

FEDERAL CONSULTATION WITH TRIBES REGARDING
INFRASTRUCTURE DECISION-MAKING

HELD AT

INDIAN PUEBLO CULTURAL CENTER
2401 12th Street Northwest
Albuquerque, New Mexico 87104

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8:30 AM

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Jody Cummings, DOI
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Gina Allery, DOJ
Xavier Montoya, USDA
David Conrad, Tribal Liaison, DOE
Eric Howard, Archeologist, FERC
Charles Smith, Assistant Secretary, Army of
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Lynn Trujillo, USDA
Terry Brunner, USDA
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Leoyla Cowboy, George Werito, Nathan Tsosie,
Carol L. Nuerte, Marjorie Johnson, Terry Knight,
Quentin Candelaria, Nikki Shurack, Drew Setler,
Rylee Escalada, Leona Morgan, Matthew Olguin
Lyle Sanchez, Raymond Concho, Jr., Pinuu Stout,
Chris Parrish, Brandon Velivis, Elizabeth Reitzel,
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Alicia Rodriguez, Bobby Valdez, Gaylord Siow,
Lynn Trujillo, Dave Nezzie, Juan Massey, Eddie Anico,
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Eddie Holley, Michael Dax, Jesse C. Gutierrez,
Sharon Pinto, Steve Vance, Chris Mulcahy,
Mavis Anderson, Don Ami, Ronald Kneebone, Amy Klein,
Allan Steinle, Kyle Nayback, Alan Hatch,
Malcolm Bowekat, Jason M. Edwards, Josh Sanchez,
Amy Luedors, J. Michael Chaverria, Lisa Morales,
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Jerome M. Williams, Lorelyn Hall, Jaime F.
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Cheyenne Antonio, Jennifer Marenz, Rose Whitehair,
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Jane P. Farffer, Keioshiah Peter, Gil Vigil,
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Kay Painto, Henry Misserile, Phoebe Suina, Norman
Brown, Jennifer Denetdau, Hope Alvarado, Debra
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Sandoval, Juan Massey, Herman G. Honanie, Norman
J. Honanie, Lamar Keevama

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1 COLONEL HELMLINGER: Good morning, ladies and
2 gentlemen. First and foremost, I want to thank everyone
3 for joining up today to participate in this consultation
4 session with tribal leaders. I would like to thank the
5 All Pueblo Counsel of Governors and the Indian Pueblo
6 Cultural Center for hosting our consultation session
7 today.

8 At this time, I would like to call Santa Clara
9 Pueblo Governor Michael Chavarria who has graciously
10 agreed to open our session today with a blessing. I will
11 turn the microphone over to him.

12 GOVERNOR CHAVARRIA: Good morning, everyone.

13 (All say, "Good morning.")

14 GOVERNOR CHAVARRIA: (Native American spoken.)

15 A lot of respect. Good morning, everybody. My
16 name is Michael Chavarria, Governor for Santa Clara. It
17 is customary in Pueblo Country that we start off our
18 meeting with a prayer in our native language, asking the
19 Creator and the spirits to come down upon us today, to
20 look down upon us to give us that strength and courage to
21 discuss this meaningful session of tribal consultation.
22 And as tribes, pueblos, nations, living off the land
23 utilizing natural materials, to continue our cultural ways
24 of life, but most importantly is our native language.
25 That is the glue that holds all of our traditions and our

1 cultures together. Without our native language, we can't
2 do much. So it's very important today, as I mentioned in
3 my prayer, it is now open to you as tribal leaders, staff,
4 to express your concerns and issues related to tribal
5 consultation.

6 There are so many projects that impact our
7 livelihood on a daily basis, and so now is that time to
8 address this concern, make sure it's documented, make sure
9 we have that process available. But again, never to give
10 up. Keep us strong, to give us long life and health for
11 our children and the ones that are yet to come. And that
12 when the meeting is over, that the Creator opens that
13 pathway back to respective communities. So again, thank
14 you, everyone, and let's have a good day. (Native
15 American spoken.)

16 COLONEL HELMLINGER: Thank you, Governor
17 Chavarria.

18 All right, ladies and gentlemen. Our purpose
19 today is to gain input on the questions posed in the
20 framing paperwork, which was provided to you as you
21 entered the room today.

22 First, I'd like to introduce myself. My name is
23 Colonel Pete Helmlinger. I'm the Division Commander for
24 the South Pacific Division of the U.S. Army Corps of
25 Engineers. I have with me today, representatives from the

1 Department of Army, Department of the Interior, Department
2 of Justice, and many other agencies, which have been
3 involved in the consultation process. We all -- many of
4 these agencies have the authority in decision-making
5 involving infrastructure, which is why we are here today
6 to consult with you.

7 At this time, I would like to go through and have
8 our members of the panel, starting from my left to the
9 right, introduce themselves and their agencies.

10 MS. MILES: Good morning. I'm Ann Miles. I'm
11 with the Federal Energy Regulatory Commission and I'm the
12 director of our office of energy projects.

13 MS. ALLERY: Good morning. I'm from the
14 Department of Justice, Office of Tribal Justice. I am
15 Deputy Director of the Office of Tribal Justice.

16 MS. HAUSER: Good morning. I'm Valerie Hauser,
17 the Director of the Office of Native American Affairs at
18 the Advisory Council on Historic Preservation, and I want
19 to thank everyone for joining us this morning.

20 MR. SMITH: Good morning. My name is Chip Smith.
21 I work for the Assistant Secretary of the Army for Civil
22 Works in the Pentagon. Thank you all for coming. I
23 appreciate it very much.

24 And the purpose of these meetings, at least for
25 the Department of Army, is to listen very closely,

1 meaningfully consider everything we hear today, and all of
2 the meetings across this nation, and take action. I am a
3 civil servant, so I will transition into the next
4 administration and keep the ball moving. Thank you.

5 MR. CONRAD: Good morning. My name is David
6 Conrad. I'm with the Department of Energy, Deputy
7 Director, Office of Indian Energy Policy and Programs.

8 MR. BRUNNER: Good morning. I'm Terry Brunner.
9 I'm the State Director for Rural Development here in New
10 Mexico for the U.S. Department of Agriculture.

11 MR. CUMMINGS: Good morning. My name is Jody
12 Cummings. I'm at the Department of the Interior. I'm the
13 Deputy Solicitor for Indian Affairs.

14 I just want to say thank you to the tribal
15 leaders for having us here today. I'm really looking
16 forward to a good session with you today in both Phoenix
17 and earlier this year, in Seattle. I felt we had some
18 really productive sessions hearing from tribal leaders
19 about their concerns as it relates to consultation on
20 infrastructure. And I think, as Chip mentioned, we are
21 just really looking forward to listening to you today,
22 getting your input, getting your comments, and really in a
23 meaningful way, trying to use that to improve how we
24 consult with you on these projects. So thank you for
25 having us.

1 MR. BLACK: Good morning, everybody. I'm Mike
2 Black, Director of the Bureau of Indian Affairs. Welcome.
3 And as Jody says, thank you for having us here today. But
4 thank you for taking time out of your schedules to be here
5 with us today and to provide your input on this very
6 important issue, and giving us the opportunity to hear
7 from you what we can do better moving forward on
8 developing infrastructure-type projects and getting
9 better, more meaningful, early, timely input from the
10 tribes related to cultural, environmental, treaty rights.
11 Those things are very important to you and how we can
12 better address those in our projects and the decision-
13 making moving forward.

14 So thank you, and I really do look forward to
15 hearing from all of you today. Thank you.

16 MR. AIKEN: (Native American spoken.) I'm Scott
17 Aiken. I'm the National Native American Programs
18 Coordinator for the U.S. Fish and Wildlife Service. And
19 our interface with many of the agencies that are here is
20 in consultation on biological issues. And so I know that
21 there are many issues that relate to our clans, our
22 communities, our structures, as Indian people, that are
23 related directly to how the Fish and Wildlife interfaces
24 with endangered species and migratory birds and issues
25 related to animals. So I'm happy to be here. (Native

1 American spoken.)

2 COLONEL HELMLINGER: Thank you, ladies and
3 gentlemen, and the panel. And as we said, I want to thank
4 you, our tribal leaders and tribal members who are joining
5 us today, taking time out of your busy schedules to engage
6 in this very meaningful dialogue.

7 I would like to recognize one group, and I know
8 we've got many veterans that are with us here today. So
9 if we have veterans, I'd like to ask that you stand up to
10 be recognized. The Native American veterans are the
11 largest representative group in the U.S. Military, per
12 capita. So thank you all for your service.

13 Ladies and gentlemen, I would like, at this time,
14 to introduce Senator Tom Udall. Senator Udall is the
15 senior U.S. Senator from the state of New Mexico, who
16 takes great pride in working with tribal communities and
17 upholding tribal sovereignty. Senator Udall serves on the
18 senate committee on Indian Affairs, and most recently
19 chaired a hearing on an critically important issue of the
20 theft and sale of tribal, religious and cultural items and
21 its impact on tribal communities.

22 Senator Udall is working with Congress to bring
23 attention to economic, educational, health care, housing
24 and access issues facing Native communities.

25 Senator Udall.

1 SENATOR UDALL: Thank you. Thank you. Thank
2 you. Thank you.

3 Thank you, Colonel, very much. And we, first of
4 all, want to say congratulations to you. I know you are
5 two months in your job as the South Pacific Division
6 Director, and we welcome you here to Albuquerque, and it's
7 wonderful to have you chairing this today.

8 Let me also say to Governor Chavarria, thank you
9 for that blessing and prayer. He always does such a good
10 job, and we love working with him.

11 Welcome to all of the tribes that are here. And
12 I told President Obama when he came up with the idea of
13 having a tribal consultation, "You should come to
14 Albuquerque and start here," and, indeed, that is where we
15 are starting.

16 Tribal consultation must be meaningful and
17 substantive. Compared to a generation ago, there have
18 been improvements, but we started from a very bad
19 baseline, and much work remains. My office and I are
20 committed to being part of the solutions and working very
21 closely with all of you that are here today.

22 I'd like to thank the many tribal leaders who are
23 here today, some of whom have traveled long distances.
24 And we want to hear from you and we want to listen very
25 carefully to what you have to say.

1 Thank you to the many federal representatives
2 here. They've all introduced themselves. You've heard
3 the departments that are represented. The Interior, the
4 Army, Justice, Energy and Agriculture, the Federal Energy
5 Regulation Commission, and the Advisory Council on
6 Historic Preservation.

7 To the tribal leaders, I mean, this is an
8 incredibly distinguished group of people that are here to
9 listen to you.

10 I also know that Congresswoman Michelle Lujan
11 Grisham is here at some point, and may speak to you.

12 CONGRESSWOMAN LUJAN-GRISHAM: Hi.

13 SENATOR UDALL: There she is, right there. Right
14 there. We see her all over the television. She's out in
15 force trying to get reelected, but she's also here doing
16 her job, and I want to tell you, she's a great partner in
17 Washington.

18 All of you know the federal government has a
19 trust responsibility, a legal obligation and moral
20 imperative to conduct meaningful government-to-government
21 consultations with tribes and pueblos. The federal
22 government's obligations are particularly important when
23 infrastructure projects authorized by the federal
24 government potentially impact tribal land, water and air,
25 or culturally-significant and sacred sites. I have heard

1 loud and clear that tribes have serious concerns about the
2 existing consultation process; that consultations should
3 not occur when they should; that the consultations are not
4 timely; the consultations do not respect tribes'
5 sovereignty; and that the quality of consultations vary
6 from agency to agency, from region to region, and from one
7 to another; that it feels like the federal government just
8 checks the box during the consultation process.

9 The stand-off near Standing Rock Sioux
10 Reservation in North Dakota where federal permitting of
11 the Dakota Access Pipeline is halted, has brought these
12 problems front and center to the federal government and to
13 the nation. Not even three weeks ago, the D.C. Court of
14 Appeals appealed to the federal government to follow what
15 they call the "spirit" of the National Historic
16 Preservation Act regarding tribal consultation at Standing
17 Rock. So I was pleased to see the administration
18 recognize that this is a broader problem and set up these
19 important meetings, including the first one here in
20 Albuquerque, New Mexico.

21 The framework for this tribal consultation poses
22 two questions: What can be done to improve and make more
23 meaningful the current consultation process for
24 infrastructure projects within existing legislation; and
25 is there a need for new legislation to accomplish that

1 goal? Your voices, how to better conduct our
2 nation-to-nation relationships are critical. We need to
3 hear your experiences and concerns, and we really need to
4 hear your solutions that you might have, and how we would
5 work those into the federal structure that is represented
6 here today. And when I say, "we," I mean not only the
7 federal agencies in the room, but those of us in the
8 United States Congress.

9 As the chairman said, I serve on the Senate
10 Indian Affairs Committee. I'm very happy and proud to do
11 that. Our committee will need to be involved on both
12 questions in terms of what has been outlined today,
13 oversight consultation under the existing law and any
14 needed new legislation.

15 Next year, we will start a new Congress, and this
16 topic should be at the top of our agenda, and I'm going to
17 make sure it's at the top of our agenda in the Senate
18 Indian Affairs Committee. We need to make sure that this
19 is at the very, very top.

20 I honor our nation's ancient and -- I honor your
21 nation's ancient and deep respect, love and protection of
22 your lands and your sacred sites, and I commit to work
23 with you to find real and practical solutions that respect
24 your nation's traditions and sovereignty.

25 Thank you very much. It's a pleasure to be here

1 with you today, and hope to hear -- and hope to hear some
2 of the testimony and remain here to hear what you have to
3 say. And my staff will be here through the whole session.

4 And Cal Curley, right here, is my representative.

5 Is Josh also here?

6 Yeah, Josh is here, also.

7 So thank you.

8 Josh Sanchez, one with the Navajo Nation, the
9 other with the Pueblo Acoma here to hear what you have to
10 say.

11 Thank you.

12 And Congressman Lujan Grisham, wonderful to see
13 you here today.

14 CONGRESSWOMAN LUJAN GRISHAM: Nice to see you,
15 Senator.

16 SENATOR UDALL: Yeah, thank you.

17 COLONEL HELMLINGER: Thank you. Thank you,
18 Senator.

19 All right. Ladies and gentlemen, at this time,
20 it is my honor to introduce Congresswoman Michelle Lujan
21 Grisham. She is serving her second term representing New
22 Mexico's First Congressional District. In her prior
23 position as a New Mexico Secretary of Health, she
24 established the Navajo area agency on aging and the Office
25 on Indian Elder Affairs, which serves the 19 pueblos and

1 two Apache tribes. Now as a member of the congressional
2 Native American Caucus, she continues her commitment to
3 addressing issues affecting tribal communities.

4 Congresswoman Lujan Grisham.

5 CONGRESSWOMAN LUJAN GRISHAM: Thank you, Colonel,
6 and the distinguished panel. I, too, am really honored to
7 be here, and it's a tough act to follow our senior
8 senator, because New Mexico, the entire delegation, is not
9 only very proud, but has long engaged in a variety of jobs
10 in, I think, very productive tribal consultation.

11 And, in fact, Colonel, actually, the Navajo
12 Nation has long had an agency dedicated to senior issues.
13 But the pueblos, we had the very first, Indian-area agency
14 on aging in the country, and we did that in the nineties
15 because it was very clear, frankly, in infrastructure
16 issues, when we were building senior centers, who we were
17 talking to, whether we could get the capital funds to do
18 that. When we did, whether they were ever really
19 productively allocated to anyone in Indian Country. So
20 creating a state-government body, whose job it was to make
21 sure that there was parity and equity, really made a
22 difference, and that consultation created this.

23 We went from \$100,000 in capital investments in
24 Indian Country to \$10,000,000 in three years. And I will
25 tell you that that should have been done years before we

1 got together and thought about it. Because think about
2 all the elders who didn't have the same access to those
3 services that everybody else in New Mexico had for decades
4 earlier.

5 So I know full well the benefits of creating a
6 strong, productive tribal consultation environment. And,
7 in fact, when I was at the Department of Health, all the
8 emergency planning money comes to state departments of
9 health. And most states and their departments of health
10 give it to the counties. So they do a straight
11 allocation, sort of per capita, figuring out populations
12 in each of the counties. But they don't reach out
13 specifically to Indian nations.

14 So we went to Indian nations first and had the
15 Indian nations allocate it to the counties. That changes
16 the dynamics about how those relationships work so that
17 you get the right work done in the areas where it makes
18 the most difference. And we're seeing that play out
19 productively now with BLM and Forest Service, and working
20 together to combat forest fires and prevent forest fires,
21 more importantly. And my very first bill I passed in
22 Congress was returning sacred lands to Sandia Pueblo here
23 in my district.

24 So we are clear, having you help us do three
25 things: One, and I'm reiterating the strong words of

1 Senator Udall. One, what happened in September, and
2 what's going on with the Standing Rock Sioux Tribe need
3 never have happened. We have forgotten at the federal
4 level, at the state level, how to really create productive
5 partnerships. And the only way that we do that is have
6 effective tribal consultations.

7 And I agree with the Senator. It's insufficient
8 to check off the box or to make a call to some division
9 and not even be sure about whether you know who's in that
10 division, who's responsible for what. We've lost having
11 productive relationships with tribal leaders.

12 I can tell you, that I believe that in our own
13 state, some state leadership have lost respect for tribal
14 consultation and the value of that in moving a variety of
15 issues and agendas forward. And third, we're seeing that
16 we're not aligned across federal government in terms of
17 how we have these relationships and how to make a
18 difference and how to identify what those priorities are
19 or should be.

20 So I'm really delighted that you're here, because
21 I have no doubt that we can make a huge difference. And
22 the fact that we've got senior leadership in the senate,
23 in the Indian Affairs Committee, and we're all members of
24 the Indian -- the Native American Caucus, it does create
25 incredible opportunities, to reestablish for all

1 policymakers and all appointees and everybody working in
2 the public sector, to understand tribal sovereignty, and
3 to be very clear about a relationship through government-
4 to-government consultation between us and all Indian
5 nations.

6 Thank you very much for being here. I'm honored
7 and proud to be here today. And I know that you're going
8 to do a terrific job.

9 Thank you, Colonel.

10 COLONEL HELMLINGER: Thank you, Congresswoman.

11 All right, ladies and gentlemen --

12 CONGRESSWOMAN LUJAN GRISHAM: I have to leave
13 town.

14 COLONEL HELMLINGER: All right. The topic of
15 today's consultation is how federal decision-making on
16 infrastructure projects can better allow for timely and
17 meaningful input and better fulfill tribal trust
18 responsibility.

19 This is one of a series of consultation sessions
20 scheduled through November 21st. The Administration's
21 goal, by the end of our consultation period, is to
22 consider all input and develop a short-term plan of action
23 on infrastructure decision-making for the remainder of
24 this administration. The administration will then also
25 produce a long-term plan of action to transition to the

1 next administration.

2 I would like to highlight that while the Standing
3 Rock Sioux Tribe has brought to light the need for better
4 tribal federal coordination, the Dakota Access Pipeline is
5 currently in litigation, and as such, is not the focus of
6 our consultation today. Our consultation today is more
7 broadly focused on how, in the future, federal agencies
8 can better allow for tribal input on infrastructure
9 decision-making.

10 We have heard at the listening session held in
11 Phoenix, past instances where federal decisions affected
12 tribal treaty rights, homelands, environment, cultural
13 properties, and sacred sites without any meaningful
14 opportunity for tribal input. We hope today, that we will
15 also hear some positive examples where federal agencies
16 have engaged in meaningful consultation with you.

17 One example, which is highlighted in the framing
18 paperwork that was passed out when you entered, is the
19 Desert Renewable Energy Conservation Plan. This was a
20 landscape level plan designed to conserve and manage plant
21 and wildlife in California while facilitating the timely
22 permitting of a renewable energy project.

23 We are open to your thoughts as to other examples
24 that may be models for future collaborative efforts.

25 I would like to now, just go into some

1 administration for today's procedures. First, this
2 meeting is not open to the general public or to the press.
3 If members of these groups are present, I respectfully ask
4 that you leave the room as this is a government-to-
5 government consultation with tribal leaders.

6 Second, I would like to see if there are any
7 objections to photography occurring during today's session
8 from this point forward. If there are, we will ask our
9 photographer to not take photographs. But if -- so I'll
10 just stand by to see if there is any concern with
11 photography.

12 All right. Nothing heard there.

13 I would also state that there may be multiple
14 leaders from each tribe present today. In an effort to
15 hear from you in an orderly fashion, we will ask that one
16 member of each tribe speak first before we have second
17 members of those tribes speak. And we call on speakers in
18 the order that you have signed in. There may be tribal
19 leaders here today that missed the sign-in when you walked
20 in the room; so if you would like to speak and have not
21 signed in, please do so, and we will have -- and you can
22 sign in at the back of the room.

23 All right. So once again, we are here today to
24 hear your thoughts and ideas on how your voices are heard
25 in a timely and meaningful way. So I will now call tribal

1 leaders to the microphone for your input.

2 I would, finally, highlight that a court reporter
3 is present and will transcribe today's session. So we ask
4 that you speak into the microphone and state your name and
5 tribe before speaking.

6 All right. At this time, I would like to call
7 forward Jason Camp, Tribal Council Member of the United
8 Auburn Indian Community.

9 MR. CAMP: Good morning. Thank you, Obama
10 Administration, tribal leaders, and I don't really know
11 who to thank in this territory, because I know that's a
12 subject of sensitivity, sometimes for Navajo and Pueblos.

