

In The Matter Of:
Tribal Council Listening Session

October 11, 2016

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TRIBAL COUNCIL LISTENING SESSION

Phoenix, Arizona
October 11, 2016
6:07 p.m.

REPORTED BY:
DANIELLE C. GRIFFIN, RPR
Court Reporter

PREPARED FOR:
U.S. DEPARTMENT OF INTERIOR

(Original)

1 TRIBAL COUNCIL LISTENING SESSION was taken
2 on October 11, 2016, commencing at 6:07 p.m. at the
3 Phoenix Convention Center 100 North Third Street, Room 301
4 C/D, Phoenix, Arizona, before DANIELLE C. GRIFFIN, a
5 Certified Reporter in the State of New Mexico.

6

7 BOARD MEMBERS APPEARING:

8 Mr. Sam Hirsch
9 Environmental Resources Division
 Department of Justice

10 Mr. Tracy Toulou
11 Director
 Office of Tribal Justice

12 Mr. Mike Black
13 Director
 Indian Affairs

14 Mr. Kenneth Martin
15 Deputy Assistant Secretary
 Tribal Government Affairs

16 Ms. Leslie Wheelock
17 Director
 Office of Tribal Relations
 Department of Agriculture

18 Mr. Chris Deschene
19 Director
 Office of Indian Energy at DOE

20 Ms. Heidi Frechette
21 Deputy Assistant Secretary
22 Native American Programs
 Department of HUD

23 Ms. Tracy Goodluck
24 Senior Associate Director
25 Governmental Affairs
 White House

1 BOARD MEMBERS APPEARING:

2 Mr. Larry Crook
3 Principal Deputy Assistant Secretary
4 Army for Civil Works

5 Mr. Chip Smith
6 Assistant
7 Environment, Travel, and Regulatory Affairs

8 Mr. Jody Cummings
9 Deputy solicitor
10 Indian Affairs
11 Department of the Interior

12 Mr. Joseph Sarcinella
13 Senior Advisor
14 Native American affairs
15 Office of the secretary of defense
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PROCEEDINGS

MR. LAWRENCE ROBERTS: Good evening, everyone. Thank you for attending the listening session this evening. My name is Larry Roberts. I'm at the Indian Affairs at the Department of Interior. Thank you all for attending this session.

I'm going to ask Chairman Forsman to start with the blessing before we start this session.

MR. LEONARD FORSMAN: Good evening, and thank you for this humbling opportunity to open up this session. I give way to thank the host Gila Salt River and the other tribes in the Valley and great hosts and enjoyed ourselves here immensely. I'm very proud of your leadership and young people that has been demonstrated so well this week, so my hands up to you.

So if you could stand, please do so and pray your own way.

(Prayer by Chairman Leonard Forsman.)

Thank you.

MR. LAWRENCE ROBERTS: So what we're going to -- open a couple of introductory remarks from the President Cladoosby from NCAI before we get started with a -- the listening session this evening.

MR. BRIAN CLADOOSBY: Thank you, Larry.

1 Now, sitting up here, don't get any ideas
2 that I'm your trustee. I think it's very important that
3 our trustees know -- see our elected leaders in the crowd.
4 So if we have our elected leaders stand up so that our
5 trustees can see you. And please remain standing because
6 these elected leaders here represent their own sovereign
7 nations.

8 Their goal is, number one, to continually
9 protect their homeland, where many of them have lost many,
10 many acres over the years since they signed their
11 treaties.

12 Their goal is to make sure they have a place
13 for their children and their grandchildren. For their
14 elders, a place for them to live peacefully, a place where
15 their homeland is safe and secure.

16 These leaders here have been sworn in to do
17 a job. A job that our Creator chose them to do, and their
18 people chose them to do. And it's not a job that they
19 take lightly. And they come here at this listening
20 session to be heard.

21 And so you, tribal leaders, I just wanted
22 your trustees to have an opportunity to see you, to see
23 who you are, and I just pray that as you address them
24 tonight, you do so in a good way with a good heart. But
25 with passion to let them know the things that have

1 happened to you and your people over the years. You need
2 to tell your story.

3 One of my greatest role models in life,
4 Billy Frank, Jr., I still miss that guy today, awesome
5 man. He always told us, "Tell your story. Tell your
6 story. Tell your story. Never get tired of telling your
7 story no matter how many times you say it. Say it over
8 and over and over again." He says, "Because every four
9 years or eight years, you're usually telling your story
10 over again."

11 So please be seated, and I thank you for
12 being here.

13 And, once again, I need to make it very
14 clear that this is not a consultation. This is not a
15 consultation. This is a listening session for tribal
16 leaders. I want to make that very clear. This is your
17 time to be able to speak to our trustees up here.

18 Are there any press in the room?

19 Stand up, please.

20 (Press stand.)

21 I need to do this in a good way. This is an
22 opportunity for tribal leaders, and I know you have many
23 questions to ask, but we respectfully ask that you yield
24 the time to our tribal leaders. Thank you for being here.

25 As you know, this listening session is an

1 opportunity for them to hear about your issues dealing
2 with consultation, and it's amazing that we've had this
3 relationship with the Federal Government for -- some of us
4 2-, 3-, 4-, 500 years, and they're still trying to figure
5 out how to deal with us.

6 But it's opportunities like this, moving
7 forward. Because this consultation, I believe, is a
8 living, breathing document. I will profess, and they will
9 profess that it is not perfect. I don't know if we could
10 ever have a perfect consultation process, but we're going
11 to try to do the best we can. And so this is an
12 opportunity for our trustees to hear from you to frame the
13 upcoming consultation schedule that they have set up
14 around the country.

15 And I pray that those of you, you leaders,
16 attend those consultation sessions. Bring them ideas.
17 Don't come to this meeting just waiting for a trustee,
18 once again, to say, "Here, this is what we have for you.
19 Read it and take it and sign it."

20 This is an opportunity for you as leaders,
21 and I would pit the infrastructure you tribes have created
22 against any government in the United States, bar none.
23 The team that you have assembled in your homelands, it
24 would rival any local, county, state, and Federal
25 Government in the nation.

1 And this is the 21st century. And this is
2 what our elders dreamed of for us, your elders, the
3 foundation they laid. Never forget the sacrifices they
4 made. Never forget the struggles that they endured to
5 make sure that you have a seat at the table.

6 And so we want to focus on improving
7 consultation for future infrastructure projects. And I
8 know DAPL is first and foremost on many of our minds. But
9 you know what? Every one of you tribal leaders probably
10 had a DAPL issue that has occurred in your homelands in
11 the last 50 to 100 years. I could sit up here and give
12 you examples of the projects that the Corps did in my
13 homeland without consulting with me, without asking my
14 forefathers what they thought of the project.

15 I know all of you out here have those
16 stories from Alaska and Florida to California to New York
17 to Standing Rock. But we want to focus on, not just this
18 one project, but the projects that could potentially go
19 forward. We want to learn. We want to learn from this
20 lesson.

21 This is a textbook case that our trustees
22 need to learn from. If you do not learn from your
23 mistakes, you're bound to repeat them.

24 And I want to just raise of hands here on
25 how many here are appointed at this table. Raise your

1 hands.

2 How many appointed?

3 The rest of you are career, good. You
4 outnumber the appointed. That's a good thing. Because
5 once these appointed are gone, the careers are still going
6 to be here. And we want them to hear how we want the
7 process to be fixed. We want them to hear how we want
8 this consultation process to go forward, not how we've
9 been dealt with in the last 200 years where we were given
10 that, and we had to take it. So thank you for being here.

11 I'm going to turn it back over to our
12 Assistant Secretary now who maybe add a little bit more
13 and lay out a little bit more about the format on how he
14 wants and they want to hear from you.

15 I'm not sure if -- we're not, you know,
16 going to spend time having everybody making an opening
17 statement, are we -- or --

18 I'll let Larry determine how he wants to
19 handle his team. But I think at the end of the day, they
20 just want to hear from tribal leaders, tribal leaders.

21 So thank you. God bless you. And once
22 again, speak from the heart. Let them know from the
23 heart. Thank you. God bless you.

24 MR. LAWRENCE ROBERTS: Thank you, President
25 Cladoosby.

1 So we have a full team of agencies here with
2 us today for the listening session. We have, obviously,
3 the Department of Interior, the Department of Justice,
4 Army, and other agencies. And we're going to have just
5 very brief introductions in a few minutes.

6 But I want to just emphasize a couple of
7 points:

8 One is: This session here today, I mean,
9 this is spurred by the actions at Standing Rock. It's
10 spurred by tribal leadership raising their voices about
11 Standing Rock and DAPL. And this session has grown out of
12 that. And this session is about how can we improve
13 processes moving forward.

14 And we've circulated a framing paper today.
15 I ask you all to take close look at that in the remaining
16 weeks before the first consultation sessions started.
17 Because what we're doing with this listening session is we
18 want to hear from you all about the scope of the
19 consultations moving forward, what needs to be covered;
20 but we also want to hear about whether the issues that
21 we've raised in the framing paper, whether -- what the
22 adjustments we need to make.

23 And so -- also we want to hear from tribal
24 leadership in terms of areas where it may be -- may have
25 worked right in the past, where consultations has worked

1 right. And I feel like as the Department of Interior, and
2 other agencies here, we do a relatively good job of
3 consultations on regulations, like our leasing
4 regulations, our right-of-way regulations. I'm not sure
5 that the Federal Government does as good a job on
6 particular projects -- or particular projects that have an
7 impact on a handful of tribes, or one tribe.

8 And so really examples of where you have
9 worked with the Federal Government, where that has been
10 successful will be helpful to us because we need to take
11 those best practices moving forward and elevate those.

12 So one example, which is in the framing
13 paper, which we're eager to hear about from tribes is the
14 Desert Renewable Energy Conservation Plan. It is a plan
15 that impacts southern California, specifically the signing
16 of the renewable energy projects.

17 And let me just share a little bit about
18 that consultation. It wasn't a one time consultation with
19 tribes in California, and it wasn't just limited to the
20 Federal Government. So as I understand the plan, it
21 involved the State of California. It involved multiple
22 federal agencies. It involved over 50 tribes. And it was
23 a consultation that continued over years to get to a point
24 where a plan was issued that was respectful of places that
25 were important to tribes in terms of how we wanted

1 renewable energy to move forward.

2 So we are very interested in hearing your
3 input on areas where things have worked well so that we
4 can take that and expand it -- those best practices
5 nationally.

6 In terms of just sort of mechanics of the
7 listening session today, this is for tribal leaders. We
8 want to hear from tribal leaders. And when you come up to
9 the microphones to provide us input, please introduce
10 yourself. Everything is being transcribed. We have a
11 court reporter right here at the front.

12 Please introduce yourself, what tribe you're
13 with. Please -- she may ask you to spell your last name
14 or your first name or the tribe that you're with. Please
15 help her out because that transcript will be part of the
16 permanent record here in terms of us moving forward.

17 So I want to close by saying thank you for
18 being here on a Tuesday evening of what is certainly a
19 busy week for all of you here at NCAI.

20 And I want to give a -- just a very short
21 introduction of the federal team here so everyone knows
22 who's here listening to you all today. And we'll start
23 with my left here.

24 MR. SAM HIRSCH: Thank you, Larry. My name
25 is Sam Hirsch. I'm from the Department of Justice, and I

1 work at the Environment and Natural Resources Division.
2 And I just want to say it's a great honor to be here with
3 you this evening. I see a lot of friends out in the
4 audience and, you know, tribal leaders, I think --
5 probably universally, feel that this is a conversation
6 that is long overdue.

7 If you took an aerial photograph of your
8 part of the United States, there would be all sorts of
9 infrastructure that you would see today that wasn't there
10 seven generations ago. And some of that's great, some of
11 that's not so great. But what we know is definitely not
12 great is that very little of it was put there after any
13 kind of meaningful input from the tribes. And I think
14 that this is a great step forward tonight in terms of
15 talking about how to fix that long-standing problem of
16 lack of meaningful time and tribal input. So thank you
17 all for taking the time this evening to be with us.

18 The Justice Department is not an
19 infrastructure permitting agency. We don't grant permits
20 for infrastructure projects, so we can't make decisions
21 with infrastructure projects. My division, the
22 Environmental Division, comes into play at the back end
23 where we are required to defend federal agencies who do
24 that kind of work when it's in litigation.

25 Tonight we're just going to be listening,

1 and I'm going to be furiously taking notes. And we're
2 going to be refining the subjected agenda for the upcoming
3 series of tribal consultations based on what we hear from
4 tribal leaders tonight so we really appreciate your input.
5 Thank you.

6 MR. TRACY TOULOU: Thank you for being here
7 tonight. It's late, and I'm sure many of you have better
8 things to do, but we really appreciate you taking the time
9 to help us out here.

10 I'm Tracy Toulou. I am the Director of the
11 Office of Tribal Justice, and have been the Director for
12 about 15 years now, so I know a lot of you.

13 One of the things my office is responsible
14 for is consultation in the department, and not only
15 liaison in the tribes, but with other agencies. We do a
16 fair amount of consultation in the department. But
17 frankly, it's relatively easy because we're usually
18 focused on one thing, you know, something like the Bottle
19 legislation.

20 I think, you know, with this infrastructure
21 projects, what I've seen is it's complicated. There's a
22 lot of agencies. There's a lot of tribes. There's a lot
23 of other outside entities like states. And, you know,
24 smart as we think we are up here, we're not that smart.
25 There's a lot of smart people out in the audience. And

1 every time I sit in a consultation, I learn something.

2 So we look forward to hearing what you have
3 to say and particularly in how we can structure these next
4 six consultation sessions to make them meaningful for you.

5 So thank you in advance for your time and
6 your thoughts.

7 MR. MIKE BLACK: Good evening, everybody.
8 There we go. Good evening, everybody. I'm Mike Black,
9 the Director for the Bureau of Indian Affairs, and it's a
10 pleasure to be here with you, and I do look forward to
11 hearing from all your comments. Thank you.

12 MR. KENNETH MARTIN: Good evening, everyone.
13 My name is Kenneth Martin. I am the Deputy Assistant
14 Secretary for Tribal Government Affairs at the
15 U.S. Department of Transportation. Like everyone else,
16 thank you for giving us your time tonight. We're looking
17 forward to hearing what you have to say.

18 MS. LESLIE WHEELOCK: Good evening,
19 everybody. I'm Leslie Wheelock, the Director of the
20 Office of Tribal Relations at the Department of
21 Agriculture. The Department of Agriculture has three
22 primary agencies that disturb our lands, so to speak, and
23 we are inviting those agencies and representatives to join
24 us at every consultation. The work that they do includes
25 infrastructure, it includes our agriculture programs, and

1 our conservation programs. Thank you.

2 MR. CHRIS DESCHENE: (Native language
3 spoken.) Good evening. My name is Chris Deschene. I'm a
4 member of the Navajo Nation. I'm also the Director for
5 the Office of Indian Energy at DOE. And our mission is
6 simply to maximize the development of energy solutions for
7 the benefit of tribes throughout the United States. Thank
8 you for having us.

9 MS. HEIDI FRECHETTE: Good evening. My name
10 is Heidi Frechette. I'm the Deputy Assistant Secretary
11 for Native American Programs at the Department of Housing
12 and Urban Development. I'm one of the career staff that
13 the President pointed out.

14 I look forward to hearing from you on
15 infrastructure concerns, particularly, since HUD has two
16 major programs that fund infrastructure in Indian Country,
17 which is the Indian Community Development Block Grant, and
18 the Title VI under NAHASDA, so thank you.

19 MS. TRACY GOODLUCK: Good evening. My name
20 is Tracy Canard Goodluck, and I am the Senior Associate
21 Director for the Governmental Affairs at the White House.

22 I really quickly want to say thank you to
23 all the tribal leaders -- to everyone in the room -- thank
24 you for being here. This is a very important listening
25 session to attend, and I really want to thank the tribal

1 leadership for being here. Your voices are very important
2 for us to listen to tribal consultation. And building
3 upon the nation-to-nation relationships are extremely
4 important to this administration, and we are here to
5 listen and learn. I will -- because this is primarily an
6 agency process, I will be deferring comments to the
7 agencies as appropriate.

8 Thank you, again, for being here this
9 evening.

10 MR. LARRY CROOK: Hi, I'm Larry Crook. I'm
11 the Principal Deputy Assistant Secretary of the Army for
12 Civil Works. The Deputy to Jo-Ellen Darcy and with the
13 office of the Pentagon that oversees the policy for the
14 Army Corps of Engineers.

15 The Army is -- it's an honor for the Army to
16 cohost both this listening session and the coming
17 consultations. And we very much look forward to hearing
18 ways we can do better, both at the Army Corps and across
19 infrastructure permitting agencies across the Government.

20 MR. CHIP SMITH: Hello. My name is Chip
21 Smith. I'm the Assistant for the Environment, Travel, and
22 Regulatory Affairs. I work for the office of the
23 Assistant Secretary of the Army for Civil Works. My
24 Principal Deputy is right here, Larry Crook. I'm so glad
25 he's here. I'm glad you are all here.

1 One of the civil servants that will continue
2 as part of transition, and we'll try to keep the ball
3 rolling. Whatever we learn in these consultation
4 sessions, those of us who are civil servants are committed
5 to continue to work on these important issues in the next
6 administration, whoever it is. Thank you.

7 MR. JODY CUMMINGS: Good evening. My name
8 is Jody Cummings. I'm the Deputy Solicitor for Indian
9 Affairs at the Department of the Interior.

10 Thank you, tribal leaders, for being here
11 tonight. I look forward to hearing from you.

12 MR. JOSEPH SARCIANELLA: Good evening. My
13 name is Joe Sarcinella. I'm the Senior Advisor for Native
14 American Affairs to the office of the Secretary of
15 Defense. I'm just very humbled and honored to be here
16 tonight to listen to everybody. Thank you.

17 MR. LAWRENCE ROBERTS: All right. So that's
18 our team. And I think as part of this session this
19 evening, it's going to be somewhat similar to the session
20 earlier this week on Indian water settlements. So we're
21 really interested in tribal comments. We're going to hold
22 our feedback in terms of what we've heard until the end of
23 the session.

24 So I'm going to open it up to tribal
25 leadership.

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PRESENTATIONS

MR. VERNON MILLER: Good evening. My name is Vernon Miller, and I am Chairman of the Omaha Tribe of Nebraska.

I'm here to talk about in 2011, we had a flood that was administered by the Army Department of Engineers which flooded my reservation, causing the loss of 14 homes and 187 jobs, which caused our casino to shut down. And there were several things that happened throughout that process when the Army Corps of Engineers allowed the Missouri River to flood, and I wanted to talk about some of those items to help improve the consultation process in the future for any future items infrastructure-wise and projects.

Throughout that process, you know, the consultation, or lack thereof, was limited to a letter to the tribe sharing that the Army Corps will flood the Missouri River. The tribal liaison was based out of Montana, and our tribe was the closest tribal community to the Omaha District Office. And you would think that being so close, we would have more in-person meetings, more communication to really talk about that process of how it was going to affect our community.

There was also no capacity there either.

1 During the flood, or right where the flood was about to
2 happen, there was no support from the
3 Army Corp of Engineers and in helping us with our levies
4 to try to maintain as much of our land as possible
5 throughout that process.

6 And so my concern in terms of the future
7 consultation is that we really need to evaluate. We did
8 prepare a report on the lack of consultation that happened
9 throughout that process, and all the shortcomings of the
10 Department of the Army Corps of Engineers. And I will be
11 forwarding that in written testimony upon completion of
12 today.

13 What I really wanted to -- I mean, I'm not
14 here to talk about the pipeline, but I want to make sure
15 that you're aware of that, you know, there was no
16 consultation in 2011. We did submit that report back then
17 just to really help the Army Corps of Engineers on any
18 future projects of infrastructure. And some say that we
19 followed that fear because we're here today now to have
20 another listening session on how to provide that
21 consultation.

22 And so on behalf of my tribe, I just really
23 wanted to also encourage that we maintain
24 person-to-person, government-to-government consultations.
25 I mean, yeah, the teleconferences is one mechanism but, to

1 me, that's not meaningful at all. And I know one of the
2 consultations that's listed as a telephone conversation,
3 we really need to evaluate the locations also. You know,
4 my tribe, like I said, is only an hour from Omaha. But my
5 tribe has to go to Rapid City -- it's an 8-hour drive --
6 to provide our testimony during that actual consultation.
7 So we'll evaluate the locations.

8 So the decisions that Army Corps of
9 Engineers makes are extremely impact -- have huge impacts
10 on communities and so the person-to-person,
11 government-to-government conversations need to happen.
12 And I would just encourage the Department of the
13 Army Corp of Engineers to really learn from the mistakes
14 of my tribe in 2011, and other tribes along the Missouri
15 River on how we can improve that process in the future.
16 Thank you.

17 MR. MARK FOX: All right. Good evening.
18 Members of our fellow government representatives, I
19 appreciate it very much, of course, all the tribal
20 leadership that is gathered here as well as other guests.

21 I have a number of things, primarily three
22 things, really to talk about on behalf of our tribe.

23 I am Mark Fox. I am the chairman of the
24 Mandan, Hidatsa and Arikara Nation, also known as the
25 Three Affiliated Tribes located in western North Dakota,

1 along the Missouri River, and very proud of who we
2 represent. And here as well, Councilman Hall is getting
3 ready to make comments in the other line, and I have
4 Councilman Spotted Bear here as well, too. I want to
5 acknowledge them.

