

1 U.S. DEPARTMENT OF THE INTERIOR  
2 FEDERAL CONSULTATION WITH TRIBES REGARDING  
3 INFRASTRUCTURE DECISION-MAKING  
4  
5  
6

7 TRANSCRIPT OF HEARING PROCEEDINGS  
8 Wednesday, November 2, 2016  
9  
10

11 PURSUANT TO PUBLIC NOTICE, this matter came  
12 on for hearing on the 2nd day of November, 2016, at the  
13 hour of 8:30 a.m., at the Grand Ballroom of the  
14 DoubleTree Hotel, Billings, Montana, before the  
15 Departments of the Interior, Justice, and Army, with  
16 Director Tracy Toulou of the Office of Tribal Justice  
17 presiding.  
18  
19  
20  
21

22 Vonni R. Bray, RDR, CRR  
23 P.O. Box 125  
24 Laurel, MT 59044  
25 (406) 670-9533 cell  
(888) 277-9372 Fax  
vonnibray@gmail.com

## 1 PROCEEDINGS

2 (Hearing proceedings commenced at  
3 8:30 a.m., November 2, 2016.)

4 MR. TOULOU: So welcome, everyone. My name  
5 is Tracy Toulou. I'm with the Office of Tribal Justice  
6 of the Department of Justice.

7 Before we get started today, Mr. Steve Vance  
8 of the Cheyenne River Sioux has agreed to do the  
9 blessing and get us started in the right way today.  
10 Would you all stand.

11 MR. VANCE: Good day to everybody. I have to  
12 prepare myself for this, so -- I didn't expect this. I  
13 got up, started thinking, running around, hauling my  
14 bags outside, getting checked out, exerting myself  
15 mentally and physically and emotionally.

16 when I'm asked to do something spiritually, I  
17 have to prepare myself. When we do this in the  
18 morning, the Native people have a protocol in  
19 addressing their day and addressing life. So many of  
20 us have already said a prayer. But for this meeting, I  
21 was asked to say some words just to explain what I will  
22 be saying.

23 I'll be addressing everything above in the  
24 daytime and everything above in the nighttime and then  
25 the elements, the north, the east, the south, and west,

1 and the earth of life. Because the essence is all of  
2 that that created this planet that we live on and what  
3 we take from this planet: clothing, food, our health,  
4 and happiness.

5           You know, the main goal in life is to be  
6 happy. And I'm happy to be here. I see a lot of my  
7 colleagues in the field of work that we do, close  
8 personal friends. I'm still getting to know quite a  
9 few of the people up here.

10           But I want to remind everybody of something  
11 first before we do this. When we went to Seattle, the  
12 tribes of the Northwest opened the door -- or basically  
13 asked for permission for them to open the door for us  
14 to be there and to help them. And when we went to the  
15 Southwest, the Pueblo and the Navajo, by protocol, the  
16 other person got up and opened the door for the other  
17 tribes. But they uttered the words that are also in  
18 prayer.

19           During that meeting, there was an outburst of  
20 the issue that's going on with water. So I had to go  
21 back out -- I was the next speaker after that happened.  
22 And I got up, and I reminded them, "Remember why we  
23 started this meeting. We started this meeting with  
24 prayer." And the people on that line are protected out  
25 there. Every day, they are dealing with risk of harm

1 and arrest, whatever. So I just ask everybody to  
2 remember why we're here.

3 These are long-awaited issues. And so it's  
4 tough to stand up here and try to say good things about  
5 something that's pretty heavy for a lot of us to deal  
6 with at a higher level of consultation.

7 when I first heard the word "consultation" --  
8 to elders, what does that mean? Sometimes, a simple  
9 language is easier than all these big, long words.

10 But anyway, I ask all of you to find in your  
11 heart, however you pray, to also support the words I'll  
12 be saying here.

13 And from here, if I could ask or request for  
14 the recording to stop.

15 (Prayer said.)

16 MR. TOULOU: So welcome, everyone, here to  
17 Billings. I'm going to go ahead and get started here  
18 in a second and have everybody introduce themselves.  
19 And then I'll run quickly through kind of how we think  
20 this is going to come together and then move on with  
21 you-all.

22 So again, I'm Tracy Toulou. I'm the director  
23 of the Office of Tribal Justice here at the Department  
24 of Justice. I started my career as a lawyer here in  
25 Billings. So it's really nice to be back home and

1 see -- there's a few familiar faces, anyway.

2 And to my left is...

3 MS. DARCY: Good morning, everyone. My  
4 name's Jo-Ellen Darcy. I'm the assistant secretary of  
5 the Army Civil works, and it's great to be here in  
6 Billings. It wasn't my home, but for 16 years of my  
7 life, I worked for the senior senator of Montana, Max  
8 Baucus. So I was able to spend a lot of time in  
9 Montana. And I'm originally from Massachusetts, so  
10 this is a second home to me.

11 It's great to be here in Billings. I also  
12 wanted to recognize some of the folks who are with me  
13 today from the Army Corps of Engineers.

14 Colonel Henderson, to my left here, is our  
15 Omaha district commander. Many of you probably met him  
16 during his tenure here. He's got one of the biggest  
17 districts geographically, so he's been coming to  
18 Billings and other places around this district.

19 Also in the audience with me is Lisa Morales,  
20 who's our senior tribal liaison in the Army Corps of  
21 Engineers headquartered in Washington.

22 Joe McMahan, he's also our regulatory chief  
23 in our Omaha district. And then Joel Ames is our  
24 tribal liaison in the Omaha district.

25 we also have Cathy Warren, who's a

1 consultation specialist in our Omaha district. We've  
2 got a lot of Omaha district and Corps of Engineers here  
3 today as part of this consultation.

4 Also, where is Lindsey? Lindsey is a  
5 detailee in my office in Washington, who is a  
6 regulatory specialist from our Jacksonville district.

7 So I think this is your first time in  
8 Montana? So she's happy to be here as well.

9 And also on the dais is Chip Smith. And he's  
10 been the tribal liaison with our office for a number of  
11 years and has a great deal of experience and advises me  
12 on tribal and regulatory issues. So, again, we're all  
13 happy to be here and anxious to hear from you as well.

14 MR. TOULOU: So let's go ahead and continue  
15 introductions to the left.

16 MR. WALSH: I'm John Walsh, State Director  
17 for USDA Rural Development.

18 MR. BUELOW: Good morning, everyone. My name  
19 is Tedd Buelow, and I'm the Native American coordinator  
20 for USDA Rural Development. That means I work with  
21 tribes and our staff all over the country to build  
22 healthier bridges.

23 MR. TOULOU: Move to the right. I think you  
24 all know Mike.

25 MR. BLACK: Good morning, everyone. I'm Mike

1 Black, senior adviser to the director for Bureau of  
2 Indian Affairs as of about 8:00 this morning. So it's  
3 great to be back home in Billings today. But let me  
4 introduce a couple people for you.

5 Is Mr. Bruce Hart around?

6 He is the new director for the Bureau of  
7 Indian Affairs. So he's going to join us today.

8 And we also have Darryl LaCounte, our  
9 regional director for the Rocky Mountain region.

10 It's good to be with you here today. I  
11 really look forward to hearing from everybody and how  
12 you can help us shape these consultations and things  
13 moving forward. So thank you.

14 MR. MARTIN: Good morning, everyone. My name  
15 is Kenneth Martin, and I'm the deputy secretary for  
16 tribal affairs at the Department of Transportation.

17 MR. HARRIS: Good morning. My name is Bob  
18 Harris. I am representing the Department of Energy.  
19 I'm a senior vice president and Upper Great Plains  
20 regional manager for the Western Area Power  
21 Administration. It's a pleasure to be here this  
22 morning. I'm anxious to listen and learn.

23 MS. DE ROBERTIS: My name is Ceci De  
24 Robertis. I'm with the Federal Permitting Improvement  
25 Steering Council. If you haven't heard of us, that's

1 because we're new. We were created in December  
2 of 2015. And we're really excited to be here and  
3 listen so that we can move forward with tribes in a  
4 meaningful way.

5 MS. HAUSER: Morning, everyone. I'm Valerie  
6 Hauser. I'm with the Advisory Council on Historic  
7 Preservation. I'm the director of the Office of Native  
8 American Affairs in Washington -- we're located in  
9 Washington, D.C. And I want to thank everyone for  
10 coming this morning, for sharing your thoughts and  
11 concerns with us. And we look forward to working with  
12 you.

13 And I want to thank Steve for his words this  
14 morning.

15 MS. CONNELL: I'm Jamie Connell. I'm the  
16 state director for the Bureau of Land Management here  
17 out of Billings. I represent the Montana/Dakotas  
18 organization. But I'd also like to welcome you on  
19 behalf of our director. He, of course, apologizes  
20 because he couldn't be here today.

21 So there's also a few of us -- I'd just ask  
22 you to raise your hand -- that are here from the Bureau  
23 of Land Management. So you can see there's a few of  
24 them in the back.

25 MR. TOULOU: Okay. As I mentioned, most of

1 you have been to a consultation before. But this is an  
2 opportunity for you to talk to us and tell us about an  
3 issue I think we're all concerned about. And that's  
4 our infrastructure and how it impacts Indian country  
5 and beyond, tribal people generally, I think.

6 This is a unique consultation, at least for  
7 me. Usually, you know, we're doing one for the  
8 Department of Justice. We might do a joint one with  
9 the Bureau of Indian Affairs. But this is, you know --  
10 I think at least ten agencies are involved in this  
11 consultation.

12 There are eight different opportunities  
13 around the country to address this issue, and that's  
14 because it's a very serious issue. Because we've seen  
15 what's happening in North Dakota. Now, this  
16 consultation isn't specifically about North Dakota. I  
17 think we'd be shocked if some of you did not have  
18 comments on what's going on out there.

19 But this is specifically about -- the Corps,  
20 from our perspective, is about how we do infrastructure  
21 around Indian country. And we've broken out the  
22 framing paper that was on the table back there. And  
23 it's been out on media, and we shared it in the  
24 invocation.

25 It's about two things. The first is about

1 talking about how we do consultation and permitting  
2 now. It's not limited to consultation but how that  
3 process around infrastructure works currently, what  
4 works well and what doesn't work well.

5           And there's a lot of different agencies here.  
6 We all do things a little bit differently. And I  
7 suspect some of it you like better than others, parts  
8 of what we do. And this is an opportunity for us, as a  
9 federal government, to hear from you and think about  
10 how we do things and how we might do it better.

11           And the other thing is we understand that the  
12 universe has been defined by regulation, by the  
13 Executive Order 13175 on consultation, and a number of  
14 other factors. But that may not be broad enough.

15           And so we really wanted to open the door in  
16 this consultation to talk about other things that you  
17 think are important, which might include additional  
18 regulations or getting rid of regulations, maybe  
19 writing statutes.

20           We open this up to legislation, which, for  
21 me, is a pretty broad thing to be discussing in a  
22 consultation. And I think it goes to how important we  
23 think all of this is and how willing we are to make  
24 sure we get it as right as we can in working with you.

25           So that's what this is about today or what we

1 suggest it's about. It may be broader. I mean, part  
2 of what I've found in consultation that's so effective  
3 is there are a lot of smart people in the room that  
4 aren't necessarily with the federal government at each  
5 one of these consultations. And so I always learn a  
6 lot from you all when you're talking to us.

7 And so, you know, these are the ideas that we  
8 thought were worth discussing. But undoubtedly, you'll  
9 have ideas worth discussing, and we welcome that and  
10 look forward to hearing what you think.

11 Just a few housekeeping items. The first one  
12 of these we went to, which was in Phoenix -- and we  
13 went four and a half hours straight without a break.  
14 I'm not going to do that to you this morning. So about  
15 an hour and a half in, we'll get a break. So don't  
16 sweat that.

17 The room is a fairly standard western model  
18 with the lines of chairs. So I apologize for that.  
19 There probably are better ways of sitting and talking  
20 together, but we didn't know how many people we were  
21 going to get. And so we are kind of stuck with the  
22 seating method.

23 I have a list here in front of me of tribal  
24 leaders who are going to address the group. This is  
25 government-to-government consultation. So we really

1 want to hear from the tribal leaders in the room. If  
2 you are not on this list and want to speak, they are  
3 continuing the list at the table outside that door  
4 where you signed in. Please sign up so I can recognize  
5 you and we can make sure we run through this and let  
6 the tribal leaders have an opportunity to speak.

7           So with that, I think we'll go ahead and jump  
8 into the consultation and start hearing from you. And  
9 the first person on the list is Donovan Archambault  
10 from Fort Belknap Tribal Council.

11           You should know we're doing a transcript here  
12 today. So if we're not furiously scribbling notes,  
13 it's not because we are not hearing you. It's because  
14 we're trying to listen to you and we know there will be  
15 a transcript. So thank you.

16           MR. ARCHAMBAULT: Thank you. I guess I  
17 wanted to thank all you people for being here. And  
18 once again, it looks like we have more chiefs than  
19 Indians. I think consultation has a lot of -- a whole  
20 different definition to the government than to us. And  
21 the director has his own definition. But I think we  
22 have to pull those ideas of consultation and make one  
23 definition that fits us.

24           And maybe the tribes have to do that  
25 themselves. Because the government, they do everything

1 one size fits all. But we're all different. We're  
2 different in our customs, our religion, even our  
3 thoughts about how things should be done.

4 But we get a type of register with 30 days to  
5 comment on an issue that no one has sat down with us to  
6 get our input into. And I believe Standing Rock is a  
7 good example of the Corps of Engineers or Department of  
8 the Army or whoever get the permits to do that never  
9 consults with the tribes -- at least that's what I  
10 read.

11 And the burial sites, also sites that were  
12 being destroyed, those things should have been taken  
13 care of. But, again, lack of consultation prevented  
14 that.

15 In 1989 and '90, we had the BIA  
16 reorganization task force. Big deal. Every area got  
17 three representatives. I was a representative from  
18 Billings. And very little, if any, of the  
19 recommendations that we made in consultation with the  
20 Bureau have ever been implemented.

21 One of the things that we discussed and  
22 agreed to was the layers of government that we have.  
23 And I think the tribal members from the Fort Belknap  
24 can attest to that.

25 we had an issue on enrollment. Called the

1 superintendent down to the tribal chambers and  
2 discussed it with them. He says, "Well, the CFR says  
3 this, but I'll call the area director and I'll get  
4 direction from him."

5 well, we can do that. So maybe our  
6 consultation should be with maybe the solicitor in  
7 Washington, D.C., and skip all of these bureaucratic  
8 steps. And that was one of the recommendations that we  
9 made back in the late '80s and early '90s in the BIA  
10 reorganization task force. But that hasn't come about.

11 And so I think we need to -- in our  
12 consultations, we need to prioritize some of the things  
13 that really affect us as tribes. And I'll take  
14 education, for example. The Bureau of Indian Affairs  
15 has education for 200 years. And what they did was  
16 send a lot of us guys to boarding schools, Standing  
17 Rock, all boarding schools. I graduated from there,  
18 Standing Rock, in 1957.

19 I left home when I was ten years old. And I  
20 did a lot of globalling around and trying to be a  
21 cowboy and was a damn good drunk, one of the best in  
22 the Dakotas and Montana. But the most brutal time of  
23 my whole life, in all of those times, was at boarding  
24 school in Pierre.

25 So we got together in the late '80s. We took

1 education to tribes. And right now, every reservation  
2 has a college. We're graduating 30 -- at our college,  
3 30 students a year. Previous to that, there was a few  
4 of us that did go to school on the GI bill and BIA  
5 scholarships. But they were kind of the exception.  
6 Most of the kids didn't go on to college.

7           So they can't tell us that we can't do  
8 things, because I think that's the shining example that  
9 we have on our side of the table that we can do. We  
10 went to school. We're educated. And anybody in any of  
11 those offices in the government forget we're subjects  
12 to their trusteeship.

13           And that is another question I have about  
14 trustee and where we're at as people. I think that we  
15 need to look at that trusteeship, because land buyback  
16 is exactly trusteeship.

17           I read in the paper this morning that the  
18 land buyback program is running out of money because  
19 they didn't figure that there was that many -- that  
20 much service that had to be done. I don't know if it's  
21 poor management or poor planning or what it is. But  
22 they're out of money, and they still have about 20,  
23 30 percent of the program to complete.

24           And so I think if we had some consultation on  
25 that -- and I went to every consultation they had, and

1 none of our -- I don't know how many of you guys went  
2 to those land buyback consultations. But none of that  
3 was ever put into the process.

4 I remember my arguments with John McClanahan  
5 [phonetic] who headed that up. I was in Rapid City,  
6 Seattle, Hell Creek, wherever they had those hearings.  
7 Same thing. Consultation. "Let's do this together."  
8 But it never happened. But it can be done. We get  
9 education. We have colleges now. Previous 200 years,  
10 we used other schools. But we have our own now.

11 And, you know, for us here at Fort Belknap,  
12 we have two visible natural resources. That's our land  
13 and water and our people. And I think we've done  
14 pretty well by our people. We're graduating our kids  
15 now from college.

16 But our land, we're getting funded to take  
17 care of our land out there about, I was told, 25 cents  
18 an acre to manage the land that the Bureau -- maybe the  
19 Bureau will speak to that.

20 The BLM gets 15, \$20 an acre to take care of  
21 wild horses and burrows and whatever else is out there.  
22 BOR gets \$5 an acre or something. It's all broken  
23 down, and I got this from a person that was working in  
24 the area here. And he gave me those figures.

25 So why -- you know, this is supposed to be

1 for us. Why are we getting 25 cents and BLM is getting  
2 \$15 to manage burrows? Maybe it's better to be a wild  
3 horse. A horse's ass or blanket ass. Take your  
4 choice. I think I'd rather be a horse with how they  
5 are being funded.

6 But, I mean, that's an example of how we're  
7 being excluded in this whole process. You talk about  
8 government-to-government sovereignty. I really don't  
9 know what those words mean.

10 And I went to Harvard University for my  
11 master's program and from Rosebud Reservation. But  
12 those words don't mean anything out here. They look  
13 good in a book, look good in the dictionary. But  
14 practical application of those terms do not apply out  
15 here.

16 So I think we need to sit down and really  
17 look at what we have, where we want to go. Our land is  
18 all we have left. And if we're only getting 25 cents  
19 an acre to manage it, no wonder we're having problems.

20 I think if we took a serious look at these  
21 crises that we have with land and water, maximize the  
22 use of all the programs that are funded, and get away  
23 from that territorial kind of thing -- let's blend all  
24 this stuff together.

25 Because there's a lot of money that's being

1 funded: social programs, water compacts, land  
2 problems. But they're all kind of scoped out for a  
3 specific kind of thing. "You can't do that. That's my  
4 program."

5 Over here, this program, "Oh, can't do that.  
6 That's mine."

7 I think we have to sit down and start at the  
8 root of the problem, not the reservation. That's where  
9 our resources are. Some have gold. Some have oil,  
10 things like that. We need to take those things and  
11 capitalize on them. I think our land is our last  
12 stronghold. And those people that stand on it, they're  
13 fighting that.

14 I read this morning in the newspaper the  
15 governor of North Dakota is wondering why the federal  
16 government does not help him fund fighting the Indians.  
17 They are our trustee. They should be sitting on our  
18 side. We're the United States Army. I'm a veteran of  
19 the Army. Don't mean nothing over there.

20 Indian veterans constitute probably -- in our  
21 state of Montana, probably two-thirds of the veterans  
22 that are in the state. But that doesn't mean nothing.  
23 I wear my hat 'cause once in a while, I can drive up to  
24 McDonald's and get a free hamburger. But at least  
25 they're thanking me.

1           So I have a lot more things I'd like to say,  
2 but I know there are some other people that need to be  
3 up here. But I want you to think about that. When we  
4 have a consultation, let's start at the bottom, and  
5 let's work up, go through all the funding, all the  
6 agencies, eliminate, take that resource, that money,  
7 and put it where it belongs.

8           And all these budgets, two-thirds of that  
9 budget goes to administration. The rest of it trickles  
10 down. That 25 cents an acre trickles down to the  
11 tribes. Maybe that's what Ronald Reagan meant in his  
12 trickle-down theory. Or was it Bush? One of them.

13           But anyway, I want to thank you for letting  
14 me voice my opinion. And thank you, guys, for coming.

15           MR. TOULOU: Thank you for your comments, and  
16 thank you for your service.

17                           (Applause.)