13 So my name is Jason Camp. I am the treasurer of
14 the United Auburn Indian Community and before that I was a
15 tribal historic preservation officer. I'm here today with
16 -- our Tribal Secretary, Danny Ray, former Chippewa as
17 well. And our central lands are in Northern California,
18 Northern and Central California, and our historic
19 reservation is on Indian Hill in Auburn, California,
20 overlooking the American River.

21 I have traveled here today from the Seattle
22 listening session to ask for your support and asking
23 President Barack Obama to allow tribal nations to have
24 signatory authority on all Section 110 and 106 agreements
25 on and off trust lands where historic properties or tribal

1 cultural properties will adversely be affected and
2 mitigation will be required. This is in the true spirit
3 of Section 101 of the National Historic Preservation Act.

4 Tribal nations need signatory authority to
5 protect our natural resources, cultural patrimony and
6 ancestral burial sites from being destroyed. Without
7 signatory authority, we might not have any hope of the
8 state if our Indian Affairs decides to fast-track these
9 consultations by promoting the California Desert Renewable
10 Energy Conversation Plan and assigning the Federal Energy
11 and Regulatory Commission to streamline consultation and
12 provide oversight and review authority on infrastructure
13 projects.

14 Both models I have mentioned have failed
15 California tribes in the past and will fail everyone in
16 the future, because -- when you continue to be treated as
17 members of the public and not sovereign nations.
18 Signatory authority will allow tribal nations across the
19 country to give their informed consent and be equal
20 signatory parties to agreement documents. Signatory
21 authority will help us resolve bilateral negotiations,
22 agreements, conservation, plus the problems with lead
23 federal agencies delegating consultation responsibilities
24 and authority to third-party advocates. Problems with the
25 work, ex parte regulations and practices, issues involving

1 the protection and distribution of confidential
2 information, concerns with area potential effects,
3 requests and findings for tribal monitors during natural
4 cultural resources settings, groundwork, operations and
5 maintenance, mitigation for adverse effects to natural and
6 cultural resources during inventory, determinations of
7 eligibility or findings of effect, cumulative effects on
8 water, fish, terrestrial lives, landscapes, viewsapes and
9 other important tribal resources. Permanent access to
10 burial and reburial areas, long-term operations and
11 management, and finally, the U.S. Army Corp's unauthorized
12 adoption and proper use of Appendix C from 401 and 404, in
13 nationwide permitting.

14 In Seattle, I heard tribal elders, veterans and
15 leaders say, "My home is where my people are buried."
16 It's over here somewhere. We have had some bad
17 experiences working through the consultation process with
18 such federal agencies as the U.S. Army Corps of Engineers
19 and the Federal Energy Regulatory Committee. Some
20 agencies like the Natural Resource Conservation Service in
21 Tahoe National Forest don't really consult with us at all.
22 And others, like the Bureau of Reclamation, do the minimal
23 amount legally required, between losing confidential
24 information and other issues that are important to us.

25 We've had many troubles on the water projects

1 involving federal energy and regulatory commissions, and
2 third-party licensees. During the federal -- or the
3 hydroelectric electric license process, third-party
4 licensees and state and federal agencies continue to take
5 our water and profit from it through the production of
6 hydroelectric power along the ancestral rivers, like the
7 American River, the Bear River, the Consumnes River --
8 Consumnes -- you pronounce it that way -- Sacramento,
9 Feather and Yuma Rivers, many of our historic habitation
10 and burial sites were along those waterways as tribes
11 along the Mississippi, Illinois and Missouri rivers know
12 well, levees routinely are made up of and can go through
13 or near many sacred burial sites, including human remains
14 and cultural items.

15 Our nation has suffered egregious and irreparable
16 damages working with the U.S. Army Corps of Engineers with
17 the Section 408 permit process, which lies in the flood,
18 safety and levee improvement projects.

19 I hope that you all never have to learn of
20 egregious and irreparable damages to your burial and
21 sacred sites. What that means raises a lot of pain to a
22 lot of people, especially native people. I don't think
23 that people quite understand that, and I'd really like
24 to -- you know, I'd really that not be a question of,
25 "What do you guys want?"

1 Well, obviously, we want you not to do that. Not
2 to destroy these sites or allow that to be done. I know
3 you guys don't do that personally, but through the -- you
4 know, the 106 process, this is being done.

5 So the Army Corps of Civil Works Division is the
6 lead review agency for all private and state and federal
7 water projects. These projects routinely go through
8 comprehensive, environmental and archaeological review
9 under NEPA, but no significant findings or adverse affects
10 are ever made, and the information we provide does not
11 receive equal considerations.

12 As you may be aware, the Army Corps of Civil
13 Works Division approves 408 levee permits, while the
14 Regulatory Division approves 401, 404 and nationwide
15 permits which will affect Navajo waters of the U.S. These
16 are examples of the types of permits that allow the
17 agencies and project proponents to carelessly bulldoze,
18 desecrate our sacred sites that we actually identified
19 earlier during the review process, but are inadvertently
20 found and treated as post-review discoveries to streamline
21 the process.

22 Water projects have already impacted tens,
23 probably hundreds and thousands of our ancestors who are
24 buried in the path of infrastructure development. We try
25 to be diligent and work through the process as consultant

1 parties, but we still do not have equal authority.

2 And over the next few years for hydroelectric
3 re-licensing, and Army Corps levee projects will continue
4 to contribute to the destruction of our history. We
5 believe, in the past, that had we been allowed to be
6 signatory on the program agreement, we would have been
7 better able to avoid seeking injunctive relief and
8 avoiding costly litigation. More importantly, it would
9 allow our nation to give its informed consent, to
10 participate in a transparent consultation process
11 effectively, and be able to protect the places that are
12 most important to us.

13 It is understandable that some agencies oppose
14 tribal signatory authority because of the fear that tribes
15 would terminate Section 110 and 106 agreements to stop
16 important public safety, transportation, energy, and
17 communications projects. But that's not what we want.
18 That's never what we wanted.

19 We would support limitation or regulation
20 providing unilateral determination that would put the
21 agencies at ease. United Auburn believes that the scope
22 and infrastructure consultations need to be expanded to
23 include the topics of long-term operations and management
24 using levees, dams and reservoirs; as our example, there's
25 a lot of damaging work that occurs after the project is

1 completed, which impacts human remains and cultural items
2 under the umbrella of minor work and routine operations
3 and maintenance.

4 Over the past three years, we have attempted to
5 negotiate with the lead federal agencies over the right to
6 access burial areas and to monitor the archaeological and
7 ground-disturbing work, but have been told that no funding
8 is available for our staff or such conversations are not
9 appropriate for a lead agency during the Section 106
10 consultation process.

11 This allows natural resources, including sacred
12 sites and burial sites, to be desecrated or bulldozed
13 repeatedly over time without any liability -- or ability
14 to protect them. We believe the permitting agencies, like
15 the Army Corps, should be able to impose obligations on
16 the project proponent during subsequent O & M work and
17 that the topic should be the lead agency's responsibility
18 for irreparable damage that it has left behind.

19 So that's a request right there, if you didn't
20 catch that.

21 All right. Next, we continue to be frustrated by
22 the process for identifying and acknowledging sites that
23 are significant to tribes. The process continues to be
24 driven by archeologists and their values rather than by
25 tribes and our values. For the consultation process to

1 really work, it must respect tribal identification of
2 properties of significance and provide meaningful
3 protection, and avoid measures for the sites that are
4 identified. We are constantly being told by lead agencies
5 and archeologists that the places and other things that
6 are sacred and religious to us are not significant.

7 The failure to identify and inventory these
8 places and cultural items allows them to be damaged and
9 destroyed without even a need for treatment or mitigation.

10 And finally -- I'm long winded -- there's a need
11 for clearer guidance for the lead federal agencies
12 regarding the confidentiality of information provided by
13 tribes on and off tribal lands, and the confidentiality of
14 reports that are generated by projects prior to the sacred
15 sites being listed and determined to be eligible for
16 listing on the National Registry of Historic Places, as
17 required by Section 304. While Section 304 of the
18 National Historic Act provides a framework for protecting
19 confidentiality and practice, many agencies reluctantly
20 apply -- are reluctant to apply a framework clarifying the
21 ability of the tribes' signatory parties to protect tribal
22 information that would help make the consultation process
23 more effective and meaningful for us and other nations
24 throughout the country.

25 The best practice would be to prevent signatories

1 from releasing confidential information to other
2 consultant parties or to other tribes who have no right to
3 the information. When traditional cultural properties are
4 documented, the signatories unilaterally agree not to
5 include information or reports unless it can be
6 distributed among all consulting parties. When that time
7 comes, we are forced to either forego the mitigation or
8 allow the confidential information to be shared with those
9 who do not really need to know about it.

10 So, thank you for your time.

11 COLONEL HELMLINGER: Thank you, Mr. Camp.

12 Next, I would like to call forward Mr. James
13 Olguin, Treasurer of the Southern Ute Indian Tribe.

14 MR. OLGUIN: Good morning, everyone. My name
15 again, is Matt Olguin. I go by my -- James is my official
16 name. I am the treasurer for the Southern Ute Indian
17 Tribal Council, and also I want to introduce our Vice
18 Chairman, Lorelyn Hall, who is in attendance here with me
19 representing the council and the Southern Ute Tribe.

20 And before I begin, I definitely want to thank
21 the elders that are here, the veterans, the tribal
22 leaders, the people that represent tribal Indian Country,
23 for the opportunity to speak before the panel, and before
24 you as well.

25 For the Southern Ute Tribe -- we take care of

1 ourselves, right? And before I begin, I really want to
2 express our process in order to represent ourselves here,
3 and hopefully, Indian Country as well, in providing
4 consultation on consultation here.

5 When we looked at this particular subject, the
6 tribal council, along with staff, and other components,
7 actually had a consultation session amongst ourselves, to
8 really dive into the fact of what is it we want to say,
9 what is the meaning of consultation, and bring that to the
10 podium here. And we have written a letter, and that
11 letter will be presented before the deadline. However, I
12 wanted to go through some of our talking points that the
13 letter expresses.

14 And with that, our first item is, "check the box"
15 consultation is not acceptable. Even where check-the-box
16 consultation might satisfy a particular statute or federal
17 agency's policy requirement, we don't believe it meets the
18 United States' duties related to trust responsibility to
19 tribes.

20 Secondly, absent extraordinary circumstances and
21 tribal approval, consultation should occur face-to-face
22 and between tribal and federal leadership. We feel that's
23 very important, face-to-face. And this is particular
24 where there is a direct nexus between a proposed project
25 and a tribe's interest, such as a land base or water

1 source, for example. And it's not particularly helpful
2 when agencies send staffers who have no discretion make
3 decisions to tribal consultation, and this does not
4 constitute meaningful consultation. Again, what we feel
5 there is, sending staff who have no decision-making
6 authority.

7 Silence on an issue does not mean that an
8 affected tribe actually consents to the United States'
9 decision. The United States should take reasonable steps
10 to assure itself that an affected tribe, which has not yet
11 engaged in particular consultation is, in fact, not
12 interested in the discussion.

13 We would like to see the United States make a
14 more -- or we would like to see the United States make
15 more resources available to tribes, such as grant funding
16 providing capacity-building equipment, manpower or other
17 resources, or by simply assisting tribes when necessary so
18 that they may develop their capacity necessary to meet
19 their consultation needs, and so that the United States
20 may meet its trust responsibility to consult on a
21 government-to-government basis with tribes.

22 We support an expansive view with regards to the
23 need for consultation. Considering the federal
24 government's duty to protect tribal property and
25 sovereignty, the only approach that is consistent with the

1 United States trust responsibility to tribes is a federal
2 consultation policy requiring consultation in all
3 instances where the United States intends to make
4 decisions which may affect a tribe's interest, including
5 among other things, a tribe's land, citizens or natural
6 resources.

7 And lastly, the existing legal framework
8 concerning federal infrastructure decisions could be
9 adequate with regard to federal consultation with tribes,
10 but only if the United States commits to a more robust
11 consultation process that commences at the earliest stage
12 of federal involvement on any particular project.

13 So with that, thank you.

14 COLONEL HELMLINGER: Thank you, Mr. Olguin.

15 I would next like to call forward Chairman Herman
16 Honanie. Please forgive me if I mispronounced your last
17 name. Chairman of the Hopi Tribe.

18 CHAIRMAN HONANIE: Good morning, everybody.
19 (Native American spoken.) As I always say (Native
20 spoken.) Thank you for having us here. The Hopi Tribe
21 expresses its thanks and welcomes this opportunity to be
22 here today because we, too, are concerned with the subject
23 matter of consultation.

24 We have our issues. We have various issues that
25 we have mentioned in our paper here, which I will read

1 into, and this is a good opportunity for us to express, as
2 other tribal leaders have and will be. So I would just
3 like to briefly take this time and opportunity to identify
4 and introduce two tribal council representatives who are
5 with me, Norman Honanie, tribal representative from the
6 Village of Kykotsmovi and Lamar Keevama, from the Village
7 of Kykotsmovi. And I believe we also have one staff
8 member from the mining operations, Norman Honanie from the
9 Hopi Tribe.

10 Again, good morning. My name is Herman Honanie.
11 I'm Chairman of the Hopi Tribe and I am a member of the
12 Tobacco Clan.

13 Subsequent to the listening session in Phoenix,
14 there was a tribal consultation scheduled here in
15 Albuquerque today. This is to provide you with an outline
16 of possible talking points for the tribal consultations as
17 you requested.

18 The question to be addressed in this session is:
19 How can the federal agencies better ensure meaningful
20 tribal input into their infrastructure-related reviews and
21 decisions, protect tribal lands, resources and treaty
22 rights within the existing statutory framework? These
23 talking points will discuss the need for a consultation at
24 the local level, regional levels and national levels in
25 order to provide meaningful tribal input into

1 infrastructure-related reviews and decisions.

2 In this context, a few examples: The tribal work
3 group, which is known to us as TWG, a case regarding the
4 future of the Navajo generating station currently before
5 the 9th Circuit Court of Appeals is directly on point
6 regarding the question to be addressed in this session:
7 in relationship to the TWG, Lenny Balen, the OI Solicitor,
8 purporting to represent the Hopi Tribe in a technical
9 working group without ever directly consulting with the
10 Hopi Tribe. The talking point should be that despite the
11 Council's statement that it was going to remain neutral
12 until it assessed the relationship of the LCR litigation
13 to the continued operation of the NGS, there was some
14 comment by the DOI solicitor, at the least, to consult
15 directly with the appropriate decision-makers within the
16 tribe to determine whether that assessment had been made,
17 and what the tribe's position was going to be before
18 purporting to speak for the tribe in the official TWG,
19 consideration on the status of the NGS.

20 As the tribe has contended in the Hopi Tribe v.
21 U.S., the consultation requirement of the federal
22 regulation is not satisfied by having an agency solicitor
23 consult on the tribe's behalf without ever having
24 consulted directly with the tribe.

25 Another issue that specifically raises an

1 infrastructure and consultation issue is recognition by
2 the federal government that it has a trust responsibility
3 arising from the federal government allowing a Navajo
4 state to encroach on the aboriginal lands of Hopi. This
5 recognition resulted in the 1996 Navajo Land Settlement
6 Act approved by the U.S. Congress. The Act was intended
7 to benefit the Hopi Tribe in purchasing lands in Northern
8 Arizona that would be taken into trust by the U.S.
9 government for the benefit of the Hopi people.

10 Certain obligations are required of the tribe,
11 which have all been met. The process by which the Act was
12 approved by Congress permitted amendment by the State of
13 Arizona without prior consultation with the Hopi Tribe.
14 While the amendment made the State of Arizona a third
15 party to the agreement, it remains a federal obligation to
16 initiate the land condemnation process.

17 It has now been over 20 years, and the land
18 condemnation process regarding the State of Arizona trust
19 lands has never been initiated. The failure to initiate
20 the trust taking of the state and their spirit lands
21 essentially negates the benefits of the lands settled by
22 the Hopi Tribe, and the entire settlement may come undone
23 as a result of the persistent failure by the federal
24 government for over 20 years.

25 Despite the attempts of the numerous Hopi

1 administration to discuss the resolution of the issue with
2 federal government officials, for 20 years the
3 condemnation has not been initiated, while the value of
4 the land continues to increase. Because of the
5 intentional delay by the federal government, the funds
6 previously provided are no longer adequate and should be
7 supplemented.

8 Another example is Snowbowl. The Snowbowl issue
9 is another infrastructure issue where there has been a
10 refusal to consult with the tribe or to listen to the
11 reasonable input of the tribe. The San Francisco Peaks
12 are a vatican of the Hopi Tribe and all parts are sacred,
13 not just the very top of the peak. The Hopi Tribe should
14 not be required to live in this cathedral in order to
15 protect it from desecration. As one of the judges stated
16 in the three-judge panel decision on the 9th Circuit,
17 using reclaimed water at Snowbowl is equivalent to using
18 reclaimed waste water in the holy water font of a
19 Christian church. It does not just taint the font, it
20 taints the whole church.

21 Snowbowl's use of reclaimed water to make snow,
22 taints the entirety of the most sacred sanctuary of the
23 Hopi Tribe since time immemorial, the San Francisco Peaks.
24 If the U.S. government had consulted with the Hopi Tribe
25 and had not facilitated the use of between 44 and 76

1 billion gallons of pristine aquifer water to slurry coal
2 to Nevada to satisfy the immense energy appetite of the
3 Southwest, and instead required Peabody to use reclaimed
4 water or methane to slurry the gas -- or slurry the coal,
5 the Hopi Tribe would have access to sufficient water to
6 provide to Flagstaff, to allow pure water to be used for
7 snowmaking even if snowmaking is allowed to continue
8 against the wishes of the Hopi people, and in violation of
9 the religious rights of the Hopi Tribe, thereby, at least,
10 eliminating the taint of the water and the resulting taint
11 on the sacred sanctuary of the Hopi Tribe.

12 Another infrastructure issue raised has to do
13 with a well field at Hollow Mesa, which is necessary to
14 provide water to the village of Jeddito, an island on the
15 Hopi Reservation. There is currently no way to get power
16 to the Hollow Mesa to run pumps for wells. Hopi
17 understand that funding would possibly be obtained from
18 the Bennett Freeze money with cooperation and consultation
19 with the federal government to convince AP to extend the
20 69 KB power line going into Tuba City from Tuba City down
21 Arizona to route Arizona 264 to King's Canyon and beyond.
22 Perhaps to provide power as far as Jeddito Island, which
23 is on the south side of the reservation coming towards and
24 going towards Spider Mountain and the Navajo Reservation
25 and out of Arizona.

1 With that transmission line, the Hopi Tribe would
2 get power to Red Lake or Hollow Mesa or a well field where
3 the Navajo communities in Coal Mine Country -- Coal Mine
4 Canyon and Red Lake, and maybe Jeddito, if it went that
5 far, could receive reliable power as well.

6 The talking point there would be that despite
7 having lower numbers of people, the Hopi Tribe has lost as
8 much as the Navajo Tribe, but has received virtually none
9 of the benefits of the Relocation Commission because of
10 the consultation.

11 Navajo has gotten schools and roads and other
12 value infrastructure because of greater numbers of people,
13 it appears, and not only for any other reason. The
14 Relocation Commission has not consulted directly with the
15 Hopi Tribe about its needs or fairly allocated the money
16 or benefits between the two tribes. Direct consultation
17 with the Hopi Tribe should be required and an equalization
18 of the benefits to the two tribes, share and share alike.

19 Construction of this transition line after
20 consultation with the Hopi Tribe would benefit both tribes
21 and would allow Hopi options as to how to get water to the
22 island created by the U.S. Government, and left without
23 any source of water.

24 A related item, which is raised under the current
25 system, it appears larger tribes always get greater

1 consideration than do older but smaller tribes -- tribes
2 such as the Hopi Tribe. The talking point should be that
3 there is a need for a group where each tribe has equal
4 representation, rather than the current situation where
5 the large tribes get greater consideration, like in the
6 U.S. House of Representatives.

7 The Little Colorado River, a talking point is the
8 over allocation of the Colorado River system, which has
9 existed since the time of Teddy Roosevelt when the
10 allocation of the Colorado River water began. Under the
11 allocation system, Hopi have received no allocation
12 despite being the oldest, continuously resident tribe in
13 the United States.

14 The federal government is not consulting with the
15 Hopi Tribe while allowing Arizona water laws to ignore
16 aboriginal rights of the Hopi Tribe for its water. This
17 desperate impact on Hopi as opposed to other tribes,
18 violates the Equal Protection Clause of the U.S.
19 Constitution. Because of this failure by the U.S.
20 government, Phoenix and other metropolitan areas are being
21 allowed water which should properly go to Hopi. Leaving
22 the Hopi Tribe with no water and no means of economic
23 development or population expansion, the Hopi Tribe will
24 never leave its aboriginal lands, which it has occupied
25 for more than 1,000 years.

1 The tribes of the Hopi people are largely
2 associated with water sources and mineral pigments. The
3 traditional gathering sites of the mineral pigments and
4 salt are all associated with the Grand Canyon and the
5 Colorado River Basin.