6 But there are a number of comments that I
7 want to make, and I also want to say, you know, as much as
8 we're -- you're going to hear tonight and much of the
9 criticism and complaints about what the Federal Government
10 does or does not do properly, I will be the first to
11 acknowledge that there are situations and things that the
12 Federal Government does do in a good way and -- and we've
13 seen the results and some of that this past year.

14 I've been Chairman for nearly two years, and
15 so we've had some good, positive things. So I'm not here
16 to say that everything the government does has been bad.
17 We've had some good, solid support in the number of areas.
18 And I want to say thank you for that.

19 But I also want to -- now that we've got
20 that part over, get to the other parts that do concern us.
21 And -- and I'm wearing tonight a medallion, one of my
22 medallions -- and it's a Marine Corps medallion. A Marine
23 Corps with the eagles and the anchor in the middle of it.
24 And I keep thinking about my experiences of me serving in
25 the Marine Corps. Very proud veteran of that.

1 And I was part of the fleet marine force
2 deployed overseas. And I had First Sergeant in the Marine
3 Corp, a tall fellow, older, of course, and the thing about
4 him is whenever he wanted to make a point or make --
5 excuse my language -- make damn sure you remember things
6 to keep your butt out of the sling, he would repeat
7 everything three times. And if you didn't catch it after
8 three times, then you made a bad mistake. And I'm going
9 to say the same thing to ours tonight.

10 The three things that -- the word I want to
11 say tonight is: Sovereignty, sovereignty, sovereignty.
12 And, you know, that's got a whole different meaning for
13 many people, but I know what it means to our tribe, our
14 nation, and so I'm going to try to elaborate on that
15 quickly here. And I know it could turn into a long night.

16 We have our one primary issue, and I've had
17 a chance to even before this meeting and throughout this
18 conference and previously, but we had -- I brought it up
19 today at the noon break right before briefly, with a
20 general doing a presentation, and I've talked to some
21 staff here.

22 Land transfer. Indian Mineral Restoration
23 Act -- for Federal Indian Mineral Restoration Act, 1984,
24 said after flooding and causing one of the worst
25 devastations to our reservation in the 1950s, early 1950s,

1 part of the fixed loan program, great havoc that was
2 created to our tribal nation by flooding of our areas.
3 And it destroyed our economy, and it disrupted our social
4 structure and caused such a great havoc that
5 we're contending with to this day.

6 But in that act it says: "When land is no
7 longer necessary for the purposes of the debt, then that
8 land is to be returned or, in effect, transferred to the
9 Interior Department to use -- to be used for their
10 purposes of the tribe."

11 It doesn't say anywhere in there in my
12 reading of it, "Subject to concerns raised by a Governor."
13 "Subject to concerns raised by recreational enthusiasts,
14 non-tribal, who take advantages of a certain corporate
15 leasing in the past -- what they had claimed to have
16 rights on within our boundaries." The law does not say
17 anything to that affect. It just says, "You will transfer
18 it back."

19 And, in fact, we've had representatives of
20 the Corps at meetings with the State, and we're trying to
21 be cordial. That said, in Indian Country, this has
22 happened before, and we've never allowed a laundry list of
23 those who are opposing it to come in and play. We simply
24 did the work and transferred. But yet, we have that
25 occurring today, delay after delay, whether it's a

1 governor, or a senator that represents our good state,
2 that says, "Don't transfer this until you address our
3 issues."

4 And I know what the ploy is. The ploy is
5 delay. The ploy is don't transfer that acreage, roll the
6 dice on what's going to happen on that November election.
7 And then after they think they're going to win on it, then
8 they'll send a quick message over and hold everything up
9 now. We've got a whole new game in town.

10 And now, we've been given the assurance on
11 that, that we're still going to continue to do it. But
12 quite frankly, without waiting for it for decades, not a
13 couple years, for decades ever since they flooded us in
14 the 1950s, we've been waiting to regain our land usage.
15 And so we're very much concerned that that process is
16 going to be deliberately delayed, stagnated, and then
17 we're taking a heck of a risk come election night.

18 And so we're asking you, within your power,
19 the Corp of Engineers, get that transferred over to the
20 Department of Interior. A fellow, fellow agency can make
21 determinations about compliance with that law. It's not
22 going into our lands. We all know trust land is not
23 really owned by us. It's owned by the United States
24 Government, titled the United States Government held in
25 trust to our people.

1 And so what is the big concern or worry? --
2 get it transferred over. And then the Interior can sit
3 down and say, "Okay, here's how it's going to work.
4 Pursuant to an agreement between the two of you, nothing
5 else is supposed to come into play"; yet, it has.

6 We're hoping for the best of a response on
7 that in the short amount of time, and we're going to keep
8 pushing on this administration to do their job. It's been
9 decades, and our elders are waiting at home.

10 On the other item, number two, Standing
11 Rock. I left -- my friend over there getting ready to
12 make some comments -- we all sit on the Missouri River.
13 We might be differently positioned. We all know that
14 Three Affiliated Tribes has been in a situation of oil and
15 gas development. We've done some good positive things
16 with that, more negative than positive to date what we had
17 to contend with; but nevertheless, there is problems there
18 for what we do there.

19 So our position as a tribe might be slightly
20 different from others who may be against not --
21 non-renewable development, who may be against pipeline,
22 who may be against oil and gas development. Our tribe has
23 the official position, does not take that position to be
24 against -- carte blanche, against everything that is oil
25 and industry related. But I'll tell you what we do

1 support, and that's why we've been down there providing
2 services.

3 I estimate that we're getting close -- if
4 you put everything together, we're getting close to a
5 \$100,000 in support to our brother nation, Standing Rock.
6 We're getting close to the amount of money that our tribe
7 has spent to help them.

8 And there's one primary reason for that.
9 One primary reason: Because a fellow nation said, "We
10 don't want a pipeline to cross or to impact our lands."

11 And if that's the position, that's a
12 sovereignty issue. That is something that they say, "We
13 don't want that impacting our lands." And so we stand
14 firmly behind them and any other tribal nation that says
15 the same thing. We will stand behind them.

16 My position has always been to DAPL
17 themselves in trying to reach out to get my help. And I
18 say, "No, no, you've got to talk to them yourselves." Not
19 only "no," but excuse my language, "Hell, no."

20 If that nation doesn't want you to cross, go
21 around. Go somewhere else. There are other routes to
22 markets you can go to, if that's their position.

23 The bottom line is sovereignty. The
24 sovereignty of the tribe saying, "We do not want to be
25 impacted by this particular line, by a crude line coming

1 across. We don't want to be impacted." So we stand
2 150 percent behind them.

3 Now, that leads me to the final. Ourselves.
4 Ourselves have been impacted. You don't hear that much
5 about it in Indian Country. We're all -- we're in federal
6 court.

7 We have a -- a -- a pipeline company. Myths
8 represent the truth. Boldface lies to our council as we
9 considered contemplating the possibility of whether or not
10 a pipeline should be authorized to cross Lake Sakakawea
11 within our the boundaries, the Missouri River, the same
12 Missouri River that DAPL and Standing Rock are at issue
13 with. And while we were -- we were -- in two votes, we
14 voted, "no," not to allow that. Two votes.

15 And then for the previous year I told them,
16 "You don't cross that river unless we authorize you to.
17 That is our right. No pipelines."

18 So what? To our great surprise, this was in
19 June, and all of a sudden it's the end of July, and we
20 started getting the reports. In fact, on August 1,
21 confirmed reports that a company was, in fact, drilling
22 because that very company had -- it was drilling
23 underneath the lake.

24 So what did I do? We had a council meeting
25 on August 3rd, and within five days, we issued out --

1 through my office, a cease and desist order. Cease and
2 desist all activity. You have no authority to be doing
3 that.

4 A short time later -- it didn't take very
5 long -- there we found ourselves, my name -- myself as a
6 named plaintiff, and our chief of our law enforcement, who
7 served the papers on them, was the second individual
8 named, find ourselves in federal court, and we're bound
9 through the district court.

10 And now, we've found ourselves in the
11 situation where a judge believes, obviously, we had a bad
12 decision, and now we're appealing that to Eighth Circuit,
13 and a judge that says otherwise, he doesn't believe that
14 we have sovereign right.

15 I sat on the stand myself to explain what
16 sovereignty means, what trust means, what federal approval
17 means, what that requires in consultation. All these
18 things, in one ear, out the other, as far as I am
19 concerned with that judge, and now we're appealing that.

20 It's a really dangerous precedent. Because
21 what that company is saying is we don't have to -- even
22 though we own the minerals underneath where that pipe is
23 crossing, we have Indian -- remember, we have -- any of
24 you remember? The Indian Minerals Restoration Act, 1984?
25 Everything in the lake area was given back to us, those

1 minerals alone.

2 And we always assert, and will continue to
3 assert, we own the minerals below the riverbed too. We
4 have owned them since the beginning of time. And so we've
5 taken that position, you have to have our approval, but
6 that's not the only thing that we're talking about.

7 There's a dangerous precedent here because,
8 now, what this company is saying is, "We don't have to
9 have tribal approval to cross the Missouri River within
10 those the boundaries; we just have to have the Federal
11 Government, and here's our permit. Here's our permit from
12 the Corps. Here's our authorization from Interior."

13 But they cannot show you, and neither can
14 the Federal Government, any resolution from our tribes in
15 support of either of those, not once, not by your
16 Government. And so there's a very dangerous precedent.

17 If this continues on and we get on to the
18 Eighth Circuit and end up in front of the Supreme Court
19 itself, if we have to go far, at the end of the day, it
20 says, "You don't have to have tribal approval to cross
21 that river within the boundaries of the river within the
22 Fort Berthold Indian Reservation," then it's just a matter
23 of time. It's such a bad precedent.

24 You have -- you have pipelines coming in
25 within our boundaries saying, "We don't need their

1 approval; we just cross." And that's the great concern
2 that we've had. Not only do we have mineral interest, but
3 I will revert back there -- there's so many case laws, and
4 so many precedents that -- in building that dam, we -- we
5 had to sign the document, putting that bridge across, we
6 had to sign a document, but an oil company can come in and
7 get a document from the same agencies who made sure we had
8 to have signed documents throughout our history.

9 The last thing I'm going to say. We have --
10 we are an IRA Tribe, but not everybody in here is that,
11 but we are, the Indian Reorganization Act. I told that
12 judge, "You need to take a look at that."

13 That was something that was brought to our
14 people. That was a federal law that said, "Here is an IRA
15 document. You need to reorganize" -- we're here helping you
16 reorganize. And here's what your constitution and your
17 bylaws are going to look like. And we want you to approve
18 this and we want you to sign on it, and you're going to be
19 good governments from here forward, modernized
20 governments, and we're going to have that federal
21 endorsement of you doing that. You'll to be able to get
22 federal funding. You'll to be able to do," et cetera,
23 et cetera, et cetera.

24 And so our people with great opposition and
25 great sadness and despair -- you see the pictures of our

1 chairman at the time crying at the time that they had to
2 sign that. When from the Garrison Dam to the IRA to the
3 Garrison Dam, crying from what was going on when they
4 flooded us, and created this huge lake. You see him
5 crying.

6 But that document -- that document was sent
7 back up to D.C. and was approved by the Federal Government
8 saying that's a valid document. But if you read that
9 document, it says in that document that all lands within
10 the Fort Berthold Indian Reservation will be subject to
11 the jurisdiction of the Three Affiliated Tribes, all
12 lands. It didn't say, well, not fee lands. It didn't
13 say, pipeline companies who want to drill underneath the
14 lake. It didn't say, oil industry, who have interest.

15 It says, "All lands are subject to our
16 jurisdiction."

17 And that's where we set our foot down on
18 when we were -- they were trying to attempt to come across
19 in the first place. You cannot cross unless we approve
20 that. You understand. And that's the position that we
21 took. And now, it's going to cost us great time, great
22 money. I know we have a new policy. That's good.

23 I wish this discussion had happened last
24 year or even six months ago. That might have been enough
25 to put the brakes on to say, "Okay, hold on. Unless you

1 get tribal approval, oil company, pipeline company, you
2 cannot cross."

3 We are not going to approve of what you
4 permitted and requested a permit for, or we didn't have
5 that in place. And now it's going to cost us great time
6 and effort and money to try to defend ourselves and say,
7 "You don't cross that river unless the tribe approves of
8 it."

9 And that's where we've been at, and that's a
10 great concern that we've got. And I know that we're going
11 to, hopefully, at the end of the day and with this
12 administration, and with God -- God's blessing somehow, in
13 same way, somehow that what happens in November that we
14 get an administration that understands what we're -- we're
15 crying about, what we're screaming about: "Sovereignty,
16 sovereignty, sovereignty," and gets it and puts things
17 into place so that nobody just comes on and does what they
18 please, economic interest or otherwise.

19 And that's our -- our -- our hope, that's
20 our belief. And I appreciate you giving me a few moments
21 of your time tonight. Thank you.

22 MR. JOSEPH GARCIA: My turn. Okay. Well,
23 first of all, my name is Joe Garcia. I'm head councilman
24 at Ohkay Owingeh, a small pueblo out up in northern New
25 Mexico.

1 The first thing that I wanted to say is that
2 there are so many rules and regs, there are policies,
3 there are statutes, there are processes, there are
4 operation protocols in place. And so if I relate all
5 these things that are already in place and relate it to
6 what's happening at Standing Rock, you can see that the
7 system has a large failure. And so if you start at
8 whatever time this project started, it should have gone
9 through the entire process. And somewhere along the way,
10 it must have failed because it got to this point in 2016.

11 So before we go off and have kind of a half
12 cock and start doing more laws or providing more protocols
13 and all that kind of stuff, we've really got to consider
14 what went wrong with that particular case. Where did the
15 system fail us, and why did it fail us? And unless you do
16 that, we're going to just put more -- we're just going to
17 compromise ourselves, because we're just going to even
18 complicate the process a bit more, and so let's not do
19 that.

20 Let's find out where it went wrong, and why
21 it went wrong. Maybe the policies and protocols and all
22 of that are okay already, but maybe it's a human failure
23 that caused us to get to where we are. And so if we can
24 assess, not only the Standing Rock situation, but any
25 other projects that have gone through this same kind of

1 effort, we can provide a database of where the failure
2 rates are and identify them, and that's what the root
3 causes are, then maybe we need to the step back and say,
4 "Oh, these were failures because we didn't do this, or we
5 didn't do that." And before we go crazy and start
6 proposing all kinds of other rules and regs, we need to
7 start there.

8 So I'm proposing that the -- all of the
9 entities get together, and we look at where the systems --
10 where the current laws are, and then related to what
11 actually went wrong with -- with the Standing Rock issue;
12 but all of the other issues where something went wrong.
13 And so we'll probably find that it was human error and
14 maybe political errors or something like that, but I
15 propose that we do that.

16 And then I wanted to relay to everybody else
17 here that currently the FAST Act is in place. The
18 FAST Act is about transportation. And transportation
19 includes highways, dirt-ways, waterways, airways,
20 airports, and things like that. It's infrastructure.

21 And so we're in the process of doing the NEG
22 REG, negotiated rulemaking, and there's been some
23 references to -- well, let's use what's already in place
24 at BIA or somewhere else. And it's kind of scary now
25 because if we refer to something that's already in place

1 and it doesn't work, then we're causing another error to
2 take place.

3 And so please provide input to the NEG REG
4 Committee. And the website is on the Federal Highway
5 website. And I'm serving as one of the co-chairs through
6 the NEG REG team. So that's what I have to offer. Thank
7 you.

8 MR. AARON PAYMENT: (Native language
9 spoken.) I'm Aaron Payment. I'm the Chairperson of the
10 Sault Sainte Marie Tribe of Chippewa Indians. We are a
11 federally recognized tribe within the Treaty of 1836, with
12 a surface area comprised of the eastern half of the upper
13 peninsula of Michigan. The Treaty of 1836, of course,
14 cleared the way for Michigan to become a state in 1837.

15 I also serve as the Chair of the Chippewa
16 Ottawa Resource Authority, which is a five-tribe resource
17 authority over the 1836 Treaty. And also with us tonight
18 we have Little Traverse Bay Band Members, Grand Traverse
19 Band Members, Bay Mills Members, and Little River Members,
20 all of the which are a party to the treaty and manage the
21 resource.

22 The Sault Sainte Marie Tribe is part of the
23 Anishinabe people. We have a court affirmed retained
24 rights to fish within the water of the Great Lakes in
25 Michigan, Huron, and hunt fish and gather foods, and

1 medicines on public lands within the treaty city
2 territory. We share these rights with our four other
3 tribes that I just mentioned; however, these rights are
4 under threat. To exercise the treaty right to fish, there
5 have to be fish in the waters, and the fish have to be
6 safe to eat. Our fisheries are threatened by crude oil
7 pipelines that run under the Great Lakes waters and the
8 straits of Mackinaw.

9 There are the Enbridge pipelines, Line 5 of
10 the Lakehead System, and the same system that broke under
11 line 6B in 2010 and caused the biggest inland oil spill in
12 U.S. history spilling a million gallons of tar sands crude
13 in the Kalamazoo River. The Huron Band of Potawatomi
14 council members are here also with us. And it was a
15 disaster.

16 Line 5 carries a million gallons of oil
17 every hour underneath the Mackinaw Bridge. Line 5 was
18 installed in 1953 with a 50-year life design.

19 Enbridge now says it's safe to operate
20 indefinitely. We know -- we all know that no
21 infrastructure will operate indefinitely. The straits are
22 such valuable waters and delicate ecosystem that we know
23 that no one would be about to place such a pipeline in
24 today. In fact, the state's attorney general has
25 acknowledged that.

1 But with this one grandfathered in, it never
2 had to meet the environmental standards because U.S.
3 Environmental Law began in the 1970s. This was installed
4 in 1953. This location is too vulnerable to allow a new
5 pipeline to be built with the state of our steel, welds,
6 and supports, then no pipeline is acceptable at this
7 location, least of all, an aging pipeline, and an aging,
8 faulty system, already 25 percent beyond it's designed
9 life.

10 This pipeline is an accident waiting to
11 happen. The State of Michigan, the beneficiary of our
12 treaty is allowing the continued operation of an imminent
13 threat of our core affirmed treaty rights. The Governor
14 is doing nothing. This is the same Governor who presided
15 over Michigan and the Flint water crisis.

16 The attorney general has stated that the
17 pipeline days are numbered, but he won't tell us that
18 number. The state government is behaving as if a pump and
19 pray is a way to protect the Great Lakes. We know better,
20 and we need to do better. There are anchors, and the
21 attorney general had stated -- has recognized this in a
22 filing, that our supposed to be installed every 75 feet.

23 In 2014 I think as a result of tribal
24 leaders in environmental groups asking questions, the
25 State of Michigan didn't know where the permit was. They

1 had to find the permit, the original easement and permit,
2 and they were supposed to install the anchors.

3 In 2014 they acknowledged that 20 percent of
4 the anchors were not installed. Now think of this: The
5 5 miles between the Upper Peninsula and Lower Peninsula,
6 and it's not completely anchored the whole way.

7 And so for the Army Corps, I've got a
8 message for you, because we have in front of the Army
9 Corps the request to continue the easement. And our
10 original response, we have a very good relationship with
11 the Army Corps of Engineers in Michigan, very good
12 relationship. But on this issue, we got a preliminary
13 response back that basically said, "There's nothing we can
14 do."

15 Thank God for Standing Rock because that's
16 changed everybody's perspective. Where it was business as
17 usual and approving pipelines, they've taken a step back,
18 and they're waiting to find out what the answer is going
19 to be at the federal level. So I'm grateful for the
20 leadership at Standing Rock and the President for putting
21 a stop to this.

22 A huge issue is that there's little or no
23 federal law governing this pipeline. Line 5 was installed
24 prior to any environmental or safety regulations and has
25 been grandfathered. So there is no need for triggering

1 action, no approval, no to help to make this pipeline meet
2 current safety rules. This is a problem.

3 Of the half million miles of pipeline in
4 this country, half of it predates these laws. Half of the
5 pipelines in America predates our current environmental
6 laws and protections. Aging pipelines with substandard
7 welds, oil, steel, old coating technology, or non-existent
8 coating, and decades of corrosion are not subject to
9 environmental or safety rules. This is appalling.

10 The U.S. government does not have the right
11 to give away our court affirmed treaty rights to those who
12 threaten them with environmental disaster. We did not
13 negotiate away these rights, so you do not have the right
14 to threaten them by allowing a poorly regulated industry.
15 You do not have the right to give them away to a state
16 that does not have any requirements to consult either.

17 Recently, the State of Michigan and EPA
18 settled with Enbridge over its pollution over the
19 Kalamazoo River with the system spill, Line 6. That spill
20 happened for 17 hours. Enbridge believed that it was a
21 false alarm. And so what did they do? They pumped
22 additional pressure through the line. A million gallons
23 of oil, a billion dollars in costs, and a 100 years before
24 that river will be back to it's pre-spill state. That is
25 unacceptable.

1 There is zero tolerance -- zero tribal
2 consultation on the settlement. Only half -- only after
3 the fact did the Government communicate about this after
4 the tribes concerned with Line 5 made this an issue.

5 It is essential that the environmental law
6 must be made to apply retroactively to projects that
7 threaten treaty resources. It is essential that federal
8 policy on consultation and coordination with native tribes
9 incorporate the United Nations definition of free, prior,
10 and informed consent. It is essential that NEPA
11 requirements be brought to bear on every federal action,
12 including revisions to pipeline integrity, management, and
13 safety plans under FISMA. But it is essential that NEPA
14 requirements be modified to include specific analysis of
15 climate impacts for the proposed actions.

