if that's coupled with the Bi-Indian [ph] Act and the provision in the bill which allows preference for Indian energy products to be sold to the federal government. Even though it doesn't give us a price break, it gives us a marketing advantage. And the federal government is the largest purchaser of energy, electricity, fuel, and other energy products in the world. What company wouldn't want to be an Indian tribe selling to that marketplace? Why not build on the incentives that are contained there? Rather than creating disincentives for cooperation, creating incentives for disruption, why not build on that? What it would take is sufficient money to build tribal capacity in the governance arena, as reflected by the tribal energy resource agreements, the tariff component, coupled with the tribal energy resource development organization, as well as the funding to do that project development that is so critically needed that plants the seeds that bring projects to fruition. There's a great opportunity here for building on the incentives in the act itself.

If the tribal proposals are accepted relative to this study and this issue, what happens? Cooperation and partnerships break out all over the country. If the proponents of curtailing tribal consent succeed, what happens? Conflict and market disruption breaks out. It's very clear—to me at least, and I think to most of the tribal and any objective observer—that public policy ought to encourage peace, cooperation, and efficiency in the marketplace rather than encouraging disruption and conflict among its constituency and in the marketplace that serves the constituency.

Thank you for the opportunity to share these views with you.

BOB MIDDLETON: Todd, vice-chairman of the Hopi tribe. Vice-Chairman will be followed by Lori Goodman, Dine CARE, and then Rita Willard of Dine CARE.

TODD HONYAOMA: [Indiscernible—speaking a Native American dialect.]  
Good morning, everybody. My name is Todd Honyaoma, Sr. I'm the vice-chairman for the Hopi tribe. I'm a member of the Spider Clan, and I am here on behalf of our tribe and other tribes also. I think we all need to unite on issues like this.

What I wanted to say—and I ditto what the past gentleman had already mentioned—was that Hopi has been involved in the study also. And according to our opinion, we've been studied for so long as tribes. We've been researched for so long, and I think it's time. There's some goods and some bads in this study, but I think we all need to, again from the tribe, that we need to oppose this issue. I think at the level that we're at, we're doing pretty good because of the consultation process.

But before I go on, I wanted to mention that I think if the government is wanting us to have these consultation meetings, I, for one, have traveled over almost 400 miles for a 10-minute presentation. And I think at this point, they should have gave us opportunity to speak as long as we could to give them a better idea of what we're doing, but 10 minutes is nothing. But I care for my people and I've gone almost 400 miles to be here with you and intend to stay this afternoon for the tribal consultation.

The other one is that I have read on the documents on where the consultation meetings were going to be held, and I don't see Arizona in there. As Arizona, we do have about 21 tribes, and we basically cover probably two-thirds, three-fourths of the state of Arizona as tribal lands. And I would have appreciated if we had the council meeting there also. I don't know how many here are from Arizona. I see our friends Navajo Nation here, but I don't see any further tribes down south like Tohono O'odham, Salt River, Apache. They're not here.

But I think everything is based on sovereignty. Self-determination was mentioned earlier, self-governance. I think that's how we control our own lands, within our own lands. I know you talked about negotiations. That comes as the individual wants to pursue rights-of-way in our tribal lands, and it's up to the tribe. If they want, they could agree to a right-of-way, and if they don't, it's their option. But I think in this section, if it is approved, the way I understand it is they're willing to come in and take away our—forget about the right-of-way consultation process. In my opinion, everything is based on money. Now with the gas rights-of-way that are being needed, for example APS. And I'm glad that PNM was here and they're willing to work with the tribes. That's the kind of negotiators we'd like to work with: People that are willing to negotiate and talk at our level. Not to go out and say, "Tribes, I don't care. We're going to build our right-of-way anyway."

The other thing I also wanted to mention was that there was a situation that happened I believe a year or two ago, and some of you are maybe aware of that, that I'd like to give an example of what I see this issue will probably go through the same kind, and that's with education. I've sat on the Hopi—Hote-well-a-baka [ph] becoming the school board of education for about four or five years, and we've been opposing this education realignment. We've been opposing BIA using ISEP funding for the students. We've been opposing this mid-level, high-level management restructuring type of things. We've even got as far as submitting resolutions to the tribal council. I heard last year that BIA went ahead and just did away with that consultation and enacted their intentions. I just wanted to let you know that that's not what I want to see in this process. They've already done it with education. I'm pretty sure they're going to do that with this.

But like I had mentioned earlier, I think we all need to unite together, and if we have to, approach the government. I know the individuals are here to do the process on behalf of Congress, but I think as individual tribes, we need to stand up and face them, because it's already happened in education. Right now, you've got mid-level going. You've got high-level management. ISEP money is being cut. Transportation money is being cut for our children. I don't think we need that. We need to educate our children. But I just wanted to give you this example, because it happened already.

And I understand that one of the northern tribes filed a lawsuit, injunction, and right now it's a stay. But I think other tribes that are impacted need to stand up and not have the government run over the tribes. There's been several declarations, executive orders issued by our presidents due to consultation, and that should be highly respected as our national leaders and given authorized by the Congress. That ought to be respected.

Another thing I wanted to mention is that the impacts if this is approved will impact our culture and our traditions. I know some of you probably have sacred sites within your reservations, and if this right-of-way kicks in, those are going to be disturbed then, and what are we going to run into? For example, eagles, eagle gatherings, or prayer gathering sites where you may have them. Those are some of the things that will be impacted if this section goes through.

So at this point, I want to highly recommend that this study be dropped, and let's have the tribes move forward with their own process and not have the government dictate to the tribes. I think it's about time that we turn things around. The government, as our trustees, ought to listen to us, not dictate to us, but in turn, as tribes, we tell them what we want because they are our trustees and obligated.

