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FEDERAL CONSULTATION WITH TRIBES REGARDING  
INFRASTRUCTURE DECISION-MAKING

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Taken at  
RUSHMORE PLAZA HOLIDAY INN  
505 N. 5th Street  
Rapid City, South Dakota  
November 17, 2016

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P R O C E E D I N G S

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MR. TRACY TOULOU: So to get started right today, and then we'll go into introductions, Virgil Taken Alive has agreed to come up and give us a blessing so everything goes well today.

MR. VIRGIL TAKEN ALIVE: Good morning, friends and relatives. Welcome you all to the heart of everything that is, the beautiful He Sapa.

And, you know, I camped at the NoDAPL camp for five weeks. I'm 63 years old, and I've been walking our way of life for three decades, a little bit more. It was really (unintelligible) time for me sitting in that camp with all the people that came, the prayers that they brought. I learned something while I was there, or I realized something while I was there, that on my mother's side she had a grandmother named -- great grandmother named Naley (phonetic) White Face Dog Eagle, my great, great, great grandmother. She was a survivor at Wounded Knee.

And on my father's side I also have a great, great grandmother that fled when what was happening in Minnesota, her and her brothers and sister. So I'm also a survivor of that massacre. I didn't

1 realize that until I was there. And the prayer and  
2 spirituality that was in that camp was so amazing.  
3 I think I have a nephew from Crow Creek, Mr. Sazue,  
4 that was there and can vouch for me, along with  
5 other nephews at camp. And to watch what was going  
6 on and to hear what was going on was totally absurd.  
7 Water is life. (Native language).

8 So I thank you for asking me to offer the  
9 prayer this morning. We pray for all of humanity  
10 because water is life. And fresh drinking water is  
11 depleting throughout the world. So I just wanted to  
12 give us that thought and put us in the direction of  
13 humanity and the generations to come.

14 (Blessing in Native Language)

15 MR. TRACY TOULOU: Thank you very much.

16 So we're going to get started here. And I just  
17 wanted to talk a little bit about how we're going to  
18 go through today. As to start, we're going to have  
19 the panel introduce themselves.

20 And then we're going to ask C.J. who's going to  
21 speak on behalf of the Great Plains Tribal  
22 Chairman's Association about consultation and how we  
23 need to consult in a good way.

24 And then what we're going to do is, with that  
25 start, run through a list. You all signed up back

1           there. And we're going to run through the tribal  
2           leaders first because this is a  
3           government-to-government consultation and they  
4           represent the tribal governments. We'll pick up one  
5           leader from each tribe, work through all the tribes  
6           that are listed, and then go back to other tribal  
7           leaders. Because I know some of you brought more  
8           than one tribal leader. And then we'll reach out to  
9           others who may have an interest in speaking today.

10           So you know who's up here today, just a real  
11           brief introduction, my name is Tracy Toulou. I'm  
12           not the Affairs Program Manager for the Department  
13           of Justice. I'm actually the Director of the Office  
14           of Tribal Justice of the Department of Justice.  
15           I've been to a number of these consultations.  
16           They've been very, very useful I think to all of us.  
17           I learned a lot. And hopefully there's some good  
18           things we can take away from this and make some  
19           positive changes.

20           And I'm going to, I guess, start to my left.

21           MS. JO-ELLEN DARCY: Good morning, everyone.  
22           I'm Jo-Ellen Darcy. I'm the Assistant Secretary of  
23           the Army Civil Works. To my left is Chip Smith  
24           who's my advisor for tribal affairs in my office.

25           I'd just like to recognize that there are

1 additional folks from the Army Corps of Engineers  
2 here today to listen. We have Lieutenant Colonel  
3 Vail who's with my office, in the back. We have  
4 Lisa Morales who is our Senior Tribal Liaison in the  
5 Army Corps of Engineers' headquarters. We have  
6 Jennifer Moyer who's our Chief of Regulatory. We  
7 have Colonel John Henderson who's our commander over  
8 the Omaha district. We have Joel Ames who is our  
9 tribal liaison for the Omaha district and Joe  
10 McMahan who's our regulatory chief in Omaha, and Tom  
11 Tracy who is our chief counsel. And then Colonel  
12 Eswis (phonetic) is joining us this morning, too.  
13 He's from our inter-city district.

14 Thank you for having us.

15 MR. CHARLES SMITH: Chip Smith, Army Civil  
16 Works. It's a pleasure to be here. I look forward  
17 to listening and learning and continuing to work on  
18 this next year, as I am a civil servant, and with  
19 any luck I'll roll over and keep working on the  
20 issues that we're here about today. Thank you.

21 MS. DARCY O'CONNOR: Good morning. I'm Darcy  
22 O'Connor. I'm the Assistant Regional Administrator  
23 for the Office of Water Protection at EPA in  
24 Region 8, Denver. I'm honored to be here today and  
25 listen. Thank you.

1 MS. VALERIE HAUSER: Good morning. I'm Valerie  
2 Hauser, the Director of the Office of Native  
3 American Affairs, the Advisory Council on Historic  
4 Preservation. I want to thank you for welcoming us  
5 to your homeland and thank you for coming to speak  
6 with us today. I look forward to hearing what you  
7 have to say about this very important topic. Thank  
8 you.

9 MR. TEDD BUELOW: Good morning, everyone. My  
10 name is Tedd Buelow. I work for USDA Rural  
11 Development as the tribal liaison. I work with all  
12 of our staff and tribes around the country. I'm  
13 also located in Denver, Colorado.

14 Just so you know why the USDA is at the table,  
15 we do help finance infrastructure projects with  
16 tribes and with non-tribal communities and  
17 properties for electric, water and broadband. So if  
18 you're ever interested in our projects and our  
19 programs, we'd like to talk to you about those as  
20 well.

21 But I'm also joined by some folks here from  
22 South Dakota and Denver from the USDA. Our State  
23 Director for Rural Development Bruce Jones is here  
24 with me, Jeff Zimprich who's the State  
25 Conservationist for the Natural Resource

1 Conservation Service. And then USDA Forest  
2 Service's Regional Tribal Director Susan Johnson is  
3 here. So I think that's the USDA contingencies.

4 It's a pleasure to be here. I'm honored, ready  
5 and excited to hear your comments today.

6 MR. LARRY ROBERTS: Good morning, everyone. My  
7 name is Larry Roberts. I am the, heading up Indian  
8 Affairs at the Department of Interior.

9 I wanted to start off by saying thank you all  
10 for traveling here today to be part of the  
11 consultation. I know that some of you have traveled  
12 from far away, left your families, left your duties  
13 that you have back at home. So thank you for doing  
14 that.

15 It amazes me that we're, in the history of our  
16 United States that we're just having this  
17 conversation on infrastructure development today in  
18 2016. I think it's long overdue, and I think  
19 it's -- you know, it says something about all of the  
20 different agencies here consulting with tribal  
21 leadership on this important issue.

22 And the important issue is not only  
23 infrastructure but the importance of reserved treaty  
24 rights and trust responsibilities. As an Oneida  
25 person, our tribe signed a treaty with George

1 Washington in 1794. That treaty was broken the next  
2 year. And so as we have these conversations today  
3 about how to move forward in thoughtful planning for  
4 infrastructure, I look forward to all the knowledge  
5 that we're going to hear in this room. And  
6 hopefully we'll continue to push for a brighter path  
7 for our future generations.

8 MR. BRUCE LOUDERMILK: Good morning, everyone.  
9 My name is Bruce Loudermilk. I am the Director for  
10 the Bureau of Indian Affairs. It's great to be back  
11 in the Great Plains Region. Previous to my last  
12 position, I was the Regional Director here for the  
13 Great Plains Region in Aberdeen, South Dakota. I'm  
14 an enrolled member of the Fort Peck Sioux Tribe.  
15 It's nice to be back in Sioux Country.

16 MR. MATT MCGOVERN: Hi. I'm Matt McGovern with  
17 the U.S. Department of Energy. I'm a Senior Advisor  
18 of the Office of Energy, Policy and Systems Analysis  
19 and was here in South Dakota for nine years, so good  
20 to be back home today.

21 MR. JAMIE CONNELL: Good morning, everyone.  
22 I'm Jamie Connell. I'm the State Director for the  
23 Bureau of Land Management for Montana, North and  
24 South Dakota. Welcome. And thanks for not just  
25 traveling here today but getting home this

1 afternoon, which might be a little more difficult.

2 It's a pleasure to be here with you.

3 I'd also like to introduce Mary Jo Rugwell who  
4 is our state director for Wyoming. We didn't want  
5 to take up two seats up here, but Mary Jo is here as  
6 well listening. And if there are questions during  
7 break, she'd be happy to chat with people. So thank  
8 you.

9 MS. CINDY PTAK: Good morning. My name is  
10 Cindy Ptak. I am the Acting Director for the Office  
11 of Tribal Transportation within the Office of  
12 Federal Lands Highway, the Federal Highway  
13 Administration in Washington, D.C. I'm actually  
14 here on behalf of Kenneth Martin who is our Deputy  
15 Assistant Secretary for Tribal Affairs.

16 I also wanted to introduce Colleen Vaughn who's  
17 also here sitting in front of me. She is  
18 representing the Secretary's Office of the  
19 Department of Transportation as well.

20 I'm honored to be here today. Thank you.

21 MS. CECI DEROBERTS: Good morning. My name is  
22 Ceci DeRoberts. I am with the Federal Permitting  
23 Improvement Steering Council. We're a new agency  
24 that was created last December from the FAST 41 Act.  
25 And our goals are to increase transparency and

1           accountability in the infrastructure permitting  
2           process. We're very excited to be here and to  
3           listen and to learn how to make things better.

4           MR. C.J. CLIFFORD: Good morning. My name is  
5           C.J. Clifford. I'm the elected representative from  
6           the Wounded Knee District on the Pine Ridge Indian  
7           Reservation.

8           I want to thank our guests and welcome them to  
9           the Black Hills, welcome them to our homeland. And  
10          I want to welcome you all for coming up to give your  
11          testimony.

12          But first I would like to kind of give a little  
13          background on my participation in consultation for a  
14          great number of years. It started back in 1990.  
15          And it brings me to the day here, traditional form  
16          of consultation as per signing up, getting up,  
17          testifying and handing in your written statements.  
18          You never know where they go. You never know if  
19          they're even looked at. But today I'm hoping with  
20          all the good change and doing something with the  
21          existing framework that's here, I had requested that  
22          an easel be brought up. I brought some pens. I  
23          want this to be meaningful. I want this to truly be  
24          meaningful from the government side to us. So as we  
25          go through today, if you have questions and you

1 would like a response from them, I would  
2 respectfully ask both parties to be respectful to  
3 each other but answer the questions to the best of  
4 your ability.

5 Since it's a government-to-government  
6 consultation, we have decision makers at this table  
7 today. We have decision makers sitting amongst us  
8 today. So it is a meaningful one.

9 So things today, as we go through, as we agree  
10 upon them and when we make sense of them, I would  
11 like the country to know that we are doing a mutual  
12 agreement with you all, and we'll write it down so  
13 that way we know when you go, you agree before you  
14 go, and we'll agree to what we wrote. And also --  
15 so that way we know that we're getting a new start  
16 today.

17 I myself witnessed many consultations that have  
18 gone nowhere in Indian Country and I know that it  
19 falls the same on all of you guys. I know that from  
20 experience. Have our words and our letters even  
21 been acknowledged specifically here in the Dakotas?  
22 No, they haven't. But today I'm hoping as we go  
23 through and we talk about the infrastructure of  
24 consultation, that we come up with some rules,  
25 ground rules.

1           The old policy from the different departments,  
2 we need to get some sort of understanding, and they  
3 shouldn't differ very much from each other, other  
4 than how they're going to relate to programs that  
5 are underneath that department. But the process of  
6 consultation itself should be one that is unifying.

7           So as we go through this and we start our list  
8 of tribal leaders, I do not want to put a time limit  
9 on my people or anybody that wants to get up and  
10 talk. I'd just ask that you be respectful of  
11 people's time that is here that also are all waiting  
12 to speak.

13           And I think from this day forward, if we can  
14 consult and be able to come up here, just like I am  
15 now, and visit with you and talk about these  
16 rules -- I've waited many years for this moment to  
17 address consultation on consultation. And that's  
18 what this is. I want to make sure that we're  
19 treated right, as well as we treat you right, and we  
20 make some agreements today on this easel, which you  
21 guys can take the paperwork for a reminder, but  
22 everybody take note as we go through this. If we  
23 agree upon a good way about coming about this  
24 consultation, let's write it down so we know that we  
25 agreed upon this; we don't have to wait for two

1 months for a response. Because we know from  
2 experience, which wasn't good for us, that  
3 consultation never worked for us.

4 Now to broaden the subject, as we do  
5 consultation, let's not forget negotiated  
6 rule making. Negotiated rule making falls hand in  
7 hand with consultation. It's very important that we  
8 all understand that because there will be some  
9 things that come out of consultation that will  
10 require negotiated rule making, so that needs to be  
11 part of the subject today as per how it's going to  
12 be, how we're going to select people for the  
13 negotiated rule making. Because for too many years  
14 the government has had 51 percent at the table  
15 during the negotiated rule making. Today I want to  
16 see it made an even playing field, a respectful  
17 playing field, an agreed-upon playing field so that  
18 our voices will be heard and we know that they're  
19 going to be heard and that it isn't one sided and  
20 only one-sided's way. Because if I come into the  
21 game with 51 percent, you're guaranteed to lose no  
22 matter what. But if we can build a system that says  
23 upon mutual agreement with us today we're going to  
24 write it down and you will live with that, that  
25 would be greatly respected by us.

1           And with that I understand you have a list of  
2 tribal leaders that you would like to follow. So  
3 I'm asking that other people and you guys, that we  
4 work on this process today, that it ain't just one  
5 of those statements and you guys get up and leave  
6 here, that we're able to actually write down some  
7 agreements on this consultation process and  
8 negotiated rule making. Do not forget that  
9 negotiated rule making. Because at the table of  
10 negotiated rule making, 51 percent of the  
11 government, I want that to change, along with  
12 consultation, out of respect to the tribes and for  
13 you guys.

14           And with that, thank you. I'll be sitting up  
15 here as we go along. So (native language). Let's  
16 go.

17           MR. TRACY TOULOU: C.J., thank you for that.  
18 There was a lot of very good things said and I  
19 appreciate it. If I could just respond to a couple  
20 of the things, because you want us to respond. You  
21 don't have to -- you can sit down.

22           MR. C.J. CLIFFORD: No, I want to stand.

23           MR. TRACY TOULOU: So I want everybody to know  
24 that we are doing a transcript. I think taking  
25 notes and writing stuff down is great, but I didn't

1 mention there was a transcript being taken of  
2 everything that we say today. So that's going to be  
3 available.

4 There is a process that's in place that's  
5 involved six other consultations. And our intent is  
6 to have a report out in December on what is heard in  
7 all of those consultations.

8 And so while one of the aspects you talked  
9 about was, you know, putting agreements up, and  
10 there are undoubtedly things we're going to be able  
11 to agree on, there have also been six other  
12 consultations, and we're going to have to factor  
13 those in to that final report. Because people said  
14 different things in different parts of the country.

15 And I guess the final thing is you talked about  
16 us responding. And I agree. You know, I've been in  
17 those consultations where people just sit quietly up  
18 front and, you know, listen to the Indians in the  
19 room. And I've been frustrated sometimes with  
20 what's happened out there. We do not want that to  
21 be the case here, nor do we want that to be the case  
22 moving forward, because this is about doing  
23 consultation better. So I appreciate that thought,  
24 and I think we all agree with it here.

25 MR. C.J. CLIFFORD: Okay, it's very unfortunate

1 that you started your consultation beyond -- and I  
2 understand listening to a few reports that it was a  
3 traditional way of consultation, they got up and  
4 they gave their speeches and they handed in their  
5 records of say, but today, like I said, we're  
6 different in the Dakotas. We're the Sioux Nation.  
7 And we would like to be respected as that. So we do  
8 look at it as we are a different tribe. We're the  
9 Sioux Nation. And it's unfortunate they didn't have  
10 people like us or myself to stand up and mention  
11 this from the very start. Maybe I should have flew  
12 out to Washington and said it then.

13 But them both here (indicating), they're my  
14 brothers and sisters but they're not my tribe. But  
15 I can't do this here at home. And as a leader  
16 that's my job, when I sit down to negotiate with  
17 you, to consult with you, I want to be able to talk  
18 to you and I want to hear your voice back. I want  
19 it to start today.

20 I understand you got a stenographer over here.  
21 Thank you. But also whenever I write this down and  
22 my people see it and you guys agree, we know that's  
23 going to happen.

24 Because we don't know if you're going to change  
25 any words that we say from that. We don't know

1 that. I mean, I'm not accusing you of that.