16 If these things are done, it will go a long
17 way toward the goal to better ensure meaningful tribal
18 input and to infrastructure related reviews and decisions,
19 and will far better protect our tribal lands and resources
20 and our treaty rights.

21 Finally, we need regulatory change. We need
22 a regulatory change that takes into consideration and
23 requires treaty -- treaty rights and retains rates review.
24 We also need a full environmental.

25 Now, NEPA -- let me talk about that for a

1 second. And I appreciate the Chairman who went second
2 tonight. So we have to follow NEPA. When we get federal
3 dollars from the Federal Government to implement
4 infrastructural development, we have to follow NEPA and we
5 have to follow it exactly how the Federal Government
6 interprets it.

7 We followed NEPA in one of our projects
8 under homeland security grant. We followed it. We had
9 all the letters from the federal agency, and we had to pay
10 back a \$100,000 after the fact, because somebody
11 interpreted after the fact that we didn't follow it.

12 Why do tribes have to follow that standard
13 and the oil industry doesn't have to seemingly follow any
14 standard? So we need stronger regulations in order to
15 improve that.

16 And then, finally, a sacred sites review.
17 On of the issues for the Huron Band of Potawatomi when the
18 spill happened, is there was a change in a river, to
19 create a river, basically. So one of their submerged
20 sacred sites was endangered by this oil spill, and it came
21 really close to affecting their sacred areas. That's
22 unacceptable.

23 So I also want to echo what Joe Garcia said,
24 the fast track -- so we appreciate the fact that
25 President Obama -- and if you saw my thing yesterday or if

1 you saw at the White House Tribal Leaders thing, Obama is
2 one of my heros. He's the best president that we've ever
3 had. There's no dispute for me. I appreciate everything
4 that he's done.

5 He created the executive order that created
6 consultation, advisories, listening sessions. And for all
7 the tribal leaders listening, that's not a guarantee. It
8 depends on who's president on whether or not that
9 executive order will continue.

10 So I have the greatest regard for
11 President Obama. And when we created the Recovery Act
12 funding to build infrastructure to get us out of this
13 slump in the economy, a lot of money came to Indian
14 Country, so we appreciate that. But one of the things
15 that happened was to get the money to the projects to get
16 shovel in the ground, the fast track was created. It
17 doesn't include any reference to tribes or treaty rights.

18 Now, this President created that process,
19 and this President can fix that process. He can include
20 that in the language before it's too late.

21 Now, let me tell you one final thing: As an
22 elected tribal leader, the way this works is, it's all
23 about what have you done for me lately. Okay? You can do
24 all kinds of wonderful things for your people. But the
25 final thing when they ask you for it and you can't give it

1 to them, then they're voting for the other guy. Okay?

2 So Obama is not running for reelection, and
3 for all the wonderful things, he doesn't want this on his
4 legacy. He's got the opportunity to correct the fast
5 track and to put those steps, those reviews -- treaty
6 rights reviews, full environmental, sacred sites into the
7 regulatory process before it's too late so that he has
8 that as his legacy that, not only did he stop this
9 pipeline temporarily, but he put some meat behind it and
10 stopped and protect our rights going forward. (Native
11 language spoken.)

12 MR. LEONARD FORSMAN: Hello. Leonard
13 Forsman, Chairman of the Suquamish tribe up in Seattle.
14 Honored to be here and council members, anybody who's in
15 the audience as well, and my wife is here too, so I'm
16 really nervous. I think that was funny.

17 I'm here on one issue. There's a lot of
18 people here that are going to bring up probably everything
19 else that I was probably going to say, so I'll stick to
20 the one.

21 The Army Corps of Engineers Annexation and
22 Repeal, these are the National Historic Preservation Act
23 Regulations. Saturday will be the 15th anniversary of the
24 National Historic Preservation Act, if you did not know,
25 and so this is somewhat relevant.

1 For decades the Advisory Council of the
2 Historic Preservation has repeatedly expressed its view
3 that the U.S. Army Corp of Engineers application of
4 Appendix C of proposed project does not fulfill the
5 agency's responsibility under the National Historic
6 Preservation Act, and is not in compliance with
7 Section 106 of the act.

8 The National Preservation Act provides
9 a much more expansive recognition and has played a major
10 role in protecting indigenous cultural beliefs, customs
11 and practices. And they are not only problematic,
12 particularly for tribes, but they usually conflict with
13 and are not in compliance with the National Historic
14 Preservation Act, and the ACHP regulations and provide
15 less protection of historic properties and traditional
16 cultural properties and are invalid.

17 The Corps' application of Appendix C is the
18 root cause of the current dispute associated with DAPL.
19 Appendix C, therefore, is less protective of the historic
20 properties and the traditional cultural properties; but at
21 the same time, provides more protection of economic
22 interests. And we are concerned about the narrowing of
23 the scope of the project, the course that has been
24 engaging in through Appendix C, by just going with permit
25 area and avoiding indirect effects. And Appendix C

1 significantly narrows the definition of adverse effects,
2 so we want that changed.

3 Appendix C does not require tribal
4 consultation. It only says that we may be consulted as
5 part the district engineers of investigations. And we
6 really believe that this Appendix C is an unauthorized
7 delegation of rulemaking authority, and the federal courts
8 have enjoined the Corps -- have enjoined the Corps for
9 using on Appendix C. Appendix C is inconsistent with the
10 ACHP's regulation.

11 Congress did not explicitly or implicitly
12 delegate regulatory authority to the Corps to promulgate
13 its own 106 regulations; and the federal agency does not
14 have independent legislative power.

15 So we -- for the above reasons, we would
16 like the administration to strongly consider repealing the
17 Army Corps' Appendix C in order to demonstrate the proper
18 respect for our traditional ways, our sacred places, and
19 our archeological sites in our ancestor homelands. Thank
20 you.

21 MS. STELLA KAY: Good evening. My name is
22 Stella Kay, and I'm the Tribal Vice Chair of the Little
23 Traverse Bay Bands of Odawa Indians.

24 Now, I'm going to repeat a lot of stuff that
25 Aaron Payment brought up and stole my thunder, but it's

1 important, so I want you to hear it.

2 In the 1836 Treaty, the Little Traverse Bay
3 Bands of Odawa Indians, along with other Ottawa and
4 Chippewa tribes, ceded more than 26 million acres of this
5 aboriginal territory to the United States that became
6 Northwestern Michigan in 1837. Included in this, was
7 nearly 14 million acres of land and 12 million acres of
8 the Great Lakes.

9 The tribes only made this vast cession of
10 their homeland based on the promise contained in Article
11 13 of the 1837 Treaty that the tribes would have the
12 permanent right to hunt, fish, and gather throughout the
13 ceded territory, especially commercial and subsistence
14 fishing in the ceded waters of Lake Michigan, Huron, and
15 Superior. The Great Lakes Fishing Treaty right lies at
16 the heart of the tribes culture, the straits of Mackinaw,
17 that connect Lakes Huron and Michigan to Michigan's Upper
18 and Lower Peninsula are the center of our tribe's treaty
19 fishing.

20 A 62-year-old pipeline owned by a Canadian
21 company, Enbridge, known as Line 5, passes under the
22 straits of Michigan -- or the straits of Mackinaw. An oil
23 spill on the straits would destroy our sacred treaty
24 right, and it would be impossible to clean up all -- at
25 all during the winter months when the straights are frozen

1 over.

2 The United States has a trust responsibility
3 to protect our treaty fishing rights. And in 1973 filed
4 suit in the federal court in the case known as United
5 States v. Michigan, to carry out this trust responsibility
6 to uphold the treaty fishing right. To carry out this
7 trust responsibility, the United States must take action
8 to remove Line 5 from the strait of Mackinaw as the
9 catastrophic consequences of the spill outweigh any other
10 possible concern.

11 In addition to the implication of our treaty
12 rights, containing 20 percent -- containing 20 percent of
13 the world's freshwater, which all passes through the
14 straits of Mackinaw, the Great Lakes are the country's
15 most valuable resource, that's 20 percent of the world's
16 freshwater source.

17 Whether possible under current law or new
18 laws are necessary, oil must be routed around the Great
19 Lakes. Transportation of oil under them by pipeline, or
20 on top of them by boat, creates much too great a danger of
21 irreversible, horrific consequences to this unique and
22 priceless resource and to our tribe's treaty fishing
23 rights.

24 My mother was a proud Odawa women. She
25 believed she was a -- she was a water walker. And she

1 believed in the fight for our freshwater. So my tribe
2 stands with Standing Rock. We must do what we can to
3 protect our water, because water is life.

4 MR. DAVE BROWNEAGLE: (Native language
5 spoken.) Can you spell that? My name is Dave Browneagle.
6 I'm the Vice Chair of the Spokane Tribe.

7 First off, I'd like to thank all of you that
8 are sitting up there. And that was one of the things that
9 I'm going to address. And also for all the words that
10 were shared with the Standing Rock people.

11 You know, the beautiful thing -- and you
12 find some beauty in everything -- what's happening at the
13 Standing Rock Sioux Tribe and the oil pipeline, it's
14 bringing us together. It's bringing us to this point.
15 And it could have been done so much sooner. It could have
16 been done way back when.

17 But because of a lot of things that were
18 mentioned, a lot of things that were shortcomings, a lot
19 of things that weren't adhered to, or the treaties, or the
20 promises that were made that weren't kept, you know, now
21 we're here. And it's a -- it's a sad time, but there's
22 always hope.

23 I'm not here to blame. I'm not here to, you
24 know, do some name calling or anything. What I'm here to
25 do is I'm going to offer a little solution, and I think it

1 might help the future generations. And I'm talking about
2 my children, and my grandchildren, and great
3 grandchildren. And they can talk about what happened here
4 today and say, you know, our people stood up, and just as
5 our ancestors in the past stood up, and they got killed.
6 They got butchered. They got hung, but they stood up.

7 And in so doing, we get to stand here today.
8 We get to have this moment peacefully and discuss our
9 issues, our shared issues, because it is a shared issue.
10 It's not us against you and you against us. It's a shared
11 issue.

12 I've got to also let you know I'm a retired
13 educator by trade, so I've got my notes right here. And
14 some of you know these words, but I -- I'm going to say
15 them anyway, because I think we need to understand what it
16 exactly means -- at least the way I think it means. Okay.

17 Consult. And I've heard that quite a bit
18 today. Consult really is just seeking advice or
19 information from someone who is an expert in a particular
20 field. So when you call upon the native leaders in this
21 room to speak to you, we're the experts in our country.
22 We're the experts in our home. We're the experts for our
23 people. And sometimes that's dismissed because, what does
24 an Indian know? We know a lot. Okay?

25 Consultation is a meeting when the expert or

1 professional is called upon in order to seek advice. So
2 when we are asked to come to a consultation, actually what
3 we're doing -- and I've seen this in the past, I've taken
4 part in some of these, and we're going back 30 or 40
5 years. And it's kind of like you all sitting up there,
6 and you have the recorder and all this and you get your
7 name and everything. And then we say our piece, and then
8 we leave. Or I should say, if you come to your
9 reservation, we say our piece and then you leave.

10 I remember there was one federal judge came
11 with a recorder. She was sitting off to the side, and she
12 was sitting there in her robe, and we were giving our
13 consultation. And I got up -- this is like 30 years
14 ago -- "You know, you've already made your decision of
15 what you're going to do. You're just going through the
16 process because that's what your book says you have to do.
17 You have to listen to the Indian people. You have to
18 listen to the Spokane Tribe, but it's already done."

19 I said, "So why are you even doing this?
20 Why don't you just send a recorder, and we'll tell them
21 what we have to say?"

22 Trust and the trustee, the trust
23 responsibility. It's a firm belief in the reliability,
24 truth, ability, or strength of someone or something, such
25 as word, government, or leader. All the leaders that are

1 represented here, they were voted by their people because
2 they trust us to speak for them. You are appointed, or if
3 it's you're career, you're up there because that's what
4 you wish to do. There should be some trust, trust within
5 yourselves to do what you said you would do when you took
6 that job or when you were appointed.

7 And in Indian Country, the way I look at it,
8 "consult" usually means, What do you think? So I'll stand
9 up and thank you for not giving us five minutes, because
10 I've been in those too where you get five minutes to
11 speak. And -- and I've got to share this: This one
12 gentlemen from this one reservation in Washington,
13 beautiful elder, and I considered him a true elder, he got
14 up and after he got done introducing himself in the
15 language and his family and who he's representing, and
16 then he translated in English and the light went off and
17 they said, "Thank you, your five minutes are up." And he
18 was there as a consultant for his tribe -- or represent
19 his tribe.

20 So for me, a sovereign nation -- and I think
21 you heard that time and time again. We're a sovereign
22 nation. The United States Government's a sovereign
23 nation. And at one time we were considered sovereign, and
24 you made treaties with our people, and you listened to the
25 people. And you know why?

1 Because you had a small number on the East
2 Coast, and you were dealing with a large number of native
3 people. So your ancestors, to save yourself, was to make
4 a treaty. You stay on that side of the river, and we'll
5 stay on this side of the river. You don't brother us, we
6 won't brother you. It worked. But as the numbers
7 shifted, the treaties were broken. And in a sense the
8 sovereignty, power of the sovereign nation -- the
9 sovereign nation, it's broken.

10 So my purpose is, let's look at it, how can
11 we fix it? You know, we sit as a -- I believe we should
12 be sitting at a table as equals, sovereign to sovereign.
13 You are representing the United States Government, we're
14 representing our respective tribes. It should be mutually
15 respected, because there is a dominance in power, and I
16 believe very strongly the power of words.

17 I'll just give you one example: If you call
18 me a minority and I accept that term, then I'll act like a
19 minority. I am not a minority. I will not act like a
20 minority. So when we get the sovereign nations at the
21 table, they're representing a history. They're
22 representing generation upon generation upon generation.
23 And we're still here.

24 So what I would like to recommended is when
25 we have this consultation, meaning you consult with us, we

1 consult with you, our government consults, your government
2 consults, and we come to a consensus. We consent that
3 this is what we are going to do together. This is what we
4 agree upon because you listen to our experts. We listen
5 to your experts. We talked about it, and we have a
6 consensus that this is what we're going to do.

7 I think in the past after the power shift
8 change, we come and tell you and maybe it's a courtesy
9 thing, and these are the experts, but I don't think we're
10 being listened to anymore. And so I thank you tonight
11 because I feel that this might be a step to change that.

12 So the change in the mindset, I believe that
13 has to take place. And I also believe -- and I hate to
14 say this because it might give you some ideas. No, just
15 kidding. But every time we go to court and it reaches the
16 Supreme Court, there's a good chance statistically, we
17 lose more than we win. And every time we lose, we lose a
18 little bit more of our sovereignty. And if that's the
19 intent, then it's working.

20 I'm just going to ask, let's change that
21 intent and let's work together because our children and
22 our grandchildren and our great grandchildren, and our
23 great-great-grandchildren, they're going to be having
24 these conversations, and hopefully, it's going to be a lot
25 better than what we're doing now, because we are going to

1 be making those changes. Thank you.

2 MS. JENNIFER MCCLEOD: (Native language
3 spoken.) Good evening. My name is Jennifer McCleod. I am
4 a tribal councilwoman for the Sault Sainte Marie Tribe of
5 Chippewa Indians, and I'm also a certified teacher who
6 spent many years in the classroom.

7 What I came up here to tell you is a story.
8 You asked if there are stories, and I'm going tell you a
9 story about our children. I taught K-12, and from
10 Kindergarten to the 12th grade, I was always teaching our
11 children about what it's going to be like for them when
12 they go out into the dominant world because it's
13 different. It's different than the world that they know.
14 And I had to prepare them for that so that when we had to
15 get up in front of a microphone, they could do it.

16 When they had to understand why is the
17 government saying this? What does that mean? They could
18 be ready for that. When they had to go out and get their
19 first job, I taught them the skills for that because it's
20 the different. And what I want to say to you is to
21 understand that we are different. Understand that our
22 values, our sensibilities, our priorities, and everything
23 that is about who we are is markedly different than the
24 society that I prepare our children to go into and to
25 thrive in.

1 If any of you were going to be sent on the
2 other side of the world to another nation of people who
3 had a different language, you would be prepared for that.
4 You would take the time, and you would learn about them.
5 You would understand what they would find offensive. You
6 would find what's important to them. If there was a
7 prescribed dress for women, you bet that you would know
8 about that.

9 You would take the time to understand about
10 the people that you're going to be across the table from
11 so that you could relate more and understand more, so that
12 you could come to that consensus understanding that we're
13 all looking for. That's what the consultations -- that's
14 our big hope for those consultations is that we will come
15 to an understanding. We're not all going to get exactly
16 what we want, but we can work together to get to that
17 point where everybody's okay.

18 That's how our tribes existed. We always
19 worked until everybody was okay. There were no losers. I
20 urge you to look at that. I urge you to take the time and
21 understand about the people who are going to be sitting
22 across the table from you. But don't make a mistake in
23 thinking that every one of these nations here, that we are
24 alike. We are not the same.

25 Yes, we're native people, but we may be as

1 different from each other as the Swedes are from the
2 Italians. We have different language. We have different
3 culture. We have different ceremonies. And you need to
4 understand that because it affects those decisions that
5 are going to be made.

6 I know I teach the children how the dominant
7 society sees water. And I explain to them that they don't
8 see that as a woman. They don't see that as a life giver.
9 They're seeing it as something that can be used to make
10 life better, and they can travel down it, and we can do
11 all these attributes that are used for water because
12 that's how that society sees it. But my children don't
13 see it that way. Learn about that. That will help make
14 your job easier, and it will help peace to come, and it
15 will help us to make progress for all of our people.

16 So that's the story that I want to tell you.
17 We may be speaking English, but don't make the mistake
18 that we aren't different. Because what's in our heart,
19 what's in our culture, what's in our ceremonies, what's in
20 our way of life is valuable.

21 And I heard one of the gentlemen say earlier
22 one of the tribal leaders say, "Reference our knowledge."

23 We have vast knowledge that we have been
24 sharing since the point of first contact. And as I was
25 growing up, I would hear science come up with this big

1 newspaper article of what they just discovered. And I
2 would listen to my grandparents laugh, because we've known
3 that for a long time. But it takes science, and it takes
4 those methodologies that to validate what we've already
5 known.

6 We can share with you what we know about
7 this Mother Earth, about living together, about
8 coexisting, because we've been doing it pretty darn good
9 since the point of first contact. It wasn't always to our
10 benefit, but we're still here despite everything.

11 So take that time, consider that if you were
12 going to another nation that was visibly to your eye
13 another nation, what would you need to know about them,
14 and translate that to us. It will help us all. (Native
15 language spoken.)

16 MR. CHRIS DEVERS: Good evening. My name is
17 Chris Devers. I'm the Vice Chairman to the Pauma Band of
18 Luiseno Indians in Southern California.

19 And we come here tonight to talk about how
20 we can improve the consultation process. And as I sat
21 here and looked at the material and what some of the other
22 Tribal Leaders have said is you want to start this process
23 off in a good way.

24 And my question to all of you up there is:
25 Why is there not a consultation scheduled for the

1 California tribes?

2 There are a 109 tribes in the state of
3 California, and I cannot believe that between the 13 of
4 you up there that don't know that there's tribes in
5 California. So to me, that starts the whole process off
6 on a bad foot.

7 As a California tribe, we are expected to go
8 to all these other different areas to consult with you.
9 You should be coming out to California and consult with
10 our California tribes. And it may not be just once
11 because we refer to ourselves as Northern California,
12 Central California, and Southern California, because we
13 know the status and the situation of our sisters tribes
14 throughout the states, the ones that can travel and
15 can't -- have a difficult time to travel.

16 So above everything else that has been said
17 here, you know, I would expect something from whoever you
18 communicate with to respond to NCAI with an explanation of
19 why the Pacific region was left off of this consultation
20 process. And what is it going to take to put us on it?
21 And I don't want to -- shouldn't have to hear is, "We
22 don't have the time. We don't have the money. We don't
23 have the interest in including California."

24 My question is short and sweet, but I think
25 it deserves a response at some point in time for those of

1 you that are up there in the front stage. Thank you.

2 MR. WILFRID CLEVELAND: (Native language
3 spoken.) Good evening. My name is Wilfrid Cleveland,
4 spelled W-i-l-f-r-i-d C-l-e-v-e-l-a-n-d. I'm from the
5 Ho-Chunk Nation in Wisconsin. I am the President of the
6 Ho-Chunk Nation.

7 I'd like to say a word of thanks to the
8 Standing Rock Sioux for making this happen here, this
9 gathering here this evening. I'd like to say a word of
10 thanks to NCAI for hosting this listening session this
11 evening, and I'd like to thank each one of you for taking
12 the time to come here this evening and listen to us. And,
13 hopefully, that you would absorb some of the things that
14 are being said here this evening, because there is a lot
15 that you are going to be talked to about.

16 And it just so happens in the Ho-Chunk
17 Nation, we have a clan system in our ways. And we had the
18 upper clans, the birds, thunder-beings, and we also have
19 the ground clans, those that walk on Mother Earth.