With that, I want to thank you very much. Go-kwa [ph].

BOB MIDDLETON: Thank you, Vice-Chairman. Lori Goodman.

LORI GOODMAN: Good morning. My name is Lori Goodman and I'm with Dine Citizens Against Ruining Our Environment, which is an environmental grassroots organization on the Navajo reservation. And I, too, would like to say this is the third meeting that we're attending, and unfortunately, the meetings that we have attended, we have been the only representative of the grassroots people, which goes to telling you the information that is not going out there to the very people that these laws and regulations being made will be impacting.

I also want to say that this section needs to be dropped. It's a skewed plan that favors the energy company. If they're going to even write in there that they're being taken to the cleaners by Indian tribes, give us some facts, because we have facts. On Navajo, we have Exxon in Aneth, Utah which made \$8 billion of profit. And what have they left? They have left the largest community in America, it was quoted in 1994, without a source of clean water. So this is what is left behind. And then we have Peabody Coal Company—same thing. Come in and displace 10,000 Navajos, with a \$500 million bill for the taxpayers—that's all of us. So this is where this is leading.

Why is this important to me? And I'd like to say the gentleman that spoke before me, we're talking about culture. I want to give an example. Just three weeks ago at the Indian market, my nine-year-old niece won second place for weaving. It was something that she had done over the summer. She had elders, you know, teaching weaving class to maintain our culture. So she was in the position of interpreting for the elders and for the little girls that did not speak English and the elders that did not speak Navajo. And so

this is what we're talking about. She's from Dilkon, Arizona, where if this goes through, another thing that will be going through is Section 368, the energy corridor. And what that will be doing is, imagine a 20-lane superhighway being put right through the center of the Navajo reservation. Now, what will that do to our culture? That's decimating.

So this 1813 is akin—is going back to the era of Andrew Jackson, the Manifest Destiny. So 1813 is a reincarnation of that to finish the job of what Andrew Jackson wanted to do as president. As so, you know, 1813 was that—even that number—was that to honor him or what?

But this is a horrible, horrible situation here, and we do not want to go there. And the idea that Indian tribes are taking the energy companies, you know, to the cleaners, I want to see some facts. And so it's very important that this not only be seen as about money and about control, because this is a termination of Indian tribes' culture, and that's what this is about. Thank you.

BOB MIDDLETON: Rita Willard. Is it Willard?

RITA WILLARD: Ya-tay [ph]. Hello. My name is Rita Key-min-de-mon [ph]. I'm also from Durango, Colorado, and I'm here to kind of talk about what Lori just talked about, but then I also have an interest in this because all of us said earlier that, you know, our Native American land is our land. It was given to us by the Great Spirit, and it's ours to get what we want off our land. It doesn't mean defacing our Mother Earth. How would you like it if you had a big highway going down through your land? I don't think that would be good. Besides, to us, it's—I just wonder how many council delegates are here from the Navajo tribe? Can you please stand up? And also Mr. Dayish [ph]. There's 200 council delegates. I don't see any one of them here, maybe two or three.

And what does that tell you? Everything is going over their heads. They should be here in order to realize this is going to be a big impact on our reservation, the Navajo reservation. And I don't think it should happen, because that's our Mother Earth, and it's going to alter our lives.

On the chapter level, I don't see this being representative at all. What happened to our voices from us as Navajo tribe people? There's nothing saying, you know, voting, can we have this? We don't have anything presented to our chapters. That's where the council delegates should come in and also the chapter vice-president. We can't just tell them, "Go ahead. Go ahead, go through our land, deface our land." I don't think it should happen. Thank you.

BOB MIDDLETON: Thank you. Sarah White [ph], Dine CARE, and then Carol Harvey, and then Bill Quamps [ph]. Sarah?

SARAH WHITE: Ya-tay. Sarah White. [Indiscernible—speaking a Native American dialect.] Good morning, or good afternoon, everyone. I was sitting there listening to several people talking about the rights-of-way and all the road and the pipelines and the power lines and everything that is going to be built through the Navajo—all the Indian reservations. And from what I've heard, there's going to be 20 miles wide of right-of-way—they need 20 miles wide of right-of-way that is need from Farmington [ph] through New Mexico and Arizona. The right-of-way has been a big issue for the last I don't know how many years, but it seems to be more and more the last few years.

And as I'm sitting there, and as I'm looking around, I see very few Navajos from our Navajo reservations. And there are mostly leaders from different tribes. From that

perspective, I was thinking, why aren't these meetings being held on the Navajo reservation and other reservations, other tribe reservations? The people that are mostly impacted by these energy companies and the rights-of-way are living on the reservations. They don't go to the cities. They don't come to the cities. Some of them don't drive. Some of them don't speak English. And I believe that these meetings should be held on the reservations, not in the cities.

The grassroots never have a say in this kind of major change on their lands. I have a pipeline about a block and a half from my home, and the pipeline is from the El Paso pipeline company. And it's been there for years. It was already there when I was born. Nobody has ever gotten paid for that. To this day, nobody gets paid for that pipeline. And it comes from Fruitland [ph] to I don't know where. And there's also a power line right next to my home. And things like this we have suffered over the years. Like I said, the grassroots people are the most impacted, and they never have a say-so in these kinds of issues. I don't see any of them here. And I feel that it is important if the government and the Congress feels that this is very important to the people that they should put it back home to where the real people are.