2 THE COURT REPORTER: (The Court Reporter moves  
3 head from side to side.)

4 MR. C.J. CLIFFORD: You're saying you aren't.

5 I'm just saying too many times, what  
6 comments -- like I said, it's very unfortunate the  
7 other tribes didn't think like this. But the things  
8 we do here in the Sioux Nation is not only going to  
9 affect us, it's going to affect the other Indian  
10 nations. And I'm sure they would respect that also.  
11 The rules that we make is not going to be made just  
12 for us.

13 And the way that consultation is run should be  
14 a little bit more friendly. Don't you kind of find  
15 it defensive kind of like a DAPL situation all of a  
16 sudden? We're standing here and, Wow, man, you got  
17 Indians, you know. Sitting like this is kind of  
18 like a defensive method, but sitting down and saying  
19 you're applying that, "This is the way we did it and  
20 this is how we're going to do this and we're going  
21 to run it through; you're going to give us your  
22 statements," I didn't ask for that. I ask that we  
23 agree upon things as we go through this and we write  
24 some of these things down, and then that way we  
25 don't have to wait; we actually know today when we

1 leave here that this is what we talked about and  
2 this is what was said and we're going to be  
3 righteous about it. You know why I know this?  
4 Because you're all good people and you're in  
5 leadership roles, big leadership roles that do  
6 things beyond local events here.

7 That's all I'm asking. I'm not asking you to  
8 continue to oppress us and apply your traditional  
9 rules of consultation. Because the notice was sent  
10 "consultation on consultation," so we gotta start  
11 somewhere. And today is the start.

12 Like I said, it's very unfortunate that the  
13 other tribes where you had the consultation -- and  
14 we don't want to get into that because the policy on  
15 consultation, I could visit with you on that and you  
16 wouldn't be able to brief me (unintelligible). It's  
17 the policy that you all wrote, that was written  
18 before you and that you just accepted it and  
19 governed it. But now that the opportunity is here  
20 to change it, let's change it and let's make it  
21 friendly and let's be good to each other. And I  
22 understand that, but also knowing that if I write an  
23 agreement down today, my people are going to be able  
24 to go home knowing we reached that and they agreed  
25 upon that. So we look forward to dealing in that

1 fashion.

2 And it's going to affect Indian nations  
3 equally, because we're not just about ourselves.  
4 These things that we're fighting are big, but we're  
5 only so big. So as we deal with the consultation  
6 process, that's what I'm talking about, I want to  
7 hear some feedback just like we did before I sat  
8 down. I like that. Thank you. That's what it's  
9 about. Today we're building some communications  
10 now.

11 I've really got some really tough questions.  
12 You know, if we want to start it like that, I have  
13 no problem asking those questions. But a couple of  
14 them questions would go to Colonel Henderson.

15 Because I thought about you all night long.

16 (Laughter)

17 MR. C.J. CLIFFORD: You know, to make light of  
18 things, you know that we can't sit here all stressed  
19 out and like that. So -- and I know Colonel  
20 Henderson here is sitting there feeling some sort of  
21 power like that. We want to be comfortable, but  
22 also we want to be honest and we want this to be  
23 right. We want to know that every time the  
24 government sends a consultation notice out to us  
25 that we're going to be treated good this time.

1 Because consultation is a form in a way that has  
2 beaten my people for too many years. It's been  
3 dictating.

4 These items here, this is really a nice one,  
5 these two items. It leaves it open for discussion,  
6 not some packet you sent me -- you didn't even send  
7 me a packet. I just got a letter saying, "Well,  
8 this is what we're going to consult on." I come in,  
9 give my testimony, go away and never hear nothing  
10 about it but you start a program anyway whether I  
11 liked it or not. That's how it's worked. It's  
12 proven. So let's change that today, and let's keep  
13 this communication open.

14 As we go through and we have some hard  
15 questions, if somebody is asking too hard of a  
16 question, we'll ask them to break it down. But I do  
17 know that there's a few of those questions that we'd  
18 like to be addressed to the Army Corps. So let's be  
19 reasonable and try to balance that out today and go  
20 forward. Like I said, I won't go far here. And we  
21 can go ahead and start. If you have your list ready  
22 and you'd like to call your first speaker up, let's  
23 get with it.

24 MR. TRACY TOULOU: Sounds good.

25 (Applause)

1 MR. TRACY TOULOU: Thanks, C.J.

2 I think we're all here because we know, you  
3 know, the system hasn't worked real well. And I  
4 appreciate the feedback. And I count on feedback  
5 during the sessions.

6 So the first tribal leader on the list is Dave  
7 Flute from Sisseton Wahpeton.

8 MR. DAVE FLUTE: I'll use this mic so I can see  
9 everybody up here.

10 (Native language.) First, for the record, my  
11 name is David Flute, Chairman of the Sisseton  
12 Wahpeton Sioux Tribe. Lake Traverse (Native  
13 language).

14 We ask that today the discussions we have and  
15 the words that you hear, that it would give you some  
16 knowledge and understanding of our Dakota people.

17 You know, I read this, "We look forward to your  
18 feedback as to how our agencies and Federal  
19 Government as a whole can improve federal  
20 decision-making processes that affect tribal lands,  
21 resources and treaty rights and ensure those  
22 decisions are fully consistent with our obligations  
23 to tribal nations." For the record, you know, being  
24 over in Mystic Lake, I appreciate -- I'm not going  
25 to take up as much time as I did there. But knowing

1 that Appendix C is conflicting with Section 106,  
2 that really needs to be addressed. And I know  
3 redundancy can be boring at times, but there's some  
4 times if it's repeated over and over and over --  
5 like I see my brothers in uniform here, that  
6 training gets repetitious, but the more training you  
7 get, the more you hear it, it starts to really get  
8 enrooted into your thought process. So I would ask  
9 that those be really considered and looked at.

10 But also to add to that, you need to engage our  
11 tribal leaders. You need to engage the THPOs. You  
12 need to engage our legal teams. Because when you  
13 were talking, you mentioned you're recognizing that,  
14 our treaty rights and to ensure that those decisions  
15 are fully consistent "with our obligations to tribal  
16 nations". We are sovereign nations. We are  
17 sovereign nations, and you have to respect those  
18 treaties. Those are the law of the land. You know,  
19 your forefathers, our forefathers made those  
20 treaties with good consultation. They sat down the  
21 parameters.

22 And with our Dakota people and just for those  
23 in the audience, those that weren't here yesterday  
24 that heard me, when I say Dakota, I don't have to  
25 say Dakota, Lakota. It means everybody, "Dakota".

1 I just say it with a "D" dialect (Native language).

2 When they made those, there was good  
3 consultation. I believe that. But you have to  
4 understand there's a lot of promises broken. You  
5 hear that. That's what's happened for many years,  
6 so it's tough for some of the leaders to believe  
7 what the Federal Government is telling us. You tell  
8 us you're going to do one thing and you do something  
9 different.

10 And just to close, very briefly, that, you  
11 know, being a member, I served in Afghanistan. And  
12 I was at a few of those meetings when they meet with  
13 tribal leaders, tribal elders, the tribal leaders of  
14 those villages. And we called them tribal people.  
15 Those wells and schools and roads that are being  
16 built, they listen to those people there. Why are  
17 you not listening to the indigenous people in your  
18 own backyard? We're right here.

19 (Applause)

20 MR. DAVE FLUTE: Take care of us here.

21 It's appalling that the first -- President  
22 Bush, and this is -- you can research this. He  
23 ordered pilots not to bomb the sacred sites in Iraq.  
24 He ordered that. You need to respect our sacred  
25 sites here of our people. We're very hospitable

1 people, but when you make us mad, we get very, you  
2 know, we get very -- we get very upset because we  
3 love this way of life. (Native language)

4 (Applause)

5 MR. TRACY TOULOU: Thank you, Chairman. And  
6 thank you for your service and for all the many  
7 veterans I know who are in the room today. And I'm  
8 sure many of you will get up today. But thank you  
9 all for your service.

10 So next on the list is Dave Archambault,  
11 Chairman from Standing Rock.

12 MR. DAVE ARCHAMBAULT II: I brought my iPad so  
13 I could make sure that I cover everything.

14 I had our tribal council meet earlier this  
15 week, and we talked about what it is that we want to  
16 say. And we take this really serious what's  
17 happening here. We take it serious because it's an  
18 opportunity for us, for the federal agencies to hear  
19 us, not just for us today but so that we can change  
20 policies and we can change policy -- we can reform  
21 policies for the future so when we're no longer  
22 here, we can look back and say, "What happened?"  
23 And it's something like this that happened that's  
24 going to make a difference for our kids when we're  
25 no longer here.

1           So it's an honor and I'm thankful. It's an  
2 honor for me to be able to talk for our tribe and to  
3 hopefully give some dialogue so that you can hear  
4 what our issues are so we can make a better future  
5 for everyone.

6           So I'm going to read. And I usually don't read  
7 when I talk, but I wanted to make sure that our  
8 tribal council's message comes across and I don't  
9 forget. Because sometimes if I just talk, I forget  
10 a lot of the key points.

11           So the goal of this process should be simple,  
12 to make sure that the Federal Government does not  
13 approve infrastructure projects that harm our  
14 rights. Every federal agency must provide a fair  
15 process for meaningful consultation. Every federal  
16 agency must use tribal consultation to make  
17 decisions that actually protect our tribal rights  
18 and our tribal interests. The objective of  
19 consultation must be to find solutions that reflect  
20 full, prior and informed tribal consent.

21           Tribal consultation grew out of our opposition  
22 to DAPL. We oppose the Dakota Access Pipeline  
23 because of the importance of protecting our waters  
24 and Sacred Sites for the benefit of our children.  
25 While we saw that there are many good people working

1 in the Federal Government on these issues, the  
2 process itself seems broken. We saw that under the  
3 existing process, tribal interests can be completely  
4 ignored, which happened to us when the Corps of  
5 Engineers approved the Draft EA which ignored the  
6 Tribe even though the pipeline would cross Lake Oahe  
7 at the doorstep of our reservation. We have seen  
8 how important it is for consultation to take place  
9 at the beginning of the process and before key  
10 decisions are made, which did not happen with DAPL,  
11 where the pipeline route was changed to put us at  
12 risk without consulting with us at all. We have  
13 seen what happened when the Corps uses Appendix C  
14 regarding the National Historic Preservation Act  
15 which allowed Dakota Access Pipeline to  
16 intentionally bulldoze over our Sacred Sites. And  
17 we have seen how principles of environmental  
18 justice, which are intended to protect tribal  
19 communities from harm, are turned on their head and  
20 used against us. Overall, we have seen that many  
21 basic flaws have prevented tribal voices from being  
22 heard and tribal interests from being protected.

23 One big problem is that there's no common  
24 understanding among federal agencies of what  
25 constitutes meaningful consultation with tribes.

1 Different federal agencies have different views. An  
2 Executive Order to establish basic principles would  
3 be a good step towards correcting this. And such an  
4 order should make clear that tribal consultation  
5 must include tribes from the very beginning of the  
6 process. It should involve high level federal  
7 officials, be comprehensive and collaborative. But,  
8 most important, consultation must not just be a  
9 check-in-the-box exercise. Consistent with the  
10 trust responsibility, it must actually impact  
11 decisions and protect tribal rights. Consultation  
12 should be guided intentionally, internationally law  
13 principles -- consultation should be guided by  
14 international law principles that require full,  
15 prior and informed tribal consent. That must be the  
16 overall objective. The Federal Government must work  
17 with tribes to obtain tribal consent so that tribal  
18 rights and interests are protected.

19 It's difficult to have effective consultation  
20 if the federal personnel around the table do not  
21 know or understand the basic principles regarding  
22 tribes, treaties and the trust responsibilities.  
23 Sometimes it seems like federal officials simply  
24 lack any understanding of legal principles that we  
25 operate under. Federal officials who deal with

1 infrastructure approvals should be required to take  
2 training to learn about tribes and our governing  
3 legal principles. The Federal Government already  
4 does this for the State Department. When foreign  
5 service officers are sent overseas, cultural  
6 competence training is required. That kind of  
7 training would provide a basic underlying  
8 understanding that could provide for more effective  
9 consultation overall.

10 Our experience with DAPL shows some of the  
11 problems in how federal agencies address Section 106  
12 of the National Historic Preservation Act. The most  
13 fundamental problem is the Corps' Appendix C. Under  
14 Appendix C the Corps takes such a narrow view of  
15 what must be examined that tribal consultation  
16 becomes meaningless. Appendix C must be withdrawn,  
17 and the regulations adopted by the Advisory Council  
18 should be followed by the Corps.

19 And I would just say with Appendix C, we need  
20 to ask the Advisory Council -- the Corps needs to  
21 ask the Advisory Council how they deal with other  
22 federal agencies, because they do work with other  
23 federal agencies and it does work. But for some  
24 reason the Corps continues to use Appendix C.

25 And another thing with Appendix C, in

1 government-to-government consultation, we ask for  
2 government-to-government consultation and the Corps  
3 confuses that with Section 106, Appendix C. So when  
4 we confuse those two things and we try to blend them  
5 together, neither one of them get addressed so we  
6 don't have consultation.

7 Nationwide Permit 12 is intended to provide a  
8 shortcut for approving utility lines that cross  
9 waters of the United States but only where there are  
10 minimal environmental effects. This is not the case  
11 with crude oil pipelines. We have seen devastating  
12 impacts from hundreds of oil pipelines across the  
13 country, including Yellowstone and Kalamazoo spills.  
14 The shortcut process for Nationwide Permit 12 fails  
15 to protect our waters, our Treaty rights and our  
16 rights to protect our sacred sites. This process  
17 should be changed and Nationwide Permit 12 should  
18 not apply to crude oil pipelines. There is a  
19 separate consultation on Nationwide. So on  
20 November 30th we're meeting with the Corps at  
21 Standing Rock to have a consultation on Nationwide  
22 Permit 12.

23 The government looks at crude oil pipelines in  
24 a segmented way, never looking at cumulative impacts  
25 of the project as a whole. In the case of the

1 Dakota Access Pipeline, there were four different  
2 states, three separate districts of the Corps of  
3 Engineers, and the Fish & Wildlife Service, each  
4 looking at different parts of -- each looking at  
5 different parts as if there were unrelated projects  
6 and not a single pipeline. This piecemeal approach  
7 makes no sense and it places a particular burden on  
8 Tribes which are seeking to protect -- which are  
9 seeking to protect their interests. Federal  
10 agencies should not (sic) recognize that part of  
11 their responsibility to tribes -- the federal  
12 agencies should not (sic) recognize that part of  
13 their responsibility to tribes is to ensure that  
14 decision making is not so segmented that tribal  
15 rights get lost in the shuffle. A full EIS should  
16 be required on all crude oil pipelines that cross  
17 aboriginal, historic treaty or Reservation  
18 territory.

19 Tribes have historically borne the burden of  
20 federally approved projects, as federal decisions  
21 have always protected non-Indian interests at the  
22 expense of tribes. The existing Executive Order on  
23 Environmental Justice should provide a way to  
24 address this problem, as each agency is required to  
25 address whether, address whether federal acts

1 disproportionately affect tribal interests. But, as  
2 we have seen with DAPL, environmental justice is  
3 often applied in name only and tribal communities  
4 are still placed at risk. Part of the problem is  
5 that some of the tools and techniques used to  
6 evaluate environmental justice seem designed to  
7 address urban settings and don't apply to  
8 Reservations or rural settings. A half-mile buffer  
9 zone may make sense in evaluating the environmental  
10 impact for a highway in a city, but it makes no  
11 sense to say that a half-mile buffer protects  
12 Standing Rock from oil spills a half mile away up  
13 the river. A better implementation of environmental  
14 justice principles is needed. We suggest that the  
15 Council on the Environment -- we suggest that the  
16 Council on Environmental Quality, EPA and the  
17 Interior join together to issue appropriate guidance  
18 for all federal agencies on environmental justice  
19 principles for Indian tribes.

20 Whenever there's new legislation that  
21 establishes a process for infrastructure decisions,  
22 tribal participation is vitally important. The FAST  
23 Act which -- was enacted in December 2015 to provide  
24 a streamlined federal permitting process for  
25 renewable and conventional energy projects. But as

1 the process is being established under the FAST Act,  
2 tribes are being left out. The FAST Act Steering  
3 Council needs to include tribal governments. And  
4 there should be a Tribal Trust Compliance Officer  
5 who would be responsible for identifying tribal  
6 concerns and working in collaboration with tribes to  
7 address those concerns.