20 And I am from the bear clan. And the bear
21 clan is the protector, the protector of the nation and the
22 protector of Mother Earth. And it's the way that the
23 Great Spirit made it that I am the President of the
24 Ho-Chunk Nation and that I am here addressing you people
25 about Mother Earth and what has taken place with her at

1 this time in our lives.

2 And we as Ho-Chunk people and other
3 indigenous people here on the creation, we all have our
4 ceremonies, and we are all in harmony with the creation
5 and the spirits that are upon the creation, the trees, the
6 insects, everything that you see. And that's where --
7 that's where our life comes from.

8 And then we have the water. The water we
9 use in our ceremonies, the waters that the Creator of the
10 Great Spirit made sacred -- made pure for us to use
11 because we need it for survival just like everyone else.
12 And this is why we are here addressing these kinds of
13 things because our concern, the way that our elders --
14 they were concerned about us as we were children, as we
15 were grandchildren growing up.

16 And it's now, today it's our turn, our
17 responsibility to be watching out for our children, for
18 our grandchildren and the future generations. We want
19 them to enjoy all of the creation that we enjoy, that our
20 elders made sure that we enjoy.

21 And for that reason, we stand here and speak
22 to you about why we need all these -- all these pieces
23 that are being placed on us like in the state of Wisconsin
24 where we are, where we live.

25 We are -- we are -- we are stewards -- we

1 are stewards of Mother Earth. And as part of that and
2 this is our responsibility to make sure that Mother Earth
3 is taken care of, and through that -- and then -- there's
4 corporations. These corporations, they don't want to
5 understand us. They don't really care to hear about us
6 and how we are with the creation because that's not their
7 interest. Their interest is money.

8 And a question that I have and been thinking
9 about it, is why -- why is this corporation -- why do they
10 want to build these pipelines coming from Canada? Why do
11 they want them to come into our lands? Why is that?

12 And then, I don't think that even the United
13 States, I don't think they even maybe -- maybe their
14 government, maybe they're bought. I don't know. But they
15 seem to make it sure easy for these corporations to come
16 over here and do all these things to Mother Earth without
17 a care about us. And our lands -- and our lands in
18 Wisconsin we have -- we have sacred sites that we -- that
19 we concern ourselves with.

20 We have mounds. It just so happens that
21 this past winter, and when the temperature was, like,
22 23 below 0, we had a march on a capital in Madison and
23 protecting -- protecting our sacred sites. And other
24 nations came over there and supported us. And we staved
25 off the government from passing a bill that would make it

1 easy for these corporations to infringe on our sacred
2 sites.

3 And it continues. And now with what's
4 happening in -- at the Standing Rock Sioux Reservation and
5 what's happened around by them, about their sacred sites,
6 they don't -- they don't really care about those kinds of
7 things. No different if someone wanted to come over to
8 someone's cemetery and start plowing them up. How would
9 those folks feel if that happened? I don't think they
10 would care too much for that idea, but that's the way that
11 it is for us. And so we tried our best to -- to use our
12 ceremonies in a good way and ask the great spirit to help
13 us so that we can continue on being a good stewards of
14 Mother Earth.

15 And the Government, they make it easy for
16 this -- for this corporation to come over here on our
17 lands and disturb -- disturb our -- our sacred sites,
18 disturb our mounds, and for what?
19 These pipelines, there's a pipeline that was built in 1953
20 in the state of Wisconsin, and it runs from the city of
21 Superior all the way down to the central border of
22 Illinois and Wisconsin. And just recently, we heard that
23 there was going to be -- there was going to be another
24 pipeline run adjacent to that pipeline. And why?

25 They're making a larger one, a larger one

1 than -- because we all know. We all know and they know
2 that these pipelines are going to -- are going to leak at
3 some time, because they're not -- they're not made
4 forever.

5 And it's going to happen. And what's going
6 to happen to Mother Earth if that happens? What's going
7 to happen to our waters? And who's going to -- who's it
8 going to affect? Not those corporations. It's going to
9 affect us. It's going to affect the citizens of the state
10 of Wisconsin, or wherever these pipelines are. There
11 ain't just only one or two pipelines that are coming
12 from -- from Canada into the United States. There's many
13 of them coming. They are there. They've been there.

14 And so we are standing here saying these
15 kinds of words to you and making -- understand who we are.
16 Why we're concerned about desecrating Mother Earth the way
17 that these big corporations are doing, and the way that
18 they want to do. It's been happening.

19 And then we have this global warming.
20 What's causing that? It's all of this desecration to
21 Mother Earth. We know that. We know that maybe something
22 for them hard to believe that. Maybe they think it's
23 something else that's causing it.

24 But no, that's not what it is. It's
25 everything that happens to Mother Earth. And it's her

1 only way -- her only way of battling these things that
2 happen. I mean, like, you look around you, and you listen
3 to the news that's happening. It's all -- it's all
4 because of these kinds of greedy corporations that are
5 desecrating Mother Earth. And that is why we are here
6 talking to you, make you understand, make you feel what we
7 do because it's going to affect your people. It's going
8 to affect everyone, because water is -- water, at some
9 point if this continues, it's not going to be pure. It's
10 not going to be sacred.

11 So we come over here -- and even in our --
12 within our government, within Ho-Chink Nation government,
13 we are making preparations for this. When our -- when our
14 general council meeting -- we just had a general council
15 meeting a few days ago, and we did a Right of Nature, a
16 resolution that our government is going to be supporting
17 the nature around us, the environment around us, and we're
18 going to do our best to keep it so that our children, our
19 grandchildren can continue on and enjoy what we enjoy.

20 So I'd like to say these kinds of things
21 about who we are and why we are here, and why we are
22 talking about Mother Earth or why we are talking about the
23 water, and why -- why is this happening to Mother Earth.

24 And you have the ability -- you have the
25 ability to change all this for the future generations, for

1 all these tomorrows that are going to be here because it
2 could be devastating at some point for our children, our
3 grandchildren. We're not going to feel the effects of it,
4 but this is what we think about our elders thought about
5 us, we think about our future. (Native language spoken.)

6 MS. CAROL EVANS: (Native language spoken.)

7 Good evening. My (unintelligible) name is
8 (unintelligible) given to me by my late grandmother,
9 Cecilia (unintelligible) from the Coeur d'Alene Tribe. My
10 English name is Carol Evans, and I am the Chairwomen of
11 the Spokane Tribe of Indians. I come here today with our
12 Vice Chair David Browneagle who spoke before me.

13 First of all, I would like to thank all of
14 the tribal leaders in the room today. Thank you. Thank
15 you for sharing your stories. Thank you for sharing your
16 hearts. Thank you for standing up for our environment.

17 Also, I would like to thank the
18 Standing Rock Sioux for their -- their courageous efforts
19 to protect -- to protect the water, the sacred water, it
20 is sacred to all of us, and we are so thankful to that.

21 Our tribe, like many other tribes, support
22 the Standing Rock Sioux. We passed a resolution. Our
23 Vice Chair went back there. Tribes in our areas, the
24 Cowlitz Tribe, the Kalispel Tribe, and the Spokane tribe,
25 come together to send wood back for them so that they can

1 light their campfires. So we continue to support our
2 brothers.

3 We also supported our Lummi brothers and
4 sisters in their efforts at Cherry Point. It's -- it's so
5 very important that we continue to support one another, to
6 come together and to fight for what -- what is really
7 ours. It is really -- was ours. We gave it up. We gave
8 up a lot. So I thank you, all of you tribal leaders, for
9 sharing your hearts in this session today -- in this
10 listening session.

11 Also, I'd like to thank you federal
12 employees, whether your appointed or lifetime employees,
13 thank you for coming here. I know it sounds like -- if
14 sometimes we're mad at you, I don't think that's the case.
15 I think we speak from the heart. And because our
16 ancestors came from a place and an understanding of having
17 a true attachment to the environment, to the land, and to
18 the air, to the water, to the animals, to the fish, and to
19 the birds, that is why when -- when these big
20 corporations, or when these outside entities come and they
21 do harm to these things, it does -- it angers us in our
22 heart. So try to understand that -- that I just ask that
23 you listen. Listen with your two ears. You got two ears.
24 So listen real hard. And if you listen hard enough,
25 you'll feel it in your heart. Because when you can listen

1 and feel it in your heart, you're truly listening to us.

2 If you do that when you talk about
3 consultation, you may -- we may come to a point where we
4 agree -- we agree on things -- on what we're going to do
5 and how we're going to proceed with these projects we're
6 talking about.

7 I'd like to share a story with our tribe
8 involving consultation and a lack of consultation. This
9 happened a long time ago. My tribe is -- we're known --
10 my ancestors were known as salmon people, river people.
11 We are inland from the ocean, but the salmon made it all
12 the way up to the Spokane Falls in our historical
13 homelands. And so we were salmon people. We survived off
14 the salmon.

15 Since time immemorial, our people survived
16 on the salmon. And all of our culture -- our cultural
17 practices and traditions revolved around the salmon. Our
18 salmon chiefs would -- would welcome other tribes, and
19 other non-Indians to come and share in the bountiful
20 salmon runs.

21 Well, when Grand Coulee Dam was built --
22 when it was built, it took away the salmon for my people.
23 We've not had salmon for -- for three generations. And my
24 tribe was not consulted; rather, we were told. The people
25 that lived along the river, "Pack up, leave your homes,

1 take your children because you're going to be flooded."

2 So many, many families lost their home, and
3 our tribe was not consulted. And to this day, we've not
4 been properly compensated for those losses. So for me and
5 my people, that is an example of where consultation did
6 not occur. So I encourage that as we go forward that we
7 consider consultation.

8 Another example from my people: We have a
9 SuperFund Site on our reservation. It's a uranium mine.
10 And there's huge pits that have -- have harmed our land.
11 And when we first talked about reclamation of those pits,
12 the right process wasn't discussed. And our people,
13 actually, grassroots organizations come together to try to
14 demand that the right thing be done as the remedy.

15 And I think for the most part, we've started
16 the remedy. And because of those people coming and the
17 Government finally listening to us, it's a SuperFund site
18 that we were trying to clean up. But it's important that
19 we do the right thing in these cases.

20 So I think when we talk about solutions when
21 you consult, when you come to us, a lot of the tribal
22 leaders before me, they told you what you need to do:
23 Recognize us as sovereign nations for we are sovereign
24 nations.

25 As my -- as the Vice Chairman of the Spokane

1 Tribe said before, at one time, you did -- you did ask for
2 our consent. You asked to come on our lands. You asked
3 for permission. But as time has gone on, that -- that is
4 no more, but you need to bring that back.

5 You need to -- when you're looking at
6 infrastructure projects, you need to give us information.
7 You need to give us free prior information. It needs to
8 come before you decide what you're going to do with these
9 infrastructure projects. We need to get that information,
10 and it needs to be complete information. It needs to be
11 the whole thing, not half truths or half of the
12 information. It needs to be all of the information. We
13 need to be able to -- to look at the information and let
14 our experts tell us what that's going to do to us, what's
15 that's going to do to our children, and their children,
16 and their children, and their children.

17 And then we can give -- we can consult, both
18 of us, our experts can tell your experts what it's going
19 to do to our people, what it's going to do to your
20 children and grandchildren. And we truly need to do that.
21 And until you listen and you listen hard enough with your
22 heart included, then you will come and you will listen.

23 Because like some of the tribal leaders said
24 before me, we are a people connected to our land, and if
25 we do not pay attention to this global warming, to this

1 climate change, there's going to be a point where you're
2 going to need us because we are connected. We know how to
3 heal things. We never took more -- took more than we
4 needed. We always knew when we put something to the limit
5 and that was just something we were born with, something
6 we were taught with.

7 So I just ask that you, you federal leaders
8 as you look at your consultation policies, you consider
9 FPIC, you consider free, prior, and informed; and then you
10 give us this, and you consider that we give you permission
11 or that we consent with you to allow you to do these
12 projects. I think it's important.

13 And it's -- it's not only important for us
14 in our lands, our historical homelands and all of the land
15 in this country, but it's important for you too. And so
16 please do listen to us. It is important. And I thank
17 you. I thank you for listening to me tonight and to all
18 of the leaders. (Native language spoken.) That's all I
19 have to say.

20 MS. KATHRYN HALLAWELL: Good evening. My
21 name is Kathryn Hallawell, and I'm a tribal council member
22 for the Sault Sainte Marie Tribe of Chippewa Indians.
23 You've already heard from our Chairman Aaron Payment, and
24 my fellow general council member Jen McCleod, and as well
25 as our cousin tribes in Great Lakes region who are also

1 party to the same treaty that we are, the 1836 Treaty.

2 And I appreciate their good words, in fact,
3 I think anything I might have to say right now has already
4 been said at some point, but I hope you'd give me a moment
5 to emphasize some of the same notions for you to listen to
6 and take back with you.

7 I do represent my tribe and my people and
8 especially those who call northern shores of Lake Huron
9 and Lake Michigan home since before pre-contact. And I'd
10 also like to say that I am the granddaughter of -- one of
11 my ancestral grandfather was a signatory to the 1836 Tribe
12 Treaty. And he went to Washington. And it was a large
13 ceding of almost all of Michigan, as you can picture it,
14 at least the upper two-thirds, and only a very small
15 portion was left as reservation land for us to live on for
16 as long as the grass grows and the water flows.

17 Unfortunately, before they even returned
18 from Washington, D.C., to Michigan, Congress had amended
19 that treaty to say for maybe just five years. So we truly
20 are a tribe who exercises and recognizes that all of
21 our -- all of our treaty protected rights and harvesting
22 are on ceded lands. And our ability to bring back a
23 reservation has been one piece of land base at a time
24 through the trust -- the trust process.

25 So it really -- and fishing was so

1 important, and there we are in the Great Lakes, we've been
2 there since before contact. So just to give you -- just
3 to give you an idea of how important it is to us that the
4 Great Lakes waters are protected and the lands as well.

5 And as I mentioned, Navi people, we
6 recognize the role of women that they play in protecting
7 the waters, because water is life as you heard tonight,
8 and the water is sacred. And because water is life and
9 sacred, as grandmothers, we stand. We represent as
10 (Native language spoken) for the Great Lakes and the Great
11 Lakes water sheds.

12 I want to thank all of those concerned with
13 making this opportunity today available. All of the
14 federal agents that are here and are listening to us -- we
15 appreciate that -- as well as NCAI who has helped
16 facilitate this opportunity. And I also want to thank
17 those who have supported the elected leadership, our own
18 people, to bring us here so that we can speak and relay
19 those concerns to you because we speak for the entire
20 people. And especially water walkers, and all the
21 grandparents because they link hands with those
22 grandparents in the past and in the present and into the
23 future. That is our role as grandparents and water
24 walkers and protecting what we have now for our future.

25 Before us today is a conversation about

1 pipeline infrastructure reform. And I would just like to
2 frame this, if you will, in bookends. We've got new
3 construction pipelines, such as the Dakota Access Pipeline
4 that prompts us all to be here today; as well as, you've
5 heard, old decrepit pipelines that have been in place
6 since before there were some of the provisions that are
7 available today.

8 The common denominator is water and
9 protecting waters. So we hope that when you leave here
10 you keep that concept. And it's not just new pipeline
11 construction, but what's already there in the ground and
12 how can we protect ourselves from the spills.

13 As you've already heard, Michigan
14 experienced one -- down the Kalamazoo River,
15 experienced -- I think it was the worst oil spill in the
16 continental United States.

17 And I was hoping I could be here today
18 expressing -- I was hoping I would be here today to be
19 able to share a good story about a settlement for an oil
20 spill like that. But unfortunately, we're really saddened
21 about the recent EPA and Enbridge consent decree that came
22 forth and was published, I think, on July 20th of this
23 year because we had no -- we were not consulted. We were
24 not notified. And I can guarantee you as a tribal
25 representative to EPA's National Tribal Operations Caucus,

1 I have had face-to-face conversations every time I can
2 about the concerns that we had with Line 5. It was a
3 complete and utter surprise to us to see that Line 5 had
4 been embedded in that settlement.

5 So it's really with a sad heart that I stand
6 here today, because I was hoping to be able to talk about
7 exciting things like, for instance, the VW settlement and
8 what a great opportunity that was for tribes to come to
9 the table to have a voice and help a settlement develop
10 and a framework to include tribes in the future. And then
11 one month later, we have a settlement that we have to --
12 have to deal with now.

13 Our concern about that settlement was we
14 didn't know that Line 5 was going to be part of it. Just
15 no notification. And it kind of defeats our purpose to
16 request or pursue a larger environmental assessment. And
17 instead, they'll only have to do environmental assessment
18 on the toe of the tiger, and then look at the consent
19 decree and say, "Hey, we're just complying. We're
20 complying with the consent decree. We'll put these
21 Band-Aids on and everything will be good." But it won't
22 be good.

23 Those pipelines as you've heard expressed
24 today, they're encrusted with barnacles. And I don't mean
25 to get off topic, but on some of you may or may not know

1 that we have a National Defense Act before at the Senate
2 right now for fiscal year 2017, and there's a -- there's
3 what they call the Senator Rubio amendment in that. And
4 it's going to give -- it's an amendment that will allow
5 ships that come into the Great Lakes -- it's making a --
6 what do you call it, a cut around? -- an exemption, so
7 that they don't have to comply with the Clean Water Act.

8 That's how invasive species get into our
9 precious waters is in the ballast water of ships. And if
10 that passes through Congress here as part of the defense
11 bill, what is all this about then? How did we protect
12 ourselves? So that's a -- I just -- we're almost in a
13 place of distress because we know those Great Lakes are
14 under dire, dire distress right now.

15 So I know you can't necessarily do anything
16 about that if it comes out of the Congress, but it gives
17 you an idea of how the permitting processes can really
18 then be hard for them and to just work against us.

19 But just to end, just to say one more thing
20 and that's about -- let's see. I think that -- as our
21 tribe, we support this notion of -- let's see, what's it
22 called? See, I lost my place in my notes, so you have to
23 give me a moment to dig through. But we were talking
24 today earlier about this -- this Executive Order 1364.
25 That's a fast track for the permitting process and the

1 projects. Who knew? You know, it just -- the whole
2 process --

3 We haven't heard from Army Corps of Engineer
4 on anything to do with Enbridge. We haven't heard from
5 FINSA. And, obviously, we didn't hear from EPA when they
6 went ahead and did the consent decrees. There's no
7 language in any of that about the adverse impact on tribes
8 to our food that grows on water, to our fishing rights,
9 and as our chairman said, that pipe sits right
10 above spawning beds, even a small spill would erupt and
11 harm those.

12 You don't have spawning beds, you don't have
13 a fishing right anymore. No consent in any place there.
14 So this idea of getting in early that prior informed
15 consent, we need to be at that table. And so if there
16 could be an amendment to that 1364 so that we can get in
17 there, particularly for those that are -- we get the
18 project a special attention from the inner agencies, a
19 covered projects, we want to be there before they get
20 designated as covered projects so that we can put that
21 forth. And I'll just leave it at that.

22 I'm looking forward for us to be able to
23 meet in November. We hope to bring forward some ideas on
24 economic policies and fiscal policies, and some things
25 that when we see oil and global policies and dollars, you

1 know, national security is one thing but, you know, when
2 we see our exports, our fossil fuels are being exported to
3 a world market, that's a concern for us. And we think we
4 should at least be invited in to have a seat at that
5 table, too, and when the new administration is making
6 monetary policies. So thank you.

7 MR. ROBERT TAKEN ALIVE: (Native language
8 spoken.) Good evening to all of you. I'm coming to you
9 from the Standing Rock Indian Reservation in the North and
10 South Dakotas.

11 What's been given to you by -- the reason
12 why we stand is because of the youth. She gave you a card
13 that you could reach me for any questions that you may
14 have. And that's why we come. That's why we stand
15 together with the other tribal nations across the U.S.,
16 across Mother Earth.

17 We stand because of our children and our
18 grandchildren. We do this in respect to our elders, the
19 ones that didn't get to speak, the ones that had to
20 accept.

21 So with that being said, I want to address a
22 few of the topics that (native language spoken) or our
23 leader, Dave Archambault, II, asked me to address and that
24 we had a discussion and full council with.

25 But first and foremost, is that we

1 discussed -- we discussed this issue with the Dakota
2 Access Pipeline in November of 2014. We expressed our
3 concerns then that we didn't want this project.

4 Before that, 2007, we didn't want no
5 pipelines in our ancestral homelands. When we went and
6 you brought the 1851 Treaty to us, Aboriginal Homelands,
7 it was called to our ancestors, and my -- my grandfather
8 on both sides, my grandfather Sitting Bull and my
9 grandfather (unintelligible) didn't touch pen to paper for
10 those treaties. But we were placed on aboriginal
11 homeland, and that's where that pipeline is on our
12 aboriginal homeland.

13 And, again, you brought 1868 Treaty to us.
14 This one was for war to stop -- to have peace. And,
15 again, my grandfathers didn't touch pen to paper.
16 We say this because we represent, not only our tribal
17 nation, but other tribal nations represent a long lineage
18 of leadership that goes back -- dates back before the U.S.
19 Government, before 200 and -- I don't know how many years
20 now, but we were given this responsibility to address
21 these issues amongst ourselves as tribal nations and when
22 the Federal Government was established to address these
23 issues also.

24 And I stated earlier, it was never done in a
25 good way previous, but there was always coming to terms to

1 warfare. But in this situation that's going on in our
2 aboriginal homeland and the support that we got by many of
3 those flags behind you, if not all of them, we as a tribal
4 nation are very humbled. And we carry a large
5 responsibility, and we say that with a great respect to
6 the Federal Government, which is yourselves.