6 Another talking point is that the U.S. Government
7 purposely landlocked the Hopi Tribe in a donut hole inside
8 the Navajo Reservation when the 1934 Navajo Reservation
9 was created, thereby separating the Hopi Reservation from
10 the Little Colorado River. 43 USC(a) Section 150 was
11 enacted in 1919. It states, "No public lands of the
12 United States shall be withdrawn by executive order,
13 proclamation or otherwise or as an Indian reservation
14 except by act of Congress."

15 The 1934 Navajo Reservation was created by
16 executive order despite that prohibition, apparently, by
17 linking the creation of the 1882 Hopi Reservation by
18 taking aboriginal Hopi lands and giving it to the Navajo
19 Tribe is a violation of 43 USC(a) Section 150, and
20 separating the Hopi Tribe from any surface water source,
21 the federal government, without consultation with Hopi,
22 intentionally deprived the Hopi Tribe of some of its most
23 important water rights. The talking point is that the
24 Hopi Tribe was left without any accesses to any surface
25 water, depriving the Hopi Reservation of water necessary

1 for the health and well-being of the Hopi Tribe and its
2 members.

3 To further exacerbate the situation, the U.S.
4 Government then facilitated Peabody's use of over 40
5 billion gallons of pristine and aquifer water to slurry
6 coal rather than consulting with the tribe, and requiring
7 Peabody to use reclaimed water or methane to slurry the
8 coal while allowing the tribe to retain its pure water
9 rights from aquifer. The Hopi Tribe has, since time
10 immemorial, priority rights to both the LCR and mainstay,
11 the Colorado River, which the federal government has
12 allowed the State of Arizona to ignore.

13 Where Hopi currently has no allocated water
14 rights in the state of Arizona, and where the federal
15 government facilitated Peabody's access to pristine Hopi
16 water at the price of less than \$2 per 325,981 gallons,
17 which is an acre foot, for the first 20 years of the
18 Peabody coal lease, the federal government, through
19 appropriate consultation, should take the labor to assure
20 the Hopi Tribe will have recourse to Peabody for
21 restoration of its water supply or through a replacement
22 of that water supply in its entirety by other means
23 without charge to the Hopi Tribe, or at least compensate
24 for the bad acts of federal government in relation to
25 Peabody and John Boyden, former attorney for the Hopi

1 Tribe, who also unethically and improperly acted as
2 attorney for Peabody -- the lease was negotiated with the
3 full knowledge and acquiescence of the United States
4 government.

5 We have a Hopi arsenic mitigation project, which
6 is basically the same talking point as the LCR. The
7 federal government says the Hopi has to build a water
8 utility to remove arsenic from drinking water, but the
9 federal courts have said that the U.S. government does not
10 have to pay for it because the arsenic is naturally
11 occurring.

12 The talking point is that Hopi has the worst
13 water situation than Flint, Michigan, because the
14 contamination is arsenic rather than lead. The federal
15 government's implicated in the whole situation, and should
16 be required to consult with the Hopi Tribe on the
17 mitigation of the situation destructive to the health and
18 welfare of the Hopi people of the First and Second Mesa.
19 The U.S. Government knowingly allowed Peabody to deplete
20 the aquifer in order to satisfy the energy needs of the
21 non-Native peoples of Nevada and Southern California,
22 which caused a concentration and accumulation of the
23 arsenic, according to the Natural Resources Defense
24 Council.

25 The federal government also deprived the Hopi

1 Tribe of any alternative water source when it created the
2 1934 Navajo Reservation separating the Hopi Tribe from the
3 LCR and landlocking the Hopi Reservation. Even if the
4 arsenic is naturally occurring, the tribe would have
5 alternative sources of water, but for the intentional
6 actions of the U.S. federal government in facilitating the
7 basic theft of Hopi water supply and the aquifer taken
8 without consultation with the Hopi Tribe.

9 Significantly, the Army Corps of Engineers is
10 taking part in the tribal consultations. A talking point
11 that should be raised is that of a training exercise and
12 to increase good will with the Hopi people and provide --
13 recompensate for the bad acts of the federal government in
14 facilitating Peabody's taking of Hopi water supply, the
15 Corp of Engineers should agree to build a half pipeline.

16 Another talking point is the life of adequate
17 electrical transmission capability has left Hopi unable to
18 get power to the onsite wells, which have been dug.
19 Because of the State of Arizona and APS meet their
20 electrical -- meet their obligation to Hopi at the minimum
21 possible level under Arizona law and refuse to increase
22 the transmission capability, it leaves Hopi unable to
23 distribute water without high arsenic levels to the people
24 of First and Second Mesa. Under the federal rule
25 electrification requirements, the federal government

1 should either require APS to provide electrical wire,
2 electrical transmission capability to the Hopi
3 Reservation, or should undertake it to provide it
4 themselves at the federal level.

5 Jumping to school infrastructure, the Hopi Tribe
6 was told by the Hopi government that if it met certain
7 requirements, it would be provided a combined elementary
8 school, which would be less expensive for the BIE. When
9 Hopi quickly jumped through the necessary hoops and then
10 went to D.C. to finalize the school arrangement, the Hopi
11 Tribe was told that there was no more money for a school.

12 The State of Arizona using funds from Title 8 of
13 the Elementary and Secondary Education Act of 1965 has
14 built schools on both ends of the reservation that are now
15 underutilized or vacant while nothing has been built on
16 the Hopi Reservation based on the excuse that Hopi's land
17 are not taxed by the state. Most tribes in Arizona have
18 both BIE and state-funded schools while Hopi has only BIE
19 schools.

20 At one point, Hopi High School was obtaining
21 charter school funds, which the State of Arizona cut off
22 allegedly because Hopi was double-dipping with state and
23 federal funds even though Arizona is actually using
24 federal funds, as well as state funds. For Hopi to get
25 services from the state, they have to be a part of the

1 state educational system. Since the State of Arizona has
2 improperly prohibited that, the federal government, in
3 consultation with the Hopi Tribe, should be required to
4 provide the federal funds to the Hopi Tribe and the
5 equivalent education system to that of other Arizona
6 tribes.

7 Under the current situation, Hopi doesn't have
8 its own school district. The reservation was divided, and
9 part of it is in the predominantly Navajo Cedar School
10 District and part in the largely Navajo Piñon School
11 District, so that Hopi school always get outvoted by the
12 more numerous Navajo, and Hopi is left with a second-class
13 education system, which the federal government, through
14 consultation, should be required to remedy and address.

15 Finally, with regard to law enforcement, a
16 talking point is that the Hopi needs a new facility for
17 adult and juvenile detention. The Hopi Tribe has --
18 always needs additional funds to address the aftermath of
19 the damage done by John Boone to the students of the Hopi
20 Tribe who continue to have significant symptoms and to
21 offer -- and to suffer from post traumatic stress disorder
22 as a result of the ongoing sexual abuse by former BIE
23 school teacher, John Boone.

24 The final and most important talking point is the
25 lack of adequate BIA law enforcement at Hopi while at the

1 same time, the BIA has refused to issue SLEC cards to the
2 officers of the Hopi Resource Enforcement Services of law
3 enforcement officials and staff. The BIA has only six
4 officers on Hopi, and the federal government pulls them
5 away at will with no prior consultation with the tribe
6 because the local BIA does not do its job and require the
7 Navajo Nation to take -- without taking -- I'm sorry --
8 taking without consultation with the tribe.

9 I lost my pages here, so I'll have to regroup.
10 But that was basically the last point that I wanted to
11 make. And I wanted to close by stating and saying and
12 acknowledging Mr. -- Senator Udall for the recent hearing
13 with regard to the artifacts. It's an issue very, very
14 dear and close to the hearts of the Hopi people, and
15 especially to our practitioners. And holding that
16 conference recently, we were not able to attend, but we
17 still submit our position on that.

18 And, you know, Hopi never intended to impose
19 itself on an international level with this matter with the
20 recent sales and options in Paris, France; it has forced
21 us to seek help of the federal government. And I think
22 desired consultation within the federal government of law
23 enforcement, I really am heartened by the fact that
24 recently we had a discussion with various departments from
25 the government who are banding together, and will

1 hopefully tackle this issue. And so, with your help,
2 Senator, that really adds traction to that, so I really
3 commend you and appreciate it, and I thank you for that.

4 As to the overall consultation process, as you
5 can see other tribes, and I'm sure will make points about
6 consultation, the lack of it and how it needs to be
7 enhanced, we, too, in Hopi, feel the same way. And so
8 this is a good exercise today for us to be able to
9 articulate our points accordingly. But to the federal
10 government officials and everyone, consultation is an ever
11 important ingredient of proper and positive government-to-
12 government relations. Without that, we will be
13 fragmented. We will continue to have uprisings such as
14 what has happened in North Dakota and so forth. We all
15 have our unique issues. We all have our needs, and we all
16 need to speak together. We all need to communicate.

17 And so by -- this means, we must, and we must
18 continue to do so, and with a new and incoming
19 administration to all the career people and to senators,
20 such as Udall and others, we hope that advocacy, that that
21 stand will remain, that it be a priority, as you stated,
22 Senator, that it be stated as a priority on behalf of all
23 Native Americans. And that they serve and benefit the
24 Native Americans of this country, and to endure and to
25 hopefully, resolve the many, many issues that native

1 tribes respectively find. So with that, I thank you for
2 this opportunity. (Native American spoken.)

3 COLONEL HELMLINGER: Thank you, Chairman.

4 Our next speaker is Raymond J. Concho of the
5 Pueblo of Acoma.

6 MR. CONCHO: Honorable governors, tribal leaders,
7 Senator Udall, Congressional staff and, of course, our
8 federal official representatives, brothers and sisters,
9 (Native American spoken).

10 My name is Raymond Concho, Jr., and I am from the
11 Pueblo of Acoma. It is a great pleasure to be here
12 knowing that there's a lot of issues and concerns we have
13 to address. But for the record, most of my comments will
14 be based on experiences and doing consultation on
15 infrastructure projects.

16 The first thing I want to mention, I kind of feel
17 awkward talking to the audience, because that is
18 consultation. I should be sitting at a round, circular
19 table, just like you all. That's face-to-face
20 consultation.

21 And it's good that we have Mr. Black here because
22 I'm going to share with you a project we just completed.
23 It's a beautiful -- it's a road transportation project.
24 We received tribal transportation program funds under FHWA
25 and also the state funds through NM DOT, New Mexico

1 Department of Transportation. We did our homework. Day
2 one, we had consultation, how we do environmental
3 assessments and right-of-ways. We thought that was going
4 to be simplified. We can get it clear, who's going to
5 take the lead.

6 Ten months later, Acoma Pueblo ended up doing
7 CADEX under FHWA regulations, but the BIA still mandated
8 an environmental assessment. Who does two environmental
9 assessments for one project under \$1 million? That needs
10 to be looked at.

11 The same way on the same project, we have right-
12 of-way issues. Right-of-way issues focused on who takes
13 the lead. Obviously, BIA has a federal trust
14 responsibility to work with Indian tribes on determining
15 and to approve the right-of-ways. NM DOT steps in and
16 said, "No." They have the authority.

17 Well, long story short, after making many phone
18 calls to the regional office, to the Washington office, NM
19 DOT finally agreed. I don't know if we have any state
20 representatives here from NM DOT or the Historic
21 Preservation Office. Key state entities we work with to
22 get infrastructure projects complete, I don't think
23 they're here. We need to look at it and see how we can
24 work with them as well. But the end result, it's a good
25 project. It's completed. It's done.

1 The last thing I want to mention about that
2 specific project is we requested -- well, actually, I
3 requested several times from BIA Southwest Regional Office
4 to give us technical guidance on the new federal
5 regulations on leases. They haven't done that. Maybe you
6 can give them -- no. Go over there, walk over there and
7 tell them, "We need that training."

8 In reference to other federal agencies, we have a
9 good working relationship. Don't get us wrong. Indian
10 tribes, when they have the capacity to do infrastructure
11 projects, we do consultation. Good examples could be with
12 the Army Corps of Engineers here at the Albuquerque
13 office; they do great work. They respond. If we needed
14 those 404 or 401 permits, they come out. If there's an
15 urgency on them, they come out. There's good history.
16 There's a good record in terms of working with certain
17 regions. I know it may be more difficult at other
18 regions, but here in Albuquerque it's good.

19 The same way with the FEMA. FEMA office,
20 although they're based out of Dallas, Region 6, we also
21 work with the New Mexico Homeland Security Emergency
22 Management Office. They're good. They work.

23 Just recently, for example, we went through --
24 Acoma Pueblo went through five declarations, national
25 disaster declarations. We probably secured about 5.5

1 million. We had about 200-plus sites we had to work with,
2 and we had to go through archeological review over
3 clearances. Everyone responded to all that. The only
4 one, of course, the State -- I guess I can pick on the
5 State Historic Preservation Office -- anytime the State
6 Historic Preservation Office sees any state- or federally-
7 funded projects, knowing that we go through environmental
8 assessments, they expand that area that needs to be
9 cleared. And I don't blame them, because here in New
10 Mexico, every square foot is sacred ground.

11 In reference to other projects that are off the
12 reservation, a good example, and it's a sad story, in
13 Arizona the Fish and Wildlife Agency, if I'm correct, or
14 was it the Forest Service? They were in the process of
15 building a dam. But when they discovered there was a
16 pueblo village that they were removing, destroying, did
17 they stop? No, they kept going. They kept going and did
18 more damage.

19 But the end result is this. My point on that
20 specific project is that if Indian tribes fail to comply
21 with NEPA, what is the federal government going to do?
22 You're going to take away our funds, you're going to have
23 us recover those costs that we already expended to that
24 project.

25 But what about these federal agencies when they

1 mess up like that? Do they get penalized, too? What's
2 their recourse? It probably doesn't even happen. So
3 those things need to be evaluated and looked at.

4 Here's another unique project, too, that included
5 tribal consultation, and it was successful. Tribes in the
6 southwest region including Acoma, Laguna, Hopi, Zuni
7 Pueblo, Navajo and other tribes, we worked with the State.
8 We worked with the Forest Service in terms of proposed
9 uranium mining. Okay. There's consultation ongoing. But
10 even before that, the tribes and others were successful in
11 designating Mount Taylor, not far from here. So
12 hopefully, when you fly out of here, you'll fly right over
13 Mount Taylor. You're going to fly right over Mount
14 Taylor. That is a sacred site. Just as Governor Honanie
15 had mentioned, San Francisco Peaks and Flagstaff, Arizona,
16 here in New Mexico, we have mountains that are sacred
17 sites. That is a state-approved tribal, cultural
18 property.

19 The uniqueness of that bill or that legislation
20 was that it allowed development, but true, meaningful
21 consultation with Indian tribes. That worked. It's going
22 to work. But then, yes, when I get back to this proposed
23 uranium mining, tribes like Acoma Pueblo disapproved of
24 that project. We disapproved the issuance of permits to
25 allow the project to go forward, but when the Forest

1 Service honored that request, I don't think so. Let's see
2 what's going to happen in about the next two to three
3 years. Give us a call. Call the governor's office and
4 ask if uranium mining is occurring on TCP property, Mount
5 Taylor. It probably will. It probably will. And
6 hopefully, that's a battle we'll keep fighting and
7 hopefully we'll be able to stop it. By the same token,
8 yes, it brings jobs. It brings economic opportunity, but
9 at the expense of removing, damaging cultural properties,
10 that needs to be carefully looked at.

11 The other thing I'll make in terms of
12 recommendations, it's good that we have tribal liaisons in
13 these federal agencies, but I always look forward to the
14 time that we can see a brown face, someone that's native,
15 that really understands our culture, our religion, that
16 one probably won't be understood by the non-Native people.
17 Tribal liaisons are good. They are your key resources.
18 Now, we just hope that you're able to have the right staff
19 in each region, not just stationed in Washington D.C.

20 I learned that the Federal Energy Regulatory
21 Commission has a number of archeologists travel liaisons,
22 but they're all based in Washington D.C. There's none
23 that are out here. We need individuals that really work
24 with the Indian tribes, know the Indian tribes and keep
25 working with them.

1 We have many other problems Acoma Pueblo has been
2 working on, including proposed CO2 gasoline. What worked,
3 what was unique, if you're looking at best practices, they
4 came to us -- the companies came to us, and we had other
5 federal agencies like BIA representatives there. What
6 worked was that we walked the sites. Do you have staff
7 willing to walk five, 10, 50 miles to say, "Yes. No,
8 these are cultural sites." That works. It might be
9 tiresome on one hand, by the same token, that's what it
10 takes. Because when you look at the whole Southwest
11 region, you know, there's no boundaries. I'm not too sure
12 why the federal government put out boundaries on their
13 designated reservations because we go to off sites out
14 there. We make the annual pilgrimages, our traditional
15 leaders, to these sites, and they're outside the
16 boundaries. So wherever we walked, you know, we're always
17 told to be cautious and careful, be respectful, knowing
18 that there's many sacred shrines out there.

19 So what I'll go ahead and do is for the record, I
20 will consolidate my comments into a written paper. But I
21 just want to again, thank you very much for the
22 opportunity here. And, of course, we look forward to
23 working with the Congressional staff to really make this
24 issue on infrastructure really work and where there is
25 true, meaningful consultation.

1 We heard a number of recommendations that were
2 brought up, and it's good that you're able to continue
3 this dialogue, and we do need to have that occur year to
4 year. Because a lot of those consultation policies some
5 agencies have, are not clear. They're not specific. They
6 need to be evaluated and enforced. So on that note again,
7 thank you very much.

8 COLONEL HELMLINGER: Thank you, Mr. Concho.

9 All right. Our next speaker is Governor Jay
10 Michael Chavarria of the Santa Clara Pueblo.

11 GOVERNOR CHAVARRIA: (Native American spoken.)

12 Good morning, everyone. My name is Michael
13 Chavarria. I serve as Governor for Santa Clara Pueblo. I
14 also serve as the Chairman for the Eight Northern Indians
15 Pueblos Council and Secretary for the All Pueblos Council
16 of Governors.

17 Today, I also have staff in attendance. I have
18 Mr. Ben Chavarria, who is our THPO Officer.

19 Ben, would you please stand?

20 Where's Ben?

21 A little coffee? Okay. We have Jesse Gutierrez
22 and Danny Naranjo, who is part of our Rights to Protection
23 Office.

24 Are you also here? Could you please stand,
25 please?

1 Thank you again for coming.

2 I'd like to thank Senator Udall and Congresswoman
3 Michelle Grisham for being here today to hear and address
4 and sitting on the very important tribal consultation.

5 I would also like to thank the President,
6 Department of Interior, Department of Justice and
7 Department of Army, for scheduling such a session, but
8 also include the other federal and state agencies that are
9 here at this time.

10 However, I feel that four hours is not enough
11 time to fully engage and all tribes to completely address
12 our respective concerns and issues on this very important
13 topic. Throughout the years I have seen that when
14 so-called tribal consultation sessions are held, tribes
15 have been limited on time, and respective federal leaders
16 are strapped for time as well, and at times never stay for
17 the entire session.

18 We, as tribal leaders, executive or sovereign
19 nations are just as busy as our federal counterparts. So
20 there's no excuse from our federal trustees, as they need
21 to be part of and to make sure they are fully engaged with
22 such dialogue, and that's true government-to-government
23 consultation.

24 Even though there are laws, statutes, executive
25 orders that support government-to-government consultation,

1 that process seems to vary from agency to agency and
2 region to region. Those respective documents are open to
3 interpretation and, therefore, as a suggestion, there
4 should be a standard set of operating procedures or a
5 step-by-step process that needs to be outlined for each
6 federal agency to follow. And as mentioned, not just
7 checking off the box and moving on, but to demonstrate
8 their ability to fully engage and incorporate all comments
9 received from us as tribal nations.

10 It has been our experience in the past, that even
11 though such consultation sessions are held, it really
12 doesn't matter what issue, the concerns, we, as, tribes,
13 bring to the table. Because at the end, with their minds
14 already made up, the project just receives a stamp anyway.

15 So as mentioned, in the federal consultation with
16 tribes regarding infrastructure decision-making, there was
17 a framing paper that was attached to that invitation.
18 Infrastructure projects have grown in scope and complexity
19 over time as reflected in the increase in number and
20 variety of existing laws and regulations that address
21 infrastructure-related processes.

22 Infrastructure is difficult to define because it
23 encompasses a wide array of physical assets. It includes
24 examples of infrastructure, surface transportation,
25 including highway, rail and transit projects, airport

1 capital improvement projects, ports and waterways, water
2 resource projects, renewable energy generation,
3 electricity transmission, storm water infrastructure,
4 broadband Internet, oil and gas pipelines.

5 The process for evaluating environmental and
6 historical impacts and for seeking tribal input are
7 broken, leading to the standoff, such as the one currently
8 occurring at Standing Rock.

9 In the absence of meaningful tribal consultation,
10 major federal infrastructure projects can pose unique
11 threats to us, as Native American tribes. The lands and
12 resources upon which our culture and spirituality and
13 subsistence depend can be altered forever or completely
14 destroyed.

15 In the context of large-scale infrastructure
16 development, the federal government can and must do a
17 better job with consultation with tribal nations.
18 Procedural requirements with little oversight have been
19 shamefully insufficient in protection in our interests.
20 So Santa Clara urges that secretaries of each of the
21 federal agencies use their discretionary authority, as the
22 decision-makers, to step up to the plate and prohibit and
23 deny any projects that pose a potential negative impact to
24 our spiritual sanctuary or pharmacy, grocery store,
25 clothing store and biological classroom. But most

1 importantly, to protect the special trust resources.