8 While much can be done under existing law,  
9 legislation provides a more permanent solution to  
10 some of these problems. For example, while an  
11 Executive Order defining principles for consultation  
12 would be beneficial, for the long term, legislation  
13 codifying those principles could be even, codifying  
14 those principles could even be better. Legislation  
15 could also be helpful in broadening the role of the  
16 Advisory Council on Historic Preservation in  
17 resolving disputes over the Area of Potential  
18 Effects and other matters, or to clarify the need  
19 for an EIS for crude oil pipelines.

20 We appreciate that this Administration has  
21 recognized that more is needed to protect tribal  
22 rights in connection with federal decisions on  
23 infrastructure projects. As we look back on a Joint  
24 Statement issued by the Department of Army,  
25 Department of Interior, Department of Justice on

1           September 9th, we hope that two things can be  
2           accomplished. First, we urge the government to make  
3           the right decision and deny the easement that DAPL  
4           is seeking to cross Lake Oahe. And second, we urge  
5           you to use this nationwide consultation to establish  
6           a better process to protect tribes across the  
7           country with their lands, their waters and their  
8           sacred sites.

9           I just want to thank everybody for taking the  
10          time to listen while I read. Reading is not always  
11          easy, but I wanted to make sure that everything got  
12          across.

13          I could have went through each one and we could  
14          say, Do you agree to this? And I know that will  
15          take forever for us to do that. And this  
16          consultation process that we have is just that we  
17          need to put our statement out there, but there isn't  
18          that back and forth and -- not yet. So in the  
19          future maybe it's something that we can work on,  
20          if -- like what C.J. was recommending, there's so  
21          many points and so many issues with this, that it's  
22          difficult to know if you're hearing. The only thing  
23          that we can hope is that it's reflected in the end.

24          And so I just want to thank everybody. And  
25          that's all I have.

1 (Applause)

2 MS. JO-ELLEN DARCY: I want to just respond,  
3 Mr. Chairman. I just wanted to respond, in  
4 particular to Appendix C. I've been to three of  
5 these listening sessions and these consultations and  
6 have had folks at all six. And on all of those, the  
7 issue of Appendix C has been raised. And I just  
8 want everyone to know that we at the Army Corps of  
9 Engineers are working with the Historic Preservation  
10 Council to improve Appendix C. We've heard it  
11 repeatedly, so clearly it needs to be addressed and  
12 addressed soon. So I just want you to know that  
13 we're doing that.

14 MR. TRACY TOULOU: There was a lot there, and  
15 we really appreciate the depth of the feedback. If  
16 you do have a written statement or something to give  
17 of something you're reading from, it would be great  
18 if we could get a copy for the court reporter so we  
19 can make sure -- she's taking everything down, but  
20 it's great to have the actual document to put in the  
21 record if we can. So -- and if there's a problem,  
22 talk to me afterwards and we'll figure out how to  
23 get it.

24 So next up is Chairman Trudell from Santee  
25 Sioux.

1 MR. ROGER TRUDELL: Greetings to all of you  
2 that come for consultation. My name is Roger  
3 Trudell. I'm the Chairman of the Santee Sioux  
4 Nation in Nebraska.

5 And I know that there will be a lot of  
6 documentation, you know, submitted on behalf of the  
7 Great Sioux Nation and the Great Plains Tribal  
8 Chairman's Association, so I'm just going to take a  
9 few minutes to talk on a personal basis, I guess.

10 As you heard earlier, you know, we're really  
11 interwoven people. As you heard in the prayer this  
12 morning, the gentleman that gave the prayer, that he  
13 had relatives from the 1862 fight with the United  
14 States Government. The Santee Sioux Nation, we  
15 weren't called it at the time, but that's who we  
16 are, the (Native language) people. And we fought  
17 the United States Government because they were doing  
18 much like is going on today with our people that are  
19 up in Standing Rock who are trying to protect the  
20 water. They were oppressing us, trying to starve us  
21 to death, so we took arms against them. And the  
22 Hunkpapa people out here, the great visionary  
23 Sitting Bull, took our people in. A lot of our  
24 people he took in. Our people were scattered in all  
25 four directions. We suffered the largest massacre

1 of individuals in this country. 38 men were hung in  
2 a single hanging, December 26, 1862, the day after  
3 Christmas, entertainment for the people the day  
4 after Christmas. That wasn't good enough so they  
5 went and hung, kidnapped two of our leaders out of  
6 Canada and brought them back and hung them.

7 So we have a lot of mistrust in the United  
8 States Government. And the treaties that have been  
9 signed, you know, because I've heard with my own  
10 ears, "Well, those are just papers. You know,  
11 there's no value to them anymore." Those papers,  
12 those treaty papers are just as valuable as the  
13 Constitution of the United States. That is what  
14 authorized them. That's why they need to be  
15 recognized. And that's why when you sit down to  
16 consult with the tribes, you've got to consider the  
17 treaties. You've got to consult with the tribes  
18 about it.

19 These infrastructure projects, what effect are  
20 they going to have on the tribes? Whatever affects  
21 the Hunkpapa people up here at Standing Rock is  
22 eventually going to affect all of us down south as  
23 the river goes. Those all need to be taken into  
24 consideration.

25 And you've heard all the speakers talk about

1 the generations that follow us. The decisions to  
2 protect need to be made that protect our people for  
3 the next several generations, 20 to 25 years, so  
4 you're looking at 140, 150 years plus that when you  
5 put something in the ground or you take something  
6 out, is that going to impact our people in the  
7 future? If you put something in the water, is that  
8 going to impact our people like the dams have  
9 impacted us? And you've taken the best land of a  
10 lot of the tribes and they're all under water. We  
11 have hills and that's about it. All of those things  
12 have an impact on our future generations.

13 So I guess just in light of the framing paper  
14 that's out for the future consultations, it has to  
15 be a much better process. It can't be a Dear Tribal  
16 Leader letter.

17 I know that the colonel made the statement  
18 yesterday he followed up with every tribe on the  
19 basin, 28 I believe he said. Well, if something  
20 doesn't come across my e-mail, there's a good chance  
21 I'm not going to see that until it's already passed  
22 and it's history. So the process needs to start  
23 much earlier and has to take much more value on what  
24 the tribal people are saying. And it has to be  
25 based upon those treaties which are valid, as valid

1 as the Constitution of the United States.

2 Mitakuye oyasin.

3 (Applause)

4 MR. TRACY TOULOU: Thank you very much.

5 C.J.?

6 MR. C.J. CLIFFORD: I have a question for  
7 Secretary Roberts.

8 Secretary Roberts, under the current process  
9 for federal infrastructure projects, how is it that  
10 the Department of Interior ensures that treaty  
11 rights and federal trust responsibilities are  
12 considered and adhered to?

13 MR. LARRY ROBERTS: So we do that in a number  
14 of ways, but I think one of the reasons that we're  
15 having this consultation and series of consultations  
16 is because we don't have a uniform way of doing it  
17 every time. So, for example, sometimes tribal  
18 leaders and tribal leaders in this room have come to  
19 our office and said, you know, "We're concerned  
20 about a particular project, and we need the  
21 Department of Interior to become engaged." We learn  
22 of things that way. We become engaged with our  
23 Solicitor's Office, as well as with our office.

24 There's other times where federal agencies may  
25 reach out to us and ask, you know, "We're working on

1 an infrastructure project, and we want to know how  
2 to properly consult with tribes."

3 So it comes across in a number of different  
4 ways. But I view the Department of Interior as not  
5 only playing a role with the Department of Justice  
6 and other departments to say that this trust  
7 responsibility isn't just -- the treaties aren't  
8 just with the Department of Interior. The treaties  
9 are with the United States Government, and the  
10 United States Government has an obligation to uphold  
11 those trust and treaty responsibilities, and so  
12 informing federal agencies about that and working  
13 with tribes.

14 So we don't have a uniform process, but I think  
15 that that's something that we're all working on  
16 together to figure out, these infrastructure  
17 projects as they're moving forward, how do we learn  
18 about them, where they're being cited, which federal  
19 agency has a role in all of those and how do they  
20 impact Indian country.

21 MR. C.J. CLIFFORD: Thank you.

22 MR. TRACY TOULOU: Okay. Next is Casey Camp.

23 And excuse me, I'm going to butcher names  
24 because my handwriting is not great.

25 But Casey from Ponca, if you're here, could you

1           come up?

2                   (No response)

3           MR. TRACY TOULOU: Okay, we'll come back. Oh.

4           MR. LARRY WRIGHT, JR.: My name is Larry  
5           Wright, Jr. I'm the Chairman of the Ponca Tribe,  
6           Nebraska. And I'm working with our relative Casey,  
7           councilwoman for the Ponca Tribe of Oklahoma. We  
8           share a common history, culture, tradition, our  
9           homelands on the Niobrara and Missouri River on the  
10          border of Nebraska, South Dakota.

11                   And as we stated yesterday, what affects the  
12          rest of the Missouri River tribe affects our  
13          homeland as well, our sacred sites, our sacred  
14          burial sites. And even though we're an example of  
15          Federal Government policies to terminate us, move us  
16          out of our homelands, we're still here today. And  
17          the miles that separate us don't change the fact  
18          that our Ponca relatives in Oklahoma have that  
19          connection to our homeland as well. Our burial  
20          sites are still there on the banks of the Missouri,  
21          on the banks of the Niobrara and could be  
22          affected -- will be affected when there's a leak in  
23          our rivers impacted by that.

24                   And so at this time I just wanted to stand here  
25          with my relative and as she has some prepared

1 statements to say. And as a Ponca Nation as a  
2 whole, we share in the concern and solidarity for  
3 these issues and looking at how this consultation  
4 affects us in moving forward with new infrastructure  
5 consultation.

6 And I just wanted to say real -- as an example  
7 of one thing that we were involved with that was a  
8 good thing is there's a road between our homeland in  
9 the Santee in Nebraska that the Corps was involved  
10 with. And consultation started early in that  
11 process. We were brought to the table. And that's  
12 the way it should be, but that's not always the  
13 case. And our tribes were able to work together to  
14 look at that.

15 And people look at the cost impact of projects  
16 and sometimes they want to take the shortcut and,  
17 "We'll put it over on this ridge because it's more  
18 cost effective." But we have burial sites there.  
19 Those are sacred sites to us. And so that process  
20 has been drawn out. And that's an example of how  
21 this situation can work between tribes and the  
22 Federal Government and the agencies. And that's --  
23 but that's the exception to what usually is done.  
24 And so those are the kinds of things that we would  
25 like to see improve and be successful when we're

1 brought to the table early in the process so we can  
2 provide that, so we can show this is what impacts us  
3 that people don't know about that are passed down  
4 through our oral history and we know where those  
5 things are.

6 So with that, I would like to turn this over to  
7 Councilwoman.

8 MS. CASEY CAMP-HORINEK: (Native language)  
9 relative, we're speaking. That's our traditional  
10 way. But as a councilwoman for the Ponca Nation of  
11 Oklahoma, I also have the honor of being able to  
12 speak on behalf of my nation. Ponca means sacred  
13 head. We were part of five nations at once, the  
14 (Native language). We also have many other  
15 relatives that lived along the Missouri as we did.  
16 We called it (Native language).

17 I want to say thank you to each one of you.  
18 You know, I was observing you from the back there  
19 and to see your attentiveness is really gratifying.  
20 I appreciate that a great deal.

21 I want to say thank you to my relatives that  
22 are indigenous to this area for allowing me to be in  
23 this portion of the earth and to stand before you  
24 and to say a few words.

25 I have a paper prepared from my nation that I

1 will give to your stenographer so that she has that,  
2 but I came here just to speak on behalf of my folks.

3 Also proudly wearing -- I don't know where  
4 Russell is. I think he was Standing Rock 136. I'm  
5 Standing Rock 138. I was there because (Native  
6 language) is sacred to us, the smoking water.  
7 (Native language) is water. (Native language) is  
8 smoke.

9 I was telling someone just today that when we  
10 first began to travel as environmental activists and  
11 activists to stand up for the rights of the silent  
12 ones, for those with no voices, those that walk on  
13 four legs, those that swim within the waters, the  
14 sacred water itself, those with wings, those creepy  
15 crawlers, those that burrow, and the oil and the gas  
16 itself, the sacred air, none of those are being  
17 listened to by any of you at this moment, but our  
18 people with indigenous knowledges that our ancestors  
19 have passed to us have ways through ceremony that we  
20 understand that it is a time of change, a time of  
21 purification. Scientists call it climate change,  
22 and we listen to them because they're learning from  
23 us. They're learning to be able to interpret those  
24 signs that our people have already been talking  
25 about for generations.

1           That there in Oklahoma, by the way there's 39  
2           federally recognized tribes there, 36 of them from  
3           forced removals, including my people, and yet  
4           there's nobody coming to Oklahoma to listen to those  
5           voices.

6           This consultation process has started from the  
7           top down, like everything else has. So respectfully  
8           I want to say to you that it would be nice to be  
9           included in that consultation process by being  
10          consulted with about the process itself.

11          When we come here today to speak on behalf of  
12          our people, I remember when I was a young woman and  
13          I traveled up north to the sun dance with my nephew,  
14          John Roy would be there sometimes. He'd be living  
15          with the Poncas down there. And we'd go up to my  
16          brother Lenny Crow Downs (phonetic) after Wounded  
17          Knee in '73 and my (Native language), my mom's  
18          sisters. We're the first generation born after our  
19          forced removal, same as (unintelligible). And the  
20          only thing that they'd asked me to bring back is  
21          sacred sage from the circle, the prayers, and a  
22          little bit of water from (Native language) so that  
23          they could bless themselves with their homeland  
24          waters. That's how we feel. That's how sacred  
25          earth is to us. That's how much the knowledge and

1 the deepness and awareness of what water truly is,  
2 water is life. (Native language), in Ponca that  
3 tells you that not only are you the container of  
4 water and the container of life but life is the  
5 container of you and water is the container of you  
6 and none of it is separate from one another.

7 So those with roots that breathe for us, we're  
8 here to speak for them as well. All of those things  
9 that are part of creating the sacred system of life  
10 have been disturbed by what is happening within the  
11 Ponca Nation and other nations that bear an undue  
12 burden of the environmental genocidal processes  
13 created by the extractive industry.

14 We live where Conoco Phillips is. There's a  
15 nest of pipelines underneath us coming from the  
16 1920s, '30s, '40s, '50s, '60s, '70s, '80s, '90s  
17 2010s, 2020s almost and yet they're going to try to  
18 put more through. We have had 3,000 earthquakes  
19 this year, one a 5.8, one a 5., directly associated  
20 with injection wells. That's going to happen up  
21 here, too, where fracking is going on, where the  
22 earth herself is shrugging her shoulders and saying,  
23 No more. We can't handle it. It's going to kill  
24 us.

25 What is happening to the infrastructure of the

1 pipelines when the earthquakes are happening? I  
2 know that the infrastructure of the water lines  
3 underneath (unintelligible) Oklahoma have been so  
4 disturbed that we've had to get emergency grants. I  
5 know that the water has been so disturbed that we've  
6 had five fish kills in the last two years going  
7 through our community, and yet the Department of  
8 Environmental Quality and the Department of, the  
9 Environmental Protection Agency have not found a way  
10 to do the testing other than for organics, as if  
11 algae blooms are responsible for everything and that  
12 the fracking technology under the (unintelligible)  
13 loophole has not hidden the 500 different  
14 ingredients that go into fracking, that go into the  
15 ground water and when the earth shakes, it's shook  
16 free.

17 I can tell you that today my grandson, Preston  
18 Metais (phonetic) Antone Williams is in the hospital  
19 down there for ten days, got another two weeks  
20 maybe, from E. coli from the last earthquake that  
21 happened that poisoned the well water. These are  
22 true and real issues that come around about the  
23 water.

24 So respectfully to those citizens that depend  
25 on the oil industry and have to support the

1 pipelines coming through, I ask you to ask them for  
2 adjust transitions. To say, Don't blame us when you  
3 think that those 50 permanent jobs that are going to  
4 come with Dakota Access Pipeline, not the thousands,  
5 temporary ones that travel with the pipelines but  
6 with those 50 that are there, that those workers  
7 should be trained in adjust transition to renewable  
8 energies. Don't look at us who are protecting the  
9 earth, the land, the water and say that we're  
10 responsible for them losing jobs. Look at the  
11 extractive industry where the top 1 percent are  
12 going to be able to make money on the backs of my  
13 babies and their generations to come.

14 I also have some notes here. So the  
15 consultation process: The consultation for  
16 Keystone XL that came through the territory of the  
17 traditional territory of our (Native language) Ponca  
18 and (Native language) Ponca, I'm from the hot  
19 country; they're from the cold country, but we're  
20 one. When that started to come through, we began to  
21 protect through the sacred ways of the coordinate  
22 itself. We called upon the treaties with our  
23 relatives from the Yankton area because they  
24 caretake the same land as we did when we lived along  
25 the Niobrara, between the Niobrara and the (Native

1 language), the swift running water and the smoky  
2 water. The smoke, my folks say, is the spirits  
3 moving along there of the ancestors that are  
4 supposed to guide our prayers. When we get up in  
5 the morning and we see that on (Native language).