7 We do that because of our -- what was given
8 to us or want to give it to our children and their
9 children and their children. This isn't -- and I share
10 this because I know Chairman Archambault, this isn't about
11 money. This is about peace and prayer. And in that
12 prayer, in that peace is our water. It stands as a soul,
13 as you do for your relatives, that's our relative also.

14 With that being said, consultation must be
15 meaningful and involving high officials. Decision makers
16 must be at the table to hear tribal leadership. Companies
17 should not be allowed to undertake or perform Section 106
18 review. They should be performed by the federal agency or
19 a neutral entity.

20 Nationwide Permit 12 was used in reviewing
21 the Dakota Access pipeline. That permit was supposed to
22 be for projects with minimal environmental effects. But
23 it was applied more broadly, including to major oil
24 pipelines. Allowing projects to come under Nationwide
25 Permit 12 minimizes the focus on the importance of

1 reviewing tribal interests, and consultations applicable
2 of the treaty rights. Our focus is the river walk, sacred
3 places, and our future using our sovereign rights, unity,
4 and prayer.

5 Another point I wanted to make this evening:
6 About the Nationwide Permit is up for renewal soon and
7 should be reevaluated. It's applicability to oil
8 pipelines should not be prohibited -- or should be
9 prohibited -- excuse me. Individual permits and full NEPA
10 reviews should be required for crude oil pipelines.

11 Standing Rock cannot be left behind. DAPL
12 must be addressed regardless of the future changes to the
13 federal review process. There is a need for earlier
14 notification to the tribe before routes are determined,
15 similar to the current FCC cell tower process. Federal
16 agencies should do landscape-level management planning
17 with tribes.

18 The BLM currently and used to poach on
19 public lands because it seeks to identify important
20 ecological values, patterns of the environment change, and
21 the coordination of the estate holders. The evaluations
22 for this for the Army Corps would be special area
23 management plans, which are authorized in the Water
24 Resources Development Act currently before Congress.

25 And last, unity brought us here. We stand

1 strong when we stand together. Standing Rock stands with
2 each of you tribal nations in our fight to protect our
3 sacred places. Over 320 tribes supporting our effort have
4 come together. This humbles us.

5 As a Standing Rock Sioux Tribal Council, I
6 am one of 17. But each of us knows that we're standing --
7 that we're at a place that our ancestors were not, and we
8 know what we're -- what we're standing at, but each one of
9 us stand together on the council, and each one of the
10 tribal nations that came with their leadership, came in
11 support. We had a meal together. We had prayers
12 together. That bonds us as one tribal nation.

13 So 320 tribes coming together as one tribal
14 nation, I hope that this body here that I'm giving the
15 listening session to understands that -- that it's not
16 just the Standing Rock Sioux Tribe, but it's the tribal
17 nations in your nation that came together.

18 So with that, I thank you for listening.
19 (Native language spoken.) Thank you, and have a good
20 evening.

21 MR. NORMAN HONANIE: (Native language
22 spoken.) My name is Norman Honanie. I am currently the
23 chairman of the Hopi Energy and Water Team. I come from
24 the nation, the tribe of the Hopi, who is in the northern
25 part of this state that is called Arizona . I sit here

1 and echo everybody what have been talked about already.

2 Standing Rock, I bow to you guys. (Native
3 language spoken.) Thank you. You have made an impasse.
4 But you have also now opened the grandest door that you
5 could also. So now we're here to talk to you. We're not
6 leveraging. Let's make it very clear (unintelligible).
7 We're not leveraging. It must be understood that as you
8 guys sit up there, you face determination, but is it
9 really determination that you face? Think about that.

10 Here are some points that the Hopi tribe
11 needs to address:

12 How can the federal agencies better ensure
13 meaningful tribal input into infrastructure related
14 reviews and decisions protecting tribal lands, resources,
15 and treaty rights within the existing statutory framework?
16 I want to hold that first. My tribe doesn't have a
17 treaty, we've never had a treaty; yet, we exist and
18 survive. I want that to be on the record.

19 In this context, the (unintelligible) case
20 before the Ninth Circuit Court of Appeals was directly on
21 point regarding the question for the answer in that
22 decision in relationship to the (Native language spoken)
23 and DOI solicitor perpetrated to represent the Hopi Tribe
24 in a technical working group without ever directly
25 consulting with the Hopi Tribe.

1 The talking points should be, despite the
2 tribal callings statement that it was going to remain
3 neutral until the session of the relationship of the LCR,
4 which stands for Little Colorado River litigation, to be
5 continued operating -- operation of the NGS, which is the
6 Navajo Generating Station. It is incumbent that the DOI
7 at least consult directly with the tribe to determine
8 whether the assessment had be made and what the tribe's
9 position was going to be before perpetuating to speak for
10 the tribe.

11 As the tribe has contended in Hopi Tribe
12 versus the U.S., the consultation requirement of the
13 federal regulations is not satisfied by having an agency
14 solicitor consult on the tribe's behalf without ever
15 having consulted directly with the tribe.

16 There's more. Another issue raised in
17 infrastructure and consulting issue in the land
18 condemnation issue arises from the ranchers acquisition
19 pursuant to the 1996 Settlement Act.

20 Despite the land settlement act being a
21 federal land settlement between the Hopi Tribe and the
22 Navajo Tribe, the Federal Government required that the
23 State of Arizona consent to the land condemnation once the
24 land is acquired, and the tribe seeks to have the Federal
25 Government take it into trust.

1 It has now been 20 years, and the State and
2 the -- and the State of Arizona has refused to cooperate
3 in the land condemnation. Either the land -- either the
4 land settlement should be amended to limit the consent
5 requirement, or a shorter period of time should be set up
6 for the State of Arizona to set forth specifically --
7 specific objections to the condemnation. And if unable to
8 do so within times that should be deemed to have consent
9 to the land condemnation in a reasonable acquisition cost
10 for the land should be set by the federal in consultation
11 with the Hopi Tribe.

12 Snowbowl is also an infrastructure issue
13 where there has been refusal to consent with the Hopi
14 Tribe or listen to the reasonable input of the tribe. The
15 San Francisco Peaks are a Vatican of the Hopi Tribe and
16 all parts of it are sacred. The Hopi Tribe should not be
17 required to live in its cathedral in order to protect it
18 from desecration.

19 As one of the judge stated in his
20 three-judge panel decision in the Ninth Circuit Court
21 citing reclaimed water, it's noble is equivalent to using
22 really clean wastewater and the holy water from a
23 Christian church. It does not -- it does not just taint
24 the font, it taints the whole church.

25 Snowbowl's use of reclaimed water to make

1 snow taints the entirety of the most sacred sanctuary of
2 the Hopi Tribe since time immemorial, the San Francisco
3 Peaks. Those peaks have long, long been visited by the
4 Hopi.

5 Another infrastructure is looking at into
6 Black Mesa. How Peabody was going to give
7 (unintelligible) to the Hopi Tribe. It was obtained from
8 the benefit money with cooperation in the consultant with
9 the Federal Government to convince APS to extend a 69k
10 power line directly from Tuba City to Tuba -- from Tuba
11 City -- from Tuba City down 264 to King's Canyon
12 transmission line. The Hopi Tribe could get power to Red
13 Mesa and/or all Mesa for it, well fill, while the Navajo
14 communities and in coal mining canyon (unintelligible) and
15 maybe get to it if it went back far enough, could receive
16 reliable power as well.

17 I brought up LCR, or Little Colorado River.
18 The talking point is that the U.S. government proposal
19 landlocked the Hopi Tribe in a doughnut hole inside the
20 Navajo Reservation. When the 1934 reservation was
21 created, thereby, separating the Hopi Tribe from the
22 Little Colorado River. 43 U.S.C. A Section 150, was
23 enacted in 1919, it states: "No public lands of the
24 United States shall be withdrawn by the executive order,
25 proclamation or otherwise as for any other Indian

1 Reservation except by an act of Congress."

2 The 1934 reservation was created by
3 executive order despite that prohibition. The Federal
4 Government without consultation with the Hopi Tribe
5 intendedly deprived -- deprived the Hopi Tribe of any
6 access to any surface water features depriving the Hopi
7 Tribe of water necessities for health and well-being of
8 the Hopi Tribe and its members.

9 Hopi Arsenic Mitigation Project. It is
10 basically the same talking points as LCR. The Federal
11 Government says Hopi has built a water utility to remove
12 arsenic from drinking water, but the federal courts have
13 said that the U.S. Government does not have to pay for it,
14 because arsenic is naturally occurring. The Federal
15 Government allowed Peabody to deplete the end natural for
16 end cause, a concentration and accumulation of arsenic.

17 The Federal Government also deprived the
18 Hopi Tribe from any alternative water sources when it
19 created the 1934 Navajo Reservation separating the Hopi
20 Tribe from the LCR and land locking the Hopi Reservation.
21 Even if arsenic is natural occurring, the tribe would have
22 to take in an alternative source of water, but for the
23 intentional actions of the United States -- United States
24 Federal Government taking no consultation with the Hopi
25 Tribe .

1 As you can see, I have an opportunity, and I
2 have taken this opportunity. And I'm grateful that you
3 guys are sitting out there listening. But it's also
4 saddening that we have to do this. Why can't we just sit
5 down and look at -- everybody has echoed water. We're no
6 different. But I want you to understand I have an
7 opportunity, and so do you.

8 So what are we going to do with this
9 opportunity? That is the question I pose to you. I hope
10 every one of you realizes that the Hopi Tribe will never
11 move from its land. If we have to import water from
12 somewhere, we will, but we're not moving. We've been here
13 before all of you. The Spaniards came through us, and
14 we're still here, and we will be here forever.

15 I liked what one of the gentlemen said prior
16 to this. He said that, if there comes a time to talk, let
17 us do that, but let's not assure ourselves that we will
18 live in judgment. Let us look. Let us learn.

19 But I want to thank you for this time, and I
20 want to thank the NCAI for allowing me to talk to you. We
21 are not a member of this, but I am very grateful I have
22 this opportunity.

23 Thank you for your time, and you guys all
24 have a safe trip, all of you that have come from all parts
25 of the world, go back and hug your children, drink your

1 water, and support yourselves. (Native language spoken.)

2 Thank you.

3 MR. KEN HALL: Good evening. Ken Hall,
4 Executive Secretary for the Three Affiliated Tribes in
5 North Dakota home of the Mandan, Hidatsa, and Arikara
6 people. I just want to introduce -- acknowledge my wife
7 Cara (phonetic).

8 Cara, if you could wave or something. And
9 then also my daughter, Faith Hall, in front of me here.
10 Faith is a 12-year-old, and she's a 7th grader. She had
11 an opportunity to meet President Barack Obama and the
12 First Lady when they visited the Standing Rock Indian
13 Reservation.

14 And as you well know that when the President
15 and the First Lady visited Standing Rock, they were moved
16 by the youth and very, very motivated to do so, and from
17 that became the Generation Indigenous Movement.

18 And I want to read an article. It's the --
19 if we can fully implement the union declaration of the
20 rights of indigenous peoples across the all federal
21 agencies.

22 President Barack Obama endorsed this
23 document back in 2010. And if that would have happened
24 back then, we wouldn't be having this conversation. I
25 introduced my wife Cara, her uncle Dr. Wilton Littlechild

1 devoted his life on this document with indigenous people
2 around the world -- indigenous rights experts around the
3 world, which took 25 years to draft.

4 And in particular, Article 32, where it
5 says: Indigenous peoples have the right to determine and
6 develop priorities and strategies for the development or
7 the use of their lands or territories or other resources,
8 State shall consult and cooperate in good faith with the
9 indigenous peoples. Concerns for their own representative
10 institutions in order to obtain their free and informed
11 consent prior to the approval of any project effecting
12 their lands or territories or other resources.

13 Particularly, in connection with the development,
14 utilization or exploitation of mineral, water, or other
15 resources.

16 State shall provide effective mechanisms for
17 just and fair redress for any such activities.

18 Appropriate measures shall be taken to mitigate adverse
19 environmental, economic, social, cultural or spiritual
20 impact.

21 That's just Article 32 of United States
22 Declaration of Rights of Indigenous Peoples. So this
23 president fully endorsed that back in 2010, but it was the
24 Federal Government that failed it. They forgot to
25 implement it across the board. We wouldn't be having this

1 conversation if that happened.

2 And I'm going to speak a little bit about my
3 great grandfather, Chief Drags Wolf was the last chief of
4 the Hidatsa people. He couldn't speak English. He had an
5 interpreter. And when they tried to flood our lands like
6 Chairman Fox mentioned earlier, what he told the Army
7 Corps in his native tongue was, "You'll never take me away
8 from these lands alive."

9 And when they had meetings, the last meeting
10 he went to, he went with his war bond and war paint on,
11 and told the Corps exactly what I shared with you.

12 The Corps' response was, "Take it or leave
13 it." That was their response. So that tells me it's an
14 attitude that the Federal Government has with our
15 sovereign people and with our sovereign nations. You talk
16 about trust responsibility, you talk about moral
17 obligation, then you have to follow through with those
18 words.

19 And I had an opportunity to address the
20 industry a few weeks ago in North Dakota. And everything
21 that the leaders talked about today, about being
22 sovereign, we have inherent rights through our treaties,
23 but they failed to recognize that. They failed to
24 acknowledge that we have rights as indigenous peoples.

25 "Indigenous" means land. We are people of

1 the land. And when those chiefs could not speak English
2 and telling the Federal Government that, "You cannot take
3 me away from these lands alive," that's powerful. That's
4 who we are as people. We never can skirt away from that
5 as indigenous people, or people of the land.

6 It was during the Franklin D. Roosevelt
7 administration when Chief Drags Wolf received the peace
8 medal. So under his watch they did not flood our lands
9 until he passed away.

10 And then the 1944 Flood Control Act came.
11 And we had the most devastation of any tribe down the
12 street, 155,000-plus acres of rich bottom land.
13 80 percent of our people lived near the river. We had no
14 diabetes. The unemployment rate was below 6 percent. We
15 were self-sufficient. We were economically sovereign.

16 Fast forward to today, and you heard our
17 Chairman earlier, in the spirit of partnership and mutual
18 respect, if we're partners in any agreements, then we have
19 to start with respect. We have to respect each other's
20 sovereign rights. We have to respect each other's
21 government in a true government-to-government
22 relationship. It's been one sided for 150 years. It's
23 time to come back to our side and hear our story and fight
24 for us as partners in this relationship.

25 The Chairman wanted me to tell you that when

1 the Dakota Access bulldozed over the sacred sites and
2 burial grounds, those could be our ancestors as well,
3 because the Mandan, Hidatsa, and Arikara roamed those
4 lands as well. So our cultural preservation office is
5 involved in that -- those findings as well.

6 And I just talked to my brother Robert Taken
7 Alive, and their family adopted me into their tribe. He
8 confirmed that there was sacred sites and some -- and some
9 burial sites, and those could be our ancestors. So our
10 cultural preservation office is involved as well.

11 So we're trying to find answers. We're
12 trying to find solutions. How much more as a people --
13 how much more injustices do we have to endure as a people?
14 We're resilient. We're resilient people, and we know
15 that. We're still here. But how much more do we have to
16 endure before we get it right?

17 My daughter is here. A gentleman that was
18 part the North Dakota Industrial Commission says that the
19 decisions we make today will have an impact on our
20 grandchildren's grandchildren, which is five generations.
21 And as you well know, as indigenous people, we try to
22 think seven generations. So the decisions we make are
23 going to impact several generations, so let's get it
24 right. Let's get it right for their sake and their
25 generations to come.

1 Thank you for listening to me. And we hope
2 there's some great dialogue, and we hope that there's
3 reform, and we hope there's meaningful consultation at the
4 front end and not the back end.

5 A famous world leader, Margaret Thatcher,
6 told President Regan, "This is not consultation. It's
7 notification."

8 So let's get it right. Let's do the right
9 thing. Thank you very much.

10 MR. JASON SCHLENDER: (Native language
11 spoken.) Good evening, everyone. My name is
12 Jason Schlender. I'm a council member to the Lac Courte
13 Oreilles Band of -- Lac Courte Oreilles Band of Ojibwe. I
14 represent my constituents that were Lac Courte Oreilles.
15 I represent my family back home and also my extended
16 family and relatives that are part of different bands,
17 part of different tribes.

18 So I wanted to just to, first of all, thank
19 everyone for all of their good words especially our
20 relatives at the Sioux, (Native language spoken) as we
21 call it in Ojibwe or (Native language spoken). It's good
22 to hear our language here as well as many other languages
23 here tonight.

24 So I want to tell you a story -- real quick
25 story because it's getting kind of late and suppertime has

1 already passed for me so I don't like -- like to skip many
2 meals in my lifetime, so I'll make it short.

3 But I want to tell you story about a
4 consultation gone bad. A long time ago in our community
5 where I'm from -- so a consultation gone bad -- I'll just
6 hold the mic. But anyway, what happened a long time ago
7 La Courte Oreilles was, there was a power company there
8 NSP, or Xcel as it's known now. They created the dam
9 there in our communities, which is now called the Winter
10 Creed Dam, a Chippewa Flowage. In our -- in our -- and
11 the result was many of our families were displaced, a lot
12 of people -- some people died. But one of the main things
13 that happened is it destroyed our wild rice crop,
14 "Manoomin" as it's called.

15 Until this day, it's been almost 100 years,
16 we haven't been able to regain that. Manoomin in our
17 story as Ojibwe people, as an Anishinabe people, is one of
18 the most sacred foods that we have. It's part of our
19 creation story. It's part of our migration story. And so
20 what happened is -- once again, you know, a consultation
21 after the fact, as many people have mentioned, the tribes
22 were brought in after the fact that all these business
23 deals that have taken place.

24 And so when you think about that, we think
25 about the restoration of our wild rice crop, what can be

1 done about that, because what has happened as a result of
2 that has destroyed, you know -- you know, the -- a source
3 of dietary nutrition for our people. As a result, it's
4 planted by disease and unhealthy lifestyles.

5 So when -- so looking at all of you up
6 there, some of you are members of different tribes, so
7 it's your responsibility now to help -- help the
8 Government become more culturally competent of the effects
9 of some of these consultations; whether they're -- and how
10 they can take place in a more respectful way as the
11 gentleman just said as before I did.

12 But as I think about that, as I think about
13 the consultation process, I think about -- I think about
14 it in a historical way. A long time ago when -- when
15 tribes, and whether it was the Spanish, or if it was the
16 French, or the British, or the Americans, there was also
17 an exchange of gifts that took place. In our language we
18 call it (native language spoken), gifts or bundles that we
19 give -- that we would give away in exchange, you know,
20 of -- exchange of gifts symbolic of the respect that we
21 have for one another.

22 And so when you think about that, you know,
23 when I think about changing consultation and the whole
24 process of it, flipping it over, because what I would --
25 what I would propose is that -- and it may take a long

1 time if it happens at all, is that it should be a
2 ceremonial event.

3 You shouldn't sit up on the stage like that.
4 You should come down and sit with everyone else that's
5 here. We should take these tables out of here, and not be
6 in a single line like this. That's not how we sit -- how
7 indigenous people from this part of the world, we don't
8 sit in lines like that. We sit in a circle.

9 So take all these chairs out of here, lay
10 some buffalo robes down, some blankets, put our pipes down
11 there, our drums, and let's have a smoke. Let's have a
12 smoke and sit down there and sing for a little while, and
13 let's dance and let's eat and let's talk about some of
14 these decisions that have -- that need to be made for the
15 benefit of yourselves as the Federal Government, but also
16 for the benefit of the tribes here as well.

17 Because ultimately, our sovereign government
18 lies with the (Native language spoken), you know. That's
19 who we are accountable to. Because ultimately, that's --
20 you know, that's one of the things we recognize. We
21 always acknowledge our children, our elders, ourselves,
22 our people in our peer groups.

23 But every time -- every time you hear us
24 talk, especially in our language, we always acknowledge
25 (native language spoken) those ones in the ground, those

1 ones in the sky. That's what we have to do, and that's
2 what we should -- maybe that's what we should do -- that's
3 what's absent here is that there's no ceremony. I don't
4 see a pipe sitting around here. I don't hear anybody -- I
5 don't smell any medicines being burned or smudge going
6 around, so there's an absence there of culture. We can
7 get up and talk in our language for a while, that's good.

8 And so as ambassadors for us to -- you know,
9 you have your responsibility to do -- to act on our
10 behalves, think about that for a little bit. Be the
11 envy -- be the envy of your institutions, because there's
12 a lot of seats up there that are empty from some other
13 people that are just sitting in Washington, D.C., or
14 traveling across the nation doing -- they're doing their
15 work, but not sitting here.

16 And so be the envy -- be the envy of your
17 institutions and remember that, because that's something
18 that -- let's change how it's done. Let's make a
19 remarkable, profound change. Because I think that
20 would -- that would resonate with all of us here if we
21 could just take all day -- if it takes days to consult,
22 because you don't do a consultation in two hours, so --
23 and we sit there and we have a moment to acknowledge our
24 Creator, and the Creator of all things, and everything
25 that's part of our creation and everything that is, we

1 should -- let's try to do that.

2 I say (native language spoken) to the
3 relatives at Standing Rock. I say (native language
4 spoken) to all of our -- all of our people standing up;
5 whether that's -- whether it's the pipeline, whether it's
6 the Dakota Access Pipeline, or if it's the pipelines that
7 goes through Wisconsin, you know, where I'm from. Because
8 if you look at it -- if you look at the grid, it's kind
9 of, you know, the tentacles of pipelines go across the --
10 you know, across this nation, so everyone's voice needs to
11 be heard.