2 It is important to remember that NEPA does not
3 just look at impacts of the physical environment, but also
4 considers the interrelated social and cultural effects,
5 and the definition of "cultural" is broad under NEPA.
6 Therefore, as a matter of environmental justice, the
7 agency should use their discretion to deny any projects
8 adversely impacting cultural resources when there is no
9 way to mitigate those environmental justice impacts.

10 These include the numerous traditional cultural
11 properties found on and adjacent to our reservational
12 lands that fall well within our aboriginal lands, springs,
13 shrines, ritual areas, plant-gathering areas, trails and
14 non-renewable resources.

15 So in other words, once the area is disturbed, it
16 cannot be restored, moved or replicated in another place.
17 Therefore, it is incorrect to think that mitigation could
18 later occur through Section 106 process. So I feel that
19 the administration should ensure that consultation occurs
20 early in the decision-making process, that meaningful
21 consultation is always undertaken with the goal of
22 reaching consensus.

23 It is important to note, that a tribal nation's
24 actual consent is required when infrastructure projects
25 have the potential for significant impacts on tribal

1 nations, traditional lands and resources. Ensure that
2 each agency assumes responsibility to coordinate, fulfill,
3 to implement the federal trust responsibility, and to make
4 sure that each agency is held accountable for engaging in
5 meaningful consultation with tribes.

6 So I have also provided specific language for
7 each of my thoughts as presented, and I'll provide that as
8 part of my written statement for the record.

9 To this end, the administration should and needs
10 to fully implement existing laws, reform administrative
11 regulations and practices as necessary, and support the
12 development of legislation to ensure meaningful
13 consultation occurs when infrastructure decisions are at
14 stake.

15 As I previously stated today, I don't have enough
16 time to address -- to fully address all the issues and
17 concerns on behalf of my Pueblo of Santa Clara. Over and
18 over again, tribes have either been altogether excluded
19 from the decision-making process regarding large-scale
20 infrastructure projects, or we have participated only to
21 have our concerns noted and dismissed.

22 This failure to meaningful consultation with
23 tribes have resulted in major threats of our cultures,
24 lands and ways of life. These threats have led to the
25 people that have a current standoff at the Standing Rock

1 Reservation. So we urge the administration to take swift
2 action, to implement current laws, update administrative
3 policies and practices, and support legislative change to
4 effectively protect the tribal nation and permitting of
5 federal infrastructure projects.

6 But it is also important that we, as tribes, are
7 very unique. And it goes back to our native languages.
8 That's the glue, the cohesiveness that holds our
9 traditions, culture balance together.

10 And so we are considered endangered communities
11 just like endangered species. Endangered species get a
12 lot of funding, so why not us, as tribes? And our voices
13 need to be heard, because it has an impact on our day-to-
14 day lives, our culture, our tradition, our religion, that
15 has been passed down from generation to generation and
16 time immemorial.

17 We are the best stewards of our land. We care
18 for our lands. Everything is respected. And so even in
19 this day we're dealing with geothermal. And one of the
20 agencies that should be here is also the Forest Service.
21 That's important because it's impacting Mother Earth, and
22 we don't harm Mother Earth because she's providing us with
23 our food, as I said, our pharmacy, the medicines, the
24 herbs, the water, our clothing, and our biological
25 classroom. That's what we've survived on all these years.

1 And so it's important to understand the full
2 meaning of tribal consultation. What is that? But for
3 us, it's coming to each respective community, sitting down
4 face to face with the governor, the council and our
5 people, not in a big room like this. But it's coming out
6 to each respective community and addressing our issues, to
7 engage in meaningful tribal consultation. That is the
8 true meaning of tribal consultation. It's not just
9 meeting here, because not all tribes are present.

10 Yes, you're going to go around the nation and
11 have these respective sessions, but again, it's not one
12 size fits all. But there has to be processes incorporated
13 to really understand and, have those agencies understand
14 their commitment, because it is important to understand
15 that. And like we all mentioned this morning, not just
16 checking off the box and say, "Well, we met with them. We
17 don't care what they're telling us. We're still going to
18 go forward."

19 And so, is it money that we're looking at, the
20 economy, or is in the best interest of the environment to
21 continue our lifestyle, living off the land, using those
22 natural materials to benefit us and our children into the
23 future. That's what we're standing here for. It's not
24 for us. It's for our children, and the ones that are yet
25 to come.

1 And so it's very important, as I stand here
2 before you today. And thank you for the opportunity to
3 speak before you. You're always welcome to come and visit
4 Santa Clara Pueblo, visit us, hear us out, because it is
5 important. As I mentioned, we are an endangered community
6 with only 2,500 tribal members. So what happens if all
7 2,500 are gone? That means there's no Santa Clara Pueblo.

8 But it goes back to that glue, which is the
9 tribal -- our native language. That's what's important.
10 And so we're not wealthy financially, but we're wealthy
11 with our traditions, our culture and our values. And that
12 language is important to keep us strong and moving
13 forward.

14 As I mentioned, I'll go ahead and present my
15 written comment. I have about maybe six pages, I wanted
16 to go ahead and update, and I'll submit that to the record
17 hopefully, before the end of the week or first of next
18 week. So again, thank you. (Native American spoken.)

19 COLONEL HELMLINGER: Thank you, Governor
20 Chavarria.

21 Next, I would like to call forward Gaylord Siow,
22 Tribal Preservation Officer for the Pueblo of Laguna.

23 MR. SIOW: (Native American spoken.)

24 Good morning to everybody. My name is Gaylord
25 Siow. I serve as the tribal historic preservation officer

1 for the Pueblo of Laguna. I also have with me today, some
2 staff members that Governor Siow has sent with me today to
3 this particular consultation. I have Mr. Adam Ringia. He
4 is the environmental natural resources director for the
5 Pueblo of Laguna.

6 Adam.

7 I also have our in-house attorney, Ms. Ethel
8 Abeita, and also our grant writer, Mr. Malcolm Bowekat.

9 So I'd like to take the opportunity, first off,
10 to thank Colonel, and all the agency staff here for
11 holding this consultation. As Governor Chavarria has
12 mentioned, four hours is not nearly enough time for the
13 20-plus tribes here in New Mexico, to have a meaningful
14 consultation. But nonetheless, we're here today before
15 you, to provide our testimonies, our experiences and, you
16 know, successes with some of the consultation processes
17 that have worked for us as Laguna Pueblo.

18 I also want to say thank you to the leadership
19 from our sister tribes who are here today, to provide key
20 testimony. And hope that as we move forward as native
21 people, as was stated earlier, stewards of our mother, our
22 land, that these processes will get better as we move
23 forward.

24 One of the first things that I'd like to address
25 here is the Pueblo of Laguna's comments are specific and

1 general in nature, but address the key points of
2 meaningful tribal input, government-to-government
3 consultation and tribal capacity.

4 There needs to be direct tribal and community
5 input, that was stated by Governor Chavarria as well.
6 Meeting directly with tribal councils and leaders as we
7 are elected or appointed in some of the tribes into
8 leadership as governors, lieutenant governors, council
9 members, we are given the authority to make the best
10 decisions on behalf of our tribal membership. Laguna
11 Pueblo has over 8,500 tribal members currently, and we're
12 growing day by day. You know, the decisions that we make
13 today, as also, Governor Chavarria stated, it's not for
14 us. It's for those children, our grandchildren, those yet
15 to come. What legacy are we going to leave them? So it
16 is with those in mind, that we make decisions that are
17 going to allow us to survive as native people.

18 So those meetings with the agencies whoever we
19 deal with, need to be held directly with tribal leadership
20 and tribals councils, first and foremost, so that
21 everybody is educated on the projects, whether it be road
22 infrastructure, pipeline infrastructure,
23 telecommunication, what have you, they need to come to the
24 pueblos.

25 Meetings directly with Indian communities, that

1 was also stated, separate from general border-town
2 meetings. You know, at Laguna and with our brothers
3 Acoma, we're surrounded by Spanish communities and small
4 towns that are aggressively trying to reinvigorate, if you
5 will, the uranium mining industry. You know, the Mount
6 Taylor project that was talked about, the traditional
7 cultural property that was fought so hard and finally
8 approved as a TCP within the state of New Mexico, Pueblos
9 of Laguna, Acoma, Zuni, Hopi, Navajo Nation, led that
10 battle. But we're continually being asked by Forest
11 Service, again, they should be here -- to review
12 applications for permitting, to reopen an area called Roca
13 Honda Mine. The Pueblo of Laguna has a moratorium on
14 uranium mining due to the fact that in our very backyard
15 at Laguna Pueblo was once the world's largest open-pit
16 uranium mine, that has left just a big hole in the ground.
17 Very disrespectful to what we believe, you know, in
18 damaging Mother Nature. It's an eyesore. It's very
19 depressing to see it in that state.

20 But, you know, back in the days when governments
21 were -- tribal governments were brought with proposals in
22 terms of economic development, we didn't have the staff
23 capacity in those times to say, you know, we need to do it
24 through some type of lease agreement of what-have-you with
25 the mining industry. But as we go forward, that was a

1 very important lesson that we've learned. And now that we
2 have capacity in terms of in-house lawyers and
3 environmentalists and other staff at the pueblo, we're now
4 doing things more cautiously.

5 But, you know, again, the other example that I
6 will use is in terms of, say, lack of consultation, Mount
7 Taylor again, as a TCP, right as soon as that was
8 approved, then here comes NextEra Energy, and they built
9 60 -- or erected 60 wind towers, which are very -- just an
10 eyesore on top of Mount Taylor. They slope on Mount
11 Taylor. And without -- no consultation to the Pueblos of
12 Laguna and Acoma and those that surround the Mount Taylor
13 region, this project went up on private land.

14 These wind towers are an eyesore. The landscape,
15 the viewscape of Mount Taylor has been impacted. So, you
16 know, those consultation processes really need to be
17 adhered to as we move forward.

18 The other area in terms of tribes working
19 together, two days ago I attended a meeting with our
20 governor at the Pueblo of Zuni, which included the Pueblos
21 of Acoma, Laguna, Zuni, and Hopi was invited, but they'll
22 get updated as we move forward with the protections and
23 maintenance of the sacred Zuni Salt Lake. We have
24 trespass issues. We have erosion problems. We have
25 security issues there. We have just a number of problems

1 with the area that we, as tribes, from the western part of
2 the state of New Mexico make pilgrimages to on an annual
3 basis. We heard testimony from Kiva leadership from
4 traditional leaders, from these four pueblos, and we're
5 concerned that it's surrounded by also, private land.

6 So as Senator Udall and Congresswoman Michelle
7 Lujan Grisham were here this morning, I wanted to touch
8 base with them in terms of what is their stance in terms
9 of helping us to protect these types of areas from
10 desecration and trespass. It's very, you know, alarming
11 that, as far out as this area is removed from mainstream
12 society, we're still having a lot of trespass issues
13 there. So, you know, we'd like support from agencies
14 where funding could be made available, to help us to
15 protect that sacred Zuni Salt Lake.

16 Another area as Lieutenant Governor Concho
17 mentioned, is that here in the state of New Mexico, the
18 Department of Transportation has worked well with the
19 Pueblo of Laguna. I've recently been involved and in
20 constant contact with the environmental section of the New
21 Mexico Department of Transportation for a project that is
22 being funded with federal highway dollars and State of New
23 Mexico dollars.

24 Governor Martinez has put a lot of money forward
25 for the reconstruction of New Mexico Highway 6, which

1 comes across 18-plus miles of Laguna tribal land. And so
2 that process with the environmental section of DOT has
3 been working very well. And, you know, also Acoma is
4 signing on to a memorandum of agreement as a concurrent
5 party of this project for New Mexico Highway 6. So I
6 think as we move forward, the relationships that we have
7 built at Laguna with our sister tribes, with state
8 agencies, departments, BLM, Forest Service, are continuing
9 to improve.

10 So as was mentioned, a lot of these other
11 agencies really need to be at this table. And I do agree
12 again, with Governor Concho, in terms that when we sit
13 down and talk about consultation, it should be, I think,
14 in an environment that we're sitting at the table with
15 you, as leaders of your agencies. I think that's a key
16 point that I would like to make and ask for consideration
17 moving forward.

18 A large portion of projects that federal
19 departments list as permit or approval processes are
20 private or corporate projects and even state or local
21 municipality projects. They should bear the cost of
22 tribal input, no matter how small or large the project is.
23 If a project -- or an entity can pay for a project, say,
24 of \$50 million, then they should be able to afford the
25 bill for tribal consultation, for tribal involvement to be

1 at the table with them. It shouldn't be the cost of the
2 pueblos or the tribes to always foot the bill when it
3 comes to consultation for projects that are either going
4 to be close to us or on our lands. So we need to stress
5 that, I think, going forward.

6 In meetings with tribal leaders on sacred sites,
7 properties of significance, you know, we have to be
8 careful what it is that we can share in terms of our
9 culture, our traditions. Those things that were gifted to
10 us by our Creator were meant solely for the use of tribal
11 members. When we give information to agencies or others
12 at a consultation, it's going to be limited. We're not
13 going to tell you everything because those are protected
14 by societies that we have in our communities, our medicine
15 men, our Kiva leaders, our traditional leaders. That, is
16 for them to know. A lot of things they know, they don't
17 share with us, so don't be -- you know, you can't be
18 expected to know everything from a cultural viewpoint.

19 But as it relates to, you know, the laws,
20 regulations, policy, those are things that will be
21 important in terms of consultation. We understand the
22 code of federal registers and, you know, the legislations
23 that have been approved by the Congress, and such
24 authorizing agencies. We have to be law-abiding just as
25 the next -- as much as the next person, you know. So we

1 respect -- and I think have worked with agencies in the
2 past on projects that have come through the Pueblo of
3 Laguna.

4 I have -- in a manner of not being too long here,
5 I want to give time for other leadership to make their
6 presentations. We will have our government affairs
7 director draft more comments and send those in to you,
8 Colonel, as we move forward in terms of meaningful
9 consultation.

10 I wish you all well at your next meeting, travels
11 and consultation with other tribes. But I also want to
12 stress that as Governor Chavarria said, it's not a one
13 size fits all. As you can tell by the different dialects
14 of our native languages, it's similar, but they're not the
15 same. So we're not all one size one fits all.

16 So thank you very much, and have a great day.

17 COLONEL HELMLINGER: Thank you, Mr. Siow.

18 Next, we'd like to call forward Councilman Joseph
19 Holley of the Battle Mountain Band Tribe. And please
20 forgive me with my pronunciation.

21 COUNCILMAN HOLLEY: Good morning. My name is
22 Joseph Holley. I'm from the Shoshone Tribe from Battle
23 Mountain. I also brought with me our Vice Chairwoman,
24 Florine Main, Delbert Holley and Eddie Holley, council
25 members.

1 I want to talk about consulting with the bands.
2 In Nevada, we have a lot of gold mines, a lot of the
3 world's largest. And when we meet with the BLM, they sit
4 and listen, just like you guys are doing up here right
5 now, but when we walk away, tomorrow it's a whole
6 different story. They bring out archeologists to go
7 through class 3 surveys. We're sitting there right
8 alongside of them. They're look at stone. We're not
9 stone. What happened in between them stones?

10 That's where the native people have the right to
11 be there to discuss where their ceremonies, why this land
12 is sacred, but we're not being heard. The Tosawihi
13 Quarries, which some of you may have heard about, is a
14 very sacred site, and it's been minimized to allow mining
15 to proceed, to destroy, to desecrate, to remove, to do
16 whatever they want. And it's falling on deaf ears. They
17 ain't listening to the bands, to the people.

18 Every time we meet, every time we talk with the
19 BLM, all we hear is, "Well, I'm sorry. Well, we'll
20 listen. We'll do better next time." It's even gotten so
21 bad that we were even told we're not U.S. citizens. So if
22 this is coming from the federal agencies, then somebody
23 needs schooling.

24 We come forward. We talk with you people. We
25 address you in rightful manners. I'm dressed like you. I

1 talk like you. Why am I not being heard? That's
2 meaningful consultation. Come to us. Talk to us. Make
3 it right. Listen to what we've got to say. I know the
4 federal agencies don't like to hear it, but Te-Moak Band
5 stands with Standing Rock because we live that same life
6 right now. That's why we're here.

7 COLONEL HELMLINGER: Thank you, Councilman
8 Holley.

9 Next, we'll hear from Governor Michael T.
10 Sandoval, Pueblo of San Felipe.

11 GOVERNOR SANDOVAL: Good morning everybody. My
12 name is Michael T. Sandoval. I am currently serving as
13 the Governor for the Pueblo of San Felipe. (Native
14 American spoken.)

15 Again, good morning to all of you. And I want to
16 first and foremost, thank Senator Udall for making this
17 tribal consultation a reality.

18 And you, as the panelists from the federal
19 agencies, I thank you for coming before us.

20 I know it was mentioned and it was expressed that
21 it's our hopes and our expectations that you could come to
22 our levels at our respective pueblos, to really, truly
23 have a meaningful consultation. A lot has been expressed,
24 which is very similar to all of us within our respective
25 pueblos, that we face on a daily basis. I'm not going to

1 echo off on those, because all of us do have projects that
2 we all experience what has been voiced.

3 What I'm going to emphasize and express is the
4 processes, that federal agencies that do, it is evident
5 that there is a lack of responsibility as the trustee. We
6 talked about consultation. It's not on a timely and
7 meaningful manner because most of the times, it's just as
8 governors mentioned, a check in that box. And yet we all
9 know that permits and plans are already made without
10 consultation. It's usually after the fact.

11 I think that agencies need to be respectful to
12 the tribal, cultural, and values that we have in place.
13 They need to actively demonstrate to be respectful. In
14 all of the agencies, I know you all have field staff. I
15 think that something needs to be done at that level. They
16 are to be held accountable, to follow the laws that have
17 been adopted and put forth in regards to executive orders,
18 treaties, regulations and policies. All your field staff
19 needs to be fully trained on those things and be held
20 accountable on those things.

21 There's too many tribal resources that have been
22 spent with regards to time, energy, and precious funds
23 that are spent trying to get these federal trustees to
24 follow the laws that are already in place. And I know
25 that as Native Americans, we have practices that I feel

1 that the U.S. Fish and Wildlife must honor those tribal
2 religious use of eagles. Because we use them in our
3 practices. And no so much to go into detail, a lot of
4 them and a lot of my brothers, as governors have
5 expressed, that it's high time that we all have a better
6 relationship. It shouldn't just be coming up from the
7 mouth, but it should be coming up from the heart. Because
8 I think as Native Americans, we have proven that we are
9 the better stewards of Mother Earth, because we were here
10 since time immemorial and we are still here and we will
11 still be here.

12 We have put our footprints on Mother Earth in the
13 sake of making pilgrimages, to better preserve her,
14 because that's what it's all about, the preservation of
15 our religious, traditional, cultural values, that we have
16 in place, that we practice.

17 So all I want is that relationship to improve.
18 That's what we all ask, to have a better government-to-
19 government relationship. So I, too, will invite all of
20 you, if you have time, to make that effort, to come to our
21 local respective pueblos. I invite you to San Felipe,
22 also.

23 Let's get to and sit down at a table where we're
24 just face to face with each other, and not in an open
25 crowd like this. I see that as being more meaningful, as

1 it was expressed earlier.

2 So with that said, and not to take too much of
3 your time, I thank you for hearing us out as tribal
4 leaders. Thank you very much.

5 COLONEL HELMLINGER: Thank you, Governor.

6 Next, we'd like to call forward Chairman Harold
7 Frazier, of the Cheyenne River Sioux Tribe.

8 CHAIRMAN FRAZIER: Thank you. My name is Harold
9 Frazier. I'm Chairman of the Cheyenne River Sioux Tribe.
10 We're located in the north central part of South Dakota.

11 Before I begin, I want to thank the Governor,
12 here. That was my thought: Why are we sitting like this?
13 Are we meant to address our own people, or are we meant to
14 address these ones?

15 I -- we're right -- the Cheyenne River Sioux
16 Tribe, our border is 50 miles south of the proposed
17 pipeline. This pipeline is going to cross the river and
18 our treaty lines with the great Sioux Nation, the 1851
19 Fort Laramie Treaty. So where this is happening, is on
20 the great Sioux Nation treaty lands.

21 Yesterday, I had the privilege of visiting
22 President Obama, and I asked him to not approve the
23 easement. At the very least, require an environmental
24 impact statement to be done. One of the things he said
25 is, made me feel, like, to have faith in this process,

1 this consultation process.

2 Yesterday, in Seattle, we had staff attend that
3 meeting. It was very disappointing to hear federal
4 officials say, "We've got to go early. We've got a plane
5 to catch in Albuquerque." But yet them people in Seattle
6 are not here.

7 I was asked in LA from a reporter, "Do you trust
8 the federal government?"

9 I could honestly say, "No, I do not. I don't
10 trust you guys."

11 One of the things that we said, "We need decision
12 makers at the table." Where are them three people that
13 signed that letter, that tribal leader letter? Where are
14 they?

15 On our reservation we have a huge epidemic of
16 meth, lack of law enforcement, unsolved murders, but yet
17 I'm here because this pipeline is important. Water is
18 important. We need good water to live a good healthy
19 life. So why can't these three individuals be here? If
20 it's that important to the president of the United States,
21 why can't they be here? They should be.

22 And that's one of our comments. When we do
23 consultation, decision makers should be at the table. All
24 information in regards to the project should be provided
25 to us prior to the meeting. One of the things when we

1 submit comments, we don't know what happens to them.

