U.S. DEPARTMENT OF THE INTERIOR, JUSTICE, AND ARMY

Tribal Consultation

Tribal Input on Federal Infrastructure Decisions

Mystic Lake Casino

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Santee Conference Room

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REPORTED BY: ANDREA J. TUNGLAND HEAIRET, RMR, CRR, CLR

*** APPEARANCES ***

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KELLY ALEXANDER
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KENNETH MARTIN
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JODY CUMMINGS, Deputy Solicitor - Indian Affairs
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(continued...)

APPEARANCES continued:

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KATHARINE FERGUSON, Special Assistant to the President,
DPC, The White House

CHARLES SMITH, ASA (CV) Assistant Secretary of the Army
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P R O C E E D I N G S

JO-ELLEN DARCY: Good morning, everyone. Can you hear me? Great. Thank you.

Welcome to Prior Lake. My name is Jo-Ellen Darcy. I'm assistant secretary of the Army for Civil Works. What that means is the I oversee the Army Corps of Engineers, and I'm excited to be here today at this listening session, this consultation.

SPEAKER: It's kind of hard to hear back here.

JO-ELLEN DARCY: Is that better? Thank you. I'm looking for the chairman. Over here. He would like to open up the session today for everybody.

We have microphones here, and there's a podium. So whenever, whoever, when you're speaking you have an option of either of those. Chairman?

CHAIRMAN CHARLIE VIG: How about this one? Does this work?

Well, welcome everybody. And thank you. Thank you all for being here today to help us listen and plan for our future needs.

I think one thing I just wanted to say, today is -- we all -- I just want to welcome all of the leaders too. Thank you for coming. I won't start

naming names because I'll forget some, but thank you for being here and taking the time.

But I think it's so important for us, everywhere we go as leaders it seems like our main job is educating the people, and with new elections, turn-over, we're constantly educating but that's what we have to do. We have to make better rules, we have to -- the consultation process needs to be there. And today this is a forum to do that, to make things better.

So I want to welcome you to our community. Welcome to Mystic Lake, which is owned and operated by Shakopee Mdewakanton Sioux Community. I want to acknowledge our Vice-Chairman Keith Anderson, our secretary Freedom Brewer.

So we have -- we just have a three-council tribal council here, and four-year terms. It's rather nice. Keith, we were just talking about it this morning. Keith is on his fourth term. He's pretty helpful to me. I'm just on my second term here.

You can see in our community we're doing a lot of work. We just received from the Army Corps to fill this lake out here. We're doing a reconstruction of this County Road 83. It's about a

mile stretch. The first phase just opened up yesterday, which part of it opened up from the south to right out in front of the casino.

And a big thing, trying to tie this into education, but we went from a two-way traffic system out in front of the casino to a one-way.

So I was talking to our staff this morning. It's interesting. We get it stuck in our mind we're going a certain way, and we wake up this morning and we have to go a different way. So probably similar to what we have to do daily here.

So on behalf of that Shakopee Mdewakanton Sioux Community, welcome. And we'll get some testimonies today. So I hope you enjoy your stay here. That's it.

I'm going to introduce Leonard Wabasha. Leonard is our cultural director here at the Shakopee, and he's going to offer a prayer this morning. So if I could ask you to rise.

LEONARD WABASHA: (Speaking in non-English language.)

Grandfather, thank you for this beautiful day. Today I ask you for blessings for the people, for health, for life, and for help that we may all get along together in a good way. I also think of the

water we call the water of life. And I ask you to please guard her and watch over her.

JO-ELLEN DARCY: Thank you for that. Welcome, everybody. Again my name is Jo-Ellen Darcy. I'm the assistant secretary for the Army Civil Works. We're here today and have representatives from many of the federal family who are sitting up here with me today, who I'm going to ask to introduce themselves, and then also I'd ask -- I'm going to have them introduce themselves.

Why don't we do that right now and I'll just have a couple more words before we start. Can we start -- I'll pass it this around.

KAREN MOURITSEN: Good morning. Okay. Hello. Good morning. My name is Karen Mouritsen. I work for the Bureau of Land Management. I'm the regional director for our Eastern Region, which covers everything east of the Mississippi. So I'm very glad to be here. And thank you.

KELLY ALEXANDER: Good morning, everyone. My name is Kelly Alexander. I'm here representing the Federal Committee Improvement Steering Council.

While we're not a permitting agency, we are a stakeholder that was established under FAST 41 in December of last year so we are a new -- what they

call a micro-agency.

And our task here today is really to listen, but ultimately the goal is to bring synchronization of the review process, as well as bring transparency to the process through a permitting dashboard that is public facing. Thank you.

KENNETH MARTIN: Thank you, everyone. My name is Kenneth Martin. I am a deputy assistant secretary for Tribal Government Affairs at the U.S. department of Transportation.

JODY CUMMINGS: Good morning. Thanks for having us here today. My name is Jody Cummings. I am the deputy solicitor for Indian Affairs at the Department of the Interior.

COL. SAMUAL CAULKINS: Good morning. I'm Sam Caulkins. I'm the district commander for the St. Paul district for the United States Army Corps of Engineers.

VALERIE HAUSER: Good morning. I'm Valerie Hauser. I'm the director of the Office of Native American Affairs at the Advisory Council on Historic Preservation, and I want to thank you for your welcome today, Mr. Chairman, and for your hospitality. I look forward to hearing all of you this mornings.

MATT McGOVERN: Good morning. My name is Matt McGovern and I'm with the U.S. Department of Energy. And I'm a senior advisor in the Office of Energy Policy and Systems Analysis.

SCOTT AIKIN: Good morning, friends. I'm Scott Aikin. I'm the national Native American program coordinator for the U.S. Fish and Wildlife Service, and I'm grateful to be here today and look forward to talking to you on this and other issues that we are involved with that are very crucial to what the tribes are considering as most important in terms of cultural significance so we work with many tribes, and in the room I recognize, and in our work that we do, so I'm grateful to be here today.

KATHARINE FERGUSON: Good morning. I'm Katharine Ferguson. I am the chief of staff with the Domestic Policy Council at the White House.

I'm here today to make sure that you know that this administration is listening, and that from the top down there is interest in hearing from all of you. And really, first, thank you for making the time to be here.

I do want to clarify that this whole process is one that's agency-driven, and that's why you have so many federal agencies here at the front today and

listening.

The White House is convening, coordinating, and committed to making sure that this remains a priority. So thank you all for being here, and we look forward to hearing from you.

GINA ALLERY: Good morning. My name is Gina Allery and I'm the deputy director of the Office of Tribal Justice at the United States Department of Justice.

And I just want to thank all of you for coming out today to be here. And I'm actually from Bemidji, Minnesota. That's where I grew up, so I'm excited to be back here in Minnesota to hear from all of you.

JO-ELLEN DARCY: Okay. So let me start with some logistics and then a couple of comments.

For everyone who is interested in speaking, if you have not signed up out front, please do so because we're going to be going through this list of speakers as far as how we organized our morning.

So if you have not signed up and are interested in doing so, please do so so that we make sure we her hear from everyone who wants to be heard.

Also, when you are speaking, please, I'm looking at the court reporter to help her out here, please state your name and your affiliation before

you begin speaking so that we have an accurate record.

We will be having the court reporter tribe everything that is said here today. It will later be put up on the website so that everyone can know, because I can't take notes that fast, so we'll be relying on that. So thank you for your service and being here today.

We're here for consultations to hear from our tribal friends. I think that the Dakota Pipeline sort of rose to -- I don't want to use the word prominence, but rose in everyone's minds' eye, and I think part of that is one of the reasons we are here today, because we heard that consultations are an important government-government responsibility that we have. And when it comes to large infrastructure projects, there's probably room for improvement.

Just so all you know, the focus of this consultation is on the siting and permitting of large construction projects and how our consultation with tribal friends can be better improved in that.

But I think because of DAPL, I just want to update you on what happened yesterday. I sent a letter to the chairman of the Standing Rock Sioux Tribe and to the owner of both the energy partners

whose parent company of DAPL, which is Dakota Access Pipeline Company, stating that the Army Corps of Engineers had completed a review of our previous decisions and found that they were all legally consistent.

However, we believe that we need further discussions with Standing Rock Sioux Tribe in order to get all the information we need in order to decide whether easement at the crossing of Lake Oahe is something that's in the public interest. So we are going to begin those discussions tomorrow, and hopefully be able to hear either more information or additional information or new information about what the crossing at Lake Oahe would or would not do.

So that said, we are still in discussions on whether there will be an easement granted at Lake Oahe. During our discussion period there will not be an easement granted to Lake Oahe. So we are going to have hopefully robust and inclusive discussions with Standing Rock Sioux Tribe in order to fully evaluate whether an easement at Lake Oahe is in the best interest of all.

So please put that on the table. Get it out of way.

And again, I think because of DAPL, made us

more cognizant what we need to do going forward and that that's to improve our consultation with tribes.

Just one other thing I'd like to do today. I think all you know we had a framing paper that we -- sorry? Oh, sorry. That we put a framework paper out at the beginning of these consultations which we are sort of using to guide us.

At the end of consultations, which will end -- I think the last one is by teleconference in November 21 of this month, then we will be collecting all of the comments that we've heard and suggestions that we've heard in developing a paper in a way forward for the administration to improve on consultation with tribes.

That said, I think we should -- one other thing I'd like to do today. It's a little late, but we celebrated Veterans' Day on Friday, and I just want to thank you all of our Native American Veterans who are in this room for their service.

(Applause.)

JO-ELLEN DARCY: Under President Obama's leadership he provided the Army Corps of Engineers with financing for us to establish what we call our Veterans Curation Program. And what it does is partners returning veterans with the Corps of

Engineers to help us with our archeological responsibilities, because any time we do a project, whatever disruption we make to the land, we need to categorize and preserve for history what it is we have found there.

And last -- in August of this year we opened our fourth Veterans Curation lab, and it was on the Colville Reservation in Washington state, recognizing that veterans and our Native Americans have a great deal of interest.

And we hope that this lab will also reap the same benefits that we've had in the other three labs. We've trained over 150 returning veterans in skills, and about 80 or 90 percent of them have gone on to either further education or found jobs in the private sector, as well as in federal government. So we're hoping to keep that going in the years ahead.

So with that, I'd like to do one more thing and that is to recognize -- I'm going to ask them to stand up in the audience. We have a great deal of people here from the Army Corps of Engineers from throughout our districts and divisions in this part of the country, from our district commanders to our staff in Washington to district staff both in Rock Island and here in Minnesota, as well as our

Mississippi Valley division. And I think it is just testament to the fact that we take this business session seriously.

And if you would just take a minute to stand up and recognize yourselves. Because there are some people here who are working with me that I haven't met until today. Can you start over there?

CHIP SMITH: Chip Smith. I work for Ms. Darcy. I'm her assistant for environmental tribal and regulatory affairs. Glad to be here.

COL. JOHN HENDERSON: I'm John Henderson. I'm the commander for the Omaha District Corps of Engineers.

COL. TIM VAIL: Colonel Tim Vail, Army Civil Works. I work for Ms. Darcy.

COL. RICH PANNELL: Colonel Rich Pannell, deputy commander for Mississippi Valley Division in Vicksburg, Mississippi.

JENNIFER BOYER: Good morning, everyone. I'm Jennifer Boyer. I oversee the regulatory program in Washington, D.C.

LISA MORALES: Good morning. I'm Lisa Morales. I'm the CE/tribe liaison for the Army Corps of Engineers, Washington, D.C.

MINDY HOGAN CHARLES: Good morning. I'm

Mindy Hogan Charles. I'm the assistant secretary of the Army.

CORY VAUGHN: Cory Vaughn. I'm with Mississippi Valley, tribal liaison.

BRAD JOHNSON: Brad Johnson, St. Paul district regulatory branch tribal liaison.

CHAD CONICKSON: Good morning, I'm John Conickson, chief of the regulatory program here in the St. Paul district of the Corps of Engineers.

JOHN SOBIAK: Good morning, everybody. I'm John Sobiak, tribal liaison, St. Paul District.

CHARLES CAMILLO: Good morning. Charles Camillo, executive assistant for the Corp of Engineers in Vicksburg, Mississippi.

MICHELLE LARSON: Michelle Larson, St. Paul District.

ROD DICE: Welcome. From Rock Island District my name is Rod Dice, and I'm a tribal liaison.

SPEAKER: Rock island district.

SETH COHEN: Good morning. I'm Seth Cohen. I'm with the Corp's collaboration and public participation center, Institute for Water Resources.

JO-ELLEN DARCY: So we've got a few people here from the Corps of Engineers. Thanks, everybody,

for being here. Welcome.

I'm going to go through the list of folks have signed up. I'm going to go through in order. However, I think in deference to our tribal host here this morning, I would like your representative to begin the morning for us.

And I'll just remind everybody to state your name and your affiliation for our court reporter. And after about 90 minutes I think we probably might all need a break, including our court reporter. So I'll be watching the clock and at that time we'll take a little break. Thank you.

KEITH ANDERSON: Good morning. I won't be 90 minutes. I appreciate your deference.

JO-ELLEN DARCY: Sir, could I just remind you, name and title. Thank you.

KEITH ANDERSON: I'm sorry. You know what? I was thinking that. I'm trying to adjust this.

My name is Keith Anderson and I am vice-chairman of the Shakopee Mdewakanton Sioux Community. As the federal government puts it, we are the Shakopee Bdemayato Dakota Oyate.

I just have a few bullet points, and I'll make it as quick as possible. First of all, thank you for

introducing yourselves and your service. I'd like to thank you as well for engaging in consultation with tribal nations on infrastructure development.

This region here has been Indian country for generations. The Mdewakanton Dakota along with as well Dakota Oyate and other tribes who have lived here for thousands of years. What you see now of our reservation is but a fraction of those homelands.

Infrastructure can be viewed sometimes by tribes as a curse. Traders and gold-diggers started the demise of our resources and our homelands, but today infrastructure connects all of us. The tribe and the descendents of settlers and treaties alike, treaty-signers alike, we all come together under that collaboration.

The infrastructure you see here today opens up opportunities between us and our neighboring governments to collaborate rather than expatriate -- ex-appropriate, excuse me, the property of our tribes. This, our recent march of economic development toward our reservation, has come about largely through our enterprises.

This development and its infrastructure serves the interests of our neighboring government. We actively participate in robust and respectful

government-to-government consultations with those governments, the cities, the counties and the state. We build on our self-sufficiency with this infrastructure, with very little federal participation, by the way.

Federal agency record on tribal consultation is badly broken. As our relatives at Standing Rock have recently -- recently learned anew. All too often federal decisions -- federal decision-makers have treated consultation with tribal governments as an afterthought or futile gesture.

We are here today to submit our written testimony to be true to our treaties and our government-to-government relationship with the federal government as you represent.

Being our federal trustee for whom we have -- whom we are the beneficiary, we would like to propose simple legislative action drafted as a bill that would put some sharp teeth to federal tribal consultation, teeth that would make that consultation mandatory.

And as I say, it will be in a written form of legislation. And I know you don't deal with bills or so forth, but it's a good footprint to look at.

I'd like to say in closing that we ask that you

support that legislation, and that we'd like to hear at Shakopee, as our chairman said, thank you for being here. So on behalf of our tribal council, thank you for listening. Thank you very much.

(Applause.)

JO-ELLEN DARCY: Thank you, Mr. Anderson. The next speaker is Melanie Benjamin.

MELANIE BENJAMIN: (Speaking in non-English language.)

Melanie Benjamin from the Mille Lacs Band of Ojibwe here about 100 miles north. And I wanted to take the opportunity to also welcome all of our visitors to the State of Minnesota as well.

And also I wanted to just comment too about veterans. And we all know that American Indians have the highest percentage of enrolling in the Armed Services, so thank you for that comment this morning.

And also to note that my father, George Staples, was in the Korean War, and he came out as a sergeant. And I have two sisters that also enrolled, Bernadine Staples, who came out as staff sergeant. And then my youngest sister Arlene Victor. So there's a couple in the family that have seen fit to serving in the armed forces.

And for me, my role as warrior is to meet with

you guys and hopefully come with a lot of solutions for our issues that we have to deal with together.

So I'm here today to share my tribe's experience with the federal tribal consultation, and reforms that we believe are essential. The Mille Lacs Band fully endorses the recommendations from the National Congress of American Indians and the Great Lakes Fish and Wildlife Commission.

We support and ask for tribal inclusion in the federal fast-tracking of infrastructure projects, that you require that all federal permits that affect tribal lands, waters, sacred places or resources, including wild rice, must demonstrate trust compliance; that you repeal Appendix C of the National Historical Preservation Act, which makes consultation with tribes optional; that in the nationwide permitting program you require the Army Corps to consider impacts on our lands, water and resources, not just the actual crossings; that you require agencies to enter into program agreements with tribes early in the process for major projects; require agencies to work with tribes of Minnesota and Wisconsin to create new Section 104 permitting processes for wild rice waters, because rice is especially impacted by these projects.

I will be submitting a written statement later, but today I will briefly discuss these points using examples from our experiences.

For the past two years the Mille Lacs Band and other tribes have been trying to stop the Sandpiper pipeline from cutting across a path that could be devastating for our lands, waters, and resources. These inter-connected waters flow through our trust lands and reservations.

The Sandpiper route would go through treaty-ceded territories where we have reserved hunting, fishing and gathering rights, and where cultural resources are located. A spill will be catastrophic.

And we also have evidence that just the act of constructing the pipeline could severely damage our wild rice. Wild rice has federal protections.

Working with other tribes we managed to delay the Sandpiper but no Enbridge wants to put in another pipeline along the same exact route.

In July, Enbridge and the DOJ reached a settlement over spills in Illinois and Michigan that happened in 2010. In a consent decree, Enbridge was ordered to replace the leaking pipeline called Line 3 as quickly as possible. At first this might sound like a good thing, but that is not what they are

doing.

Instead Enbridge plans to abandon the leaking Line 3 pipeline and construct a brand new Line 3 hundreds of miles from where it is right now, along the exact same path it had proposed for Sandpiper. It would cut through pristine lakes, waters and rivers along the same route we just stopped, so that is where we are at right now.

In Minnesota, the Public Utilities Commission, or PUC, is in charge of approving these projects. During the public hearing process on the Sandpiper, the PUC never once consulted with Indian tribes. They held scores of hearings, but when asked to hold just one hearing on the reservations, they said no.

Despite an executive order signed by Governor Dayton, requiring state agencies to consult with tribes, the PUC said that order did not apply to them because they are an independent agency. They put us in the same category as private citizens rather than a sovereign tribal government.

We responded by holding our own public hearing, but our input was still treated like one private citizen. This is Problem No. 1. While most federal laws require that tribes be consulted, states do not have that same requirement. Even though the U.S.

cannot delegate treaty obligations to states, the states are usually issuing the permits, and they do not take treaties into consideration.

The solution is the meaningful consultation must be mandatory for the Army Corps, which means that you must require federal agencies to conduct a full evaluation of all potential impacts on treaty rights, even when a state agency is in charge of the permitting.

After the PUC ignored us, we were concerned about our first consultation with the Army Corps of Engineers. History has taught us that these consultation can be used against us. So we held three consultation phone calls to discuss ground rules with the Corps, and tried to agree on how our input would be used. But they were nervous about making commitments, which brings us to Problem No. 2:

Army Corps staff still have no road map about how to consult with tribes. We don't know how or if they will use our input, so we take a huge risk in consulting with them.

In a perfect world, consultation would mean that we have veto authority over any project that threatens our lands, waters or resources.

At a minimum, consultation should be more than

just asking what we think. Consultation should require that we work together to reach consensus about what decisions should be made.

There is a model for that. It is the MOU between tribes and the U.S. Forest Service. The MOU mandates that the goal of the federal service is to reach consensus with the tribes. The Forest Service must also document how tribal information and involvement would be taken into account, and how tribal information is used in making decisions.

If consensus cannot be reached, a dispute resolution process kicks in. Tribes gain some reassurance that our input has been meaningful and used in all decisions that affect our resources.

Further, most federal employees involved in consultation know very little about us. In Minnesota over 1,000 state employees have received intensive training on how to interact with Indian tribes. This is a training designed tribe by tribes, provided by our own tribal university professors, and is mandated by the governor for any state employee who interacts with us. We need a federal equivalent of that.

At our first face-to-face meetings with the Corps one of the lakes we were most concerned about was Rice Lake. This is where our people have riced

for hundreds of year. It is one of the most abundant producers of wild rice in the nation. Even the slightest change in water levels can harm wild rice, which brings me to Problem 3:

The Corps said their scope is to look for adverse impact only at the actual water crossings, not the adverse impacts up or downstream. Even if we can prove beyond a reasonable doubt that the pipeline construction phase will destroy our wild rice downstream, they said they were not allowed to take that into consideration.

This does not make any sense because water moves. What happens at the crossing impacts everything up or downstream.

And that brings me to Problem 4: They also said they would only consider the potential adverse impacts during construction of the pipeline. They said they are not allowed to consider possible adverse impact from any future spills. What is the point of having federal approval process at all if the impact of future spills is never taken into consideration.

When we ask about who was looking out for our trust resources downstream, the Corps told us talk to the Interior. Yet in conversations with the

Interior, we were directed back to the Army Corps and the EPA.

EPA claims it has no role until much later in the process, and then only under certain circumstances. By then, the pipelines are usually a done deal.

We are in a no-man's land because all the agencies that are supposed to look out for us seem to be afraid of the pipeline companies.

And that is Problem No. 5. From start to finish, in discussions with federal staff, there was a common theme. They are terrified of litigation from Big Oil, and they admit it.

Your staff are running scared of the pipeline companies so they are severely limiting the scope of what they are willing to look at when they evaluate these projects. The deck is stacked against us because agencies are afraid to use authority they already have to protect our trust resources.

If there is a spill, and we know there will be, Indian tribes and people would suffer a disproportionate impact, which brings me to Problem 6:

The federal agencies must be prepared to follow their own environmental justice policies. But to

date these policies are largely being ignored. The agencies do not want to talk about environmental justice. But they should, because our tribal communities are defined as minority populations within Presidential Order 12898. This raises serious issues under Title VI of the Civil Rights Act of 1964.