12 So the -- so the final thing that I just
13 want to say to all -- to everyone here and for the record,
14 (native language spoken.) What that kind of just
15 generally means is water is sacred. If we listen to the
16 water, in the water's instructions for our lifeline,
17 because that's essentially where we come from. So (native
18 language spoken) to all of you for your time. (Native
19 language spoken.)

20 MR. JAY JULIUS: Good evening. Jay Julius,
21 Lummi Nation.

22 A few solutions: One, special area
23 management plan for cultural sites and places of
24 significance; two, maybe an endangered cultures act; or
25 three, maybe an endangered peoples act.

1 Not something that we can take
2 responsibility for and nor can any of you take personal
3 responsibility for that solution request by us, by me, but
4 the United States Government can. The United States
5 Government can through policy -- federal policy, boarding
6 schools, termination policies.

7 The past speaker talked about partnership.
8 This all happened through a partnership after the largest
9 land real estate transaction took place in partnership.
10 Yeah, it's called treaties, but you guys hear that all the
11 time: Treaty, sovereignty, treaty, sovereignty, but it's
12 not viewed as what it really was. It is a partnership.
13 In our realities, everyone here is a survivor near
14 extinction, most of us, not because of our own actions.

15 This is following treaties. This is up
16 through the '50s and '60s and '70s, all my aunts and
17 uncles went to boarding schools 500 miles away from our
18 homeland, from our reservation. So just a thought.

19 And we entered into a treaty in 1855, the
20 Point Elliot Treaty. And I think there's 20-plus treaties
21 that were entered into in Washington state allowing the
22 state of Washington to become a state in 1871. We held
23 title to every square inch of land, and it was through
24 these treaties that this was made possible, a partnership
25 with the tribes.

1 But one example, look it -- we're talking
2 about DAPL. We're here because of DAPL, and EA not even
3 an EIS. Taking your partner, your partner attacked by
4 dogs, women and children attacked by dogs because they're
5 trying to protect an area that is sacred to them, water
6 that is sacred to them. And as a partner, what have you
7 done?

8 Well, we did an EA, and don't think that EIS
9 was necessary. Yeah, we consulted with them a little bit
10 but, hey, it's jobs. Well, look at the jobs that have
11 been provided over the last couple of hundred years
12 through this land transaction, this real estate deal.
13 Look at the suffering these people go through. The
14 Standing Rock people, they are suffering today. They will
15 not sleep, many of them, will not sleep tonight.

16 We just went through a five-year battle at
17 Cherry Point adjacent to our reservation on top of one of
18 our archeological sites, and the Army Corps is very
19 familiar. And it's taxing. It's tiring. It's harmful.

20 These mitigation measures that are put in
21 place, 106 has no teeth. That's why it may be an
22 endangered peoples act or an endangered cultures act.
23 Because this if there's an endangered species where you
24 propose a project, that could kill a project. But if
25 there's graves and sacred places to Native Americans, oh,

1 let's just put 8 feet of fill over the top of it and
2 protect it. That's our reality. That's what we have to
3 deal with.

4 So moving forward, none of you can take, you
5 know, any responsibility for history, but history is what
6 it is and the United States fails to teach true history.
7 The genocide, the denied North America holocaust, but
8 today we can move forward. Tomorrow and future
9 generations from this experience, this horrific nightmare
10 that many tribes are going through like Standing Rock, we
11 can move forward, and we can create new policy and process
12 as partners and treat each other like partners, not this
13 paternalistic BS, and these Indians are in the way. No,
14 we're partners.

15 And I think -- we know it's time to start
16 treating us as partners, and respecting and understanding
17 that these treaties were important to create the states in
18 the United States. So why not treat us with the respect
19 or treat our ancestors and the people in the future
20 generations with that respect.

21 So as we move forward, that is just a
22 suggestion, maybe it's a potential solution. And I second
23 what Chairman Forsman suggested to you guys about
24 Appendix C. We too are in agreement.

25 We want to -- I want to personally thank you

1 guys for being here. Hopefully, you didn't think you were
2 going to be at dinner at 8:30, but safe travels home.

3 (Native language spoken.)

4 MR. AARON WILLIAM OTTO: My name is Aaron
5 William Otto. I'm (Native language spoken) from little
6 Traverse Bay Bands of Odawa Indians, and I come from the
7 land of (native language spoken).

8 I come before you on the shoulders of my
9 ancestors. I am turtle clan, so forgive me, sometimes it
10 takes me a while to get to my point. I -- you are here to
11 hear solutions, how can we fix these issues. The biggest
12 answer that I have to that is when you come to us to
13 consult, you have to do it before the decision is made.
14 You come to us, and you tell us what you're going to do
15 and then you say, "What do you think of that?"

16 Well, we'll tell you but, you know, we're
17 not being heard. We're being listened to.

18 My -- I'm the legislative leader for the
19 Little Traverse Bay Bands. And you heard some of my
20 fellow tribal people here and sister nations speak as well
21 on Line 5. I'm not going to go too much detail into that.

22 But what I do want to talk about is the
23 Great Lakes Tribes. We -- to be consulted, need to be on
24 equal footing as the governors of the states in their
25 ability to talk about the -- and make decisions on the

1 Great Lakes. We're not consulted on anything that goes on
2 in the Great Lakes. We need that. You know, the
3 Governors of the states don't have our best interests at
4 heart, and that's what we hear when we try and talk to
5 people about the Great Lakes.

6 Well, the Governor of Michigan, he'll -- you
7 know, that's what he's there for. Well, he doesn't
8 represent my people. I represent my people. We can make
9 those decisions on our own. We don't have to have him do
10 it.

11 As well as, we need avenues to be heard.
12 I'm not sure what that solution is. But to have one or
13 two people who come in front of us and say, "Okay, we'll
14 write down what you say and put it in a file and put it
15 away." We need to be able to have discussions and not
16 just with, you know, the staffers. We need to be able to
17 have discussion with the decision makers, you know, to --
18 to have us have 15 minutes with a staff member, that does
19 no good for us.

20 If a Senator comes to a decision maker, do
21 you say, "Oh, well, here, just talk to my secretary.
22 We'll give it to them."

23 That doesn't work. We are leaders of people
24 too and we need to have that access.

25 I know there was more that I wanted to say,

1 but I'm getting emotional now, so I think I will stop.
2 And I will say thank you for allowing us to have this time
3 with you. And I want to thank everybody else here and
4 everybody that has spoke before me for all of their words
5 and wisdom. And I hope that it leaves from here and gets
6 to the right people. Thank you.

7 MR. PETER CLARK: Good evening. My name is
8 Peter Clark. I'm with the International Leonard Peltier
9 Defense Committee. My work on behalf of Leonard Peltier
10 has put me in touch with indigenous peoples from around
11 the world and communities here in the United States.

12 MR. LAWRENCE ROBERTS: Sir, with all due
13 respect, we do -- I'm going to ask you to -- to hold your
14 comment in respect for tribal leaders as part of this
15 consultation.

16 MR. PETER CLARK: Yes, sir.

17 MR. LAWRENCE ROBERTS: Thank you.

18 MR. TAYLOR AALVIK: Good evening. I've been
19 here for quite a while now. These are important words,
20 and I think they need to be heard.

21 My name is Taylor Aalvik. I'm an executive
22 councilman for the Cowlitz Indian Tribe. Our homelands
23 are located in the lower Columbia River that borders
24 Washington, Oregon. I also oversee the Natural Resources
25 Department for our tribe.

1 You know, one of the major duties that my
2 department works on is trying to restore an environment
3 within our own lands that is already in disrepair, already
4 been torn up, already been -- dirt's been turned over with
5 levies and industrial development for over a 100 years.

6 And so I have a department that's built
7 around, you know, trying to fix -- or pick up the pieces
8 and do what we can. You know, what I do for my people to
9 bring back our first foods, our culture, and our way of
10 life. Bring back to as much as we can to what it was.
11 You know, and I enjoy -- you know, it gives you a good
12 feeling because we do a lot of restoration projects for
13 salmon and steelhead and smelt in the lower Columbia. All
14 that are listed, most all of them are listed under
15 Endangered Species Act.

16 One of the problems about what I do, I'm
17 also in charge of trying to defend our resources as well.
18 Just this past year I've been inundated with numerous
19 environmental impact statements associated with major
20 developments along the lower Columbia River, so they're
21 not stopping.

22 So on the one hand, we have systems from the
23 Government to try to restore what is, you know, already
24 damaged, and so we're trying to recover endangered species
25 in our area along the lower Columbia River. There's the

1 traditional foods that, you know, that mean a lot to all
2 the tribes in the entire Columbia basin, even Canada and
3 the first nations.

4 So -- and in regards to consultation, sure,
5 you know, we try to do our best, but our tribe in our
6 department is getting peppered, getting peppered with all
7 these draft permits, all these draft processes. We were
8 physically unable, physically unable to catch up to them
9 all unless there are resources that are being provided to
10 us to be a better consult.

11 Not only that, but we have draft permits,
12 documents and draft NEPA documents out there. And when we
13 get them, I'm reading a bunch of garbage half the time.
14 They don't have a clue what they're talking about. That
15 doesn't make me feel good wanting to consult. When they
16 show up, I'm just going to tell them, you know, you've got
17 a bunch of garbage and you guys just wrote up in regards
18 to potential impacts.

19 And what I believe what it is, is a bias.
20 It's a bias in regards to the Corps and the industrial
21 developers who want to put in their -- their major coal
22 terminal, or their major oil terminal, or major methanol
23 terminal in the lower Columbia River.

24 You know, you have to understand -- you
25 know, sure, it's one thing to consult, but when I'm

1 getting fired at by balls and wads of paper, piles of them
2 and then you say, "Well, how are you going to do a better
3 job of consulting?"

4 And not only that, they intermix all these
5 permits applications via e-mail, staff to staff, who are
6 getting inundated, inundated, literarily inundated, unable
7 to catch up to all of them. To all the permits. There's
8 a lot of permits. Draft permitting that's going on,
9 either negotiating with SEPA processes -- or NEPA
10 processes that we have to try to deal with.

11 Then we have Section 106, permitting
12 processes, and, man, there's just a pile of them. So if
13 you want help in addressing the issue of trying to better
14 consult, we need more resources so we can get more staff
15 on board. Not only that, but there needs to be better
16 priority system to where -- you know, the Corps or some
17 other federal agency, you know, knows when to actually
18 pick up the phone and call somebody to try to get a
19 response from the tribes. Because intermixing some
20 important permits, draft permits, with probably, you know,
21 just basic permits and just -- just spit wad, you know,
22 all that stuff at us is very challenging.

23 Sometimes you guys don't get a response and
24 then you say that, "Well, I guess they have no issues."

25 That's because we haven't got to it. And

1 then in the meantime, we're just getting steamrolled over.
2 So I think there needs to be more funds in regards to our
3 ability to consult meaningfully.

4 You know, one idea is -- maybe the tribes,
5 you know, for the consultation that we do have with the
6 Federal Government record your time, send a bill back to
7 them because it costs money. But not only that, it causes
8 heartache because I'm not doing what I like to do, is try
9 to fix things that's been damaged and have to try to
10 defend a future of probably stacking a whole pile of coal
11 on top of a restoration project.

12 That's about all I got to say.

13 MR. STEVEN LEWIS: (Native language spoken.)
14 Good evening. My name is Steven Lewis, and I'm the
15 Governor of the Gila River Indian Community, the land that
16 you're at and you're convening on tonight. And so I'd
17 like to formally welcome you to the land of the Akimel
18 O'odham and the Pee-Posh peoples here.

19 Now, as the Akimel O'odham, meaning "we were
20 the people of the river," our story was, was that we were
21 separated from our river. Over a 100 years ago our river
22 was taken away from us our (Native language spoken) or
23 water. There was no consultation. There was no type of
24 formal arrangements or due process when our water was
25 taken away from us over a 100 years ago when our people

1 were pushed to the point of extinction.

2 Without water we weren't able too grow our
3 crops, to irrigate our fields. Our people died here on
4 this land. And we fought for our water, our elders, those
5 that are past leaders that aren't here with us today. And
6 in 2004, the Arizona Water Settlement Act, we regained our
7 water rights.

8 My father, Rod Lewis, was key to that. He
9 had sacrificed and he had dedicated and devoted his whole
10 legal career. He was one of the first Native attorneys to
11 be admitted to the Bar here in Arizona. He was the first
12 Native attorney to argue a case before the U.S. Supreme
13 Court in 1980, Central Machinery versus Arizona, one of
14 the civil tax cases in Indian law. And he was the first
15 Native American to win that case for Indian Country and
16 for the Gila River Indian Community.

17 Now, I'm saying that because he was there
18 and he was waiting, but it got too late for him. So my
19 mother is here, (unintelligible) Lewis, who was a
20 childrens' court judge and a VAWA, Violence Against Women
21 Advocate, for the Gila River Indian Community. My sister,
22 my niece and nephew, and my son who are here as well. And
23 so they represent the next generation. The generations
24 that we're talking about today -- those youth.

25 We could hear -- and I think one of our

1 deejays from -- from Gila River was providing the music in
2 the next room. But it was those youth that were there
3 celebrating, celebrating their life, celebrating the
4 dedication to the struggle that goes on today.

5 Whether it's Standing Rock -- we have our
6 Standing Rock here a few miles away, and I'll talk to you
7 about that right now in the context of consultation and
8 how consultation has failed the Gila River Indian
9 Community, has failed us today, has failed us tonight, has
10 failed us this moment.

11 So consultation can fail for a number of
12 reasons. In the worst case, an agency may simply
13 disregard their consultation obligations. Other times,
14 consultation is viewed as a check-the-box exercise, an
15 empty process for the sake of process. And sometimes
16 agencies are not even aware that their actions will have
17 tribal implications or raise concerns because their
18 projects are happening off tribal lands, or they don't
19 take the time to fully inform us about these projects so
20 we can identify their potential impacts. That's the
21 story. Story after story of what tribal leaders have been
22 saying tonight.

23 And I think part of this, and when we
24 started talking about standing up for Standing Rock, it
25 was hard standing there for a while, standing for Standing

1 Rock. But when we talk about -- and specifically, when
2 meaningful consultation does not happen, regardless of the
3 reason, the results can be devastating like what's
4 happening with the Dakota Access Pipeline.

5 Now, unfortunately, like the Standing Rock
6 Tribe, my tribe is experiencing the same devastation that
7 has resulted from an empty check-the-box process where a
8 federal agency did not listen to or consider our concerns.
9 That federal agency, Mr. Ken Martin, was the federal
10 Department of Transportation.

11 In 2015, the Federal Highway Administration
12 and the Arizona Department of Transportation approved a
13 major freeway that would cut directly through Ma Ha Tauk
14 (native language spoken), our sacred South Mountain, just
15 a few miles from here south of Phoenix, one of our most
16 sacred, cultural, and natural resources.

17 South Mountain is prominently featured in
18 our oral tradition. So the devastating effects of this
19 highway will forever alter the landscape and our views of
20 South Mountain, isolate our community members, our elders,
21 and our youth from culturally significant locations and
22 resources, destroyed sites, sacred sites on or around
23 South Mountain that serve as traditional cultural
24 properties that are federally protected, and destroy or
25 interfere with our sacred trails, shrines, and

1 archeological sites that have cultural significance to my
2 people.

3 And I'd like to recognize our THPO
4 Department here, and Barnaby Lewis and his staff. Thank
5 you for being here. Thank you for staying here all night.

6 Mr. Barnaby Lewis, he is one of the leaders
7 and one of the acknowledged experts within the THPO
8 community. So I thank him so much for his knowledge of
9 our (native language spoken), which is our way of life.
10 That's something that I rely on as a tribal leader.
11 That's something that our Tribal Leaders we rely on it.
12 We rely on the strength of our TIPO office.

13 So from the very beginning of this freeway
14 project, our Tribal Leaders and members spoke out in
15 opposition to this project. Those first -- those first
16 voices of opposition, just like at Standing Rock, just
17 like at Rosebud, just like at Gila River, were the youth,
18 those young activists. They were the ones that gave voice
19 to what this movement has become. The save South Mountain
20 "no" on the 202 freeway movement that we have here today
21 in Arizona.

22 So even though there were consultations,
23 these consultations were not meaningful. Far from it.
24 The federal agencies did not listen to or actually
25 consider our concerns. Instead, they went ahead and

1 approved a project and impact that will destroy our
2 cultural resources and traditional cultural properties in
3 ways that cannot be reversed.

4 So like the Standing Rock tribe, we were
5 left with only one option, which was to file a lawsuit to
6 protect our culture to protect our very way of life. We
7 should not have to resort to the courts in order for our
8 voices to be heard. Our resources can be and must be
9 spent to help our own people and not to fund a lawsuit
10 that would never have been necessary if meaningful
11 consultation occurred before the agencies approved this
12 massive multi-billion dollar freeway project, which will
13 only save the Phoenix commuters six minutes in commute
14 time.

15 From my experience with successful and
16 unsuccessful consultations, here are some of my thoughts
17 and recommendations for approving consultation:

18 The first, tribal nations and federal
19 agencies must establish relationships and open lines of
20 communication. Agencies should know the types of projects
21 and geographic areas that are going to concern tribes or
22 impact their cultural resources, and who to contact in the
23 tribe before a permit or application is even submitted.
24 We were able to accomplish this, though, with the U.S.
25 Fish and Wildlife Service through a statement of

1 relationship.

2 Federal agencies should explore how
3 agreements between specific agencies and individual tribal
4 nations that address specific tribal interests, protocol
5 for consultation, and information sharing can be achieved.

6 Federal agencies must ensure that whatever
7 mandates or procedures that result from this
8 infrastructure consultation, focus on, and can be
9 implemented by local federal agency offices.

10 While consultation must allow for Tribal
11 Leaders to meet with senior agency officials in
12 Washington, D.C., it is the local federal agency's staff
13 that will mostly be interacting with tribal nations and
14 would be the first to realize when a project may impact
15 the tribal nation in any -- in any real way.

16 So while senior agency officials need to
17 recognize the importance of consultation, it is equally
18 important, or even more important, for specific procedures
19 to be in place at the local level.

20 Federal agency staff typically do not
21 inherently understand the interests and needs of specific
22 tribal nations. There needs to be training in place to
23 educate the staff, especially at the local agency level on
24 both when consultation is necessary and how to consult.

25 For consultation to be meaningful, it is

1 critical that it happens early in the decision making
2 process as we've all heard tonight. One of the biggest
3 complaints that we as tribal nations have, is that
4 consultations happen too late. A current example of this
5 is the Indian Health Service publishing several proposed
6 rules, recently proposing a complete realignment of the
7 agency without first consulting with tribes.

8 Consultations on those decisions have just started, but
9 they should have started about the decisions were made.

10 Agencies need to follow their consultation
11 policies. Of course, President Obama directed federal
12 agencies to develop consultation policies, and that's a
13 good thing. Many agency -- many agencies did this and
14 consulted with tribal nations in the development of those
15 policies.

16 In some cases the agency has a good a
17 policy, but fails to actually follow it, or the agency
18 staff are not properly trained about the consultation
19 policy itself.

20 What's the point in having a consultation
21 policy if you're not going to follow it?

22 So in closing, those are my recommendations.

23 I want to thank -- again, thank you for giving me this
24 time to speak on behalf of the Akimel O'odham and the
25 Pee-Posh people of the Gila River Indian Community. But I

1 think also -- I think also before -- and I'm going to
2 throw this out there -- before -- before the
3 administration changes, I think we need an immediate
4 convening at the White House to protect and to put in
5 place some strict standards that will set the guide for
6 the next administration in regards to preserving that
7 consultation and government-to-government relationship
8 between the Federal Government and the first nations of
9 this United States of America. (Native language spoken.)
10 Thank you.

11 MR. LAWRENCE ROBERTS: Thank you,
12 Governor Lewis. I don't think these microphones are on up
13 here. I just want to say a couple of quick words and that
14 is, one, I know that it's been a long session here. I
15 really appreciate all of the tribal leaderships' input,
16 but I know that tribal leadership and Chairman Bainbridge
17 has been waiting for quite sometime. So we will -- we
18 will, obviously, have this session extend for everybody
19 who's been waiting in line, and then we will be bringing
20 it to a close for this evening.

21 So thank you, and thank you for your
22 patience. I'm sorry that Tribal Leaders have had to wait
23 so long to make their comments here tonight. And I am
24 looking forward to a lot of engagement across the
25 consultations as we go forward and across the country, so

1 thank you.

2 MR. ASA WASHINES: I thought you were going
3 to cut me off there for a second. (Native language
4 spoken.)

5 Good evening, my relatives. My name is
6 Asa Washines, and I came from the Yakama Nation to Tribal
7 Council, currently, also part of the Executive Committee
8 as well. I appreciate the patience. I'll try to make my
9 remarks quick. I think my ribs are showing, so I missed
10 my dinner reservations at 8:30, but that's fine.

11 You know, and I think tonight is a good
12 reflection of our patience that we have. It's kind of one
13 of the things that we endure as people. If we had to
14 stand for another three hours, I think we would.

15 And so, you know, the Yakama Nation has a
16 long history before the Treaty of 1855. You know, we
17 lived along the Columbia River like a lot of the other
18 tribes, and because of that relationship, you know, we're
19 known as a river people. Even though our reservation is
20 located north of the Columbia River between Oregon and
21 Washington.