18           MR. TOULOU: So our next speaker is Mr. Steve  
19 Vance.

20           MR. VANCE: I just want to make a comment on  
21 something that was just said about veterans. I'm also  
22 a veteran. And I think it was in Albuquerque that they  
23 asked the veterans -- or Seattle, they asked the  
24 veterans to stand up. But I didn't stand up because  
25 that's in the past.

1           There are people present right now as Native,  
2 and others who are overseas right now. Those are the  
3 ones I recognize before I stand up.

4           But just in him saying that, it triggered  
5 something that was written by some federal official of  
6 tribes contributing to the protection of this country  
7 through many, many wars, you know, the different world  
8 wars, Korea, Vietnam, Desert Storm, Afghanistan, Iraq.  
9 You know, now there's other terrorist organizations.

10           And this federal agency said we should help  
11 the Natives protect their interest when the Native were  
12 helping the United States protect their interest. Just  
13 something for thought.

14           A little update on the Missouri River issue.  
15 We have been involved -- us as a tribe have been  
16 involved over two and a half years. And because of  
17 interpretations, we were trying to push litigation  
18 during the crossing of the Garrison. And the attorneys  
19 felt it was too far away to show harm.

20           So they said we'll wait until they get by the  
21 Cannon Ball area. And by then, Standing Rock had  
22 filed, so we filed interest. But it's still the same  
23 river. That river runs all the way down to the Gulf of  
24 Mexico. So it is a water issue. It is now titled the  
25 [Native speaking], but it means seven fires.

1           Because there's been probably close to 300  
2 tribes up in that area. There's been people from other  
3 countries there, you know, campers running up to  
4 anywhere from 3,000. So it's grown more than just a  
5 local issue. It is now not just an international issue  
6 but a global issue.

7           But Sally Jewell has -- I think they all know  
8 who Sally Jewell is. Sally Jewell is the secretary of  
9 Interior who talks about climate change and reduction  
10 of flaring with oil and gas industry.

11           But as I said, you know, the tribes have been  
12 pulling together on these issues of concern. And it's  
13 not a tribal problem. It's a federal agency problem.  
14 This is why we're here. So, like I said, that's just  
15 an update as to where that is now.

16           I'm going to direct my comments this way.

17           Some of you have seen me before. Seattle, I  
18 was up in Seattle. And I was in Albuquerque, Billings.  
19 Most likely I'll be in Minnesota. I don't know about  
20 Maine. I get to where I can. And for sure I will be  
21 at the Rapid City one. And I said this: I'm going to  
22 keep coming because I am going in my seventh year as a  
23 tribal historic preservation officer.

24           And I was just a simple carpenter back in the  
25 day, after I got out of the military. And when I got

1 back on the reservation, I couldn't find a job. I  
2 looked and put in everywhere. I was refurbishing  
3 million-dollar homes in salt Lake City. And in 1976, I  
4 was customizing in Santa Ana, California. Twenty-one  
5 years old, had a good job.

6 went back to the reservation. I couldn't  
7 even -- I was ranching, branding, fixing fence,  
8 anything to make money. And one day, I was asked to be  
9 a police officer by the chief of police. And I  
10 thought, "Geez, three years, I haven't had a job. I'll  
11 take it." And he threw keys, a badge, and gun at me.  
12 Four bucks an hour.

13 well, in taking on that job, it's to protect  
14 and serve. And it reminded me of, you know, back in  
15 the military. So I took it on. But during that time,  
16 I became a state-certified police officer. And how I  
17 learned that was I studied. I learned and read.

18 In 1995, the tribe mandated the instruction  
19 of language, culture, and history in our schools to  
20 where we were losing our language. So I hung up the  
21 badge and gun and went into the classroom and sat down  
22 on the floor with the kids. And I'm teaching, talking  
23 like this amongst them all day. Thirteen classes at  
24 14,000 a year.

25 From there, I became a state-certified

1 teacher by reading, studying. For some reason, a piece  
2 of paper changes your rate. My salary went up with a  
3 certificate. Doing all the work with a state teacher's  
4 certificate, my salary changed.

5 But a few years back, I was asked again to  
6 put in for tribal preservation officer. So here I am.  
7 But I still look at the words "protect and serve."

8 And now it's preserve and protect. So it's  
9 still there. But my goal is for the people, all these  
10 people here. I don't look at it as an individual  
11 tribal issue. I look at it as all the tribes who  
12 congregate in this area, their culture and history.

13 But I read -- and I'm still reading. I have  
14 mountains of paper. And I could bring all of that in  
15 here to show you where there are things, previously  
16 written, that still cause a conflict and sometimes a  
17 loophole and sometimes, very little, a positive  
18 outcome.

19 I was reading a document here on the Indian  
20 trust by Department of Interior. You know, you'll hear  
21 people talk about treaty. That was kind of recent, I  
22 think. Like, 1805 the first one was written. Another  
23 one, another one, another one. This treaty outdid that  
24 one and so on.

25 And here we are with resolutions from tribes

1 previously asked. But those are documents kind of  
2 guided into, I guess, isn't a man's word good anymore?  
3 You got to put it in writing. I remember a handshake,  
4 nod of the head, and that was it. And here we are,  
5 mountains of paper. And we still don't come to an  
6 agreement or equality.

7           The National Historic Preservation Act, as I  
8 said, was built on a foundation and with good  
9 intentions at that time. And since then, many things  
10 have been added. It's like a skyscraper or something,  
11 a big building. And as things get more piled onto it,  
12 the foundation becomes weaker. I hope we don't do that  
13 here. I hope we don't pile another bunch of executive  
14 orders or things on top of what's existing. I  
15 recommend that we go way back.

16           A lot of the issues that I had with  
17 extractive issues -- and I will tell you right up, my  
18 biggest battle is extractive history. We have rural  
19 projects going on with housing and stuff. And we know  
20 that needs to be done and infrastructure, water, sewer,  
21 you know, stuff like that.

22           But when we're digging mountains as to what  
23 was proposed in the Black Hills with bare-element  
24 resources which -- if I was to say, how many of you  
25 want to give up your phones? Not too many people want

1 to give that up. There's a lot of stuff on that little  
2 machine. You're not packing around this big, old  
3 computer. Things are getting smaller. It comes with  
4 newer technology, and some of that is very relevant.

5           And there was a proposal to dig an open-pit  
6 mine on the south -- just to the southeast of Bear  
7 Lodge. Now, us as Native people, we understand when we  
8 say Bear Lodge. To you, you'll know it when I say  
9 Devil's Tower. It's sad, but we have an important,  
10 sacred site named after Satan or the devil. But when I  
11 hear Bear Lodge, my heart skips.

12           So this is quite a consultation. What you  
13 say or what we hear or what we interpret together isn't  
14 the same.

15           But in that, I started looking at  
16 reclamation. So I said, well -- I asked during --  
17 element resources in the company, it was on Forest  
18 Service property. But I said, "What about the  
19 reclamation?"

20           And they said, "There will be none. We're  
21 going to leave this open pit there when we're done."

22           So it goes clear back to 1872 Mining Act. I  
23 have to read that. There's not a problem of, you know,  
24 what is here presently but, say, what's happening on  
25 the Missouri River. This is going way back to how

1 tribes are involved, how tribes are interpreted.  
2 Because we have, for a long time, said no to certain  
3 things such as that as to how that process was going to  
4 be conducted.

5 The other one is, you know, with the  
6 executive orders. You know, all the other things that  
7 fall into place. But, you know, I have to read and  
8 read and read. And I'm still reading as to my  
9 interpretation and understanding of why we use that  
10 application.

11 You know, and I think that the new ones on  
12 the panel in Seattle -- there was five. And in  
13 Albuquerque, there was 10. Today, there's 12 plus  
14 others out there. So I thank you for opening your ears  
15 to what we are doing here.

16 But a couple things I want to get understood  
17 right off here. In Seattle, they said this is not  
18 consultation. And in Albuquerque, they said this is  
19 consultation. So something you want to -- as to what  
20 you call this meeting, because I'm really going to be  
21 confused at the next meeting, whatever it's called.

22 well, like I said, I think there's a lot of  
23 stuff. And I have a list of stuff here that I've  
24 created myself. Our tribe, at the chairman's level,  
25 will do their written submittal for comments.

1           But I'm the person in the trenches every day,  
2 as are many of these tribal people. They are the ones  
3 that have to deal with all the different issues of  
4 consultation. And we tried to simplify it to get that  
5 to the chairman to deal with -- our governing bodies to  
6 deal with these without having to go through the  
7 frustration we go through. So we try to simplify  
8 things when we present to our tribal council. They  
9 have to do everyday things.

10           we have winter coming on. And if any of you  
11 know the Northern Plains, it gets cold, and there's  
12 times we're over a week without electricity. So there  
13 are pressing issues going on right now at home, and  
14 they needed to be dealing with that.

15           I'm the one who has this frustration of  
16 having to consult and come back and give them  
17 something. They make a decision, and it's confusing.  
18 But hopefully, I can bring them a better message as to  
19 what these meetings come out to be.

20           My first complaint about all of this -- now,  
21 the Missouri River was kind of -- I'm thinking what  
22 brought this for DOJ, DOI to call this meeting was  
23 because of what happened up there. So if I'm wrong,  
24 you might want to say that, because I see there's other  
25 agencies. Now we have BLM. We have federal regulatory

1 down to Albuquerque.

2 I keep saying, "Where is EPA? Where is EPA?"  
3 I've been saying this for seven years. "Where is EPA?"  
4 These have to do with water, the effects to land, air.  
5 And water is a major issue to our culture.

6 Before we even take a root from the earth, we  
7 ask permission and put something back. We have, as  
8 Native people, forever been instilled with the  
9 responsibility to care for Mother Earth and all the  
10 other resources that this earth gives us for life.

11 But that has been taken away. And one of  
12 them is the Environmental Protection Agency. Instead  
13 of asking for quarterly -- because there are some  
14 things that are four years, they will do a study. And  
15 other things, it's eight years, they'll do a study.

16 well, mining of uranium, they basically leave  
17 it up to the company to monitor water quality on sites.  
18 The EPA is not there. It's called self-monitoring. So  
19 I think, you know, you might want to -- like I said,  
20 three agencies called this meeting. And more have come  
21 on board. That's good. Because I deal with each one  
22 of you separately.

23 But it has come to a point of what the  
24 concerns and issues are. A simple communication. Some  
25 of you have watched the movie long enough ago of, "what

1 we have here is a failure to communicate."

2           And I think some of it is maybe a simpler  
3 interpretation of what you say is sacred, what I say is  
4 [Native speaking]. It's a different interpretation.  
5 what you say is prayer, and what I uttered up here  
6 about all of this creation as being relative in the  
7 word [Native speaking] is a misinterpretation.

8           So I think there's a language barrier. But,  
9 again, we're educated. We learned to read English. So  
10 are we interpreting it different than you when we talk  
11 about the effects?

12           So basically, what -- as I said, what brought  
13 this about was the Missouri River issue of water. But  
14 being in D.C., when we first went up there, I asked the  
15 educated people, "What is the consequence? We're not  
16 consulted." They said, "There is none."

17           You know, the Corps is going to get picked on  
18 at all these meetings. But for the Corps, what they  
19 will probably, most likely, do is tell the Corps go  
20 back, start over, and do consultation.

21           And you know how much people have expended?  
22 Money is a resource. No country can operate without  
23 virtuality, the government, and the monetary system.  
24 But the tribes have spent, I would say, more than  
25 hundreds of thousands, probably millions now, on this

1 issue.

2           There was a comment one time, "How come  
3 you're not feeding Grandma at home and you're putting  
4 all this money in this issue?" This is the future that  
5 we're worried about. But there's no consequence. So I  
6 think that's the first thing that needs to be looked at  
7 in any of this is that there needs to be a consequence  
8 to the agency that does not consult the bureau  
9 properly.

10           we didn't, and we held things up.

11           If there's no consequence, let's say monetary  
12 or financially, for the agency -- because we're  
13 expending time and money ourselves. I'm trying to hit  
14 as many of these meetings as I can because I've been  
15 saying this -- six and a half years ago, I said this --  
16 "Where is the EPA? How come we're still dealing with  
17 1872 money now? How come you don't recognize the 1868  
18 treaty, but you'll pull up this old act to limit the  
19 amount of aid that the agency is going to use in making  
20 billions of dollars?"

21           So I'm saying that if there is no  
22 consequence, monetary or financially, that the agency  
23 be suspended from the project. And somebody -- as I  
24 said, Federal Energy Regulatory Commission come in.  
25 The pipeline -- the issue is that the Corps and tribes

1 feel that whatever comes of it, they -- and I think  
2 from the get-go, the Corps didn't really want this  
3 project. We kind of seen where this was going. It was  
4 just like, "well, we're stuck with it."

5 well, I asked BLM to become involved early on  
6 with the EPA, with the commission, with the Department  
7 of Energy. We have other agencies that can come in and  
8 take the lead.

9 Because when we met -- like I said, when we  
10 met in Seattle, there was a general. When we met in  
11 Albuquerque, there was a colonel. And here today, I  
12 see Henderson, who was actually in a meeting in  
13 Nebraska. And we had asked then, you know, "where are  
14 the other agencies?"

15 Because they said BIA was involved. You  
16 know, Fish and wildlife is involved. And according to  
17 what I read, if I interpret it wrong, two or more  
18 agencies, BLM will step in and take the lead. So we  
19 asked them -- like I said, if the agency fails, then  
20 there should be a consequence. Even pulling them  
21 aside, because there will be a record.

22 So when you say, "okay. This agency is  
23 taking the lead," well, they didn't do it appropriately  
24 or properly for, you know, four other times, so -- to  
25 give you a history of the agency's involvement with

1 what we have issues and concerns with as tribes.

2 And if you read the National Historic  
3 Preservation Act, it says in there that you are  
4 mandated, as an agency, to follow these federal  
5 guidelines.

6 And I don't want to bring all that stuff up.  
7 I have a big folder here with all kinds of things. I  
8 could bring you boxes of paper.

9 So my first thing, like I said, is to start  
10 over. Start over with a better foundation, because we  
11 have an understanding of what the historic preservation  
12 is today with the issues of climate. Those things  
13 weren't talked about in the 1800s or early 1900s. We  
14 thought the world was going to last forever. Now we're  
15 looking at Mars. Is there life on Mars?

16 So consequences, suspension from the project  
17 and replace with the lead agency, such as Department of  
18 Energy, Bureau of Land Management, Federal Regulatory  
19 Commission, EPA, et cetera.

20 Section 106 versus U.S. Army Corps of  
21 Engineers, you can see, I totally disagree with. If I  
22 was to transport illegal weapons or drugs across this  
23 country, there's a federal law that's going to -- no  
24 matter what state I go in -- that federal law kicks in.

25 Section 106 is a federal law and should be

1 done coast to coast. But yet we have others doing  
2 other things differently, which should get them out of  
3 there. I think we should go with the one rule. so I  
4 do totally disagree with this consultation process.

5           Nationwide PAs do not address regional  
6 concerns. I disagree with the words "nationwide PA."  
7 I have written a specific letter. I have -- really  
8 actually haven't done anything involved with Corps of  
9 Engineers since the litigation came up. But I think  
10 the individual PAs per region are issues of concern for  
11 the tribe.

12           And environmental impact statements versus  
13 environmental assessment. Now, we understand there are  
14 findings of no significant impact and categorical  
15 conclusions for certain projects because it is simple,  
16 routine. Going alongside the freeway is a routine  
17 thing.

18           You know, but my question to federal highways  
19 is you're making more freeway and all of a sudden, you  
20 come across some flowers and teddy bear and -- what is  
21 that? How could you treat that now? You just tear it  
22 down? Throw that teddy bear in the trash?

23           Something happened there. There's nobody  
24 buried there, but something happened there. And people  
25 go there. These are new things now. we didn't see

1 these -- I never seen these when I grew up. But now  
2 you see them often along the road.

3 But that maintenance, the mowing is a routine  
4 thing. Now you have another, you know, effect possibly  
5 as to what to do.

6 But some people used to get out of doing a  
7 full EIS. Any agency or company opposed to [Native  
8 speaking] should be really looked at and studied. Is  
9 this a loophole? Because if they're doing it to get  
10 out of doing the EIS, they should be mandated to do the  
11 EIS. It's a little more work. But people use it,  
12 again, as a loophole.

13 Like I said, a lot of these are court-issue  
14 stuff right now. Our Resource Protection Act is a --  
15 has to do with -- one of them that I've been hearing  
16 about is trafficking. And Martin Calister [phonetic],  
17 who does a damage investigation course, said it is the  
18 third largest illegal moneymaking activity in the  
19 world. And I was like, "The third largest?"

20 well, he explained that weapons -- of course,  
21 everyone wants a nuclear weapon. After that, it's  
22 drugs. weapons, drugs.

23 Now, I see a lot of people still today  
24 taking -- trying to find gold. But then there's the  
25 bigger people who are looking for the City of Gold, you

1 know, with the Egyptians or with the Mayans.

2 well, our stuff is just as important. You  
3 know, sad thing to say, but as an example, what would  
4 Crazy Horse's skull go for out on the black market? So  
5 then I realized that it is or could be the third  
6 largest illegal moneymaking activity in the world. So  
7 our preservation was in place to protect that.

8 And one of the things with the Corps was we  
9 had 132 bison skulls wash up, and the Corps passed it  
10 to the state. So there's stuff in the PA that says  
11 that stuff on the surface and below is tribal  
12 resources. We're still trying to get closer to that.

13 But one of the other things is there are  
14 thousands of artifacts that were stolen illegally, and  
15 people were convicted. Those things are still held by  
16 the court. All of these state consultation. I'm not  
17 just saying that. How do we fix it with one or two  
18 bullets on the paper?

19 Bulletin 38 versus Brief 36, TCP and  
20 landscape. "TCP" is the term used for traditional  
21 cultural properties, which is, again, a different  
22 interpretation about sites. To us, it's the same.

23 A lot of the things we deal with here,  
24 especially in the Northern Plains, is landscapes,  
25 larger areas. I have a picture on my phone where we

1 went to the project with the proposed expansion of the  
2 Kendrick, uranium. And we went up, and we found this  
3 split stone. But when you stand to the east side of  
4 that stone looking to the west, right in perfect  
5 alignment is Bear Lodge. I said, "Where do you want me  
6 to draw my line?"

7           Because when I greet the sun in the morning  
8 and you're saying that, "well, this site right here, it  
9 don't involve that," it does. The pyramid, how her  
10 alignment is involved with bigger things. So our  
11 involvement with TCPs, landscapes, sacred sites has  
12 association to setting and rising of the sun and  
13 constellations and the moon.

14           We know the seasons away from the calendar.  
15 We know there's 13 risings of the moon, not 12 months.  
16 But these things are, like I said, interpretations,  
17 different interpretations. Sacred sites, places,  
18 objects.

19           I think, now that we're talking about issues,  
20 sacred sites also involve land, air, and water. I had  
21 to learn all these acronyms. My interview for being a  
22 THPO consisted of 13 different acronyms. What is this?  
23 What is that? I said, "Obviously, I don't know all of  
24 them. But if I get placed in that position to do it,  
25 I'll learn them." And I did.

1           But I have to throw my own out. Natural law.  
2   Everybody talked about federal law, tribal law,  
3   Congressional law. And an elder person said, you know,  
4   "We feel there's an advantage. We didn't bring our  
5   attorneys."

6           And I said, "This elder person probably run  
7   circles around all of us on traditional law." But we  
8   deal with natural law, the law of nature. And that is  
9   land, air, and water. A lot of these regulations were  
10  written without thinking that. And we come in there  
11  thinking that.

12           We come in here thinking the land is sacred,  
13  and you say "No, it's a resource."

14           You know, one of the things I heard a long  
15  time ago from an elder is two people look at a tree.  
16  And one person looks at that tree and says, you know,  
17  "That is a living thing. If you look at it, it has a  
18  heart. It has roots. It has branches."

19           Another person looks at that tree and says,  
20  "I wonder how many toothpicks I can get out of that."

21           This is where we're at today. We have  
22  nations coming together, saying, "There's something  
23  wrong here." But how we operate in resources, we're  
24  not look -- we're still looking for that City of Gold.  
25  How much can I get? Me. Me. I. I. Not us. Not we.