6 The consultation process that was, I don't know  
7 how, inflicted on the Ponca Nation of Oklahoma was  
8 two Poncas, pretty sketchy guys. We know our own.  
9 Pretty sketchy guys. I really like their families,  
10 though, so I'm not going to tell you their names.

11 (Laughter)

12 And the officials from Keystone XL,  
13 TransCanada, met with these two individuals. They  
14 called that consultation. And those two individuals  
15 may have signed a paper; they may have reached under  
16 the table and received a little compensation. But  
17 what the Ponca Nation of Oklahoma got for Keystone  
18 XL coming through was used playground equipment.  
19 That was called consultation.

20 So we're asking for something a little bit more  
21 real. Maybe it's not consultation. Maybe it's  
22 negotiation. Maybe it's not consultation. Maybe it  
23 is consent, consent from whatever tribal forum that  
24 we have, whether it is the meetings of the  
25 grandmothers, whether it is a meeting of the tribal

1 council, whether it is a meeting of the entire  
2 tribe. Whatever it takes for us to give consent,  
3 then maybe you could say you consulted with us.

4 There was a 5.8 in Pawnee. There was a 5.0 in  
5 Cushing, the crossroads of America where the  
6 (unintelligible) people live. Those were manmade  
7 earthquakes. Those were induced earthquakes. None  
8 of the tribes down there are being able to speak to  
9 you. There are other pipelines trying to come  
10 through there. We need that way of saying, We're  
11 going to listen to you in a meaningful manner.

12 So the Ponca Nation, the Pawnee Nation both  
13 passed resolutions recently, ours in February of  
14 this year, 2016, the Pawnees around that same period  
15 of time, to put a ban on fracking injection wells  
16 and this new process called dewatering. If you  
17 haven't heard about it, watch for those words.  
18 Dewatering is another way the extractive industry is  
19 going to do fracking. They put four wells in the  
20 corners of 160 acres. And it breaks down -- when  
21 they suck the water into those wells, it breaks down  
22 the center and creates a sink. Theoretically then  
23 this extreme energy process will allow oil and gas  
24 to run through the center, which they extract, which  
25 brings up the radioactive water, which creates a

1 situation for injection wells where methane gas is  
2 released into the air. We have over 10,000  
3 injection wells in Oklahoma. Around the Ponca  
4 Nation where my son Micasee (phonetic) went out and  
5 did testing with his super infrared camera, we found  
6 that 30 out of 30 within a half a mile of our tribal  
7 headquarters, 30 out of 30 are leaking methane gas.

8 So there is so much going on with the  
9 indigenous nations having to bear the burden of all  
10 of these things that we need to say more about  
11 what's going on. Why are we up here? Why were we  
12 arrested at Standing Rock, other than my relative  
13 Russell getting us involved as observers?

14 (Laughter)

15 Because (Native language) affects us all,  
16 18 million people, ranchers, farmers, the  
17 bread basket of America that's going to feed us all  
18 are being impacted by what's going on there. The  
19 nations of my people, the (Native language) Ponca,  
20 these relatives, they're all being impacted by that.

21 And on top of that, Conoco Phillips is on Ponca  
22 land in Oklahoma. And Conoco Phillips, Phillips has  
23 a one-quarter interest in an energy transfer company  
24 up here or DAPL. And who has an interest in  
25 Phillips? Our new President elect.

1 Harold Hamm who lives in Oklahoma brings train  
2 bombs from the Bakken shale fields through  
3 Oklahoma, through the Ponca community, through the  
4 White Eagle community, through Marland. A half a  
5 mile away from my grandchildren those train bombs  
6 are going, and then they're going to other  
7 indigenous nations. If we had free, prior and  
8 informed consent, we would have said no.

9 So with the resolutions that we've passed, and  
10 I've given it to everybody with initials, the BLM,  
11 the BIA, the EPA, the OCC, the DEQ, probably more  
12 initials, I don't know, starting with the United  
13 Nations when we were there visiting with others from  
14 your agencies, we have not got any teeth in the laws  
15 that we're making in our own homes. If we're saying  
16 no and the Oklahoma Corporation Commission is saying  
17 yes and the Federal Government is ignoring us,  
18 there's a serious breakdown in our sovereignty that  
19 has to be addressed.

20 Mary Fallin, the governor of Oklahoma, has said  
21 that the injection wells and the earthquakes may or  
22 may not be related, but she made a law that said  
23 that no municipalities in Oklahoma could put a ban  
24 on fracking and injection wells. We of the 39  
25 tribes are beginning to try to create a coalition to

1 protect the ranchers, farmers and municipalities  
2 around us, because somebody has got to do this.  
3 When there are 3,000 earthquakes in a small area  
4 like we live, you cannot imagine the fear, unless  
5 you've been up there to Standing Rock and, you know,  
6 the cops are coming down and the National Guard is  
7 chasing you and there's tear bombs, tear gas,  
8 tasers, tanks, snipers, then you get a little taste  
9 of the fear that we live in from the earth shaking.

10 But there's something seriously wrong with the  
11 treatment of the indigenous people of this world in  
12 general but of the United States it is a shame that  
13 we have to carry around a stupid card that  
14 guarantees us the right to be part of our own  
15 citizenships when we self recognize, when we know  
16 who belongs to who.

17 I didn't ask this young man, So you say you're  
18 (Native language) Ponca? Whip out that CDIP and  
19 prove it.

20 (Laughter)

21 I told him, "I know who your relatives are."  
22 That's how we know. That's how we identify. So  
23 unless you have a European identification card, only  
24 then can you understand where the injustices have  
25 begun when the Bureau of Indian Affairs was incepted

1 under the War Department and we feel oftentimes that  
2 it still operates from that particular place.

3 We're asking that our traditional knowledge be  
4 taken into account, because that traditional  
5 knowledge will help guide the world back into  
6 balance again. When we sit in Oklahoma and we see  
7 armadillos that weren't there one generation ago,  
8 they all were in Texas, all of us see the difference  
9 in the migration, the timing of the snows. You see  
10 that, too. But we have chronicled that through oral  
11 tradition through lifetimes, and we're willing to  
12 share that with you.

13 We are asking that the United Nations  
14 Declaration on the Rights of Indigenous People not  
15 only be signed onto and recognized but implemented  
16 in the United States, implemented in the United  
17 States, and particularly that area that offers us  
18 free, prior and informed consent.

19 And remember, remember, if our treaty rights  
20 are upheld, if our indigenous rights are upheld,  
21 your great, great, great, great, great grandchildren  
22 will benefit from this. This is not an indigenous  
23 issue. This is a possibility for human life to  
24 continue to be part of the sacred circle, the sacred  
25 system of life. We choose that. We ask you to

1 choose that as well. (Native language)

2 (Applause)

3 MR. TRACY TOULOU: Thank you.

4 Okay, next up we have Willie Kindle from  
5 Rosebud Sioux, Chairman.

6 MR. WILLIE KINDLE: Good morning, everyone.

7 It's good to see all of you back here again after  
8 our session yesterday. Our guests over here,  
9 welcome. Good to see you all back. I hope you had  
10 a good night's rest. I hope you've got your  
11 listening ears on. Thank you.

12 You know, I've been around Rosebud for many,  
13 many years now, many, many terms as a tribal  
14 president down there, so I've been to many, many of  
15 these kind of sessions. I guess I can't count them  
16 anymore there have been so many. But we've always  
17 came with our hopes and prayers that we'd be  
18 listened to and that maybe our words were going to  
19 be, some action would be taken on what we request.

20 So many times we get some time here at the  
21 podium and we get a chance to leave some testimony  
22 out at the front desk, and then we go home. And we  
23 expect to hear from the Federal Government saying,  
24 We heard you. We listened to you, and your  
25 testimony made a difference. We're going to listen

1 this time. We're going to do something about it.  
2 But I guess I can't count the times that that's  
3 happened for us down in Rosebud. And I see my  
4 friend Harold Frazier shaking his head yes. I think  
5 Harold has been through it, too, and John Steele.  
6 John has been around a long time, and we always come  
7 to these same meetings, bring the same message, and  
8 we ask the federal people to listen to us.

9 I've kind of changed that thought. I know  
10 they're listening. They're actually listening to  
11 us, but what we want them to do is go back and do  
12 something about it, take some action that we're  
13 requesting. Don't just listen and leave. Let us  
14 know after we get home that you heard us, actually  
15 heard what we were saying and what we're requesting  
16 of you.

17 I don't want to take a lot of time up here  
18 because I've got some of my council people with me,  
19 and I know they are wishing to get up here and say  
20 something as well.

21 Some of our treaty people are here and our THPO  
22 people, and I want to give them all a chance to come  
23 up here as well.

24 I have something I'd like to read into the  
25 record. I submitted some other testimony out front,

1 at the front desk, but I have a couple of things I  
2 want to read into the record.

3 We're here today to look at a couple of things,  
4 promoting meaningful government-to-government  
5 engagement within the existing framework. We're  
6 here to look at that and try to fix that, repair  
7 that, if we can. And we need to identify any  
8 necessary changes to that existing framework to  
9 strengthen it so it works.

10 First and foremost, we need to adhere to the  
11 treaties. Those treaties are the supreme law of the  
12 land. Those treaties exist above anything else the  
13 Federal Government has. They can have statute after  
14 statute but it doesn't mean a darn thing when you  
15 put the treaty there. The treaty is up here, the  
16 statutes and everything else down below that. So  
17 it's imperative that the Federal Government adhere  
18 to that treaty.

19 True consultation must be held with tribes  
20 prior to any decisions that are made that affect our  
21 nations. Serious consideration of all decision  
22 consultation must be done with tribal nations. It's  
23 an absolute must.

24 Tribes have been provided with information that  
25 resulted after the consultations. And like I stated

1 earlier, that is seldom in our favor. And that's  
2 what we want to change.

3 But just a reminder, keep the treaties above  
4 everything else. Those have to be adhered to.  
5 Especially I think it's Section 11 of the  
6 '68 treaty, that is a real important part of that  
7 document that you need to look at, review and keep  
8 in mind.

9 There's also a very important part of the  
10 National Historic Preservation Act that was not  
11 adhered to. I think it was totally ignored. I want  
12 to read a portion of that for you if I may so it can  
13 go into the record here today. It says, The Corps  
14 is responsible for complying with the National  
15 Historic Preservation Act, including Section 110  
16 that requires federal agencies to establish a  
17 program to preserve, protect, identify, evaluate and  
18 nominate historic properties under their  
19 jurisdiction and control, including traditional  
20 cultural properties and historic properties to which  
21 tribes attach religious and cultural significance in  
22 consultation with others and, two, to give full  
23 consideration to the preservation of historic  
24 properties not under their jurisdiction or control  
25 but affected by the federal agency undertaking.

1           And the Corps' main system operations and  
2 maintenance actions must meet the definitions under  
3 Section 106. The Corps is required to consult with  
4 any Indian tribe that attaches religious and  
5 cultural significance to historic properties that  
6 may be affected by proposed federal undertaking.  
7 And that's under Section 6. You need to keep that  
8 in mind.

9           I'm going to keep my comments brief, as I said.  
10 Most of you in the room were across the hall  
11 yesterday when we had a very, very, very eloquent  
12 speaker get up and talk to us. I believe Mr. Broken  
13 Nose from Pine Ridge, I believe he's on a treaty  
14 council over there. On my way home last night I was  
15 thinking about what he said to us, what his message  
16 was. And the message he brought was not only for  
17 us, it was for our guests here as well. And I  
18 thought about that on the drive home last night. I  
19 went home and came back this morning. And I  
20 wondered how many people listened to him and fully  
21 understood what he told us. I think we all heard  
22 what he said, but what his message was, I don't know  
23 if we got, all of us got the message that Mr. Broken  
24 Nose gave us. But I think for our people here, it  
25 would be good if they could pull that tape up and

1 listen to that and see if they could let that into  
2 their hearts and minds what Mr. Broken Nose said to  
3 us yesterday. I think that was the most important  
4 part of any messages that came out of that meeting  
5 yesterday. And we need to listen to what he said  
6 and let it into our hearts and minds.

7 So having said this, I'm not going to take any  
8 more of your time here. I know we've got a lot of  
9 speakers and time is getting away from us.

10 But I want to say thank you to all of our  
11 fellow tribes that are here with us, and a  
12 particular thanks to Mr. Archambault and to  
13 Mr. Flute for coming down and saying what they had  
14 to say.

15 You know what, us older chairmans probably  
16 don't have a lot of years left in this position, but  
17 it does my heart good to see these young men  
18 stepping up to the front like they're doing. I know  
19 when my time is done down at Rosebud, I'm going to  
20 feel good knowing that some of these young people  
21 are coming forward to carry the fight to defend our  
22 treaties and our indigenous rights.

23 So having said that, I want to thank you for  
24 listening. And I'll give the mic to someone else  
25 here for comments.

1 Thank you for listening.

2 (Applause)

3 MR. TRACY TOULOU: Thank you, Chairman.

4 So after C.J., we're going to do one more  
5 speaker and then we're going to take a break so that  
6 everybody --

7 MR. C.J. CLIFFORD: Is that in the spirit of  
8 justice so they can look you over?

9 MR. TRACY TOULOU: Look us over, yeah, right.

10 (Laughter)

11 MR. TRACY TOULOU: That was it? Just  
12 repositioning? So the next speaker -- that was  
13 quick -- is Alan Nygard from the Mandan, Hidatsa and  
14 Arikara Nation.

15 MR. ALAN NYGARD: (Native language) I am Alan  
16 Nygard. I am the Chief Executive Officer of the MHA  
17 Nation. That is the senior non-elected official of  
18 our government. And on behalf of our tribal  
19 council, our government and Chairman Fox, I will  
20 read Chairman Fox's statement. A more detailed  
21 response will come to you before the deadline. And  
22 then I have a couple of comments also to make as an  
23 administrator of a government to a government.

24 The Mandan Hidatsa and Arikara Nation and all  
25 of the tribal governments here today have a

1 government-to-government relationship with the  
2 United States. Most days we implement our  
3 government-to-government relationship through tribal  
4 consultation. The wellbeing of our  
5 government-to-government relationship is measured by  
6 how successful and productive tribal consultation  
7 is. Looking around Indian Country, I have to say  
8 I'm very concerned.

9 Just a few years ago in 2009, President Obama  
10 directed all federal agencies to update and improve  
11 their tribal consultation policies. We are living  
12 and working under those policies now. How well are  
13 we doing? Across Indian Country I hear about  
14 agencies checking the box, ignoring tribal comments  
15 and coming to consultation meetings with their minds  
16 already made up. What is happening today does not  
17 live up to our government-to-government  
18 relationship. This is not meaningful consultation.

19 Just like Standing Rock Sioux and other Sioux  
20 Tribes, we have pipelines crossing our lands and  
21 threatening our waters. There is one proposed  
22 pipeline just upstream from our reservation and  
23 another going straight through the middle of our  
24 reservation. The oil pipeline companies want to  
25 cross Lake Sakakawea and the Missouri River, our

1 main water supply. It is critical that the Federal  
2 Government not grant any permits for pipeline lake  
3 or river crossings near reservation lands without  
4 engaging in proactive meaningful consultation with  
5 tribes whose water sources, sacred sites and other  
6 rights are affected. It is even more critical that  
7 the Federal Government does not grant pipeline  
8 permits under or across the lake or river within  
9 reservation boundaries without tribal consent. The  
10 tribes have sovereign authority over all reservation  
11 lands and the Federal Government must recognize the  
12 tribes' jurisdiction, concurrent with the Federal  
13 Government, to protect the health and welfare of its  
14 members and the safety and integrity of its water  
15 sources.

16 Recently, and without consultation, a pipeline  
17 was drilled under the lake and through the MHA  
18 Nation's reservation mineral estate without the  
19 MHA Nation's consent, consent which is required by  
20 federal and tribal law. The MHA Nation is now in  
21 litigation to protect its sovereign right to prevent  
22 the pipeline encumbrance on its trust land. This  
23 litigation could have been avoided, and tribal  
24 dollars saved, had meaningful consultation occurred  
25 and had the Corps of Engineers solicited our input

1 before granting the right-of-way.

2 Crucial to meaningful consultation under the  
3 policy is early consultation. We are brought in  
4 after the initial planning stage after crucial  
5 project components have already been developed or  
6 implemented. Without input at the planning stage,  
7 tribal consultation is little more than public  
8 notice and comment. The Federal Government must do  
9 a better job of soliciting tribal input at the  
10 initial planning stage. Only then can consultation  
11 be meaningful.