22 But we -- because of our course, or treaty
23 signers, that allowed us custom access to our traditional
24 lands, which is pretty vast, you know, we also traded --
25 and because of the uniqueness of the Yakama Nation, like

1 other tribes -- because of the river system, we had vast
2 trading networks that went beyond Washington state in the
3 northwest. We traveled to the plains.

4 Recently, you know, we found some artifacts,
5 some cultural artifacts, turquoise, and then so that kind
6 of definitively shows our vast networks. And so we
7 consider it our usual custom and from coast to coast.
8 Before there was horses, you know, we send runners to go
9 trade, knowing that they would be gone for two years,
10 three years, five years.

11 And so with that, because of our unique
12 treaty that we have, moving forward into modern day, we
13 have a long history of litigation. And because of our
14 treaty and, you know, us willing to fight, you know, we
15 have significant court cases that we have won because of
16 litigation and, you know, so that includes more recently
17 Bradford Island, the cleanup in Bradford Island along the
18 Columbia, a SuperFund Site down in Portland. And also
19 more recently, you know, with Handford coming up, you
20 know, all that's within our UNA. And, you know, we don't
21 like to fight, but when we do, we win when it comes to
22 these resources.

23 And a lot of these resources go back to, you
24 know, a decision to proceed with infrastructure projects
25 that shouldn't be there. And so I'm saying this because

1 currently, you know, recently, and also there's been a lot
2 of proposed terminals, oil terminals, natural gas
3 terminals along the Columbia River. And there's one more
4 left of these proposed, and that's the Millennium Bulk
5 Terminal in Longview -- I think it's in Longview,
6 Vancouver area, you know, and we feel confident enough
7 that -- that what's being proposed it will get denied
8 based on treaty rights.

9 But to expand on that, I really wish that
10 there should -- you know, consideration and how we do
11 consultation, we need to expand the EIS from point to
12 point, from start to finish of wherever these proposals
13 are being put in place. And so the end point in this
14 case, would be down the Columbia River. But originally
15 EIS needs to consider the starting point and everything in
16 between, and so because, you know, where it touches the
17 resource it effects the Yakama Nation.

18 And then, the second point I'd like to make
19 is, you know, treaty and cultural resources as trust
20 assets. I think for us, you know, it's called the TCPs,
21 you know, those type of resources are significant because
22 we hold them dear to us as the Yakamas. We would consider
23 it a trust assets as well just because it's so important
24 to us and who we are and how we live.

25 And so, you know, even more recently there

1 was a derailment this past spring along Columbian Mosier.
2 There was 97 rail cars transporting the fossil fuels along
3 the Columbia River. Fortunately, only -- I think, 11
4 crashed. But it's because of these projects and other
5 projects that, you know, we've been fighting. You know,
6 it could cause -- has the potential to cause, you know,
7 unintended consequences. It could cause irreversible
8 damage, you know. And so it's these things -- why we're
9 here. It's these things -- I think why we all speak for
10 those who cannot speak for themselves.

11 And so I say that, you know, as a form to
12 move us along, move the dialogue along, you know, as we
13 consult in this process.

14 I do understand that there's one being
15 proposed in Seattle, but for the Yakama Nation, you know,
16 consult the nation only happens at Yakama. (Native
17 language spoken) and so, like, tonight, this is the
18 listening session.

19 If we do arrive in Seattle for that next
20 one, we would consider it a listening session because of
21 our treaty that we have -- and, you know, our dispute
22 resolution is with the President, and so -- but I do
23 appreciate you guys here tonight. It is a long night but,
24 you know, there is hope, I believe.

25 You guys are here making the effort to make

1 change, but in no way is it as equal to what's been done
2 already. And so with that being said, you know, I
3 appreciate it. I appreciate all of you guys that are
4 still here, right, the bunch of nerds. Thank you. Night.

5 MR. WOODY WIDMARK: Good evening. My name
6 is Woody Widmark. I'm the Vice Chair of Sitka Tribe of
7 Alaska. The Sitka Tribe is located in the Tongass
8 National Forrest in southeast Alaska. We have a little
9 over 4,000 tribal citizens enrolled with the tribe.

10 Thank you for being here. I was watching
11 all of the other Tribal Leaders and citizens throughout
12 this assembly, and I was kind of pondering -- and you kind
13 of remind me of us. When I say "us," I mean the tribal
14 council, because in our meetings, we would have -- in our
15 agenda we would have tribal citizens to be heard. So I
16 feel like a tribal citizen. I'm not saying you're a
17 tribe, but it reminds me how patient you were, you are, in
18 having tribal citizens come in at our council meetings
19 once a month, and their concerns, and what are you going
20 to do about it? What are we going to do about it?

21 So it kind of puts things into perspective a
22 little bit, and just -- just trying to be a holistic
23 approach, so I'm not saying you're a tribe, but it -- it
24 kind of reminds me -- because I sit up there, but I listen
25 to the tribal citizens -- because you see a lot of tribes

1 speaking out and showing their concerns to you, and I'm
2 hoping that your words -- or your actions are louder than
3 you know, your words. Speak louder than your words.

4 Listening. A lot of people don't listen.
5 I'm not saying you don't, but a lot of people like to
6 talk. So, for me, I don't like to talk either, but I like
7 to listen, so I do a lot of listening back home to the
8 tribal citizens. So right now, I'm speaking on behalf of
9 the tribal citizens. The last couple of days or so -- it
10 seems like the last couple of days -- that we've been
11 challenged. So my challenge, I guess, I took the
12 challenge of talking to you.

13 So the other thing that -- that another
14 tribal leader talking about was having a site visit up
15 California. Over a 100 tribes. Well, in the state of
16 Alaska we have over 200, and I don't see a site visit
17 there either. But I know that the NCI president is going
18 to the AFN next week. So I'm hoping some kind of dialogue
19 or message to the tribes up there are going to get here
20 too.

21 I know we have Seattle, but my goodness, the
22 tribes going through Seattle? Okay, we have a
23 teleconference.

24 So it is pretty spendy. I mean, we have a
25 lot of Alaska delegation here -- to come down here, and we

1 had the president of NCI -- a lot of sacrifices to our
2 Alaska delegation that came down here just to be here.

3 So I also heard that the BAI provider
4 conference was canceled, and now I heard it's back on
5 again. And so these are avenues -- and I'm bringing it up
6 to you is, you know, to dialogue or listen to the other
7 tribes. So I wanted to jump on the bandwagon, at least,
8 the California tribes, there is no site visit, but I can.
9 Over 200- -- over 230 federally recognized tribes in
10 Alaska. That's a lot. So I had to put a plug in that one
11 as well too.

12 Speaking about our tribal council meetings,
13 we would invite the Forest Service. We have the
14 Department of Interior. We have the National Park there.
15 We would invite the people there to our council meetings.
16 So there is dialogue. I know we can't get this at NSA a
17 lot because, you know, time is short, and -- and they'll
18 cut us off. We may get three minutes, now it's two
19 minutes, now it's one, now it's -- maybe it's a nod up or
20 down here because we're running -- running out of time.

21 So just to share that for dialogue or
22 partnerships that I've heard for the past here, it's a
23 work in progress. It's hard work. It has to do with the
24 tribe too. We have to work -- we have to work on that
25 relationship. And I'm hoping you -- you work with us.

1 And it's a very difficult -- I can use the -- the --
2 what's the word -- well, it's kind of like a marriage, if
3 you will, so we're going to have some good times, and
4 we're going to have some bad times, but we need to work it
5 out.

6 So I'm trying to keep this as simple. We do
7 it, you're doing it, it's work. So it can happen. I've
8 heard we have successes. Yes, we do. Do we agree all the
9 time? No, but we agree to disagree. So it's work. I
10 don't care if it's somebody's new, or he or she there is,
11 like, the full-time employee or appointed, whatever, it's
12 education. We work.

13 So we try to build on that partnership a
14 lot. So I'm hoping that, yes, they're within the
15 agencies, yes, their people will work. But like I've
16 heard other Tribal Leaders saying, "They're just staff.
17 They're just here for one or two years." But the people
18 who are making the decisions are up in Anchorage, you
19 know, like, for back home, or they're somewhere else in
20 Seattle or D.C. They need to hear us.

21 So what I've been hearing that we need to
22 partner or collaborate. And those -- basically, when I
23 heard "collaboration" that was a Forest Service term back
24 home. Tribes, say, for example, Sitka tribes didn't use
25 the word collaboration. I first heard that, so I put that

1 on the Forest Service to say, "Let's work. Let's do it.
2 Consultation."

3 The other thing -- I mean, I -- a couple
4 more things. I know. And each tribe is unique so what
5 I've heard from all the Tribal Leaders, and I put some
6 bullet points down.

7 Self-determination. Okay. I've heard
8 sovereignty, but I've heard other tribal leaders,
9 "Exercise that sovereignty, exercise that sovereignty."
10 Sure, sovereignty, but, Tribes, if you don't exercise that
11 sovereignty, you're not going to go anywhere.

12 Self-governance. That's what tribes want to
13 do. They just want to do what's best for their people.

14 And I've heard a lot with consultation.
15 I've been there, done that, been 20-years plus as the
16 Chairman for back home and work on consultation.

17 Implementation. We might have policy, but
18 implement it. And I've heard other tribes say, "We don't
19 implement, it's not going anywhere. Why do the work --
20 why do all this work if we're not going to implement?"

21
22 And the tribe, for example, okay, and I
23 guess getting right down to it is -- it was a bold step
24 for our tribe.

25 Oh, before I get down to that, the President

1 of NCIA mentioned about Billy Frank. I've been privileged
2 and honored to be with Billy, you know, on a couple
3 boards, board meetings. He came up to Sitka during the
4 EPA Tribal Leaders Summit or Sitka. Sitka Tribe hosted
5 it, and Billy told me, "Woody, we need enemies. Woody, we
6 need enemies." And I -- wow. Because we don't have
7 enemies, we fight among each other. Okay?

8 I'm not saying you're our enemies. We want
9 to be partners, and I think that's important. Billy is
10 right. That's his story to me, and I've hung on to that a
11 long time.

12 And that leads me to -- I wanted to share
13 with you and other tribes that are still here, that the
14 Sitka Tribe has its own consultation policy. We know you
15 have a policy, okay, tribes should have their own policy.
16 This checks and balances. We're frustrated with some
17 things, and you can hear the frustration here.

18 But this tribe took the initiative to look
19 outside this box, to pass a consultation policy for Sitka
20 Tribe of Alaska, and it basically says what the
21 frustrations of all the tribal leaders have said here,
22 said all day.

23 So I'd be glad to share with you other
24 tribes, but I wanted to let you know that Sitka Tribe, for
25 all the things that are going, has its own consultation

1 policy. So thank you for listening.

2 MR. BRIAN BAINBRIDGE: (Native language
3 spoken.) My name is Brian Bainbridge. I'm the Chairman
4 of the Red Cliff Band of Lake Superior Chippewa, at the
5 most northern tip of Wisconsin on the south shores of Lake
6 Superior.

7 You probably already know why -- why I'm
8 here to talk because there's been a lot of talk about
9 water and the Great Lakes. I won't go through the laundry
10 list that, you know, I had written down earlier today as
11 we were talking about what do we need to bring up because
12 a lot of things have been said already. And, you know,
13 this web of pipelines that are so degraded that there's --
14 it's a time bomb, ticking time bomb. And as we talk about
15 consultation, you know, we're very dependent on the
16 natural resources, as you heard tonight. We're connected
17 to the land and water.

18 My ancestors are -- lived on the water all
19 their lives, and it's important. A lot of things have
20 happened way before my lifetime, and there's a lot of
21 things that have happened within my lifetime. You know,
22 we've had degradation of our sacred sites.

23 On Madeline Island, an island of Lake
24 Superior, where there was a marina that was proposed. And
25 this happened within my lifetime. I wasn't there, but my

1 relatives were there. They were watching backhoes scoop
2 and dump our ancestors off where they were buried.

3 So that's why it's important for
4 consultation before permits are issued. I have signed so
5 many letters of opposition, my pens are running out of ink
6 in the office. My voice gets hoarse because I've waited
7 in many lines for many hours to give testimony on behalf
8 of our -- our many nations, my relatives, because it's
9 important.

10 You know, it runs through my veins. It runs
11 through my heart and soul to make sure that -- that we're
12 protected. You know, we have over 7 million acres, just
13 so I can put it into perspective for everybody. Over
14 7 million acres of freshwater in Lake Superior that the
15 Red Cliff Band uses for commercial and subsistence
16 fishery. That's not including the area of Minnesota where
17 we battled the Army Corps, the Department of Defense for
18 the area where they used munitions. They used it as a
19 munitions as a dump.

20 And now I had to send a letter a little over
21 a month ago asking for a formal consultation because the
22 finger keeps getting pointed back at the tribes of whose
23 responsibility it is to clean it up.

24 We will not fund you on these efforts. You
25 know, to me, that's significant. I will not have a

1 consultation over Skype, over the telephone, it must be in
2 person. This is important. You know, it's -- we can go
3 on and on and on as we have, but I think it's important,
4 and everything has to be echoed.

5 And it's important for me to come and talk
6 on behalf of the Lake because our water runs through the
7 bodies of my ancestors and the people of our great nation
8 today, and the Lake Superior Ojibwa. So, you know, I --
9 and I'll leave it at that. But, you know, it's -- you
10 know, as our -- as our members are laying on railroad
11 tracks because they're bringing acid on -- by railroad for
12 mines or standing in front of bulldozers because there's
13 another proposed mine right above a reservation within
14 spitting distance of mine. You can't let that happen. We
15 won't let it happen.

16 As we heard tonight of -- of the Chiefs
17 saying, "This won't ever happen, and my life will be there
18 before it happens. I'll lay my life on the line."

19 And we've done that. Believe it or not,
20 there's been people in the background with machine guns
21 hired by big corporations because we stood in the way.
22 And we almost have to wage war before we can get the help.
23 You know, it saddens me that, you know, we have to see and
24 hear of women and children getting bit by dogs to protect
25 their land, this day and age.

1 So I come here with our Vice Chairman,
2 Nathan Gordon, you know, we're two -- two young people who
3 have seen a lot. And we're here to protect and make sure
4 our voices are heard and make sure the voices of all
5 Indian people are heard. It's important.

6 So I'll say (native language spoken) again
7 for opportunity, and that goes for Assistant Secretary
8 Roberts for staying up late with everybody else
9 acknowledging this -- that usually, we get in line, and
10 they pull the mic away before we can get up here
11 but (Native language spoken).

12 MR. SHANNON WHEELER: (Native language
13 spoken.) My name is Shannon Wheeler. I'm a -- with the
14 Nez Perce Tribe, a newly elected member to the council.
15 Prior to that, since 1990, I've been in my own business,
16 my own enterprises. So I kind of understand the
17 enterprise side and what the departments are dealing with,
18 not only from our side, but the private industry side that
19 you guys get a lot of pressure from to want to do the
20 DAPL, and where the President says that we don't want to
21 be "Over the barrel," so to say on foreign oil. So
22 there's a lot of pressure that you guys are facing.

23 But, we too, face a lot of pressure from our
24 people because we live here, you know, we're going to die
25 here. So our people that -- that -- we're understanding

1 and that we're protecting their water and their rights.
2 Their cultural areas are very important to us. And I'd
3 just like to say that I'm glad that you guys are here
4 to -- to open your ears to us and to look back at some of
5 the things that have -- that have transpired and to learn
6 from that.

7 What we're looking at as a tribe is that you
8 want to take all of our traditional cultural property.
9 I'm talking about all of our sites, not just one site, but
10 all combined into a traditional cultural property, and we
11 want to give that to you guys.

12 We've already prepared in our ceded lands,
13 which cover Montana, Idaho, Oregon, and Washington. A lot
14 of our UNA areas, all of our UNA areas are in those
15 states. So we want to give those to you guys to say,
16 "Here, this is where we have our sacred sites at. This is
17 where we have our gathering. This is where we fish. This
18 is where we hunt. It's your trust responsibility to take
19 care of that."

20 So we want to give that to you guys. That's
21 your information that you guys can -- before that's --
22 that's first. That's first. You guys can look at that
23 and say, "Okay. Before we -- consultation goes, they've
24 already given us this." So we want to put that in place
25 with you guys. So that's one of the -- I guess, proactive

1 ways that we'd like to communicate with you guys and put
2 that out there.

3 There's a lot of things that we do on the
4 reservation now. We were against the megaloads. That's
5 the -- going through Idaho, going through our tribal
6 lands.

7 There's the -- there's mining in Idaho that
8 we opposed. The Yakama, Mr. Washines, mentioned the
9 Superfund site in Portland. And, you know, we're a part
10 of the Columbia River Tribes, so we definitely like to
11 take good looks -- long looks at those, because fish is in
12 our diet.

13 So just basically keeping it brief. I know
14 some of us have tee times in the morning, you know, so
15 we'd all like to make those. But we -- as a Nez Perce
16 Tribe would oppose any federal lands within our ceded
17 areas to be turned over to state control. We definitely
18 don't want to see any of that.

19 And just kind of in closing that, you know,
20 a quote from one of our great chiefs, this medallion I'm
21 wearing is Chief Joseph. Is it does not take many words
22 to speak the truth, and I'd like to leave it at that for
23 this evening. (Native language spoken.)

24 MR. MARK PARRISH: Good morning, or at least
25 it feels that way. My name is Mark Parrish, and I'm the

1 Tribal Council Secretary for the Pokagon Band of
2 Potawatomi Indians. Our homelands are southwest Michigan
3 and northern Indiana, and in -- yes, there really is a
4 tribe that's federally recognized within the state of
5 Indiana. You know, I think that's -- a lot of times,
6 that's overlooked.

7 But I agree and my, you know, fellow
8 Pokagons agree and share the same views that have been
9 provided here tonight. But I'd kind of like to take a
10 step back, you know, in terms of talking about
11 consultation and so forth.

12 I think we -- in society, I think we
13 complicate things unnecessarily. I don't see why
14 consultation from the Federal Government side seems to be
15 so difficult with us, because you do have a process with
16 all the other nations, you know, within the -- on earth
17 here.

18 And I don't -- I'm guessing that when you go
19 and, let's say, talk with Canada and, you know, in
20 reference to the Great Lakes Water Quality Agreement
21 there, I think there was some meaningful dialogue and
22 meaningful input that you accepted by the Canadian
23 government.

24 I don't think that the U.S. government sat
25 there and shrugged their shoulders and walked way. We

1 don't care. Well, that wouldn't happen, so why is it
2 happening here? You have a process in place. So I don't
3 think, you know -- I think it's imminent. You already
4 have it. All you need is the will.

5 And so now we're talking about, you know,
6 the possibility of having to codify what it -- what it
7 will take to actually consult and what meaningful
8 consultation is. But let's be careful that we don't make
9 another set of laws that will end up to be broken. We're
10 better than that, all of us are.

11 So in terms of consultation, I really -- I
12 really don't see the big deal. You know, how would you
13 like to be approached? We're probably no different than
14 you when you -- when you take a step back.

15 And another thing I'd like to share with you
16 is that a lot of tribes, we have different capacities. We
17 have different capacities in terms of, you know, our
18 economic strengths and in our abilities to -- to work and
19 respond to a lot of these consultations and so forth.

20 In our tribe we're still growing, but we
21 don't have experts that are solely dedicated to one
22 specific discipline that could address that in its
23 entirety.

24 When I was on tribal staff in the
25 Environmental Department, I literally did everything. I

1 was a surveyor. I was a chemist. I was a physicist. I
2 was a bug guy, you know. And to be able to synthesize all
3 this information that comes our way, it takes an awful lot
4 of time for us to really get our head around it to be able
5 to fully understand it.

6 Sometimes that whole -- that whole
7 consultation comment period, from my standpoint, isn't
8 adequate, simply because of we don't have the full staff
9 that the U.S. Government has and can afford. So I'd like
10 you -- you know, to take that into consideration too when
11 we're talking. It's not that we're slow. We're not slow.
12 We're taking our time so we can get it, hopefully,
13 correct.

14 So I hope that, you know, gives you a little
15 bit of -- a little bit of information to consider on what
16 we're up against when -- when we're under a consultation
17 and so forth.

18 And one other thing here: In terms of the
19 Enbridge, Line 5, that goes under the straits of
20 Mackinaw -- I know Chairman Payment had described its --
21 its construction practices and some of the shortcomings of
22 it. But some of the, you know, photos that I've seen of
23 the pipeline that it is -- that it is today, that when it
24 was originally laid down, it also had -- it was also
25 supported actually by a gravel berm. And there's quite a

1 bit of area -- there's a number of areas in there where
2 that gravel berm doesn't exist anymore, and there's no
3 supports for quite a distance. And on top of that,
4 there's a lot of zebra muscle growth on there, that's
5 really weighing that down. So you have old pipeline
6 that's not supported and has excess weight that it wasn't
7 designed for.

8 So we have a problem, a big problem. And we
9 look to you to do the right thing, not just for Enbridge,
10 Line 5, but all these pipelines and anything that would
11 take -- anything that we -- we get involved in.

12 I don't think technology is going to be the
13 answer. It won't. I think the way that it will be the
14 answer is, we will eventually get ourselves to Mars. And
15 the reason we will go to Mars is because we can't live
16 here. So it's absurd.