1           And it's hard because you have agencies  
2   throwing money into these companies with powerful,  
3   educated, legal people who, most of them, are governed  
4   by politics. I think there should be something done  
5   immediately as to what's going on with this.

6           Because the last meeting, in Albuquerque, it  
7   got loud and it got -- you know, got -- people were  
8   angry because people were getting -- the chairman had  
9   to get up and leave. Those are all things he had to  
10  deal with every day.

11          So I think something on that needs to be  
12  immediately dealt with. And for what we're doing  
13  here -- you all have somebody else complaining a  
14  different tune for you. So is our tribal council.

15          Many of -- half of our tribal council is  
16  leaving, and a new half is coming in. We have 18  
17  people on our council. Half of them are leaving. Half  
18  will be coming in. So I have to turn this over to a  
19  new group, saying that this is where we're at for the  
20  past seven years while I was involved with tribal  
21  issues concerning resources.

22          Our chairman will still be the chairman for  
23  two more years. But you all have a big question in  
24  front of you too. Clinton? Trump? With that comes  
25  executive orders. I didn't get to that part yet.

1           But, again, I think whatever comes here needs  
2 to have some finding to it, some teeth to it, something  
3 solid to where Clinton don't come in and change it to  
4 something else with a stroke of a pen. Or Trump won't  
5 come in and change it with a stroke of a pen.

6           This is my concern with executive order,  
7 because it's changed from president to president to  
8 president to president. I think executive order, in  
9 dealing with these types of things, should be  
10 Congressional acts. They are long-term.

11           Again, I want to thank the council and  
12 preservation. We have Valerie sitting here. They have  
13 probably heard what the tribes have said. I mean, this  
14 is labeled a listening session. But they heard the  
15 tribes. They didn't just listen; they heard.

16           And I have hundreds of documents where they  
17 have turned around and said this is what it's like. So  
18 my thank you to ACHP is they did support the tribes.  
19 But again, the chairman said, "Okay. We heard. We're  
20 moving on."

21           Corps of Engineers heard ACHP. "Okay. We  
22 heard you. We're moving on." How much does the advice  
23 of your own federal agency mean to you?

24           So from there, in the Northwest, I sat down  
25 with the tribes and said, You need to speak with the

1 Northwest region advisory council. Because what I'm  
2 saying doesn't mean anything. Do you know anything  
3 that I have said six and a half years ago about these  
4 same issues? No. You had somebody else. A regional  
5 office or a tribal liaison or a cultural resource  
6 manager sitting at the table talking to me, who somehow  
7 never got that message up to you. Because I've been  
8 saying it for six and a half years.

9           So I advised the Northwest tribes to form  
10 their own advisory council that will give that advice  
11 that is regional. And I said the same thing to the  
12 Southwest. And we've been saying it here for quite a  
13 long time. Because in this area -- there are a lot of  
14 tribes in this area that are involved, land-based  
15 tribes.

16           We're not just sitting on a little 2-acre  
17 plot. A lot of history there. Well, how can I fix  
18 that when there's stuff over here that's broken? How  
19 do I fix that? How do I get human remains back off  
20 private property when there's a federal law that  
21 governs that and then there's a state law that says  
22 different?

23           So thank you to ACHP. Thank you, Val.

24           Traditional laws and protocol versus  
25 archeologists. Now, I've got a lot of friends who are

1 intelligent. I have a lot of relatives who are  
2 intelligent. But when I go into a meeting, I am  
3 thinking about who I am as a person. Because the  
4 things I'm talking about could be 8,000 years old. And  
5 the person that was standing there 200 years ago, 500  
6 years ago, a thousand years ago, what life did they  
7 have? what will their association be if that was  
8 established?

9           They went into those sites with a connection  
10 with nature. As I said earlier, I kind of like to  
11 center myself to address all the elements and be  
12 respectful as to what my position is in this time.

13           My position here is to take what was -- one  
14 of the words I said in the classroom -- with 20 kids  
15 looking at me in the classroom, I said, "I am not your  
16 teacher. I didn't invent language, history, and  
17 culture. But I was taught it, and I learned it. And I  
18 will repeat, and someday you will repeat to your  
19 children."

20           I am in the middle with culture. I need to  
21 pass this on to the next generation. And hopefully  
22 they will have a better life than this generation. All  
23 of us should be there. Our ancestors said there are  
24 seven generations.

25           My challenge to a lot of people: who are

1 your future? Your own children.

2           So when we go into these sites, we bring an  
3 essence of spirituality, a connection. And how I think  
4 on our job -- I said, you, as a kid, probably went to  
5 church, sat there with your parents, all the local  
6 community people. And you believed in the person who  
7 was created out of nothing. And from there, a woman  
8 was created. This is our understanding. A person who  
9 could walk on water. A person who can rise from the  
10 dead.

11           Some of you probably don't know who I'm  
12 talking about. But when you come in there as an  
13 archeologist, you think of evolution. You think of a  
14 scientific connection to that -- what we're talking  
15 about. And there is things that say there is a  
16 knowledge tribes have differently than archeologists.

17           But the secretary of Interior's standards  
18 said you have to meet a certain type of qualifications  
19 in order to be a principal investigator on a project  
20 and sign off on it. And they do not understand our  
21 stuff.

22           It's a new one now. You didn't hear this one  
23 before. That's why I'm saying that.

24           Tribal people on the ground. Boots on the  
25 ground, people out there monitoring construction have a

1 connection to what's going on out there. But there's  
2 things out there that say, "well, you're not an  
3 archeologist. We have to get a report from the  
4 archeologist." So there's a discrepancy.

5 Now -- tribal resolutions addressing the  
6 no-action alternative. When a tribe enacts a  
7 resolution, what replaces the treaty? I don't know if  
8 you read the treaty. At this point there's others,  
9 like I said, starting in 1805. But read 1851 treaty.  
10 1968, there was an agreement to keep peace,  
11 not to harm each other, to protect each other. The  
12 very essence of it.

13 But from there, treaties went into acts. And  
14 from acts, it went to resolutions. So when a tribe is  
15 submitting a resolution, that is equal to a treaty.  
16 And a tribe writes in there, no-action alternative.  
17 No -- what does that mean?

18 I can probably ask several tribes in here how  
19 many said no to a project that went that way. Very  
20 little to none.

21 what does it mean when a tribe, by  
22 resolution, addresses no? The regulatory commission is  
23 one of my biggest issues in the board of consultation.  
24 Because the tribe submitted a resolution of no  
25 expansion, no renewal, or no new permitting of uranium

1 mining.

2           There are several things -- you know, we have  
3 this, you know, national federal regulation. And, you  
4 know, we try to talk about government to government.  
5 You have to remember tribes are nations also,  
6 independently.

7           I know what we have done here in the Northern  
8 Plains area is we have tried to come to meetings. And  
9 there are several agencies in here that can show that,  
10 where tribes have come together as a team.

11           Instead of saying, Okay. There are 33  
12 tribes, and we have to consult with each one of them  
13 individually, we will come together, and we'll have one  
14 meeting. But you have to remember that each tribe  
15 independently has to be recognized as a nation equal to  
16 what is recognized by the United Nations.

17           I don't know if you read -- there's an  
18 acronym for that too. United Nations Declaration of  
19 Rights of Indigenous People.

20           When they came to this country, they told the  
21 United States, they said, "Give the Black Hills back to  
22 the Indians." Read that case up. We know what was in  
23 there by tribes. And they said, "Yes, we know it was  
24 illegally taken. Here. Here is a bunch of money."

25           And the tribe said, "No." That's still

1 there. But that's nation to nation. So when you're  
2 saying government to government, I can sit there and  
3 talk all I want all day. Government to government, you  
4 need to be in front of our tribal elected officials to  
5 meet government-to-government consultation.

6 All of this comes down to, like I said,  
7 sacred sites and traditional culture properties.  
8 Again, in order for it to be -- what do you call it? --  
9 on the national registry, it has to be certain  
10 criteria: A, B, C, D. There needs to be something in  
11 there -- either agencies need to recognize our  
12 interpretation, what A, B, C is.

13 And for a little history on what that is --  
14 and if I'm wrong -- I mean, we got a lot of people  
15 doing this longer than I have -- correct me. But A is  
16 an event. B is a person. C is, like, architecture or  
17 structure. And D is kind of what we fall under all the  
18 time, something that says, "well, there's some history.  
19 There's some information here, history."

20 Now, when you go out to a site -- I guarantee  
21 if you go out anywhere in the very secluded areas of  
22 the Black Hills, you will find a sacred site.

23 Now, obviously, it's an event. well, okay.  
24 We're here in Montana. How many of you have been to  
25 the Medicine wheel, as we call it? If you go there,

1 obviously there was an event there. And there was  
2 people there.

3           The alignments of this is so intricate.  
4 People don't understand it. And people still say, as I  
5 hear on the History Channel, "Aliens built the Medicine  
6 wheel." I don't believe the alien theory. But like I  
7 said, people were there.

8           Our healers are very significant people to  
9 us. I know a person who healed three people of cancer.  
10 If you step away from western medicine and accept the  
11 traditional medicine and healing, you will -- and they  
12 did. They're still alive. Doctors want to know that,  
13 but that's confidential information. Select people.  
14 Those people are important. But none of -- nobody up  
15 there knows who this person is. But people of the  
16 tribes know who this person is.

17           So obviously, the event, the people.  
18 Architect. If you've been to the Medicine wheel, can  
19 you explain it? These people here can. And, of  
20 course, it tells the history.

21           So then I say, No, it's not. It doesn't meet  
22 A. It doesn't meet B. It doesn't meet C. Maybe D.  
23 That's what we do with it. There needs to be something  
24 in there more favorable to the tribes.

25           The national burial code not a state-by-state

1 burial. We know what NAGPRA does. NAGPRA reaches from  
2 the East Coast to the West Coast, line between here and  
3 Canada. But when we, as tribes, meet with the Canadian  
4 tribes, we speak the same language. We say the same  
5 prayers. We sing the same songs. And we understand  
6 each other.

7 But that line separates them from their  
8 resources, their sacred sites, and separates us from  
9 our sites up there. But NAGPRA reaches all the way  
10 across. So when you go to Iowa, you're going to deal  
11 with a different state burial law, which is fairly good  
12 and they are updating it.

13 But when you get into South Dakota, the  
14 burial law changes.

15 This is on private property. I don't care  
16 what kind of property it is. If you had a relative on  
17 there, your child, your parents were on that, you  
18 probably want to be able to go there or at least put  
19 them somewhere where you can see them. But these state  
20 laws hinder us from our buried relatives.

21 Like I said, all these things come to  
22 consultation. It's not just, fine, sit down and talk  
23 about -- it can't be done.

24 I already talked about Congressional order  
25 changes. There should be more Congressional acts that

1 are binding to the next President. Anything you can do  
2 before Clinton or Trump get in, it would be binding to  
3 them. But right now, we don't know, you don't know  
4 where we're headed.

5 I already said 1872 Mining Act.

6 Tribal management. Now, this is going back  
7 to some of the consequences. Suspend the agency that's  
8 not consulting appropriately and put in another agency  
9 related to that. That has to do with pipelines and the  
10 Department of Energy.

11 If not -- suspend them. If not,  
12 comanagement. I'm sure the tribes and the  
13 municipalities that live along that river can tell a  
14 lot of these federal agencies what that means. And I  
15 know the general who spoke up in Seattle. The tribes  
16 up there actually said they manage one of the dams  
17 themselves.

18 When we brought up all these issues up there,  
19 the general who was there at the meeting -- I forget  
20 his name, but I probably won't see him again.

21 But anyway, I said a lot of these regional  
22 issues we can fix here right now. He got curious what  
23 the colonel was going to say down in Albuquerque. He  
24 never mentioned anything about fixing things down  
25 there.

1           So anyway, when you come to these issues --  
2   and I'm talking about tribal management, you know, or  
3   properties.

4           I really don't like that word, "property."  
5   We need to change that word. Because as soon as you  
6   say "property," people get aggressive. They look at  
7   ownership.

8           The tribe will tell you right off, "We do not  
9   own the land. It owns us." And if you're not putting  
10   dirt or vault or casket, you go lay in a tree or  
11   scaffold or ditch.

12           National Park Services produced a climate  
13   change response strategy. 'Cause there was a  
14   recommendation to come down to each agency, develop a  
15   consultation process. And some have, and some haven't.

16           There was four agencies, I think, came in.  
17   When the declaration of rights and people came out,  
18   ACHP looked into the Preservation Act, and four tribes  
19   or agencies came in and signed reporting that. Like I  
20   said, I have a whole bunch of that stuff.

21           But like I said, what have other agencies  
22   done to address climate change? Their actions. We  
23   know when you go east of the Missouri River -- I have a  
24   lot of hunters come from Wisconsin because of  
25   agricultural spray, herbicide and pesticide. The

1 water is polluted. They said the fish glow. So they  
2 come over to the plains to hunt deer because that's  
3 deer they can consume.

4 But now we're having issues with water.  
5 1800s, there was still mercury in the Cheyenne River.  
6 The Cheyenne River runs from almost up here -- all  
7 these waters run down into the tailwaters of the  
8 Cheyenne River, which runs on the southern part of the  
9 Black Hills, across the Badlands, back over to the  
10 southern border of our reservation. And fish have  
11 sores. One eye. Too many fins. Not enough fins.  
12 This is today.

13 Our environmental protection went down there,  
14 and they still found contaminants in the Cheyenne  
15 River. So climate change is an issue, and I think all  
16 agencies need to sit down and look at that.

17 And as I said, regulatory. I don't agree  
18 with them taking on any project, because they are  
19 funded by the companies that mine uranium. It's a  
20 conflict of interest, I think.

21 Nuclear Regulatory Commission should be under  
22 the Department of Energy, and they will follow the  
23 federal law in consultation. Because they have failed,  
24 to the largest that I have seen -- like I said, I've  
25 only been in here for a little while.

1           EPA on aquifer exemptions. There's an  
2 aquifer exemption in which uranium mining, oil  
3 drilling -- you can drill into the aquifers, use that  
4 new water, add a bunch of chemicals to it, and start  
5 doing your fracking, start cutting into the cut, the  
6 harder surfaces.

7           And when you're done with the project and you  
8 have what they call, in mining, the slurry material,  
9 you can reinject it back in there because it's not a  
10 drinkable source of water. Well, this water on top is  
11 gone.

12           For generations, people have been ranchers.  
13 They will drill, pull water up. You'll see the old  
14 windmill pumps. Everybody used underground water  
15 because they weren't closer to surface water. Now our  
16 surface water is becoming contaminated.

17           And I said agricultural stream -- you know,  
18 herbicide, pesticides. So the surface water is getting  
19 kind of limited and questionable. So we may end up  
20 having to tap into what's below. But that may be gone.  
21 I think that there should be more stringent things on  
22 EPA for aquifer exemption.

23           Regional agencies versus treaty territory.  
24 Again, well, we got several BLM people here. But do  
25 their comments go as far as what we talk about when

1 we're discussing treaty or aboriginal?

2 I have a map that was etched in stone from  
3 the Great Lakes past the Big Horn Mountains. Our  
4 people back then knew how big this area was.

5 So how many different agencies do we have to  
6 consult with -- do we have to consult with to address  
7 that area? We have to take into consideration, when  
8 we're talking aboriginal territories, where and who are  
9 these agencies. Because the message ain't getting  
10 around.

11 what one state -- what we're doing in one  
12 state and in the next state beside it, the messages  
13 aren't being shared.

14 Last thing, funding. There are so many  
15 branches to what funding is. But the dollars that we  
16 function under, operate with, hasn't increased. The  
17 states have lost more property to -- that area, you  
18 know, wow. So just talking about South Dakota. You  
19 know, the seven tribes, the state has relinquished  
20 acres of land that they won't have to manage. But the  
21 dollars don't come with it. They still keep the same  
22 amount of money they have to operate.

23 And then every time the tribe comes in, the  
24 tribes split their portion. The states aren't picking  
25 up 160 more states. So there's no issue of their

1 funding. That's the biggest thing, I think, that  
2 hinders a lot of the tribes here.

3 You know, I've been saying this, and I'm  
4 going to keep saying it -- probably tired of hearing  
5 me, but I'm going to keep saying it. My job. One of  
6 the elders.

7 [Native speaking].

8 Here we are looking forward. Look back.  
9 There's a bunch of grandkids looking at us. What are  
10 you doing to them?

11 [Native speaking].

12 Those of you who heard, thank you. And thank  
13 you for listening to me today.

14 MR. TOULOU: So thank you, Mr. Vance. I said  
15 we'd do a break about 10:00. So we're going to take a  
16 five-minute break.

17 (Recess taken 10:21 to 10:39 a.m.,  
18 November 2, 2016)

19 MR. TOULOU: Okay. Thank you all. So we're  
20 going to jump right in to our next speaker, and that's  
21 Jody LaMere.

22 MS. LAMERE: Okay. Good morning, ladies and  
23 gentlemen. I just kind of wrote down some of the  
24 concerns from the Chippewa Cree Tribe. I'll just go  
25 through the list rather than elaborate.

1           Our number one concern is tribal consultation  
2 with tribal leadership on tribal lands on potential  
3 activity affecting the tribe. That is one of our  
4 issues, concerns.

5           The second concern is 106 consultations  
6 needed to involve their THPO on historical property  
7 with federal undertaking.

8           Number three is timing. Before projects are  
9 even considered, consultation should happen. Tribes  
10 should be consulted before a decision is made, and  
11 tribes should have a say. Also, full and early  
12 participation and purpose and need, infrastructure  
13 permitting discussion.

14           Number four, tribal governments must be  
15 provided, in a manner similar to state government,  
16 funding for participation in federal permitting  
17 processes.

18           And then number five, our cultural  
19 significance is different than the non-Native people.  
20 And then some of our successes and solutions that we  
21 came up with is a solution for effective consultation  
22 that the Chippewa Cree Tribe has utilized FCC's TCNS  
23 process for telecommunications projects or Section 106  
24 reviews, which can be a model for other federal  
25 agencies. And we encourage their review and to speak

1 to Chairman Tom Wheeler of the FCC.

2 Number two, the Chippewa Cree Tribe's tribal  
3 historic preservation officer, Mr. Alvin Windy Boy, is  
4 the vice chair of the national THPO, working on  
5 cultural and religious issues for over a decade. So I  
6 encourage you to make contact with Mr. Windy Boy. He's  
7 had his boots on the ground running for probably over  
8 30 years. And he's a good asset for our tribe.

9 In closing, I guess I'd just like to reserve  
10 our right to have our written concerns and solutions by  
11 the deadline of November 30th. And thank you.

12 MR. TOULOU: Just one second. And, you know,  
13 at the end, I was going to say, because I know you're  
14 rushing through, I appreciate the fact that you're  
15 giving us more time. But, everybody, written comments  
16 are very much appreciated. It's not that we're not  
17 listening. And we've a transcript that's going on.  
18 But it's great to get written comments also.

19 I have one question. And not part of the  
20 format. You were talking about the FCC, how they ran  
21 their process. Was that a good process, or was it bad?  
22 Because one of the things we're looking at is, you  
23 know, who does a good job --

24 MS. LAMERE: I believe it's a good process  
25 because there's a lot of data that's maintained and

1 reports that go back and forth with the program that  
2 Alvin's running. And I apologize he's not here today.  
3 He's out on other endeavors. Otherwise, I would have  
4 had him take the mic.

5 MR. TOULOU: Okay. That's helpful. Thank  
6 you.

7 So up next on the list is Michael Black wolf,  
8 who's a registered preservation officer for Fort  
9 Belknap. I know he was talking about speaking with  
10 Mr. Donovan. But please come up.

11 MR. BLACK WOLF: Good morning. I'm Michael  
12 Black wolf, tribal Crow preservation officer, Fort  
13 Belknap Indian community, home of the Gros Ventre  
14 Assiniboine tribes, and we're located here in north  
15 central Montana.

16 A lot of the points I wanted to bring up were  
17 already brought up previously, so I'll make mine also,  
18 out of respect for others that want to speak, rather  
19 short.

20 I was looking at the letter that was sent out  
21 to us. And, you know, there's essentially two  
22 questions you folks are asking. You know, how do we  
23 promote a more meaningful government-to-government  
24 engagement within the existing framework?