Federal agencies, including the Corps and EPA, are required to implement the environmental justice requirements and Executive Order No. 12898 when they consult with tribes.

These requirements include recognizing the tribes as cooperating agencies in conducting environmental reviews. The agencies have a mandate to engage tribes of issues of environmental justice. They are supposed to consider alternatives that would avoid disproportionate and adverse effects on minority tribal populations. Right now this is not happening, so this is a mandate we ask that you take seriously.

I have a number of other recommendations that I will be submitting in our written comments. But I want to close with one final thought: Over the weekend of friend of ours, who is a Washington insider, told us that because of the recent election

these consultations are futile. He said that the most federal officials are likely eyeing the exit doors, suggesting this is a waste of time.

As tribal governments, we don't have the luxury to simply give up and do something else. For us there is no exit door.

At least a few of you are career civil servants and have survived previous transitions. For those of you who will remain with your agencies it is my hope that you will be courageous and that you will boldly fight for the rights of Indian tribes from within, and continue working for progress.

People sometimes minimize the power of the civil servants, but those of us who have been through several transitions know that you are the glue that holds things together between administrations.

Now more than ever, we need you by our side. I ask that you be willing to step outside of your comfort zones and fight alongside of us. It is critical that we have brave allies in Washington, D.C. now more than ever before. Help us prove that this session today was not futile.

On behalf of the Mille Lacs Band of Ojibwe, I thank you for your time and service. Miigwech.

(Applause.)

JO-ELLEN DARCY: Thank you, Melanie. Our next speaker is Mark Macarro.

MARK MACARRO: Good morning. My name is Mark Macarro. I'm the Tribal Chairman with the Pechanga Band of Luiseno Indians. The Pechanga Band is in Southern California, Temecula.

First let me just acknowledge, I want to say to all of Minnesota folks, but particularly the Ojibwe, on behalf of my wife is from the Red Lake Band of Ojibwe; and I have some ties there in Bemidji. My in-laws are up that way as well.

You know, first of all, thanks for being here and thanks for doing this. I didn't think that I would be coming to this particular one. I was trying to make the one in New Mexico but that didn't work out.

So here's the thing: You know, my tribe has been -- our belief is that we've been around for a long time. In fact, the belief of the Luiseno People, the western Indian people, is that the world was created at a place called Exva Temeeku.

Exva Temeeku is where the present-day Temecula Valley is. That's 25 miles inland from the coast, 60 miles north of San Diego, 95 miles from downtown Los Angeles.

And Interstate 15, by the way, in that part of Southern California, goes right through the heart of our aboriginal lands, about a 40-mile stretch of our aboriginal lands are inland from the coast.

Our present-day Camp Pendleton occupies a significant part of our aboriginal land base. So our belief is that we've been there for thousands of years. Our work for bison, for instance, is something that's in our songs, in our stories.

And that word, uchinah (phonetic), is talking about a preacher, animal, bison in particular, which there were no bison in our region for the last few hundred years. The first bison that is encountered by researchers, using the development of a project when you go through paleontology or inadvertently discover, they're all below 20, 22 feet. They're please to see bison.

Those of you that know your years, your epochs, that's the Ice Age, 10,000 years ago to 1.8 million years ago.

Those are the creatures that are talked about in our songs. That's how long we believe we've been where we are. So, you know, when we talk with agencies about impacts to our landscape, our cultural landscape and the world around us, we see that that

mountain range over there is a core part of our creation story, and certain things happened on that mountain that happened in no other place, and defined our future, the future of humanity, we mean what we say. And we know something about what we're talking about.

So, you know, through the generations, actually, and even more recently through the last few decades, it's been frustrating to see so much of our landscape destroyed. Prominent landmarks mentioned in our songs that come to us from the time of creation or the time of the last flood have been destroyed completely.

You know, we can go to a mountain in the San Bernardino area 60 miles north of us, it's in our songs. It's a key landmark for our people. And it's part of what's left of the Portland Cement Plant. It's really a nub. It used to be a 15-foot hill. It's gone. And it took about 110 years to grind that thing down. But there were no environmental laws when that project started in the 1890s.

So more recently, let me just point out in the last 15 years I think the first thing that really impacted us in terms of large-scale projects, and there have been two. I'm going to address a 500-

kilovolt power line, and I'm going to address a mining project.

These aren't pipelines but they are large-scale infrastructure. And there's a discussion here about the inadequacy of existing law.

But in 2001, there's a piece of land that bisects essentially our reservation. It created two noncontinuous parcels of reservation land. We were fortunate in 2001 to be able to buy that 300-acre tract of land.

And as soon as we bought it, we learned that Sempra Energy -- Sempra Energy and San Diego Gas and Electric, the parent company being Sempra, had plans to put a 31-miles transmission line, 500-kilovolt transmission line right through that property, and endanger a 1500-year-old oak tree, as well as a village site that lies about a quarter mile behind it.

We were -- that was a period of time when land wasn't appointed to trust. There was a lot of paranoia about transfers, and we weren't able to bring that protection around until 2004.

So in the intervening years we had -- we had to get a piece of blocking legislation put into place so that 1813 eminent domain couldn't be asserted on the

property. That was a heavy lift.

We had to engage, you know, thousands of neighbors who didn't want to see a power line, we had to get the state's Public Utilities Commission blocking legislation from Congress, which, you know, this day and age seems absolutely impossible to accomplish, but in 2004 still was.

And then a negative decision on the project from the California Public Utilities Commission. So we were able to align a number of forces in this extremely heavy lift to prevent that project from happening. And we were successful, at considerable expense to the tribe, which we're happy to be able to do in hindsight, certainly.

There was no law that said, you know, tribe, you have cultural sacred sites on the pathway of this transmission power line. Therefore, this thing should be rerouted. It was eminent domain, we have the power to do this and we're going to do it. And they almost did.

More recently, about seven, eight years ago, on brand new construction out of Watsonville, California, Worldwide Mining Company decided they needed to develop an aggregate mine a half a mile off reservation lands, just west of Interstate 15 in an

unincorporated area of Temecula. And that particular mountain is the site of our creation area.

Our creation isn't just like one piece of ground. It's actually part of a mountain range, it's part of the valley below, it's part of a canyon formed by an adjacent mountain.

And this 75-year-long project, aggregate product, this rock product, they've been grinding down the inside of the mountain, leaving the face of the mountain looking the same, which was the appeal to the valley residents.

And, you know, we were able to kill the project. Actually not kill it. We were able to keep that project from happening because we were able to strike a deal with the mining company to buy their land.

Now, having to buy out the interests or pay for experts, and it was millions of dollars in defense of something is something, again, we were happy to do. But there was no law that was going to prevent that mining company from the complete and utter destruction of this one and only significant cultural and sacred site of our tribe.

Everything we tried to hang our hat on, certainly all the state laws, state environmental law

was a procedural dead-end. And actually a losing legal proposition.

So, you know, there is -- there's a complete deficiency in federal law that says hey, you know, there's a tribal -- there's a tribal interest or sacred site or something that -- maybe it's not a sacred site but it's culturally significant in the path of the project, it's -- it's something -- it's completely uncovered.

So I think in the big picture of things, that's the sea change that needs to occur. I mean, I'm prepared to point out some particular issues with regard to amending the NHPA and other things, and I'm going to get to those in a second. But I don't want to lose the big picture.

The main thing, and there was -- if there was a wish list here, I'd have one item on a wish list. And it would be a mandatory goal that would be inserted in every federal law that deals with infrastructure projects, vis-à-vis tribal sacred sites and government sites, and it would be avoidance.

Avoidance is really the key. And the only way to get there is from real consultation, early consultation of, you know, I didn't really, for

instance, know about this FAST thing, the one-stop shop website. Here we are, everybody is punching boxes and bringing testimony in at this lower level of government agencies dealing with the Interior or Army Corps or whatever. But there's some super-agency that's been imposed on top where a lot of the decision-making and green-lighting takes place.

And that's where the knowledge needs to be. That's where the information needs to happen. That's where avoidance needs to occur to the extent that that can happen.

You know, gone should be the days where a large public utility or a big pipeline company can just say, you know, the shortest path between here and there is that straight line, and we'll be dammed whatever comes in between us. We're just going to forge our way through there.

That should not be the policy that drives this stuff. There is just too much at stake and we've already lost too much to get us to this place.

So, you know, I just want to highlight that it's been -- it's been a painful history, you know. Being an Indian tribe, we all have our painful histories. And I'm mindful of a treaty that was negotiated, went into a drawer in the U.S. Senate for

45 years after it was negotiated.

And our treaty was discovered in 1905. And in a big moment, it was like what do we do now. I want to point that out because that treaty went out display at the NMAI now, and it will be there for the next three or four months, through January.

But that treaty has been covered up. Most of the time, since it was negotiating in 1852, it has been in a drawer, in a box somewhere, rather than in daylight. So it's probably going to have a total of four months.

But on the basis of that treaty, our land in the 1850s, we had to village our people, we were evicted from and kicked out, and the land was taken and the reservation was set aside in 1882 by Executive Order.

So we're fortunate that we're only two, three miles away from where we believe our world was created. And us and several other descending bands share this history, and the history with the land as well. And we take particular care to assert, to be custodians of these things.

But I want you guys to hear what that dynamic is because we've been very engaged in it.

So first, in terms of the scope of review

that's been proposed by the agencies' framing paperwork, according to that document, the agencies intend these consultation sessions to focus on federal agency permitting actions on infrastructure projects.

It suggests that we're only going to be looking at actions with a large footprint, such as Dakota Access Pipeline and some of the other pipeline projects that have been mentioned, while not looking whether the federal permitting process as a whole is flawed with respect to considerations of tribal concerns.

I'll tell you simply that the process as currently administered is at best inconsistent, and more often than not results in impacts to resources of value to tribal communities. Impacts resources of value to tribal communities.

So it's a larger inclusive term than just tribal, religious and sacred sites, includes water resources, air resources, and things of that sort.

In the interest of time, I'll address some of my major concerns, which will be concerned more in our written remarks.

First I want to address the concern that regarding the two narrow focus of the agencies'

approach to this problem. While large infrastructure projects do indeed pose impacts on a massive scale, we can't overlook the fact that agency actions on even smaller projects likewise have natural impacts to tribal resources, largely because of cumulative impacts through time.

The Pechanga Band has encountered issues with the implementation of Section 106 under the Natural Historic Preservation Act on both large scale and more limited scale projects like large-scale housing developments.

California has over 39 million residents. Two-thirds of those residents live in Southern California. And most of those people seem to live all around my reservation. There's a lot of traffic in our area.

So for example, 2001 -- well, I gave you the example of the power line so I won't re-address that. But in addition to large-scale projects like that transmission line, Luiseno cultural resources and sacred places are threatened and destroyed by smaller projects, largely residential and commercial in nature. One example just to the south of our current day reservation in northern San Diego County, it's a traditional cultural property and village site known

as Tomqav.

If you look on a map, it's at the intersection of Interstate 15 and Highway 76. We call the site Tomkav. The mountain that's associated with it is called Tomka.

This area plays an important part in our Luiseno creation and in our world view. And it is one of the major events altering the world of our people, and in fact everybody, but our people occurred.

In addition to this cultural component, the area is comprised of a large village site, which also includes multiple human remains. In short, following approval under our state and environmental law of four separate projects in the area, which includes the San Luis Rey River, a jurisdictional water under the Army Corps' control, 16 separate burials were then unearthed.

In addition to the intangible cultural values of this area, and the other tangible resources such as rock art, habitation remains and artifacts.

In this case, the Army Corps must issue a Section 404 permit under the Clean Water Act, which triggers a Section 106 consultation process under the NHPA.

While there are many issues regarding the Corps' actions on this project, in the interest of time I want to point out similarity of this project with those larger infrastructure projects such as DAPL.

The Corps believes its jurisdiction is limited only to a small area of any given project, specifically the permit area. This approach allows of Corps to ignore the direct and indirect effects that will occur because of the permit approval.

Take the Tomqav example I just gave you. While the permit area is limited only to the jurisdictional waters of the four projects in this area, approval of the permit has huge direct and indirect impacts on the cultural resources, the so-called intangible traditional cultural property and the tangible resources such as human remains and rock art that are ignored in this myopic approach.

These projects will not only destroy the village site, but has impacted multiple human remains and will forever change the landscape that comprises the cultural importance of this area to my People.

Thus, the approval of the permit provides for widespread impacts to these resources, but which impacts the Army Corps is allowed to ignore because

it believes it has only a limited review area. It's absolutely maddening.

Under the implementing regulations for the NHPA, the area of potential effects is defined as a geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties. By limiting the area of potential effects to only the permit area, the Corps is simply ignoring the direct or indirect effects that an undertaking, such as permit approval, may have on cultural resources such as those described in this one example.

I want to note for the record that this severely limited view of the agency's responsibility is the result of what's often referred as Appendix C. Appendix C was promulgated by the Corps, which simply lacks any legal authority to develop and implement its own regulations.

In fact, that authority rests solely with the Advisory Council on Historic Preservation, the federal agency responsible for compliance with the NHPA, and which has already promulgated regulations.

The Advisory Council has long argued that Appendix C was developed without legal authority, and that the Corps acted outside its scope of authority.

Appendix C is in direct conflict with both the NHPA and the regulations promulgated by the Advisory Council and must be revoked.

In fact, in a 1985 case the Los Angeles Army Corps District was found in violation of the NHPA for using Appendix C to narrow its review to only the permit area, thus ignoring the indirect -- the direct and indirect effects of its permit approval.

We'll expound more on this issue in our written comments.

So federal permitting actions are not just a concern on large-scale infrastructure projects. Tribes face the same issue on smaller-scale projects, such as the one I just described. That example is only one of many that my Tribe encounter on a near daily basis because of the pace and scale of housing development and commercial development in Southern California.

For this reason, we urge that the agencies broaden the scope of review on federal permitting actions to not just large infrastructure projects but to all actions requiring federal agency approval or oversight, even on smaller projects.

Now, when the NHPA Act was passed, the focus was on concerns regarding the historic fabric of the

United States. Further, the NHPA is a process law and does not provide for the substantive protections of tribal resources. The reading the law, a person can see that its focus is on historic buildings and larks, tangible items, tangible, quote/unquote, with values that are easily apparent to the general public.

Consultation with tribes is not appropriately defined and has been historically used as a procedural box-checking action. I do not believe this is the way to ensure tribes' cultural values and resources are protected, as they should be under the government's trust responsibility.

We, tribes and federal agencies collectively, are at a possibly game-changing juncture. As the initial consultation letter and framing paper suggests, the results of these consultation sessions and comments may result in one of two options: One, legislative reform of the NHPA; or two, new legislation. And possibly some combination of both.

So with regard to new legislation, we believe, Pechanga, that the best way to ensure that tribal concerns are addressed through meaningful and culturally sensitive consultation is to draft new legislation that is focused only on tribal resources.

Tribal resources deserve their own protection under a framework that can accommodate the unique views of tribes, in addition to the processing of tribal information. The framework upon which the NHPA was built was not meant to incorporate these sources of information.

So, you know, we talk about a broken system. But at best, the system wasn't really broken. It just was never even geared to address tribal issues, tribal values.

The NHPA is best used to address resources with values that can be compared to -- against other types of similar properties, and that have values accessible and important to a broad spectrum of individuals. For tribal resources it's simply not the case.

Looking at like properties cannot compare these values, nor can a professional such as an architect or historian point to the value as a type or example of a particular historic period. It's bizarre to assert that that could actually happen.

So in sum, the NHPA is simply not built to accommodate tribal sources of value and information to Native American tribes. As such, the law will always fall short in trying to address the impacts to

these resources.

I do commend those who have been trying to use this law to protect tribal resources through the years; however, I give short shrift to that. It's been a valiant effort. But we need a law that has some force and has some backing behind it.

So this very conundrum then has examples in other contexts, examples that I think can direct our conversation to how best to address federal agency permitting actions and their impacts to tribal cultural resources.

So I'll just use one example: NAGPRA, NAGPRA of 1990. That law provides a framework for addressing Native American remains, grave goods, sacred items, and objects and cultural patrimony that are either housed in museums, or found after 1990 on federal or tribal lands.

I want to make two points here. First, NAGPRA was absolutely necessary because no other federal law at that time could adequately address the unique cultural issues related to these items.

The Antiquities Act of 1906, for example, addresses archeological items, very narrow, which are very different from human remains, and the other items that NAGPRA protects.

NAGPRA, then, was essential to addressing the tribal concerns of return of their ancestors and their burial items, sacred items and objects of cultural patrimony.

The second point I want to make is that NAGPRA builds into the law a universe of appropriate sources of information for proving cultural affiliation. These sources of information include tribal oral histories and traditions, linguistics, ethnographic information and other sources that are not per se academic or citable.

This is fundamentally important because tribes use these same sources of information to describe the cultural resources threatened by federal agency actions, sources that are simply in opposite to those the NHPA anticipates will help determine the presence or significance of historical properties.

One can take pictures, find historical photos and architectural descriptions of a building or bridge, but those sources simply cannot be replicated when describing the tribal values of a given resource.

One final point I'd like to make in support of the new legislation is that recent legislative reforms with regard to Pechanga Band's efforts in the

State of California, under the environmental law there in California, the Environmental Quality Act, CEQA, a lead agency must assess a project's impacts to a variety of environmental areas, such as traffic, air, and biological and archeological resources.

In September 2014 CEQA was amended specifically because the original iteration of the law was simply inadequate to address tribal cultural resources and the values attributed by tribes to such resources. As such, the law now has three very significant changes, among others, that are relevant for our conversation today.

First, tribes are recognized as experts in their cultural history, thus placing their information on the same level as those of scientists and academics.

Second, tribal cultural resources, which include those intangible resources such as cultural landscapes are now recognized as distinct from archeological resources, which must be separately analyzed under the law.

And finally, these resources must include the tribal values attributed to them by the tribe. This means that an agency must consult appropriately with the tribe to gain an understanding of the tribal

values of the resources, which must in turn be addressed in the final environmental document.

If we look to the intent of these legislative changes, we can see how preservations laws enacted decades ago are simply inadequate to address tribal cultural values and resources, informing us all that it is time to look towards a better option to ensure tribal resources are identified and protected.

Now, with regard to reforming the NHPA, let me summarize first by saying, we're talking about a square peg in a round hole kind of thing.

For the reasons already stated, I believe new legislation is the best route to addressing the concerns that have been expressed. However, I also want to provide potential solutions under the existing framework.

I have several ideas on how to amend the NHPA to address the issues I've spoken about today and to incorporate the tribal values in the identification and presence of and assessment of impacts to tribal resources. I'll address a few ideas, which will be expounded upon in our written comments.

These are bullet points:

First, create a new category separate from historic properties that properly addresses the

unique nature of the tribal resources.

Second bullet point, recognize tribes as experts with respect to their culture and resources.

Third, identify proper sources of tribal information, such as is included in NAGPRA, to avoid arguments over tribal information versus scientific information, which will assist federal agencies in properly identifying and assessing impacts to tribal resources.

Bullet four, specifically revoking Appendix C and clarifying which federal agency has authority to promulgate binding regulations to implement the law.

Next bullet point: Amend Section 106 to more appropriately include tribal consultation at specific junctures in the process, and to define what proper consultation is under the law.

To that end I would add proper consultation to include hallmarks of meet as early as possible, and including the goal of avoidance of tribal cultural properties, a goal if done early enough, is sometimes possible. And if -- and if not, at least a conversation is taking place early and everybody knows about it.

The next bullet point, address joint state/ federal environmental review to avoid arguments that

a federal agency is constrained by an approved project pursuant to state law.

That's this thing here, you know, where each agency, the state points to the feds, the feds point to the state, and nobody has responsibility or accountability, and the tribe gets squeezed all the same.

And then the last bullet point, amend existing NHPA regulations with tribal consultation.

So these are just a few of the potential approaches and amendments that could be made to the NHPA and existing regulations that would address the shortcomings of the legal framework as it currently exists, and considerably upgrade the process as it exists now, relatively speaking.

The third thing here, and probably the last of these things, is that -- you guys are lucky I have a flight. I traveled from Southern California to get here.

United Nations Declaration on the Rights of Indigenous Peoples, the UNDRIP, no matter which avenue is ultimately taken, it is time that the United States move beyond simply supporting the tenets of the UNDRIP, but rather incorporate its articles into law.

At the heart of the declaration are the rights of all indigenous peoples to their culture, water, cultural properties and resources, fair and meaningful consultation and outreach by the federal government. The UNDRIP provides a powerful framework upon which the federal government can build a more transparent, fair and meaningful process for federal agency actions and activities.

Respecting the ability of other tribal leaders to provide comments today, I'll keep my oral statements on this as brief as possible. However, I do want to provide a couple of key points for your consideration as you digest these comments.

First, the UNDRIP provides that indigenous peoples have the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archeological and historical sites, artifacts, ceremonies and literature. That's Article 11.

Indigenous peoples have the right to participate in decision-making in matters that would affect their rights, Article 18.

The declaration requires states -- requires states to consult with indigenous peoples in order to obtain free, prior and informed consent before

adopting and implementing legislative or administrative measures that may affect them. Article 19.

And then Article 25 provides indigenous peoples the right to maintain and strengthen their distinctive spiritual relationship with their traditional lands, territories, waters and other resources, and to uphold their responsibilities to future generations.

And finally I want to point out Article 40, which provides the right to prompt decisions through fair and just procedures for the resolutions of conflicts and disputes.

In looking at just these few articles, I see that under current federal law and process, tribes are afforded few, if any, of the basic human rights to which we as indigenous peoples are entitled. We cannot maintain and protect our past, present and future cultures, including tribal resources because federal law simply falls short of providing a way for us to do so for the reasons I've already discussed. We aren't allowed to participate, meaningfully at any rate, in decision-making on matters that affect our rights, as demonstrated by the consultation issues you've heard about, and the shortcomings of federal

law and regulations.