The energy companies, just like Lori Goodman says, the oil fields, the power plants, the strip mines, the power lines—it damages the way of life of the Indians. It also damages the cultural sites and the offering sites, burial sites. I see this with my own eyes and hear it with my own ears. I live not too far from a strip mine and the company and the power plant. They wanted to relocate some of the burial sites so that they can go through. And these damage our elders. It ruins their health, physically and mentally. The Navajos have lived on these lands all their lives, I guess from the world began. And

we still teach our ways to our children, and we don't teach them that we're going to deface our Mother Earth or butcher our Mother Earth or give away our lands. And I'd like to say this. Thank you.

CAROL HARVEY: I'm Carol Harvey, and I'm honored to be here today. It's very gratifying for me to be in the presence of so many Native leaders and also with representatives of the government who are our trustees, the Department of Interior and Department of Energy. And I would like to thank them for working extensively on this study, because I know they've done that. I'm not going to get into what I consider right about the report, because with my limited amount of time, I would like to address issues that I hope to see in the final report.

The nomenclature "fair market value" or "market value" is simply not applicable to tribal land, as there is no open, competitive market for tribal lands, and there is no willing buyer and seller with no compulsion to buy or sell. All references to fair market value or market value or fair—and there are many, many within the report—must be qualified. Ultimately, these can only be determined in litigation, if at all, as they have a subjective component. "Appropriate compensation" is a much more accurate term. In Section 4.2, the departments must explain from the outset why tribes reject market value principles. That needs to be in the Executive Summary at the very beginning of this report.

If the federal government does not wish to value non-economic uses such as conservation, natural lands, preservation, or other aspects, that does not mean that an equivalent standard should be imposed on tribes. Congress has recognized in a myriad of statutes the value of tribal lands for sacred purposes. I also submitted a video on Navajo

culture and history that was screened at the last meeting, hoping that that would give industry and the government an idea of the value of our lands to us and of the sacredness of those lands.

The data reference in the letter that I sent previously on the complete lack of historical authority of problems prior to the current reports by industries' lobbyists, such as FAIR, INGAA, and EII, must absolutely have a dominant place in the Executive Summary. It is not because I submitted that document. It is because page after page after page of that document demonstrates that there is absolutely no historic authority for this issue, and there was a complete lack of that matter. I think it absolutely must have a dominant place in the Executive Summary and in the report.

The departments must acknowledge the historical undervaluation of rights-of-way which has the impact of overstating the increase in cost today. They continually talk about the multiple of costs in terms of what we're asking for now versus previously. But if those numbers were understated in the past, then those multiples based on those numbers have absolutely no credibility and no validity today. I'm extremely concerned that that is missing from the report.

Case studies are inherently unreliable, as we've all discussed. Voluntary surveys by tribes were verified by the departments, but those of industry were not, in all cases. Those of industry not so verified have no place in this congressional study—absolutely none. There is no way to ascertain whether they limited their survey, as did the departments, to electric transmission lines and natural gas and oil pipelines.

Given the voluminous mergers of companies in the last five years, any data prior to that simply may not be relevant today. For example, a statement by Amoco,

Burlington, Conoco, or Texaco simply would not be credible today due to the circumstances that have changed dramatically in mega-mergers, in buyouts, and in dissolutions of companies. Any data they have to submit has got to be current, because the industry has changed so dramatically and so quickly that trying to rely on dated material is simply not valid.

Anecdotal references by industry also have no place in this study. For example, where they speak of being afraid of retaliation by tribes so they do not speak up or they do not identify themselves. Industry was certainly not afraid to present its unverified, undocumented position to its legislators. This hearsay should not be allowed in the report, or it should be clearly, clearly denominated as anecdotal and as non-verified.

The words “indicated” or “could” or “would” or “will” or “unsubstantiated” must be rephrased. And I would like to read a few examples: An energy company noting that 70% of its natural gas comes from two major supply companies with infrastructure on tribal lands indicated that its natural gas rate payers could be negatively impacted by unreasonable energy right-of-way fees paid by interstate pipeline companies. A trade association also contended that energy right-of-way renewals resulted in tens of millions of dollars in additional costs to its member utilities and their customers.

Also: An economic analysis of energy right-of-way compensation presented by an interest group, however, stated that if residential customers fully bear the cost increases associated with energy right-of-way renewal fees for all 95 tribal right-of-ways under the jurisdiction of a gas and electric utility of New Mexico, those customers could see their electric rates increase as much as five percent. Industry parties also commented that consumer energy prices could increase because of increased negotiation costs. In

particular, potential trespass damages levied against utilities, even though no specific data or actual instances of such a problem exist.

Tribal parties—let's see. Okay. Again, here: The departments note, however, that most energy right-of-way negotiations are completed successfully. This is true even if the negotiations are protracted and the method for determining the value of the energy right-of-way results in compensation that sometimes greatly exceeds the market value of the tribal lands involved.

You can't make conclusions of that nature when the market value should be what the parties negotiate between them, not always stating that on the tribal side, anything we're asking for and anything we end up negotiating and agreeing to greatly exceeds the market value of the tribal lands involved.

I thought that—and again, the Department of Interior and Department of Energy are in a very difficult position as our trustee. They are having to balance their role as a trustee to us and their role to present from a public interest perspective this issue. So I think it needs to be very clear that this balancing act is occurring and how it can be addressed, because they talk about their need to address rights-of-way on tribal land from a public interest perspective. And then they talk about that it does not appear to be consequential—the study done as far as tribal costs and stuff. I would like to see them use stronger language, rather than “it does not appear to be consequential,” you know, this issue of tribal consent for rights-of-way

And again, I want to go back to my other notes. So I would like to see these words, “indicated” or “could” or “would” or “will” in some manner rephrased, because they simply are not accurate statements.