2 There's no reports given back to the Indians. That needs
3 to improve.

4 A uniform process needs to be developed how every
5 agency will conduct themselves. There needs to be
6 penalties, disciplinary actions against government
7 officials and employees when they fail to properly follow
8 these standards. What currently happens is, they start
9 over.

10 We need to be consulted on all projects that are
11 in our treaty, in our ancestral homelands. Don't limit it
12 just to our reservations. Why can't you guys, the
13 administration, propose legislation, give us tribes the
14 authority that a state PUC has where we could approve or
15 disapprove projects. We need that authority. When we are
16 consulted, if a tribe says, "No," by resolution, "no"
17 means "no." That project needs to be stopped.

18 The Army asked this morning that we do not talk
19 about the pipeline, but I have to talk about it. My main
20 concern is for the safety of our people who's at that
21 camp, who's at that site. Why is the State of North
22 Dakota using federal troops against our people? Who is
23 protecting us? The local media is spreading lies about
24 our people. We don't have weapons. We have nothing but
25 prayer and unity at that camp.

1 We need the federal monitors like President Obama
2 told me that will be there. This Saturday, I was up there
3 this weekend. This Saturday, the people were following
4 orders and were dispersing, going back to the camp when
5 they arrested 83 of them. There's pictures, a cop
6 standing on a woman's head with his knee. What kind of a
7 man is that? A cop up and down that line, pretty soon he
8 stops and shoves them. Steps back and sprays them. Where
9 is that compassion? Where's the American values that you
10 guys promote?

11 I see a lot of hatred towards Indian people.
12 Always been there, always will be. I cannot believe
13 private lands -- what is private lands? Why are they
14 arresting everybody? Them are our lands. It's sad we
15 have to live under your laws. We have laws, too,
16 unwritten laws, laws of (Native American spoken.) That's
17 how we live. So I ask, you have the authority right now,
18 to protect them people up there. Will you guys do that?

19 Right now, they're sending buses of people, of
20 cops, the Army, to arrest our people, right now as I'm
21 speaking, and yet you guys are not going to interfere.
22 When you took our lands, you promised you would take care
23 of us, but yet you're failing.

24 I just want to thank all of our people whose
25 sacrifices -- who's been suffering to protect our water.

1 If it wasn't for them people up there at them sites, at
2 them camps, we wouldn't be here today. They've been
3 bitten by dogs, sprayed with mace, pepper sprayed, hit
4 with batons, intimidated, but yet they're still there, and
5 they will stay there, because we are strong people.

6 So I hope, you guys should be on your phones
7 right now, calling, checking, taking care of our people.
8 Thank you.

9 COLONEL HELMLINGER: Thank you. All right.
10 Thank you, Chairman Frazier.

11 Ladies and gentlemen, at this time, we're going
12 to take a five-minute break. I ask that you please be
13 seated at 10:50. Thank you.

14 (A break was taken from 10:45 to 11:00, and the
15 consultation continued as follows:)

16 COLONEL HELMLINGER: All right. Thank you,
17 ladies and gentlemen. Welcome back. Before we resume
18 again, I would like to state that we will remain here for
19 the duration of your comments, so we're not constrained to
20 the four hours that you heard.

21 So it was a frequent comment that was brought up,
22 but our panel members will remain here or substitutes for
23 them until we're done for the day.

24 Okay. And we've also -- we've slightly
25 readjusted the podium. Certainly, we understand, we want

1 to hear from you, the federal panel members that are here
2 today.

3 Now, without further ado, I would next call
4 forward our next speaker. This is out of sequence due to
5 a schedule conflict, but I like to call on Former Governor
6 Mark Mitchell, who's currently the current Tribal Historic
7 Preservation Office for the Pueblo of Tesuque. Please
8 forgive me.

9 MR. MITCHELL: Good morning. My name is Mark
10 Mitchell. I am the current THPO for the Pueblo of Tesuque
11 and former governor for the tribe. In the audience with
12 me today is Former Governor Gale Vigil, who also serves as
13 the Northern Pueblos' CEO.

14 On behalf of Governor Vigil, Frederick Vigil,
15 AKA, Rick Vigil, he gave me his approval to come up here
16 and talk to you all about consultation.

17 Meaningful consultation, I guess, starts at your
18 level, and by way of amending your policies and procedures
19 as to how you're going to chit-chat with 500-plus tribes
20 across the nation. Also, it doesn't mean that you-all
21 check off a box that you've already met your requirements.
22 That's where your policies need to change.

23 And at the same time, for your understanding,
24 that the governors of this state, presidents, chairmans,
25 they're all sitting at the same level as President Obama.

1 So when we say, "consultation on a government-to-
2 government basis," that's what -- who we want to talk to,
3 period. We want to talk to the decision-maker who will
4 talk to us. And we might have our differences, but to us,
5 that's government-to-government, because the president is
6 the leader of the Free Nation, and the leaders of all the
7 nations within one nation are the same.

8 The other issue that we want to bring to light is
9 at yesterday's meeting, we had another meeting yesterday.
10 And at that meeting, a request was made, "Can you share
11 with us your sacred sites so we don't damage them?"

12 Well, for some of the pueblo tribes, and Tesuque
13 is one of them, we're unable to do that. Others may and
14 can share everything under the sun, but as for Tesuque, we
15 cannot do that. So, therefore, we're going to have to
16 find another remedy.

17 Also, as somebody stated earlier, the tribes
18 should have some type of signature authority, because when
19 it comes to consultation, and one of the speakers earlier
20 said that, if a tribe disagrees or says, "No" to a
21 project, it should stop. Also, by the same token, there
22 was a notice given for -- some of the federal governments
23 give out, from what I understood yesterday, was a
24 five-year notice on certain projects aren't going to
25 happen. A five-year notice goes out.

1 So for example, if there was a project coming up
2 in five years, which will be 2021, we will be getting that
3 notification today. But as far as I know, for the Pueblo
4 of Tesuque, we only get that one notice. So what we
5 recommended is that maybe a phone call, e-mails, and
6 continuous. Because as a tribal government, it's just not
7 one entity we're deal dealing with. We're dealing with
8 local governments, state governments, county governments,
9 and they, too, have projects. So food for thought. I
10 mean, you can add that to your items.

11 As far as off-reservation sites, you-all have to
12 understand that the first occupants or the first people in
13 this continent were the descendants. And when other
14 governments came in, they carved up the land. So,
15 therefore, it became private property and what-have-you,
16 county property, state lines, et cetera. But those sites
17 are already out there since time immemorial or when our
18 ancestors roamed the area.

19 And to share with you-all, the state governor,
20 current state governor told me, "I want to see evidence
21 before I move on certain things." What more do you want?
22 So I just wanted to elaborate a little bit on that. And
23 as far as sovereignty is concerned, sovereignty was
24 recognized by foreign governments to the pueblo tribes.
25 The Spanish government, the Mexican government, and in

1 1863, then president Abraham Lincoln, recognized pueblo
2 sovereignty. So we're just exercising that muscle today.

3 As far as dialoguing, I hope that when we do
4 dialogue, that it trickles down to staffers on the ground.
5 Because 99.9 percent of the time, they have no clue what's
6 going, and it's the tribal folks that are trying to
7 educate them as to what's going on at this level or at the
8 president's level.

9 And also someone once or earlier said that
10 racism -- it's there today. It's always been there, but I
11 think as a race of people, we can rise above it.

12 And I know that we talk -- there was talk about
13 law enforcement. I'm a product -- I'm a former law
14 enforcement officer, but my duties were to patrol the
15 reservation lands. And I just wanted to share this with
16 you-all, because when it comes down to the looting of
17 cultural items and items of patrimony, those are some of
18 the things that I've come across.

19 And, you know, the issue with the Stop Act, I
20 think we're all in support of that. And it would be nice
21 to have your support on that issue as well. There's other
22 issues that we, ourselves, at Tesuque have taken on, and
23 one of them was the Cerberus case, the 2009 Cerberus case.
24 We spoke to the local federal agents, the FBI officers,
25 who were up in arms because they had a three-year

1 undercover sting, and the end result when it went to court
2 was these people only got a misdemeanor. In the
3 meantime, who suffers? The tribe suffers all across the
4 nation, because those sites are irreplaceable, and how can
5 you replace something that's been damaged?

6 So at the end, is that I think that of all the
7 federal agencies, the BLM should be here, because as
8 Governor Chavarria stated earlier, there is the issue with
9 them proposing the geothermal, and I think the tribes are
10 against that, in general.

11 The DLA should be here. And the last words -- I
12 think is that, you, as our trustees, we need to hold your
13 feet to the fire. Because as someone stated earlier,
14 there's issues going on right now, and failure is not an
15 option. Because lives matter, native lives matter.
16 Because you are our trustee. So I hope that you can touch
17 your own hearts, your own feelings, as to what's happening
18 across the nation, and stand up for what's right. Because
19 you're looking at the product of the folks that occupied
20 these lands since time immemorial.

21 And I hope that when we do have consultation
22 meetings, that you incorporate the language that the
23 tribes are telling you, because that's where we get that,
24 it falls on deaf ears. And it's not only at your level,
25 it's at the state level and it's at the county level. So

1 I think we all have got to do a better job listening to
2 each other and be proactive. Not reactive, but proactive.

3 And again, sites have been there since time
4 immemorial. And we're only stewards. We know where they
5 are, and we know what they're there for. But if we're not
6 there to -- if you're not there to support the tribes,
7 then it's all for naught.

8 So with that, on behalf of the Pueblo of Tesuque
9 and current Governor Richard Vigil, we will submit our
10 testimony to you-all. Thank you, again.

11 COLONEL HELMLINGER: Thank you, Governor
12 Mitchell.

13 All right. On our sign-up list, we will hear a
14 second speaker from tribes that have already spoken, but
15 I'm going to proceed to hear from speakers from tribes
16 that have not had an opportunity to speak yet.

17 So next I will call on Angela Thompson, Treasurer
18 for the Pawnee Nation.

19 MS. THOMPSON: (Native American spoken.) And
20 hello to all. My name is Angela Thompson. I'm an
21 enrolled member of the Pawnee Nation of Oklahoma of the
22 Skidi and Chaui Bands. I'm the treasurer of the Pawnee
23 Business Council.

24 I want to take this opportunity to thank our
25 federal partners, the pueblos, and other tribal nations in

1 the area for hosting this consultation, and for the
2 opportunity to address each of you today to bring forward
3 the Pawnee Nation's recommendations related to
4 consultation and project infrastructure.

5 The Pawnee Nation's recommendations for
6 consideration by the federal agencies in response to
7 infrastructure consultation, recommendation one is, we
8 would like an insert -- to insert a requirement for free,
9 prior and informed consent into consultation language for
10 all infrastructure projects, that cross traditional Pawnee
11 lands or affect treaty-affirmed retained rights, whether
12 trust land or ceded territory.

13 Recommendation number two: We want to work with
14 Congress to develop legal framework that forces
15 interagency cooperation and that identifies the ultimate
16 federal trustee for the Pawnee Nation while adhering to
17 the spirit of the United Nations Declaration. And to
18 provide you with an executive summary of the United
19 Nations Declaration on the rights of indigenous people
20 that includes language, free, prior and informed consent.

21 Executive Order 13175 of November 6th, 2000,
22 Consultation and Coordination with Indian Tribal
23 Governments does not include language for free, prior and
24 informed consent. President Barack Obama reaffirmed
25 Executive Order 13175 with a memorandum on tribal

1 consultation on November 5th of 2009, but did not update
2 its language by including the United Nations standard of
3 "free, prior and informed consent."

4 None of the federal agencies in their response to
5 the memorandum from President Barack Obama included "free,
6 prior and informed consent" in their policies and
7 procedures for meaningful consultation and collaboration
8 with Indian tribes. Free, prior, informed consent and its
9 working definition needs to be incorporated into all of
10 the consultation documents of federal agencies.

11 Federal agencies should work to develop a legal
12 framework, that forces interagency cooperation with
13 regards to any federal undertaking on Indian land. We
14 need to identify an ultimate federal trustee and grant
15 that authority, the final say, in any agency action that
16 may take place on Indian land. Also, identify the
17 ultimate federal trustee that will have enforcement
18 authority over any federal undertaking on Indian land.

19 Recommend one to these statements: The general
20 assembly of the United Nations adopted its declaration on
21 the rights of indigenous people, which creates within its
22 framework necessary to ensure that there are minimum
23 standards for survival, dignity, well-being, and the
24 rights of the world's indigenous people.

25 The concept of free, prior and informed, consent,

1 FPIC, contained within the declaration is meant to be a
2 guide outlining the importance of state's relationship
3 with its indigenous peoples, particularly with respect to
4 any development occurring within the historical,
5 traditional and current territory of any tribe impacted by
6 such development.

7 The United States of America voted against
8 adoption of the declaration, which is seen as failing
9 within the Pawnee Nation and the many citizens it serves
10 to protect. By recognizing this declaration, or at least
11 parts of the declaration, the United States government can
12 begin to heal some of the deep rifts that have occurred
13 due to the widespread infrastructure development in Indian
14 Country especially in the fast-paced growth occurring in
15 the oil and gas industry.

16 The government of the United States has begun to
17 at least look at consultation with tribes in ways that
18 benefit both; however, none of these documents go as far
19 as the United Nations Declaration with regards to FPIC.
20 Two executive orders serve to highlight this glaring
21 deficiency. First, the executive Order 13175 of November
22 of 2000, Consultation and Coordination with Indian Tribal
23 Governments, do not include the concept of FPIC. It
24 merely discusses regular and meaningful consultation and
25 collaboration without defining "meaningful."

1 And the second memorandum on tribal consultation
2 of November of 2009, missed the opportunity to address
3 this deficiency by continuing the language of the
4 executive order, and requiring federal agencies to prepare
5 and adopt policies on consultation and collaboration. An
6 examination of the documents prepared by each of these
7 federal agencies turns up none that includes the language
8 of "free, prior and informed consent."

9 We, at the Pawnee, recognize this absence as
10 undermining the entire consultation process. If we are to
11 move forward in any meaningful way and ensure that
12 consultations are not merely a rubber stamp to
13 administrative actions, then a full recognition of FPIC is
14 needed.

15 Treaty rights do not go away just because they
16 might be ignored, understood or protected. If the United
17 States were considering projects which would cross
18 territory held by the Pawnee Nation or affect significant
19 resources used by the Pawnee Nation, it should not simply
20 proceed without the consent of the Pawnee Tribe.

21 The Pawnee Nation, as a sovereign entity, must
22 protect what they are sworn to protect in our
23 Constitution. Meaningful consultation is simply not
24 enough. In the opinion of the Pawnee Nation and its
25 representatives, free, prior, informed consent must be

1 incorporated into all of the consultation documents
2 federal agencies use when undertaking any action.

3 Recommendation two: Many of the issues that face
4 the Pawnee Nation, its government and its citizens, stem
5 from the simple fact that many agency decisions are made
6 in ignorance To other agency rules, regulations,
7 procedures, and that there is an absence of ultimate
8 authority. It is too difficult for small, understaffed,
9 under-resourced tribal governments to chase down the
10 progenitor of the federal undertaking. It is also too
11 difficult to seek out address when there is an absence of
12 ultimate authority that can address any issue and have
13 final say.

14 With these difficulties, naturally comes chaos
15 and confusion as to what is being done, and on the lands
16 in which they are constitutionally empowered to preserve
17 and protect as a trust responsibility. After assessing
18 the causes of this systemic problem, it has become
19 apparent that interagency cooperation is a necessity when
20 an agency takes action on Indian land.

21 It is also apparent that a trustee be clearly
22 defined in the policies of each agency so that a tribal
23 government will know who is making the ultimate decision,
24 which has the ultimate authority, and more importantly,
25 who is ultimately accountable to the many tribal

1 governments.

2 The Pawnee Nation implores the agencies to
3 develop a policy that addresses these issues and
4 encourages agency cooperation in developing the necessary
5 regulatory framework to fix the systemic deficiency
6 inherent in the entire federal system.

7 The Pawnee Nation will work to -- continue to
8 work on these issues with our local federal partners, but
9 knows that a statutory fix is necessary to overcome an
10 insufficient system.

11 The Pawnee Nation has been and always will be a
12 willing, working partner, and we look forward to helping
13 our trustees in developing a practical solution to a very
14 real problem.

15 Most of these statements come from the issues
16 that we are dealing with in Pawnee Nation and our tribal
17 members. We have had environmental summits, and have
18 invited our federal department heads in our region to the
19 table, trying to have a -- work out -- have a discussion
20 to work out solutions to our issues. And one agency will
21 say, "It's the BIA's responsibility."

22 BLM will say, "No, it's the Bureau's
23 responsibility," and we're left there alone with our
24 tribal members trying to decipher who we need to work with
25 to resolve your issues.

1 We have the issues of violations of the leases
2 that the BIA is approving, they're taking water from the
3 Cimarron River, that is not a part of that lease, and
4 that's a direct violation, but we're told by the BIA, they
5 don't have the resources available to monitor every lease
6 that they sign on our behalf. So we're taking that
7 responsibility within our natural resources department, to
8 go out there and to issue those violations. But, you
9 know, it's -- we're doing the job of the federal
10 government, and that's not right.

11 Also, I wanted to invite you all to an
12 earthquake-damaged community event that we're hosting this
13 Saturday in Pawnee, Oklahoma. We recently suffered a 5.8
14 earthquake that was in the center of Pawnee, Oklahoma,
15 that directly affected our Pawnee Nation. And we have
16 OSU, USGS Division coming there to speak as well, and
17 we're planning to have another huge earthquake that's
18 going to directly impact our tribal government, our
19 people, our citizens. Not just our citizens, but our
20 community as well, the non-Native community. And we --
21 and if you really want to hear what's going on in Oklahoma
22 at the Pawnee Nation, come to this event. It's Saturday
23 at the Pawnee Nation.

24 Also, I would like to speak on behalf of the
25 Southern Plains Region. I'm the representative for the

1 Tribal Interior Budget Council. We recently had our
2 regional information meeting two weeks ago and we
3 discussed this consultation, and I would be amiss not to
4 mention this to you because I represent four agencies in
5 the area and 17 tribes as that representative. And to
6 you, they wanted me to say, is, "Why was not a
7 consultation on infrastructure brought to Oklahoma where
8 it directly affects 39 federally-recognized tribes, and
9 where recently from the fracking from these project
10 infrastructures have directly affected 39 federally-
11 recognized tribes in Oklahoma?"

12 And so we would like for you to keep that in mind
13 when these consultation schedules are being listed,
14 because it's important. It affects us, too. We may be
15 small tribes, but we deserve a right at the table as well.

16 And in closing, the Pawnee Nation stands with
17 Standing Rock. Thank you for your time.

18 COLONEL HELMLINGER: Thank you, Ms. Thompson.

19 Next, we would like to hear from Timothy
20 Menchego, Cultural Resources Coordinator from the Pueblo
21 of Santa Ana.

22 MR. MENCHEGO: Good morning, everybody. I'm
23 Timothy Menchego from the Pueblo of Santa Ana, Cultural
24 Resources Coordinator for the THPO Department.

25 Governor Armijo, Governor Myron Armijo, from the

1 Pueblo sends his regards. He apologizes. Due to multiple
2 conflicting meetings and schedules for his day, that he
3 was not able to attend. He provides his well wishes to
4 the panelists and to the staff of Senator Udall and
5 Congresswoman Lujan Grisham. He also sends his regards
6 and wishes them the best in all their endeavors.

7 You know, this morning, the comments that have
8 been addressed here are 100 percent legitimate and
9 heartfelt. They are strong and powerful, and it's
10 something I can't follow. Sitting there, listening to a
11 lot of the comments that were stated by leadership were
12 words that were actually taken right out of my thoughts as
13 I was trying to formulate what I had to say.

14 I also sat there and thought about writing a
15 statement, but as I thought about it, and as the time or
16 as the comments were going, I decided it's best for me to
17 say it from the heart. Granted, that I do have a few
18 notes that I can be able to keep on key with the points
19 that I want to get across.

20 I can also stand along with those lines of
21 comments, and I do support all the comments that were
22 provided. It's a unity of the First Nation's First
23 People, aboriginal people that inhabited these lands,
24 first and foremost. And I can also say that I
25 respectfully ask and appreciate the ability to echo some

1 of those comments that were made by the leaders here today
2 and representatives.

3 It's apparent we're all here to speak on tribal
4 relations with government. We hope that you're here not
5 to listen, but to act on the recommendations that we
6 provide to you.

7 As is spoken through the English language,
8 actions speak louder than words. So, you know, we hope
9 that that's your -- that you're able to do that based on
10 the recommendations.

11 As one of the leaders spoke earlier in their
12 language, you know, in our language, we consider -- out of
13 respect, we consider the President of the United States of
14 America our father as well, and that's a sign of cultural
15 respect, because he's an individual. He or she at this
16 point in time now, can claim to be a father or a mother
17 and a leader of a Free Nation, and given our ways of life,
18 we're taught to respect all walks.

19 My question was, at one point in time, what do
20 you consider us? Who do you consider us? I mean, I think
21 that we should be considered the true people, the true
22 descendants. You know, as was stated by Senator Udall
23 earlier, government started in a bad line with the
24 aboriginals. That's true. And I think we're here to
25 right the wrongs that were done, particularly sacrilege.