And finally, federal law certainly does not require consultation to obtain free, prior and informed consent on matters that may affect them, or we would not be here today having this conversation.

We as indigenous people owe not only a duty to our ancestors and present generations, but also to our future generations. The federal government owes a duty to all tribes under the federal trust responsibility to not only act in their best interests, but also to ensure that tribes can fulfill their obligations to their peoples. In our current situation, the federal government is failing in that obligation. It's forcing tribes to struggle and fight to keep from failing in their obligations to their own people. This outcome is certainly not what either party should endeavor to achieve. We can do better, and we need to push hard to do better.

So in closing, I want to thank the agencies for opening these consultation sessions to address these concerns of all tribal nations with respect to federal permitting actions. My people have fought against loss for generations, first when our homelands were taken from us, and then when we were evicted from our villages, and then followed by

generations of struggles just to survive.

Now in this contemporary era we fight against the loss of our tribal heritage, our tribal sacred sites, our identities, and the loss of our tribal and natural resources, and the loss of a future in which our next generations will thrive in a world that advances their identities as tribal people.

I hope that today marks a turning point for all tribal nations, where our voices are heard, our cultures are respected, and our histories are protected, and where the federal government proudly upholds its obligations to us as sovereign nations.

So I have hope in spite of the heavy lift in front of us all at this point in time. I think my comments feel like they have a different weight to them, pre-election and post-election.

I hope as many of you continue here, I think previous comments mentioned the importance of the glue that you folks provide to this process. You know, it's pretty obvious you are developing this -- I think it's an institutional memory. That's one of the key things that folks in your position to serve throughout government, that continuity of government.

You know, CEO Melanie Benjamin, I think she's right here, said that regardless of who is in your

seats, we don't get a choice. We have to keep pushing forward. We hope it's with you. You guys are developing this record, and you have this human connection to what we are saying. And that is all fundamentally important.

Ms. Darcy, you mentioned that -- and thank you. I want to thank the Army Corps for the letter yesterday, the decision -- I don't know what it's sufficiently called legally, this time-out, it's significant. It is -- I think you were tentative about use of the word prominent, the prominent DAPL action going out and taking place here.

I want to assert that it in fact it is prominent. It's probably one of the most prominent things that is taking place.

On a personal level, my daughter has been out there as a supporter of people who are on the front line and praying, and trying to keep them from getting pushed to the ground and stuff like that. And in the process, having to wear a bandanna to keep from getting sprayed or getting that stuff in her face.

And there's a lot of stuff that shouldn't be going on out there that is because had the consultation been different, nobody would have had to

go through this kind of thing.

And I hope this -- I hope it doesn't have to be another DAPL. You know, we can do this if we have early consultation, if tribes are involved in a sincere way early in the process. That's all really that needs to be happening.

Now, that is a heavy lift to rewrite laws, anachronistic laws, but it can be done. It needs to be done in order to get some integrity in the future and maintain the trust, and the government-to-government responsibility, trust responsibility that the U.S. has with tribes.

So I want to thank you for the opportunity to share this with you. Our comments, I promise, are much more in-depth, full of citations and stuff like that and lots of good reading.

Please take it to heart because this is our future, you know. We have an experience of mistakes to look to and make things better. So thank you very much.

(Applause.)

JO-ELLEN DARCY: Thank you. The next speaker this morning is Gary Paul DiPiazza.

(Discussion held off the record.)

GARY PAUL DiPIAZZA: Anish na. My name is

Gary DiPiazza from Little River Band of Ottawa Indians, Manistee, Michigan. My traditional name is Sees-Bak-Tunse, which means Real Sweet Sugar. I always look at that as the song by Johnny Cash, and it helps me be here and deal with these things.

A few things I want to bring up. A lot of things we feel that we're, you know, not consulted on until after the fact. A lot of times things are put out for us to consult on on the register, but some things I think need to be actually the tribe -- you need to get ahold of us, some important things.

A couple things I do want to bring up, you know, being out of Michigan, we have our own crisis up there. It's Line 5. And that runs under the Straits the Mackinac bridge. And that's capable of running 23 million gallons of oil per day. And that pipeline is 63 years old.

And most anybody knows, you know, iron 63 years old submerged under water, most people don't have a car that old, let alone our Corps tribe -- or our Corps, with the tribes consulted with the Corps of Engineers, because the pipeline was floating on the bottom of Lake Michigan under the straits, and they want to strap it back down.

And that was kind of an afterthought to consult

with the tribes, which that's their Great Lakes fisheries, which is a great concern, you know, because they want to strap it back down and weld on it some iron that's 63 years old and it's very fatigued.

Even if that line burst today, by the time they shut it off you're going to have about 100 million gallons of oil in Lake Michigan which is going to devastate fishing, tourism. It will be devastating.

And I think a lot of it was, you know, the consultation with the tribes and also the governors trying to, you know, have a committee with all tribes involved, you know, Great Lake tribes. But that was kind of after the fact.

But a lot of it is -- a lot of it has to do with the timelines. You know, we need consultation on things before they happen, before they transpire.

You know, every morning a lot of our leaders and spiritual people get up and they greet the sun and give our prayers to all that's going on in this country, and all the elections and things, and I hope we'll have consultation with what's going to transpire in the future.

A lot of my people back home are very concerned with their healthcare and things on that order, and

what may happen with their sovereignty and things. You know, I'm responsible for almost 4,000 members and their families, which is almost 60,000 people, that I'm responsible for. And in the morning I weep for what I see for my relatives across this country.

And I hope we can, you know, give a little better consultation with us. Like I said, I know I'm not -- the Great Lakes Basin, a ways from home, but I needed to be here. That's all I can say right this minute. Thank you for your time.

(Applause.)

JO-ELLEN DARCY: Thank you. Our next speaker this morning is Dale Greene.

DALE GREENE: I'm moving from the left to go over to the right, kind of a symbolism. You guys are just like a jury.

(Speaking in non-English language.)

My name is Dale Greene. I work for the Leech Lake Band of Ojibwe as the self-governance guy. I've got a written statement that's about a page and a half long. If you don't mind, I wouldn't mind reading it before you take your break here.

I want to say a couple things first. When I say Anishinaabe Ojibwe it means quite a bit different things for different people. But for this here

setting it means the indigenous people.

You know, in lieu of the recent elections I'm going to say the United States is a great country. The State of Minnesota is a great state. I mention that because I believe that with all my heart. But for us Anishinaabe Ojibwe people, and I include the Dakota/Lakota people, we paid a heavy price for that greatness. And often, that sacrifice that many people call it historical trauma and whatnot, that's still prevalent in our day-to-day life today.

The price that we paid was premature death, the loss of our land and resources, in the great 1871 American Indian Civilization Act is where plenary power really took hold and started that process where we were considered less than persons, or whatever, to have constitutional protections.

For many of us, our identities held in trust when we go through a federal recognition process, our resources, our properties and lands and resources are held in trust. Quite frankly, we're at the mercy of the different agencies.

You know, even coming down here and seeing the Army Corps of Engineers kind of triggers some bad memories that are historical because many of our rice beds that, quite frankly, were our buffalo, were

dammed and destroyed, you know, in the early 1900s, 1890s. Many of our rice beds in the central part of Minnesota were drained to create farmland.

Yeah, I could sit up here today and tell you that I believe it was done on purpose to starve us and destabilize and dysfunctionalize our families and our communities that have a quite visible problems yet today, but I want to focus on more of the positive, that this is a great state.

The resources that were used in the Spanish-American War came from Minnesota, Wisconsin and Michigan. The World War I, World War II, Korean and Vietnam, that iron ore came from our region.

The timber that was used to make the cities great in Minnesota, Wisconsin, Michigan and wherever, even I would imagine Chicago, that came from this great state.

So I mention that because I want you to remember our peoples sacrificed that seems to have been forgotten and overlooked in the history that made this a great state, and that contribute to making America great.

So I'm going to read my statement now.

To whom it may concern: The Anishinaabe' Ojibwe Akii, indigenous lands, contains the essence

of our ancestors and our people of today. Our bodies, bones, our actual being have nourished the earth from the beginning of when, the Anishinaabe' Ojibwe, were originally placed here. The very essence of our ancestors and of the Anishinaabe' Ojibwe living today nourish the waters, river, streams, lakes and ponds. It is in the air we breathe. In return, the water, with the air and other resources, nourish us well. The essence of our ancestors mingle with the spirits of these living things today. Our being here noongom today is proof of this.

Our creation stories tell us when we, the Anishinaabe' Ojibwe people, were originally placed here on Turtle Island; we too were originally spirit beings without mortal forms or body with substance. Our creation stories place us omaa, here on Turtle Island fully grounded in the respect we have for the land, the plants, and the animal beings. All of these we understand have spirits.

Our stories tell us of Kitchi-Manido, the Great Spirit, the creator, God, the Great Mystery, provide for our creation and provide the living plants that we use for food, shelter and tools. The animal spirit beings, the two-legged and four-legged, winged

beings and water beings, were also asked to help the Anishinaabe' Ojibwe. In turn, we have the responsibility and therefore the inherent right to protect our resources, our lands, and our culture and our people.

As Anishinaabe' Ojibwe we have a right to meaningful participation and decisions that affect us. As the original people of this land, our rights are not new, they are not unexpected, and they are not aspirational. These inherent rights are recognized by the United Nations, and we expect to enjoy them, regardless of the political climate in the United States.

In the past there has been consistent and wide-spread failure on the part of the U.S. government to engage in meaningful consultation with Indian people. The conflicts and litigation over the use of protection of resources here and in places such as Standing Rock indicate that egregious and consistent failure of the U.S. government to engage in meaningful consultation with Indian people. You are sorely derelict in your fiduciary trust responsibility to protect the resources of Indian people.

I remind you that you are required to obtain

the free, prior, and informed consent of the Anishinaabe' Ojibwe people, through the representatives they have chosen, before making decisions that affect us. A large meeting with limited times, such as this, will not suffice. Visit our reservations to engage in meaningful consultation so that you can better understand our values and responsibilities.

The true threshold determination of the success of your consultations will be whether the Anishinaabe' Ojibwe and other people and other Indians are able to enjoy their individual human rights and their rights as indigenous people. This cannot be accomplished without meaningful consultation.

With that I say miigwech and once again welcome you to the great State of Minnesota, that we all seem to enjoy the pristine waters. So thank you.

(Applause.)

JO-ELLEN DARCY: Thank you. We'll take a break.

(Recess taken between 10:05 a.m. - 10:20 a.m.)

JO-ELLEN DARCY: Thanks, everybody. Let's get started with Round 2. A couple things before we get started with this next session. I was earlier

asking all of the folks from the Army Corps of Engineers who are here in the audience to stand up and be recognized.

And we also have other representatives from other federal agencies, some of whom are represented up on the panel, but some are here in the audience. And if you could start on this side of the room. If other members of the federal family who are here representing federal agencies stand and introduce themselves, I'd appreciate it. Start over here on the left-hand side.

JOSH FITZPATRICK: Josh Fitzpatrick, FAA, environmental specialist, Dakota, Minnesota, First District Office.

JO-ELLEN DARCY: Thank you.

LINDSAY BUTLER: Good morning. I'm Lindsay Butler. I'm the deputy manager of the FAA Dakota office here in Minnesota.

JO-ELLEN DARCY: Thank you.

DAVID TALBOT: My name is David Talbot. I'm also representing the Federal Permitting Improvement Steering Council.

JO-ELLEN DARCY: Thank you.

TEDD BUELOW: Good morning, everyone. My name is Tedd Buelow. I work for USDA Rural

Development. I live and work out of Denver, Colorado but work for our folks in D.C. as a tribal liaison. Nice to be here.

JO-ELLEN DARCY: Over here on the right.

MARY RASMUSSEN: Good morning. I'm Mary Rasmussen with the USDA Forest Service representing our eastern region.

JO-ELLEN DARCY: Okay. Thank you. What I thought might be helpful for moving forward here is for me to announce the next speaker, and then announce who is going to follow after that so you know when you're on deck here.

The next speaker will be Catherine Hollowell. Then she'll be followed by the three speakers who are representing the Sisseton -- I'm going to butcher your tribe, three speakers from that tribe.

And then after that someone I passed over earlier this morning, I apologize, Kevin DuPuis.

So if Catherine could get started, that would be great.

CATHERINE HOLLOWELL: My name is Catherine Hollowell. I'm a tribal council member from the Sault Ste. Marie tribe of Chippewa Indians. And thank you for coming here today. And also thank you for everyone who has given such good testimony up

until now.

In fact, I think I've heard all the talking points touched on so I'm going to keep this brief so that we all have an opportunity to speak. And I appreciate everyone who has assembled here today.

We do have -- we do have written testimony that we will submit to the record with citations and white papers.

I just want to say that there is so much competency in Indian country. I don't think we give ourselves enough credit for how we've invested in our own children to be advising us, whether it's in environmental or engineering or education or historic preservation or we send them through law school and we send them off to Washington, D.C. to be our ambassadors in whatever capacity they hold. So I'm really proud of Indian people and how we've invested in our youth.

And we are standing on the shoulders of our grandparents. You are -- our ancient grandparents as well. You've heard people speak much more eloquently than me to that, so we'll leave it at that.

But I want to say we look long into the future and we hold on tight to who has brought us this far along the way. So I'm always appreciative when those

that are not from our tribal or sovereign nations recognize that value that we bring to the table.

And I appreciate -- someone just recently stated that we're proud of the United States. We're United States citizens, and we know our contributions to this great country, and we also -- we hold the cost that it was to us.

And it's not something that we can let go of and move necessarily to the suburbs or elsewhere in the United States. And I've heard a lot of people say that's, that I'm moving to California or move to New York City where the climate is more progressive for our world views. But we can't leave the land. We are people of the land and people of the water.

And myself, I'm here today particularly to speak to our Nokamis grandmothers who are water protectors and water-walkers, and some of them are kind of getting kind of antsy and they're asking me as a tribal representative of a sovereign nation of when are you going to make that federal government honor our treaties. What are you doing, what have we got you there for, that you haven't been able to make progress in that way.

So we have our constituencies as well, and we want to make sure that we are recognizing them.

So the things I say from here are just going to be just a little bit of a story of who I am and where I come from, and it recognizes the people on the ground at home who are wanting me to be here today and speak to you.

I think I will start, because we started off so well with recognizing our veterans in the audience, and those assembled here. My father was born in 1905 and served in the Marines as a young boy. But ultimately worked for the Michigan State Highway Department and entered World War II in the Army Corps of Engineers, and was stationed in the British arena over in the Middle East.

And I know it was a profound time for my father. He actually got quite close to the Bedouins and the various tribal peoples who lived in that area. And because he appreciated their cultural, their weaving, and he took that on as something of big interest to himself. And he even got some national renown in his retirement for his -- for his own expertise as a weaver. And he brought that back from the Middle East with him.

He's also the one who first mentioned to me a prophesy story that many of us share regarding the Black Snake, which big surprise, they were talking

about fossil fuels. He brought that home to my mother, who had never left the State of Michigan at that point.

And he said, you know, the next world war will probably start from where I've just come from. And that was part of his own conversation with the people who lived there, the indigenous people of that region who were even then starting to express anxieties of what they could see developing in our new modern worlds.

My dad ended up retiring as a lieutenant colonel from the Reserves, so I just wanted to share with you that I come from a family of many veterans, my sister and all my brothers. And I looked to them all as protectors in their military service as veterans, including my husband, who served during the Vietnam era but probably his biggest engagement was as part of the 101st Airborne deployed to Mississippi to provide protection, civil rights protection when James Meredith -- when the federal law said that he has a right to attend college in the state, and he got push-back. The federal government and the president got push-back from the state that we're not going to honor that. And it was one of the rare occasions that federal troups had to come down on the

ground to protect civil rights of a citizen.

And it's been very heavy on my mind here watching what's going on in Standing Rock and the civil rights situation there, and who, you know, it's concerning to many people to see law enforcement, particularly private security law enforcement, aligned with not necessarily the citizens in protecting those rights.

So that's a conversation that's going to carry on from here, probably -- I'm glad it's in a way right there right now with the change in administration.

But when I look at veterans, I look at them as protectors, and I just want to say thank you to all of our veterans.

I have several talking points, but as I said, a lot of them have already been touched upon. I would like to talk, though, about a few points. And then we'll just submit papers.

I'm a little -- I was in Phoenix when we had the listening session. And I noticed that the EPA was not at the table, and I notice again today that they're not.

Now, they're a regulatory agency not necessarily involved with the building of

infrastructure, but when you're a water protector, and for many of us this is what this is about, protecting the waters. It's kind of sad that we don't see them here.

So I hope -- I hope somehow at the higher levels, at the White House level or whatever, that they're brought in and some of this information is shared with them because all the federal agencies play a role in this.

We come from Michigan, so as you heard mentioned, Enbridge and Line 5 is of particular importance to us. We're very concerned about Line 5. We'd like to see it de-commissioned because we don't think that it has the -- well, it's not a matter of if. It's a matter of when. There's going to be a leak.

And for Indian tribes who have treaty-protected rights to our fishing activity in the straits, the spawning beds are right there. Literally those pipes are right above them. And it won't take a catastrophic spill. It will only take a mild spill to forever damage those spawning beds and therefore our rights to fish in the Great Lakes.

And unlike the oceans, it's not going to revitalize itself in the same way. It's one percent

of the surface water, fresh water surface water on the globe, it's worth protecting.

And it seems to be more a conundrum for the federal agents and local governments, because it was put in prior to many of the laws that protect the environment.

So it comes down to permitting. PHMSA has a big role in that as far as permitting, maintenance permitting. And we strongly feel that that's been a very rubber-stamped action for many years. We understand that PHMSA is a much smaller agency, and they don't have a lot of folks riding around. But obviously we're not being consulted in that respect, even though our treaty- protected activity is really in dire threat to that situation.

So, you know, we find ourselves in court a lot litigating. And we invest a lot of time in our expertise on the ground to develop a case for us. And we're just thinking so much that if, somehow, trying to keep it all simple.

When permitting has to happen, when an action has to happen, if the first question can be what is going to be the impact on the tribes. And if you don't even -- and we can understand that it's complicated, but it's easy enough to pick up the

phone.

I know that the Department of Interior in a moment's notice can at least identify those tribes in a particular area that are going to be impacted by a decision that is going to be made.

So it's not necessarily that a new federal regime has to be enacted so much as just keep it simple, and ask that pertinent question, who is going to be impacted. And then engage them at the table as soon as possible.

So let me give -- let me give acknowledgment to the FAST Track Act, is that what it is? And that was implemented by Executive Order in 2008. We need to be at that table. If there's something that we can go home and see implemented relatively quickly, even though the dynamics are changing in D.C. right now, that would be very helpful, because if we're at the table, we can give that guidance and advice.

I want to take a moment to talk about -- I also sit on the National Tribal Operations Committee for EPA. Maybe that's why I'm a little sad that they're not here. So I think I can speak to what many tribes, at least in Region 5, which is Minnesota, Wisconsin and Michigan, feel about Enbridge.

In the State of Michigan, the worst oil spill

in the continental United States happened with Enbridge Line 6. It was pretty devastating.

Then Enbridge Line 6 is part of the Lakehead System. It connects to going north, Line 5, which is where that pipeline just floats suspended in the Straits of Mackinac.

And then of course it connects with Line 6 -- no. Line 3? Line 6, going through Minnesota. And you've heard the tribes from there speak to that. They've -- they've developed relationships. We're trying to develop a relationship with the state.

But there's a couple points that are important here. When federal authorities get delegated to the state we are instantly left out of the situation. It's just by the good graces or whatever, good relationship we might have at any particular point with the state that we have a seat at the table, and it's tenuous. We look to the federal government for our relationships.

And when the dollars get allocated to the state, and when the rule-making and the permitting get delegated to the state, we're probably going to have -- you can bet on a problem.

And so the higher up we can be at some of the policy levels, we can maybe avoid problems

downstream. Because I know there's a notion that decisions are going to be made at the lowest level possible. And for tribes, that's where we start.

And if nothing else, Standing Rock is the best example of late, almost an awakening. We're going to keep elevating that up until it gets to the real decision-makers from the high perspective.

So it just seems it would be better if we were there in the decision-making process down from there, we'd probably avoid a lot of the angst that there is.

There's a problem with communication among the different agencies. I think somebody already spoke to it today where EPA's role is strictly after there's been an incident.

Army Corps of Engineers might be involved if it's an easement issue in a permit or in new construction. PHMSA in the maintenance permitting.

If everybody is not talking, we individually as tribes, all 552 tribes, we have to engage all these different agencies.

So the good thing is we've built up some pretty good expertise in that respect, but it's wearing, and there's been a lot of nobody here, this isn't -- this doesn't regard anyone here in particular. But there's been some real disrespects that have been

paid to Indian people across the nation. And it's a failure to recognize our role in this, in that we do have rights and you do have responsibilities. So I hope that those can be shared.

Before I step down I wanted to speak to Enbridge one more time. And this is an example of how it can go wrong.

So I mentioned the spill that happened. And that ended up bringing it to -- involved the Department of Justice, and the eventual settlement.

And rather than being settlement regarding the line that broke, it was a settlement and a consent decree between EPA and Enbridge for the rest of the pipelines that make up the Lakehead System.

Not once were we consulted about it. And it was only -- nor was it -- we notified. It was only by thumbing through it and looking on page 76 that we saw Line 5 was involved in there, where Enbridge is consenting to agree to some stipulations with the EPA. Nobody talked to us.

We don't necessarily think that those stipulations are adequate. And I can see right now Enbridge is going to shrug their shoulders and say hey, we're just complying with the consent decree.

So that's an example of the disrespect that

happens when we're at least not allowed to come to the table.

One thing I haven't heard yet, so I'll just touch on it. As a good example that might be a best practice, if you will, is how FCC engages with tribes when it comes to putting up the various cell towers around the United States. That has been -- mind, you it's small scope. It's not like you're running a pipeline through multiple states and many tribal nations, but it works.