The fact that over a five-year period only three companies have characterized the negotiation or renegotiation of tribal rights-of-way as a material issue should be front and center in the study, along with the names of the three companies and whether they still exist or have been the subject of a merger, a buyout, or a dissolution.

Whether market value principles do not reflect the proposed use of the right-of-way or the value of the right-of-way to the grantor is completely irrelevant. Numerous tribal transactions have already occurred prior to today that recognized that we are going to consider what the use of that right-of-way is for. These principles that industry groups cite are not legally mandated and have been supplanted in the current energy environment.

They mentioned using the BLM right-of-way compensation schedule in their consideration of options, but there is simply no analysis of how this would be done. And I know there has been tremendous criticism about that rate schedule set by the BLM and whether it is an undervaluation of federal lands.

And then option 4.4.2(e) that provides for arbitration is just an easy out to industry at every turn, since if the parties can't agree, they can seek arbitration. If that's a congressional requirement, why take the time and try and negotiation and reach an agreement if you know that you can just merely seek arbitration?

Also, I think that the paragraph talking about using appropriation acts to accomplish condemnation of tribal lands is wholly unconscionable and should be deleted from the report. It's difficult enough for tribes to know what's occurring in the political arena, much less have us completely following every single appropriations bill to

determine if they allow for condemnation of any particular lands. So I think it's absolutely critical that that option be deleted from the report.

And the precise reason specific options cannot be set out is detailed in their own report in section 5.3.2. Energy rights-of-way vary in type, duration, size, renewal rights, and valuation methods. Trying to determine a global problem legislatively is simply not applicable.

I also wanted to note that I'm the Executive Director of the Native American Holocaust Museum, which is an online museum dedicated to honoring Native Americans who suffered or died or are suffering or dying as a result of the colonization process in this country. I see Section 1813 as a continuation of the holocaust process. This site was dedicated to Native Americans, but it's also to bring about tolerance and understanding between peoples—you know, for us to come to know each other. And if we're not trying to negotiate and learn business styles and encourage each other in energy development and not only leveling the field, but allowing us to play in the game, then it simply is a continuation of a takeover of tribal lands. So I think it's very important. And I sent a letter to the Department of Interior on that subject along with a video on Navajo culture and history, but because that video had to go through their security system, that letter and video are not yet on the site. But I think it's extremely important to deal with the fact that this issue of taking away of tribal lands without our consent has gone on for centuries and centuries and has created much of the trauma that Native Americans experience today.

Thank you.

BOB MIDDLETON: Thanks, Carol. Bill Quamps [ph] of Umatilla. I hope I pronounced that okay.

BILL QUAMPS: Tough name to pronounce. [Indiscernible—speaking a Native American dialect.] That's good morning in the three languages of the three tribes that comprise our reservation.

Why do Indians have such high cheekbones? Sitting in consultation meetings all day.

Until these agencies listen to what they're consulting us about, we need to change that name. Because of all—I've been a board member for the Umatilla tribe for eight years, and I can't think of many times we've been listened to, let alone the last 150 years.

My name is Bill Quamps [ph]. I got to retain our family name. Usually when they were given this name at the boarding schools, they couldn't pronounce it, so it became Smith and Jones. I am Walla Walla Cayuse—I have Walla Walla Cayuse blood, Klickitat, Wyampum, Nez Perce, Blackfeet in me, and a quarter German. When the tribes were fighting on what I was going to look like, the Germans stepped in and took over.

I have been to a few of these meetings. I've come over 1,000 miles, ten minute talk, so 100 bucks a minute, I guess, is pretty good for this.

Our tribe is the Confederated tribes of Umatilla Indian Reservation. It was named that because the Umatilla people had the most number, of the three tribes, when the treaty was signed. We've had a long history of rights-of-way across our reservation. The first was the Oregon Trail. It split our reservation. We ceded six and a half million acres to the government to retain a 500,000-acre reservation which was surveyed in half. Then we were diminished, and then we were allotted. So imagine three tribes trying to get along with that situation, let alone get along with the government. So we were basically

given the short end of the stick for quite a while. All the rights-of-way that were put through our reservation, we weren't at the table at.

In 1855, we signed a treaty and it became the Umatilla reservation. That right-of-way came through our reservation without our consent, and we're going to fight that anymore. When people try to take our land, we're going to fight in any way we can.

The Oregon Trail came through our res because it was the easiest way for them to come through the Blue Mountains. And because of that, other rights-of-way followed. In 1881, President Buchanan, he enacted the permanent non-compensated railroad right-of-way, and that permitted the railroad to come through—Union Pacific to come through our reservation, followed by Interstate 84 and Northwest Natural Gas Pipeline.

In the past, energy and transportation rights-of-way on our reservation have been negotiated with little or no tribal support. BIA representatives basically gave whatever was asked of them. This has changed. We have taken advantage of federal Indian policies supporting self-determination. We've developed a considerable government—400 people. We have doctors, lawyers, dentists, accountants, fisheries, biologists, planners, engineers, of course lawyers, and that. What I'm trying to read from is a lawyer memo. I was just assigned to come here Monday and didn't get time to do my own speech.

We've also developed quite an economy in the last 20 years. We have a small casino. We're trying to get into the energy business ourselves and developing some wind projects. We have a travel plaza, a truck stop, RV park, golf course, hotel, a museum, convenience store, restaurants, mobile home parks, and we have a travel farm enterprises and a regional waste disposal transfer facility. We employ 1,100 people totally—second

largest employer in our county, and that's a lot of non-Indians. Our tribe is basically, after it was allotted, we have a lot of support from non-Indians that live on our reservation.