1 And maybe it was a misunderstanding, maybe it was a
2 misconception that the Europeans didn't understand our
3 Neanderthal types of ways, didn't understand our
4 languages, that didn't resonate with them. It was a
5 misunderstanding, miscommunication.

6 And as it was mentioned earlier, you know, we
7 stand here and dress the same. We talk the same.
8 Dominantly, English is the language. But first and
9 foremost, I am Native. I do speak my language, and that's
10 what makes us different.

11 I have to really put away my nickel-and-dime
12 language and have to break out with my five-dollar words.
13 I have to be able to talk on a level that maybe government
14 will understand. And it's hard to be able to articulate
15 and formulate these statements on a whim, because I didn't
16 know that this meeting was going to be at the capacity and
17 at the level that it is. I didn't realize that the
18 panelists were going to be people that could actually make
19 some impact, that can actually do something, not just
20 sending out a staffer or not just sending some
21 representative from the agency or from whatever department
22 it may be, but actually having people that are in your
23 capacity, to make choices and decisions. Not to take it
24 back to the table and talk about it for another 30 or 60
25 more days, but to make choices, and prove your actions.

1 You know, so getting back to the agenda, I think
2 I'd like to switch it around and say question number two
3 should be a priority, and make it question number one.
4 Should the federal agency propose new legislation altering
5 the statutory framework to promote these goals?

6 Well, first, my answer directly to you is yes.
7 Absolutely. Federal agencies will benefit from proposing
8 new legislation. Government came into these lands
9 promising governing and prosperity to the people that they
10 didn't understand. Reverse the role, and do what should
11 have been done right the first time. So who better than
12 the people that were here already caring for the land, and
13 having customs and tradition and culture embedded in us
14 generations after generations prior to the European
15 encroachment? Who better to ask: How can we take care of
16 these lands? How can we do what's right to respect what
17 we promised you long ago? How can we sort of make the
18 slate clean and start fresh and start all over?

19 Everything goes back to the White House.
20 Everything goes back to D.C. Everything goes back to our
21 father. A father who has the hardest decision-making, and
22 sometimes the father that has these childrens crying out,
23 such as Native people, his kids. Sometimes, you know,
24 there's the redheaded stepchild that just doesn't get paid
25 attention to, and at these points in time, I think that's

1 who we're identified as. We're not listened to and we're
2 not respected no more, but yet we're the eldest of all his
3 children.

4 You know, and getting to some of my colleagues
5 that are here, I have colleagues in the audience that are
6 from my respective tribe. And for some of those -- for
7 most of us that work in consultations and we see each
8 other on a consistent -- they're also considered
9 colleagues because we help support ideas and thoughts and
10 efforts to move forward as a collective, even though,
11 granted, that we are the same indigenous people, we also,
12 too, have different goals and directions that we want to
13 take.

14 Some tribes are more fortunate, and some tribes
15 are less fortunate, but it doesn't make that any different
16 than being a Native American. So today I asked, and I
17 consulted with one of my colleagues, and asked, you know,
18 "I want to hear your concerns. If somebody from the
19 Pueblo of Santa Ana is to speak and represent Governor
20 Armijo."

21 So from a technical point, I'd like to identify
22 some of these recommendations. And first of all, before I
23 get to that, I just want to address that, consultation
24 will never be 100 percent meaningful. If you're not in
25 the shoes of a Native American, you'll never understand

1 the spiritual aspect of it. Just outright honesty and
2 being forward with you, it'll never be 100 percent
3 meaningful from the government's perspective, because
4 you're not able -- you're not born with the culture. That
5 blood does not flow through you. And unfortunately,
6 sometimes, not all, but some Native Americans that work in
7 the government, eventually end up getting
8 institutionalized because it's ingrained in them that
9 their way of life is not mattersome to the United States
10 government's rules and regulations.

11 So factors to a meaningful consultation, tribes
12 need to be briefed, first and foremost, and I can
13 understand that. Sometimes things come about that -- say,
14 with projects or directions, that some of the agencies
15 want to take. And the next thing you know, we get a
16 letter to the governor of the pueblo and to some of the
17 respective departments that say, "This is going to
18 happen." Well, we weren't briefed and we weren't told,
19 and now we're with our backs up against the wall,
20 scurrying to try to get the right staff and intelligence
21 to be able to sit at the table, to be able to make a
22 consultation, and sometimes being pressured to make those
23 decisions.

24 As was mentioned earlier by a few other
25 colleagues here, consultation needs to be at the

1 leadership level. It was government that brought the idea
2 and the concept of structure to us saying that, "You need
3 to be structured in order to sit and communicate with us."
4 Well, we do have our structure, both in the traditional
5 and secular even before any type of foreign encroachment
6 happened.

7 So long story short, getting to today, the
8 governors of the pueblos, and I'm sure as well as
9 presidents of nations or councilmen of other tribes,
10 aren't at the level of the President of the United States.
11 So they should have every free will to go walk into his
12 nation, into his home and request a consultation at his
13 level. Those people deserve that respect as the President
14 of the United States. So that's a second recommendation.
15 Consultation needs to be at the extreme level of
16 authority. Unfortunately, sometimes you send you the
17 staff that doesn't realize that upper management have made
18 decisions or have made recommendations, and then you get
19 lower staffers that come out and really don't know what
20 has happened from the last meeting or consultation.

21 Third, the follow-up, unfortunately, like was
22 mentioned before by a speaker, follow-up doesn't really
23 happen, so we're kind of left in the dark. It's not
24 addressed whether our comments or concerns were actually
25 addressed or whether they were actually implemented onto

1 whatever the consultation was at that point in time.

2 Some of the things that the agencies should take
3 into account is the audience and the technical knowledge.
4 Sometimes, you know, us Native Americans, are still in a
5 rudimentary state and form of knowledge, and that's no
6 disrespect to them. Some of those people that are
7 rudimentary are the ones that are higher in knowledge of
8 the traditional and cultural background. Those are the
9 ones that hold on and those are the ones that are still
10 considered the keepers.

11 So when you get various levels of leadership in
12 your consultation processes, it would be good for the
13 agencies to understand who these people are, and sometimes
14 be able to bring down these terms to a lay term and keep
15 things at a technical level as well. Because, you know,
16 for the Pueblo of Santa Ana, we're fortunate that we do
17 have staff that are educated in understanding, and we also
18 have leadership that are willing to come to sit at the
19 table and try to understand what government wants and what
20 they request from our community.

21 Some of the things that were asked in this packet
22 that was on the website, some good examples of working
23 relationships particularly for the Pueblo of Santa Ana,
24 that we have one -- and I'm kind of between the -- between
25 considering it a good example or a bad experience. It

1 says, "The poor work here at Tamaya, provide tribe funding
2 for independent, technical review of the project."

3 So being professional, being ethical, you know,
4 you want to give the applause where needed, but, you know,
5 I like to speak on the work of the Corp of Engineers, and
6 only for the fact that the Corp of Engineers are in the
7 spotlight right now because of the access pipeline that's
8 happening.

9 The Corp of Engineers decided to structure a
10 reservoir and a dam that retained water for whatever their
11 engineering and scientific study was, and that they
12 thought was going to help divert the water and channel in
13 the flow of the Rio Jemez. So you go from that concept,
14 the inception of building it to current day, we have high
15 water levels, and we have a cultural structure that is in
16 jeopardy due to that. It can't be scientifically proven
17 because I'm pretty sure there is science to say that it's
18 not because of the dam, but in reality it is.

19 And so these after-effects and the long-term
20 effects because of the integrity and the high status level
21 of that cultural structure being in jeopardy, it's not the
22 Corp. It's not the people at that time who were the
23 management and the leadership, that are worrying about
24 that. It's the current religious leaders and the
25 community wondering how they're going to continue their

1 religion and livelihood, something that we knew from the
2 day that we were put on earth and we were created. Here
3 in the pueblo communities, we are still true, living
4 proof, the aboriginal descendants of the Four Corners, the
5 Mesa Era, and the Chaco descendants. We have a tie and a
6 connection. We still have evidence that that culture is
7 alive.

8 And getting back to the Chaco fracking, the whole
9 BLM concept of thinking they can manage a plan, to be able
10 to say that within a certain radius, that fracking is
11 okay. You know, having the discussions, knowing that
12 that's happening out in Oklahoma. And a bedrock is a
13 bedrock, regardless of the topographical terrain; fracking
14 is fracking. What's going to happen when those ruins are
15 shaken. No man should be able to able to create an
16 earthquake. That's something that's natural, and if
17 Mother Earth -- no man should be able to shake the land
18 and cause a disruption to it.

19 And so those are some of the things that, you
20 know, they all -- they all come into play. All the
21 agencies, NPS, BLM, Bureau of Reclamation, Forest Service.
22 I was at a Forest Service meeting yesterday, and they're
23 so unstructured for the fact that they can't even contain
24 their audience. I have other things -- better things to
25 do -- as far as issues and concerns and happenings with my

1 own community. So I get up and I excuse myself and I
2 request a one-on-one consultation, just as was mentioned
3 earlier today. When you're in a public setting, people
4 aren't mindful of who's around, leadership, whether it be
5 both on the secular or traditional side. There's no
6 mindfulness. That's where humanity is actually at. We're
7 not mindful of who is who, but yet we're all human beings.
8 We all have a living life, a beating heart, blood that
9 flows through our body, and in some religions, in some
10 cases, a soul. But that's -- humanity's really out the
11 door.

12 Getting back to these technical -- what steps can
13 be taken? Oh, yeah. Eliminate the impersonal address to
14 leadership. So I believe in your letter that was put out
15 it said, "Dear Tribal Leader." Well, it would be good if
16 you guys can do your homework and actually find out who
17 these leaders are. There is something called the "World
18 Wide Web," and that information is put out there,
19 something that was created by -- and no disrespect -- the
20 white man, to transfer and put out information whether
21 it's approved or not.

22 You know, that's kind of impersonal. It's almost
23 like saying, "Hey, you. We're having a meeting. Come sit
24 with us and talk." You know, leaders command respect just
25 as Mr. President Barack Obama wouldn't want to be called,

1 "Hey, Mr. Leader." He's addressed in an appropriate
2 manner, and so should our tribal leaders.

3 It should also be identified as far as tribal
4 departments or agencies that are key players in a lot of
5 these. So if you send a letter to the Governor of any
6 pueblo, as was mentioned earlier by my colleagues, you
7 know, there's tribal historic preservation departments in
8 some pueblos. There's NAP for representatives. There's
9 individuals that represent. And unfortunately, staff is
10 spread out thin. There are natural resource departments
11 that are also representative of the environmental affairs.
12 There are education departments. There are police and law
13 enforcement departments, wellness and health departments.
14 So it's good to get an idea of who you're actually calling
15 to the table instead of just putting out a generic
16 statement, asking a leader to come out and sit and
17 discuss. And so, you know, those are just some of the
18 technical comments as far as from maybe an employee or
19 being a representative that works for staff or for an
20 administration.

21 So I want to take it next to maybe a traditional
22 and a personal perspective. Government has happened and
23 government has evolved and has changed the way Native
24 America is, to the point that you actually have tribal,
25 religious leaders that are at the helm of their community,

1 in a sense having to learn these five-dollar words and
2 having to educate themselves and be as up and up, and to
3 par, with the man, to be able to protect his lands,
4 because of the government who is encroaching onto our
5 lands.

6 And sometimes sending out a common person, that
7 might have minimal or adequate amount of traditional
8 knowledge, is not sufficient enough. So governments are
9 actually getting traditional leaders to have to step up
10 their game, whereas back in the day, government -- or
11 excuse me -- traditional leaders were only tasked to worry
12 about the cultural and spiritual importance.

13 But because they're at this position, sometimes
14 their hearts get tainted and polluted, because we're
15 having to deal with -- and it all boils down to this thing
16 called money.

17 Funding is important. You know, there's not
18 another way for me to articulate it, but please find a way
19 to fund the THPO and the program that goes along with
20 that. I believe there's quite a huge number of millions
21 of dollars set aside for that.

22 And, you know, we're alleviating a load from the
23 State Historic Preservation Office. We're taking
24 responsibility from them, and we're taking responsibility
25 for our own selves. But yet they continuously get funded

1 at the same level. But when the THPO department and a new
2 THPO comes online, the pie gets sliced a little bit
3 thinner. Pretty soon, Native Americans are going to be
4 fed crumbs once again.

5 The way staff comes and conducts themselves, you
6 know, there are some people that are real mindful, and
7 it's because they're good human beings, not because
8 they're from a race or religion, but because they're good
9 human beings and they have good upbringing. But then
10 again, you get some staff that sit in these meetings, and
11 they just can't seem to sit still or pay attention, and
12 they get antsy and aggressive. And the way they present
13 their body language, and the way they respond, in a sense
14 it is disrespectful, because it makes us feel like they
15 don't want to listen to what we have to say.

16 Hence, comes the statements and the comments
17 that, "Oh, it's just another box that they have to check
18 off." You know, if consultation takes one day,
19 consultation takes one day. If consultation takes a week,
20 it takes a week. Sometimes consultation might take a
21 lifetime because there might not ever be the right answers
22 to be able to provide to federal government, especially
23 when we're asked to divulge information as far as our
24 cultural sites and our ways of life.

25 Staff also -- you know, whatever happened, and

1 some tribes that have been mentioned -- as has been
2 mentioned -- some tribes are real lenient with divulging
3 information, but just because -- excuse me -- that tribe
4 has divulged information, doesn't mean it represents the
5 Native nation. There are some of us that still hold on to
6 our traditional core values, that we don't divulge
7 information, and you'll always receive a "no." And then
8 you'll be told, "We can't say."

9 So just because -- and an example being I worked
10 with the BLM staff at a recent consultation last month,
11 and so because she was privy to being taken into a kiva,
12 and granted that she's a non-Native individual, this
13 person thinks that she has knowledge of all traditional
14 Native American ways of life, and because that they have
15 these friends that share information with them, they feel
16 that they have an understanding, and that they understand
17 all Natives.

18 Staff needs to be educated on how to conduct
19 themselves with the tribes and the leaderships. And as I
20 mentioned earlier, they don't know who the people are that
21 are in the room, that they're coming to meet and
22 congregate with, because we all blend in, as necessary, so
23 we don't stand out. We wear the same clothes. We talk
24 the same talk, and we're able to communicate the same way.
25 So the way staff conducts themselves is real key,

1 especially around leadership.

2 And basically, you know, Governor Armijo, in an
3 e-mail earlier, will be sending official consultation
4 recommendations to the addresses provided in this
5 paperwork on an official letterhead. And these are just a
6 few of the comments that I had to provide.

7 We're the same, but we're also different. But we
8 are -- we share one thing, we share one title, and we're
9 First Peoples. We were here first, and we're always going
10 to stand by that. We're always going to say that we are
11 the stewards. We are the caretakers, and we are the
12 originals that know how to better care for the land.
13 Granted, that society has grown, and that's obvious and
14 that's reality. We're mixed amongst all walks of life,
15 but there are some things that have to be identified as
16 different. And we have -- we ask that you, as government
17 officials, please provide those respects towards your
18 efforts on building your working relations with the
19 tribes.

20 We can't go back and undo what was done sometime
21 back, but a slate can be made. A clean slate can be made,
22 and you guys can undo what was done in the past and make a
23 better and positive progress here forward.

24 You know, one of the things that the Pueblo of
25 Santa Ana prides itself on and hopes that working with

1 BIA -- we outright purchased out of our own pocket
2 aboriginal lands, and a great sum of money. We shouldn't
3 have to go through all the red tape dealing with BIA to
4 get that land put back into trust. We purchased it for a
5 purpose because it has ancestral and aboriginal ties.
6 We're making efforts, and we're moving forward without
7 asking for a handout from the government to say, "Help us
8 with that." We're doing it on our own.

9 I think somewhere halfway, I think government
10 should be able to meet us, and the Pueblo Santa Ana looks
11 forward to try to make some sort of progress and working
12 in having a better government nation-to-nation consulting
13 relation. Thank you for your time.

14 COLONEL HELMLINGER: Thank you, Mr. Menchego.

15 Next, we would like to invite Juan Massey,
16 Executive Staff Assistant, for the Navajo Nation.

17 MR. MASSEY: Yatahey. Good morning. My name is
18 Juan Massey. (Native American spoken.) My name is Juan
19 Massey, and I am an executive staff assistant for the
20 Office of the President and Vice-President Navajo Nation,
21 and I brought some comments on behalf of my colleagues.

22 Thanks to the Army Corps of Engineers and other
23 federal agencies for holding this meeting.

24 Thanks to Senator Udall and Congresswoman Lujan
25 Grisham for your support, and to all the leaders of the

1 tribes and pueblos who are here with us today.

2 I would like to acknowledge in the audience
3 Mr. George Werito, from the Navajo Encino Community
4 Chapter. He's the President. And Mr. Randolph Olivas,
5 Community and Economic Development Advisor, also at Encino
6 Chapter.

7 The Navajo Nation welcomes this consultation and
8 the Navajo Nation is currently working on reviewing the
9 questions that have been asked as to whether statutes and
10 regulations need to be revised. We're going to be
11 submitting this in writing.

12 But what I'm here to highlight today is about the
13 questions the agencies have raised about approach, and I
14 think a lot has been discussed today regarding that issue,
15 including which federal agencies have engaged in
16 productive consultation.

17 As many have said also, check-the-box
18 consultation with a strict legalistic approach without
19 being inclusive and holistic is not acceptable, and it's
20 often useless. It is fair to say that the most productive
21 consultation processes have been those interactions that
22 are not labeled as consultations at all. And let me be
23 clear on what I mean by productive processes.

24 A productive consultation process is one that
25 results in the trustee having a deep understanding of the

1 concerns of the nation now. In an ever-changing world, it
2 can be challenging to understand the current concerns.

3 One example of very good consultation process is
4 the work of the Bureau of Reclamation and the development
5 of a tribal water study for the Colorado River.

6 An example of bad consultation or rather lack
7 thereof, is when the Navajo found out that EPA regulations
8 were going to shut down two units of the Four Corners
9 power plant, and we found out by reading the newspaper.
10 It seems from the outside that those individuals who feel
11 confident in their positions, supported by their
12 supervisors to be creative and think outside the box are
13 those that can fully engage in meaningful consultation.
14 All that being said, there will continue to be a need for
15 formal consultation.

16 Now, I want to go off script here a little bit.
17 I'm an in-law, and I've been adopted by the Navajo Nation,
18 but I've been with the Navajo Nation or married into a
19 Navajo Nation family for 15 years. But prior to that, my
20 experience is in international relations and international
21 trade. And my dealings with the federal government have
22 involved dealing with the Foreign Trade Service, with the
23 State Department, with the military, but abroad.

24 So it's incredible, you know, that the federal
25 government goes out of its way to train people in cultural

1 sensitivities. You have to take an exam to become a
2 member of the Foreign Service. You have to study -- you
3 know, I've met colleagues abroad, you know, in China, in
4 India, that know the last creek, last river, last oil
5 field that is in those countries.

6 I have colleagues that look just like you, you
7 know, that are fluent in Mandarin, Arabic, Russian. You
8 know, yet here in the United States, you know, tribes are
9 sovereign nations. This is an international event right
10 here.

11 Yet the civil service that deals with the First
12 Nations is not trained in these cultural sensitivities, is
13 not trained in the religion, the sacred sites, the
14 cultures, the taboos, everything that involves the Native
15 culture, and the Native Tribes and the Native places. So
16 it's about time, where it's long overdue, just as we have
17 with Foreign Service, to have a First Nation Service.

18 And by the way, the Navajo Nation stands with
19 Standing Rock. Thank you very much.

20 COLONEL HELMLINGER: Thank you, Mr. Massey.

21 Next, we would like to invite Terry Knight,
22 Tribal Historical Preservation Officer for the Ute
23 Mountain Tribe.

24 MR. KNIGHT: I would like to speak to all of you,
25 and I was not prepared to make any kind of presentation.

1 I was just supposed to come down and see what the
2 government was going to offer. But sitting here and
3 listening, my mind went back to Saturday, Saturday
4 morning, Saturday afternoon, when I was a kid watching
5 black-and-white TV. And the Indians were being at war
6 with the white people, and they would send the cavalry in,
7 and the cavalry would talk to the chief.

8 Of course, the government said --

9 FEMALE PROTESTER: They're attacking the people
10 on the ground at Standing Rock right now.

11 FEMALE PROTESTER: Right now.

12 FEMALE PROTESTER: Right now.

13 FEMALE PROTESTER: Use your powers. They're
14 attacking the people at Standing Rock. You want to talk
15 about consultation, tell Obama to stop it, now.

16 FEMALE PROTESTER: Look at the live feed you-all.
17 It's really horrific right now, what's going on.

18 MALE PROTESTER: It's actually genocide,
19 environmental genocide.

20 FEMALE PROTESTER: Our people are at war.

21 FEMALE PROTESTER: Cultural genocide. Modern
22 genocide.

23 FEMALE PROTESTER: -- that our government is
24 doing.

25 FEMALE FEMALE PROTESTER: This tribal

1 consultation should have happened years ago. We're
2 ashamed of you. We don't need you.

3 UNIDENTIFIED FEMALE: Excuse us.

4 COLONEL HELMLINGER: All right.

5 MR. KNIGHT: Okay.

6 FEMALE FEMALE PROTESTER: The Army needs to stop
7 this.

8 UNIDENTIFIED FEMALE: In deference to the tribal
9 leaders, this is their time. Thank you. Sorry.

10 COLONEL HELMLINGER: Yeah, Mr. Knight, so I would
11 ask the members of the audience to yield the floor to our
12 speaker.