12 For these pipelines proposing to cross our  
13 waters, the Bureau of Land Management and Army Corps  
14 staff working in this area need training and an  
15 understanding of our deep bond to the lands and  
16 waters of the Missouri River. Without a good  
17 understanding of who we are and what we value, how  
18 can agencies' staff really hear what we are saying  
19 and use our comments to improve projects to make  
20 them better for everyone?

21 Agencies need to take the time, and be given  
22 the time, to document consultation, make revisions  
23 to proposed projects based on consultation, discuss  
24 these revisions with tribes, and find a common  
25 ground that upholds the federal trust

1 responsibility. Each agency office must be  
2 accountable for actually considering the information  
3 provided by tribes. That's consultation, a  
4 deliberate process that is a meaningful  
5 government-to-government exchange.

6 Our government-to-government relationship is  
7 dependent on federal agency staff and whether or not  
8 they take meaningful consultation seriously. As  
9 leaders of these agencies, they need to know that  
10 you will require meaningful, effective and  
11 accountable tribal consultation. Our lands, waters,  
12 cultural and natural resources depend on meaningful  
13 government-to-government consultation.

14 We appreciate consultation and hold it vital to  
15 our self-determination. On that note, I want to use  
16 this opportunity to commend the Corps of Engineers  
17 and the Bureau of Indian Affairs for engaging in  
18 consultation with my administration in an effort to  
19 return the surplus lands around Lake Sakakawea.  
20 Returning these lands is an important step toward  
21 righting the incredible injustice that was brought  
22 upon our people by the flooding of our heartland for  
23 the Garrison Dam. I express my sincere appreciation  
24 to the Corps and to the Bureau of Indian Affairs for  
25 working with the MHA Nation to restore these lands

1 to tribal ownership. Sincerely Mark N. Fox,  
2 Chairman.

3 As an administer of a government, we will  
4 always hold you to your trust responsibility and  
5 remind you of that. That must happen. You have  
6 that responsibility to all of our nations. It's not  
7 a one-way conversation. It's not a one-way street.  
8 It is a responsibility that the Federal Government  
9 and your agencies have to us, and we will always  
10 remind you of that.

11 We're looking for partners. And a partnership  
12 requires us to work together. Many times the rules  
13 are promulgated and they are delivered. That is not  
14 a partnership. We will not stand for that any  
15 longer. If you want to be our partner, we will sit  
16 down with you and we will come to the best possible  
17 conclusion that benefits all, but we will not stand  
18 any longer for that one-way street.

19 And finally staff: Every agency has a tribal  
20 liaison, but when I look at these tribal liaisons, I  
21 see white faces. I have nothing against non-native  
22 people, but a duck can never be a swan. A duck and  
23 a swan have webbed feet; they have feathers; they  
24 fly and they swim; they eat the same diet; they have  
25 bills, but they are not the same. They will never

1 be the same. Those people who are supposed to be  
2 tribal liaisons need to understand -- they need to  
3 have the ability, the knowledge and the  
4 understanding of who we are. Without that they  
5 cannot give you the consultation; they cannot give  
6 you the advice that you need in order to effectively  
7 deliver the services to our people.

8 Let me give you an example. Recently we had a  
9 discussion on some rural water lines on our  
10 reservation with the Bureau of Land Management and  
11 the BIA. The rule says that when those cultural  
12 surveys are done to satisfy NEPA requirements, the  
13 requirement is a master's degree archeologist or  
14 equivalent. I'm sorry, but our THPO office will  
15 know more about our cultural, sacred and historic  
16 sites than those master's degrees will ever dream of  
17 knowing about our reservation.

18 (Applause)

19 MR. ALAN NYGARD: But yet our THPO does not  
20 and cannot be recognized as providing input.  
21 There's something wrong with this. That's  
22 consultation. That's partnership. That's what we  
23 need to move forward. I hope moving forward that we  
24 can get there. But history has proven that maybe  
25 it's a crapshoot at this point.

1           We want to work with you. We look forward to  
2 working with you. We thank the Corps of Engineers  
3 for helping us. It was a long haul but we made it.  
4 We worked it out. And we thank you for that.

5           Mazagiddatts.

6           (Applause)

7           MR. LARRY ROBERTS: So before we take a break  
8 here, I just wanted to share a couple of thoughts  
9 about the dialogue that we're having today. One is  
10 a number of leaders have talked about the need to  
11 have federal competence, cultural competence  
12 training across the Federal Government. And  
13 speaking for the Department, I think that that makes  
14 a lot of sense. And it's something that I'm  
15 surprised that we're not doing already and that we  
16 should be doing. And we're going to need everyone's  
17 help in this room to do that in a right way.

18           I also wanted to touch upon, there was a  
19 comment about CEQ, the EPA and Interior working on  
20 environmental justice principles for Indian tribes,  
21 and that's something, again, that is very concrete  
22 that we can wrap our arms around and hopefully make  
23 progress on something like that as well because I  
24 think that that would go -- that's a critical piece  
25 of the puzzle.

1           Finally the last comment about tribes and  
2           tribal historic preservation officers not meeting  
3           whatever regulatory requirements were set some time  
4           back at some point, I know myself and my boss,  
5           Secretary Jewell, have been all about deferring to  
6           tribal leadership and tribal ecological knowledge,  
7           and so that's another concrete suggestion that I'm  
8           going to take back to see if there's a way we can  
9           make that common-sense change work very quickly  
10          before the end of this administration.

11           So with that, I don't know if there are any  
12          other comments.

13          Valerie?

14          MS. VALERIE HAUSER: Thank you.

15           I'd like to, in particular, address the comment  
16          about the qualifications for tribal historic  
17          preservation officers. If federal agencies are  
18          interpreting the various Secretary of Interior  
19          standards that apply to historic preservation, if  
20          they're applying them to THPOs, that's not correct.  
21          So I will commit the Advisory Council to working  
22          with the National Park Service to clarify the  
23          existing guidance about this. That's an easy fix  
24          for us, and I think that we can get it done close to  
25          the end of this administration. I'll commit to the

1 Advisory Council of making the clarification at  
2 least. And I'm sure Interior will be willing to  
3 work with us. Because THPOs should not be held to  
4 those standards.

5 In fact, the park service has in one or two  
6 places in other guidance a clarification that tribal  
7 expertise is a recognized and valid, I'm not going  
8 to say this correctly because I don't remember  
9 exactly what the guidance says, but tribal views are  
10 as valid as other views in the process basically,  
11 and that tribal experts do not have to have Western  
12 World degrees. And the ACHP's regulations  
13 themselves require federal agencies to recognize the  
14 special expertise that tribes and Native Hawaiians  
15 hold. So there's various places in federal law and  
16 guidance that clarify that.

17 I would also like to let you know that  
18 regarding the issue of cultural competency, the  
19 Federal Government has, for the past eight years, I  
20 think we launched it in 2008, through an interagency  
21 effort, the one under the Bush, the second Bush  
22 administration, developed a training course called  
23 "Working Effectively with Tribal Governments". It  
24 was free and available to the public. And the last  
25 time we checked, which was more than two years ago,

1 10,000 people had taken the course. We had to pull  
2 it down in September because we're working on major  
3 updates to it. It didn't include things like TLOA  
4 and violence against women. So we're updating it.  
5 We're hoping to find a new home so that it will be  
6 relaunched for free to everyone. Some agencies have  
7 taken the initiative to make that training  
8 mandatory. So I will tell you in the Advisory  
9 Council that it's mandatory for every single  
10 employee, even the support staff, to take that  
11 course. We have a hundred percent compliance with  
12 that. But I will also admit that we only have 40  
13 staff, so it's not like a department.

14 And through an interagency MOU, Memorandum of  
15 Understanding with the Departments of Defense,  
16 Interior, Agriculture, Energy and the Advisory  
17 Council, this summer we completed an online course  
18 on sacred, how federal agencies should treat sacred  
19 sites. The course was developed not by feds. The  
20 course was developed by subject matter experts from  
21 Indian country, including legal experts. So we're  
22 hoping that that launch -- that course may even be  
23 available today. It's to be launched any time now,  
24 again free and available to everyone. And so we  
25 will send out notification to everyone when both of

1 those courses are launched. They're only parts of  
2 the cultural competency training.

3 ACHP I can tell you will commit to continuing  
4 to work on government-wide training to create  
5 cultural competency in key federal staff.

6 Thank you.

7 MR. TRACY TOULOU: Okay, I think we're going to  
8 go to break.

9 Oh, do you have a question?

10 MS. CASEY CAMP-HORINEK: My notes also included  
11 something that I think is really important when I'm  
12 listening to your feedback is that I'm very blessed  
13 to be an elected official of my tribe, but I'm also  
14 (Native language). It's a women's society that's  
15 been passed down through my grandmothers. And I'm  
16 often represented from the traditional society  
17 within my tribe, as Faith Spotted Eagle has, when  
18 we've been in the United Nations and various other  
19 places where that is recognized. I would like to  
20 make the suggestion that you also consider not just  
21 government to government being an official  
22 leadership position but what we recognize as  
23 leadership positions of the traditional societies  
24 within our nations.

25 Thank you.

1 MR. TRACY TOULOU: Thank you.

2 Okay, let's take a quick break. I'm thinking  
3 five minutes. I know it'll be tough, but we've got  
4 a lot of people, and we want to make sure that we  
5 get to them.

6 (Recess taken)

7 MR. C.J. CLIFFORD: I guess I do have a  
8 question to continue some dialogue with everybody.  
9 I have a question for Colonel Henderson.

10 Colonel Henderson, you approved a permit for  
11 DAPL with the knowledge that it was opposed by the  
12 Indian tribes because of its effects on water and  
13 cultural resources. You also knew that the  
14 Department of Interior, the EPA and the Advisory  
15 Council on Historic Preservation were raising the  
16 same, exact same concerns. Since then it has blown  
17 up into an international incident with  
18 (unintelligible) and water protectors camping out at  
19 the base of the Missouri and hundreds of Native  
20 people thrown into prison for trying to protect the  
21 health of future generations. The question I have  
22 for you, Colonel Henderson, is: What would you do  
23 differently if you could rewind the clock backward  
24 one year?

25 MR. TRACY TOULOU: So we -- I'm going to step

1 in, C.J., because --

2 MR. C.J. CLIFFORD: Let's -- let's let it kind  
3 of play out. Because there's actually -- the DAPL  
4 part hasn't really been hit, so we'll just kind of  
5 open it up and keep it flowing, and then we'll go  
6 right back into testimony.

7 MR. TRACY TOULOU: Since we're having an open  
8 dialect here, the DAPL part of it, because it's so  
9 involved in litigation, it's something that's hard  
10 for us to talk about. But let me try something with  
11 your question and see if this works for you. So  
12 what if we asked the Colonel what if we -- based on  
13 this process, the changes we're going to make, how  
14 things would play out differently going forward?  
15 That way we don't have to talk about what happens  
16 there, what happened in litigation.

17 Can you do that, Colonel?

18 COLONEL HENDERSON: Yes.

19 Hey, first of all I just want to say good  
20 morning to everybody. I didn't do -- I didn't give  
21 a formal introduction earlier. I just want to say  
22 it's an honor to be a part of this process. Because  
23 as Chairman Archambault articulated very well  
24 earlier, this is a part of history and a part of  
25 major policy change and a higher level national

1 discussion and to get to the heart of the question  
2 that I feel was, that I personally and  
3 professionally feel was very needed.

4 Some of this stuff -- the last three listening  
5 sessions now that I've been a part of, we've heard  
6 these same things over and over again, Appendix C in  
7 conflict with the ACHP. We've heard there's not a  
8 consistent policy about how we define consent and  
9 what the role is for indigenous tribes and their  
10 treaties on their treaty lands and how we make  
11 decisions on infrastructure projects that go through  
12 treaty lands that might now be private land and what  
13 those authorities are.

14 We've heard that just because the Federal  
15 Government has the trust responsibility to consult  
16 with tribes, that sometimes the states who have the  
17 majority of these utility permitting obligations  
18 don't necessarily have the same obligations that the  
19 Federal Government does and that creates a very  
20 confusing conflict in all of this.

21 So from -- so from a perspective of how this  
22 may help, it would be extremely helpful for those of  
23 us and all the federal agencies and for people out  
24 in the field who are in charge of trying to  
25 implement this myriad of federal law that has

1 accumulated over the years. Some of it has come in  
2 conflict with each other. Some it has been,  
3 especially with regard to treaties, has been changed  
4 and updated and changed and revised. And to keep up  
5 with all of that is that if we can take the  
6 substantive input that's come out of all of these  
7 listening sessions and get an Appendix C that's in  
8 line with ACHP, if we can have an agreed-upon way  
9 that we consult about treaty lands, historic treaty  
10 lands and how we do infrastructure projects on  
11 those, if we could have an agreed-upon definition of  
12 what consent is that we all agree on and then all  
13 federal agencies have the same interpretation of it,  
14 for us in the field that would be extremely  
15 beneficial and would make our consultations --  
16 because our personal experience is we've gone  
17 meeting to meeting to meeting before any of this  
18 permitting was done, and we listened to the  
19 feedback. What we found sometimes with Valerie on  
20 the phone or Valerie's staff with us is we found  
21 these inherent conflicts cause problems throughout  
22 the entire process.

23 And as a member of the executive branch and the  
24 Corps of Engineers, what I've learned is that --  
25 well, we work -- our staff, we have great staff out

1 of Omaha that worked hard, worked extra hard to  
2 ensure that we were in compliance with the law and  
3 we were in compliance with NEPA. And I'm very proud  
4 of them for that. As we've gone through, sometimes  
5 we found that the federal laws that we were trying  
6 to comply with were either in conflict with each  
7 other or maybe they were ambiguous and there was  
8 certainly room for improvement.

9 And if there's anything good that's come out of  
10 this higher level discussion, that's come out of the  
11 DAPL pipeline permitting in North Dakota, especially  
12 with that crossing, is the fact that we're sitting  
13 here in this room and you have the open ears of some  
14 of the most senior officials in the Federal  
15 Government who have committed to do something about  
16 this. And I think this is a historically and  
17 inherently a good outcome in spite of whatever the  
18 permit decisions end up being.

19 So thank you for the opportunity for feedback  
20 and thank you for being here today. I'm proud to be  
21 a part of something that's historic.

22 MR. C.J. CLIFFORD: Thank you, Colonel  
23 Henderson. You made some really good points there,  
24 and I'm glad you had an opportunity to kind of shake  
25 that nervousness out here in the room and relax a

1 little bit.

2 (Laughter)

3 MR. C.J. CLIFFORD: You know, but just to make  
4 mention, as you talked about that there was some  
5 laws and policies that were not jibing and working  
6 right, you know, there's a Supreme Court ruling that  
7 is called the Canons of Construction that these laws  
8 and policies, laws, policies, regulations will be  
9 interpreted to benefit the Indians. So I think that  
10 would be something to kind of keep in mind as we go  
11 through this. And when these policy changes start  
12 coming forth, and they're needed, that we look at  
13 allowing us to put the interpretations so it will  
14 help us.

15 MR. TRACY TOULOU: Thank you. Okay, thank you,  
16 C.J.

17 And thank you, Colonel.

18 So what we're going to do is I'm going to  
19 announce the next three speakers in order because I  
20 think it's hard to keep track. And I'll keep doing  
21 that. I'm a wrestling coach and we have on deck and  
22 in the hole. That's how we keep track.

23 So the next guy up is Boyd Gourneau. On deck  
24 is Brandon Sazue. And in the hole is Chairman  
25 Frazier. So those are the next three up.

1           And so Chairman Gourneau?

2           MR. BOYD GOURNEAU: I'd like to ask the elders  
3 to forgive me for speaking before you today. I know  
4 that I'm honored and humbled to be before you today.

5           I appreciate you all coming. I'm going to keep  
6 it short because, you know, I'm a new term chairman  
7 and I'm here to learn, too, especially from the  
8 THPOs and the people here on the historic  
9 preservation, I appreciate your efforts.

10           And, you know, you folks, I know you're here,  
11 you know, to listen to what tribes have to say, but  
12 we're here to listen to what you have to say, too.  
13 So please don't -- you know, it's a two-way  
14 dialogue. You know, that's true consultation. We  
15 need that. And that's when we know we're on the  
16 same boat; we're on the -- you know, we can agree to  
17 disagree, but, you know, it's got to be together.

18           And I guess one comment, you know, is on these  
19 projects there's documents in place, the National  
20 Historic Preservation Act, the Programmatic  
21 Agreement. A lot of the tribes didn't sign up on  
22 the Programmatic Agreement but, you know, they're  
23 there, you know, and they're a good guide. And use  
24 what you can out of it, you know, to move forward.

25           And the most important document is the

1 treaties. You know, that should be written up here.  
2 When you consider anything in infrastructure, they  
3 should be, you know, first and foremost. You know,  
4 it's got to be taken into consideration.