25 I think that therein lies the issues -- at

1 least from my perspective as a tribal historic  
2 preservation officer, is that the existing framework --  
3 it seems like the cards are stacked against us as THPOs  
4 when we come to or we go to consultations on behalf of  
5 our tribal governments. A lot of us THPOs, if not all,  
6 are tasked with the representative to go to these  
7 various consultations and to speak on behalf of our  
8 tribes.

9 But a lot of us, also, we maintain and we  
10 ascertain that a true government to government is you  
11 folks, the head of your guys's respective agencies,  
12 coming to us and visiting with our tribal leadership,  
13 visiting with our council representatives and with our  
14 chairman and our vice chairman or president or vice  
15 president, however each tribe designates their leaders.  
16 So that, to me, is one of the things that I would like  
17 to see changed.

18 something else that I would like to see  
19 changed is -- or I believe that we need to do is we do  
20 need to change the existing laws, because executive  
21 orders, you know, 13175, the other ones, those are  
22 just -- they're not federal law specifically mandating  
23 you guys to do these things.

24 And I get a lot of letters and responses from  
25 various agencies that like to state that although these

1 executive orders and various things that exist out  
2 there -- we're not forced to sit at this table with  
3 you. We're not forced to consult with you. We're not  
4 forced to compensate tribes for our efforts.

5           And one of the things that I like to bring up  
6 is that a lot of the agencies that we work with, you  
7 guys willingly go and hire archaeological firms,  
8 archeologists, to go and do some archeology work for  
9 you. And included in those archeology reports are a  
10 critical component.

11           And you have a vast majority of non-Native  
12 American archeologists. And I mean no disrespect to  
13 them. But they're the ones you're relying on for  
14 cultural, quote, unquote, expertise. And for the vast  
15 majority of these folks, they're not Natives.

16           When we have -- all of us -- when I'm talking  
17 about "us," I'm making reference to tribal historic  
18 preservation offices -- we have our expertise on our  
19 people, our histories, our locations, our stories. And  
20 if you folks, as federal agencies, reluctantly -- or  
21 you don't even want to bring us to a site, to a place  
22 to do our own site visits, investigations, or if we do,  
23 you tell us, "well, you come, but it's on your own  
24 dime."

25           But yet at the same time, other side of that

1 coin, you guys hire archeologists, and you pay them. I  
2 guarantee you, all of you guys, you would not get an  
3 archeologist to come do your guys's work if they had to  
4 do it for free. And yet you expect us to show up and  
5 do our bit, our consultation.

6 And then we have monitors, trained, certified  
7 monitors, each of us THPOs, that I work with, that I  
8 work closely with. We all have our own certified  
9 monitors, cultural resource monitors that are  
10 knowledgeable and know these things and know how to do  
11 these surveys. And yet you folks are unwilling to  
12 compensate us for our time to come and do that part of  
13 it.

14 And so more often than not, you folks say,  
15 "Yes, we want you here. We want you to come, and we  
16 want you to participate. But we don't have the money  
17 to help you." And you guys also always go back and  
18 reference the Historic Preservation Fund, which is  
19 administered through National Park Service.

20 And I can pretty much vouch for per person,  
21 when talking about THPOs, is that -- as my colleague,  
22 Mr. Steve Vance, said -- that pie gets smaller and  
23 smaller and smaller every year. And what that really  
24 does is that basically covers, for most of us, our  
25 salary and a little bit of travel money. And I know

1 that that's what's quoted when they tell us that,  
2 "well, you guys are already getting paid to do this."

3 But when you look at what we do in comparison  
4 to state historic preservation offices, who oftentimes  
5 have staff of 10, 12 people, you expect us, one person,  
6 one salary, to do the work of 10, 12 people.

7 So I think that you absolutely have to change  
8 the existing laws. Because I like to say that when it  
9 comes to us -- and we deal with things like Executive  
10 Order 13175, National Historic Preservation Act. Each  
11 time we try to get up and really get our teeth into  
12 something, you guys, as federal agencies, you pull our  
13 dentures out, and we're sitting there gumming the  
14 issues.

15 If we were to change and actually have  
16 federal law that mandated instead of saying, "You may  
17 do this, you might do that," however the wording is in  
18 it and saying, "You shall or you will do this," then  
19 that would make our jobs a lot easier as THPOs.

20 And again, I could go on a little bit more --  
21 or I could go on a lot more. But out of respect for  
22 others that need to speak, that's all I wanted to say  
23 at this time. Thank you.

24 MR. TOULOU: Thank you very much. I'm going  
25 to jump in the schedule a little bit. We have an

1 elected tribal leader. Terry Tatsey, vice chair of  
2 Blackfeet Tribal Council.

3 MR. TATSEY: I prefer to be a moving target  
4 and not have my back to the audience here. But as a  
5 student of life, I have a question. I was trying to  
6 figure out what this really meant when I came to this  
7 meeting. And thanks to John Walsh for the invite and  
8 extending that invitation to me.

9 But as a student of life and student of  
10 process, student of structure, student of anything, I  
11 asked the question, when we're gathering as a group to  
12 come out here and framing this consultation process,  
13 how did you work, as interagencies, interdepartments,  
14 to develop that format?

15 MR. TOULOU: So you're talking about the  
16 framing paper?

17 MR. TATSEY: Just for yourselves to come do  
18 this.

19 MR. TOULOU: So this is an ongoing process,  
20 and it's clear, as we get more information, what we're  
21 receiving and how the works change. I think one of the  
22 earlier speakers talked about the increase in people.

23 But the white House called together a group  
24 of all the federal agencies that have infrastructure  
25 that goes on that might impact tribes, plus some

1 others, like the Department of Justice might be  
2 involved in the legal aspect. And we put together a  
3 framing paper we thought would start the conversation,  
4 and that's just the start of the conversation.

5 MR. TATSEY: Okay. Thank you for that  
6 clarification.

7 Now, as a teacher at the Blackfeet Community  
8 College for 23 years -- and in the past, helped build a  
9 college there. And as a teacher, I got a test  
10 question. And I was going to pick on Tedd down there  
11 because I know him from the tribal college, so we're  
12 close, but also Jamie and anybody in between. The word  
13 "[Native speaking]," does anybody know what that means?

14 MR. BUELOW: I do not.

15 MR. TATSEY: Tedd? Jamie?

16 MS. CONNELL: No, sir, I don't.

17 MR. TATSEY: Anybody in between?

18 (No response.)

19 MR. TATSEY: Okay. That's fine. I'll  
20 explain a little bit about the [Native speaking]. It's  
21 basically referencing us as a people, the importance of  
22 our home. And a lot of the discussion that has been  
23 shared so far has been about physical landscape. But  
24 if you look at the full definition of the [Native  
25 speaking] and you relate it to our lodges, the paint

1 lodges that we have as [Native speaking] people, the  
2 top of our lodge represents what we call the [Native  
3 speaking]. And that's every constellation that's out  
4 there. It's the story of Milky Way. It's the story of  
5 Pleiades. It's the story of the Big Dipper. It's the  
6 story of Orion's Belt or the hand.

7 So as you were framing your consultation  
8 process, did you consult with NASA? Because that's  
9 part of our home. That's part of our stories.

10 As you were -- the middle parts of our lodges  
11 are the helpers that we get, our spiritual helpers, our  
12 guiders. And a lot of that can be an animal. It can  
13 be a plant. It could be anything within that sphere,  
14 if you talk about lithospheres or stratospheres in the  
15 western science world. But that sphere for us or that  
16 area of the tepee represents something that is  
17 important to all of us as [Native speaking] people  
18 called [Native speaking].

19 And so [Native speaking], there is things  
20 that we're dealing with today, from the Federal  
21 Communications Commission, called airwaves. And there  
22 was a consultation with tribes and others for the  
23 airspace for the historical lands and also their  
24 reservation boundary homelands. Was that consultation  
25 part of your framing for your meetings, as you had this

1 thought process coming out?

2           The third part of our lodges is the bottom.  
3 And they call that [Native speaking]. And what that is  
4 referencing is everything that's on the surface or  
5 underground. And so as you were framing your meetings  
6 to come out and talk to tribes, did you consider the  
7 USGS? Did you consider everybody else that deals  
8 with -- from federal agencies to departments that deals  
9 with all those layers of everything underneath the  
10 earth?

11           Because for us, the tribal people, when we  
12 talk about [Native speaking], it's referencing  
13 everything that I just mentioned. And for your  
14 consultation process, it's something you might want to  
15 consider. Because when you consult with tribes, from  
16 their worldview, not everything is encompassed that you  
17 guys have a responsibility to address with tribes.

18           And Steve mentioned earlier, you know, that  
19 we have a system, a process of respect and  
20 responsibility. And that was before we ever took  
21 anything, we had to give and keep balance with our  
22 surroundings in our environment.

23           So we gave through prayer. We gave through  
24 offerings. We gave through whatever means we could to  
25 give back for anything that we took for our benefits

1 and for our survival. And so that was something that I  
2 wanted to share with you.

3 Because when you're framing your next  
4 meetings, as you move forward, think about that  
5 perspective and that worldview of one particular tribe  
6 and how that relates to other tribes and their origin  
7 and creation stories and their values of home.

8 The specific project that I'm going to talk  
9 about is the -- it's a high-profile case right now  
10 being addressed by Secretary Jewell, Secretary Vilsack.  
11 And that's the Badger-Two Medicine oil and gas activity  
12 that's happening. It was in the early '80s, without  
13 consultation, the consequences of not consulting tribes  
14 is -- this is the evidence of it.

15 But in the early '80s, the federal government  
16 did not consult with the Blackfeet tribe on an area  
17 that they entertained leases for oil and gas. And for  
18 over a number of years to present day, we've been  
19 fighting as a tribe to remove oil and gas exploration  
20 and development up in the Badger-Two Medicine.

21 And we -- I think there was probably 60 or 70  
22 leaseholders in the early part of this activity or this  
23 effort in the '80s. And we have it down to about 16  
24 companies, 16 leaseholders today.

25 And we have been in a long-term battle over

1 this. And because of lack of consultation, lack of  
2 understanding of our -- what we believe and in the --  
3 my direct involvement in this began in, basically,  
4 1968.

5           It's part of our funding process to take our  
6 families up into that area. Because that was our last  
7 refuge for ceremony, when we had been pushed basically  
8 to that point of our summer area. And our people used  
9 that area at Glacier National Park, which is now  
10 Glacier National Park, to go in and practice ceremony,  
11 practice themselves and who they were and what was  
12 important to them.

13           And so since that has been away since the  
14 1870s up to now and even prior to, it's part of our  
15 family tradition to take our children up there and to  
16 introduce them to that system, to tell our traditional  
17 knowledge of the area, and to practice it.

18           And so I just came from there from last week.  
19 I took my eight-year-old granddaughter up there as my  
20 responsibility to my family and to that place of  
21 keeping that practice alive. But we've been very  
22 successful. We've had a lot of support in fighting the  
23 oil and gas development in Badger-Two Medicine.

24           And I was advised to go back to Washington,  
25 D.C. to -- they're showcasing a video that was done on

1 that area. And Secretary Vilsack has been invited, and  
2 Secretary Jewell will be there. And some of the  
3 Congressional people will be there also, senators. And  
4 so they're going to show this video. And what we're  
5 hoping to do is that this will put closure to just a  
6 very important landscape, small landscape, that's  
7 important to us as people.

8 But the way this really changed is in the  
9 early part of 2000, the Army Corps of Engineers  
10 actually provided the Blackfeet Community College,  
11 myself being the lead on it, to do -- to conduct  
12 research in that area and find out which part of that  
13 landscape was the most important or the most holy to us  
14 as people.

15 And I laugh because there's not one point or  
16 one place that's more important than the other. And so  
17 what we had to do, through the National Historic  
18 Preservation Act and their process, is to make that  
19 area a traditional -- to get it designated as a  
20 traditional cultural district.

21 And so the Army Corps of Engineers provided  
22 the college with that funding to conduct the research.  
23 And so we -- myself and my family history was told.  
24 That other family and their histories was told. And so  
25 basically, through that movement, we've got it

1 designated as a traditional cultural district for us  
2 people.

3           And the reason I bring that up is because  
4 whether it be a pipeline, whether it be a road, whether  
5 it be a transmission line, how many federal agencies or  
6 departments do consultations with tribes, provide  
7 resources for them to go out and do a one-year study on  
8 these areas before any actions are taken?

9           It's very important -- we let them know that  
10 this research, this process might take up to five years  
11 because a lot of times it's getting those elders to  
12 talk, to share their stories. It's a process. It's a  
13 trust. It's these steps you've got to take in our  
14 internal communities, that we got to deal with.

15           So I share that with you. As you look at  
16 framing your next meetings, think about these things,  
17 about our views, our relationship to place, and  
18 processes that were implemented that have not worked  
19 well for federal government, tribes, or any other  
20 entity that has some type of a, I guess, stake in the  
21 game.

22           The thing that we deal with now on the  
23 Blackfeet Reservation -- we're taking care of some of  
24 the big picture things. But we've started this Indian  
25 initiative. And the Indian initiative is to get

1 involvement from tribes in the United States and  
2 Canada.

3 We focused on confederated tribes first to do  
4 the initiative, to reintroduce bison back into the  
5 landscape. And when we took that initiative, the first  
6 ones that were supportive was the National Park  
7 Service. Even the Province of Alberta Parks and  
8 Recreation, their superintendent was on board after we  
9 set the parameters of it.

10 And so we had a treaty signing a couple years  
11 ago, on September 23rd, and that was to recognize the  
12 importance of that animal to the landscape as a wild  
13 animal. And how are we going to work with the state?  
14 How are we going to work with individuals? How are we  
15 going to work with federal agencies to ensure that this  
16 becomes a reality for this particular animal, this  
17 effort? So that's something we're continuing to work  
18 on. And that will be addressed back in D.C. on  
19 November 16th.

20 Then we bring it home to what we call  
21 "reservations." And that's one word that really  
22 bothers me. Because it defines exterior boundaries  
23 that we have to live within. And we set policies. We  
24 set guidelines. We set regulations to do activities  
25 and functions that are very -- some really are

1 challenging when we try to provide the very basic  
2 services that our people need, such as water, such as  
3 roads for access to the properties.

4 And sometimes we, as tribal governments -- my  
5 foremen on the job have more restrictions, requirements  
6 on us to do these activities than the federal  
7 government does for their actions. So it's tough to be  
8 in these positions, because we have many jurisdictions  
9 to deal with, from individuals to counties to state.

10 And so one of the reasons I'm not going back  
11 to D.C. for the 16th and 17th activities is because I'm  
12 meeting with the Montana School of Law. And I'm going  
13 to have some of the graduate students do some research  
14 on how did easements get through our reservation  
15 boundaries for -- with the state or for the railway or  
16 for -- how did the town of Browning even become the  
17 town of Browning? Who gave you that property?

18 How did we get these airports that were under  
19 federal regulation when all of a sudden, when that  
20 responsibility was passed on, why wasn't that property  
21 forwarded on to the tribe to basically re-own? But it  
22 was given to the county.

23 So these are things we'll be researching, and  
24 I'll have students take the lead because we don't have  
25 time to do it.

1           But I want to read this to you, some of the  
2 challenges we face. But from our historical  
3 perspective, from the activity that we worked with that  
4 we're seeing a little bit of fruition, success, be it a  
5 long-term investment and some of the challenges of lack  
6 of proper concentration and for those coming out to  
7 visit us and some of the things that we're dealing with  
8 at the local level today. So I just wanted to share  
9 that with you.

10           As you go back to your tables, to your peers,  
11 put some thought into who else should be at this table.  
12 Should we have NASA here? Should we have the Federal  
13 Communications Commission here and all of those players  
14 that have a potential impact from lack of consultation  
15 with tribes on our reservations? So thank you.

16           MR. TOULOU: Thank you. So next is Anderson  
17 Richard, a private archeologist from Northern Cheyenne.

18           MR. RICHARD: It's Andrew Richard.

19           MR. TOULOU: Okay.

20           MR. RICHARD: That's all right.

21           MR. TOULOU: I'm sorry.

22           MR. RICHARD: It's okay.

23           First of all, there's numerous problems with  
24 the consultation process. Four hours in a day for all  
25 of you people to come here and expect that you're

1 actually going to get anything out of it is -- your  
2 expectations are not very high.

3 I'm a field archeologist for the Northern  
4 Cheyenne. So I've worked CRM, cultural resource  
5 management, which is how you guys determine eligibility  
6 on these sites, how we work with SHIPs and whatnot.

7 The problem with how we do 106 in this  
8 country is based on archeology. But archeologists are  
9 anthropologists in the beginning. So you're not taking  
10 into consideration the cultural aspects and the  
11 spiritual aspects of any of these tribes.

12 How many of you guys have been to college,  
13 have been to consultation classes in the university?  
14 How many of you? I'm asking you a question. Are you  
15 going to raise -- any of you going to raise your hand?  
16 Not a single one of you.

17 How can you decide these things? You don't  
18 even have the knowledge, a basic knowledge of what  
19 you're trying to do. Your intent is fine. It's a  
20 great intent. But where is this going to go? You have  
21 all these tribal leaders in here that have degrees.  
22 You have Emerson Bull Chief, Dr. Emerson Bull Chief,  
23 who is a THPO. Do you ever listen to what he actually  
24 has to say to you?

25 I mean, ACHP has its own issues. Okay. So

1 there's times I go, "What are you even there for?"  
2 Your policy -- you're supposed to talk to the president  
3 and advise the president and advise the Congress. They  
4 don't even listen to you. What are you there for?

5 So everything that we do is based on science.  
6 But why is it based on science? Because this country  
7 is white. That's why. It's based on racism. It's not  
8 based on culture.

9 As an archeologist, I spend a lot of time in  
10 the field. I spend a lot of time with my guys that I  
11 train that are certified cultural resource specialists.  
12 I know they're certified because I certified them.

13 But there's a huge disconnect between the  
14 U.S. Government and the SHIPOs. The U.S. Government  
15 says, "Oh, we're going to go to consultation, and we're  
16 going to do this, this, and this." But in the end, the  
17 SHIPOs decide what is eligible and what is not.

18 In North Dakota right now, if you have -- say  
19 that this is the North Dakota SHIPOs. And this is --  
20 this is the site. And you have an archeologist say,  
21 "This is a site."

22 And they go, "Okay. That's a site."

23 But then you have the same thing going on  
24 where the cultural resource specialist says, "Well,  
25 this is a TCP. It's not just a site." You have --

1 that North Dakota SHIPO -- I don't know if you guys are  
2 paying attention to the news at all -- but in Standing  
3 Rock, these issues -- half the issues would go away if  
4 the SHIPO would do their job.

5 Ethically, they're challenged because of  
6 race. Look at the North Dakota SHIPO guidelines for  
7 eligibility. The only ones that determine eligibility  
8 are the SHIPO and the archeologists. It doesn't say  
9 THPOs. It doesn't say Native input.

10 Last year I went to a TCC meeting, tribal  
11 consultation meeting, in North Dakota. It's the first  
12 one I've ever been to up here on the Northern Plains.  
13 It's the first time that I was absolutely ashamed of my  
14 profession as an archeologist. I'm not ashamed of my  
15 work, because I know I'm good at what I do. I'm  
16 arrogant enough to say that, and -- but I'm also  
17 educated enough to say that.

18 You guys, how is this going to affect the  
19 future? You're coming in as an administration that's  
20 getting ready to leave. So are we ever going to see  
21 you guys again? Do you have goals set? Are we going  
22 to see you guys again?

23 MR. TOULOU: Just to respond, a number of us  
24 are career. I'm career, and a lot of people at the  
25 table. And just, you know, I'm taking in everything

1 you're in here saying. But there will be a report in  
2 this. It's quite extensive. And there will be actions  
3 that are delineated in that report.

4 MR. RICHARD: Is there a timeline? Like, are  
5 you going to make these actions in 20 years? Five  
6 years? Ten years?

7 MR. TOULOU: There -- the report will be --

8 MR. RICHARD: And I don't mean to interrupt  
9 you --

10 MR. TOULOU: Because, you know, I understand  
11 what you're saying.

12 MR. RICHARD: And I don't mean to interrupt  
13 you. But you guys have, like, a couple hundred of  
14 years of experience in the government, a government  
15 that's suppressed these tribes for how long? You guys  
16 couldn't even tell me, because you're not educated  
17 enough to tell me that.