I've commented on this before, and we have sent letters to the departments. In our January 6 letter of this year, I stated that the landscape has changed today. Our experience in right-of-way negotiations with Northwest Natural Gas Pipeline—it shows that. In the 1813 report, the total compensation before that negotiation—basically before that, a 40-year period when BIA was negotiating our rights-of-way, we got \$38,000. And with our expertise in our government, when we renegotiated the right-of-way, we were compensated for past inadequate compensations. And the renewal also authorized landowners to submit claims for loss of agricultural production, which is significant.

We don't claim to know other tribes' right-of-way situations or histories of other rights-of-way, but if you have similar experiences to ours, then it is no surprise compensation paid for tribal energy rights-of-way has risen. It demonstrates that the days of BIA negotiation agreements for low or no compensation is over. It's a sign that tribes have the capability to manage our own affairs, to negotiate our own right-of-way agreements, and that the day of taking advantage of tribes is over.

We feel that we contributed to this with our renegotiation with Northwest Pipeline back in the mid-90s, but I'm not going to apologize for that. It's just we're becoming a little more powerful today.

Comments on the report itself: We do support key findings contained in the draft report. Contrary to the oft-repeated but never substantiated claims by energy and pipeline industry reps, tribal consent for energy rights-of-way across tribal lands do not constitute

a threat to national security, have not and do not create any energy supply emergency, and is not consequential in terms of energy costs for either the nation or consumers. We believe the report needs to plainly state that based upon the report's findings, energy rights-of-way across Indian lands is not a problem that requires any congressional action.

The report fails to include any meaningful discussion of the trust obligation owed by the Departments of Interior and Energy, nor is this fiduciary obligation incorporated into key findings, options, and recommendations contained in the report. The trust responsibility is mentioned only once in section 1.3.8, and only as a summary of tribal comments. This is an admission especially glaring, in light of Interior's involvement in drafting this report. While all federal departments and agencies have a duty to uphold the trust responsibility owed to the tribes, the Department of Interior has a primary obligation to do so. Interior includes the Bureau of Indian Affairs, which has primary authority within the federal government to serve and protect tribes and their resources. The report needs to explain the department's trust obligation to tribes, their members, and their trust assets and then incorporate that fiduciary duty and perspective into the report's findings.

The report also needs to characterize the impact of the actions options set forth in section 4.4.2(d) and (e). The report sets forth five options for congressional consideration in section 4.4.2. Options (d) and (e) would permit energy rights-of-way on tribal lands to be created, expanded, or renewed without tribal consent. The report should make it clear that these options or any option that eliminates tribal consent violates treaty rights.

Here's an excerpt from Article 1 of our Treaty of 1855: That so much of the country described above as is contained in the following boundaries shall be set apart as a residence for said Indians, which tract for the purposes contemplated shall be held and

regarded as an Indian reservation, all of which tracts shall be set apart and surveyed and marked out for their exclusive use, nor shall any white person be permitted to reside upon the same without permission of the agent and the superintendent.

Our treaty is clear and unambiguous on requirements that tribal consent is required for an energy right-of-way to be placed on tribal lands on our reservation. It is not enough for the report to state, as it does in section 1.3.8, that tribal commenters asserted that condemnation of tribal lands would violate exclusive use treaty provisions. The departments should include in the report a clear statement that any proposal or option to remove tribal consent from the grant, expansion, or renewal of an energy right-of-way on tribal lands would violate numerous treaties between the United States and tribes.

We do support several sections of the report. I probably won't get through all of this, but I will submit this to them. We find that the characterization of the tribal sovereignty and current federal policy supporting tribal self-determination in chapter 2 of the report is excellent. Sections 2.1 and 2.2 of the report make the important point that tribal consent has historically been required for rights-of-way being established within reservations. Moreover, the description of federal policy and tribal self-determination in section 2.3 and the importance of consent to such rights-of-way for tribal sovereignty in section 2.4 are significant policy considerations for the departments' development of options for congressional consideration in chapter 4 of the report.

We have other things that we support in this. I don't have the time to go through this. I've got a plane to catch—no, I don't. I wish I was important like Senator and David Lester, and I was needed somewhere else, but I'm not quite there yet. I'm not an elder, I guess.

But anyway, I will send this report—this memo—over to the people that are running this, and I'm honored to be here, and I thank you, and I thank all the tribal reps who have taken their time and spent tribal resources to get here to talk for 10 minutes. Thank you.

BOB MIDDLETON: Thank you. I think it's Arlen Quetawki. Did I pronounce that correctly? Pueblo Zuni. And next would be Anna Frazier, Navajo Dine CARE. And is Miss Lovejoy here? Okay.

ARLEN QUETAWKI: [Indiscernible—speaking a Native American dialect.] Good morning, everyone. It's great to see everybody here today. Thank the Department of Interior, Department of Energy to be here to listen to a lot of recommendations, comments from not only the grassroots people but all the way up to the tribal leaders that are here today to at least address some of their issues and comments, recommendations to the draft report here.

First of all, again, Arlen Quetawki, currently the governor for the Pueblo of Zuni. I had an opportunity to be up in Washington, DC along with NCAI when we were up at the hill talking to our congressional delegates specifically to the right-of-way issues and for the Morongo tribe from California having paid my way up there to talk on specifically these issues.