5 You know, I'm here because my people allow me  
6 to serve. And I take that very seriously. And when  
7 you have a project on our dam, then you are staff in  
8 my position. You are serving us. And, you know --  
9 so without -- without our people, none of us would  
10 be here. And that's who we serve. And I'm very  
11 proud of that. And, like I said, I'm here to  
12 listen.

13 And I'm just going to close by saying the river  
14 is the subsistence to our existence. Water is life.

15 Mitakuye oyasin.

16 (Applause)

17 MR. TRACY TOULOU: Okay. So next up is  
18 Chairman Brandon Sazue from Crow Creek, followed by  
19 Chairman Frazier, and then President Steele.

20 MR. BRANDON SAZUE: First of all I want to  
21 thank you for giving Crow Creek the opportunity to  
22 speak to you. And, please, I mean no disrespect to  
23 anybody, I just want to tell you from my heart my  
24 experience and what everything means to us as Native  
25 Americans, as individuals, as people. Those

1 children there would be the reason. Water is life.

2 This number here says 137. I'll remember that  
3 for the rest of my life. That is sort of like my  
4 prison ID number now. I'll never get that out of my  
5 head.

6 For what -- what meaningful consultation means  
7 to me is all the things that happened in Standing  
8 Rock could have been avoided simply because  
9 politicians, people in higher positions listened to  
10 us. What's going on now is wrong. It's very wrong.  
11 How many pipes are going to go under the river? We  
12 have heard in the last couple days, "There's this  
13 many pipes already under there. They're this old.  
14 So what's going to make a difference of another pipe  
15 going under there?" When is enough enough? When  
16 are we going to stop?

17 We're all stewards of the land. We're stewards  
18 the water, especially the Army Corps of Engineers.  
19 And the laws need to change. They need to change  
20 where pipes aren't going under the river anymore.  
21 This is for our future, your future.

22 I see you all drinking coffee, water, juice.  
23 How do you make all of that? With water. How are  
24 we made? With water. How are our animals going to  
25 survive? With water. Our cattle, vegetation, corn

1 fields, everything, by water.

2 There are people up there sitting there right  
3 now in the cold weather, and it's soon going to  
4 blizzard. They're not going anywhere. I've been up  
5 there five days a week since August. I'm the  
6 Chairman of my tribe. I'm the leader of my people.  
7 So that's what leaders do is you go put yourself  
8 before your people.

9 And sometimes when we're elected into office or  
10 we serve a higher purpose in society, we forget  
11 about all of those things and we just want to follow  
12 the law; we just want to try to push it out so we're  
13 not involved. The only way we're going to make  
14 change is by what we're doing today, because that's  
15 what makes the difference tomorrow is by changing in  
16 here, by changing in here.

17 Look at what has happened, 15-year-old kids  
18 shot off horses, a tribal president, a tribal  
19 chairman being told to bend over and spread his  
20 cheeks, putting numbers on the (Native language)  
21 that was talking up here earlier. I got arrested  
22 with her. How would you feel if you'd seen somebody  
23 writing on your (Native language), your grandmother,  
24 your mother, writing a number? How would you feel  
25 when that same grandmother pulled into this Morton

1 County garage seeing her son locked in a cage? How  
2 would you feel about that same son seeing his mother  
3 put in a cage with about 20 people in each cage?  
4 That could have all been avoided had we had  
5 meaningful consultation --

6 (Applause)

7 MR. BRANDON SAZUE: -- had we all listened to  
8 each other in our hearts.

9 We've talked about how we grew up and where we  
10 came from. All of those people up there are going  
11 to have PTSD. There's different sorts. There's  
12 fighting in Morris.

13 Myself, I can't drive back now because it's  
14 going to snow. In 2009 I stayed out in a blizzard  
15 for three weeks and I got lost. So it's going to  
16 cost me a couple extra days, but I'm not driving in  
17 it.

18 I go to sleep every night now, and I'm sure all  
19 the people that got arrested on that day have  
20 trouble sleeping, too. These numbers are going to  
21 ring out in our minds forever, and as we were  
22 sitting there, to see these tractors running over  
23 your teepee poles, young kids pulled out of  
24 sweat lodges. What would happen if somebody came  
25 and pulled you out of your church while you were in

1 ceremony, while you were praying? It's horrible.  
2 And it's 2016 and it's happening right now as we  
3 speak. Money over human beings. We can't drink  
4 money. We can only drink water, because water is  
5 life.

6 Everybody here has decisions to make. When you  
7 go home tonight, you can't lie to yourself. We  
8 can't lie to ourselves. I could try to lie to  
9 you (indicating), I could try to lie to  
10 you (indicating) or you (indicating) can try to lie  
11 to us or you (indicating) can try to lie to us, but  
12 when you go home at night and go to sleep, you're  
13 not going to be able to lie to yourself. You're not  
14 going to be able to lie to the creator, whoever you  
15 may call him, God, Jesus, (Native language), whoever  
16 you call it, he knows everything. He put human  
17 beings on this earth to work together, to not -- not  
18 to fight each other.

19 This is supposed to be the United States of  
20 America. This is not our United States of America.  
21 We are from the Sioux Nation. We've been here since  
22 the beginning of time.

23 (Applause)

24 MR. BRANDON SAZUE: We were -- you know the  
25 history. And we all know it well. But still to

1 this day we're living that history. History is  
2 repeating itself.

3 On that day on October 27th you had the  
4 buffalo. You had the horses. You had the eagle in  
5 the sky. It looked like it was chasing the  
6 helicopter. Not too long after that an eagle landed  
7 at camp. Human beings, people were able to go up to  
8 that eagle and pet it, a wild eagle, for about up to  
9 an hour. How spiritual is that? What is Mother  
10 Nature telling us? That we're hurting the earth;  
11 we're hurting the water; we're hurting each other.

12 We like numbers. Numbers talk. People don't  
13 anymore. It's all about numbers. What are we going  
14 to do when that pipeline goes under the water and  
15 all of that oil has drained out from that part of  
16 the earth? What's going to be left? A big crater,  
17 emptiness, a big whole lot of emptiness because we  
18 took out what we're not supposed to take out. It's  
19 there for a reason.

20 We need to start looking at other renewables,  
21 green energy. That's the way we should be going,  
22 not hurting each other and not shooting 15-year-old  
23 boys, not writing numbers on grandmothers, not  
24 telling presidents to bend over, not seeing our  
25 people locked up in cages.

1           We've forgotten about each other. Up in  
2 Standing Rock it's all about each other. "Can I  
3 help you? What can I do for you?" It's not about,  
4 I'm getting pretty today for him or her. "Are you  
5 hungry?" So from a few hundred years ago to today,  
6 that's what it's about again. But it's modern day,  
7 people helping each other because of one thing,  
8 water.

9           Water is our life. Water is our resource.  
10 What's going to happen when that's gone? How many  
11 other pipes are going to be going under the river  
12 under our waters? Look at Flint, Michigan, I mean,  
13 there's so many stuff out there that we don't want  
14 to pay attention to, for whatever reason, because of  
15 money, because of politicians. Politicians are  
16 what's running us into the ground or what's dividing  
17 us. What divides us can unite us. We are divided  
18 because of water.

19           North Dakota is fighting its residents. South  
20 Dakota is fighting its residents. All these other  
21 places are fighting their citizens because of DAPL.  
22 When the Dakota Access Pipeline wasn't here, we all  
23 got along. We went on our daily routines. There  
24 was no shootings. There was no fighting each other.  
25 All of this divided all of us.

1           By the way, I served in the Army National Guard  
2 the 200th Engineer Company out of Pierre, so I know  
3 what it feels like to be in the military. I know  
4 what your jobs are. But are your jobs more  
5 important than life? Are your jobs more important  
6 than those children or your children? It's not  
7 worth it. It's not worth it. We're all human  
8 beings here. We're all people.

9           As a leader, I slept with my, in the camp up  
10 there five days a week. It's so humbling. You  
11 can't explain the experience of people uniting, of  
12 people being together. You can't explain that.

13           We at Crow Creek are about three and a half  
14 hours from Standing Rock by the Big Bend Dam.  
15 There's hydro power there but yet we pay the  
16 largest, one of the largest electricity bills in the  
17 United States. We were removed from our bottom  
18 lands and put on top. We were forced to  
19 concentration camps. We were given enrollment  
20 numbers. 342UU002254, that's my number. My other  
21 number is 137. How many more numbers are we going  
22 to get? How many more numbers are we going to keep  
23 making? So most of this could have been prevented  
24 had we had meaningful consultation.

25           I didn't write nothing down because I want to

1 speak to you from my heart as a human being, as a  
2 person, as a grandfather to two girls, as a human  
3 being, as a leader of my tribe, as part of the Oceti  
4 Sakowin, as a human being, as a veteran of the  
5 United States Army. That's who I am. I didn't get  
6 to my place by not doing anything.

7 And especially fighting each other, look at  
8 this world. Look at the protests around the globe.  
9 Look at the protests. People are speaking up.  
10 They're not going away. We are on the verge of  
11 civil war, whether we want to believe it or not. If  
12 we don't do something now to stop it now, we are  
13 going to spin out of control, because we are  
14 spinning out of control. When we have no feelings  
15 for 15 year olds, shooting them off horses, when we  
16 have no feelings for that (Native language) that was  
17 standing up here, when we have no feelings about our  
18 own people in our own backyard, who's going to  
19 suffer? Our people, our animals, our land, our  
20 water, Mother Earth. And here we are killing each  
21 other and abusing each other. How can we stop that?  
22 We can stop that right now. We can start -- this  
23 would be a start to stop that right now.

24 How would you feel if somebody did that to your  
25 grandmother? It's killing me on the inside. They

1 charged me with a felony, conspiring to harm by  
2 fire, me and Russell, Ben, the lady from the Ponca  
3 Tribe, all of us with families, \$1,500 cash bond. I  
4 got paid on that Friday, the day after I got  
5 arrested, so I had the money to get out, but I  
6 couldn't bond out because I couldn't get out of jail  
7 and go to an ATM and pull that money out. It cost  
8 my tribe \$7,500 for a lawyer, but the lawyers can't  
9 represent more than one person because it's a  
10 conflict of interest. So that's how hard we're  
11 making it. That's how hard we're fighting each  
12 other.

13 Now you got more protesters up there, pro DAPL.  
14 I think in a way they just want people to go home.  
15 And everybody wants to go home. So send them home.  
16 Send them home and stop the madness. Stop this  
17 madness. Because those people out there with all  
18 the money, you can hear them over the radios,  
19 they're playing heavy metal music; they're messing  
20 with people on the radios.

21 And there's stories that they're not going to  
22 tell because they don't want to start a war. Where  
23 they tackled a kid and put his head under the water,  
24 you never heard that. Where a few people got beat  
25 down, you never heard that either. Because why?

1 That's how strong our people are. Our people don't  
2 want you to know because they don't want to start a  
3 war. Nobody wants that. We all just want to go  
4 home. But we're not going to go home because water  
5 is life.

6 We love each and every one of us in here.  
7 We're all human beings. No matter what capacity  
8 you're in, we all mean something to each other.  
9 Does money mean more than that? Does it? To ruin a  
10 whole river system from North Dakota to the Gulf of  
11 Mexico, all of those farmers, all of those people,  
12 all of those states, taxpayers' money.

13 And it even goes further than that. Tribes and  
14 states are not getting along anymore. How many  
15 years have we been fighting to stay on the same  
16 page? And we finally trust the state, so we sign an  
17 MOU with the South Dakota Highway Patrol. You know  
18 what it took to do that? And just like that, that's  
19 what it took to undo it, just like that.

20 So all of these things we need to take into  
21 account for meaningful consultation, for life, to  
22 understand all of these things happen and are  
23 happening because of this one thing. And it's a  
24 variety of things.

25 Meaningful consultation with the tribes,

1 listening to the people, the people are speaking and  
2 they have been speaking, and they still are speaking  
3 and we're speaking here today. Will everybody here  
4 listen to us? Yeah, you'll listen to us, but going  
5 behind an office in a closed door is a whole  
6 different story. "Well, we had a consultation with  
7 them, but yeah, we're still going to go ahead  
8 because we got these laws and we're going to fix  
9 these laws."

10 When I was arrested that day and sat down and  
11 had to watch all of these things, for the first time  
12 in my life I understood something, and that was the  
13 United States' laws, those aren't my laws. They are  
14 not my laws. We are tribal citizens. We have our  
15 own laws. And those were laws over years and years  
16 of abuse, years and years of abuse.

17 So I can't stand up here and speak to you in my  
18 own language because I don't know it. Our  
19 grandparents, their parents, their ears were cut  
20 off. Their language was taken away and they were  
21 beaten. And to stand up here to keep repeating that  
22 is like going in a circle, because is anybody  
23 listening?

24 This is as real as it gets, people, and it  
25 ain't gonna get more real than this. If that pipe

1 goes under that water, it will get more real than  
2 you can imagine. That's the direction we are going.  
3 But people in this room have the power to change  
4 that.

5 Look at all the diversities in here, Native  
6 American, Caucasian, people from Japan up there,  
7 people from Hawaii, Canada. It's not just the  
8 United States anymore, people. It's the world. And  
9 when we go home tonight, let's think about that.  
10 Because you can't lie to yourself. You can't lie to  
11 the Creator. So meaningful consultation, this is  
12 meaningful consultation. I'm not here to say bad  
13 words to Mr. Henderson.

14 I know how you must feel, but I don't  
15 understand how you feel. I just assume how you  
16 feel. And you're put in one heck of a place, a  
17 predicament right now, but you still have a choice.  
18 God gave each and every one of us a choice. Are we  
19 going to do right by that choice? Are we going to  
20 start doing right by that choice, or are we going to  
21 go home and lie to ourselves? Are we going to stand  
22 by these children? Are we going to do the right  
23 thing?

24 If I died tomorrow, I'd die with honor.  
25 Because I got a felony, if I was charged with that

1 felony and convicted of that felony, my constitution  
2 says I have to step down as chairman, I would step  
3 down with honor because I did what was right. And I  
4 don't have to go home at night and lie to myself.

5 But for the rest of us that are up there, in  
6 one way, shape or form we're all living with PTSD,  
7 post-traumatic stress disorder, in whatever form it  
8 is. We have to carry that on.

9 But we need not be divided anymore. We need to  
10 stop the division amongst us. "Because we're making  
11 a hundred, two hundred thousand dollars a year, as  
12 long as our families are taken care of, the heck  
13 with the rest of the world," that ain't the way it  
14 works. That's not the way it works.

15 You go to church on Sunday; you worship; you go  
16 home. Do you forget about that Sunday? Do you live  
17 a different life Monday through Saturday? No, you  
18 must live that life daily. It's the spirituality in  
19 all of us. We're not dark. Everybody here has a  
20 spirit. What do we want to do with our lives?

21 From this day forward we need not put no more  
22 pipes under our river, no more pipes. I don't care  
23 if it's propane, whatever, we can't do this to  
24 ourselves anymore. We are going to die. It's just  
25 a matter of time, people. It's just a matter of

1 time.

2 And I will be going back to Standing Rock, and  
3 I will be camping with my people. I'm not leaving;  
4 they're not leaving until we make the right  
5 decision. And let that decision come from your  
6 heart, not from numbers. We don't want to be  
7 numbers anymore.

8 The world is crying out right now for us to do  
9 the right thing and stand together. Can we do that?  
10 Are we going to do that?

11 So I'd just like to say thank you to everybody  
12 for listening to me. It is a very meaningful  
13 consultation. Life is meaningful. Water is life.

14 Thank you.

15 (Applause)

16 MR. TRACY TOULOU: Up next is Chairman Frazier,  
17 followed by Chairman Steele, and then Chairman  
18 Flying Hawk.

19 CHAIRMAN FRAZIER: Thank you.

20 I want to begin by thanking the people who are  
21 up on the front lines. With their sacrifices is why  
22 we're here today. They've been bitten by dogs,  
23 beaten by batons, sprayed by mace, shot with rubber  
24 bullets. They've seen their horses killed, but yet  
25 they're still there. They've been arrested, charged

1 with crimes, and I thank them for their sacrifices.  
2 They're the ones that give me the strength to keep  
3 fighting.

4 When this first started in August, I seen a  
5 picture of a little boy, little Indian boy. He has  
6 a sign above him. It says, "You can't drink oil."  
7 And I thought, What kind of human being with a heart  
8 would not listen to that picture? That little boy  
9 has more common sense than every one of us in this  
10 room. He knows what could happen if we drink oil.

11 I guess I want to begin with a question for  
12 Assistant Secretary Darcy.

13 You've had three agencies write letters to you  
14 concerned with the environmental assessment but yet  
15 you continued on. Why is that?