13 Mr. Knight.

14 MR. KNIGHT: Okay. As I was going on, I was, you
15 know, watching the programs where the Indians were in an
16 uproar, uprising. The government would send the cavalry
17 out and talk to the chief, but it would only be a
18 lieutenant or a captain. They were expected to take care
19 of everything. And that's what I see here. You know,
20 you're not the people that's going to make that decision.
21 You were just sent out here, "Go talk to them people.
22 Calm them down." I don't know if you wanted to or not,
23 but here we are. And these people that have been making
24 testimony here are talking about real life instances,
25 what's going on in their home, in their backyard.

1 I don't know if you realize this, that man that
2 was just here said that these people, that he worked with,
3 should have -- they had all this kind of training as to
4 who they were, where they were going, and you don't have
5 that. And I really doubt if any one of you or all of you
6 have the authority to act on what has been presented here
7 from the heart. You were just sent out to listen to them,
8 you know, Washington or whomever your superiors are, "Go
9 calm them Indians down because of what's happening up
10 North." So they send you all down. "Go here. Go here.
11 Go there." I don't know which one who would -- all this
12 information was given to you.

13 I hope some of it, you can act on it. I don't
14 know what your position is, what you do, but I see the man
15 with the uniform. I'm assuming he's an Army Corps of
16 Engineers guy. And when I first started working ALP, I've
17 been in tribal government for many years. I was a
18 chairman at one time. And I'm also the traditional
19 ceremonial person for my tribe and the rest of the Ute
20 people. And people that I know they said, "Watch out for
21 the Army Corps of Engineers."

22 I said, "Why?"

23 "They're no 'blank' good."

24 I said, "Why?"

25 "Well, they do this. They do that. They have

1 total disregard for anyone's thinking, their religion,
2 whatever culture. They just do whatever they think is
3 right, but someone is telling them what to do."

4 And the other agency they told me to watch out
5 for, because them guys are bad, too. Number two on that
6 list was the Bureau of Reclamation. And I worked with
7 them people, looking at them, and, damn, those guys were
8 tough. Tough. But I went round and round with them until
9 one day I told them, "You, mister, you work for me."

10 They said, "Hell, no."

11 I said, "Yes. You work for me. You are a
12 government employee. I am a member of the tribe you are
13 working with to build this reservoir. And I am working
14 with the culture people, and this is to benefit the Ute
15 people. You work for me." He didn't like it, but we came
16 to an understanding. You know, but it takes that kind of
17 language to get these people down and say, "Hey, you know,
18 shake them up" and say, "Okay. We can do this. We can do
19 this," not me.

20 So, you know, these people are telling you their
21 concerns, what's going on with the government, federal
22 government, right? But we're leaving out the other half,
23 state government. Where do they fit in? We're leaving
24 out the private land owners. We have to work with them in
25 Colorado, and that's a hard thing.

1 Yes, we expect a lot from the federal government,
2 but what about the state people, the private landowners.
3 Who's got control over these lands around there? In
4 Colorado, there's a lot of state land, private landowners.
5 We have to work with them.

6 We had some sites and human remains here and
7 there that are not under NAGPRA jurisdiction. We had to
8 make some kind of agreement, consultation, with the state
9 and private landowners. We had to consult. It was 46 or
10 48 Indian tribes that came through the state of Colorado.
11 We presented that work to the Natural Review Board, and
12 they said, "You have to go out and talk to them, talk to
13 their leadership." So we did. We got everything done,
14 and one tribe, the Kiowa said, "No. We do not support
15 this. It's a story."

16 And I said, "Why not?"

17 "Because your grandmother shot my great-great --
18 my -- your great-great-grandfather shot my
19 great-great-grandmother in the leg up there.

20 I said, "That's why you're not supporting it?"

21 "Yes."

22 I said, "Okay." I went back to the National
23 Review Board. "We got support from all these tribes
24 except the Kiowa."

25 And they said -- well, the guy -- I guess I don't

1 know who he was. I can't remember -- said, "Well, That's
2 it. You have to get support from all of them."

3 I said, "No." I said, "According to what you
4 gave us, we're only supposed to consult with them. They
5 did not have to support us. We have one tribe that's not
6 supporting, but we consulted with them."

7 And that's what you're doing, consulting. You do
8 not have to agree. You do not have to say anything. The
9 National Review Board said, "You're right. You did
10 consult. Okay. You can have your process." So that's
11 what you're doing. You're consulting, but you're not
12 agreeing. You're only taking notes. I don't know where
13 you're going to take your information. What? I don't
14 know. I don't know if this is a worthy consultation or
15 not.

16 Consultation has been going on for a long time.
17 I've been involved in it many years. And from the
18 government, different people always come, always different
19 ones, and we have to start from the beginning again. I
20 don't know how many times. But we're patient people. We
21 will persevere. We're still here, and here we are again,
22 talking with you all.

23 But other things -- one major big factor in this
24 whole thing, including what's going on up there and within
25 our reservations, we forget, and we all forget. It's the

1 almighty dollar. No? The dollar, that's why you want to
2 build that pipeline. That's why you want to go into
3 tribal lands, disrupt ceremony areas and burials and this
4 and that, because somebody wants to make a dollar. Not a
5 few dollars, billions of dollars.

6 And I'm saying, "Dang, yes, this is America. Do
7 unto others, but don't let them do it to you." That's
8 what we learned. Remember that, when you was at school,
9 we talked about those things. And we have to go back,
10 reconsider what the baseline is here. Why are they doing
11 this? Why aren't they following, not up there, everywhere
12 in Indian Country, we have regulations and laws that's
13 already printed, that these people are supposed to be
14 following. Consultation is a major part of that, and
15 they're not doing it. They're not doing it.

16 But yet, a lot of us, we don't have the financial
17 resources to do something, take them to court or whatever.
18 And if the agency, their people aren't doing right, like
19 the one man asked, "What did they do with them?"

20 You know what they do with them? They send them
21 to somewhere else. They're not doing it right here, they
22 send them to Oregon or somewhere. They just ship them
23 around. You know, they don't get penalized. They just
24 get sent somewhere else, and it just continues, just
25 continues. Maybe some of you people are like that, you

1 know, got sent here because of, you know, some things that
2 weren't going right. That's the system, right?

3 We have to look at the system that we're dealing
4 with. Who are we dealing with? Not very good people, not
5 very good people. A few, yes, have a good heart. But
6 many of them say, "Well, I'll just do this. It's only a
7 job. Only a job. Not someplace where we live." If you
8 don't like this job, you can get transferred somewhere
9 else. Fine. Take your stuff, move, fine. But we don't
10 do that. We're from a certain area. We don't want to
11 take our stuff and move. No, we don't want to do that.
12 This is where we live. This is where we are, our
13 ancestors and everything. Who we are is right here. We
14 just can't get our bag and move. It don't work that way
15 with us.

16 But with you, foreigners, you get your stuff
17 together, buy a house over there in California, boom,
18 you're gone. And you forget everything, what has been
19 done, what has been said among these people. And we have
20 to remember how do we survive in this society, that is
21 controlled by people that have been put in by the federal
22 government, state government, that has the most votes,
23 that has the most resources, that money provides, for them
24 to be there.

25 And we try, we try to say, "Well, we've got this.

1 We've got this law." But how many of us are there? How
2 many Indians in each state, that the government, the state
3 government, the federal government will listen to? They
4 say, "Well, never mind them guys. There's only a
5 handful." There's millions of us.

6 You know, I'm a guy that likes to speak my mind,
7 and sometimes I offend people. They say, "Oh, hell with
8 it. We're going to do this, we're going to do that." We,
9 the non-Indians, they say, "We, we're going to do that."

10 And here we are, we say, "Wait a minute. We've
11 got laws. We've got this and we've got that." And us,
12 people, are very patient. Indian people are very patient,
13 and sometimes the patience runs out and things happen, and
14 that's what's happening now. And I see it all goes back
15 to Saturday afternoon, watching black-and-white TV in the
16 late fifties. That's how it is. So remember these things
17 that you're dealing with. You're dealing with people, and
18 you have to think both sides.

19 The tribal people are here. They're true.
20 They're honest. They're brave, according to their tribes
21 and their religion, their ways. But here, we have this
22 other thing that's always moving, moving, always moving.
23 And the very basis of that is the almighty dollar. If you
24 don't got the big money, you're nobody.

25 Look at me. I'm not dressed like you guys. I

1 didn't expect to come talk. But I walked in and said,
2 "Well, these guys are all dressed up." I should have at
3 least brought my clean Levis or something, my shirt. But,
4 you know, that's the way it is. But, you know, maybe it's
5 different. Maybe they need to see somebody different, you
6 know. So maybe you'll hear me.

7 But these people are good people, knowledgeable
8 people, and I worked with a lot of them here in the state
9 of New Mexico. We work together on a lot of issues, and
10 we made good relationships. The same thing in Colorado
11 about the adjoining tribes, and the Southern Ute, our
12 sister tribe, got two councilmen here, and maybe my
13 council would have come down, but the white man's ways.
14 We had election, and so it's in transition.

15 We have a chairman, but we don't know who his
16 officers are, and they don't take -- get on until the
17 first Friday of November. So everything is in transition.
18 Yesterday, one council had their last meeting, so I don't
19 know who's doing what or what. But anyway, someone said,
20 "Maybe you should go down there and listen to them."

21 I said, "No. I don't have to listen to them
22 people."

23 "Why not?"

24 "I've listened to them enough, the federal
25 government, I've listened. I know what they're going to

1 say. They sit there, my people, 'Hmmm. Hmmm. Huh.
2 Huh.'" Then you leave. That's it, you know. So I'm
3 throwing that part in there, looking at you all, you know,
4 are you really going to do something, or are you just
5 messengers?

6 You know, because like I said, there's some
7 agencies that I was told are just no good, and your agency
8 is right at the top. So I said, "No."

9 Like that man said, "Do you trust a white man?"

10 "No." What's that saying go? Not as far as I
11 can throw and whatchamacallit -- how far he throws, that's
12 how far I trust him.

13 Yes, we are Indians, and you're different people.
14 Yes, us Indians, are together. So be good to us. Listen
15 to us, whatever you can. And whatever capacity that
16 you're in, do it, because we're looking. We have eyes and
17 ears all over. We're going to hear what comes out of
18 here, who said what. Are you going to do it? Are you
19 going to follow up on it? We're going to hear it. So
20 I'll just remind you of that. And I hope I have time to
21 go back and type something up and send it to you all, so I
22 can remember what I said. So thank you all for listening.
23 Thank you.

24 COLONEL HELMLINGER: Okay. Thank you,
25 Mr. Knight.

1 FEMALE FEMALE PROTESTER: We just got news that
2 they are enacting extreme violence.

3 FEMALE FEMALE PROTESTER: Violence.

4 FEMALE FEMALE PROTESTER: -- is in tears about
5 what is happening in the midst of it.

6 COLONEL HELMLINGER: All right.

7 FEMALE FEMALE PROTESTER: We have Army Corps of
8 Engineers representatives right here.

9 COLONEL HELMLINGER: All right, now. Ladies and
10 gentlemen, I just request your attention. This is a
11 government-to-government consultation right now.

12 FEMALE FEMALE PROTESTER: We are the government.

13 COLONEL HELMLINGER: They -- this --

14 FEMALE FEMALE PROTESTER: We are the people.

15 FEMALE FEMALE PROTESTER: The National Guard is
16 in Standing Rock right now. They're tearing down the
17 barricades and they're raiding the people who are in the
18 camp.

19 FEMALE FEMALE PROTESTER: Acting violence --

20 FEMALE FEMALE PROTESTER: They are setting fires.
21 They're sending out sound waves.

22 FEMALE PROTESTERS: We need your help.

23 FEMALE FEMALE PROTESTER: Tribal leaders, the
24 Feds --

25 FEMALE FEMALE PROTESTER: They have dogs.

1 FEMALE FEMALE PROTESTER: -- you guys need to
2 call and send people out there to put a stop to this, to
3 shut down National Guard now.

4 FEMALE FEMALE PROTESTER: It's war.

5 COLONEL HELMLINGER: All right. I --

6 FEMALE FEMALE PROTESTER: We are here --

7 COLONEL HELMLINGER: I respect your opinion.

8 This is not the proper forum to voice this. As I
9 mentioned at the beginning --

10 FEMALE PROTESTERS: (Yelling various statements.)

11 FEMALE FEMALE PROTESTER: You have the power to
12 put a stop to this.

13 FEMALE FEMALE PROTESTER: You started this.

14 FEMALE FEMALE PROTESTER: There's people who
15 could be killed right now.

16 COLONEL HELMLINGER: All right. I -- we --

17 FEMALE FEMALE PROTESTER: This is indigenous
18 land, and we will be heard.

19 COLONEL HELMLINGER: All right. I would just ask
20 for your patience --

21 FEMALE PROTESTERS: We will not be silenced.

22 COLONEL HELMLINGER: -- so we can continue this
23 consultation.

24 FEMALE FEMALE PROTESTER: We will not be
25 silenced. There is no more time to wait.

1 FEMALE FEMALE PROTESTER: You need to stand up
2 now.

3 FEMALE FEMALE PROTESTER: There are people out
4 there who are ready to lay down their lives, and you're
5 talking about consulting? Consulting should have been
6 done years ago. It is always at the expense of our
7 people. We're still standing here. You're still taking
8 our water. You're harassing us.

9 FEMALE FEMALE PROTESTER: Stop the genocide.

10 COLONEL HELMLINGER: All right, ladies and
11 gentlemen, I assure you, I will remain after this --

12 FEMALE FEMALE PROTESTER: That's why this is
13 going on right now as we speak.

14 COLONEL HELMLINGER: -- and can meet with you
15 private -- I can meet with you to discuss.

16 FEMALE PROTESTERS: We're here. We don't want to
17 talk to you.

18 COLONEL HELMLINGER: But in order to continue
19 this consultation and allow an appropriate opportunity --

20 FEMALE FEMALE PROTESTER: We call, we send
21 e-mails. We call whoever you tell us to call.

22 COLONEL HELMLINGER: -- to hear from individuals,
23 we're going to continue with this --

24 FEMALE FEMALE PROTESTER: -- we go around in
25 circles. There's never an answer.

1 COLONEL HELMLINGER: -- as it is.

2 FEMALE FEMALE PROTESTER: Never.

3 FEMALE FEMALE PROTESTER: We are here to uphold
4 our treaty laws, Article 6. Looking at you, you are part
5 of the Army Corps of Engineers, why is this going on? Can
6 you tell us?

7 FEMALE FEMALE PROTESTER: Consultation now.

8 FEMALE FEMALE PROTESTER: It looks like war.
9 Look at the live feed, people.

10 FEMALE FEMALE PROTESTER: You have tanks out
11 there.

12 FEMALE FEMALE PROTESTER: They have guns against
13 unarmed people.

14 FEMALE FEMALE PROTESTER: There's children.

15 COLONEL HELMLINGER: All right, ladies and
16 gentlemen.

17 FEMALE FEMALE PROTESTER: You are responsible.

18 COLONEL HELMLINGER: This is unscheduled. We'll
19 take a five-minute break, at which point, we'll resume
20 with our final two remaining speakers that we have here.
21 I would also ask -- and our two remaining speakers, I'll
22 share with you, are Mr. Vance from the --

23 FEMALE PROTESTERS: We stand with Standing Rock.

24 COLONEL HELMLINGER: -- Cheyenne River Sioux
25 Tribe, and then we'll hear from Mr. Ortiz --

1 FEMALE PROTESTERS: Water is life.

2 COLONEL HELMLINGER: -- from the Pueblo of San
3 Felipe.

4 If we have other tribal leaders that have not had
5 an opportunity to speak, I ask that you see me now, and
6 we'll add you to the list of speakers.

7 FEMALE FEMALE PROTESTER: Call the President,
8 People.

9 FEMALE FEMALE PROTESTER: (202) 456-1111.

10 COLONEL HELMLINGER: But then we will -- we will
11 take a five-minute break and resume.

12 FEMALE FEMALE PROTESTER: We don't want
13 consultation. We need you to come and get permission, get
14 consent from our tribes.

15 FEMALE FEMALE PROTESTER: You were briefed from
16 all of us. It already started, and this is how it's going
17 to end.

18 COLONEL HELMLINGER: All right. A five-minute
19 break.

20 (A break was taken from 12:30 to 12:45 PM, and the
21 consultation continued as follows:)

22 COLONEL HELMLINGER: All right, ladies and
23 gentlemen. Welcome back. All right. I do want to share
24 some breaking news, and I understand that since this
25 consultation began, there has, indeed, been activity in

1 reference to the Dakota Access Pipeline right now, and I
2 want to let everyone know that our leadership, in
3 particular, the Army leadership is aware of the situation
4 as it's developing, and monitoring it.

5 So it is -- so we're aware of what's going on
6 right now, but in this forum, we want to continue with
7 this consultation as it was intended. And -- but just
8 know that government leadership is aware of the situations
9 that are taking place right now with the Dakota Access
10 Pipeline.

11 All right. I would also like to just remind
12 everybody, that we do have court reporters here today who
13 are capturing the statements of all our speakers here
14 today, so your voice will be heard. Particularly, for the
15 agencies that organized this, the Army, Department of
16 Justice, the Department of Interior, you know, our leaders
17 there are very concerned and eager to hear the input
18 that's provided here as well as the input that is
19 provided -- that can be provided via e-mail by the 21st of
20 November. So know that your voice can be heard, and what
21 is said here today, will be heard.

22 All right, with that said, we have two final
23 speakers scheduled. So I would like to invite Steve
24 Vance, Tribal Historic Preservation Officer for the
25 Cheyenne River Sioux Tribe.

1 MR. VANCE: (Native American spoken.)

2 I'd like to first explain what I just said. I
3 said, "Thank you for opening the door in the beginning for
4 us to come here and speak," and that is protocol. Tribes
5 understand us, without speaking they feel that connection.
6 So I want to first say that we thank the tribes for
7 opening the door for us to speak down here in your
8 territory.

9 We've been, as you said, addressing many issues
10 up there in the Northern Plains, also. But this
11 discussion here was invited by the federal agencies here.
12 So from here on, I'll direct the discussion towards the
13 panel.

14 In the panel here, I'd like to first thank
15 Valerie Hauser, ACHP. A little bit of history.
16 Earlier -- okay. I'm going to back up a little bit.
17 There was a prayer offered here this morning, and we know
18 how to conduct ourselves when we pray. We have asked all
19 the people at the camp, it is now called (Native American
20 spoken.) Seven Fires Camp. We have asked the people up
21 there to remain peaceful, and they have been. Under the
22 most challenging threats, they remained in prayer. And
23 they will deal with it how they know how to deal with it.
24 They're there right now dealing with it. And if they're
25 going to get thrown to the ground, handcuffed, tossed in

1 vehicles, tossed in jail, they still remain peaceful with
2 prayer.

3 So I understand the frustrations. We feel it.
4 My chairman here feels it, but we need to move forward
5 here, what our roles are. My role is to deal with these
6 federal agencies as a tribal historic preservation
7 officer. If I'm put into that situation, I will not
8 hesitate to protect.

9 Earlier, they said, "Those of you who are
10 veterans stand," I remained sat. I was there in Vietnam,
11 but that's over with. Seventeen years I was a law
12 enforcement officer to protect and preserve -- or to
13 protect and serve the Native people. From there, I was
14 asked in '95 to go into the schools and teach language,
15 culture and history, to protect and serve our culture and
16 our language.

17 Six years ago, a little over six years ago, I was
18 asked to be a tribal historic preservation officer.
19 Today, I am still protecting, serving and preserving our
20 language and culture. So as a tribal historic
21 preservation officer, we read reports, massive reports. I
22 could fill this room with paperwork that I have received
23 over the past six years in consultation with many federal
24 agencies and many different faces.

25 Valerie's the only familiar face I see here

1 through those years. I'm sure the officer here has never
2 seen me before. Some of you have never seen me here
3 before, but I've been consulting with you through somebody
4 else you have sent down as a tribal liaison, cultural
5 resource manager, regional person, but I've been saying,
6 these things need to be changed.

7 The foundation of what we are talking about is
8 the preservation and protection of cultural, historical
9 properties. On top of that we have built many, many
10 regulations, policies, executive orders, mandates -- that
11 foundation has collapsed. Why are we even going to pile
12 more on top?

13 The reason why I'm saying that is because I'm
14 going to address many other issues that are involved with
15 the consultation process that has been bringing us to this
16 point. Earlier, I heard one of the -- couple of the
17 people talking about returning sacred land. So not only
18 as THPO am I doing this presently, I have buried many
19 people who have said those same words.

20 We know what the Black Hills are. The Black
21 Hills are sacred lands. And we know how we've been
22 saying, "Return the Black Hills." And this was even said
23 by United States Nations to the United States, "Give the
24 Black Hills back."

25 But under this process, we have what they call a

1 traditional, cultural property term that says, "Well, you
2 need to draw a line around what you think is sacred."

3 So I said, "The sun is sacred to us, as do many
4 other tribes. Where do you want me to draw that line
5 between here and the sun, and the sun rising and the sun
6 setting?" Because when we're talking about cultural
7 property, that is why those sites are created.