And we're always contacted right off the bat to give consultation on whether we've got wetlands or where our protected and sacred sites are. So that might be a real practical thing to look at. I don't know how you're going to incorporate it into larger infrastructure projects.

But I'll just conclude by saying that spiritually we're water-protectors. We can't help it. That's who we are. It's just how it is. We're not going anywhere. We're going to be here moving forward, regardless of the focus from the administrations and Congress.

So hopefully the next time we might see some of you will be in D.C. as we start strategizing on transition statements for the next administration,

and we can start to talk about sustainable economies. We think we have much to provide to the federal government, a way to go forward, with a globe that's getting smaller by the day. Thank you.

(Applause.)

JO-ELLEN DARCY: The next speaker is Dave Flute. And then I believe Dianne.

DAVE FLUTE: (Speaking in another language.)

Very briefly, I could go on speaking my Dakota language, but I don't want to take up too much time because there's a lot of good points that have been made already and I don't want to be redundant.

But I'm a member of a treaty tribe. I'm a member of a treaty tribe here. And that's important to us, like the treaties that are made with Japan, treaties was made around the company.

I'm an Afghanistan veteran. I'm a Purple Heart veteran. I say that with much humility. I say it with great respect to the men in uniform today.

I seen a lot of the full birds walking in. I almost snapped to attention. But I thought, I'm going to give them hell. It's my turn to give them hell; not give me hell. So it's with great respect to you, sirs.

I am the chairman of the Sisseton-Wahpeton Sioux Tribe. We are a treaty tribe. We are one of few remaining treaty tribes in the State of South Dakota and the Midwest. And we don't say that lightly. A treaty is a treaty.

And the United States government is -- needs to be held to those obligations, whether they're implied and written in the different records and legislation, the different arguments that have been adjudicated in court, even in the highest court.

But we have issues too. Our Enemy Swim Lake, you know, I've seen some comments about the dredging, that you have certain authorities over dredging and the permitting, and you need to be -- to try to strengthen the consultation process. You need -- you need to be listening to the grassroots people. You need to be listening to them, not just elected leadership.

Yes, I'm an elected official, but my thought process and my mentality, I'm enrooted in the grassroots people. That's where I come from. I don't go out and be a showboat. I don't like Facebook. I don't ask to be a Facebook. I'm a grassroots Indian. And we take that very seriously.

And we ask that you listen to those people that

know the sacred sites, they know the historical sites of our different reservations that were assigned to us or that we say assigned with negotiations with the United States government.

And just to reflect a little bit on NAGPRA, the repatriation amendment was added to that. I know that for fact because my father is the one that met with the grassroots people. His name was Gary Flute. He was the director of Association on American Indian Affairs.

Mr. Ekel Hops (phonetic), they pushed that NAGPRA bill through. But by him visiting the traditional people, they wanted that in there. They wanted that in there, and they pushed for it.

There was some backlash from NARTH and NCAI and those other organizations. They didn't want that part in there, but they put it in there and it passed.

And those grassroots Indians, the traditional people, not the elected leadership. And I say this with great respect to people that wear suits and ties. I don't wear suits and ties.

I say it with great respect to the traditional people. Listen to them and take what they're saying as truth. They're not here to make up sites and to

try to make you go a different route. They know what they're talking about.

These songs, our language is very sacred. I wish we had a translator here so I could go on speaking. When we speak our language, our language, whether it's Dakota, Anishinaabe'. There's more meaning attached to that than speaking English from an indigenous standpoint.

So the other part, I wanted to share an example, because I see you have a great list of questions in there to try strengthen the consultation process.

The medicine wheel: My dad was part of that medicine wheel coalition in the Bighorn Mountains. The U.S. Forest Service was involved. The tribes, the Sioux, the Cheyenne, the Crow. The first time the Sioux and Crow ever came together at a table.

I'm not saying this to be funny. Enemy tribes historically come to the table together, smoked a pipe together to protect that medicine wheel. Good consultation. It took years. It didn't take just two meetings and then a couple outreach meetings. You have to sit. And it's not playing chicken. It's about finding the best negotiation possible to make it a win-win.

Now, when you destroy a sacred site like the medicine wheel, it's gone forever. If you destroy a man-made road, you don't loss the integrity. There is no historical value or cultural value to those places like that.

And I know that had nothing to do with the Army Corps, but still it's a federal agency that with good consultation, listening to the grassroots people that know what they're talking about, you have to listen to them.

I want to introduce our historic preservation office from the Sisseton-Wahpeton Oyate Tribes, she's the Tribal Historic Preservation Officer, Dianne DesRosiers. And then we have Mr. Paulson, our special counsel.

(Applause.)

DIANNE DesROSIERS: Thank you. Good morning, everybody. Diane DesRosiers. (Speaking in non-English language.)

I greet you all with a heartfelt handshake. My name is Dianne DesRosiers, and I'm Sisseton-Wahpeton Oyate. We formerly we were in Minnesota until you guys exiled us out. But that's a whole other story.

But these are our homelands. We consider this our aboriginal homeland. I want to thank you all for

coming here and for hearing tribal concerns today.

It's not often we have this opportunity to speak to a group, and one that I hope is willing to take our comments to heart, and to really listen to what they're hearing from our leadership today.

I guess one of the things I'd like to say as a THPO, you know, we're charged with a responsibility to try to protect the sites that remain. And those sites that remain out there are the evidence of us, of who we are, and of how long we have been here.

Those sites aren't just old bones. Just because they don't have a white picket fence around it and a cross, that doesn't make them any less important, because those are our people that lay there. Those are our people that gave their lives and sacrificed for us to be there, many of them.

I just want -- I want to say that much because I think that it needs to be put into a human perspective, not a federal regulation, you know, and I believe that. I hope you all have a heart inside of you, and you can open that up to understand, you know, we as a people, and the things that we have experienced these last 500 years.

Among your ranks you have educators who can help you to have a better understanding of native

people, and of our perspectives on things.

In May we attended an invitation by the Army Corps of Engineers to participate in a cultural sensitivity training. And the people that you had there, some of them are here in this audience, they are very well-versed in cultural information and have that understanding about the Dakota people.

And in our way when we say Dakota that means all indigenous native people, just like the Anishinaabe'. My husband is Anishinaabe' as well. And he, you know, when you say Anishinaabe' that refers to all the native people.

But one of the things, I guess you've heard it and you're going to hear it again, you've probably heard it at how many other meetings you've been at, some of the problems: What is meaningful consultation.

In one of the meetings we went to on the Dakota Access Pipeline, the Army Corps people had made a statement that we sold all the property right there. It doesn't matter what you want. The project is going to happen. So that was it, you know.

Is that meaningful consultation? I don't think so. But, you know, maybe we need to Google that and see what meaningful consultation really is, because I

guess in my books that isn't meaningful consultation.

One of the other issues, and the industry knows, and I mean any industry knows that they get all their infrastructure, they get it all done, and then they get to the box on their EIS or EA or whatever it is, that says tribal consultation. So then they call us all in on a meeting.

Well, the project is almost done. Where was the consultation on that? I mean, the pipeline is in the ground, or whatever project it is. But so that's not meaningful consultation when it's already done and you call the tribes in. So that's been an ongoing issue.

Another issue that's serious for us, and many tribes have said it today, that the water is sacred to us. It's our first medicine. That's what we're taught. Because without it we can't live. Try it. Try it. You're not going to live. You need that water. Your children need that water. Our grandchildren need that water. I haven't found -- there is no substitute. We all need it. The earth needs it. Our Mother needs it.

One of the other things, there is no regulatory authority for oil pipelines. Nobody is having oversight of those pipelines. I don't know why.

They watch everything else, they look after everything else. But no, not that one.

Natural gas, they have a regulatory authority. FERC. FERC is the one who has authority over those.

But you know what? Why not the pipelines mines. So again it's oil. It's big industry, it's Big Oil.

Yes, we need money; yes, we like money. But if I have to choose to drive my car or be alive because I need water to survive, I think I'm probably going to choose water because the car isn't going to do me any darn good.

One of the other things I guess, and you've heard is already, is Appendix C. That needs revision.

And I'm glad Ms. Darcy mentioned that at the outset of the meeting. There's room for improvement. Thank you. We need major improvement. That is. That is something that is important, and we need it.

Other than that, I guess one of the other things that I would like to say is about our sites. When you destroy all those sites, when those are all gone, then the evidence of our history here for thousands of years is gone as well.

And we believe that those are important to us.

We believe that this is our land, and our dead lie buried here, and that's who we are.

I mean, if you can't understand that, you know, I'm hoping that this is truly meaningful consultation.

I do want to mention that I want to thank the water-protectors for calling attention because nothing ever gets noticed unless someone is out there calling attention. They're sacrificing.

I don't know if you've all seen it, but the inhumane treatment of the water-protectors out there, you know, being beaten, sprayed, shot with rubber bullets, and using sound canons.

One of my friends said that the sound cannon made her so sick she fell to her knees and she was throwing up. And I said I can't even imagine that something that you hear makes you that ill.

But that inhumane treatment of people here in the United States, it's unfathomable. I can't even believe they were put into dog kennels and then marked.

I mean, we've seen that during the Holocaust. I mean, I wasn't around, but history tells the story, and that's what's happening to our people.

And I think recently a comparison was made with

the folks who took over a building in Oregon. And I forget their names but, you know, they weren't treated -- they were armed. They were armed protestors.

In that camp I have relatives that are there and they're praying, and we're praying for them every day, for their safety, that they won't be hurt. There's little children, there's babies there. Because that's how important this issue is to many people.

And I know Colonel Henderson was in Standing Rock recently. I don't know if he went to the campsite. There's little children running through the site. I mean, they don't even realize the predicament that they're in or the danger.

Because their parents and grandparents believe in protecting this, so strongly, that we're going to stand there in prayer. That's what it means. That's what it's going to take.

So with that, I'll leave you here today, and hope that really you do take our comments serious, and consider what you've heard. And if it takes legislation, then so be it. We need that support. We need that support in the House and the Senate.

And we need that understanding because people

just do not understand. They ignore global warming. It's not happening. They're just saying that. It's imaginary. That's not -- it is happening. We see it.

Many of the plants that we dig, they're due at a certain time. We know when. Those times are changing for our gathering. There's a shift in the environment, and we need to heed those warnings. We need to take note because things are changing. Thank you.

(Applause.)

GREG PAULSON: Thank you for being here today. I am also on behalf of the -- speaking on behalf of the Sisseton-Wahpeton Sioux tribe. My name is Greg Paulson. I'm an attorney so my comments have been asked to be more legal in nature. I'm going to address the National Historic Preservation Act.

The elephant in the room I think today is Appendix C, National Historic Preservation Act, 54 USC Section 306102 says every federal agency, including the Corps of Engineers, if they have regulations to carry out the National Historic Preservation Act, they must be consistent with the regulations issued by the Advisory Council on Historic Preservation.

Why do I raise this issue? It's not a new issue. This is an old problem to a new circumstance. A very old problem. Appendix C was drafted in 1990.

Now, we don't need to go to any other authority besides the Corps of Engineers themselves. In 2002, in 2003, in 2004, in 2006 they published notice in the Federal Register saying that Appendix C needs to be updated, needs to be better reflective of the National Historic Preservation Act.

Why is that? According to the Corps, the National Historic Preservation Act was, they are correct, it was amended in 1992 after Appendix C was in existence. And then also the ACHP had regulations that were issued in 2000 and 2004.

So according to the Corps itself they know that the Appendix C, which is still in existence today, is legal -- is legally deficient, but they're applying it to the problem today, which is why you're here, one of the reasons you are here.

The Corps in 2005 issued interim guidance. We're going to stay with Appendix C despite what anyone else says, despite our own acknowledgment of deficiency. We're going to stay with Appendix C, and we're some interim guidance for how we can comply with the National Historic Preservation Act.

That wasn't good enough. 2007 the Corps did the same thing. They issued again interim guidance, said here's how we're going to carry out Appendix C to comply with the National Historic Preservation Act, even though we're not going to do so on final regulations.

In 2008 the Corps responds between the Army Corps of Engineers and the ACHP resulted in over eight years ago, October 9, 2008, the ACHP informed the Corps of Engineers: "We see major problems with the Corps's concept proposal, the definition of an undertaking, the definition of area potential effects, and the nature of consultation required in the Section 106 process." To make the same problems that are on the DAPL today.

We had just over a year ago to the extent the Army Corps of Engineers has gotten together with the Advisory Council on Historic Preservation to address this issue should be a plus. To the extent you still adhere to Appendix C we're going to have problem after problem after problem. This is an old problem and we're going to have new situations to this old problem.

Just over a year ago today, October 21, 2015, the ACHP said, "Developed in 1990 and known generally

as Appendix C, the Corps uses this regulations to comply with Section 106. The Corps did not, as required, develop Appendix C as an alternative pursuant to 36 CFR 814."

Further, the ACHP has never approved Appendix C as counter regulation for implementing Section 106 as required by the NHPA. Because it differs from the Section 106 regulations in many wise, especially in terms of essential Corps elements including the definition of undertaking, the delineation of the APE, the scope of effort for identification of the historic properties in the APE, and the nature of consultation during the Section 106 process. Between 2008 and 2015 nothing got done.

The ACHP should have deference here. The Army Corps of Engineers is a federal agency subject to the NHPA. They should be following the ACHP's regulations once they acknowledge Appendix C is legally deficient. You've acknowledged it since 2002, at least publicly.

The other issue here is the Clean Water Act. Obviously that applies to the DAPL project. Whether the Corps of Engineers must regulate the entire length of an 1,100-mile oil pipeline under the Clean Water Act is a separate issue from its duty to

consider the entire pipeline under the National Historic Preservation Act. That is because the National Historic Preservation Act applies to the Corps's direct and indirect jurisdiction.

So just focusing in on the Clean Water Act alone is never enough. Under the National Historic Preservation Act you have a duty under the law to look at your indirect jurisdiction.

Finally, a lot of your regulation of DAPL, for example, has been under a nationwide permit. Hundreds of them, as I understand. If you issue a nationwide permit, then under your Section 106 compliance known as General Condition 20, provides the following:

Where the non-federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

The problems of this are immense. Nationwide permits, there's generally no public notes so no one knows about it.

Secondly, as what I just read from, the non-federal applicant will identify historic properties. The applicant. Not the tribe. Not the federal agency, which has the duty after consultation to identify.

What is needed is a uniform law, but it can be there, even now, it can be better. A permanent solution, maybe legislation is needed, but there is a solution today to have a uniform law because it is on the books. You need to follow it.

The Corps has acknowledged the deficiency, the ACHP has acknowledged the deficiency. And the law cannot work when the Corps will not follow. Thank you.

(Applause.)

JO-ELLEN DARCY: Thank you. Our next speaker will be Kevin Dupuis, followed by LeRoy Staples Fairbanks. Mr. DuPuis.

KEVIN DuPUIS: (Speaking in non-English language.)

My name is Kevin DuPuis. I'm the chairman of the Fond du Lac Band of Lake Superior Chippewa. On behalf of Fond du Lac Band I would like to thank you for holding these consultations with the tribes.

We plan to submit more detailed written

comments by November 30. I want to highlight some of our major concerns. There's a lot of things that have already been said that I really don't want to reiterate, but I have to because I have to speak on behalf of our people on Fond du Lac.

First and foremost, I'd like to thank everybody for their service. And gentlemen, ladies, thank you.

I also was in the military. I spent eight years in Marine Reconnaissance, so I think we have a roomful of people who understand certain things and different things. And my background had a lot to do with cartography and map-making, so there's things that are in here that I want to make sure nobody is going to throw smokey mirrors and issues in that. So miigwech, and thank you for your service.

The Fond du Lac Band also appreciates the work that this administration has done to improve government-to-government consultation within Indian tribes.

Under President Obama's leadership, this administration has worked to put in place policies to protect tribal interests. A lot of good work has been done on these policies.

But there are problems. One of the problems we see that is good policies are not always followed.

Another problem is that even when we have consultation with federal agencies, the final decisions are made too often do not include protection of tribal interests.

Consultation means to me more than just checking off a box. Consultation should result in decisions that include protection of tribal rights and interests.

I want to mention a few examples from our experiences.

One example concerns the proposed Sandpiper oil pipeline. Sandpiper has two parts. One is the crude oil pipeline that would be about 600 miles long. Another part is proposal to replace possibly expanding existing pipeline known as Line 3.

In 2014 the Army Corps of Engineers wrote us to ask if we wanted to consult on Sandpiper. We immediately wrote a letter to say yes, we wanted to consult. In our response, we also asked for information about the projects so that we could prepare for consultation. We never received any information.

A year later we got a phone call from the Corps to ask about whether we might want to meet, but nothing else has happened. No meeting was set, and

there has not been any consultation.

What we know about the project is based on what we read in the newspapers. We saw that this summer the company Enbridge announced that it would no longer seek permits for the main Sandpiper pipeline. But there is still a proposal to do work to replace or possibly expand Line 3. Part of Line 3 crosses our reservation.

We are concerned that the Corps hasn't started consultation with us on Line 3, because the Corps may be waiting until the company gets state permits, but at that point consultation with us will be too late.

Our concerns about possible replacement or expansion of this line need to be considered before decisions are made about the line, not after.

Another example involves the U.S. Geological Survey. This spring, the US Geological Survey did aerial surveys of mineral resources in northern Minnesota, Wisconsin and Michigan. These surveys covered our reservation as well as areas where Fond du Lac and other Ojibwe tribes hold treaty rights to hunt, fish and gather. When these surveys are done, the data becomes available to mining companies without our consent. Without our consent.

So when these aerial photographs and these

aerial paths, and you gentlemen know exactly what I'm talking about. When a flight plan is established, a reason to avert a flight plan, you have to ask yourself why. Why was it averted to cross our boundaries? And why was it looked at in that manner? These are serious, serious, serious issues.

We are very concerned that the work USGS is doing will simply lead to increased pressures for more mining development, all of which would happen without considering the impacts of increased mining on our reservation. Or our reliance on natural resources outside our reservation within our ceded territories.

The USGS did these surveys without any advanced notice to the tribes. We were not consulted. USGS did this work from their Denver office, and that office didn't even know the location of our reservation, much less our treaty rights. Work is now being done to improve consultation with USGS, but USGS is part of the Department of the Interior, and should have known to get information about the tribes before they started work.

The third example involves a federal government's review of the proposed PolyMet mine. This is an open-pit copper mine. It would be the

first of its kind in Minnesota. The mine would be located on land that is now within the Superior National Forest, which is within our ceded territory.

For the mine to be developed, the Forest Service would transfer a tract of 6,500 acres of Forest Service lands to the company, in exchange for several scattered tracts of land elsewhere in the state much.

The mine would operate for 20 years, and require wastewater treatment for 200 to 500 years -- 200 to 500 years after the mine was closed. 200 to 500 years after the mine was closed.

This mine would also lie within the territory which we are treaty rights to hunt, fish and gather. The mine affects the wetlands. Water quality puts at risk the fish and wild rice that are essential to our people.

In addition, the proposed mine is crossed by two large rivers that flow downstream into the St. Louis River, which runs through our reservation and into the largest fresh water deposit in the world, which is Lake Superior.

We are participating in the environmental review for PolyMet. In that process we provided detailed scientific analysis of potential impacts of

the mine to the environment, and identified reasons why further study and additional measures are needed before final decisions can be made regarding the mine.

What we have seen at consultation does not translate into decisions which take into our accounts and concerns. For example, we explained why the line will put our treaty rights at risk because of harm to water, fish, and our wild rice.

But the Forest Service, in a draft decision, decided we wouldn't be harmed because the new lands of the Forest Service we get from the company have road and boat ramps.

We didn't ask for more roads and boat ramps. What we did ask for is clean water, so that the wild rice is not destroyed and the fish are safe to eat, for our future generations and our obligation and our dedication to our people is that, for our future generations, to respect our elders, and respect for the ones who came before us.

So the wild rice is not destroyed and fish are safe to eat, the Forest Service didn't listen to what we said, but decided for itself what would be good for us, which has been happening for 524 years.

In our work on PolyMet we have also seen that

the federal agencies did not implement many other important federal policy.

For example, the environmental review of PolyMet did not include any kind of analysis of global warming that this administration has repeatedly urged to be done. Tribes are disproportionally hurt by climate change, so careful consideration of climate change is essential in reviewing proposed mining projects, especially when they affect tribal rights and interests.

In addition, the PolyMet mine will destroy nearly 1,000 acres of high-quality, undisturbed wetlands, in addition to 7,000 acres of other wetlands not permanently lost would be indirectly damaged.

The administration adopted policies that give priority to avoiding loss of wetlands. Under those policies. If the loss of wetlands can't be avoided, the next priority is to mitigate the loss by developing other wetlands in the same watershed.

How do you do that? It's contaminated. How do you establish new water wetlands in the same watershed? Just a thought.

Under those policies, if the loss of wetlands can't be avoided, the next priority is the same, to

develop other wetlands in the same watershed. But none of this would happen if PolyMet is built.

Even though the mine will destroy thousands of acres of wetland, almost all of the proposed mitigation would occur outside St. Louis watershed, and outside of the area where our reservation is located, and outside where we hold treaty rights.

Developing wetlands outside this watershed won't mitigate the serious damage to the resources on which we depend.

We think there are steps that administration can take to fix these problems. One step is to make sure that good policies which the administration has developed are actually followed. These policies need to be enforceable.

We know that this administration has 65 days left, but in this time we hope that the President might have issue an Executive Order which provides detail on what we require for proper tribal consultation, and directs the federal agencies to comply with these consultation positions.

Also, the Executive Order should state that, where agencies have discretion in decision-making, they must exercise their discretion in ways that protect tribal rights and interests. In the

long-term, work should be done to add these requirements to regulations or statute.

Some of the problems may be fixed by making sure that the federal employees are trained so that they know about the tribes, and understand Indian treaty rights.