17 So that's just my walk away of looking at
18 things, I guess, but I think there's some truth in it.
19 And I really thank you for being here and listening, and I
20 hope you have safe travels. (Native language spoken.)

21 MR. PAUL CUERO: (Native language spoken.)
22 My name is Paul Cuero, and I come from the Campo
23 Reservation. And I just have a couple of things to say.

24 You know, there's two things that -- two
25 words that have not ever changed, but a lot of people try

1 to manipulate them as much as they can and that's "right"
2 and "wrong."

3 Today, you know, some of these things that
4 you've heard from a lot of our people getting up here and
5 speaking, sometimes some of you people don't know our
6 story.

7 So there's two books that I recommended that
8 you read. American Holocaust: The Conquest of the New
9 World, which is a new book. And the other one is, Murder
10 State: California's Native American Genocide. And if you
11 read some of the things that our people have been through
12 and you see the emotion that has been here, if you read
13 these two books, you will understand where we're coming
14 from. And all we can do is give you the tools and to show
15 you where we're coming from.

16 I don't think this is the place to sit here
17 and draw it all out, but that's what the consultation is
18 for. But to give you this information ahead of time, to
19 read it, to read these books and then to come down and sit
20 with us, then you will see a whole different story.
21 Hopefully, it comes from here then. You'll understand
22 when we connect from here, our heart, then we'll have
23 great understanding. It's not here. And that's what a
24 lot of people think. It's not all the -- it comes from
25 here, and it's implemented from here (indicating).

1 So that's what I ask -- that's what I bring
2 to you. Please read these two books. And some of you
3 that are going to be leaving with the administration, save
4 those books for the next ones that come in, and give it to
5 them and ask them to read it, because that's how we're
6 going to get these things -- where you kind of understand
7 where we're coming from, when you understand our history.
8 Read it at your own time.

9 But when you come to sit down with us, like
10 I said, then, hopefully, we connect, our hearts will
11 connect, and you'll understand where we're coming from.
12 Because, if anything, what these corporations that are
13 doing to the American citizens like the Government did to
14 us, let me tell you, that's what's happening -- we're like
15 that canary in the coal mine. And that people better
16 start waking up, because these corporations are just doing
17 whatever. They don't care if it destroys lives,
18 environment. And it's up to the other people to wake up
19 the majority.

20 We've been through it, and we have -- we're
21 still here. And that's the only message that I,
22 hopefully -- that you take and read those two books, get a
23 little bit of understanding of who we are and what we've
24 been through, and hopefully, we can connect. Thank you.

25 MS. FATIMA DAMES: Good evening. First, I'd

1 just like to recognize all the elders that are here this
2 evening. We are so appreciative that you are still here
3 in the late hours. And second, I'd like to thank all the
4 government officials that are present at the tables here
5 tonight.

6 My name is it Fatima Dames. I am the Vice
7 Chairwomen for the Mashantucket Pequot Tribal Nation. And
8 I stand before you today to present five solutions,
9 hopefully without (unintelligible), because my stilettos
10 are tired, and I've been standing on my feet all day.

11 But I stand before you today to present five
12 solutions with the belief that you will consider these
13 recommendations as you contemplate next steps with regard
14 to revising consultation -- the consultation process as it
15 relates to all agency actions regarding infrastructure
16 decisions.

17 The first suggested recommendation is that
18 tribes must be involved and consulted during the
19 pre-licensing phase to ensure that cultural and religious
20 sites are properly identified and not disturbed by
21 applicants. All mechanisms are protected, such as,
22 confidentiality of information regarding sensitive
23 cultural resources. Also reduce in the process in order
24 to mitigate any damage done to these sites.

25 Second, when identifying historic properties

1 and addressing environmental injustice in Indian Country,
2 the first right should be given to tribes so that the
3 identification process is conducted in a culturally
4 relevant manner that is directed by culture itself.

5 All federal agencies must make a reasonable
6 and good faith effort to identify historic properties,
7 including consulting with tribes directly to identify and
8 assess adverse effects through historic properties.

9
10 Also, federal agencies must not delegate
11 their responsibility to engage in consultations with
12 tribal governments to protect components, their legal
13 team, or consultants. Consultations should occur directly
14 between tribes and federal agencies regarding concerns
15 about historic properties of religions and cultural
16 significance that may be affected by their decision.

17 Federal agencies must consult directly with
18 tribes to request information that they may possess about
19 the presence of historic properties in the area of
20 potential effects of any undertaking.

21 And, finally, existing language in federal
22 statutes must be clarified to ensure that agencies are
23 held accountable when they do not appear to mandated TROPO
24 laws. This language must be followed by all federal
25 agencies, including those with independent status, such

1 as, the federal energy retro commission to follow these
2 mandates.

3 And I truly appreciate your patience and
4 your presence here tonight. I wish everybody a safe
5 travels and good night.

6 MR. EARL EVANS: Good evening. I'll try to
7 be brief as I can. I promise I won't keep you longer than
8 an hour and a half.

9 My name is Earl Evans. I'm a Tribal
10 Councilman for the Haliwa-Saponi Indian Tribe in North
11 Carolina. Again, as we want to say that I appreciate your
12 time and consideration, and thank you for being here and
13 thank you for the opportunity to speak and for taking the
14 leadership to put together the framing paper. It's a good
15 document.

16 I've been trying to take notes at the same
17 time as put some thoughts together, so I haven't had very
18 much time to go through it in a lot of details to give it
19 some more thoughts, so it might all seem a little bit
20 jumbled, or scattered. It's because they are. So I'll go
21 ahead and apologize for that in advance.

22 But I also want to apologize that as tribes
23 a lot of us don't have your own laws in place regarding
24 these things. And I think that in terms of some
25 additional guidance as to what could make this process

1 easier, I think it would behoove us as tribes to develop
2 our own laws on what we expect the consultation to be like
3 with external governmental entities from other nations,
4 such as the United States, as well as developing our own
5 permitting processes for private companies and other
6 entities that want to come into aboriginal territories or
7 our own trust lands, et cetera, in order to do their own
8 projects.

9 And I think that for tribes who do develop
10 their own laws on these things, it would behoove the
11 Federal Government, and also probably take some of the
12 burden off of you in some ways, to assist with
13 enforcement.

14 Just to give you an example, the Uniform Law
15 Commission oftentimes, as many of you know, the laws for
16 state governments that they hope these other states will
17 adopt so that -- some state laws that have things that are
18 similar, and it's not very much effort on the part
19 attorneys to kind of understand things that are going from
20 state to state with regard to certain laws.

21 Well, then some of those laws, for example,
22 one of them that comes to mind is -- okay, in North
23 Carolina, where I'm from, for example, there's a domestic
24 violence law that's a uniform law that the state adopted.
25 And in that uniform law it recognizes tribal court orders

1 or domestic violence protection orders and requires the
2 state to enforce those.

3 So I think that the Federal Government could
4 have gone in through various agencies could take certain
5 initiatives to enforce permitting laws that tribes put
6 into place for projects that come into their areas
7 relating to environmental concerns or historic property
8 concerns, et cetera.

9 One of the -- one of the other questions
10 that -- one of the things that Mr. Roberts mentioned was
11 he wanted to know what the scope of the consultation as it
12 should be going forward.

13 Well, one of the things that I think we all
14 agree to is, the DAPL project needs to come to a halt. If
15 I'm not mistaken -- and I apologize, if I am -- it's my
16 understanding that the National Historic Preservation Act
17 gave the Advisory Council on Historic Preservation gave
18 the authority to promulgate rules and regulations that
19 government implementation of Section 106. And they
20 agencies that wish to substitute their own procedures for
21 the AC- -- ACHP's regulations must first seek to receive
22 approval from the Advisory Council on Historic
23 Preservation, because the ACHP is the only agency with
24 congressional authority to issue regulations implementing
25 Section 106.

1 And so as we said here earlier, there's
2 Appendix C to 32 and Part 325 that the Army Corp utilizes
3 that's never been approved by the Advisory Council on
4 Historic Preservation or which the Advisory Council has
5 repeatedly expressed its view that this Appendix C is not
6 in compliance with Section 106, and that for the Army
7 Corps to follow this Appendix C, does not fulfill the Army
8 Corps' responsibilities under Section 106.

9 And, you know, final -- again, into the
10 final following on that. It's also my understanding that
11 supposedly the Army Corps decided to issue permits on this
12 DAPL project even though the Advisory Council on Historic
13 Preservation objected, which has contributed to the
14 controversy.

15 So if my understanding of all of this is
16 correct and this is what's resulting in these costly
17 project delays as well as the expense of litigation, then
18 it kind of seems like to me, the Standing Rock should team
19 up with energy transfer that apply to the permits and sue
20 the Federal Government, or allow it -- for the Army Corps
21 to illegally issue permits under regulations that if this
22 is correct, that Congress has not authorized on the Corps
23 promulgated. So I think that conversation may need to
24 occur. I mean, I think that's something that should be
25 considered.

1 Also, the Infrastructure Steering Committee,
2 it was created by 831-13604. I think if we take a look at
3 that since it was the framework for the FAST Act, that it
4 may be looking at a similar executive order for tribes
5 before President Obama leaves. Something that puts in
6 some consideration for tribes, the same way it does for
7 state and local governments, might also be considered as
8 well as -- if I understand this correctly, there's some
9 money that's received by state and local governments to
10 mitigate some of their -- some of the things that go on as
11 a part of that. And if that's the case, the tribe should
12 be part of that too.

13 Let's see -- some issues raised in the
14 framing paper, what adjustments need to be made. UN DRIP,
15 it was mentioned earlier by Mr. Hall very briefly from
16 Three Affiliated Tribes. I definitely agree that UN DRIP
17 should be dealt with, but also understand that UN DRIP
18 deals with indigenous peoples, not just federally
19 recognized tribes. This is not just a federally
20 recognized tribe issue. There other tribes that are not
21 on the federally recognized tribe list that assume
22 responsibilities under federal law. Such as, for example,
23 taking the role of the federal agencies and completing
24 environmental review processes, for example.

25 So if you limit solving this problem in

1 consultation with federally recognized tribes only and you
2 don't consider the potential negative implications you
3 could be placing on other tribes that have other types of
4 relationships with the Federal Government, you could also
5 create loopholes that allow other serious, unintended
6 consequences that harm other indigenous peoples.

7 Also, under the issues raised in the
8 (unintelligible) and what adjustments may need to be made.
9 I think probably the Advisory Council on the Historic
10 Preservation should be here. Someone from there should be
11 represented at the table. I don't think in the
12 introductions I heard anyone mention that it was from
13 there, and perhaps the NAGPRA Review Committee and some
14 other folks along of those lines if you could think of
15 those.

16 Also, one of the things that was mentioned
17 in a presentation today is that the President and the
18 Secretary of the Interior have the authority to regulate
19 matters on Indian lands and from 25 U.S.C. 2 under such
20 regulations, the President may prescribe. So that may
21 allow for the discussions of potential regulations that
22 you may be able to do to address this issue going forward,
23 as well.

24 In terms of -- from tribal leadership,
25 what -- what has worked in the past, what hasn't, examples

1 of where tribes and the federal government and best
2 practices that can be elevated.

3 One of the processes that I've had the
4 opportunity to participate in and I think worked
5 particularly well is the Negotiating Rule Making Process
6 with the U.S. Department of Housing and Urban Development.
7 So I think having a conversation with the Deputy Assistant
8 Secretary that's there about how that process works may
9 lead to some discussions that could be potentially
10 helpful.

11 And also, I think that when the
12 consultations take place, even though you weren't around
13 to see and understand around the country and it's limited
14 to certain locals, I think that during -- that during
15 those circumstances, if there are other entities that I
16 may not have mentioned such as the NAGPRA Review Committee
17 that are similar, that I may not have thought about that
18 you know of, I think it would potentially be wise to
19 include them in those consultations as well, especially if
20 they may have particular expertise that they can lend and
21 help me to craft some type of solution to the issues.

22 Again, thank you so much for your time. I
23 hope I've been helpful in some kind of way. And I would
24 like to continue to be involved and participate in any
25 mailing list or list serves or whatever you send out to

1 tribes to participate in this process. Thank you so much.

2 MR. LAWRENCE ROBERTS: All right. It looks
3 like we have the final comment tonight. Go ahead.

4 MR. DAVID GREENDEER: (Native language
5 spoken). David Greendeer is my name. I'm a legislator
6 for Ho-Chunk Nation in Wisconsin. I'm also a member of
7 the deer clan, and I just wanted to say thank you for
8 everyone that was here this evening.

9 It's customary to, as a deer clan member, to
10 be one of the last -- one of the first into battle, and
11 also one of the last out to protect our people. So I sat
12 here to try to wait and follow custom on behalf of all of
13 the Navajo Nations that are here today.

14 Firstly, I guess, I want to promise you
15 something that I'm going to try not to repeat anything
16 that you've heard. And I just want to tell you a little
17 bit about my background and where I'm coming from when I
18 make the remarks that I do.

19 I hold an MS, MBA, VS as well. I also was a
20 former executive administrator for the Ho-Chunk Nation.

21 We have 12 state departments. If you were
22 to liken me to something within, I guess, the federal
23 system, I would be like a senator. I represent 2,000
24 constituents. I'm also one of the very first individuals
25 to ever, I guess, be named to the Milken Institutes over

1 in London in the Global Arch.

2 And the reason I'm telling you this is, when
3 I went to different countries, the countries regarded the
4 Ho-Chunk Nation as a sovereign entity in a totally
5 different way than what I've seen here in the United
6 States.

7 I have also served as -- I served on ICEIWG,
8 the Indian Country Energy Infrastructure Work Group, and I
9 also have experience working with the NEG REG group. So
10 I've been involved in, you know, multiple consultations.
11 As an executive administrator, I've also had, I guess, the
12 luxury of being part of the team for Badger Nations Plant
13 Transfer for 1560 acres and also just numerous projects,
14 everything that's been stemming through Minnesota,
15 Saint Louis, Illinois, regions on various projects when it
16 was water, infrastructure, natural resources types of
17 things. And so I've actually had oversight over a lot of
18 this. And I wanted to just bring you a real simple
19 message.

20 I've been a trainer also for the -- I guess,
21 different federal agencies. And I've just noticed
22 something that is almost the most -- we'll call it the
23 obvious answer to help with what you asked early on is:
24 How can we improve this process? How can we educate
25 ourselves? And how can tribes help, you know, in terms of

1 doing this?

2 In a recent training of federal department,
3 I realized that most of your federal employees do not have
4 a cultural competency requirement. And the requirements
5 that are in place, even if they've been in their jobs for
6 some time, don't have refreshers. And when you lose the
7 basic aspects of being able to communicate within your own
8 agencies, you cannot communicate to tribes.

9 At the same time, our Ho-Chunk Nation goes
10 through an election cycle that support -- every four
11 years, we have a president's rule -- well, not rule,
12 but -- for replace -- I forget. It's getting late -- you
13 know, through another election cycle and every two years,
14 we have different legislators coming in.

15 Most of your federal agencies contact our
16 president's offices or elected leaders' offices, and you
17 don't realize that we actually have 12 different
18 departments. And it's just like me trying to contact one
19 person, and then you're contacting the wrong people all
20 the time. So we're always running behind the curve.

21 One of the things that I would hope that you
22 do in the consultation process is first identify who to
23 communicate with. I think that's the most important
24 thing. And then, to establish a formal communication and
25 up the game plan. And then, on top of it have a cultural

1 competency piece that's actually developed for those
2 individuals who are going to reach out to actually
3 communicate with each one of these -- with the actual --
4 each travel department, and actually evaluate that person
5 and find out do they know, the phone number? Do they have
6 a contact? Do they realize that the election cycle for
7 our tribe may be at the end of the fiscal year?

8 My fiscal year is, like, in July but, like
9 Potawatomi that was here earlier, theirs is actually -- it
10 runs in a whole different cycle. It doesn't follow the
11 federal cycle, which actually impacts each one of your
12 federal programs and grants.

13 And if you don't understand that, you might
14 have, like, a cross of these agencies where you're --
15 where you have -- you might be right next door to one of
16 your sister agencies, and another person talking to that
17 person that you need to talk to. But you just didn't know
18 it the whole time and you basically, have lost two or
19 three weeks of, I guess, communications, right? So that's
20 just one piece.

21 On a totally different note, I'll go over
22 some suggestions. We have lots of great examples of --
23 we'll call it places where we've been successful in
24 working with federal governments to multiple consultation
25 numbers, but at the same time, lots of lessons learned.

1 As a result of lessons learned, the Ho-Chunk Nation,
2 whether we knew it or not has been able to evolve, and
3 most recently, adopted -- or looking to adopt into our
4 constitution the rights of nature.

5 We have one of the most developed judicial
6 systems in all of the Indian trade and consistently have
7 been, you know, passing laws, creating new regulations,
8 creating new rules diversifying from Section 16 to
9 Section 17 and actually bringing on both entities.

10 These types of things are being done so we
11 can develop our corporate prowess, but at the same time,
12 learn how to work with the agencies and communicate on a
13 more efficient and a higher level.

14 These -- just in summary, are just a few of
15 the things that our nation has been doing, but there's
16 lots of nations that have been doing this. There's a
17 handful of nations that are very strategic. And the -- in
18 closing, the -- there's one thing that we see that's going
19 to be coming down the pipeline, and it's actually has to
20 do with the sand mining, industrial sand mining in
21 Wisconsin.

22 In a recent consultation of the EPA, there
23 was a notice that went out, and this was last year, and I
24 just happened to be in D.C., and I was actually invited to
25 go and I show up. And I'm one of the six people that

1 represented all of the tribes. And they asked me -- so
2 they sat everybody in front of us -- they said, "Hey, what
3 are the issues?"

4 And I -- looking to them, and well, I said,
5 you -- PPM2.5 came to mind right away, air quality
6 standards, you know, right now, they're only measuring for
7 PM10. I started telling them about the issue of the sand
8 mine and what was going on and, you know, everybody looked
9 flabbergasted. It was amazing to see that after a while
10 people broke me aside and said, "Well, come talk to us.
11 We'll tell you who to go talk to. We'll show you the
12 way."

13 And it was nice to actually have almost a
14 person, you know, the people to come out and just tell you
15 that. But my question, as a tribal leader, is the role of
16 NCAI and that's -- that -- well, at the BIA level, at the
17 Department of Interior level, who is my person that will
18 lead me through? Because there's -- I don't see anyone
19 really unifying our communications.

20 And with so many tribes, you know, you're
21 only dealing with -- we'll say the states, right, from
22 that perspective, but when you have 560 nations, who's
23 actually responsible for coordinating all of that
24 communication and trying to do it in an efficient and
25 effective manner and timely, which is the key thing,

1 timely.

2 Because, technically, a consultation
3 period -- I was looking at your schedule, how efficient is
4 a consultation period if you've already lost half the
5 Tribal Leaders. There's -- there's just -- by the time
6 you get everything going -- we have a saying back at home:

7 There's only about six meetings that you
8 will to be able to be effective at with our finance
9 committees or on legislature, because it takes that long
10 to make it through our committees because we run
11 everything with a cycle and it's every two weeks to make
12 decisions. Not everybody makes decisions on a daily
13 basis. So you know as well as I do government runs really
14 slowly.

15 But those are my questions. I would hope
16 that, you know, perhaps out of this NCI has a role with
17 this. I hope that the Department of Interior has a role
18 with this. And I hope, again, there are some sort of key
19 requirements for competency to be able to evaluate that
20 and evaluate your staff. And then also for the tribes at
21 the same time to use whatever that is, those models that
22 you create. And maybe we can do our own self-evaluation
23 as well as because we're just as responsible, too.

24 But I want to thank you for your time. Have
25 a great evening. Thank you, everyone.

1 MR. LAWRENCE ROBERTS: So I want to close
2 the session just by saying thank you to tribal leaders for
3 sharing your time, for sharing your hearts, your stories
4 your suggestions, and your commitment to engaging,
5 continuing to engage in this nation-to-nation dialogue.

6 I've heard a lot of things at this session
7 with consultations about engaging early, that it needs to
8 be a continuing dialogue that leads to consensus, that we
9 need resources to accomplish the work, but we also need a
10 workforce that is properly trained as well to engage in
11 these consultations. And that the consultations
12 ultimately lead to the protection of lands, waters, sacred
13 sites for future generations.

14 So I want to just turn it over to any of the
15 other fellow panelists here to see if they have any
16 closing comments.

17 Anyone? Anyone? Bueller? Bueller?

18 All right. So thank you all for sharing
19 your time with us tonight, and we look forward to your
20 full engagement in these consultations as we move forward.
21 Thank you.

22 (Listening session concluded at 10:18 p.m.)
23
24
25

1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing proceedings were
 4 taken before me; that the witness before testifying was
 5 duly sworn by me to testify to the whole truth; that the
 6 foregoing pages are a full, true, and accurate record of
 7 the proceedings, all done to the best of my skill and
 8 ability; that the proceedings were taken down by me in
 9 shorthand and thereafter reduced to print under my
 10 direction.

11 I VERIFY that I am in no way related to any of
 12 the parties hereto, nor am I in any way interested in the
 13 outcome hereof.

- 14 Review and signature was requested.
- 15 Review and signature was waived.
- 16 Review and signature not required.

17 Dated at Phoenix, Arizona, this 15th day of
 18 October, 2016.

19 _____
 20 DANIELLE C. GRIFFIN, RPR
 21 Court Reporter

22 * * * * *

23
 24
 25

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