But I think one thing that for some of the recommendations and comments specifically from the Zuni tribe is the fact that when you talk about studies that are being done out there, I think it's being emphasized and will be emphasized by individuals, here is the fact that there's 560-plus federally recognized tribes, and only a few were selected to address some of these issues. But I think, as it was mentioned earlier, we need to go

back to, again, region by region to get more input from those specific areas because of the fact that you have the, as mentioned earlier, water issues. You've got the desert issues. You've got timber issues. You've got a lot of different issues from different respective regions. And I think selecting some of those tribes within those respective regions, talk about the significant impacts that this is going to create in their respective areas. Also broaden a lot of those issues and present it to Congress to make a fair decision of how we need to go.

We also have best practice tribes out there that have been dealing with a lot of these issues. We need to take a look at those best practice tribes and how they dealt with those issues within their respective areas. Some of us tribes are now starting to get into these right-of-way issues, and we don't really know the specifics of how to get from point A to point B. Now, we take a look at some of these tribes that have done that and have—you know, take a look at some of those issues. So we, as tribes, also need to take and focus those—highlight those areas. You know, PNM from New Mexico, their issue here is specific in that New Mexico is dealing with the 22 tribes here. And how they dealt with is another best practice that energy company has worked with these tribes. They can also possibly, within the respective region, have specific energy companies that deal with those tribes and how they went and negotiated those areas.

Consultation has come up in the numerous talks that I've participated in. Yesterday, as Governor Garcia had indicated, right now we're in the federal court dealing with the consultation issue regarding the reorg of education. I think consultation is a very bad word. We need to reword it to where again here we need to be very specific. Because when you come and sit or meet people in trying to deal with our specific issues,

something has to be done about it instead of just talk. And those recommendations, comments that were made are just put to the side. And those departments, BIA is a bad example of this one. Where did our recommendations go? Where did our comments go? It went to the side. At a lot of those meetings that they've had behind closed doors, they've already made a decision before, "Oh yeah, we've got to consult with the tribes." So when they meet with us, we can say whatever we can say, opposing those specific issues, but it's never recommended on how we're going to be going forward with the recommendations that were made. But again, we need to remove that word consultation and be very specific on what needs to be done and how we need to move forward.

I was talking to Governor Garcia about one issue about how we're talking about certain issues and we're not being—I guess our recommendations are not being met or even looked at or considered. So I passed him a note and I said, "Any energy right-of-way issues or any issues that goes through in areas where there's endangered species like the spotted owl and the western flycatcher and all those endangered species out there, they go all out to protect those areas to prevent any type of damage to be done on that. Well, if you take a look at it, Native Americans, Indians, our populations are not that much. Why don't we consider ourselves endangered so that maybe, you know, they can't go through our lands. Really consider that.

We're an endangered species here too because there's less of us. There used to be a lot of us, but we're coming down. So why don't we consider ourselves endangered so possibly—but again, you know, we're not trying to stop the rights-of-way going through. It's just that we wanted to be there to sit down with those energy companies, I think, in the best interests. I heard right here that BIA, Department of Interior has not done a well

enough job for the tribes, to represent the tribes. So I do believe that a lot of our tribes have tribal members that have gone to that level of becoming attorneys, looking out for the best interests of the tribes. And we're getting knowledgeable. We're educated. So why can't the tribes deal with those energy companies themselves and look out for their best interests, instead of BIA looking out for the—well, they're not really looking out for the best interests of the tribes. But to have the tribes deal with those issues themselves and come to an agreement, negotiate with those companies.

As mentioned earlier, there are sacred sites. The Zuni tribe does have lands in New Mexico and in Arizona, as the individual from Hopi indicated. But whole Arizona tribes are not being represented also, but Zuni does have lands in Arizona. We may not be impacted on our main reservation in New Mexico, but we also have concerns regarding the Arizona lands because of our sacred areas, our sacred trails that could be impacted. So we have concerns over these things when we deal with right-of-way issues.

So I think, again, my recommendation specifically is to really let the tribes deal with their own issues, because they do have the capability of dealing with those issues, because those people have in their true hearts the sacredness of those lands. Now, nobody can understand it but ourselves. And that's why I think we do need to be at the table.

This is another mechanism to where it puts tribe against tribes too, also. Because I think those are the mechanisms that are out there that plays with us out there when we deal with a lot of these issues, because it puts tribe against tribes, because some of the tribes are energy developers and some of us aren't energy developers. We may have huge amounts of coal, gas, oil on our reservations but we've chosen not to develop those,

because we hold sacred to our hearts the lands that we stay off, as it was mentioned by those individuals that represent the grassroots people. We truly hold dear to our hearts not to disturb Mother Earth. And people don't understand it. It's just between those Native Americans that truly deal with these issues day in and day out.

Again, my recommendation is to truly look at and hear what these individuals have to say to you today and to take to heart those recommendations and to focus on looking at other different regions and finding out what their specific issues are.

I'm glad that I was given an opportunity to come before you and talk. I think there are—I don't want to be too redundant, but I do believe each individual that is able to come up here has specific issues. [Indiscernible—speaking a Native American dialect.] Thank you.

BOB MIDDLETON: Thank you. Anna Frazier.

ANNA FRAZIER: Good morning. I am Navajo Dine from the Navajo Nation. I live near Dilkon, Arizona. That's the southwest portion of the Navajo reservation. And I'm here to talk from the grassroots, from my home, where we're close to the land. I'm here to talk from that side.

The Section 1813 and 368, a part of the tribal energy resource agreements, is a violation of the civil rights of native people and also the environmental justice violation of all Navajo and other Indian tribes throughout the United States, Alaska, you know, that we have relations with. And they have no voice at all in these types of hearings and in any consultation to speak for themselves. So this is my second time that I've spoke at these hearings. I was here last year in Albuquerque in regards to the TERA hearings.