We also join with many other tribes in asking this administration to improve the ways in Section 106 of the National Historic Preservation Act is implemented.

One important step is for the Army Corps to eliminate its Appendix C, which is inconsistent with the 1992 Amendments to the Act, as well as the regulations adopted by the Advisory Council on Historic Preservation. Another step is to adopt a policy so that federal agencies offer tribes stats as signatories whenever traditional cultural property or sacred site would be affected by a project, including sites that are located outside of tribal lands.

I know, finally, we join with other tribes asking the Corps' Nationwide Permit 12 to be revised so that it does not apply to oil pipelines. Nationwide Permit 12 is intended to streamline the process for Clean Water Act permits for those projects that have minimal impacts on waters. But

major pipelines that transport crude oil and which cross waters do not fall within this category.

Improving the federal decision-making process as it relates to tribal interests is important. It is also sound policy. Timely and proper consideration of tribal interests reduces the risk of disputes and litigation, and results in better designed, development and implementation projects.

We have additional comments which will be provided to you in detail by November 30, 2016.

I want to say something real quick here outside of this paperwork. There was a gentleman that was standing here. His name was Bill Russell, one of the greatest athletes in our time. And what he does, he goes around wherever he goes, and he makes the claim -- he had to leave, but he makes the claim, and he holds it, that he stands with Standing Rock. I just wanted everyone to know that, where he stands. And this is throughout the country under this issue.

If I get emotional, I apologize for that. But you need to hear us. All the administrations listen all the time, but you need to hear us. You really need to hear us.

On September 3 I was at Standing Rock, myself and another tribal official from Fond du Lac and

tribal members. I watched the dogs. We were there when the attacks of the dogs. And the mace. And seen elders come down with red marks on their face. And I know what that stuff does, with CS gas in the military.

And I asked myself, how could somebody do that? How could somebody do that? And gentlemen, we all took an oath one time to protect and defend the Constitution of law against all enemies, both foreign and domestic.

When you take somebody's religious belief or their way of life, thinking that's a violation of the Constitution of the United States.

After this happened, they were informing everybody you need to go to the road. And the most interesting, but -- I can't -- I can't find the words to describe it. 25 yards where the police were parked on the road and watched the whole thing.

We've been stepped on and pushed aside for 524 years. We are the most regulated group of people on the planet, and we ask ourselves all the time why doesn't this work. Because nobody knows who has authority over us.

We have all these organizations and this chain of custody or chain of command structure that exists,

and we do everything that we probably can because we are obligated to our people.

And so we send in to one department and they say we don't know where it goes. And by the time it all comes to things happen, bulldozers are there ripping up a sacred site.

Every country in the world protects its history except us. Why is that? We were the first people here, indigenous people of this land. And everything has been taken from us.

Simple words: "Makasin" is our word for "moccasin." Because it couldn't be pronounced they call is moccasin.

Misi-ziibi, the river Mississippi.

Street names, city names, state names are taken and put into the principle of this country. The timber, the beaver which built this country, our resources, things that we have been doing since the dawn of time.

We're asking you, we want you to hear us. We have a right, like every other human being on this planet, to exist as who we are. And no one man or group has a right to deny us our right to exist as a people. And we have a way of life. Our language, our culture is spiritual.

I need to ask the panel a question: Do you go to church? Some of you? What would you do if a group of people came, law enforcement, and started pulling the people out of the church when they're under prayer? Where would that be in the news?

Then why is it happening at Standing Rock? How they can go into somebody in a sweat lodge under prayer and pull them out. And why isn't this posted across the world. Genocide is happening in today's day and age. Atrocities, violation of the Constitution of the United States. And some of us upheld that. We gave an oath to protect and defend the Constitution against enemies, foreign and domestic.

And for the ones who served, how do you explain that to them? It's okay now. You're not in the military anymore? No. That's not right. It's not right at all.

I ask you that question so maybe you can understand where we're truly coming from and hear us.

And everybody in this room knows if a church were to be invaded by a group of native people armed it would be nationwide. It would flash through the world immediately. Immediately.

What was given to us by the creator is ours,

whether it be in a sweat lodge, whether it be in a drum, whether it's an elder who taught, that's ours, that's our way of life, that's our belief system. I want you to hear us. And I think that's what everybody is here for, to hear us.

Miigwech.

(Applause.)

JO-ELLEN DARCY: Thank you, Mr. DuPuis. Our next speaker is Tina VanZile. Am I pronouncing that correctly? Tina VanZile. Am I pronouncing that correctly?

And after Tina we'll hear from Eric Chapman.

Just a reminder to everyone, which I should have done earlier. Again if you want to speak, make sure you sign up.

And also we're hoping that people who do attend sign in so we know how many people were here in participation of everyone in the consultation. So Tina?

TINA VanZILE: (Speaking in non-English language.)

My heart is racing. It is racing really fast, especially after hearing his words. It's going to be hard to get mine out.

I was here in Minneapolis about 13 years ago as

an elected official. I was a vice-chairwoman of my tribe, and I was on the council for eight years. And our threat to our tribe was the proposed Crandon Mine, which we fought for 28 years.

And I was telling my best friend back there that I wasn't a speaker, I couldn't talk in front of people, but I had to learn fast. So I come to Minneapolis, just like I am here today, and I'm meeting with the Army Corps of Engineers, my co-worker and I. His name was Roland Ferdinand.

And we kind of had some things we prepared and we typed up. And I was trying to talk about those issues that were affecting my homeland, or that were going to affect my homeland.

And as I'm standing at the front of the table, and the table was long this way, and people were looking at their papers, and some were on their phones. And I could see that they weren't hearing me, much like he said. And I said okay. I need you to stop. I need you to look at me because I came here, which I thought was a long way, six hours. I said to talk to you today because I have people back home that are depending on me and my words to make a difference.

I need you to understand that Sakaogon is not

just words on a piece of paper, much like Standing Rock is not words on a piece of paper. We are real. And maybe you don't feel that because there's a disconnect. In the big cities I see there's a disconnect because you don't really know who we are. Sad to say, you don't really see us as people.

And so I took a piece of paper, and I put it in front of my face while I was talking. And I said from this day forward when you see Sakaogon Chippewa Community on a piece of paper, you will see me and you will hear me, and you better listen to us, because we are not going to stop fighting. We're never going to stop fighting.

And I say that because many of us here are grandchildren, great-grandchildren and great-great-grandchildren of the people that fought for us.

My granddaughter -- I have a granddaughter, her name is Goni Waswin (phonetic). She is Ojibwe, she is Potawatomi and she's Oglala Sioux. So I wear this in her honor, because them are her relatives.

But in our belief we are all relatives. And that's why you see us all standing together. Because we're afraid it has come to a time that we are going to have to die for those future generations that

aren't even here. And that's what we are willing to do.

Our belief and our culture and our ways are so strong that we will die for protecting them. That is something without a shadow of a doubt I know.

So meaningful consultation means simply to, like he said, that you hear us. Sometimes -- I'm sitting back here and I'm watching all of you, and sometimes some of your eyes are glazing over. You're not paying attention. That's what's wrong with everything.

Meaningful should be that when you're consulting with tribes that we have some kind of consensus.

I agree with the other gentleman. We should not be a box that you check off in your documentation. We are a people, we are a nation, we are not a box that you check off.

Many of us tribes are treaty tribes. And with those treaties the government has trust responsibility to us. And often the federal agencies delegate that not the responsibility, but some of these authorities and laws, like 401 of the -- or 404 of the Clean Water Act in Michigan, for one.

Do you know when you delegate something like

that to the state, they have no sense of responsibility to us whatsoever. They believe that's your responsibility, not the state's. And they've said that to us.

We should be treated as the nations and the governments that we are.

Oftentimes in meaningful consultation we ask ourselves what does that -- I mean, I've been asking myself that ever since I heard about this meeting. What does that mean?

It can mean many things. There's a lot of things that are already in place that you provided to us at Attachment A. And myself, I'm thinking we can't even honor these things. Why are we trying to create new things? Maybe we strengthen up these things.

And so I was thinking back, meaningful. Well, if you got these huge projects, these infrastructure projects such as the pipeline and mining and whatnot, and then you come to Small Mole Lake, who is a band of the Lake Superior Chippewa Indians. We have about 1,300 in our enrollment roster. And the environmental department really consists of two people. And then we have two in the fisheries.

How meaningful is that really going to be, when

we don't have the capacity to look at documents that are so technical in nature sometimes that it's -- I compared that to our ancestors signing those treaties. They're signing a document when they couldn't even speak English.

And sometimes that's how this consultation is. Some things are so technical in nature that we don't even have the capacity in some of our reservations, such as mining.

So what do we have to do? We have to take all of the funds and income that we have, and try to find technical experts to assist us, who have the education, the background.

And then what does that do? By spending money on all of those technical experts, which I'm telling you with the proposed Crandon Mine it was well worth it, but it was at a cost. It's always at a cost.

So all of the money that we dumped into fighting this proposed Crandon Mine, I can't even tell you. We had three lawyers and all these experts. That means that the youth program isn't going to get their allocation for that year. Or the elder program isn't going to get the healthcare that they need that year when we have these threats to our home.

There's always a cost to something. And to us it's usually the cost of who we are, what we believe in.

I have to mention this, and I hope I can do this, but manoomin has to be one of the most sacred foods and spiritual things for not just Ojibwe but many Anishinaabe' people. We believe it has a life like we do. Everything else has a life, trees and plants, the water, everything.

My dad lived for that season of manoomin. He's not here with us anymore. He passed away this year. He fought long and hard with cancer. He was 77 years old, and the main thing that man lived for was manoomin.

He looked forward to that two-month long process of going on the lake. You know, we still harvest the old way, with canoe, push, pull, homemade rice sticks. And then processing all by hand, where everybody in the family has to participate because that's the only way you're going to get it done. But by that way, you hear the stories of it. You learn about the hard work that it takes to be who we are.

Sometimes I joke about everything that's old, old ways is really hard. But it has more meaning. It has way more meaning and gives you much more

respect.

And so it's with that, that when we teach our children that, you give them that respect too by teaching them the old ways. Because if they don't know the old ways, they're going to have a hard time remembering, protecting, fighting for what we believe in.

These executive orders and attachments that you gave us, I think when it really gets down to it, the language is gray. There's too many gray areas. It's weak. The language is weak. When it's gray and weak and not specific by meeting consensus with tribal nations, you create loopholes.

So I don't care what kind of regulations you're talking about. When it's not specific enough, especially when we're talking about here and why we're here today, sometimes I think it's purposely done to create loopholes so that big corporations can get around and get what they want.

The biggest thing I don't understand as a native person of other people is that we're a people who do our best to prevent degradation. We're not believers in polluting and restoration and mitigation. We are first and foremost protectors. And we don't understand what's wrong with that.

Always our tribes in this role as protectors and trying to protect our homelands and our ancestors that are buried in this ground that we, that many people don't even know that's there and walk on, we are always opposed, if you want to say that.

They call the people there in Standing Rock protestors. That is such an insult. They are not protestors. They are protectors and they should be treated as such.

We all should be treated that way. Because we just don't understand why fighting to keep things the way they are, in their natural state without little alteration, we just don't understand why that's a bad thing.

My tribe too has gone officially -- there are written comments by November, but I felt it was important to come here so that hopefully when you get those comments, you remember us. Because there's a lot of people back home that can't be here.

We're all here from many nations representing a lot of people, all here on our word to try to make a difference.

And so I will say miigwech for your time today. And as we enter this winter season, remember this -- remember my granddaughter, Goni Waswin. Her name

means snow blowing around. And boy, she is that person. I always say to her, that's your Sioux blood. That's our little joke, even though we all consider ourselves fierce, I think they're a little fiercer. And I know they're going to -- they're going to -- they're going to win this fight because all of us are going to be standing with them.

Miigwech.

(Applause.)

JO-ELLEN DARCY: Thank you. Our next speaker is LeRoy Staples Fairbanks. And on deck is Eric Chapman.

LeROY STAPLES FAIRBANKS: So you want me to speak in the mic so you can get it on the record, right?

JO-ELLEN DARCY: Yes, please.

LeROY STAPLES FAIRBANKS: (Speaking in non-English language.)

LeRoy Staples Fairbanks, District III representative from Leech Lake Band of Ojibwe. I had some written comments that I had, and I'll touch on them for the sake of time. I know we have to move along. I think this is done at 12:00 or 12:30.

JO-ELLEN DARCY: As long as people need to speak, we'll be here.

LeROY STAPLES FAIRBANKS: Nice answer. All right. So first I'll start off and speak to the audience because there's elders here, in respect to them that I'm speaking to everybody in the room and not just the panel here.

Everything that was said today, I mean, my relative from Fond du Lac, Kevin was up here speaking, and it was like he took the words out of my mouth. I could feel everything he was saying as he was saying it, about how we feel about issues such as -- primarily kind of why we're here today, about what's going on at Standing Rock.

Obviously this issue is important enough that we have law enforcement here today. I've never been to another consult -- a consultation for a consultation that required law enforcement. So it must garner some presence of law enforcement that the issue is that important, that people are understanding how emotional they are around this issue. It's an emotional issue for everybody. You can hear from the testimony here.

I think it's good that people submit their written comment, but I like to hear more of the personal perspective of how it feels and how it hits home.

When Kevin was talking about a situation where it would affect somebody else, when he was talking about if people took over a church, I mean, it puts things in perspective of where people are and the way they want to see things. That's how we feel.

I was thinking the same thing in the back. I'm like okay, we're talking about sacred sites over in Standing Rock, and it's not just Standing Rock. Those pipelines are all over the country. It's not just there.

It's more -- it created more awareness around this country and around the world because of what's going on there, but it's affecting as all all over the country.

So when we're talking about sacred sites, how would we feel if we had -- even if we had a local home cemetery in our town. Maybe the local big business owner wanted to build something, and for the sake of building something, you know, he cut deals with the local city council and the county commissioners because he wanted his business to be somewhere.

But the people within that community didn't feel like that -- that they should be -- their ancestors or their family or their relatives, their

burial site should be bulldozed for the sake of allowing, you know, the local big business guy to construct his business.

Putting things in perspective, that's what's going on. Those are our relatives. That's how people need to understand, and that's how people need to see this.

We have these issues at Leech Lake. We just had a conversation about technicalities, about who's going to be partners in addressing, you know, doubling the amount of oil that was supposed to be going through a pipeline that runs straight through Leech Lake.

We need people to see that Leech -- not Leech Lake, but indigenous people, they have a legal right by way of treaty to protect the land and water, but they also have a spiritual right by way of responsibility to protect them as well.

And so that's why people are here. That's why people are so emotional about this. That's why you see what's going on over there. That's why you see -- I was taken aback. I turned around and said holy shit, there's Bill Russell. I'm a basketball guy. That like blew my mind. What is he doing there? That's how important this is. I couldn't

believe it. I ran out there, I'm like, man, that's something else.

I mean, that's one of the greatest, and he pops in just to say I'm with you guys, I stand with you guys. That makes a difference to me. It should sure does.

(Applause.)

I'll go through my written statement, but I wanted to say, I mean, it's not a full written statement. Our chairman wasn't able to be here today and will be submitting the technical written statement by the date required, but we're here to provide personal testimony about where we're at.

And I'm up here to say that I share the same feelings as everybody who has been up here before. All the technical aspects of where we stand on this issue, but also the more grassroots positions that we stand on these issues as well.

And so on behalf of Leech Lake I just wanted to come up here and say a few words.

Regarding the topic of tribal consultation on infrastructure projects, I believe we have to come to an understanding of the word "meaningful" and ensure the definition that we set is agreed upon for the basis of actions.

In the Department of the Interior policy on consultation with Indian tribes there's a guidance section. The section states: The bureau or office works with tribes to consider specific tribal structures, traditional needs, and schedules of tribes.

What I as an Ojibwe person consider traditional needs I consider how we even conduct these consultations. In our minds, meaningful consultation that occurs with anyone that considers the traditional structures, meanings, or schedules of the tribes would consider how we meet.

For example, if we had a meaningful consultation early in the process, our leaders would be expected to exchange the same tobacco with those involved in the council, all locals and all visitors. We would sit together, we would share tobacco, smoking our pipes together, before setting out to consider impacts of our natural resources, our land, water, air and all that surrounds us. We would expect the government would come to our territory instead of having us travel all over the country.

And I know we had a visitor here from California, so he must have made it a point that this issue is that important that he come over here

because he wasn't making local consultation, right?

They sit on the land with us, the land that will be impacted. They walk the land with us, listen to the songs that come from the land, and eat the food that comes from the land with which we live to understand how impactful the infrastructure changes will affect us.

However, we look around at this meeting. This isn't present. We did have a prayer today, which is important in how we start things out.

I urge the departments and agencies to reconsider this aspect of consultation and ensure that indeed our partners do follow the guidance set forth.

Agency liaisons must be aware of tribal leaders. We must ensure that tribal contacts are updated annually, and we've heard that agencies have a difficult time contacting tribes. This can be solved with administrative communication lines, update tribal contacts annually, or even twice yearly even. This is a simple fix that demonstrates open, transparent communication.

The requirements or limitations on federal role of the infrastructure process is alarming. This is an example of private industry or state practices

overriding Executive Order or any federal processes.

Perhaps regulations need to be re-examined in order to account for Native American rights. The statutes should be aligned with tribal rights to govern our lands. If statutory exchanges prove too difficult, we need to consider a regulatory process that encompasses tribal rights and resource rights.

Negotiated rule-making or the process must be considered in order to align infrastructure process with tribal governance for inclusion. We ensure that our historic preservation officers are contacted and meaningfully engaged. Our officers are subject matter experts in our areas and must be treated with equal authority to state historical documentary limits.

Does this also require a statutory or regulatory change? Because we've seen the historic preservation officers disregard in the DAPL permitting, for instance, our historic preservation officers must be engaged in the processes.

I'll just -- there's a little bit more. I will leave it there. I know there's a lot of other leaders in the area that came here to share their story, and their perspective and their positions for each of their nations, tribal nations.

I had a feeling when I seen all the different agencies that were covered here that there's a sense of importance behind the issue, that we have the attention of, you know, all these agencies. But just, you know, from Leech Lake's position I will say that no matter the administration, no matter the president, no matter who is in office, the tribes will always be the protectors of the land and the water.

(Applause.)

JO-ELLEN DARCY: The next speaker will be Eric Chapman, followed by Wilfred Cleveland.

ERIC CHAPMAN: Thank you. I want express my appreciation for the Shakopee Band for hosting us today and allowing me to come here and speak.

It's difficult at times to get up and speak, you know, I had several talking points to talk on but I'm just going to speak from the heart.

A lot of the tribes' legal consultation is, you know, just a federal agency jumping through the hoops. They get to check that box. Yeah, we talked with the tribes over an issue that's going to impact them, you know, very little or it could have a great impact on them.

And I think that's being demonstrated today at

Standing Rock. There's a tribe that in my opinion has been pushed in a corner, pushed in a corner, and finally they said no more. We're going to step up and we're going to protest not only the policy that is put before us, but we're going to stand up and we're going to make sure that our concerns are heard.

It sounds like the consultation policy might have happened, but their side of the story was never heard or considered.

My tribe has supported that cause of the water-protectors. We've assisted them financially with resources from our own reservation, and will continue to do that. Their fight is our fight; their water is our water.

As well one of the Chippewa treaty bands in Minnesota, Wisconsin and Michigan, we see several projects within ceded territories that are going on. And it's usually after the fact that we get a chance to comment on it or one of the representatives to the task force comes about, did we know about this, you know, it's going to impact the wild rice on the river or that lake.

We always get after the fact. And, you know, it's a disappointment.

The federal government has a treaty obligation

when our forefathers seven generations ago sat down and thought about us. Even today, they hope that, you know, the federal government will uphold their responsibility, their obligations. Because we have.

We lost several millions of acres of land that we could just go in our back yard, hunt, fish and gather without worrying about contamination, mercury in the fish.

I think that, you know, moving forward with the consultation issue, it's important that good policies are developed. But you can have the greatest consultation policy in the world, if you don't have staff that regularly know what the policy is about and implement that policy, it's only another book on a shelf.

But as consultation develops and there meaningful talks, as one of the speakers mentioned earlier, a lot of the tribes don't have the capacity or the road engineers sitting around waiting to go look at elevations of a proposed bridge or a culvert replacement, sitting around ready to go. We need a funding mechanism to assist us with that technical capacity.

We want to make sure that when we get the opportunity, we have the best staff available to give

us the best advice so that two years down the road, five years down the road, oh, it was done wrong, we were never consulted. Who's going to go back and fix it?

Just a couple examples of some projects that I was aware of, I guess, in the past. There was a transmission line came up to our reservation. It was constructed along a railroad grade, abandoned railroad grade, which was to their advantage. And, you know, it saved a lot of money, just continued the transmission along the railroad grade.

But once it got to the reservation they expected just to keep on going. But, you know, we stood up and we said no, that line will not go across our reservation.

And lo and behold, you know, luckily we sort of faced it early enough where, sure enough, the transmission line went around.

Another instance is -- I think it was mentioned earlier that the U.S. Forest Service has an MOU with some of the treaty tribes in Wisconsin, Michigan and Minnesota. I think that's a good example, because if they engage us early enough and on any projects that have any impacts to the treaty resources.

But it just doesn't end there. You know, they

listen to our concerns, and we have a sit-down and try to work through those issues, I guess.

And also there's a dispute resolution provision in there that says it can be heard by a third-party to try to fix the issue.

You know, some of the other things that is concerning, though, is I believe the chairman mentioned is the USGS consult on the electromagnetic survey of northern Wisconsin and the lac du Flambeau Indian reservation.

In the late '70s, early '80s, our tribal chairman signing agreement with the USGS and the BIA saying do those electro service and other core samples on our reservation, that was done. The project was completed. We knew what was there, and we had no intention of removing it. We had no intention of degrading our Mother Earth over those minerals.

Yet lo and behold, somebody sitting at a desk in Colorado said oh, we need to do another one. Let's go to the lac du Flambeau reservation.