8 As do the pyramids in Egypt with the
9 constellations, in the Northern Hill or the Northern
10 Plains area, there are many land forms that are associated
11 to constellations that we feel sacred. One of them is
12 Mato Tipila, our Bear Lodge. I know you call it, "Devil's
13 Tower," but we've been trying many years to change that
14 name. But it's part of Bear Butte. It is part of Wind
15 Cave. It is part of Peshla. It is part of the Powder
16 River Basin. All of those line up with constellations in
17 the stars. So we didn't have to build pyramids. They
18 were already built by nature.

19 In other regions, they are doing the same thing
20 to replicate direction in this planet. This is how we
21 walk through seasons and cycles and ceremonies. So the
22 terms we use in this process of talking to you has been
23 there a long time.

24 I made a comment to Federal Railroads. Federal
25 Railroads have to do with FCC on the positive train

1 control where trains were wrecking; they said, "We need to
2 fix this. Let's put towers up, remotely take over these
3 trains."

4 Federal Railroad said, "Why are we sitting there
5 with the tribes? We don't have to do this."

6 The FCC said, "Yes, you do."

7 So this is who we deal with in consultation
8 interpretation. You know, I kind of made a smart-aleck
9 remark to the Federal Railroads about, "Hey, you guys
10 didn't even consult with us in driving that golden spike
11 in. We opposed the railroad going across the Black
12 Hills."

13 But here we are today. These are our concerns
14 and issues. They've been there for a long time. Now is
15 the time to do a complete rebuild.

16 I just found out about Title 54. All this time I
17 was saying Section 106. Now Title 54 gives a whole
18 different number to what we're having to deal with tribes
19 -- or with federal agencies. So is it Title 16 or Title
20 54? Because it comes down to other things that criss-
21 cross. I'll kind of jump down the line here as an
22 example, Bolton 38 vs. Bolton 36, the one I just talked
23 about, TCPs. When we're saying the whole Black Hills,
24 you're saying, "Well the project is an oil well -- two oil
25 wells right next to Bear Butte."

1 We're saying, "Wait. What about the landscape?"

2 "Oh, no. TCP is smaller."

3 So this is the thing that I'm saying, the whole
4 thing needs to be revamped. And I support -- I do support
5 every comment the tribes have made here. And if it has to
6 be in writing, I'll do it in writing. But I'm saying it
7 on record, recorded, I support all the issues the tribes
8 have voiced here.

9 And a major one is consequences. I had asked our
10 attorneys, "What is the consequence?"

11 And they said, "They will have them go back to
12 the beginning and start over again."

13 How much has been expended to save money-wise?
14 Attorney fees, going to D.C., putting food, clothing,
15 shelter on people at the camp site, all because of one
16 project.

17 A little history, the pipeline with the energy
18 transfers, Dakota Access Pipeline, DAPL, they call it
19 DAPL. I call it destroying aboriginal people's lands.
20 But two-and-a-half years ago, we consulted on the Dakota
21 Access Pipeline. Letters were submitted by THPOs in
22 opposition with support from the ACHP, that's why I thank
23 ACHP. The SHPO denied our concerns, our comments, and
24 ACHP's. The Corp of Engineers turned down the
25 recommendations from their own advisory council.

1 So it wasn't just this overnight thing that this
2 came to a boiling point. And I feel sad that it may go
3 into my lines. There are a group of people who will step
4 in and protect their children, especially a mother and a
5 father, and there's children at that camp. It's sad it's
6 to this point.

7 Two-and-a-half years ago they should have said,
8 "Let's look at this issue of the pipeline and we'll do a
9 complete EIS versus an EA. Because a EIS and a EA
10 process, is sometimes utilized by a federal agency to say,
11 "Well, it falls under a categorical exclusions mechanics,
12 so we're going to do an EA instead of an EIS." Or it's a
13 "Findings of no significant impact," they call a FONSI.
14 "We'll do an EA versus an EIS." We asked for a full-blown
15 EIS on this from the get-go, and the no-action
16 alternative.

17 As my chairman spoke up here earlier, what does
18 "no" mean when it comes from a nation's leader, to an
19 agency who should send that message on up? Because this
20 is -- if this is the very first time you're hearing me,
21 that's sad. Because when I very first got in here -- I'm
22 not an archeologist, anthropologist. I'm just a normal
23 human being that has a concern, and will do the best job I
24 can.

25 And I read and I read and I read everything. I

1 have to understand how wind farms go up. I have to
2 understand how water pipelines go in the ground. I have
3 to know in situ mining process by the Nuclear Regulatory.
4 I have to know open-pit mining from rare elements. I read
5 it. That's my job. And I hope I'm doing the best I can
6 to represent our tribe.

7 But like I said, I've been saying this.
8 Hopefully, this is more than a listening session. I do
9 not look at it as consultation. When I see all of you
10 standing in front of our tribal government, that is
11 face-to-face government-to-government consultation. This
12 on paper is a listening session. If you're deeming it
13 consultation, I've said these things before.

14 So again, consequences, the amount of resources
15 spent on this one project, I don't see anything coming
16 back to where we can say, "All right. Now, we need to
17 penalize the federal agency for noncompliance with our
18 main issue in this whole thing."

19 And my chairman can say it himself, that he has
20 not seen any person in front of a tribal government on
21 this project, and we invited them. So if there's no
22 consequence or penalties or fees to an agency for
23 noncompliance -- a couple of weeks ago I was up here in
24 Durango -- or not Durango, but over to an FCC meeting --
25 just, I stayed at Durango, but I can't remember the name

1 of the town. But that was noncompliance of the FCC on
2 cell towers.

3 So again, noncompliance, what is the penalty? If
4 you don't do what you're doing, you know, my
5 recommendation is suspension. If an agency is not
6 complying or consulting appropriately, they should suspend
7 that agency and put in another lead agency. We had
8 thought the Dakota Access Pipeline would be a
9 multiple-agency project being as Colonel Henderson at that
10 time said BIA was involved and, of course, the Corp was
11 involved and, of course, Fish and Wildlife was involved.
12 And the regulation says, "Two or more agencies, BLM takes
13 the lead." There was no BLM.

14 I'm glad the Federal Energy Regulatory Commission
15 is here because maybe the Corp should step aside, let
16 another agency take the lead, because we haven't gotten
17 nowheres in two-and-a-half years. And the same issues are
18 there, and they're growing. Now, it's civil rights
19 violations, not just compliance to 106 or Historic
20 Preservation Act, so suspension should be in place for
21 noncompliance. I know if I didn't do my job, I'd be out
22 the door. If they don't, I'd walk out the door. But that
23 is my job, to do what I can to -- within this area.

24 As a tribal historic preservation officer, I'm
25 not involved at the beginning, but agencies become

1 involved first, then they invite the tribes in. and then
2 by the time they come up with an agreement, then they shut
3 the door on the THPOs, and the project continues.

4 In Section 106, process of identification -- or
5 consultation, identification, evaluation, determination on
6 this project, I am still in consultation. I have never
7 gone out to the site to identify anything. Because you
8 have to go from step one -- you've got to finish step one
9 before you go to step two.

10 For the Corp of Engineers, I'll say it again, I
11 disagree with Appendix C. One or the other. You either
12 do Section 106, which is federal, you know, compliance
13 measure from coast to coast, because it's not just the
14 Corp. Other agencies have their own little means of
15 skipping out of things.

16 In consultation I talk about the good, the bad,
17 and the ugly. I've seen them all. Nuclear Regulatory
18 Commission was one of the ones with the poorest
19 consultation process. A lot of it comes down to how the
20 Nuclear Regulatory is funded. Nuclear Regulatory
21 Commission is funded by uranium mining projects. They do
22 not get appropriation dollars. That, to me, sounds like a
23 conflict of interest. You're almost playing into their
24 hands in decision-making. We have done that. When they
25 said, "Sites were ineligible," we said, "They were."

1 A disagreement came between the state historic
2 preservation officer and the Nuclear Regulatory
3 Commission, and they said, "Okay. We agree to rely on the
4 keeper of the Natural Register to make a determination."

5 The keeper came down and said, "They're all
6 eligible," seven sites in Wyoming.

7 They countered back and said, "We disagree with
8 the keeper."

9 That's a problem. But again, they're being paid
10 by mining. They always said, "Don't bite the hand that
11 feeds you." So I think the Nuclear Regulatory Commission
12 needs to come under other rules and guidance in
13 consultation or go under BLM.

14 I already talked about the EA versus EIS. I
15 don't think an EA should be done specifically to get -- or
16 FONSI or CADEXs be done specifically to get out of doing
17 the EIS. If the tribes request an EIS, it should be done.
18 We've been asking and asking. You heard the tone in my
19 chairman's voice. He's demanding.

20 Nationwide programmatic agreements, I disagree
21 with. I know the nationwide PAs for the Corp is supposed
22 to be coming up here in 27. I disagree with it.

23 Regional issues are different. I mean, how
24 tribes deal with water and mountains on the West Coast is
25 different than on the plains, and different in the

1 Southwest, and different -- cultural differences, but
2 they're still sacred, but they're treated differently.
3 But these nationwide PAs is kind of like just throw them
4 into one category.

5 As nation-to-nation or government-to-government,
6 you need to look at our chairmans' and our presidents'
7 comments at that level. I was glad that our chairman was
8 able to visit with Obama, but he's going out the door. He
9 don't want a black eye before he leaves. So he's kind of
10 got to be cautious as to how he exits. But you have a new
11 administration coming in again with many, many, many,
12 probably presidential proclamations, executive orders,
13 direction or guidance. You're going to have a whole
14 different tone when Trump gets in or Clinton gets in.
15 That's you guys. We have our history here.

16 So those are the other things that come to fault.
17 Executive orders, presidential executive orders should be
18 more governed by congressional binding, that don't change
19 every four years or every two years or when somebody
20 passes away, and somebody else comes in and changes.
21 Because an executive order can be wiped out by another
22 president coming in. But these are long-term discussions
23 that need to be binding.

24 Sacred sites policy, both in 38, it's limited,
25 frustrating. We're talking about federal law. We're

1 talking about congressional law, county law, state law,
2 city law. One time I sat in a meeting with about this
3 many people, many federal agencies, more than what's
4 sitting here. Somebody asked the question: "How many
5 attorneys in here?" And there's like 11 hands went up.
6 They were all federal-agency attorneys.

7 And this elderly lady said, "We feel at a
8 disadvantage because we didn't bring our attorneys."

9 But when it finally came around to speak for me,
10 I said, "You know that comment that elderly lady said?
11 How many of you sitting here on this panel know
12 traditional law, natural law?" I said, "This elderly lady
13 sitting back here would run circles around all you
14 attorneys on traditional law and tribal law, treaty law,
15 natural, land, air, water." Because land is sacred to us.
16 Air is sacred to us. Water is sacred to us. But it's not
17 all on the sacred sites policy. That needs to change.

18 Going back to 1872 mining that is still utilized
19 by extractive industries in acquiring leases to
20 properties, that needs to change. They're acquiring land
21 for peanuts, for cents, a few dollars, and making billions
22 of dollars, and the local people in those areas, not just
23 tribal, but non-Native, too, are suffering the
24 consequences of major extractive industries. And that is
25 kind of one of the biggest problems why we're here. I

1 heard the Oklahoma tribes talking about earthquakes. I've
2 been asking that in Crawford, Nebraska, when we were
3 dealing with Nuclear Regulatory on the fracking process of
4 in situ mining.

5 They will do injection wells, extraction wells
6 and monitoring wells for one mining project, and they're
7 doing multiple -- there are about nine proposed on the
8 west side of the Black Hills right now. So I said clear
9 back then, fracking has an issue. They kept saying, "No,
10 no, no."

11 Well, there's been some documents come out that
12 the earthquakes in Oklahoma are from fracking. Going
13 down, and I heard a comment of the crust of the earth.
14 You drill a little needle-sized pin hole in my shin, I'll
15 still walk, but the more you do, I will fall over. This
16 earth is very vulnerable. One little shift, we'll all
17 die. We have to respect the Natives term of "Mother
18 Earth."

19 I support NAGPRA. I also want say thank you to
20 Terry Knight. I have referred many NAGPRA issues over
21 Terry being as he's closer to the Colorado area, which is
22 also our ancestral territories, but it's hard to be
23 everywhere at once. There's things going on as we said,
24 right now. You heard the voices earlier. There's things
25 going on that are very, very pressing to our chairman and

1 to me with projects, but this is also important.

2 But the NAGPRA issue, I think, and how you heard
3 the comments of private land versus federal land versus
4 tribal land, and how we deal with Native remains. It's
5 sad that we cannot acquire our ancestors off private
6 property. The goal of tribes is to leave them where
7 they're at. There was a ceremony conducted. It's a
8 sacred site. Leave them where they're at. But they said,
9 "Well, we've got to move them. We've got a project going
10 up here. You know, we've got a shopping mall. You know,
11 we've got a" -- whatever it may be. It's sad that we have
12 to go in there and retrieve them and rebury them.

13 But what complicates that is each state has a
14 different, separate burial code. Some are good. Some are
15 bad. The majority of them are bad. So if we had a
16 federal or national burial code versus -- because that's
17 the problem. If I'm meeting with a federal agency on a
18 highway project -- as an example, in South Dakota Highway
19 16, I had to meet South Dakota DOT and Federal Highways.
20 And as the highway crossed into Wyoming, I had to deal
21 with the Wyoming DOT and the Wyoming SHPO, and still
22 Federal Highways. And the interpretation of how we were
23 treating that buffalo jump site was different, because of
24 the differences of a state historic preservation officer
25 who is actually appointed by a governor in most states,

1 and they follow what the governor says. So I think that
2 needs to come to some type of better understanding for the
3 tribe, of human remains.

4 As I said earlier, executive orders, you know,
5 should be more binding by Congressional acts. and the
6 other thing is, you know, a lot of these places, and this
7 was said on the Missouri River, if it's right on the
8 borders of our reservation, why can't we manage it as a
9 tribe or co-manage it? We know what's there more than the
10 federal agencies.

11 I think -- and I'm still asking for seven years,
12 you know, six-and-a-half years I've been asking, "Where's
13 EPA? Where's EPA? Where's EPA?" These are environmental
14 issues right now, what's going on with the water line.
15 That Missouri River runs all the way to the Gulf of
16 Mexico. It is not just one tribe. It is everybody who
17 consumes water from that body. But EPA has -- also has in
18 mining, extraction injections of water used. They will
19 extract water from water tables, aquifers, subsurface
20 water because it is deemed non drinkable.

21 Now, when you don't have no more water on the top
22 to drink, I think everybody is going to start tapping into
23 some of these aquifers for life. But since it's deemed
24 non drinkable, EPA allows Nuclear Regulatory and other
25 agencies a aquifer exemption. And they can extract water

1 from the aquifers, conduct their mining operations of
2 fracking and drilling with chemicals, and then they turn
3 around and reinject that water back into where they got
4 it. So obviously, it's going to be non drinkable then.

5 The funding -- I heard the issue of funding.
6 We're on crumbs right now. I have to take care of three
7 million acres, which is our reservation. But that's not
8 even addressing the meetings I had with FCC, the meeting
9 I'm having -- you know, my comments being heard here
10 today. We're coming down on our own dime.

11 A lot of federal agencies tell us to. "You ought
12 to come consult." Well, I've got to spend money to get
13 down there. You know, you've got to do it. "Will you
14 reimburse us?"

15 "Oh, no, we can't."

16 So it's hard. We have to pick and choose what we
17 can, just by funding sources.

18 National Parks Service has already come out with
19 a -- what do they call it -- Climate Change Response
20 Strategy on how they will manage national parks. As other
21 agencies come address climate change because 200-plus
22 nations met and brought it up. I heard it since I was a
23 little kid. I used to see these street protests. You see
24 this guy standing with a sign, "The end is near," you
25 know, but it's getting factual.

1 Regional agencies versus treaty territory.
2 Again, talking about EPA Regional 8. Our territories are
3 our concerns of consultation -- cross boundaries, cross
4 state boundaries, cross regional boundaries. But they
5 say, "Oh, that's not our region. That's a different
6 region." They should not put that on tribal participation
7 or involvement.

8 So again, as I said, I encourage the tribes down
9 here in the Southwest to organize a Southwest Advisory
10 Council, Native Advisory Council. Because I have seen
11 where federal agencies haven't even listened to their own
12 advisory council. And there are times I have to go back
13 and discuss this with other people. Because that is one
14 of the things we want to do in the Northern Plains. So we
15 have a group of tribes who are saying here, this is what
16 we're saying collectively. It's not just one tribe trying
17 to say something when you have other ones. When you have
18 consensus among tribes, when they're addressing the same
19 issues through the advice, federal agencies should listen.
20 Because they're not listening to one tribe.

21 They didn't listen to the Cheyenne River
22 two-and-a-half years ago, but for some reason we're at the
23 table today because of concerns that may be become deadly.
24 We hope that don't happen up there.

25 So hopefully, we'll see you all in Rapid City

1 next. I'm going to follow you around. I'm going to keep
2 saying this. I'm not tired of it. I'll keep saying it.
3 How long has our people been saying these things? How
4 long have our people been giving? How long have our
5 people been suffering? We're still here. My people did
6 it before me. I need to keep it there for the next
7 generation. And at 63, you know, I can't be doing this
8 for 50 more years.

9 I encourage the tribes to start bringing their
10 youth. They will be the ones that's here 50 years. I
11 would like to, but I'll be here in a different way.

12 So I think the other people standing here
13 listening to this, to pick up that -- to pick up that
14 torch and keep going, keep that fire lit, keep that spirit
15 going. (Native American spoken.)

16 Those of you that heard me, thank you. Have a
17 good day.

18 COLONEL HELMLINGER: Thank you, Mr. Vance.

19 All right. I now would like to invite our final
20 speaker for today, Ricardo Ortiz, Tribal Historic
21 Preservation Officer for the Pueblo of San Felipe.

22 Is Mr. Ortiz still here?

23 All right. Earlier, we had from the Pueblo of
24 San Felipe, so it appears Mr. Ortiz had to leave.

25 All right. With that, that concludes the

1 scheduled speakers that we had here today. I would ask if
2 there are any tribal leaders here today that have not had
3 an opportunity to speak?

4 All right. Nothing heard.

5 Then we will wrap things up here. What I want to
6 do is, first and foremost, thank our tribal leaders and
7 tribal members for joining us here today, for sharing your
8 concerns with us. We are genuinely concerned with
9 improving the process for proper and meaningful
10 consultation in regards to infrastructure projects. Your
11 voices will be heard in the Department of the Army and the
12 Department of the Interior, in the Department of Justice,
13 and other federal agencies there.

14 I am going to very briefly summarize some of the
15 things that I heard here today. This isn't all of them,
16 but these are ones that two or more people said, and we'll
17 have a more thorough list after our panel members have
18 consolidated our notes.

19 But the first theme is that we want better
20 informed consent on infrastructure consultation, including
21 signatory authority with that. One person mentioned free,
22 prior and informed consent is the standard for this.

23 The second theme is clearer guidance on
24 confidentiality of sacred sites, and another theme was to
25 ensure that our consultation meets our requirement for

1 trust responsibility, that it's not check-the-block
2 consultation, and that we need more standard procedures
3 across the federal government because our processes vary
4 from agency to agency.

5 Also, heard many people request for more
6 face-to-face consultation at the appropriate level of
7 authority to make decisions. I heard several themes of
8 requesting accountability or evaluation of repercussions
9 when the government may be in error on decisions, and
10 also, better assistance enforcing and protecting tribal
11 lands from -- protecting and enforcing lands.

12 Finally, we heard several frustrations that their
13 voices are not being heard --

14 PROTESTERS: No justice, no peace.

15 COLONEL HELMLINGER: -- and that no action has
16 been taken in the past.

17 PROTESTERS: No justice, no peace.

18 COLONEL HELMLINGER: But we do generally want to
19 develop more meaningful consent.

20 PROTESTERS: No justice, no peace.

21 COLONEL HELMLINGER: All right. Ladies and
22 gentlemen, as we wrap things up here, I want to remind you
23 that --

24 PROTESTERS: No justice, no peace.

25 COLONEL HELMLINGER: -- you can still contribute,

1 that if you have additional comments, you can submit
2 them --

3 PROTESTERS: No justice, no peace. No justice,
4 no peace.

5 COLONEL HELMLINGER: -- to consultation@bia.gov
6 no later than the 30th of November.

7 PROTESTORS: No justice, no peace. No justice,
8 no peace.

9 COLONEL HELMLINGER: And with that, I know it
10 took a lot of time and expense to bring everyone here
11 today. So I want thank you all --

12 PROTESTORS: No justice, no peace. Water is
13 life.

14 COLONEL HELMLINGER: -- as well as our panel
15 members for your time. We will adjourn. Thank you.

16 PROTESTORS: Water is life. Water is life.
17 Water is life.

18 (The consultation concluded at 1:15 PM.)

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C E R T I F I C A T E

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

I, MICHELE NELSON, New Mexico Provisional Reporter, working under the direction and direct supervision of Yvonne Gonzales, New Mexico CCR License Number 62, hereby certify that I reported the attached proceedings; that pages 1-154, inclusive, are a true and correct transcript of my stenographic notes.

Dated at Albuquerque, New Mexico, this 6th day of November, 2016.

Michele Nelson

Yvonne Gonzales

YVONNE GONZALES
Certified Court Reporter #62
License Expires: 12/31/16

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