18 It bothers me when someone says, "Oh, I've  
19 been doing this a long time, so that makes me good at  
20 it." Just because you've been doing something a long  
21 time doesn't make you good at it. It could make you  
22 repetitively horrible at what your job is.

23 So Michael Black wolf was talking about  
24 funding the THPOs, how the pie gets smaller and  
25 smaller. What that does is reduce the effectiveness of

1 THPOs across the country and eventually will make them  
2 irrelevant without funding.

3 But you guys get funding every year. You  
4 guys, all your funding gets increased every year.

5 No, it doesn't? No? Do you get a raise  
6 every year?

7 MR. BLACK: No.

8 MR. RICHARD: Do you get a raise every few  
9 years? Did you start as a GS-4, and now you're a GS-12  
10 or whatever?

11 MR. BLACK: Many of us, we've worked our way  
12 through the system, yes.

13 MR. RICHARD: So that's an increase in  
14 funding.

15 MR. BLACK: I would assume similar to what  
16 you're talking --

17 MR. RICHARD: But I don't get paid what you  
18 guys get paid.

19 MR. BLACK: No. You've worked your way up.

20 MR. RICHARD: It wasn't given to me; that's  
21 for sure. But a lot of you are politically appointed  
22 as well. So I don't want to get into all that.

23 There's so much here that you guys can't  
24 change in 50 of these meetings. And until you start  
25 going through the guidelines of 106 step by step with

1 every single tribe and getting their opinions and  
2 asking them their opinion, nothing's going to change.

3 This is a consultation. We're talking about  
4 consultations and how the process is to be fixed. But  
5 do you even know where to start? It doesn't seem like  
6 you guys know where to start.

7 I mean, you got this thing happening in North  
8 Dakota. Nobody's doing anything about it, it seems  
9 like. Not on the federal level. The Corps of  
10 Engineers -- who is here from the Corps of Engineers  
11 besides the guy in the uniform there?

12 (Several raise their hands.)

13 MR. RICHARD: So the Corps of Engineers, the  
14 process which you guys use for determining how  
15 important these sites are are determined by you. And  
16 you don't ask anybody. In --

17 Go ahead.

18 COL. HENDERSON: I was just going to say  
19 you've challenged us to make sure that we got the facts  
20 right and what we know. Before you talk about what the  
21 Corps of Engineers is or isn't doing in North Dakota, I  
22 would ask you to make sure you have your facts  
23 straight --

24 MR. RICHARD: Well, I'm not --

25 COL. HENDERSON: -- because we've done a lot.

1 And we have invited THPOs and tribal-appointed  
2 archeologists, and we've met several times and  
3 conducted several site visits.

4 MR. RICHARD: And I understand that.

5 COL. HENDERSON: So before you start calling  
6 everybody racist and we're not doing anything, I would  
7 just ask you to make sure you have your facts correct.

8 MR. RICHARD: Well, like I said before, have  
9 you taken any classes in cultural anthropology?

10 COL. HENDERSON: No. But I've a great team  
11 on the district level --

12 MR. RICHARD: And I'm sure they are. And I  
13 think that's great. Okay. And you are trying to make  
14 the attempt to change things in a positive way. I can  
15 see that. A lot of us can here. But the attempt  
16 should have been made before this process ever started  
17 with that. And you guys know that. You guys have  
18 admitted as much.

19 Department of Interior has admitted as much,  
20 too, because they agree with that. But you guys made  
21 mistakes. But who pays for those mistakes? When you  
22 got these guys like Vance, Steve Vance, Michael Black  
23 wolf, and my boss, Teanna Limpy, you don't get punished  
24 for anything.

25 If someone takes a tractor and runs through a

1 site and that site is right -- this is the one site  
2 that didn't get put into the database in North Dakota.  
3 Okay. This TCP, this area here, that's a bunch of  
4 cairns didn't get put into there. Then it disappears  
5 and is gone forever. And you just affected someone's  
6 cultural identity. You can't do anything about it when  
7 it's gone. What are you going to do about it now?

8 We go to these meetings all the time, and we  
9 hear this (indicating). And things are checked. Boxes  
10 are checked. "Oh, we went to this meeting. We're  
11 good. We talked to them. We're good." You guys don't  
12 get it. Some of you do. Some of the changes you're  
13 making are positive.

14 But if you don't work together with the  
15 SHIPOs and the THPOs and look at that whole  
16 initializing consultation and actually look at it for  
17 what it is, as legal -- you know, legally and the steps  
18 that need to be followed -- there's times when I have  
19 projects that come across my desk.

20 BLM drops a project on me and says, "Hey.  
21 The CRM is already done on this. Can you guys send two  
22 guys out to look at it?" Why would we want to send two  
23 guys out to look at it if you determined what's going  
24 on? That's a little late.

25 Every one of these agencies do the same

1 thing. They send you reports. They all say the same  
2 thing. They all say the same thing. The first part  
3 starts out with Clovis. That whole section, you could  
4 take that and cut and paste it from one report to  
5 another, and it says the same damn thing.

6           You don't look at it from a cultural aspect.  
7 You look at it from a scientific aspect. And until you  
8 start looking at it from a cultural aspect, none of  
9 it's going to mean anything, not a single part of it.  
10 Most of what we do has already been predetermined  
11 before we even get to the table. Would you agree?

12           MR. TOULOU: So, you know, I understand what  
13 you're saying. I understand why you're angry, and I  
14 understand a lot of things have not gone right. I  
15 don't think any of us would be up here, particularly  
16 those of us who have made our career working in Indian  
17 country because we understand those issues.

18           Things happen. And, you know, we're  
19 representatives of the federal government, and we've  
20 got to take ownership. I'm not suggesting that we  
21 shouldn't. I'm not suggesting that you shouldn't be  
22 unhappy with what's going on. And I'm happy and I  
23 think we're all happy to listen to that, because every  
24 time we're here, we learn something new. And we could  
25 do better.

1           But what we would like -- and you're free to  
2 talk in any way you like, as anybody in this audience.  
3 You know, based on those bad things that have happened  
4 and your understanding of how they have worked out  
5 because of your training and the fact that you've dealt  
6 with this day in and day out for what seems to be quite  
7 a while -- is how we can do better in the future. And  
8 that's what we're trying to do here is not recreate  
9 those mistakes we've made in the past. Because we know  
10 we've made a few.

11           MR. RICHARD: And that's part of my point is  
12 in the future, is this really going to go anywhere?  
13 You want it to, but is it really going to go anywhere?

14           MR. TOULOU: We're going to do our damndest  
15 to make it that way. You know, I can't guarantee the  
16 future, but I think that's --

17           MR. RICHARD: Can you be held accountable for  
18 that statement, that you say, "Yes, we're going to do  
19 something about it"?

20           MR. TOULOU: Well, I just said I could. And  
21 I think people who know me, and some people here do --

22           MR. RICHARD: Well, I don't know any of you.

23           MR. TOULOU: Then time will tell.

24           MR. RICHARD: It will tell.

25           MR. TOULOU: It will.

1           MR. RICHARD: Because we've worked with FCC,  
2 the Corps of Engineers, the BLM and go to meetings, and  
3 nothing happens. So if you're going to make something  
4 happen, then do so. And look at yourself in the mirror  
5 in the morning and say, "Yes, I'm actually making a  
6 difference." Every single one of you.

7           MR. TOULOU: Okay. I accept the challenge.

8           MR. RICHARD: Good.

9           MR. TOULOU: We'll see what happens, and  
10 we'll talk about it probably in a year or two, I'm  
11 sure.

12          MR. RICHARD: I hope it's not that long from  
13 now.

14          MR. TOULOU: No. I mean, we'll continue to  
15 talk. I mean, I don't think any of us who are sitting  
16 here -- I know Mike and I have been doing this for a  
17 long time, other people too -- expect to go away, and  
18 we don't expect these conversations to end. So, again,  
19 I understand what you're saying, and I appreciate the  
20 fact that you're outraged about some of it. You should  
21 be. But, again, what we'd like to see is how to make  
22 it better.

23          MR. RICHARD: And the last thing people want  
24 to hear is this is an evolving process, it's an ongoing  
25 process. That means that it's ongoing and it never has

1 an end to it and it never has -- by not having an end  
2 to it, it doesn't have, "Hey, let's deal with this  
3 challenge and then solve the problem and then move onto  
4 the next one." It's not like that.

5 If it's an ever-evolving process, it's like a  
6 jumble of crap that goes down the road, and that's what  
7 we deal with every day.

8 You know, ancestral lands for the Northern  
9 Cheyenne, do you know what they consist of?

10 MR. TOULOU: I'm sure you know better than I  
11 do.

12 MR. RICHARD: Well, I would hope so. So  
13 basically the Canadian border all the way down to  
14 northern Texas and from the Rockies to basically the  
15 Mississippi -- so every federal project that happens  
16 within that area, we have to deal with. You guys deal  
17 with one project at a time, most of the time.

18 MR. TOULOU: You know, and that's  
19 something -- not to interject too much, because I  
20 really want to listen. But that's something we've  
21 heard, and I think that's a legitimate issue to raise,  
22 that there are a lot of areas well beyond a reservation  
23 boundary where tribes have had historic interest and  
24 continue to have interests. And that needs to be  
25 something we take into consideration.

1           Another thing I've heard -- I heard this in  
2 Phoenix -- is, you know, we expect tribes to comment on  
3 every one of these projects. And tribes have limited  
4 resources, and yet we expect them to be at the table at  
5 all of them. And I think that's completely legitimate,  
6 and I don't know that we'll be able to fix all of  
7 those. But until we identify problems --

8           MR. RICHARD: Great.

9           MR. TOULOU: -- and we can do some --

10          MR. RICHARD: Well, then good. Part of the  
11 problem is this, okay, and I'm sure you heard this  
12 before: If you have 30 consultation meetings in a  
13 month, how many are you going to go to as a THPO? So  
14 you're going here, and it's like a separation. When  
15 you separate people out, then not everybody's voice is  
16 heard.

17                 So if you're dealing with all these  
18 overlapping consultations, which ones are you going to  
19 deal with? And then eventually, something is going to  
20 happen on a project that you didn't go to, and you're  
21 going to feel responsible for those things. You have  
22 to consolidate these meetings and have a schedule.

23          MR. TOULOU: And I think that's fair. And,  
24 you know, that's an excellent point. You know, part of  
25 the reason we have consultations is we don't

1 necessarily get this stuff, you know, internally.  
2 You're right. We're out there. We're out there on the  
3 ground with you.

4 But I don't know how to fix that. I'm hoping  
5 you have ideas and people in the audience have ideas on  
6 how we can think about fixing it. So you're right. I  
7 hear what you're saying.

8 MR. RICHARD: And, you know, the thing is,  
9 I'm hired by the Cheyenne as a tribal archeologist.  
10 But I'm not Cheyenne. So their values and how they  
11 deal with things -- I'm there to deal with things that  
12 they can't deal with, like human rain, like getting  
13 really pissed off at you and yelling at you. That's my  
14 job. Okay.

15 I advocate for the tribe, but I also advocate  
16 not only for the Cheyenne but for every other tribe out  
17 there. It's not something that I just do and you go to  
18 work from 7:00 to 5:00, where you live in conditions  
19 that you normally wouldn't, in order to go to work  
20 there. It's not something like that. It's kind of  
21 like you have to be really dedicated to this.

22 And if you guys aren't as dedicated as the  
23 rest of us here, then we're not going to solve  
24 anything. You guys need to be as dedicated to this  
25 subject as we are. You need to be invested in this.

1 otherwise, it doesn't mean anything.

2           Somebody is going to replace you. But nobody  
3 is going to replace them. You guys need to understand  
4 that.

5           And you need to go, "Hey, this archaeological  
6 report, where is the report from the tribe? Where is  
7 their perspective on this?" You've heard this numerous  
8 times. Where is the tribal perspective in any of the  
9 reports that you guys -- whatever, you guys get these  
10 CRM companies to -- you hire them. Where is the  
11 cultural perspective? There isn't one. 'Cause you  
12 guys aren't asking. And that's one of the main  
13 problems with this process is that you don't ask.

14           When I go to an archaeological site and I do  
15 an excavation and there's someone there with me to  
16 monitor -- and I don't know what I'm working on  
17 necessarily all the time. Say I find something  
18 completely new. There's archeologists that will go,  
19 "Wow, I found this cool thing that's completely new,"  
20 and they go run off to go record it.

21           But there's actually archeologists that will  
22 go, "Hey, what is this?" to the guy standing next to  
23 you. You guys -- if you don't see a cultural  
24 perspective, you're never going to get this. Never.  
25 You'll sit in your offices in Washington and go --

1 you'll do paperwork all day and not be able to truly  
2 understand.

3           You need to come to the field if you want to  
4 understand this. You need to come out to these  
5 projects. Put a pair of boots on, and come to the  
6 field. That's what you need to do. You need to go  
7 pick a project that's like Dabble [phonetic], where you  
8 have monitors that want to go out but can't. Just go  
9 to the field and see what happens. Watch the process  
10 from the very beginning.

11           Go to Fort Carson in Colorado to watch the  
12 CRM guys record a site and say, "There's tons of damage  
13 to the site by a tank." And on the other side, the  
14 report comes out, and the report says no damage.  
15 Because it's been filtered through so many different  
16 aspects of the government and the process that -- and  
17 it's internalized. It happens all the time.

18           You got bulldozers running over stuff in  
19 Wyoming all the time, you know, basically going through  
20 sites that they didn't even have a permit to go  
21 through. What's done about that? "Oh, here's a \$4,000  
22 fine." You're, like, a \$20 million company. What's  
23 \$4,000 mean? Are they held accountable? No. Is their  
24 permit pulled? No.

25           You guys need to give these guys some teeth.

1 The ACHP needs teeth. And you guys need to follow the  
2 damn rules and follow the law. The law is there for a  
3 reason, not for you to circumvent. And you need to sit  
4 in the middle, between people, and not be on the side  
5 of one or the other. You need to help those that need  
6 the help and do your job.

7 All right. I'm done.

8 MR. TOULOU: Thank you. And I mean that.

9 So next is Emerson Bull Chief, the THPO from  
10 Crow Tribe.

11 MR. BULL CHIEF: Like Andy said, it's Doctor.  
12 No, just kidding.

13 I wanted to start off by -- I know there's so  
14 much I could sit here and talk to you about, and I have  
15 talked to some of you about a lot of the things I'm  
16 going to discuss.

17 When we really think about what consultation  
18 means, it's a regard for an opinion of who you're  
19 consulting with. And a lot of times, that means  
20 respect. Respect for -- you're going to have respect  
21 for me, and I'm going to have respect for you.

22 And when you really think about that, when  
23 you're asking for our opinion on consultation, you're  
24 taking us to a site to look at, and we give you our  
25 opinion about that site, according to our oral

1 traditions, our history. A lot of times, I always get  
2 a feeling of disregardment, that it's just  
3 superstition, that you don't respect that part of it,  
4 that you don't respect my opinion, which you ask for in  
5 consultation.

6 so I think that to be able to fully  
7 understand this concept that -- somebody brought up  
8 science. Science is something that Native Americans  
9 practiced for thousands of years. I mean, look at  
10 corn. It's I don't know how many years of genetic  
11 engineering that was done to develop corn.

12 And we have this knowledge of the land. We  
13 have this knowledge that the environment that we  
14 develop our culture on gave us, and we practice that  
15 knowledge of the land. And we want that respect for  
16 you to believe us and trust us, what we tell you when  
17 you consult with us. That's one issue of consultation  
18 that I feel like is lacking.

19 A lot of times, we're not dealing directly  
20 with the federal agencies. I mean, I see some of the  
21 federal agency folks here that I work with in the field  
22 like Buck and Marcia. And we're out there with them on  
23 the ground, and they listen to us. We built  
24 friendships. We're friends. A lot of the people that  
25 are in the higher-up positions, we'll see you once in

1 the meeting, and that's it.

2 I've had the opportunity to have -- to build  
3 a relationship with Valerie and with ACHP. I've been  
4 out to their offices and had lunch with them and just  
5 talked. And that's where we build this trust with each  
6 other. I mean, not that I don't want to not meet with  
7 Buck anymore. Buck is a great guy. I love Buck.

8 But, you know, there's a couple times with  
9 Colonel Henderson that we've sat and talked for a  
10 little bit, but never did we just go and have lunch and  
11 just talk. You know, that never happens, not with the  
12 people up in the higher-ups.

13 So that's one thing that I would like to see  
14 changed is trust building that's between the THPOs, the  
15 people that are actually doing the regulatory work of  
16 the National Historic Preservation Act within the  
17 reservations, and the higher-ups. And we'll continue  
18 the relationships with the field people, because that  
19 part will never end.

20 Another thing that I feel like needs to  
21 change is this whole idea that -- every federal agency  
22 is different. Every tribe is different as well. But  
23 tribes have been given this mandate -- or not given;  
24 we've required the mandate of being National Historic  
25 Preservation offices or, you know, the offices.

1           But all the federal agencies, they all  
2 practice consultation, and they all have their own  
3 different interpretations. If we can find a way to  
4 uniform those regulatory processes of 106 consultation  
5 and have that input from the tribes into that and come  
6 up with an agreement, I think it will be more powerful.  
7 I think it will be -- will make everybody happy, for  
8 one. I mean, the tribes will definitely be happy if  
9 we...

10           I'm sorry to keep beating up on the Army  
11 Corps. But for instance, we have the nationwide permit  
12 system that I feel like a lot of times excludes the  
13 consultation with the tribes.

14           This Appendix C excludes the consultation  
15 with the tribes. I go through it. I mean, I'm sitting  
16 here, reading through. I don't know. Have you guys  
17 read this document? A lot of it is decision-making by  
18 Army Corps of Engineers, the -- what do they call it,  
19 the master engineer. Is that --

20           MS. HAUSER: District engineer.

21           MR. BULL CHIEF: District engineer. He makes  
22 a decision on site and then shares it with the SHIPO.  
23 There's consultation later on. But that initial  
24 decision-making process should include the tribes, and  
25 that's lacking. And that's the whole situation.

1           Like, combining Appendix C and nationwide  
2 permits, that's why this whole thing in North Dakota  
3 got out of hand. And it is out of hand. Have you guys  
4 been out there? It's mind-blowing. I never went out  
5 there to protest because I'm in a regulatory office for  
6 my tribe, so it's not my place to go protest. But we  
7 got invited to a meeting last week, on the 27th, when  
8 all hell broke loose.

9           And we were sitting there, just discussing  
10 being able to work together as tribes, and then all of  
11 a sudden, we start getting reports that they're going  
12 to dismantle the north camp. And all of us, we said,  
13 "well, let's go check on our folks that are out there.  
14 Let's go see what's going on."

15           And to see that a majority of the tribal  
16 leaders that were there -- actually, most of the tribal  
17 folks were just standing in a circle, singing and  
18 praying. There was a few people that were kind of  
19 looking at the military folks and walking around. But  
20 the majority was just praying.

21           And there was no weapons. I looked around.  
22 I seen it with my own eyes. They didn't have weapons.  
23 And to see this militarized force standing there,  
24 waiting to bust heads with their batons, it was  
25 emotional. It was hard. So my heart has been there

1 since then.

2 And I think that a lot of that could have  
3 been avoided. I mean, this is now. Everything that's  
4 happened up to this point is in the past. Me, as a  
5 tribal historic preservation officer, is always looking  
6 to the future. How can I work with you? How can you  
7 work with me? I'm always willing to offer that respect  
8 to you.

9 And I'm open to any suggestions. I'm open to  
10 meeting once a month. I mean, whatever I can do to  
11 help develop this process where all federal agencies  
12 are in line with each other and all the tribes are in  
13 line with that process, I'm willing to hang my hat on  
14 that.

15 So, anyway, I don't want to take too much  
16 time. I know we're getting close to lunchtime. And I  
17 think there's probably a few more people that want to  
18 talk from the Crow Tribe's standpoint. I think he'll  
19 talk later a little bit about some written comments  
20 that are going to be written from the tribe. But  
21 anyway, thank you.