The consultation policy from the Department of the Interior might have been sitting on the shelf, but because he didn't know what it was, what it was about, and that he was required to implement it, now

we get after-the-fact consultation.

As a tribal leader, I'm on the tribal council, I occasionally think about what our chiefs and headmen thought about seven generations before us when they sat down and negotiated the treaties that Chippewa Band signed. And, you know, they looked out for us. They looked out for our future. And it shows because we're still here today.

And we have the same obligations to the next seven generations coming behind us. We have an obligation to our children, our grandchildren, their grandchildren, and the children following them.

So I guess with that, you know, as I mentioned, there's some good speeches by some caring and giving persons with some big hearts today. And, you know, we have the same concerns of what this whole consultation policy and issue is. It's got to be fixed.

But fix it with us. Don't develop it and here, it's done. This is what we're going to do.

And one of my biggest pet peeves is the delegated authority to the states. We signed the treaties with the federal government. Some responsibilities were given to states. And the states look at that as well, we didn't sign the

treaties with you, and so our voice isn't heard on a lot of projects that affect a lot of our resources.

So with that, you know, I didn't come here today to point the finger at anybody. I didn't come here today to throw mud in your face. I came here asking you to recognize our sovereignty, recognize us as an independent nation, separate from all the other tribes, because they all have their priorities and their issues they have to deal with. Thank you.

(Applause.)

JO-ELLEN DARCY: Thank you. The next speaker Wilfred Cleveland followed by Gary Besaw.

WILFRED CLEVELAND: (Speaking in other language.)

I say good morning to each one of you, and strengthen to me to see all of the people here, and to hear what is being said here. And so I was -- I feel privileged and honored to be here speaking before you.

My name is Wilfred Cleveland from the Ho-Chunk Nation. And within our Ho-Chunk Nation we have clans, the clans are upper clans and the lower clans, and I belong to a lower clan. I'm a bear clan member.

And so we have a government, a four-band

government. And we have a legislature, and some of our governmental officials are here. And I'd like to say a word of thanks to them for allowing me to speak on behalf of the Ho-Chunk Nation. They are young, they're eloquent speakers, but due to respects to our government and the position that I hold as president, they have given me this honor to be standing here and speaking on behalf of our people.

We're from the -- we're not from, but we reside in what is called the State of Wisconsin. And that was kind of built around us without our say, how it was done that way.

And then in that we have maybe approximately about 7,500 enrolled tribal members not only in Wisconsin, but in the United States and in Europe. And we are a little bit -- I'd say -- I want to say I don't want to say different, but maybe just how our lands are -- we are not on a reservation. We have trust lands, and throughout the central part of the State of Wisconsin.

And our people back in the day when non-natives were encroaching on lands in the United States, then they were for many years they tried to remove us from the State of Wisconsin. But our people always managed to venture back and come back to the

homeland.

So I imagine one day the federal government finally got tired of it and said okay, we'll put them on trust lands. So that's kind of the way that it is.

And through that, and through all of our adaptations to what is happening around us, then we begin to be able to acquire -- acquire lands. And then put it into trust. And then putting into a trust that is not really ours. It still belongs to the federal government, but they have oversight on it, and we live on those lands. And so this is how we are as a people.

And we've been -- we've had experiences over the years. Our government is quite young. I believe it was about the mid '60s that our people organized, and organized as a government.

So within our Ho-Chunk Nation we have this government, our Ho-Chunk government, and we also have our traditional way of life, and are still intact. We have our chief, like I just mentioned, we have our clan systems, we have our ceremonies, and we have our language.

So there's a thought that I have that our elders, they didn't have very much, say, education in

respects to going to school, first, second, third grade, that sort of thing. But they had a lot of education about the creation, and our surroundings. And being in harmony, being in harmony with the creation taught them a lot. And so they -- they must have figured that it would be good for the future generations if we were -- if we had a government to improve I say as part of adapting, to improve our housing situation, education, and our health.

There's a lot of different situations that we come across where our lifestyles have changed, and we needed some kind of understanding about health for our physical being, because even at times our eating habits changed because of the encroachment of this government that came across what is now the United States.

And so because of all that, then we've organized and we've continued to change our government. We were under what I would call a boilerplate type of a constitution back in those days. And then early '90s, around '94, 1994, somewheres around there, then we changed into a four-branch government that we have today.

And part of that is our general council. We have a general council branch, and that's all the

members of the Ho-Chunk Nation. They have a say in our government, and how we do things.

And then through the years then we've had, like I say, different consultations with the federal government, with the State of Wisconsin in trying to improve the lifestyles of our people, make the way for future generations.

And so it seems like this consultation definitely needs improvement because it seems like when we try to do something, consult and do those kind of things, we're kind of like spinning our wheels. And so it's kind of difficult to find traction and do things the way that we would like to see them.

Like a consultation, maybe the federal government or state government would think like oh, yeah, yeah, I called that tribe up, yeah, consultation. And so that's done. But then or else they'll come in to a meeting and say okay, well, this is what we're going to do. And someone, a tribe or we might stand up there and object to what they're saying, but no, it's already decided. This is what -- they've just come to tell us. And that's consultation to them.

And then we come to the idea to having

meaningful consultation. Now, what is meaningful? What does that really mean, to have a meaningful consultation?

Meaningful consultation as native people, we sit down and talk, talk about, you know, what we want to do, talk -- say this is how we want to do something.

Like I say, we have our general council, and they say okay, this is what we want to do. And so as a government, as part of their government and working within that government, then we implement what they want to do.

And that, to me, is kind of what more like what consultation is. Come to agreement on whatever they're counseling on, consulting on, excuse me.

And so these are the kind of things that happen to us. And one of the things, I think it was about -- these young people that are in our government, they even changed me so I kind of have to carry these things around me to keep notes. They shoot things at me and say hey, do this or say this. And this is one of the things that I wanted to talk about too. And my brother out there must have sensed this and gave this to me.

But in the 1980s, my uncles, my grandfathers,

they met with the State of Wisconsin to try to take care of parts of our -- the parts that NAGPRA doesn't cover. They met with some of the government, State of Wisconsin government, and they made a law. They made a law to preserve our burial mounds, our effigy mounds, our sacred sites. And it worked. It worked.

And so we was going along like that, enjoying this relationship that we had with the State of Wisconsin. And here just about a year ago, some young -- some young congressional people thought that they wanted to change this. They wanted to change this law that was in place.

And so they were infringed because some of these -- I don't know how the whole intricacy of how government works. But there's some of these people that are running for an office, so they're supported by somebody that puts money into their coffers to make sure they win. Maybe that's how it is.

But anyway, there's this big business that wanted to infringe on our sacred sites. And there's one right in the city of Madison, the capital of Wisconsin, an organization called Wingra. And we have a burial mound there and there's laws that protect that.

And so what they did is they dug all the way

around that site. And there's a certain amount of feet that they -- that they can go to. They can't go any further than that. They went that far. And it's out, and it looks terrible.

But then they want this law changed so they can take that little piece that's left there so they can continue on and desecrating our sacred sites, our mounds, our burial mounds.

And so they had these -- they had this -- the State of Wisconsin, these young government people to try to change this law that was made there. And so our government opposed that. And our legislative body, some of the members there went down to Madison pounding on doors telling them hey, this cannot happen. This is why.

And so they gave them the history. They talked to them. They gave them the history on why they thought -- why it is sacred, why it means something to us. And so this law became -- never was changed.

But we know, we know that that isn't going to be the end. They're going to continue to try to change it so that they can -- and just like what they did out there, out there on Standing Rock where they dug up over those sacred sites. It don't mean nothing to them.

And to us, to us they mean something, something sacred, something holy. And so this is what this is all about, so that our future, our children, our grandchildren, our children that are not yet born but will be would have something, that they would see that and they would know that Ho-Chunk people have been here since the beginning of time, and they can relate to that, and they can have that pride, they can have that self-esteem, knowing that our people come from these lands right here, and they worked. They worked at trying to be there or trying to maintain all of this.

And so through all this, the state made up a study committee. Now they're studying this law that they made in the 1980s to see if it's -- I don't know, if this can be changed or it can be improved, make it stronger.

I'm under the impression that they make it stronger so that these businesses, these big businesses that are into desecrating Grandmother Earth can't be doing those kinds of things.

That's my thought on what they're doing with that study committee.

So in the process of all this we have our general council branch. We have an annual general

council meeting. And because of these changes and how we have to adapt to all that's going on around us, now we -- now we thought everything was okay. Our Grandmother Earth and all that we hold sacred is going to be okay.

But with this happening, then there's how are we going to -- how are we as a people going to address this and use this government that we have here within our Ho-Chunk people.

So at our general council we made -- one of the tribal members presented a resolution to put into our constitution. It's a Rights of Nature. And that would be our next step as a government people trying to preserve our -- our environment.

The people of the Ho-Chunk Nation find our air, land and water are threatened. We live at a time of unprecedented species extinction, ecosystem collapse, and global warming. These are the kind of things that this Rights of Nature resolution that was made before our general council meeting, and was passed. And so now we as a government are going to be implementing this and making it and putting it into our -- so it would give our government more strength, more support, and what were our efforts of preserving our environment.

Because it's -- what is happening with this DAPL, it's being said here, it's being done throughout, throughout the United States. And in Wisconsin, same way.

They got this -- as a matter of fact, last summer, my uncle walked from the border of Wisconsin, Illinois, walked up along a pipeline that's in the state. Walked up there to bring awareness to this. Walked up all the way to the city of Superior. And so this is -- this pipeline is going to be -- I'm told that it's going to be even larger than this one that's coming through over here that didn't go through Bismarck but that was rerouted to go through the -- by the Standing Rock Reservation under the Missouri River.

So these are the kind of things that we need to be stopped. And so this -- if this consultation is going to -- is going to make that happen, and that's why we're all here in support of this, and so maybe we -- in the past we've had -- we have had consultation with the Army Corps of Engineers, and maybe they could understand more of how we feel about the earth, about the water. Because it concerns them too. They have children, they have grandchildren that this is going to affect.

And not only that, but this comes from not even within the United States. It's coming from north of us, coming into the United States. But then when it's happening it's going to be leaving the United States. From what I understand we're not even going to benefit by it, but yet it's happening.

And then all these -- all these inhumane things that you hear that are happening. And why is that?

Those are the kinds of questions that we have. And hopefully these consultations that we'll be happening, that they will be meaningful, that we would be understood in our concerns, our opinions that we give, and these consultations would be taken into serious consideration for what we want.

Not for ourselves, because during my time, if -- and I say if this pipeline is made then it may not leak in my time. But it's going to. It's going to. And then that's what we're talking about.

We're talking about our future generations here. Not right here today, but the tomorrow of our children, our grandchildren.

And we want them to have this same thing that we have, some thing that my uncles, that my grandfathers, that they wanted me to have, to enjoy this creation, the water.

We use it in our ceremonies, pure, shining, powerful to our bodies, because we need it. Everything. Everything on the creation needs this water. Ain't no way around it.

So this is why I'm thinking that this consultation is happening, and then it's constant. Us indigenous people, we are always having to educate, educating, educating. But like I said, when my uncles made that law in Wisconsin, and then they educated them, they made them understand. And then here 30 years later, then they have to come back and try to change that law. So we have to go back and educate them again.

When you say there's a change in administration, so when you all leave here, there's going to be some new people coming in. We're going to have to come back and educate them.

And this is the way it is for us. But we never give up because we're not leaving. We're not going anywhere. We have nowhere to go. This is where the creator put us and this is where we're going to be, and this is where we want our future generations to be, and to enjoy all that we have.

So our Ho-Chunk Nation will be submitting comments on this meaningful consultation, and how

it's going to happen in the future. And I hope, I hope that it will reach the people that could make this change.

I don't know where in the government structure that you all are, who is your supervisor, who is that person's supervisor and so forth up the line, but I hope all this information that you all are saying is going to reach those people that can -- and you can relate to them and make them understand what we're saying here so that these laws can be improved so that -- for our future generation to make happen.

I had a few things written here. And the other big concern that's out there is this eminent domain. I don't know if private industry has that capability of having eminent domain, and what that -- why? What is that?

People can come and say or somebody can come and say I want this piece of property because I'm going to put this pipeline through there. Sorry. That kind of thing. Is that Democracy? Is that how it is? I mean, those things are kind of like got to be questioned so that -- the federal government, they do have a trust duty or fiduciary responsibility to us. From what we're hearing here, the treaties that have been made, so all these kind of things.

So what is being said, what is being told to you here, that you would take it and share it, share it with your friends, share it with people that you consult with or confer with or talk about your work with, that they would have an understanding of how this is, how things are being done.

So I would like to say thanks to you for you all coming here and sitting here and listening to everything that's being said, and taking notes on what is being said. And I'd like to thank all of the government people that are here also for taking the time to come on over here. This is very important to us.

And I'm really doing my best to be positive that everything that's being done and being said here would be used. And in the future say that with the new administration come in, that some of those people that are going to be coming in can share this with them so we can have the understanding that we do, because everything that's being said here is talking about the future of not only the indigenous people, but the future of all people. Everybody.

There ain't no one person that don't need water, don't need what comes out of Grandmother Earth for survival. It's needed by everybody.

Even Mother Earth, you know, even this oil that's being taken out of her, it's in the ground for a purpose. She needs that lubrication in her life. Then you wonder why there's earthquakes, you wonder why there's tsunamis. Because part of her is being taken away and it affects her. So she's got some way of combatting what is going on with her.

So these are the kinds of thoughts that we have about the creation. Because we have stories of when the woolly animal was around and when that big sheet of ice came down from the north, we have stories like that within our people, just like everyone else here. We've been here since the beginning of time.

So I have taken this much of your time. Like I say, we'll be sending comments to the appropriate people here, and make life good for everybody.

And yeah, this is the way that we are. We are very spiritual. We all, each one of us we have our ceremonies to give acknowledgment to the creator, we have sacrifices that we give to them every day. And this is how we've been able to adapt, this is how we've been able to maintain our ceremonies and maintain our language and be here since the beginning of time, and to be able to do those kind of things.

So we are -- we learn to adapt, we learn to

speak the English language so I can try to stand here and talk to you and make you understand how we are, so there will be a better relationship with us. And so I just want to say this much at this time here. And I'd like to say a word of thanks for your time.

I was wondering too: How long are they going to be here? They say it's going to be from 8:30 until 1 o'clock. And I go man, they're going to hear all of us in that period of time, especially when, like me, I don't know how to speak English. It takes me a hard long time to make you understand what I'm trying to say.

But I would like to thank each one of you for your time.

(Applause.)

JO-ELLEN DARCY: Thank you. Our next speaker is Gary Besaw. After Gary is Stella Kay, and then Edith Leoso.

GARY BESAW: (Speaking in non-English language.)

First I would like to say for the individuals with these colors for what that represents, I'd like to say thank Shakopee, our relatives, for allowing us to be here, to allow our footprints on your land. And for that beautiful prayer that we all have open

hearts and open ears and we do this in a good way, because fighting won't get us anywhere. We've got to do this together. There's only one world.

My name is Gary Besaw. That's how I pay my taxes. They make me use that. My name is Gary Besaw. I'm former chairman and current tribal legislator for the Menominee Nation of Wisconsin.

A little background. The Menominee tribe is presently located in what they now call Wisconsin. The word for it, the real word is Wisconsin. That's our word. It means it's a good place to live. They call it Wisconsin now.

We call ourselves (unknown word). That means the ancient ones, the ancient movers. That means we go to ricing camps and hunting camps and gardening. We do all of that. That's why we call us fellow movers. That's how we call us, because that's what we did. We survived there.

We also call ourselves the forest-keepers. That's our word for ourselves.

We currently have almost a quarter million acres of forest in northeast Wisconsin, and it's in sustained yield forestry. A squirrel can get on one side of that forest on the east, and you could travel on the tops of the trees to the west without touching

the ground.

That's what we have, and it's important. It ain't our land. It belongs to -- it belongs to those animals and those trees. We call them persons. They're all tree people and they're air people, water people. They are real and they're alive.

And if we take care of them, they'll take care of us. That's what the old people say. So that's what we're dealing with coming forward, we're dealing with different mentalities.

In my language, in our language we don't have a word for "resource." I heard "natural resources" and I thought holy crap, we can't even say that in our language, because you demean those trees and those animals and that soil when you commodify it.

When you call them nothing more than something to be traded, something -- something to be exchanged, you have demeaned them. You have taken that life from them and now they're just a commodity, and we can't do that. These guys can't do that.

We're talking about different worlds here. We're a different breed of cat. This is our perspective. This is how we do things.

Well, that same forest, I'm proud to say, the Menominee tribe, with assistance from Nika (phonetic)

and with the Stockbridge Munsee Tribe, we took a semi load of some of our logs out to our relatives out in Standing Rock, so we were happy with that. That's the one way we could help our brothers and sisters out there because we're a very poor tribe.

We took a semi load of some really good firewood out there. Didn't have cranes to lift it. They all got like a bunch of little army ants and they all lifted the logs off the trucks and took care of it.

But they're fighting those same fights. You hear of this DAPL. No DAPL. But there are many, many other fights across our country.

You heard my relatives, the Ho-Chunk, talking just a minute ago. You know what they're fighting against in the west -- in the western edge of the state with fracking. My God, that's terrible. Nobody should do that to your -- to your own mother. Don't dilute that. That don't go away. You can't do that kind of stuff. It don't make sense. It ain't right.

Well, we're one of the few tribes in the United States left that don't have a migration story. We didn't come from anywhere else. Where we are is where we came from.

At the mouth of the Menominee River, and that separates Upper Michigan from Wisconsin, that's where we first come out of the ground. Our ancestor there come out, and he was asked and got turned into our first Menominee. And so from that start, that's where Menominee have come from.

So now there is a mine called Aquila. Aquila Resources starting on Back Forty Mine on that very Menominee River. And that contains all kinds of ancestral mounds of our people.

It also has raised garden beds, prehistoric. All of those historians and archeologists, they all told us, you Indians, a long time ago, you were gatherers, that's what you were. You were just gatherers. You weren't sophisticated enough to have full gardens and this kind of stuff, and be able to live that far north at that latitude.

Well, guess what? On that Menominee River they found miles of raised bed gardens. This is a truly historic occurrence that high up in the state. Nobody believed it. Well, they exist.

And we had stories. They exist. We told them. But they wouldn't take our word for it.

But we have many things there. And here's our problem: Just like we were talking about this

consultation, and this is a great segue to some of that. Through federal delegation of environmental decision-making and authority, Michigan and I believe New Jersey, their DNR are given that ability to make that authority to make those decisions.

Well, that authority goes -- but what you heard from several here before, the trust relationship, the treaty rights, those do not follow. You gave them half of it. You gave them what they considered the good part. But they don't now have to follow through with the consultation. That truly meaningful consultation, they don't have to do that. So here's our dilemma then. That's where we are at.

So you can see the struggle. And I have a lot of written comments as I get going, I start jumping around. But my comments very much are organized, the written portion that you will receive.

Our history with infrastructure in the 1980s the Menominee Tribe's territory, air, water environment, were threatened by development of the mineral deposit near Crandon, Wisconsin.

Our tribe, along with many of our brother and sister tribes in Wisconsin, success -- were successful in defending our territory and right to clean air, clean water, and clean environment. And

we were thanked by the sports fishermen and the farmers, and the tourists and everybody else that lived in that section of the world.

To this day they still thank us for standing up and doing what was right because now their babies -- it's not just Menominee water. It's everybody's water. And that needs to be pushed as we talk to DAPL and everything else, that it's everybody's.

And we're not terrorists. We're talking about the collective wisdom and the collective welfare of the world.

Well, after we defeated that, they had -- they culminated in the mining moratorium in Wisconsin. But just a few short years ago, the State of Wisconsin rewrote its mining laws, and it deregulated existing laws meant to protect the air, water, environment and what they called the natural resources, which in English I know what means.

Today we face another throat, and I just spoke to that, the place of our Menominee origin is under attack, along with the burial mounds, sacred sites, ceremonial dance rings, villages located along that Menominee River.

The threats we are facing are a direct result of delegation of federal authority to the states,

which has ignored the foundation of meaningful and timely consultation.

So again specifically, federal delegation of environmental authority and decision-making, the Michigan DNR without delegation of federal trust responsibilities.

Okay. So you have several questions that we would want to respond to. How can federal agencies better ensure meaningful tribal input in infrastructure related reviews and decisions, protect tribal lands, resources and treaty rights within the existing statutory framework. Well, I'll give you a couple comments.

Within the actual consultation process notification, that just raw mechanism, there's a lot of times I just had a postcard or something come, Dear Tribal. And it looked like it was a mass-produced en masse, Dear Tribal Leader letter. Well, my gosh. Do you know how easy that is to get lost into a multi-million dollar organization, just that?

And we also have problems with notification regarding remove tribes. Remember, tribes were at one time centered along major rivers, oceans, thoroughfares, good land. That's where we were. But

we were removed. They wanted that good land, the government did. So we were moved.

Well, now when a lot of this notification comes, federal agencies aren't notifying who they moved out of there. It's just who currently is around there. So there needs to be through the federal agencies research into who -- who they're actually -- who they're digging up.

I don't know if I necessarily have to pull out that Michigan DNR delegation of authority piece again, it's in my notes, but you need to know that can't be. That cannot be.

And I believe New Jersey I think is the other state.

That needs to be corrected. And going forward any other MOUs with states, we need to take that into account. And we need to also make sure that does not happen if it should go forward. And I don't know how it could go forward unless you have that direct follow-up in coordination in conjunction and in consultation with the tribes as any type of infrastructure projects are reproposed within those states that you've dug into.

I want to speak on the FAST Act, Title 61. The FAST Act was signed into law in December 2015 in an

effort to strengthen the economy and create new jobs through the expedition of federal review of infrastructure projects. The implementation plan and streamlined process failed to include Indian tribal governments or any recognition of the federal trust responsibility of tribal lands, resources and sacred places.