16 MS. JO-ELLEN DARCY: Mr. Chairman, during the  
17 consideration of the environmental assessment, we  
18 did hear from other federal agencies, and in making  
19 our determination for the 404 determination, we did  
20 take those into consideration and made the  
21 determination that the environmental assessment was  
22 complete and accurate and that in moving forward we  
23 would be able to assure that there would be safe, in  
24 putting an easement together, we would be able to  
25 assure that the pipeline would be safe.

1           CHAIRMAN FRAZIER: So these agencies will be  
2 consulted as well, is what you're saying?

3           MS. JO-ELLEN DARCY: They made comments on the  
4 environmental assessment, yes, they did.

5           CHAIRMAN FRAZIER: You know, one of the  
6 things -- I know you represent the army, and I know  
7 that the army needs oil to function, so I'm really  
8 distrusting of the army.

9           You know, going back to our people who are up  
10 on the front lines, when they break a so-called law,  
11 they're thrown in jail, but yet when a non-Indian or  
12 an employee of the Dakota Access breaks a law,  
13 nothing happens to them. When a police officer  
14 breaks a law, nothing happens to them. Why is that?  
15 Any three of you can answer.

16           MR. TRACY TOULOU: Well, I'm not sure which  
17 incidents you're talking about, Chairman, but in  
18 regards to civil rights violations, there have been  
19 a number of allegations that have been forwarded to  
20 the Civil Rights Division that involve those  
21 individuals who you're talking about that weren't  
22 water protectors, and they're being reviewed to see  
23 if there's something that we can go forward on this.  
24 It's slow, but it's not, you know, it's not that  
25 they're going to be let off if they broke the law.

1           CHAIRMAN FRAZIER: One of the things I just  
2           can't believe, and that's why maybe Colonel  
3           Henderson has a disagreement. You know, they swore  
4           to defend and uphold the Constitution of the United  
5           States. And in that Constitution there's a Bill of  
6           Rights, and one of them rights is freedom of speech,  
7           the right to assemble, the right to pray, but yet on  
8           core land there's a barricade set up by North Dakota  
9           Police preventing our people from going further  
10          north, in our core land, right in the middle of that  
11          core land in North Dakota it sat there, to the north  
12          and to the east preventing our people from going to  
13          practice their First Amendment rights. It's just  
14          right there in black and white. I'm not an educated  
15          man, but if I could read that and understand that,  
16          why can't you? That's why I'm firmly believing  
17          Indian people, we don't have rights.

18                 I always remember when this started, too,  
19                 asking the U.S. Attorney's Office, "How come a white  
20                 man can assault an Indian and get away with it?"  
21                 And he said, "Because it's on state land." Said,  
22                 "Oh, that's fair. So for the Indian, we can assault  
23                 a white man on Indian land?" "No. You go to jail."  
24                 Where is the justice in that?

25                 You know, in these consultations, I mean, we've

1 had, our tribe was represented in every one of them,  
2 and we submitted our comments I believe in every one  
3 of them. And I'm really glad that you guys are here  
4 because we do need decision makers in these  
5 consultation processes. We also need all  
6 information given to us prior to a consultation.  
7 And what we really need is disciplinary actions and  
8 penalties imposed against government officials and  
9 employees when they fail to consult meaningfully.  
10 Because right now if they fail, nothing happens.  
11 They just start over.

12 Also we need to respect tribal governments.  
13 And I think you heard me say yesterday to the Corps  
14 about that. You know, the Federal Government has  
15 that trust responsibility to consult with us,  
16 particularly on the Missouri River. That river  
17 belongs to the Great Sioux Nation.

18 But I've been thinking about treaties. Before  
19 the 1851 Treaty, our people was up into Canada. We  
20 lived up there, throughout North Dakota, Minnesota.  
21 And it's sad that we have to rely on treaties to  
22 identify our homelands. But in reality our  
23 homelands are beyond the treaty lines, the treaty  
24 boundaries.

25 When you give respect to tribal governments in

1 this process, you need resolutions from every tribal  
2 government for approval before you proceed on with  
3 the project. We need to be treated like a state  
4 PUC. We need that authority to say yes or no. But  
5 these signature authorities don't -- shouldn't be  
6 limited to our current reservations. They need to  
7 extend to our ancestral homelands. Quit keeping us  
8 in that box.

9 Are you aware that the Corps of Engineers has a  
10 Programmatic Agreement with some of the tribes? Why  
11 hasn't that been followed?

12 MS. JO-ELLEN DARCY: I'm not certain which  
13 agreements you're referring to in particular,  
14 Mr. Chairman.

15 CHAIRMAN FRAZIER: The one for the management  
16 and operation of the Missouri River.

17 MS. JO-ELLEN DARCY: The one that we're  
18 currently looking at (unintelligible)?

19 CHAIRMAN FRAZIER: It has been signed back in  
20 2004. The Cheyenne River Sioux Tribe --

21 See, that's the problem, they don't care.

22 Are you aware of that agreement?

23 UNIDENTIFIED SPEAKER: Yes, I am.

24 CHAIRMAN FRAZIER: You were made aware  
25 yesterday.

1 UNIDENTIFIED SPEAKER: I knew about it.

2 CHAIRMAN FRAZIER: So why hasn't it been  
3 followed? Because in that agreement -- see, why are  
4 us Indians made to follow laws and rules but you  
5 guys don't have to? Why is that?

6 (Applause)

7 CHAIRMAN FRAZIER: In that agreement we're  
8 entitled to access for religious and cultural  
9 activities, but yet North Dakota stopped us at that  
10 river, forced our people to stand in water, freezing  
11 water. And I'm tired of this, We don't want them  
12 charging up that hill. Why do we have to get a  
13 permit to pray? Why are we getting trespassing  
14 charges on federal land?

15 From the very beginning in May, I went over to  
16 the U.S. Attorneys' Office in Pierre, South Dakota  
17 with Randy Seiler, and I asked him and our Attorney  
18 General sent him a letter, same question, same  
19 request, "Will you protect our people from  
20 exercising their First Amendment rights?" He's  
21 never written back, but he did tell us verbally, "As  
22 long as they're on federal land and it's peaceful  
23 and lawful, they'll be protected." But that has not  
24 happened. We've seen their videos how they treated  
25 the people who were in that river. Have you guys

1 seen those pictures? How does that make you feel?

2 You know, the BIA, trying to ask them to  
3 protect our people with their law enforcement, and  
4 they refuse. "We have no jurisdictions over  
5 non-Indians in the Dakotas." But yet President  
6 Obama passed a law, Violence Against Women Act. And  
7 I have a picture of a non-Indian cop standing with  
8 his knee on a woman's head. That's violence.  
9 That's against a woman.

10 (Applause)

11 CHAIRMAN FRAZIER: What's going to happen with  
12 that cop? Nothing. That woman probably ended up in  
13 jail, now has a criminal record. What's going to  
14 happen to that cop? They're going to slap his  
15 hands, civil fine, that's it.

16 The Federal Government, you need to realize  
17 you're in a battle with the north, North and South  
18 Dakota, hatred, racism, not from us, from them.  
19 They've ignored it. Now it has arisen over this  
20 pipeline.

21 On Cheyenne River, I'm trying to think back to  
22 the history of our reservation where we know  
23 instances of non-Indians murdering our people,  
24 raping our women, but yet I can't think of an  
25 instance where an Indian did that to a white man.

1           You need to hear our side. Right now a lot of  
2 decisions are based on the reports from the Morton  
3 County Police Department. What makes them more  
4 honorable than our people? Is it because of their  
5 skin color? Is it because they're from a state?  
6 What is it?

7           I was told by President Obama himself, "I have  
8 federal monitors out there."

9           Chairman Sazue, have you seen any?

10          At some point somebody needs to come and take  
11 the side of the Indians, listen to our side, look at  
12 the facts.

13          Dakota Access had an employee, a loaded AR-15  
14 shot on core land. Where are them reports? What  
15 happened to that individual? Nothing. I talked to  
16 the colonel about that awhile back. He didn't even  
17 know whether this individual was arrested. I  
18 speculate two things: One, the BIA never gave the  
19 report, or he didn't take the time to look at the  
20 report. But that was a serious crime.

21          Growing up I was always told, "Don't point a  
22 gun at people." (Native language), holy, sacred,  
23 because it could give life by hunting but it also  
24 could take life. "Don't ever point it at anybody.  
25 Even if it's unloaded, don't do that," our parents

1 always told us. But yet this man had a loaded  
2 weapon, pointed it at women. It's on video. Have  
3 you guys seen that video? What are we going to do  
4 about it? That very same day that individual was on  
5 Facebook so-called telling his side. North Dakota  
6 ruled he was a victim. But what about that lady,  
7 the women that had that gun pointed at them? That's  
8 attempted murder. And that was on federal land, not  
9 state land.

10 You know, I'm really hopeful that something  
11 good comes out of this, because there's a lot of our  
12 people that have suffered through this process. I  
13 haven't. You haven't. But them people that's up on  
14 the front lines, they suffer. We need to tell them  
15 that their suffering wasn't in vain. All they are  
16 doing is trying to protect our water.

17 I challenge you government people, go without  
18 water for four days. Don't drink any. Don't eat  
19 anything. Instead pray, dance and pray. Then  
20 you'll understand the meaning of water.

21 I thank you guys for at least listening. Like  
22 Chairman Kindle said, Let's do something about it  
23 instead of just listening.

24 Thank you.

25 (Applause)

1 MR. TRACY TOULOU: Thank you, Chairman Frazier.  
2 And, you know, a lot of that is really hard for us  
3 to listen to, but we need to listen to it. And not  
4 everything that's happened (unintelligible) and  
5 certainly am sorry that some of the people in the  
6 audience and people in the camps have had to endure  
7 that. Hopefully this process, this talking, this  
8 listening will help us get to a better spot and so  
9 that sort of thing doesn't happen again and  
10 hopefully that makes it worthwhile.

11 I'm going to ask for Chairman Flying Hawk.

12 MR. BOB FLYING HAWK: (Native language) I want  
13 to thank you for being here and listening to all of  
14 us as leaders of our nations. And one of the things  
15 that I wanted to share and in the observations that  
16 I have is the thinking, the mentality. We as a  
17 people, a Dakota people, think and we have thoughts  
18 but it's different. It's ours. And we acknowledge  
19 that. We know that. Mainstream society has this  
20 thinking also. We have been told about a thinking,  
21 a mentality that's a part of our government of the  
22 United States called the Doctrine of Discovery.  
23 It's not anybody's fault. It's just there. And  
24 that's a mentality that comes from our homes, which  
25 is what I was told, the basic unit of our society.

1           As I look at what we're faced with here today  
2           and why we're here today, as a family, one member of  
3           my family has a problem, whether it be health,  
4           education, but I look outside of my family for help.  
5           And I'm trying to make an analogy here with all of  
6           us as being that family. And that river is that  
7           member of our family. It is a family member who  
8           needs our help. What are we going to decide to do  
9           to get that help to that member of our family that's  
10          going to be -- that's memorable or beneficial for us  
11          with whatever decision is made? And so I'm trying  
12          to make that analogy for us to get these two trains  
13          of thought together.

14           We are defensive at times. We're human. So if  
15          we're faced with a question, then we stand up and we  
16          put up walls; we put up barriers.

17           I always share with my committee members and  
18          some of my tribal members that I was told a story of  
19          a man coming excitedly to two of our ancestors who  
20          were standing with their pipes. This man had this  
21          book and he said, "Take this book and put down those  
22          pipes." So our two ancestors looked at each other  
23          and said, "Well, maybe we should do this. He might  
24          have a heart attack." So they did. This man gave  
25          this book to two of our ancestors. They took it.

1 The man said, "Well, all right, I saved the savage."  
2 But that was our ancestors. That's our thinking.  
3 We looked out with that understanding for the  
4 welfare and health of us as neighbors, as people for  
5 the humanity of us all, but yet that's not given  
6 back to us; it's not reciprocated. And that's all  
7 we're asking here is to take down this disconnect in  
8 communication. And I wanted to just begin with  
9 those two things.

10 I'm asking that -- some of our tribal members  
11 here, I have a member of our THPO committee that I  
12 would want to share some thoughts, also our treaty  
13 committee, two of our council members, so they will  
14 be sharing some thoughts as you allow them to do.  
15 I'll give you their names here.

16 But I just wanted to share those thoughts with  
17 you and ask for your understanding and that we  
18 continue forward in this effort.

19 Pilamaya. Thank you.

20 (Applause)

21 MR. BOB FLYING HAWK: We can do that now, so if  
22 we could start.

23 MS. FAITH SPOTTED EAGLE: You know how grandmas  
24 are, we get complicated.

25 (Native language)

1 I come with the hope on this beautiful red day  
2 that we will be able to make influence in the  
3 changing of minds in the systems that we work with  
4 that are very (Native language) or violent.

5 Before I start, I want to acknowledge the mini  
6 (Native language) that I have brought here. And  
7 this mini (Native language) came from the ceremony  
8 site, the (Native language). True, it's unfortunate  
9 that we had to get a permit. I think in another  
10 time and space I would have argued until I was blue  
11 in the face with Colonel Henderson, but considering  
12 DAPL was staring down my throat, I made a  
13 compromise, which I was not happy about, but we got  
14 a permit to do a ceremony. Because the higher call  
15 was to visit a sacred place that has existed there  
16 for thousands of years, hundreds of years, decades,  
17 layers of multi-generational sites, layers of  
18 multi nations, layers now continuing  
19 multi-generational trauma.

20 So as I say these words, this water has been  
21 listening at the ceremony. It's listening today.  
22 And I'm going to ask one of the members, possibly  
23 Valerie, because she's listened to us for a long  
24 time, to offer this water to (Native language)  
25 because it is the witness to what we're doing here.

1           Somebody talked about cultural competence  
2 training in the Federal Government. We have to  
3 examine that cultural competence training because  
4 oftentimes it doesn't speak for us. So we don't  
5 trust that. So I would have to experience that; I  
6 would have see it before I take it at your word.  
7 But I appreciate you making the attempt.

8           But one of the things that we do in our culture  
9 is we bear witness. So the water, the (Native  
10 language) is the witness to your words today. Every  
11 time we have something significant happening in our  
12 camp circle, somebody has to witness it for the  
13 winter count. We have winter counts that have  
14 memory of a 1713 winter count at Cannonball. It is  
15 actually written on a buffalo rope. There are  
16 winter counts of multi nations being there during  
17 ceremony. So I think it's no accident that all the  
18 agencies have come together with our nations at this  
19 multi-national, multi-spiritual place. It's part of  
20 our divine plan. (Native language) is rejoicing  
21 that we finally have come together.

22           So the testimony that comes out of here remains  
23 to be seen as to whether we actually stop  
24 weaponizing it. Because I've learned a lot of  
25 different interesting terms from my daughter who is

1 getting her doctorate in anthropology at the  
2 University of Washington. She has this cool  
3 language that she's sharing with me. One of the  
4 things that she talks about is how we use systems to  
5 make weapons. I think truly the consultation  
6 process has been weaponized. It has become a weapon  
7 that has used, been used on an entity that has less  
8 power. And that's what we have been subjected to.  
9 So consequently we've had a chance to really  
10 practice about this weapon. We are experts at  
11 grading all the federal agencies that want to try to  
12 consult with us. We get to see you perform or not  
13 perform in front of us. So sometimes we'll give BLM  
14 a D. A lot of times we give the Army Corps an F,  
15 but I still have hope. We will give U.S. Fish &  
16 Wildlife maybe sometimes a C. In this round they're  
17 getting an F. We are suing them. But we see all of  
18 these federal agencies not being able to perform.  
19 They all have a different idea of consultation.

20 I have heard archeologists out in the field  
21 shake their head. I was at a consultation in  
22 Wyoming, and this archeologist -- we were working  
23 with the colonel out there who happens to be a  
24 descendent from (Native language). He has (Native  
25 language) blood, so he's got DNA that allows him to

1 see in a different way. So right away he sought me  
2 out and shook my hand. He said, "I'm probably  
3 related to you." And I thought, Oh, no, he's got a  
4 uniform on. But it turns out he is related, so I  
5 have to claim him. You don't always choose your  
6 relatives, right? So in this situation it benefited  
7 us because you could tell that he thought  
8 differently. And he thought long and hard. And the  
9 meetings continued. And when he was taking us out  
10 into the field and saying this was only the  
11 beginning of a process, the archeologist on point  
12 there said to me, he said, "You know, this colonel  
13 is really different." And I said, "Because he's  
14 (Native language)?" He said, "What's that?" And I  
15 said, "Never mind. Private joke." But he said,  
16 "He's not like all the other ones that just meet  
17 with you and they go home and they say they're going  
18 to see you again, because they're not." This is an  
19 archeologist that works with the federal agency  
20 telling me this.