The two sections that I mentioned, 1813 and then the 368, intrude on the people—the grassroots people—and also will alter the lives of the grassroots people. And so in that area, what it will do, and what it has been doing all these years for generations to generations from over 200 years, has been destruction of our land and destruction of our way of life, destruction of our cultural sites. It violates all that. So to continue to do this, it will continue to violate the lives of the people, and it will alter the lives of the people, the way of life of the people.

There've been a lot of statements made this morning here that the cultural rights of our people and the cultural resources and the way of life of the native people are very important to us. And we don't seem to give the little people any say-so in any of these consultations or any type of hearings that affect the life of those people. So I think that needs to happen somewhere. Our leaders, you are here—the native leaders. You need to listen to your people—the grassroots people that live in your area. And they have a right to say what they want to say and to protect what they have, preserve their land and their culture.

I live only about less than one-fourth of a mile from the pipeline of the El Paso Natural Gas Company and Transwestern down in Dilkon, Arizona. And this 368 is going to affect my life and my children's lives, my relatives' lives. And our chapter has—Dilkon chapter is only like about even less than a fourth of a mile from the pipeline too. So what's going to happen to our people? Another relocation for us? And other traumatic experiences affecting the social structure of our people. See, that's what's going to happen again if this goes through.

So I'm very much opposed to the way that these TERA, Tribal Energy Resource Agreements, have been developed, and then all these other things that keep coming up out of that. It needs to be looked at, and I think we need an extension on these hearings that are taking place. We need to—like the gentleman that spoke right before me—there are other things that we—Washington, DC is about a planet different from where we are. I mean, they live in another world from where I live on the reservation. So we need to take a look at those things and make those changes to benefit our people, our way of life.

And another—the other one, Environmental Justice, Executive Order 12898 that was signed by President Clinton in 1994. And it says that the federal agencies have to consult with the Indian tribes and also the companies, and that needs to be followed.

And also, since 1692, the rights of our native people have been violated, and we all know that, and it continues. It just continues to go on year after year.

We need to just throw this 1813 and 368 out. We don't need that. So we need an extension on these hearings. That's all I have. Thank you.

BOB MIDDLETON: Thanks for your comments.

[change of tape]

SPEAKER: ...make their case. They haven't done it. And it is a credit, I think, to the authors of the draft report that they say that over and over—that the data show that there is no problem. That the requirement of tribal consent to rights-of-way over tribal lands has not created any kind of concern over the availability of energy supplies or the ability of energy companies to transport their power or petrochemical products across the nation. It has not created any concern for the security of energy infrastructure. It hasn't created any significant or even measurable increase in cost to consumers of energy

supplies. None of the horror stories that the companies presented to Congress and have tried to present in these meetings previously can be demonstrated from the data that the departments have looked at.

Given that, the point I want to make is this: The departments have been extraordinarily attentive to the timeline that Congress dictated in Section 1813, presenting a report one year after enactment of the act. That, too, is quite astonishing to me, because congressional timeframes for departments to issue regulations and so forth are almost uniformly ignored by the agencies. But here they are doing it. They are rushing this thing through, staying right on the dates that Congress established. But it seems to me that it would be appropriate for the departments likewise to be just as attentive to the directive they were given by Congress that they give recommendations as to what, if anything, should be done to deal with this claimed problem that the energy companies have touted. And based on the data presented in the draft report, plainly, the only recommendation that can be supported is that Congress needs to do nothing—or, as David Lester suggested earlier this morning, Congress could provide some incentives for the corporations to work more cooperatively with tribes if they feel like they're being inconvenienced in these negotiations. They can find more productive ways to achieve agreements more rapidly.

But for the report to lay out this array of options for Congress without taking any position on any of them seems to me to be highly irresponsible, contrary to the directive that the agency received in the legislation and unsupportable, given the substance of the report. To include options that would allow Congress to consider outright condemnation of tribal lands, specifying compensation levels that would apply in energy right-of-way

negotiations—those types of options—to include them in the report gives those options some credibility that they simply do not deserve, based upon the information that is plainly set out in the report.

And I would strongly urge that to maintain the integrity of this report, and in keeping with the comments of earlier speakers who have emphasized the importance of the historical inequities the tribes suffered and the way in which rights-of-way were granted across their lands, the gross disparity in resources that the companies and the tribes are able to bring to bear at the bargaining table, and the other factors that need to be emphasized, I would urge that the drafters of the final report live up to their statutory responsibility and say to Congress, “The data support only one recommendation, and that is, there should be no change in the existing legal structure.” Thank you.

BOB MIDDLETON: Carol.

CAROL HARVEY: I’m Carol Harvey. I haven’t identified my tribe, because I don’t want for anyone to think that I am speaking for them. But I only wanted to make a brief comment, and that is to call upon the Department of the Interior’s legal scholars to carefully review this study.

For example, option 2, which talks about Congress could establish a legislative clarification of tribal consent. This is absolutely not required. There is a tremendous amount of legal authority within the Department of the Interior, and I would ask them to look at the line of cases involving notice to lessees, number 5, that specifically provide that if the energy industry did not challenge the 1951 regulation within the time period required, they simply have no basis at this time to challenge the fact that the Department of Interior took the position that right-of-way consents were required from IRA and non-

IRA and other tribes. I would call upon them with the utmost faith and respect that they review this and that they advise the Department of the Interior and the Department of Energy on what is and is not required.

My concern is that if the Department of Interior and Department of Energy were to convince Congress that they should reopen this and enact a new statute, is that we never know what that statute is going to look like. And I just don't want to open that door—open Pandora's box—and allow issues to come forth at this time that do not need to be.

But option 2 that they have provided is simply not legally required. And I would call upon the Solicitor's Department to adequately advise these departments in that respect. Thank you.