There are obligations, and both legal and policy, as defined through Executive Order 13175. That's the duty to consult with Indian tribes on any federal action that will affect tribal interests; U.N. Declaration on Rights of Indigenous People, and I'll speak on that free, prior, and informed consent in a second.

Statutory obligations that you have under Section 106 of the National Historic Preservation Act, the National Environmental Policy Act, the Clean Water Act, the Native American Race Protection and Integration Act, the American Indian Religious Freedom Act, Archeological Resources Protection Act, and other federal laws.

And specifically, tribes also have many specific laws regarding infrastructure development within our own tribal lands, our own reservations.

The United States has trust obligations to

protect tribal lands, waters and sacred places. Menominee Tribe agrees with the National Congress of American Indians Resolution 067 that calls upon the President and the Secretary of the Interior to do the following to remedy these shortfalls created by the by the FAST Act law, and there are five:

One, ensure all agencies permitting infrastructure projects affecting tribal lands, waters and sacred places demonstrate compliance with federal trust obligations, treaties, consultation requirements, the United States, United Nations declaration on the indigenous peoples, and all statutory obligations applicable to those projects.

Number two, require that such tribal trust compliance be integrated into all regulations and guidance implementing FAST Act and other federal infrastructure permitting projects.

Three, require that appointees to the Federal Permitting Improvement Steering Council include a tribal trust compliance officer who is knowledgeable about Indian tribes and tribal lands.

Four, require that federal policies support greater tribal control over infrastructure development on Indian lands or lands where Indian tribes' both natural cultural and spiritual

resources, ceded territories, and when tribal nations are initiating or supporting, infrastructure project there should be a presumption of the tribe's direct involvement as evidence that concerns over lands, water, resources and sacred places have been adequately addressed.

And their fifth was require that Indian tribal governments must be provided in a matter similar to state governments full and early participation and purpose and meaning infrastructure for many discussions, and findings for participation in federal permitting process.

Okay. Now I'll go to your second question: Should federal government -- should the federal agencies propose new legislation altering the statutory framework to promote these goals?

In our language we could say (unknown word), darn right you should.

We request the proposal of legislation that identifies tribes with its ancestral and historic connections as having standing, and are required to be engaged at the onset of the exploration, and throughout the process for any lands that are impacted by infrastructural proposals, whether governmental or privately held.

We want you to close the mining loopholes in the Clean Water Act of 1992 and 2000, and specifically I'm talking about several. Remember the Clean Water Act of '73 was intended to prevent further degradation of natural waters.

Well, loopholes were inserted into its implementation regulations, and you've heard that mentioned several times, in 1992 and 2002, enabling new mine development that pollutes waters receiving mine tailings.

There are two loopholes. The first one redefines a waste treatment system, quote/unquote, to include an impoundment of natural stream or lake used to store mine tailings. This allows it to receive pollution that would not be permitted if it were not called a waste treatment system.

So we're -- so we've called these natural impoundments and streams, we've renamed them into a waste treatment center. What the heck is that? That should not happen. Should not happen. Your babies are going to have to drink, just like ours, out of that water.

The second loophole redefines fill material in the way it allows contaminated mine tailings to be used to fill wetlands and lakes under a Corps of

Engineers' permit.

Well, these two loopholes have allowed mining companies to discharge pollution continually since then. That can't happen.

To close these loopholes does not require a congressional act. To close these loopholes does not require a congressional act.

The two federal agencies responsible for these regulations, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers can change their regulations governing hard rock mining, tailing disposal, and fill-in wetland permits.

So that's a request coming straight from the Menominee people. And as we become more informed, I'm sure others also have that request.

Review all existing pipeline infrastructure to require compliance with current regulations in order to permit continued operation. And in the case where compliance is not possible, the commission. There are over a half million miles of pipelines transporting natural gas, oil and biohazardous liquids across the U.S. More than half of those are more than 50 years old. And with that age, many of them, the safety laws don't apply to them because of that. And those are the exact ones that it should

apply more to. They should be more strict to them.

Many larger, newer pipelines have detection equipment and automatic shut-off valves that were forced into it. The older ones don't have that. The only reason they might have to come into compliance is if there's a major catastrophe. Then they're forced to. But why are we letting that happen?

We need to enact provisions to mitigate the disproportionate impacts of climate change on tribal nations, including aid and indefinite moratorium on new carbon fuel extraction, transportation, or processing infrastructure; and, B, a deeper requirement to carry out carbon impact studies in EA or EIS documents.

Tribes within U.S. and our tribal members suffer the greatest impacts from climate change for several reasons. We are land-bound. I can't go down to Santa Fe or Washington and say those are my lands. I know. My people have told me.

In fact, because we've been here so long. You've got to know that connection. We've been on our land over 12, 15,000 years. And we didn't have these big shiny metal caskets and coffins and all this stuff. A long time ago, you bury them in a tree in the winter, when someone passed away. Or you

would bury them in the ground and you'd roll big heavy logs so the bears couldn't dig them up and eat them. There are ways we did that.

And those people, over 15,000 years, they have fed the earth. So when I go hunting, or go fishing, I go berry picking, my relatives, my ancestors have fed that. When I see those great big trees, probably some of those that went out to Standing Rock, those were fed off the nutrients of my relatives, my ancestors.

When we say we are the land, we are the land. You've got to know that.

So climate change is happening. The consensus is there within our forest we are seeing changes in different types of trees that can withhold certain climate tolerance. Some can't. We're seeing the loss of certain types of trees or the degradation of certain types of trees because -- because of climate change. And not just with the trees. We see that with our animals also.

The federal government should amend NEPA to explicitly require carbon impact studies as part of the analysis and documentation whenever an environmental assessment or environmental impact statement is required under terms of any agency's

NEPA processes and procedures.

We've put together the NEPA process a long time ago. We weren't that concerned, apparently, about carbon. Now we know its impact.

Why we included that in the EAs and EISs. I'm sure the tribes will ask that same thing. Or I'm sure they will, it's in the comments, many of these things I'm talking about.

Certain requirement for free, prior and informed consent into consultation language for all infrastructure projects that cross tribal homelands and system territories or affected treaty affirmed retained rights, whether trust or ceded.

The U.N. Declaration on the Rights on Indigenous People included language free, prior, and informed consent. Well, what the heck does that mean?

Free. It's not coerced.

Prior. That means we start it before the project starts. Before that mining phase we are sitting in and rolling up our sleeves at the very same time the agencies or anybody else is.

And informed consent, you heard some of that talk about well, that's all Greek to me, looking at this some of this technical stuff. Informed consent

is really allowing to understand what they're agreeing to or what's in front of them. It's necessary.

Apparently it isn't happening if you're hearing from some of the tribes that I don't know what that is, you know. We don't have -- we don't have the resources to have somebody to interpret that technical language to us. And it's true.

So when we ask for that, remember President Clinton issued Executive Order 13175 without the language of free, prior, and informed consent. I mean, he gave us something but it wasn't in there.

And when it was reaffirmed by Obama, he basically did the same thing as Clinton and he did not include free, prior, informed consent.

So there we are. None of the federal agencies in their response to the memo from Obama included free, prior, and informed consent in their policies and procedures for meaningful consultation and collaboration.

When you ask us what that is, or ask Menominee, well, that's what it is.

We asked the Menominee Tribe specifically the process that the State of Michigan has gone through. They have not reviewed the wetland permits, but the

other permits have gone through, but had not involved the federal responsibility to respond to some of the other laws I talked about. That had been -- I shouldn't say ignored, but it's not followed through on.

We ask that the federal government review those three permits that the Michigan DEQ has put forward, and let's see if they had left out some of those tribal responsibilities, treaties, trust responsibilities that we believe they did.

Now, we're all warning you. And, you know, it's, you know, preaching to the choir. But we're not the only forest-keepers. There's forest-keepers, there's water-keepers, and they're all here, and we're all saying the same thing.

Now, you just heard President Cleveland say that same thing: While others can come and go, the politicians, you are the agency decision-makers, and you're closer to us.

Not just communication-wise, but I believe you also can help with those same types of decisions to take care of this world for your babies the way we're trying to take care of it for our babies.

So forget those politicians. There's a charge that you have also. It's an ethical charge we take

on every single, single, single day. We have no choice in the matter.

And I'll tell you one secret. It was really simple. One of my grandpas told me once. I tell you a secret how you stay in that same region and how you can be alive and how you can be here for 15,000 years. I was waiting for this big. And he tells me, don't poison the water and the air that you breathe, and that land will take care of you right back. And that's what he said.

So I've lived that so I keep it simple so you'll understand it. And that's what I try to do. And you'll see that from many people here, that same thing. And I hope that you guys understand that also, because that's where we come from.

I want to say for everybody, you have valuable time. Probably even belly-growling. I see you turning your mics away so we can't hear that. But we thank you for that, for taking this time to do that.

And we have leaders that came from a long ways away and other departmental people. The way our people say is we pray that when we leave here, that when you go home, you find your family in a good way. All your friends, all your relatives, when you get home, they're the same way you left them.

So with that I say (unknown word).

(Applause.)

JO-ELLEN DARCY: I think we've gone a long overdue break. We still have five more people we'd like to hear from this morning. Now it's the afternoon. But maybe five, ten minutes we'll come back and finish up with those five speakers.

(Recess taken between 1:08 p.m. and 1:28 p.m.)

JO-ELLEN DARCY: Welcome back. I believe our next speaker is Stella Kay.

STELLA KAY: My name is Stella Kay and I'm the Tribal Vice Chairperson for the Little Traverse Bay Bands of Odawa Indians. We are located in the northern -- the northwest corner of the lower peninsula in Michigan, in God's country.

A lot has already been said, so a lot of the talking points I don't feel like I need to go over a lot of that. If nothing else, so we can get out of here a little quicker. But I did have some thoughts I wanted to share and tell you about our infrastructure story.

First I want to say I am humbled to be here in the midst of all of these great tribal leaders. I am relatively new in my position. I'm only two months into it. And I can only hope that I could be as

eloquent and the champion for my tribe that you have been.

So I had some thoughts on consultation, and what I thought it should mean, okay? I hear a lot about consulting. The federal government seems to feel that consulting or, you know, whoever, agencies feel that consulting is sending us a letter and letting us know that it's happening, right?

Prior early consent in consultation should be the goal, okay? Notification does not qualify as consent. Consultations should not be delegated to the corporations who profit from the permit. Consultation should be local and face-to-face.

Having a consultation session in D.C. doesn't help the tribes that can't afford to get there, you know, and it's a stretch for some of them to make it to these regional consultations. So just an effort to be local would be helpful.

A tribal trust compliance officer who is knowledgeable about Indian tribes and tribal lands should be appointed to the Federal Permitting Improvement Steering Committee to make sure that a tribal trust compliance is integrated into all regulations, and guidance implementing the FAST Act in any other federal infrastructure permitting in any

agency.

So then the federal government goes out of its way to train people for foreign service and requires them to pass a test, yet here in the U.S. a civil service employee working with sovereign nations does not require training in cultures, religions, or sacred sites. That's something that I feel strongly needs to be changed.

The federal government consults with states, counties and cities. According to the U.S. Constitution, tribes have sovereign status similar to a state government. All we are asking for is equal consideration to a state instead of this continued marginalization.

And now my story and my purpose for coming. In the 1836 Treaty the Little Traverse Bay Band of Odawa Indians, along with other Odawa and Chippewa Band tribes, ceded more than 26 million acres of its aboriginal territory to the United States that became northwestern Michigan in 1837. The tribes made this vast session of their homeland based on the promise contained in Article 13 of the 1836 Treaty that the tribes would have permanent right to live, hunt, fish and gather throughout the ceded territory and the ceded waters of Lake Huron and Lake Michigan, and

Lake Superior.

The Great Lakes Treaty fishing and hunting rights lies at the heart of the tribe's culture, water especially so. The Straits of Mackinac, the water that connects the Lakes Huron and Michigan between Michigan's Upper and Lower Peninsulas, are the center our tribe's treaty fishing.

A 62-year-old pipeline, owned by a Canadian company, Enbridge, known as Line 5, passes under the Straits of Mackinac. You've heard other tribes mention this.

An oil spill in the straits could destroy our sacred treaty right and be impossible to clean up during the winter months when the straits are frozen over.

In addition to the implication to our treaty rights, the Great Lakes are the United States' most valuable resource for fresh water. 20 percent of the world's fresh water passes through the Straits of Mackinac.

In the State of Michigan a lot of talk is centered about what to do about this. Almost everyone is in agreement that this is not a matter of if, but when the line will break. The pipeline is 12 years past its original estimated life.

A year ago the governor of the state, Rick Snyder, the same governor who presided over the Flint water crisis, told the Michigan tribes he would ensure an action plan was put into place.

A year later when asked about the progress of that action plan, he admitted nothing meaningful has been done.

A month ago representatives of my tribe met with the Region 5 EPA representatives and asked them if there was something they could do or something we could do to help them get action on this issue. They told us until Line 5 broke, their hands were tied.

The core of tribes have had contact with the Army Corps of Engineers regarding the approval of a permit for Enbridge to add anchored support for Line 5 at the Straits of Mackinac.

Turns out, there are significant spans of Line 5 underwater, mind you, that aren't anchored, as the original plan required. The core of tribes and their environmentalist have concern that the installation of these supports would stir up potentially contaminated sediment. The result was -- a document stating the concerns of the tribes, but the Army Corps of Engineers did not share the same concern.

That was their consultation. We told them we had a legitimate concern, and the Army Corps of Engineers sent us a letter telling us we were wrong. We asked for scientific documentation to show us why they believed this, and to date we have received nothing, and no promise to provide us this proof.

Catherine Hollowell, of the Sault Ste. Marie Band of Chippewa Indians, told you about the Line 6B consent to meet with Enbridge. After months of sitting at the table with the players involved, a last-minute change to the consent decree that the tribes weren't made aware of grew to bind Line 5 and Line 3 into the consent decree. The reference was buried on page 73 of the document.

Today you've heard a lot of great ideas on what will work and what doesn't. What I'm asking for is a point of contact, someone to take responsibility as the tribe's liaison when we have these issues. Someone the tribe can go to and get action.

In this particular instance all we have been met with is a lot of people either telling us our concerns are unfounded or pointing to some other agency within the federal bureaucracy.

The U.S. government has a long history of double-dealing with Indian tribes. When it comes to

infrastructure projects and progress, it really doesn't feel like any progress has been made at all.

Well, maybe it has. At least you aren't shooting at us this time. Oh, wait. I forgot about Standing Rock.

(Applause.)

JO-ELLEN DARCY: Kathleen Brosemer, and then Edith Leoso, and then I think John Dossett.

KATHLEEN BROSEMER: Thank you. My name is Kathleen Brosemer. I am the environmental program manager for the Sault Ste. Marie Tribe of Chippewa Indians.

The Sault Tribe is the largest tribe east of the Mississippi, and we have our ceded territory, our service area in the eastern half of the Upper Peninsula of Michigan.

You know what we do in Michigan with our hands, we put your hands up. You'll see the eastern -- part of it you can see of my right hand is our service area. Between those two parts of my hands that you can see is where Line 5 is, the five-mile long stretch of dual pipelines 20 inches wide each that runs under the Straits of Mackinac.

I was asked to come and speak on behalf of my tribal chairperson, Aaron Payment. We've been

working together very closely on these issues for several years now. And I write a lot of his testimony, and he's complimented me by saying I have taken on his voice.

So please take this as what Aaron Payment would be seeing if he was able to be there. He is the chairperson for the Sault Chippewa Tribe. He's also chairperson of Michigan Alliance of Sovereign Tribes. In that capacity, he arranged for a meeting of tribes last night here, he asked me to work with.

He couldn't be here. Very sorry about that.

On my own, I am also an enrolled member of the Echota Cherokee out of Alabama, which is where my father is from. I'm a regional representative on the Regional Tribal Operations Committee for EPA Region 5, and I serve on the National Tribal Water Council.

We have five tribes in the Treaty of 1836. 1836 Treaty arranged for the cession of all these lands that are in visible hands to what then became the State of Michigan in 1837.

Without the Treaty of 1836 there wouldn't be a State of Michigan. That is significant, and I want you to keep that in mind when we talk about what we are as sovereign tribes.

We are also right on the Canadian bothered. We

have become very aware that we as sovereign nations are treated quite differently than the way you treat the other sovereign nation on our border.

When the Great Lakes Water Quality Agreement is renegotiated, the State Department does so. Not the EPA. EPA feeds into it, but it's the state department leading.

We are sovereign nations. You have treaties with us. You have treaties with Canada. You do not have treaties with other states. You do not have treaties with counties. You do not have treaties with townships, you do not have treaties with stakeholders, you do not have treaties with corporations.

We are sovereign nations. The state department shouldn't be leading this conversation. It would be leading this conversation if you were considering how federal involvement in permanent infrastructure might affect Canada.

Aaron Payment is taking a very active role in fighting Line 5. The Chippewa Indians are a federally recognized sovereign tribe. The Sault Tribe is part of the Anishinaabe' people. The people of our area where our homelands begin on the original Turtle Island, Mackinac Island, which is right

adjacent to the Straits of Mackinac where that pipeline lies.

We have court-affirmed treaty rights to hunt and fish within the waters of the Great Lakes, Michigan and Huron, and to hunt, fish and gather foods and medicines on public lands within the treaty ceded territory. These rights are under threat.

In order to exercise a treaty right to fish, there have to be fish there. Those fish have to be edible. Our fishery is threatened by crude oil pipelines at the Straits. Enbridge Pipeline Line 5 of their Lakehead System, the same system that broke on Line 6B, spilling a million gallons of tar sands into the Kalamazoo River, a million gallons that took 17 hours of repeat pumping and ignoring of alarm bells.

Under the Straits of Mackinac, a million gallons of oil flows every hour. If they ignored that for 17 hours we would have a 17 million gallon spill.

And indeed, for a third of the year that's under ice. And the Coast Guard told us it would not be able to be cleaned up.

Line 5 was installed with 1953 with a 50-year design life. You can do the math. Enbridge now said

that they could operate indefinitely. Please put quotes on that when you're putting that in the record.

We all know no that no infrastructure is safe to operate indefinitely. Nothing. The Straits are a valuable water, ecosystems. We know that no one would be allowed to place pipelines there if they were applying to do it now. It's too risky, it's too valuable. The ecosystem is too valuable, the water.

So why in the heck is a 63-year-old pipeline acceptable?

If current technology, state-of-the-art steel, state-of-the-art welds, state-of-the-art coating is too risky in that place, somebody better find out a way to stop the 63-year-old pipeline with the old welds, the old coatings, and the old steel.

The pipeline is an accident waiting to happen. The State of Michigan, which is the beneficiary of our treaty between you and I, is allowing continued operation of an imminent threat to our court-affirmed treaty rights. The governor is doing nothing.

The attorney general of the State of Michigan has stated that the pipeline's days are numbered, but he won't tell us what those numbers are.

State government is behaving as if

pump-and-pray is a way to protect the Great Lakes. We know better and we need to do better.

A huge issue is that there's little to no federal law governing this pipeline. Line 5 was installed prior to the environmental laws of the 1970s. It's been grandfathered in. There's no need for treatment reaction, no approval, no hook to make this pipeline meet safety standards. It's an enormous problem.

Of the half million miles of pipeline in this country, half of that pre-dates these laws. Aging pipelines with substandard welds, old steel, old coating technology or non-existent coating and decades of corrosion are not subject to modern environmental safety rules. It's appalling.

The U.S. government does not have the right to give away our court-affirmed treaty rights. You just don't have that.

When you take inadequate action or permit companies to take actions that threaten those rights, you are giving away our court-affirmed treaty rights. That's what you are doing.

Recently, the State of Michigan EPA settlement with Enbridge over the pollution to the Kalamazoo Ridge System over Line 6B, and included the

information for remedial support on Line 5. Zero tribal consultation on this settlement. Only after the government communicated about this after we as tribes found and made it an issue.

It's essential environmental law must be made to apply retroactively to projects that threaten treaties resources. That's essential.

It's essential that federal policy on consultation and coordination with native tribes be incorporated in the United Nations' definition of free, prior, informed consent.

I want to get into the free, prior and informed consent just a little bit more.

The United Nations Declaration on the Rights of Indigenous People was adopted in 2007 with 143 countries affirming this, four countries not. The United States was in those four.

President Clinton's Executive Order was dated 2000, so it's forgivable that it didn't include the language of free and prior and informed consent.

It was seven years in advance. But President Obama reaffirmed EO 13175 with his memo in 2009 and failed to include free, prior, and informed consent.

After President Obama issued his memorandum on tribal consultation, various agencies started

producing their policies on consultation and coordination with Indian tribes. We've reviewed 46 of these federal policies, and found free, prior, and informed consent in none of them. Zero.

State Department in 2010, when federal government -- when Barack Obama finally agreed to endorse the UNDRIP in 2010, the last of those four hold-out nations to endorse it.

When he finally endorsed it, State Department came out with a document that described what they intended to do. The announcement of U.S. support for the United Nations Declaration on the Rights of Indigenous People.

In this document, page 2, "Moreover, the United States is committed to serving as a model in the international community and promoting and protecting the collective rights of indigenous peoples as well as the human rights of all individuals."

The United States talks a good talk, doesn't it? The last of 147 nations to endorse this. Last one. Dragged kicking and screaming. That's not a model. That's not leadership.

In addition, this document played fast and loose with definitions of words that we all know the definitions to.

The U.N. came out with a document explaining what it meant by free, prior, and informed consent. And it defined free, it defined prior, and it defined informed. No one realized we actually had to make it define consent. That's seems pretty darned obvious what consent is.

However, on page 5 of this 2010 document from the State Department, in this regard the United States recognizes the significance of the declaration's provisions on free, prior, and informed consent, which the United States understands to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken.

I put before you that the State Department is playing fast and loose with definitions of words that we all know the definition of.

If I were to go on a date, and my date said these are my intentions, tell me what you think. And I told him what I thought. And if I said no, and he said well, I've heard you, I listened to you, but I'm going to go ahead and do what I like anyway, that is not consent.