22 MR. TOULOU: Thank you.

23 COL. HENDERSON: I accept your invitation for  
24 lunch.

25 MR. BULL CHIEF: You buying?

1 MR. TOULOU: Can we get John Eagle, the THPO.

2 MR. EAGLE: You know, one of the challenges  
3 to having the English name John is that when you walk  
4 in a crowd and someone says, "John," about 20 people  
5 turn around. But I have to correct your pronunciation  
6 on my last name, because I'm proud of my last name.  
7 And my last name is Eagle.

8 MR. TOULOU: I'm sorry.

9 MR. EAGLE: And I'm a descendant of the  
10 [Native speaking], one That walked Dressed As Eagle.  
11 That's where my last name comes from. So I, too, feel  
12 awkward that I'm having to turn my back on our people  
13 here and my relatives. So I'm going to take this  
14 opportunity to say that even how the room is set up can  
15 affect meaningful consultation.

16 [Native speaking]

17 The reason why I introduce myself to you like  
18 that is my relative here put this into my head at a  
19 consultation meeting. In North Dakota, which really  
20 should be a model on how consultations occur -- and  
21 that's North Dakota DOT and the tribal consultation  
22 committees that occur in North Dakota -- where we're  
23 coming into a room where any question that we ask, that  
24 experts are sitting in the room with us that can answer  
25 it right then and there.

1           But I want to show you something. Because he  
2 put that into my head. This is my tribal ID. I know  
3 you can't read it, and that's not important. But what  
4 is important is that it says Standing Rock Sioux Tribe.  
5 We didn't name ourselves that. The United States  
6 Government named us that. And on here is my enrollment  
7 number, and the first three numbers in my enrollment  
8 number is the POW camp that I come from, which is POW  
9 Camp 302, founded in the late 1800s.

10           But as tribal people, we have to quit  
11 allowing United States Government and mainstream  
12 society to define who we are, which is why I introduced  
13 myself to you in my language. Because that's the  
14 original language of this land.

15           And we still have that cultural knowledge and  
16 in our stories and winter accounts to say that for us,  
17 the Oceti Sakowin, which United States Government knows  
18 as the Great Sioux Nation, our ancestral homelands  
19 extend as far west as Wyoming and Montana and as far  
20 north as Canadian bush country and as far east as the  
21 Great Lakes and as far south as Kansas.

22           It took me nine hours to get here, and not  
23 once did I leave my ancestral homelands. But that's  
24 the problem that we, as tribal people, have impressing  
25 the federal agencies and proponents and getting in

1 consultation. And I mean no disrespect to our  
2 relatives that are here, because we acknowledge and  
3 appreciate that within those ancestral homelands, there  
4 are many tribal nations that thrive in that land. But  
5 that's what mainstream society doesn't understand.

6           The other thing is that I think that we have  
7 this opportunity to redefine consultation. Because in  
8 my opinion, I came here to support my relatives in  
9 Montana because they came to stand with us in Standing  
10 Rock. And I came here because I said  
11 government-to-government consultation -- I wanted to  
12 shake hands with the president because I never shook  
13 hands with the president before.

14           And in my mind, as a sovereign nation,  
15 government to government should be between our leaders.  
16 So my chairman and that councilman that spoke here is  
17 at a level of Congress as the president. So the  
18 problem that we often get to within consultations is  
19 we're sitting with people that aren't the  
20 decision-makers.

21           And the problem with that is we pour our  
22 hearts out; right? We pour our hearts out to these  
23 people that really care, that are real sincere. But  
24 there is no possible way for them to take that forward  
25 to the decision-makers. There really is no proper way

1 for them to speak to our needs. Because without us  
2 being at the table, you should never talk about us  
3 without us.

4 The other thing, too, is in terms of  
5 government-to-government consultation, we're  
6 interpreting this as a first step. So in our minds,  
7 this isn't the government-to-government consultation.  
8 Because if you're not within my homelands, you're not  
9 on Standing Rock, speaking in front of my entire  
10 council -- and that's what government-to-government  
11 consultation really should be.

12 Because then it allows us, as tribal nations,  
13 to share truly who we really are. And what you're  
14 going to find if you accept that invite -- so, Colonel,  
15 I want to go with you when you go with Emerson to go  
16 eat.

17 what you're going to find when you accept  
18 that invite from us is a beautiful, vibrant culture  
19 that's still alive today. Oftentimes, we're looked  
20 upon as if we're something from the past. But we're  
21 still here. And you can pinch me if you want. I am  
22 real. I'm not a projection.

23 But therein lies the problem in consultation.  
24 Because unfortunately, our narrative lies in the hands  
25 of the state SHIPOs and archeologists. And if you

1 really think about anthropology and archeology -- and I  
2 learned this from the Plains Anthropological Society --  
3 is Native American language and our oral histories and  
4 our spiritual knowledge should be the database to  
5 American anthropology and American archeology.

6 The colonel -- when we did that walk-through,  
7 we were walking with Congressman Kramer. Congressman  
8 Kramer asked kind of a no-brainer question of me. He  
9 said, "Should SHIPOS be encouraged to work more closely  
10 with tribes?" Yes.

11 And he said, "Should PSC -- the Public  
12 Service Commission in North Dakota -- be encouraged to  
13 work more closely with tribes?" Yes.

14 And then the colonel and I start talking  
15 about that law, 106B, which allows us to attach  
16 religious and cultural significance to a site within  
17 our ancestral homelands. But unfortunately, that law  
18 reads, "Federal agencies may consult with tribes."  
19 What I'm here to ask for is that legislative change be  
20 to, "Federal agencies shall consult with tribes."

21 Because you have to remember, if you look at  
22 national news and national media, we know that  
23 unfortunately, ISIS, when they moved into Mesopotamia  
24 and these ancient places in the world, went in and  
25 started destroying sacred places, started destroying

1 the ancient sites.

2 what went through my mind when I started  
3 seeing those new reports is that once those places are  
4 gone, they're gone forever. And that's part of our  
5 collective history. But unfortunately, it's happening  
6 right here in this country each and every day. But  
7 once those places are gone, they're gone forever.

8 See, within our spiritual view, that land has  
9 an energy to it. That land has a spirit to it. That  
10 water that you have sitting in front of you, that has a  
11 spirit to it. [Native speaking] in my language, which  
12 may translate to [Native speaking]. We translate as  
13 spirit, but it's much more than that. It's a spiritual  
14 essence of everything in creation. So when man changes  
15 the land, it's changed forever. And that's why we  
16 fight so hard to protect these sacred places.

17 Because my wife -- I should have brought it  
18 today just as an example. But my wife beaded me this  
19 beautiful medallion that I wear with pride because she  
20 put all of her love and her spirit into this for me.  
21 And on it is a ledger horse and some things of  
22 religious and cultural significance to me.

23 And if I was to show it to you and ask you,  
24 "Can you tell me the religious and cultural  
25 significance this has for me?" I literally would be

1 setting you up because there's no possible way for you  
2 to do that unless we have a conversation with each  
3 other.

4           And that's what's happening at these sites.  
5 And we get locked out of these sites because they're on  
6 private land. And you got to remember, it took me nine  
7 hours to get here when I left the exterior boundaries  
8 of Standing Rock, but I never left my ancestral  
9 homelands.

10           And the importance of consultation for us is  
11 to be able to assert ourselves. I really think that.  
12 And this is going to be a long shot. You know, I  
13 didn't come here to ask for what I hope you're going to  
14 give me. I came here to ask for what I really want.  
15 And I want signatory authority within my ancestral  
16 homelands, if not for the THPOs, at least for the  
17 tribes.

18           And those MOAs go out, where there's required  
19 signatures. Those projects, infrastructure projects  
20 going through ancestral homelands, the tribes should be  
21 afforded that respect of signatory authority. Because  
22 keep in mind, my job as a THPO isn't to stop projects.  
23 My job is to look at historic properties, assess  
24 adverse effect on those properties, and then to  
25 mitigate those adverse effects if there are any.

1           But if you don't give us that chance to do  
2 that, I can't explain to you the pain that it feels to  
3 us. And those actions that are occurring in North  
4 Dakota, I'm glad to hear my brother speak to those.  
5 Because I served in the United States Army. In fact, I  
6 was joking around with Colonel Henderson at the end of  
7 last week because that was the first time I ever shook  
8 hands with a colonel because you used to have to salute  
9 them.

10           But I never thought I'd see a day that that  
11 brotherhood that I proudly served with would ever be  
12 used against my people. And that's what we witnessed  
13 October 27th. And it was a sad day. There were a lot  
14 of veterans down there on the lines that couldn't do  
15 anything to protect our people.

16           And many of us cried afterwards. But we had  
17 to create that place for each other because we never  
18 want to put fear in the hearts of our women and our  
19 children. So as men, we gathered, and we prayed, and  
20 we talked about it, and we cried. That's how painful  
21 that was to watch.

22           History is going to repeat itself if we don't  
23 do something about this. And you have to look back at  
24 the history the United States Government has had with  
25 our people, and we get to this point where there's

1 conflict. We can diffuse that. We can change it. We  
2 can create such positive, strong, and strength-based  
3 relationships with each other.

4           But when you come into our traditional  
5 homelands, all those things that you were curious about  
6 that you're not ever going to find on Google, that  
7 Kevin Costner, I don't care how many movies he makes,  
8 he's never going to be able to properly address, all  
9 those things that are in your history books, it's alive  
10 in each and every one of us out here, because those  
11 things have been passed down from generation to  
12 generation to generation.

13           So I can go to a site that's 5,000 years old  
14 and look at it. And based upon how I live my life  
15 today, I can tell you what's there. And every single  
16 one of these THPOs sitting out here, to include the  
17 people that they represent, have that ability. Because  
18 it's in our oral histories. It's in our sacred  
19 knowledge.

20           Keep in mind that there's an unfortunate  
21 unbalance here where -- and I'm not picking on you,  
22 Colonel, but I'm going to pick on the Corps. That  
23 Appendix C that Emerson brought up, you need to look at  
24 that.

25           And you need to take a look at that because

1 how we're interpreting it is that it allows the Army  
2 Corpsmen nearest to circumvent their requirements,  
3 under not only NHPA, to take full environmental impact  
4 statements on those projects, but also on their  
5 compliance of section 106.

6 Also keep in mind the application of  
7 Nationwide 12 Permits which was applied to the Dakota  
8 Access pipeline, you know, 1,100 miles of pipe. It  
9 narrowed their review to just the water crossings. And  
10 it also, again, circumvented, unfortunately, Section  
11 106 and the NHPA process.

12 It also created adversarial relationships  
13 where there was no requirement for them to consult with  
14 tribes. And when the Corps of Engineers -- again, I'm  
15 not picking on the colonel here. But when the Corps of  
16 Engineers issued that statement and all the historical  
17 properties affected, not once were we ever on the  
18 ground with them.

19 Not once -- in fact, it wasn't until that was  
20 issued that my office actually got the 2015 emergent  
21 cultural resources survey. So I never even got a  
22 chance to look at the survey and say, "There's  
23 something wrong here."

24 We can change that. We can fix that. And I  
25 believe this colonel to be a good person. I see the

1 compassion in his face. I see the pain in his face and  
2 the point that he's in because these decision-makers,  
3 responsibilities.

4           Every single one of us in this room are where  
5 we wanted to be. So now we have to have that courage  
6 to lead. And sometimes that's going to be painful.  
7 Because in order to have the courage to lead, sometimes  
8 we have to turn around and look at the people that  
9 we're leading, that infrastructure, and say, "Something  
10 needs to change here."

11           So we want consultation at the front, prior  
12 to any decisions being made. We want to be sitting  
13 with the decision-makers; not the middle people. We  
14 want you to value our opinions. But unfortunately, we  
15 don't feel like that's happening.

16           we also want government-to-government -- and  
17 there's a very clear distinction between  
18 government-to-government consultation and section 106  
19 consultation. A lot of times, they kind of get mixed  
20 up with each other. We want government-to-government  
21 consultation to occur with each and every individual  
22 tribe on our homeland so we can show you the beauty of  
23 who we really are.

24           And as a THPO, when I first came into the  
25 office and I went into a consultation, I saw the

1 tension in there by the federal agencies as soon as the  
2 THPOs walked in. I said, "That's what needs to  
3 change." Because if you get to know me, you're going  
4 to hug me. I guarantee it. Right?

5 (Laughter.)

6 MS. HAUSER: I do.

7 MR. EAGLE: And I know it has something to do  
8 with being cute and chubby.

9 (Laughter.)

10 MR. EAGLE: But it also has something to do  
11 with honesty, with integrity, with courage, with  
12 fortitude, with humility, with prayer. It has to do  
13 with all of that. So what I said to you in my language  
14 when I start talking was I addressed each and every one  
15 of you as my relatives. And I said, "Today I greet  
16 each and every one of you with a heartfelt handshake."

17 And the reason why the beauty and wisdom of  
18 my ancestors in addressing each other like this so,  
19 that as good relatives, we're going to listen to each  
20 other. And if we can approach each other like that --  
21 keep in mind, you have siblings. You have family. I  
22 guarantee you, at some point in your life, you fought  
23 with your siblings, fought with your family.

24 But because you were family, you always had  
25 that to fall back on. And that's what we're going to

1 create. We can approach other with this in meaningful  
2 consultation where our opinions are truly looked at.

3 Now, be careful, because I'm a horseman. And  
4 like a lot of them too. So because I'm a horseman, you  
5 can't lie to me, because I read body language. Horses  
6 are almost hundred percent nonverbal communicators, and  
7 I never heard them go (indicating). Ninety-three of  
8 our communication is nonverbal. So when we get into  
9 consultation, your body language says a lot to us. So  
10 that's just a caution to you.

11 So I appreciate this today. I actually meant  
12 to just come here and support my relative, so I  
13 apologize for taking any time from them. [Native  
14 speaking].

15 MR. TOULOU: Thank you very much. You know,  
16 we've got a couple more people signed up. I'm going to  
17 take five minutes here and give everybody a break and  
18 also see if there's anybody else we need on the list.  
19 So let's take five minutes. If you're not on the list,  
20 talk briefly at the table back there if you want to be  
21 on.

22 I've got Teanna Limpy from Northern Cheyenne  
23 and Devin Oldman. There may be other people. 11:56.

24 (Recess taken 11:56 a.m. to 12:07  
25 p.m., November 2, 2016)

1 MR. TOULOU: Next speaker is Teanna.

2 MS. LIMPY: My name is Teanna Limpy, Northern  
3 Cheyenne THPO. My family know me as [Native speaking].  
4 I was just thinking about how my predecessors as THPOs  
5 had a difficult time with federal agencies. 'Cause my  
6 mom used to work for our THPO program. And when I was  
7 in high school, I would go over there, and I'd, you  
8 know, see them arguing. And I thought, "Maybe when I  
9 graduate college, I'll go back, and it will change."

10 And this one year that I've been the THPO,  
11 I've seen a lot of change. But a lot of things are  
12 still the same. And I was thinking about how our  
13 government and our THPO, how they're always tied, seems  
14 like their hands are always tied.

15 And they look to federal agencies to assist  
16 them in protecting what's ours. And I know that we  
17 always push for involvement and participation. And  
18 that's something that I'm asking you guys to consider  
19 is involve tribes from the beginning.

20 Let us go participate in field surveys so we  
21 can identify a lot of things before there's frustration  
22 and anger and nothing gets done. And, you know, just  
23 decrease the tensions and animosity that can occur from  
24 things like that happening.

25 And I was just thinking about how agencies

1 and their applicant team, they answer to the agencies.  
2 And when, you know, intentional things that are done,  
3 especially like what's going on with THPO, you know, we  
4 have these federal agencies that have power telling  
5 them, "You can't be doing these things."

6           Maybe we should write a law that says that if  
7 you do something wrong, hold them accountable for  
8 something. If they're held accountable, they'll step  
9 back and realize they have to work with tribes. And I  
10 think that's one step that can be taken moving forward  
11 here. And that's just my little bit. Because my main  
12 concern right now is, you know, what's going to happen  
13 next with the Dakota Access pipeline.

14           The Cheyenne people, I'm here now, in this  
15 place, in Billings. But at Standing Rock, we have  
16 Cheyenne Siouxs there, our ancestral homelands. What's  
17 going to happen in the next coming days? If our site  
18 is destroyed, what -- you can't be held accountable?  
19 They haven't already.

20           So, you know, that's what I encourage:  
21 involvement, participation, and being held accountable  
22 for actions and helping us work within the statute or  
23 framework that exists now. So thank you.

24           (Applause.)

25           MR. TOULOU: Next is Devin Oldman, the tribal

1 historic preservation officer of Northern Arapaho. And  
2 I think he's going to be joined by Ryan Spoonhunter.

3 MR. OLDMAN: I'd like to say good afternoon  
4 to all my colleagues in the room. I see a lot of  
5 tribes, federal agencies, familiar people. Thank you  
6 for allowing me to be here and voice our tribe's  
7 concerns.

8 One of the problems that we have today with,  
9 I guess you would say, the federal agencies and the  
10 states, mine would be their definition of meaningful  
11 consultation. Now, what that means to me is, like  
12 Emerson was saying, everybody's opinion is heard and is  
13 taken into account with the absolute most seriousness.

14 There has to come a time where us as tribes,  
15 we have to shift the burden of consultation to federal  
16 agencies. Because right now, it's on the tribes. Most  
17 of the time we have to pay for our own travel. We have  
18 to pay for our own cultural resource specialist to go  
19 out and do site visits. So funding is an issue there.

20 One of the things we'd like to see would be  
21 an extension on the 30-day comment period. Because  
22 sometimes when we get a letter, it goes to our tribal  
23 chambers. And from there, we get it. And it's already  
24 15 days into the process. So that's one of the things  
25 we'd like to see. Or if there's a grace period for

1 tribes to comment, even maybe 60, 90 days to take their  
2 comments into consideration.

3           One of the things we'd also like to see is  
4 maybe stricter penalties for violations for federal  
5 agencies that aren't in compliance with the NHPA, that  
6 aren't following through proper consultation measures.  
7 Because too many times, what happens -- and we're in  
8 Wyoming, right? So what happens most of the time is we  
9 get to the consultation, and the federal agency, the  
10 lead federal agency, and the proponent have already had  
11 under-the-table communications.

12           So when we get there, it's like the decision  
13 has already been made. And this is basically the  
14 situation that plays out. "Okay, we have project A.  
15 We have company B. They're going to be doing this, and  
16 this is how it's going to happen, and this is what we  
17 have."

18           When we get there, it's like a decision has  
19 been made. It's been predetermined before we get  
20 there. And that's what needs to change. We need to be  
21 included in the very beginning, as soon as the  
22 application is submitted. And we need to be consulted  
23 on that, and the proponent needs to be there with the  
24 decision-makers.

25           Because right now, we're not in a negotiation

1 position. We don't really get to negotiate, tribes  
2 don't. Any fair business ventures, stakeholders, you  
3 know, they get together, and they negotiate. And, you  
4 know, not everybody walks away from the table happy.  
5 You know, but they get what they want out of it.

6 And that's where tribes need to be is in that  
7 stakeholder position, because right now we're not  
8 treated as such. Some states are a lot better. Some  
9 federal agencies are a lot better. But most federal  
10 agencies aren't. And that's basically what needs to  
11 change.

12 And one of the things that we'd like to see  
13 would be, I guess -- I don't know how open every tribe  
14 is in here or federal agencies to this -- but a broad  
15 policy on what consultation is and how to carry it out,  
16 instead of implementing individual policies, so when we  
17 go to federal agencies, we're not confused as to what  
18 those guidelines are. Because most of the time,  
19 they're not clarified.

20 And that also falls into if that's not  
21 possible, we need better clarification as to what your  
22 policies are rather than getting, you know, an RMP.  
23 You know, because currently, you know, you read one of  
24 those, and it's this big, you know. And I have a stack  
25 of mail on my desk this big I have to go back and reply

1 to and read through. So, I mean, that goes back to  
2 shifting the burden to the federal agencies.

3 And that's kind of basically all I have. You  
4 know, all we want, you know, is our sacred sites and  
5 our sacred objects left alone. And if they've been  
6 taken, we want them back in the ground or back to the  
7 proper people to handle them. And also we want a  
8 cleaner environment for our children and their children  
9 and their children to live in.

10 And I'm a third generation. And our tribe  
11 was based on the Wind River Indian Reservation. And  
12 there's some areas on our reservation that you can't  
13 really drink the water because it's contaminated with  
14 uranium. You know, that's the problem. That's  
15 unprecedented.