BOB MIDDLETON: Thank you, Carol.

RONALD OLGUIN: Good morning, everybody. I know we're running on time here and I'm sure everybody's probably getting hungry about now. Blood sugar levels are probably going down a little bit, so I'll just make this quick and brief.

My name is Ronald Olguin. For the record, I'm stating, Tribal Council President in the Isleta Pueblo. First of all, I'd just like to thank the DOI, DOE today for having this meeting with the tribal leaders of the area. We understand and we know that right now in this room, there are just a smidgeon of tribal leaders. We have a lot of people in Indian country and tribal leaders that are not here today. And obviously, the tribal leadership that is here today, I can commend them for giving the attendance and obviously the attention to these important issues that face us as tribes today.

It has always been the United States government's policy to basically either assimilate tribes or actually terminate tribes. And what is that telling us? It tells us that they don't want us to exist. They haven't wanted us to exist for many hundreds of years. And right now, Indian policy is still driven by that same underlying ideology that the United States has brought with them. When they themselves from England came because of the fact that they were fleeing political and religious prosecution from their own people, and who, in fact, have had to undergo their human extermination of another people and genocide, and that's been to the native people. And right now today we exist here as a native people trying to obviously still determine our own destiny. We've done that for centuries in existence, long before any other people came around to tell us how we are suppose to have lived and how we are suppose to have determined where we are as a people.

And I want to commend our governor from Zia Pueblo, Mr. Pino, who is a very strong advocate of who we stand for as a people here. And I'd like to commend the leadership here under our director for NCAI, who is a voice for the native people, and that's governor from San Juan. I appreciate it very much. Sometimes I get hard on names. Just forgive me for that, because in speaking and wanting to get my word out, sometimes I get confused and that, but if you will just forgive me and just indulge me in that, I really appreciate that.

However, right now, I just want to ask: What is the motivation of the United States government? What is their motivation? Why are they taking tribes in this way? We're trying to build a democracy right now in Iraq. We're giving billions of dollars of resources of the United States—of the taxpayers of this land. And yet, we have the tribal

people in the back burner here, trying to dictate policy to us when I think for many centuries we've already known what our policy has been. And that has been to sit at the table and negotiate. And we've been under those terms for many years. And I think it's a foreign concept of who we are as tribal people in that you have to come here and basically imply your rules on us as tribal people when, in fact, we've had our governments and our democracies in place for time immemorial. And basically, those have come down the lines of our Creator, as far as where they put us here on this planet and why we are here.

And the statement I'd just like to make in reference to what we're doing here today is that I want to see more of these meetings take place, as far as the tribes being at the table for negotiations. And I hope this message is sent to Congress that we need to stay at the table, that nothing needs to change as far as who we are as a people and where we're going.

And with that, I would just like to say again, I'd like to thank you for this opportunity to have expressed myself today, and for the record that basically we are going to stand steadfast in our position, as far as where we have to be as tribes. We're right now in a country that is based on capitalism. And if we can't be at the table negotiating obviously as modern day capitalists, then I don't think this country is serving what it really stands for. So with that, I'd like to thank you today for your attention.

BOB MIDDLETON: Thank you. And if there are no other public comments, then I will take this opportunity to close out the public session. We will be moving to government-to-government consultations. And sign-up that we have right now, in order, will be Isleta Pueblo, Acoma Pueblo, Navajo Nation, Hopi Tribe, Fond du Lac Band of

Lake Superior Chippewa. We, of course, are going to try and keep our government-to-government consultations going on a timely basis, but obviously, as everyone's aware who has been involved in these before, when we get into good discussions—because it is a dialogue between Department of Energy, Department of Interior and the tribes themselves—we want to make sure that we are capturing and we allow adequate time for everybody to present their opinions. We'll try and keep this moving as best we can.

This room is going to be available for people to either caucus in or wait here. What's the name of the room that we're—the Cavalier Room is where we'll be holding our government-to-government sessions. And I believe it's up this hallway, take a right—please, if you have some information. [Inaudible off-microphone speaker.] It was the same room where the breakfast was being held. That'd be easiest for everybody.

Since we're closing out the public session, and this is quite literally one of the last times that I will have an opportunity to speak in front of everybody, I'd like to take a personal point of privilege and thank everybody for their participation in the 1813 study. All of the well-thought-out, well-intentioned, and substantiated information that was provided has really helped both departments do the best job that we possibly could in responding to Congress's request for us to provide this study. I know from the Department of Interior's perspective, we've really enjoyed the opportunities we've had to talk, both with tribal leadership, as well as individual tribal members on this study. It's been an experience where we have learned quite a lot. It's been of great benefit to us. And so I would thank everybody for their participation, for the time and energy that went into you attending and participating and providing us the comments that you did.

We, of course, are always available. If you don't have our contact information, please don't hesitate to ask, because we would be willing to have an opportunity to talk with people either on this subject or other subjects during the period where we are waiting for the comments to come in.

With that, David, would you like to say something from Department of Energy? Sorry, I caught you with a croissant and a cup of coffee.

DAVID MEYER: Well, once again, I don't have much new to say beyond what Bob has already told you. But I, too, and the Department of Energy appreciate your inputs and your comments, your concerns, and thank you very much. And I look forward to another opportunity to meet with you. I'm not sure when that will be, but I'm sure there will be one.

BOB MIDDLETON: So if we could ask Governor Benevidez, Pueblo Isleta, to join us, we will progress over to the meeting room for the government-to-government consultations. We will then have—Darryl will then come over as we finish up and find people in this room and bring them over to the meeting in order, as soon as we finish with Pueblo Isleta.