The State Department has no business redefining

the word "consent." And you could start by going back to state because we are not going to have a good relationship if no one can say no to you and have that respected. Thank you.

(Applause.)

JO-ELLEN DARCY: Edith Leoso.

EDITH LEOSO: (Speaking in non-English language.)

So I've been taught to introduce myself when I get up to speak to people in this manner, and what I've told you is that my name -- I am called Leading Woman, or the woman who stands in front of others upright, as to lead them. I am of the Bald Eagle Clan. I am from Bad River, but it doesn't say Bad River, which means to me more like medicine or swamp river.

I am a fourth-degree Midewiwin, but I didn't say that. I said I know all that there is to know of the Midewiwin. Midewiwin is an ancient society of our people. And I am a Midewiwin quick, which is a woman that takes care of that lodge of the Midewiwin. And I am of the Three Fires Lodge.

And so I want to say chi-miigwech. Miigwech in our language means something. And I'll tell you about that later. I want to say that to all the

tribal leaders that got up to speak here.

My tax paying name is Edith Leoso. Oh, yeah. I pay taxes. And I am the tribal historic preservation officer for the Bad River Band of Lake Superior.

I have the authority given to me by my tribal council to consult on behalf of the tribe as it pertains to the National Historic Preservation Act. That's something given to every THPO in the country that is recognized through an agreement with the National Park Service.

So a lot of things were said here today, and I'm really grateful that they were said. There isn't a whole lot left for me to say because of that.

In the 12 years I've been THPO I've found out one thing, and that is history has a tendency to repeat itself. With that, I want to say how about those Cubs, hey?

I had to say that because standing before you today is a product of Indian policy. I am a product of Indian policy. I was born in Chicago, Shikako. Shikako is a word in our language, of which Chicago was named after. Shikak means skunk in our language.

And at the headwater or the mouth of the Chicago River every fall is where the skunks would

congregate there in the fall to mate. And that's the place where we would go, because we needed for the wintertime, that medicine that the skunks provided for us. So Shikak is what that word came from.

And I was born and raised there as a product of Indian policy. My mother was sent there under the Indian Relocation Act where she had the opportunity to meet my father.

My father is from the island of Samoa, which is in the South Pacific, closer to New Zealand and Australia. But I was born and raised on a reservation, and I know my Ojibwe language and my Ojibwe history there. However, when I post on Facebook, it goes all the way to Samoa, who then has friends over there in New Zealand with the Maori, and the Australia with the Aborigines. And I also have friends over in Japan and in Peru. So social media has been a huge way of communicating.

And we pretty much know what everybody else is doing everyone else in the world.

One of the things that has emerged from that is that people realize, oh, hey, Indians aren't dead yet. Even though as a THPO I get called every single simple year from some fifth grader or sixth grader in North Carolina or something. And they start talking

about we're doing a thing on Indian history, and we thought we'd call you about that.

And the reason why they call Bad River is because after Agua Caliente is Bad River on the list of federally-recognized Indian tribes. And so they finally realize that Indians are still alive.

One of the reasons why they realize that is because we've been de-humanized for so long. The de-humanizations of Native American people on this continent has been persistent and consistent forever.

My job is to let people know that we're still here, we're still humans, we have feelings, we have families, we have a lot of work to do.

I stopped what I was doing at home, even though we're still addressing flood problems up there, and rebuilding roads to come to this very important meeting. It sort of slipped through the cracks in the emails and that, with the number of letters that we get every day, you know, pretty much nobody in our tribal administration knew about this meeting. And at the last minute it was who is going, who's going.

Well, I knew about it. I said I was going to go and see what's happening here.

I don't really consider this tribal consultation, okay? And the reason being is that

consultation invokes something else where you sit down and you get -- you have meaningful dialogue with each other. And you're able to talk about what you think about and how you feel about things.

And that is on both sides, instead of one person just listening, okay? This is more of a listening session, I would imagine.

So I've been to like I don't know how many of these, you know. Department of Energy, are you here? Are you represented here today? Department of Energy, yup. Sat at that presidential permit consultation on the power line coming over the border of Minnesota and Canada, bringing the power over from Canada, which was held under the guise of renewable energy, but it isn't.

But it's for a huge power line coming in. It's actually for the mining companies in northern Minnesota, to be able to process more mining materials that they would extract from other states, and truck over to northern Minnesota.

I've sat down with the Army Corps of Engineers I don't know how many times. Brad Johnson knows me pretty well. And I remember one of the first meetings with the Army Corps of Engineers it was with the Detroit District, and we were at Madeline Island,

which is an island among the other islands on the Apostle Islands National Lakeshore.

And I'm there with the Lac du Flambeau Tribal THPO and Red Cliff Tribal THPO. And I'm sitting there, and the Army Corps representative from the Detroit District leans over to the town foreman of the town in La Pointe and says you know what? If you put this in on your own dollar you won't have to consult with the Indian tribes.

And we're sitting there at the end of the table and I say excuse me, we're sitting right here. Who do you think you're talking to? That was totally unacceptable to us.

So what I've gathered from tribal consultation along the way in the past nearly 12 years I've been consulting with my tribe with federal agencies, I think I've consulted with just about every one of you guys except FAA.

Are you here today? FAA. I've been looking for you. You've been under the radar for I don't know how long. We have had planes flying through at low levels along our reservation during our ceremonies, which is totally unacceptable, because those ceremonies are not to be filmed, and we believe they are filming them.

We want a no-fly zone during the period of our ceremonies, and we need to talk.

There's things like that that happens. A lot of things I don't want to reiterate because I was sitting here thinking -- I said a lot of that stuff at a lot of different consultations, at a lot of national meetings. I've even consulted with the FBI.

Are they here? No. They left. With the Miller Collection. The Miller Collection is the one where somebody thought it was okay to hang on to Native American human remains in their basement. And thousands and thousands of different artifacts and that were found in this elderly gentleman's basement.

And the FBI stepped in and took control of the matter, and NAGPRA, and consulted with the tribes, which I appreciate.

On my reservation we have four pipelines that go through our reservation, all installed during periods where there was no tribal consultation, even though it clearly stated in the Treaties of 1854 that we -- things were to be done upon our consent.

Now, we've mentioned the treaties quite a bit here today. With this new administration it's kind of uncertain where those new treaties might be in a few months. And it's just to remind everybody, you

know, what those treaties actually are.

They are legally binding agreements that we have with one another that says, you know, we will be obligated to the U.S. federal government just as the U.S. federal government will be obligated to us. We both have responsibilities with these treaties, and we have upheld our responsibility. We have maintained peace.

And should a new administration come in and decide to abrogate those treaties, you know, what does that actually mean? That means that we are no longer bound to the United States and we can enter into any agreement with any country that we desire.

And I just wanted to remind you of that a little bit. And I don't say that to be disrespectful to this country. It's just a fact. That's just the way it is, just like any other treaty that the United States has made with any other country. Just because we don't have a treaty doesn't mean we're not a country.

And I remember that treaty. And I say that as though I was there, because that blood memory still goes through my veins. My great-great-great-great-grandfather Oma-shna-ma (phonetic), who was also a Civil War veteran, signed the Treaty of 1854.

And in that treaty there we were able to develop our own allotments. We began the allotment process 30 years prior to the Dawes Act, which everybody -- we were the testing ground. And it was essentially to see if they could take land away from Indians through allotments, which has happened.

And now we're still battling that. I had two great-grandfathers who signed those treaties. Oma-shna-ma in our language means -- well, in English language it might translate to the messenger. So he had a distinct purpose. And that was to speak eloquently on behalf of others as though it came from his own heart.

And I hope that I do that in consultations. Because I'm really tired of consulting because it tells me that people still don't understand Native American people.

In Germany they make it a point to educate their children about the Holocaust and what happened there. They make it a point to do that so that it never happens again, so that history doesn't repeat itself. They have on the streets in front of the homes of the Holocaust victims whose lives were taken in various camps the names of those people who lived in those homes.

And I say when I see that, when are they going to do that here? When are they going to be educated to the point where they will accept history as the way history actually was.

There isn't a whole lot I can say about this today that I haven't said before in consultation with all you agencies. So I'll have to say something I haven't said before.

And I want to talk about -- to remind people of a little known thing. And you can actually Google it. It's called the Seven Fires Prophecy. And in the Seven Fires Prophecy, there was seven prophecies that came out of that. And as Midewiwin I can speak about this, and I don't mean to offend anybody when I do that.

And in that prophecy, the last prophecy is the seventh fire, and that seventh fire there would be a people that would emerge a new people, a new people who would pick up the -- what was left along the roadside for them, what was left of our language, what was left of our ceremonies, what was left of our sacred items. We would pick those things up.

And you have to remember, these Seven Fires Prophecies were given long before European onset. Europeans weren't even here when these were given.

So at this time in the Seventh Fire they say the light-skinned race would have to make a choice. If they made one choice, that choice would join two nations together. We would become a great nation.

And along with that, two more nations would join as well to make the greatest nation there ever was in the world. And we would live that way for the longest time, in harmony with one another.

The other choice that they could make, besides that one, would lead them to -- would lead them to -- not just them. The whole world. To pain, suffering, destruction, and devastation.

And I'm reminded of that prophecy and I wonder, what did that mean? What does that mean? And I realize, you know, that the people of color know who they are and where they're from. They have a long history behind them, and they can recount the history of what happened to them.

It is the light-skinned race here, who some of them can't even remember where they're from. I ask people where are you origin, where do you originate from, do you know? Like Finland, like Germany, like Nova Scotia. And they don't know their ways, which I feel very sad for them for that.

So with that, I realize that that light-skinned

race might be you sitting at this table here, who have to make a choice of how things will be done in the future. Because you may not be sitting here in the end of January. And that's a very real thing.

So what can you do to put in to place where a tribal consultation will be consistent, where what the tribes have to say is considered, and is taken into consideration to the point where what they say actually happens. Because a lot of things we've said in the past has come to fruition.

One tribe, I believe it's the Hopis, have said there will come a change for the Anishinaabe', the native peoples, when the eagle lands on the moon. That was one of their prophecies.

And when the eagle landed on the moon, that's when we seen the American Indian movement come to fruition, and the Indian people stand up.

Another one is you would see another change when the spider spins its web around the world. And we see the worldwide web now.

So when I post something on the Internet, on my Facebook page, my relatives in Samoa, they pick that up and they share that with their friends over in the -- the Maori relatives over in New Zealand, Aborigine relatives over in Australia, and they share

that. And we keep sharing that all the way around the world.

So right now that has come to fruition. We can communicate worldwide. So everybody knows we're not dead anymore because of Standing Rock. And I want to thank all those people.

So one of the things that I do and that my lodge has done is to bring awareness to water. We have walked with that copper pail from the northern-most parts of North America. We have lifted the water in Washington and carried it to the center, and lifted the water in Maine, and carried it to. Lifted the water at the Gulf of Mexico and carried it, walked it all the way to my reservation.

When Grandma Josephine Mongomman (phonetic) lifted it over in Washington state, the next day, that's when the tsunami hit Japan. I'm not saying that that's what happened, you know. She did that, but it was peculiar. It told us something.

And there's a lot of things that are being told to us. We just need to listen.

And so with that I want to say miigwech. Miisagwech (phonetic). Because mii in our language means it is. Gwech means enough.

When we say miigwech in the way my relatives

have said that to you here means that we're very grateful. It is enough. What you've given us is enough.

But when we say miisagwech, it changes the meaning. This is enough. We have to begin to work together in a way unprecedented. Because unprecedented times are here today.

And I just wanted to say that much. Miisagwech. It's enough.

(Applause.)

JO-ELLEN DARCY: Thank you. Our next speaker is John Dossett.

JOHN DOSSETT: Hi, everyone. My name is John Dossett. I'm the general counsel with the National Congress of American Indians. I'll try to be very quick. It's been a very long day.

It's an impressive panel here. You have a lot of experience and you've invested a lot of time and effort into this.

And the tribal leaders as well have done an amazing job.

One of the things we've been thinking about at the NCAI is how do we come at the back end of this process to something that is useful that carries forward. And so far we've heard recommendations,

right in the framing paper, that one set of recommendations would be to recommend to Congress changes in the law.

That doesn't make me very optimistic, in part because this issue has been around for a long time. I think it was in 1970 President Nixon in his statement about self-determination, he recognized the problem with the conflict of interest when permanent infrastructure, and that was during the dam-building period, when the Army Corps was building dams up and down the Missouri River. And the conflict with the trust responsibility to tribes, and this idea of building, you know, national interest and infrastructure.

And he proposed that there would be a change to Congress, that there would be a trust council. And that went to Congress, it was debated for a long time.

And at that time a Republican president proposed to a Democratic Congress that they change the law, and they didn't do it, and now it's 46 years later.

So you guys are suggesting hey, we'll go to Congress and change the law. That just doesn't seem super likely that will happen real soon.

The other thought we heard is that you were making recommendations to the next administration; and that also, given the environment we're in, doesn't seem like a particularly fruitful way that we're going to get something good out of all the effort that you guys have put into this.

But we wanted to make a suggestion that was based on the new FAST Act, the Federal Infrastructure Permitting Steering Committee Act. That at least as we read the statute, it gives a great deal of authority to the OMB and the Permanent Steering Committee together to define best practices and recommendations for basically all other agencies.

And it's just a year ago, under the law by December 5, within a year you're supposed to be doing these recommendations. So there's a deadline.

Congress is actually telling you come out with best practices and recommendations within a year, and tell all the other federal agencies how to do it. And this may be a good time to get these tribal recommendations in front of them.

The statute, what it says, is that the executive director in consultation with the council may recommend to the OMB that guidance be issued at effectuate the adoption by agencies and best

practices and recommendations.

So what we were thinking about is that perhaps a way to do this would be -- that the OMB would issue a document, and OMB issues a lot of different guidance.

OMB circulars, you have to comply with those things. You don't just ignore OMB circulars. They're kind of law.

OMB gets -- they get to tell federal agencies what the rules are and how to move forward.

So we were thinking there would be principles and best practices for infrastructure permitting related to Indian tribal governments, that it would be a way to frame this. And a way to do it that the next administration, if it's principles of law, like the trust responsibility and treaty rights, the next administration is not going to undue that. Those are fundamental principles of law.

And if there are best practices, like ways to consult with tribes earlier, those are also just best practices. They're not something likely to be withdrawn by the next administration.

Our thought, at least, you know, trying to group them together, but 12 things.

The first would be the recognition of tribal

sovereignty; that too often tribes are treated as though they're just a member of the public.

The second would be consideration of the federal trust responsibility. And here we're particularly looking at cases like Pyramid Lake versus Morton, and Northern Cheyenne versus Hodel.

Pyramid Lake versus Morton is a really interesting case because they were building an infrastructure project to divert all the water out of the Truckee River and basically drain Pyramid Lake.

And the federal court stepped in and said no, you can't do this. You have a trust obligation to consider your responsibilities to the tribe downstream from this infrastructure project. And your failure to consider that trust obligation as a part of the administrative procedures was arbitrary and capricious. That was upheld, appealed all the way to the Supreme Court.

Same decision was uphold in that Hodel case. So considering that trust responsibility adds some teeth to this idea of consent. It's not just the UNDRIP but it's part of the federal trust obligation to Indian tribes to consider this, and there's case law to back it up.

So in addition to that trust obligation, there

would be consideration of treaty rights, which had been mentioned earlier here, consideration of all the statutory duties that we've discussed. And that's quite a lot of these statutory duties. And then the environmental justice concerns.

There is this Executive Order in environmental justice, and this has come up again and again in the discussions. Those would be like the substantive principles that need to be considered, and then best practices or ways to do this could be, you know, the Federal Communications Commission and its regional mapping project, the way they did that is really a good best practice. And you guys have also suggested other best practices, ways to get notified, and you find out about off-reservation hunting and fishing rights, or off-reservation cultural resources.

The idea of -- obviously consultation in early planning, notice of information sharing. One of the most surprising things I found was the way tribes are forced to go through the FOIA process in order to get access to documents, particularly by the Federal Energy Regulatory Commission. They're like submit a FOIA request and maybe we'll get you some documents. That part I thought was something you may want to work on.

One of the recommendations that we thought was interesting was the Indian Trust Impact Statement that was recommended by the American Indian Policy Review Commission. Their report, I think it's chapter 4 of their report from the mid 1970s, and this was right at the end of dam-building period. They had extensive recommendations on how to balance the trust obligation to Indian tribes with the national infrastructure interest. And this was a huge amount of consideration went into this in 1970s.

The other issue, best practice would be funding tribes so they can participate, providing training to federal officials, and then studies about cumulative impacts.

We thought that this may be a way to come out of this process with some sort of a document or a statement that would have lasting value, that would be very difficult for a future administration to withdraw. You wouldn't need action from Congress. And all this work that we've put in, really good work and that you've collected, you'd be able to put it ina framework that could move forward.

And then the next time one of these Standing Rock infrastructure problems comes along, all right, there's a set of principles. Here's how

you're supposed to do it. And it would be something that would apply to every federal agency that works in harmony.

This isn't the entirety of the issue. There are a number of other issues that are specific to federal agencies, like Army Corps, Schedule C, so this doesn't get to everything that might come up.

But we'd like to put this forward to you to consider as one way to come out the back end of this process with a strong statement that could carry forward in a good way. And all the good work that you've done here would be preserved in a place for the next administration and administrations after that.

Anyway, I'd be -- I don't know if there's other speakers. One more after me. But if you have a chance, I'd be interested in your thoughts about what comes out the back of this process. You know, what kind of policy can we get in this environment that would be useful going forward. Thank you.

(Applause.)

JO-ELLEN DARCY: Thank you. One final request for a speaker. It's David "Niib" Aubid. Am I pronouncing that correctly?

DAVID "NIIB" AUBID: David "Niib" Aubid,

elected representative representing District 2 of the Mille Lacs Band, whose chief executive Melanie Benjamin spoke so eloquently earlier today.

I will take this opportunity to turn my back on the panel, and thank and applaud the tribal leaders here today.

(Applause.)

You have spoken with well-articulated statements. No longer will the feds turn their backs on us. As I turn to face the panel, I offer my apologizes, as well as my sincere thanks for accepting the courageous responsibility of continuing meaningful tribal consultation in the years to come. Miigwech. Thank you.

(Applause.)

JO-ELLEN DARCY: Well, thank you. Everyone, I think we have heard from everyone. It's on now? Can you hear me? This one is on. Okay.

First of all, again, thank you. This has been a great consultation. I know that there have been more than 15 tribes who participated today and spoken. I think I speak on behalf of all of the people represented here on the federal panel, not only has it been informative, your comments have been thoughtful, and most of all they're been impassioned,

and I think that's what all of us could hear today from you.

I think that John, in your last remarks, gave some great recommendations as to what we should think about going forward, especially in light of what it is we can do in the next 60-plus days.

And the recommendation about an OMB circular, inside development talk, but I think it's something that could be useful for all of us to consider, especially given the future of the permitting office that has been set up.

So with that, I'd just like to add a couple things, observations that maybe weren't covered in some of the comments that John made.

And I think one of them, as the assistant secretary over the Corps of Engineers, our Appendix C seems to be something that needs to be focused and addressed as far as how it can be improved as well as be more in sync with the Historic Preservation Council, so we're going to be working on that.

Also we heard repeatedly that states -- we're in the Midwest so I'm familiar with the State of Michigan and the fact that the 404 program has been delegated in the state under the Clean Water Act, and how many tribes here today feel that has been a

delegation that is not warranted because of the treaty rights the federal government has with states; and that states often are not in the same place as the federal government regarding treaty and trust responsibility. So I think that's something we all heard really clearly too.

Another was resources. The consultation process can often be lengthy, time-consuming and involve a number of consultations at the same time. And many tribes don't have the resources to be participating in that. So I think we need to consider that and take that back and see how we can better improve the way we can be more inclusive, the notification process, you know, how do people get notified. You know, I think we need to do a better job of that.

And also maybe there's a way that we as a federal family can better coordinate the numbers of consultations that are necessary, especially on large infrastructure projects.

The Corps needs to consult with the tribes, and as did does the DOT for transportation or FERC or others, I think that's something that we heard loud and clear and hear today too.

Also we strongly heard that free, prior,

informed consent is something that is supported by I think everyone in this room, and how does that translate into our consultation process. And I think we need to consider that as well.

I don't know if anyone else on the federal panel wants to have any closing remarks, but I think we all learned a lot today. We will be able to take this back.

We have one more face-to-face consultation. We're on our way to Rapid City where we will have a consultation on Thursday. Then there's the teleconference on the 21st that I hope you will all be able to participate in.

And then after that we will be getting together as a federal family to come up with what we think is -- are good recommendations for all of us to be -- improve our consultation process with our tribal nations, and to be able to make sure that our government-to-government responsibilities, our trust responsibilities and our treaty responsibilities accurately reflect what it is we need to do, and that's be responsible to our tribal partners.

That said, I'd like to thank -- who's the Chairman Vig for your hospitality, for the short time I'm here, and -- I haven't been able to get to the

casino. But it's been a great, I think, representation of this area of the country.

I used to live in Michigan so a lot of my Sault Ste. Marie stories and Mackinac Island and pipeline is one I'm very familiar with from my days living there.

But again, thank you for your hospitality, for your participation. And I think that everything you said was meaningful. And I think everyone here can take that meaningfulness back with us to what we need to do, and that's to execute our responsibilities to all of you.

So with that said, thank you very much for making this consultation a meaningful one.

(The hearing concluded at 2:29 p.m.)

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REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF SHERBURNE)

I hereby certify that I reported the Tribal Input on Federal Infrastructure Decisions on Tuesday, November 15, 2016, in Prior Lake, Minnesota;

That the testimony was transcribed by me and is a true record of the testimony of the hearing;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

WITNESS MY HAND AND SEAL THIS 23rd day of November, 2016.

Andrea J. Tungland Heairet

Andrea J. Tungland Heairet, RMR, CRR, CLR
Notary Public, Sherburne County, Minnesota
My commission expires January 31, 2018.