16 And also, some places, you can light the  
17 water out of the faucet, you know, and that's from  
18 improper consultation on the reservation. That's our  
19 trust land. And I don't want to see that happen  
20 anywhere in the U.S. Nobody deserves to live in an  
21 environment like that.

22 My grandmother died from cancer because we  
23 lived right in that radiation plume where the watershed  
24 was coming through. That's where she grew up, and she  
25 died from cancer, and that's what they said it was

1 from.

2           So basically that's all I have. I just want  
3 to say thank you to everybody who put forth their  
4 opinions and concerns. And I'll pass it on to my next  
5 councilman.

6           MR. TOULOU: Thank you.

7           MR. SPOONHUNTER: Good morning. My name is  
8 Ryan Spoonhunter. I represent the Northern Arapahoe  
9 Tribe. I am a member of the business council. I  
10 was -- showed up here on short notice. I just wanted  
11 to make a few comments.

12           I'm sure somebody here writes the budget for  
13 THPOs and all of that. I just want to make a comment.  
14 If you guys could maybe write a little more money for  
15 these guys. There's a lot of work that needs to be  
16 done on your part, I know on the tribe's part.

17           I wasn't really ready to speak on behalf  
18 of -- you know, I just want to applaud everybody for  
19 all of their comments and, you know, where they are  
20 going with all of this. And my comments were, you  
21 know, this is our country, all of us together.

22           There's state historical. There's federal  
23 historical. And nobody bothers those sites in any  
24 state. You know, it's got a lot of respect for the  
25 state, for the country. We're just asking for that

1 same respect for our tribal sacred sites, ceremonial  
2 sites, things like that.

3 I just want to make a comment to the pipeline  
4 in North Dakota, Colonel. Arlington Cemetery. "I am  
5 an oil giant. I'm not going to pay a hundred million  
6 dollars to go around it. I want to go through it."  
7 Are you going to let that happen? Probably not.

8 We're just asking for that same respect for  
9 our sites, for our way of life. We're all humans here.  
10 I wouldn't go by somebody's property and remove  
11 gravesites or anything like that or, you know,  
12 something important to the government that took place  
13 there. Say it's an old battle site or something and  
14 they don't want it bothered. I'm not going to bother  
15 it. I have that respect.

16 And so just to sum it up, I would just like  
17 to ask for more funding for THPOs and SHIPOs and, you  
18 know, all of this going on. And I just wanted to ask  
19 you guys for that respect for all of our peoples across  
20 the country here. Because they do a lot of hard work.  
21 And, you know, it's just sad to hear all of the things  
22 that go on. And I just want you to have more respect  
23 for everyone.

24 That's all I had. And, again, I want to  
25 thank everybody for being here and for all of their

1 concerns for all of our peoples. Our country is  
2 growing. We're running out of space. You know, I know  
3 that's happening. And it's progress. But just try to  
4 look out for one another. Thank you.

5 MR. TOULOU: Thank you.

6 Okay. And now Robert Howe from the Crow  
7 Tribe.

8 MR. HOWE: Hello, everybody. This morning, I  
9 was called out of bed at 9:30. And my boss said, "Get  
10 over there." And here I am. But he felt I had to make  
11 this statement. We have a very able person in Emerson  
12 there, who was leading the charge in the operational  
13 activities as far as NAGPRA and THPO rules. But I'd  
14 like to make a little comment about the policy  
15 positions of the tribe so that we can continue to have  
16 good activities that Emerson has so ably administered.

17 I started in the Indian business in 1945. I  
18 was born in 1945. But my dad, who was a half-breed --  
19 he's half Irish -- and he says, "Your Indian business  
20 didn't start in 1945. It started back in the 1600s  
21 when the English men came to these shores. Because my  
22 ancestors came on the boats from there." But I'd like  
23 to refer to 1945 as the start of my Indian activities.

24 I attended Flandreau, South Dakota, Pierre,  
25 South Dakota, schools and high school in Kansas. And I

1 also worked in the old Indian Health Service, which was  
2 based in Silver Spring, Maryland. When they moved to  
3 Bethesda, I was part of the people that -- corps that  
4 made the move. And being Indian, I had to carry the  
5 desks on my back, and somebody had to crack the whip.  
6 I kid you.

7           You know, one of the comments that kind of  
8 caught my eye was Mr. Eagle. I'd like to expound on  
9 that a little bit. But I need to get approval from my  
10 boss, the Crow Tribe chairman, Darrin Old Coyote.

11           He said something about the signature  
12 authority. That's so evident in any government, in any  
13 society. You have to be sovereign. I hate to use that  
14 word, "sovereign." But we need to decide for ourselves  
15 how we want to use those resources. Therein lies part  
16 of the problem.

17           Because when I started in the Indian  
18 business, I think we kind of lost sight of what the  
19 Indian tribes are. And I'd like to just make a comment  
20 on that. Because this is our basis of what we're  
21 trying to develop now.

22           Two years ago, we had the privilege of  
23 meeting with Anna Naimark with the Office of Management  
24 and Budget. And she was at Crow agency, along with the  
25 Department of Interior business officer, the top

1 person. I forget his name.

2           And we had talked about how the tribe would  
3 like to move forward from here. And we had indicated  
4 to her we always were of the opinion that we had  
5 qualified people that could use our own resources to  
6 determine our future. And we talked about establishing  
7 a model which kind of, oh, was similar to Euro  
8 capitalism. Capitalism isn't fully practiced anymore.  
9 I think it's a mixed system anymore, that social  
10 whatever.

11           But we talked about that, using that system  
12 on the Crow Indian Reservation. And she was pretty  
13 surprised at that. And she thought that we were a part  
14 of the United States. And we had told her that, "we  
15 don't have a formal economic system in place because we  
16 were under yours."

17           So when we do our business, we have to go to  
18 Billings, Hardin to do our banking. And all our money  
19 is stashed away in somebody else's bank. So you can  
20 see, just in a nutshell, that doing business -- boy, my  
21 legs are shaking. I don't know. It must be Jamie  
22 here, on the end here.

23           But, what we're attempting to do is to go  
24 back to the United States Constitution so that  
25 everybody -- that means the states, foreign countries,

1 United States Government, going back to the commerce  
2 clause. Like Mr. Khan said over TV, somebody needed to  
3 read the Constitution. Well, I sure went back.

4 And in there, it says that there's three  
5 entities that the United States works with. One of  
6 them is foreign countries. The other is the state  
7 governments, states. And the third way, our Indian  
8 tribes. States have their activities all outlined in  
9 the Constitution. So their relationship with foreign  
10 countries.

11 But Indian tribes, I think we kind of lost  
12 our way of defining who they are. And it's no wonder  
13 that we have a lot of resources -- if we used the  
14 Constitution, that we'd be in a position to provide or  
15 use our resources to provide and become a part of the  
16 region, the national United States Government or not.

17 You know, when you talk about Indian tribes,  
18 most of us talk about poverty. We talk about resources  
19 leaving the reservation. They're being secured,  
20 extracted from our reservation, taken off the  
21 reservation, and they start changing the form of those  
22 resources so that they can use products which can be  
23 sold out there.

24 But the value of those resources out there  
25 that are produced are never ever put into the accounts

1 of the tribes. Hence, a GDP, if you will. Because we  
2 do have a people that, for example, can extract oil out  
3 of the ground. We have the people that can look for it  
4 on an exploration level. And then they can start  
5 putting in the wells and pull out the crude oil and  
6 build the pipelines to go to the refineries.

7 And that's the mentality of the Crow Indians  
8 today is to do everything ourselves. And according to  
9 the World Bank, they call that income that comes in  
10 import substitution. But we come and ask ourselves,  
11 "Wait a minute. These are our resources. If we  
12 produce products from them, we should be exporting and  
13 not, you know, substituting imports."

14 So we'd like to get to that point as quickly  
15 as we can. So getting back to the United States  
16 Constitution is very important.

17 The second thing is taxation, the  
18 appropriations clause. We don't have a tax base. Why?  
19 I don't know. We keep asking the federales, or the  
20 federal people. Excuse me. At Indian school, we refer  
21 to you as federales, because they have stogie pens,  
22 stogie shoes, whatever.

23 But I think we have to go back to the United  
24 States Constitution and redefine what a tribe is. They  
25 should be able to establish an economic framework that

1 would allow them to use their resources for themselves  
2 so that their standard of living is improved and  
3 quality of life is improved.

4           Instead of looking at them as something  
5 different and, "How in the heck are we going to help  
6 them out by giving them, you know, 638 funds or grants  
7 and contracts and piecemeal them to death?" why not  
8 generate the kind of income or revenue that should be  
9 generated so that they can have income for the  
10 households, income for the government, and income for  
11 the businesses?

12           so the framework that needs to be done to  
13 reestablish so that there's economic growth on the  
14 Indian reservation by itself is relegated to the Crow  
15 Indians, who have their own language, their own  
16 territory, and their own values.

17           And if we don't use those, we probably will  
18 never get out of this quandary of somebody coming in,  
19 getting our resources, taking them out. And they'll  
20 never see the economic growth on the part of the Indian  
21 tribes.

22           And I'm going to stop there. Because when we  
23 talked to Anna Naimark in 2014, we developed a model  
24 that she would like for us to have center -- we're  
25 still working on it, and we do want to give that to her

1 or to the consultation people.

2 I've never met you. I've heard about  
3 consultations. But according to the people that I work  
4 with, we'd rather be our own consultation people and  
5 will tell you what we would need rather than sitting  
6 down like this. We'd give you the full extent of how  
7 we would run the reservation, our resources, which  
8 includes land, labor. And we would sure be interested  
9 in controlling our own man-made products.

10 And we have a lot of entrepreneurs that would  
11 like to use our resources and keep the wealth home and  
12 to keep the money home, circulated so that there is  
13 economic growth. Well, it's not there.

14 And I think it's incumbent on you guys, who  
15 are close to the United State Constitution, because the  
16 President of the United States is held to the idea of  
17 upholding the United States Constitution. And by the  
18 way, he's my son, the President of the United States.  
19 The guy who adopted him was my brother. And his Indian  
20 name was Black Eagle. That's my brother's last name,  
21 Black Eagle.

22 And so -- which brings up another point.  
23 He's not going to be in office for too much longer.  
24 Are we looking at going beyond January with this group  
25 here? And we're always faced with the ideas of both

1 houses of Congress and the executive committee not  
2 seeing eye to eye. So we're always wondering what's  
3 going to go on.

4 So it's rather important that we make our own  
5 decisions, that you see us that way, instead of having  
6 the Bureau of Indian Affairs or some other federal  
7 agency coming up with all these standards and terms of  
8 what we should be doing. I think it should be up to us  
9 to make all those decisions for ourselves. And then I  
10 don't know if you guys are going to be around to see  
11 the outcome of today. But we're sure going to try,  
12 though. So we'll reserve the written comments.

13 And I don't know, do we have a deadline for  
14 that? By the way, we have a good law enforcement guy  
15 over there. But there's only 8 of them, and we need  
16 about 40 more of him.

17 So we'd rather take a stab at what we'd like  
18 to do and put it all on paper, our own laws, our own  
19 regulations, before somebody else tells us how to write  
20 our regulations. And I think that's really very  
21 important.

22 In closing, about five years ago, I attended  
23 a meeting in Washington. And one of the powers to be  
24 indicated that they were getting a lot of the Indian  
25 business and that the Bureau of Indian Affairs -- I

1 don't know, Mr. Black. You might know this. But they  
2 were talking about the Bureau of Indian Affairs slowly  
3 getting out of the picture by the year 2017 at the  
4 time. It was a discussion piece. But it was  
5 prevalent.

6           And we all thought, when we came back home,  
7 maybe it's because of the latest problem we have with  
8 the trust relationship, the fight we had. And so it  
9 goes. So we're still in a quandary. We don't know who  
10 we are. We don't know how to see. But leave it up to  
11 the Indians. Leave it up to the different governments.  
12 Let them decide.

13           You might have to get the FBI to help you get  
14 all the paperwork together. But I think that that  
15 would be a good place to start. Let the Indian  
16 tribes -- instead of solving them, let them have a stab  
17 at it.

18           The Crow Tribe has millions of dollars in  
19 somebody else's bank. And those banks are making money  
20 on our money, either through loans or investment  
21 securities. We would like to have a stab at that. And  
22 that would give us the basis to start making decisions  
23 for ourselves.

24           And I don't know why, but when you talk about  
25 taxation in Indian country, it gets to be a big old

1 fight. We merely want to take care of the federal  
2 highways that are on the reservation, the state  
3 highways, the Bureau of Indian Affairs highways, part  
4 of the federal highways. We would like to control that  
5 for our own commerce and trade.

6 If we don't do that, we're derelict in our  
7 duty. We're not allowing us to freely do our work.  
8 And we also know that the proper type of infrastructure  
9 would do wonders for the standard of living for the  
10 Crow Indians. It would help the poverty levels on the  
11 reservation. If we started controlling our own  
12 resources, we can do that.

13 One more thing. Crow Indians -- and I think  
14 the other tribes are -- we're landowners. The rest of  
15 the United States, you're busy with labor development.  
16 But on the Indian reservation, we own land as  
17 individuals, as a part of the tribal group. So we're  
18 landowners. Therein lies the natural resources that  
19 are needed to start producing products.

20 So we have to look at it from that  
21 standpoint. And we can develop our own rules and  
22 regulations, our own laws to protect our own land, our  
23 own rights. Public safety. We can do a good job. We  
24 just want to be on an equal footing with the states,  
25 foreign countries so that when the Federal Government

1 does its commerce activities, we sure would like to  
2 have a stab at our own intrastate commerce so that we  
3 can stay within their laws as well as our laws.

4 we do want to provide to the region. We  
5 haven't been given that chance. And I like that young  
6 gentleman's idea. Signature authority. Why not? You  
7 know, Crows have resources for their enrollment. A lot  
8 of us have migrated out of the reservation because the  
9 resources are taken out. And no taxes are coming back.  
10 Transfer payments are coming in. What a way to run a  
11 government.

12 And I was telling Mr. Black that in 2015, at  
13 Haskell, Sally Jewell made the statement that we are  
14 now getting out of the philosophy of assimilation and  
15 going into self-governance. What does that mean? I  
16 don't know.

17 Are we going to get into that without -- we  
18 have funding. We're not asking for federal funds,  
19 because they come in disjointed. We have our own  
20 money. We have our own capabilities. We have our own  
21 resources. We can generate our own revenue.

22 So we're working on that. So we'd like to  
23 reserve -- we still want to talk to Anna Naimark as a  
24 point of contact.

25 MR. TOULOU: So for purposes --

1 MR. HOWE: we'd like to reserve the paperwork  
2 for that. I don't know what the deadline is.

3 MR. TOULOU: I was going to say, for purposes  
4 of this consultation, we'd like to get comments -- and  
5 it's in the "Dear Tribal Leader" letter -- on  
6 November 30th of this year.

7 MR. HOWE: Okay. Thank you.

8 MR. TOULOU: Thanks. Thank you.

9 so I think this is everybody who was on the  
10 list. We're past 12:30. And some of us are going  
11 to -- yes.

12 MR. VOGEL: Matthew Vogel. Usually I don't  
13 speak. And I apologize to the elders in the room that  
14 I'm speaking before. But I was asked by my chairman to  
15 bring this to your attention and specifically to  
16 Colonel Henderson.

17 Happening as we speak, their protectors are  
18 crossing the Little Heart River to get to the west bank  
19 of the Missouri River. In doing so, crossing that  
20 river, we have firsthand accounts. Chairman Frazier  
21 has told me that the Morton County Sheriff's Department  
22 is giving verbal warnings that if they cross that river  
23 onto Corps land, that they will be arrested for  
24 trespassing.

25 So my question to you, from Chairman Frazier,

1 is, who has jurisdiction on Corps land, Colonel?

2 COL. HENDERSON: The U.S. marshals. On Corps  
3 of Engineer land, for federal laws, for federal  
4 citations under Title 36, the U.S. marshals have that  
5 jurisdiction. For any state and local laws which are  
6 violated on federal land, the state and local  
7 authorities have that jurisdiction.

8 MR. VOGEL: So my question is, under those  
9 authorities, this gives the Morton County Sheriff's  
10 Department authority to Mace and shoot our people with  
11 these nonlethal rounds; is that correct?

12 COL. HENDERSON: So --

13 MR. VOGEL: Which is happening right now.

14 COL. HENDERSON: That's a big leap of logic.  
15 I don't know what's happening out there right now. But  
16 I'd be happy to discuss offline. This is a very  
17 specific issue, referenced what's happening today.

18 MR. VOGEL: Yeah. I mean, we've got reports  
19 that, you know, these nonlethal rounds have caused --  
20 at least our tribal members have been reporting to our  
21 tribal chairman that they have been shot with nonlethal  
22 rounds but yet now they are now coughing up blood from  
23 their lungs. And the chairman takes it very seriously.

24 And, you know, he wanted me to ask everyone  
25 on the panel why we are still having these things

1 happen, why no federal agency, which we were always  
2 told was the law of the land -- step in over some of  
3 these Corps land issues.

4 COL. HENDERSON: So you're with the Cheyenne  
5 tribe?

6 MR. VOGEL: Cheyenne River Sioux Tribe.

7 COL. HENDERSON: Cheyenne River Sioux Tribe.  
8 So I talked with Chairman Frazier about two  
9 hours ago over this, and I have a face-to-face meeting  
10 with him tomorrow. Our concern is just to ensure that  
11 everybody remains safe.

12 And we're trying to protect the life, health,  
13 and safety of those who are peacefully protesting, of  
14 the law enforcement folks that are on-site, and the  
15 construction workers who are working in the area. So  
16 that is our chief concern as leaders, as tribal  
17 leaders, and Corps of Engineer leaders.

18 Building a legal bridge, an unsafe bridge,  
19 across the water to access land to evoke a  
20 confrontation with law enforcement, it's not peaceful,  
21 it's not prayerful, it's not safe for anybody involved.

22 MR. TOULOU: I've been getting texts from the  
23 chairman as this was going on. I didn't respond  
24 because I felt I owed everybody my attention. I know  
25 we have people on the ground. I don't know what the

1 facts are, but we need to reach out to them and find  
2 out what's going.

3 But unfortunately, it's not a place that we,  
4 sitting here in Billings, can comment on what's going  
5 on in North Dakota. But I know the colonel and I will  
6 reach out to our people on the ground. And I'm sure  
7 Mr. Black will reach out to Bureau of Indian Affairs  
8 personnel. And we'll try to figure out what's going  
9 on. Nobody wants anybody to get hurt. And I  
10 understand. I understand.

11 MR. VOGEL: Well, I just want to say, you  
12 know, we've come so far with the Indian Religious  
13 Freedom Act, all the work that's been done, all the  
14 past wrongs that we've been trying to right here with  
15 access to religious acts on Indians or by Indians.

16 So my question is, since we've been impeded  
17 from going to our original prayer site by the Morton  
18 County Sheriff, we have now taken action to pray at the  
19 west bank of the river, which is a First Amendment  
20 right. And so my question is, how is that not peaceful  
21 or prayerful to pray peacefully on that Corps land,  
22 more importantly, the 1851 treaty land, and then to be  
23 impeded by a county sheriff's department with force --  
24 is my question.

25 MR. TOULOU: Yeah. It all seems reasonable.

1 I mean, I don't know what's going on on the ground. I  
2 mean, it sounds like there's a problem, and we will  
3 reach out to our people and try to address it.

4 MR. VOGEL: Thank you.

5 MR. TOULOU: Thank you.

6 MR. VANCE: Steve Vance, Cheyenne River Sioux  
7 Tribe again. And I just want to follow up on that.  
8 You're saying that the U.S. marshal has jurisdiction.  
9 So my understanding, the U.S. marshal has to be  
10 present?

11 MR. TOULOU: I'm sorry?

12 MR. VANCE: Colonel Henderson said that the  
13 U.S. marshal has jurisdiction on Corps land. My  
14 understanding of law enforcement is that the U.S.  
15 marshal has to be present before anyone else can do  
16 anything.

17 MR. TOULOU: You know, I'm going to step in  
18 the role of Colonel Henderson's lawyer. I hate to do  
19 that, but we don't know what's going on on the ground,  
20 honestly. But, right, the marshal service is there.  
21 They are going to deputize somebody we'd normally  
22 deputize and be on the ground. We just don't know  
23 what's going on right now. So we're talking about  
24 that.

25 MR. VANCE: So if you remember earlier, I

1 talked about my involvement in law enforcement. And  
2 I've had to follow those processes in order to, I  
3 guess, turn someone over to another authority. The  
4 U.S. marshal had to come in, meet with our chairman,  
5 and, from there, be present while the other authorities  
6 do their duties. So if the Morton County Sheriff's  
7 there, if highway patrol is there, or any other law  
8 enforcement entity, the U.S. marshal should be present.

9 MR. TOULOU: Again, I don't know what's going  
10 on on the ground. It sounds like there will be some  
11 problems. But until we know what's happening...

12 MR. VANCE: And I can almost assure you that  
13 it's going to get worse, I mean, as for the continuance  
14 of what's going on. It's not going to lessen. But the  
15 Native people will continue to be peaceful. I'm not  
16 saying that they're going to escalate anything on their  
17 side. But it could happen if you -- I see some frost  
18 on top of the mountain here.

19 So you probably heard about Alcatraz. You  
20 probably heard about Custer. South Dakota, you  
21 probably heard about. You probably heard about wounded  
22 knee, '73. There are those other people out there who  
23 are standing by. And I would sure hate to see it go to  
24 that level. So something needs to happen.

25 And those of you who were down to Albuquerque

1 heard it there. You know, "We will deal with it."  
2 Apparently it's continuing. So I think somebody needs  
3 to get on the phone or physically show your presence  
4 to -- this is the thing we're talking about:  
5 Consultation -- question on the consultation part with  
6 the panel here.

7 How many of you know where Eagle Butte, South  
8 Dakota, is? How many of you have been to Eagle Butte,  
9 South Dakota? How many of you stood in front of our  
10 tribal council? That's government to government.

11 And with the handful of hands that went up, I  
12 doubt -- there was probably thousands of projects that  
13 were government to government and it didn't happen. So  
14 like I said, the process has a lot of other lower-lying  
15 people in the trenches, tribal liaisons, THPOs, sending  
16 a message up. But it never gets to that point.

17 And that's where this issue is right now.  
18 The message has gone up. And we're dealing with more  
19 harm. This is why the chairman sent us up last minute.  
20 He has winter to get ready for. But he also has long  
21 issues of poverty, unemployment, health issues. Now he  
22 has to look at extensive injuries.

23 This is why he left Albuquerque. He stepped  
24 out of the meeting, made some phone calls. He jumped  
25 on a plane the next morning, and he flew right back

1 because he has to get medical attention to people.  
2 He's got to get places, you know. So he's dealing with  
3 very pressing issues. And yet this is also just as  
4 important.

5 So you got to think about what all of these  
6 reservations deal with constantly. And yet, you know,  
7 we have to have this meeting. And I think I said this  
8 at the beginning. But is this consultation? Or is  
9 this a listening session?

10 MR. TOULOU: For purposes of the Tribal  
11 Leaders Letter, this is consultation. Keep in mind,  
12 part of the focus of this consultation is to discuss  
13 what makes effective consultation on infrastructure  
14 issues. So if you have questions about is this a  
15 consultation, that's a legitimate question.

16 MR. VANCE: Okay. I just want to say, for  
17 the tribes here present, that Cheyenne River Sioux  
18 Tribe does support your comment, and we didn't submit  
19 anything. If there's anything we can do to help with  
20 your letters and stuff, let us know.

21 MR. TOULOU: Okay. Thank you. The sooner we  
22 can get done with this, the sooner the rest of us can  
23 actually work on the issue of Standing Rock.

24 Go ahead.

25 MS. WATERS ALDEN: Good afternoon. My name

1 is Charlene Waters Alden. I'm with the Northern  
2 Cheyenne Tribe. I'm the director of the environmental  
3 protection and the natural resources systems of our  
4 tribe.

5           And our tribal leadership could not make it  
6 up here. So I did visit with them, and they did tell  
7 me to, as incentive, to talk about the consultation  
8 process, that we would like to make sure that the 106  
9 process is followed and tribal consultation is for  
10 people coming -- whoever gets involved, whatever goes  
11 on with the infrastructure, that they come to Northern  
12 Cheyenne and that they speak with our leadership from  
13 the get-go, from ground zero, so that we would have a  
14 say from the very bottom until the finished product,  
15 whatever it might be.

16           It might be a bridge, a pipeline, a road,  
17 whatever it is. But they want tribal consultation at  
18 the Northern Cheyenne level, and not just on our tribal  
19 reservation but in our ancestral homelands. And that  
20 goes from, like I said, Canada all the way down to  
21 Colorado.

22           And I have with me a couple of my  
23 administrators that are going to say a few things. So  
24 I'm going to turn it over to Shanara.

25           MS. SPANG GION: Good afternoon, everybody.

1 My name is Shanara Spang Gion.

2 Good afternoon again. My name is  
3 Shanara Spang Gion. I'm the water resources  
4 administrator for the Northern Cheyenne Tribe. I come  
5 from both Northern Cheyenne, Crow, and German heritage.  
6 And I'm very happy to see everybody here today.

7 I would just like to touch on a few points.  
8 And the first thing that I feel like some of our local  
9 other tribes and fellow tribes are saying is, how do  
10 you want to understand us? And to me, when I think of  
11 that, it's, how decolonized do you want to be?

12 How much do you want to think outside of  
13 these existing frameworks that we are living in as part  
14 of a federal government structure? And how much do you  
15 want to include what we have to say that doesn't  
16 necessarily align with that colonized structure?

17 So it's a question for you to ponder. It's  
18 not something I expect an answer for right now. But  
19 how decolonized do you want to be in your position as  
20 an individual, as your position in a federal agency?

21 Because the letter that we were sent is  
22 written very narrowly. It only addresses federally  
23 recognized tribes, for instance. And I, as a water  
24 person, I did actually meet with Montana Army Corps  
25 staff on the nationwide permit reissuance for 2017.

1           And I did get, actually, a phone call. I've  
2 been working for my tribe for ten years, and we got a  
3 phone call last week. And that's the first phone call  
4 I've ever had from the Army Corps reaching out to us to  
5 basically ask us, "what do you want to say to Colonel  
6 Henderson as he's coming into this office?" So I want  
7 to thank the Montana office for taking that initiative.  
8 And in ten years, I've never seen that.

9           So the particular comments I have towards  
10 nationwide permit issuance that I did bring up with the  
11 Army Corps staff back on September 30th is at a  
12 minimum, look beyond our political boundaries that have  
13 been established by this federal system. At a minimum,  
14 look at a watershed scale.

15           And I asked for that to be changed in the  
16 Montana Regional Conditions for nationwide permits here  
17 in Montana. I asked to have it beyond our political  
18 boundary that was established by executive order. And  
19 look at watersheds. Because what the Army Corps or a  
20 private company, they have planned upstream of us is  
21 going to have impacts on us. And what happens  
22 downstream of us can also impact our ability to use  
23 water or to allow others to use water downstream of us.

24           An example of that is we were at -- my  
25 sister, Marissa Spang, she's a natural resources

1 administrator. She'll talk to you in a few minutes.  
2 But we had a really great experience in California. We  
3 went to the World Indigenous Law Conference and met  
4 many people from New Zealand, Australia, Columbia,  
5 different areas of the world -- and what they're  
6 dealing with and how we can protect our natural systems  
7 within a legal framework. And we came back with a lot  
8 of really, really good ideas.

9           But one of the things that bothered me when  
10 we were down there -- it was two weeks ago -- and I  
11 have -- you know, we were talking about cell phones  
12 earlier. And the local paper, I have their app on my  
13 phone, so I read it almost every day. And through that  
14 app, that was the only notification I got that a  
15 pipeline was being replaced under the Tongue River.  
16 That was the first I had ever heard of it.

17           And so if we were to change to this, at a  
18 minimum, watershed scale, this pipeline that was being  
19 replaced under the Tongue River near Miles City, near  
20 the mouth of the Tongue River, where it goes into the  
21 Yellowstone, I think we would have had more advance  
22 notification of that and had some meaningful input with  
23 the Army Corps if you were, in fact, the regulatory  
24 authority or whomever is the authority.

25           So I would ask, again, at a minimum, that we

1 do look at a watershed scale. And I would like to see  
2 that in the Montana Regional Conditions when reissuing  
3 these nationwide permits.

4 And I'd just like to quickly touch again on,  
5 I think, what a lot of other folks have already said --  
6 is looking at our traditional territories as well.  
7 Just look beyond our political boundaries of  
8 present-day Montana and present-day Northern Cheyenne  
9 Reservation.

10 Ask tribes, even non-federally recognized  
11 tribes. Ask all of them, all of the indigenous people  
12 in North America, to map where their traditional  
13 territories are, and use that as your basis for where  
14 and when and who do you notify about infrastructure  
15 projects. Thank you.

16 MR. TOULOU: Thank you.

17 MS. SPANG: Good afternoon. I'll make this  
18 fast. My name is Marissa Spang. I'm the Northern  
19 Cheyenne natural resource administrator. I work with a  
20 number of programs that impact wildlife, including our  
21 buffalo herd. So my comments are going to kind of come  
22 in that sort of context. I'll make this as quick as I  
23 can.

24 I'm glad that questions have been asked about  
25 what's going to be done next. So one of your next

1 steps I'd recommend to you is that whatever gets  
2 developed out of these consultations or meetings -- to  
3 reiterate, we don't consider this  
4 government-to-government consultation or  
5 nation-to-nation consultation.

6 That you -- whatever gets developed, that you  
7 have ongoing -- like, you make it an ongoing  
8 institutional memory, a strategy that every one of your  
9 employees is trained up in, especially if they're going  
10 to be meeting with tribal leaders or people like  
11 myself, representatives from our nation, regarding  
12 infrastructure projects or anything.

13 And so I talk mostly from a perspective of  
14 wildlife, quote, unquote, wildlife. And I just want to  
15 point out that I'm talking in English today, so I'm  
16 articulating, I'm having to articulate our  
17 relationships to land in English, which is not an  
18 appropriate language. It's incredibly limited. And it  
19 is, in my view, impossible to truly translate and  
20 convey our worldview about our relations and  
21 orientations to land.

22 So with the whole grizzly bear delisting,  
23 that whole fiasco that's still happening, it's ongoing,  
24 I'm having to find myself in rooms like this and having  
25 to repeat myself. Everybody here, I'm sure, has taken

1 away precious time from where they are on the ground  
2 taking care of our communities and our governments and  
3 our lands.

4           So we've had to come here today to do all of  
5 that, and we had to make our own way here. So we have  
6 precious resources, and everybody already knows that,  
7 so I'm not going to emphasize it.

8           And I'm young. So in my short life, if I'm  
9 getting tired of repeating myself, I can't imagine how  
10 our elders feel. So my recommendation to you is that  
11 whatever you develop, that you actually train your  
12 employees about how to engage in this properly and how  
13 to protect themselves properly when dealing with tribal  
14 nations.

15           And then the other thing, too, is -- it was  
16 touched upon earlier -- is that -- well, I want to  
17 stress that indigenous people -- and this is the UN  
18 Declaration of Rights of Indigenous People. It's free,  
19 prior, and informed consent. I will repeat that.  
20 Free, prior, and informed consent.

21           So I would use that as the framework to lead  
22 your work in this regard and that you do utilize -- and  
23 so part of that informed consent is for tribes' or for  
24 nations' indigenous people to offer up their own  
25 traditional policies in orientation to land.

1           And I want to point out that the United  
2 States is a very young nation. We're very young.  
3 Northern Cheyenne and Crow are much older, and these  
4 are ancestral territories. And so we have a young kind  
5 of little brother operating on our indigenous  
6 territories.

7           So it's okay you don't bring your knowledge  
8 to the table. But it becomes oppressive when you are  
9 egocentric in your ways of knowing. And so that's what  
10 I see in the work I do, especially with the grizzly  
11 bear delisting, is that it's based off of western  
12 orientation, western ontology, methodologies. All of  
13 those are embedded in the knowledge that informed  
14 infrastructure projects for delisting of grizzly bears.  
15 Those are the things.

16           And that was the biggest point I was trying  
17 to drive home with Fish and wildlife was that you guys  
18 did your consultation and your assessment, but what  
19 about our assessments? We've actually had a  
20 relationship with the grizzly bear much longer than any  
21 other U.S. official.

22           So basically part of these processes is that  
23 indigenous knowledge is at the table and not any less  
24 than western science or ways of knowing when these big  
25 decisions are being made.

1           And then just if you haven't read the  
2   Declarations of Rights of Indigenous People, I would  
3   encourage you to go pick it up. If you Google it, it  
4   will come up in a second, and you can just sift through  
5   and read through it. And that can inform a lot of your  
6   work dealing with indigenous people. So thank you.

7           MR. TOULOU: Thank you very much. Okay. So  
8   I think we're done.

9           I will be up here if folks have additional  
10   comments they want to make not on the record.

11          MR. SCHOTTLANDER: My name is Dick  
12   Schottlander. I live south of town here. I'm a  
13   retired heavy equipment operator, but I've got a  
14   question and comment, both.

15          I'd like a show of hands of the people that  
16   came here prepared. But I'm looking at some 12 key  
17   people. But how many came equipped to hand out a  
18   business card with a phone number or an e-mail address?  
19   Show of hands, please. That's a few anyway.

20          But I don't know if you realize how difficult  
21   it is to get in touch with people like yourself, key  
22   people, knowledgeable people that can help the tribes.  
23   And, again, I'm a retired equipment operator, so I'm  
24   not going to get involved in this. But it's so  
25   critical that they can call a specific number or an

1 e-mail address and get to the right person with the  
2 right answer. It would make a lot of mystery, smoke  
3 and mirrors, and everything else, various problems.

4 I would suggest that in the future, you come  
5 equipped to hand out a business card with a phone  
6 number or an e-mail address or something of that  
7 nature. And that's the only question I had. Thank you  
8 for your time.

9 MR. TOULOU: Thank you. So we're going to  
10 wrap it up. I'll be here. I think some others will be  
11 at the table. I know some have planes to catch later  
12 this afternoon. So I want to thank you all very much.  
13 This is really useful. And we've got a lot to think  
14 about. More consultations following.

15 MR. VANCE: Normally you'll do a response or  
16 a comment to what was discussed.

17 MR. TOULOU: Well, it depends --

18 MR. VANCE: Are you doing that today?

19 MR. TOULOU: No, not today. I mean, I can  
20 tell you there were a lot of good things that were said  
21 today. But that's not the process that I necessarily  
22 follow. But I will try to let you know what I heard.

23 I heard -- yeah, people want to be involved  
24 early in the process on consultation. I think there  
25 was quite a bit of discussion about what consultation

1 means and whether or not we can come to some sort of  
2 understanding within the agencies to be consistent  
3 within agencies on about how we do consultation.  
4 Because it's confusing, and there aren't standards to  
5 be held to.

6 something else I heard people talking about  
7 is we do need standards to be held to, that there's  
8 really no -- nothing happens if an agency doesn't do  
9 good consultation.

10 I heard you in particular talk about a number  
11 of old acts that I'm going to pull up, that continue to  
12 have relevance to how things are interpreted now, with  
13 the 1872 Mining Act.

14 There was a great deal of discussion about  
15 Section 106 and Appendix C and how that should play  
16 into that. So that's definitely something we're going  
17 to be looking at.

18 I think that there was a number of people who  
19 had discussions about how we look at cultural sides and  
20 significant sides and how -- and I'm paraphrasing  
21 because I don't have the transcript in front of us.  
22 And we will have the transcript in front of us.

23 But in the western system, we tend to look at  
24 things in a very concrete, scientific -- I use  
25 scientific in air quotes -- methodology. And a lot of

1 the significance of sites for people who have lived in  
2 those sites from time immemorial are different and  
3 important. And we need to take that into  
4 consideration.

5 My suggestion is we need to talk about  
6 accountability, which I think is part of what we need  
7 to do both in consultation and otherwise.

8 I heard a number of comments about resources,  
9 just how you get to consultations, the fact that there  
10 are a limited number of THPOs out there and there's a  
11 lot going on. And the tribes are expected to come up  
12 with the coverage for that. And it just doesn't make  
13 sense. It really doesn't.

14 We really need to get tribes -- I think I may  
15 have said this. But tribes really need to have notice  
16 of what's going on before we really get into whatever  
17 it is we're evaluating. But the consultation has to  
18 happen, or some communication has to happen. And I  
19 think part of that is based on the sense that people  
20 who are looking for the permits have access that maybe  
21 tribes don't have until after maybe the decision is  
22 made.

23 Again, this is me paraphrasing. Let me know  
24 if I'm getting this right.

25 I heard somebody say the FCC does a good job,

1 or at least they had on Rocky Boy.

2 Consultation should be on-site with  
3 leadership. That's something I heard a lot and I think  
4 probably has been up on the other consultations.

5 The executive consultation should be  
6 codified. But it shouldn't just be an executive order;  
7 it should be legislation.

8 We need to use tribal experts as the  
9 archeologists who are doing some of this initial review  
10 of sites and not just, you know, people from the  
11 outside. Because I think this goes back to the  
12 cultural knowledge that we talked about earlier.

13 The vice chair from Blackfeet talked about a  
14 different worldview, I think, a sense of home that  
15 people coming from outside don't understand. He also  
16 talked about the Badger-Two Medicine area and the fact  
17 that it's maybe not within the tribe's reservation --  
18 again, something we heard a lot -- but has special  
19 significance. And we need to figure out how to factor  
20 that in as opposed to just using reservation  
21 boundaries.

22 There was also a discussion about easements.  
23 And I have a note to myself to look into how easements  
24 are established. I've seen how some of these are  
25 established. But as a lawyer, I thought the easement

1 thing was interesting. So I'm going to research that.

2 I heard that this consultation wasn't long  
3 enough. I would have thought I would be getting on  
4 people's nerves.

5 And the SHIPOs have final authority on-site  
6 in status of sites. And that should include THPOs in  
7 that determination. It shouldn't just be all the  
8 SHIPOs.

9 I'm lumping some together here. Again, the  
10 national process for THPOs. John Eagle said it should  
11 be "shall consult with the tribes and not may." I think  
12 that was probably a reference to 13175, the fact we  
13 need to put some teeth in it.

14 And the tribe should be afforded the respect  
15 to sign off on tribal homelands. Again, involve tribes  
16 from the beginning.

17 Again, a number of questions about what  
18 consultation means and how it should play out. The 30  
19 days' notice isn't enough. I'm not sure what that  
20 30-day notice was for. But I note that we normally  
21 give 30 days on one of our consultations. I suspect it  
22 was broader. But by the time it works its way through  
23 tribal leadership, a lot of times the folks on the  
24 ground aren't getting more than a few days' notice for  
25 the consultation.

1           we don't treat tribes as stakeholders. That  
2 was the second afterthought.

3           Mr. Howe talked a lot about Indian  
4 self-determination and economic development, which I  
5 think is a key part of what we're doing here.

6           And then, again, we need to look beyond the  
7 tribal boundaries. One of the suggestions was to use  
8 water projects, watershed as a scale of what we're  
9 looking at. And then it was also a suggestion that we  
10 use the UN Declaration of Rights of Indigenous People  
11 as a model for some of what we need to do.

12           I know I didn't get everything. But I hope  
13 that -- if there's something real big that I missed,  
14 you know, I'm happy to hear about it.

15           Okay. Thank you.

16                           (Proceedings concluded at 1:14 p.m.,  
17                           November 2, 2016.)

18

19

20

21

22

23

24

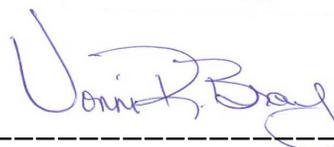
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

I, Vonni R. Bray, a Certified Realtime Reporter, certify that the foregoing transcript, consisting of 148, is a true and correct record of the proceedings given at the time and place hereinbefore mentioned; that the proceedings were reported by me, to the best of my ability, in machine shorthand and thereafter reduced to typewriting using computer-assisted transcription.

IN WITNESS WHEREOF, I have set my hand at Laurel, Montana this 23rd day of November, 2016.



---

Vonni R. Bray, RDR, CRR  
P.O. Box 125  
Laurel, MT 59044  
(406) 670-9533 - cell  
(888) 277-9372 - Fax  
vonni.bray@gmail.com