21 So it reaffirmed, and we know this. I don't  
22 have to repeat this story. But I think we've been  
23 called to leadership in our generation to be able to  
24 address -- or to stop weaponizing this process.  
25 Because when you think about the laws, you think

1 about -- I saw somebody post a meme. Yes, I'm a  
2 Facebook grandma. I saw somebody post a meme that  
3 apartheid was legal, the Holocaust was legal,  
4 slavery was legal, colonization was legal.  
5 Legislation is not about legality, it's about power.  
6 So what we're facing is systemic power.

7 The other thing that we're facing, and I see it  
8 clearly in all the, I don't know how many  
9 consultations that I've sat through, but I learned  
10 this term from my daughter, too. I don't know  
11 if she's -- she's probably hiding somewhere when her  
12 mother speaks. But she uses a word that I think  
13 really adequately expresses the arguments and the  
14 feelings getting hurt that come out in  
15 consultations, I think sometimes we engage in  
16 oppression Olympics, when the Army Corps gets their  
17 feelings hurt because we're saying they're not doing  
18 their job or they tell us something, so on both  
19 sides of the coin we have historic trauma that we're  
20 dealing with on both sides.

21 So the role that we have in this discussion  
22 here that the water is listening to is that I  
23 remember Russell Means said something one time, and  
24 I see relatives in the audience and I put up my hand  
25 to you, he said, "When you heal, I heal." So our

1 job as Native people is to heal from the rage and  
2 anger. But then it keeps coming up. You heard that  
3 in (Native language) Brandon's voice. It keeps  
4 reigniting because of stacked grief and trauma. So  
5 it's not one incident. It's this height. You hear  
6 it in the government agencies through denial. All  
7 of that is on the trauma response, denial versus  
8 rage and anger. So the call to responsibility in  
9 leadership is to heal, not to weaponize legal  
10 processes. So hopefully -- but you know what? You  
11 can't do that unless you heal. You can't take  
12 people where you haven't been. So if you've been an  
13 oppressor and a tyrant, a paper warrior, you're not  
14 going to be able to take us to those places. You  
15 have to be able to cry; you have to be able to throw  
16 tantrums; you have to be able to understand what  
17 happened on the front line, and then maybe we'll  
18 begin to evolve.

19 So I'm really, really curious about your  
20 cultural competence training. I need to experience  
21 it to see what kind of grade that we can give it.  
22 Because it's not a given that it's going to be okay.

23 I want to pay attention to some of the things  
24 that I wanted to share with you. I am who I am  
25 (Native language), Faith Spotted Eagle (Native

1 language). We were eagle catchers. My grandfather  
2 was an eagle catcher in the (Native language). We  
3 didn't kill the eagles. We took the eagles for the  
4 feathers that we needed and we let them go. I keep  
5 telling my son he needs to do that, but he's  
6 resisting that right now. He says, "Mom, you should  
7 do that." Maybe I will. That's a heart call to  
8 leadership.

9 The (Native language). I'm (Native language);  
10 I'm Sicangu; I'm (Native language); I'm (Native  
11 language) and I'm also a descendent from (Native  
12 language). So I carry a lot of different stories,  
13 and I carry a lot of different memories. So I'm  
14 going to try to integrate that some in some of the  
15 words that I'm going to share with you with the  
16 water listening.

17 A lot of times when we sit in these endless  
18 conversations that have been weaponized, we  
19 frequently fail to recognize when these actions will  
20 impact tribal interests. One of the biggest tribal  
21 interests that we have is water security. When we  
22 talk about water security, we're talking about  
23 quantity, quality, timeliness of water that is going  
24 to impact water stakeholders.

25 The water stakeholders that you have standing

1 here before you are not just the St. Lewis  
2 navigation people, they're the 1851 treaty holders.  
3 When we think about the 1851 treaty, and you're  
4 going to hear this and you're going to really learn  
5 the 1851 treaty real well. I'm really happy about  
6 that. We're all going to be able to be versed in  
7 the 1851, the 1868 treaty.

8 But I was told by my -- I remember when I was a  
9 little girl, I would hear my grandpa and grandma  
10 talking in real hush voices. They were -- and I'd  
11 be waking up in the morning and they'd be talking  
12 about the treaty. When we talk about the treaty,  
13 it's really important for us to think symbolically.  
14 This is reservation. This is treaty in regard to  
15 our land. This is aborigine. So what we're talking  
16 about in DAPL is treaty and we're talking about  
17 aboriginal rights.

18 We have research from one of our relatives,  
19 Dr. Robert Armani who is a doctorate from Sioux  
20 Valley. And his research has found archeological  
21 evidence that we were present as Dakota people in  
22 24 states, in the lower states, on Turtle Island and  
23 five provinces in Canada. We have a river in North  
24 Carolina called the Ashanti River.

25 Roger, you're going to have to go visit the

1 Ashanti River.

2 So there's evidence that we've been there.  
3 We've been to a lot of these places. So if we've  
4 been there, our graves are there. If we've been  
5 there, our memories are there, our DNA is  
6 remembered.

7 So in regard to that with those tribal  
8 interests, we have -- what we have done, the Yankton  
9 Sioux Tribe in this process has recognized something  
10 that ends up being done. Remember when I talked  
11 about colonialism being legal? Every time we have  
12 this discussion with archeologists, there's some  
13 factors that come into play. What we're dealing  
14 with in these consultations is what I call colonial  
15 archeology. Colonial means that it came from  
16 somebody else. When the colonists came, they were a  
17 starving, homeless people who had been oppressed.  
18 And so through a treaty, the 1858 treaty among my  
19 people, this one is one that I really grieve. My  
20 great, great grandfather gave 2 million acres in  
21 South Dakota away, all of eastern South Dakota,  
22 because they have compassion for these people. And  
23 you know what? Those people have not taken very  
24 good care of that land. Re-learning to be your  
25 relatives, lots of training and compassion teaching

1 to be done. But I don't want to shame people. I  
2 just want to be aware that is a call to leadership.

3 So we have colonial archeology. That means  
4 that they come to a meeting and they tell us what we  
5 have to do. They develop the agendas and they say,  
6 "Oh, Omaha said this." We have a consultation and  
7 the front line isn't there. It's two or three  
8 removed people that we have to talk to that we don't  
9 know if they're going to say -- they're limited by  
10 their understanding. They tell another supervisor;  
11 they tell another supervisor. By the time it gets  
12 to the colonel -- remember that exercise when you  
13 whisper in somebody's ear? Who knows what words get  
14 to that final person. So what is thrown out is that  
15 they will set the agendas.

16 There's another kind of, something called  
17 resistance archeology. That means the goals are set  
18 by somebody else. You see that all the time with  
19 these contractors that come in that are  
20 archeologists, they have their criteria set. In the  
21 area that's going to be affected, that's entirely  
22 their language. It has nothing to do with us.

23 Another thing is in participatory archeology,  
24 the goals are completely separate. We go into that  
25 meeting and you heard Brandon; you heard Dave, all

1 of these nephews say, We told you "no".

2 If you look at the word consultation, it's a  
3 dominance word. It means that the decision has  
4 already been made. So that brings to discussion  
5 that pre-decisional meetings have to happen.  
6 Consultation is not a good word. It's a danger  
7 word. There has to be discussions pre-decisionally.

8 One of the things, the power that has come  
9 about in recent years, you all know what UNDRIP is,  
10 United Nations Declaration on the Rights of  
11 Indigenous People, that's a mouthful, but it has a  
12 lot of power. And what it says is that we have to  
13 have free, prior and informed consent. That can't  
14 occur if you engage in these other types of  
15 archeology. It's not even on the table. So that  
16 means that we have to revamp the whole, you said  
17 infrastructure, so you have moved into seventh  
18 generation thinking. We're not going to probably  
19 solve some of these problems in my lifetime.

20 It's -- infrastructure means that the whole  
21 system needs to be revamped. And unfortunately some  
22 of you have limited terms probably in your jobs, so  
23 we're going to have to figure out in these messages  
24 that are taken down, how the downstream  
25 institutional memory of this meeting, other than the

1 water, make sure that it survives your tenure as a  
2 job.

3 Because I work in organizational development,  
4 and sometimes you will see a movement go through an  
5 organization that will get stuck on somebody's desk  
6 where there's no human being. And that's actually  
7 what happened in the Programmatic Agreement. In  
8 1999 -- I'm happy that we have this meeting because  
9 I remember in 1999 on a cold winter day in December  
10 when 40 of our relatives came up from the Missouri  
11 River. They surfaced, bones of our ancestors. I  
12 went down to the Corps and I said, "Hey, you gotta  
13 stop the river. Our ancestors are surfacing." They  
14 told me, "We don't have control of that. Omaha  
15 calls the shots." I got really angry. I started  
16 crying. My historical trauma came about. But we  
17 ended up devising a strategy. Long story short,  
18 \$200,000 later. I'm happy today that my tribe  
19 doesn't have to spend \$200,000 to get you to listen  
20 to us. That's how much it cost us to take the Corps  
21 to court in the White Swan case. And we did win.  
22 The Section 106, they foreclosed on the Programmatic  
23 Agreement at White Swan, and that's why the new PA  
24 came about.

25 But having gone through that process, which was

1 really painful, we decided that we were not going to  
2 be signatories to the PA because we have no trust.  
3 The PA never fulfills what is written down. And  
4 that is happening right now. There's a Memorandum  
5 of Agreement that came as a result of the PA. There  
6 are not even appropriate signatures on that  
7 agreement. It's incomplete. But it's being  
8 weaponized once again, and it was used -- DAPL used  
9 it for our tribe that has never signed that  
10 Programmatic Agreement. And the tribes that did  
11 sign the PA were, once again, lied to, like you can  
12 hear Chairman Frazier talk about that. So as we  
13 speak, that PA needs to be terminated. It's a false  
14 document. It's a falsified weaponized document. So  
15 at some point there has to be some truth telling  
16 about it and realization that, in our language we  
17 call it (Native language) or clarity.

18 The other thing is policies must take into  
19 account cultural practices, ancestral lands, treaty  
20 rights and traditional areas of cultural or  
21 spiritual importance. Yesterday -- or two days ago  
22 through working in cooperation with Colonel  
23 Henderson, we were able to go to a site on the  
24 Missouri River on (Native language) that is in the  
25 direct path of the pipeline. We were not allowed to

1 go there to survey as (Native language). These  
2 weaponized laws prevented us from going there, but  
3 through ceremony and understanding, we were able to  
4 go pray at that site. And guess what? We found a  
5 huge burial site, huge, large, large (Native  
6 language). And so that is the indigenous science  
7 and knowledge that we have.

8 There's -- somebody told me about Pueblo  
9 Bonito. In the Pueblo culture in the southwest,  
10 they said in 1880 some archeologists went down to  
11 the Pueblos and they were excavating, and they found  
12 what was an old stove. And in the back of the stove  
13 in the old pueblo was a bunch of wood. The  
14 archeologists, now they shake their head in horror  
15 when they find out those original archeologists in  
16 1880, you know what they did with that wood?  
17 Instead of dating it, instead of learning about  
18 where the wood came from, where the wood traveled  
19 from, guess what they did? Instant gratification,  
20 they burned it.

21 So that's what's happening on DAPL. They're  
22 not burning the sites. They're destroying them. A  
23 hundred years from now those archeologists are going  
24 to say, What were they thinking? You know, where  
25 were their brains? Where were their spirits?

1           So the point is that those ceremonial sites  
2           that we found down there, those have to be saved.  
3           Those absolutely have to be saved. It's a huge  
4           area. And you know what? It's not any different  
5           than a lot of areas along the Missouri trench  
6           because water is life. That's why we were at the  
7           water. A lot of the women sites are along the  
8           Missouri, right by the water because we cooked; we  
9           took care of babies; we had to watch the camp while  
10          the men hunted and watched over us. So a lot of the  
11          men sites are higher. Only we know that.

12           We have documentation in our winter counts,  
13          which is really precious long-term knowledge which  
14          is thousands and thousands of years old. We could  
15          teach you. We could share that. But the door has  
16          to be opened.

17           Treaty knowledge -- oh, the other thing I want  
18          to say in federal agencies was adopt a clear and  
19          unambiguous policy for identifying which tribes on a  
20          particular project sometime need a mediator.  
21          Because when you talk, like Chairman Flying Hawk  
22          said, and you didn't understand that because he said  
23          it in our language, when you say something in  
24          western way, in English, I say it differently in my  
25          world view. And you saw that on the front line,

1 right? Our people were talking about our pipes. We  
2 were talking about the sacred items that we have to  
3 pray, our sacred pipes. And what did DAPL say?  
4 Pipe bombs. In another day that would have been  
5 humorous, but it's not humorous now because it was  
6 used to injure. Again it was weaponized. So that's  
7 an example of the total lack of cultural competence  
8 and the danger that it presents when that happens.

9 So most of you -- some of you heard me  
10 yesterday, but we have actual documented evidence on  
11 the front line on the radios on that day on  
12 October 27th when Russell and some of the others,  
13 Casey, my sister Casey was arrested. On the radio  
14 one of the guys said, "Tonight we're going to make  
15 half-breed babies." That's a statement of war. The  
16 front -- the people who end up suffering the most in  
17 oppression are the women and the children. So I  
18 think that in line with that, there's probably some  
19 women/children issues that need to be looked at that  
20 are gendered. There's some gendered violations that  
21 are going on here. And a man certainly wouldn't  
22 understand it.

23 I want to say something about if a tribe has  
24 adopted its own consultation protocols as the  
25 Yankton Sioux Tribe has done, the federal agency

1 must adhere to those (Native language) or protocols.  
2 We are very pleased to share with you that after all  
3 of those painful years of not having good  
4 conversations with federal agencies, every now and  
5 then we'd be surprised, but we thought, We're not  
6 going to do that anymore. This is too painful to go  
7 to a meeting and get insulted. Why would we do  
8 that? Why do we continue to get our blood pressure  
9 up? So what we did, and I think everybody has a  
10 divine plan --

11 And unfortunately, Colonel Henderson, you're  
12 part of our divine plan, or fortunately.

13 -- we came up with our own consultation  
14 protocols that we would like to hand to you. We  
15 have developed -- because we go to meetings and they  
16 have developed the agenda. Why don't we have an  
17 agenda that involves us? It makes the most sense in  
18 the world.

19 So these protocols, I'm not going to go into  
20 them. There's not much time. But it's called  
21 (Native language). It's our laws. It provides  
22 purpose, scope and cultural protocols. One of them  
23 is relationship building should be at the center of  
24 any consultation, as this is a primary cultural  
25 protocol for the (Native language). Relationship

1 building cannot occur through one meeting, by  
2 telephone, or in some cases 364 documents of  
3 consultation with Standing Rock Sioux Tribe. I  
4 don't think that's relationship building. You gotta  
5 be in person to build relationship.

6 Agencies must recognize that water is viewed as  
7 the first medicine, and it must be honored and  
8 protected. Water is vital to the spiritual  
9 practices, culture and health.

10 It must be in the record that our tribal people  
11 have expertise and knowledge that makes them  
12 traditional, cultural, ecological knowledge that  
13 qualifies us, with or without a master's degree or a  
14 doctorate, to identify these resources.

15 So that's part of our protocols. We've listed,  
16 there's like -- I don't know how many pages we have  
17 here, but we're going to hand that over. We're very  
18 proud of this because this is our world view. And  
19 when you come to our land, we don't consult at the  
20 power house. We consult on our land. Why would I  
21 go to the power house? There used to be a fort  
22 there, more historical trauma. So I'm going to hand  
23 those to you, if you could take that. These are our  
24 protocols. The water is listening.

25 I want to say something about treaty. I know

1 I'm running out of time here. Treaty councils must  
2 also be permitted to participate in consultation. I  
3 am the chair of the (Native language) Treaty  
4 Committee. I'm very honored to be that way -- to be  
5 on that committee. In our tribe we are chosen by  
6 the people. We are chosen for lifetime unless we do  
7 something erratic like stealing a car or doing  
8 something, so hopefully that's not on my agenda.  
9 But I serve for a lifetime. And so we're  
10 responsible to the people.

11 When we look at treaty, I am so happy that  
12 we're having this discussion. As a person who  
13 descends from treaty signers, when we signed the  
14 1851 treaty, according to oral history and also  
15 written history, there were a thousand Yankton  
16 people that went to sign the 1851 treaty. There  
17 were a total of 10,000 Native people that ended up  
18 at Fort Laramie. More than that -- 3,000 more than  
19 at Standing Rock. Can you imagine that many people  
20 bringing their pipes? Not pipe bombs but pipes.  
21 And so in view of that, those documents that were  
22 signed were spiritual agreements. They were done  
23 with prayer. And believe it or not, those prayers  
24 are still traveling, and maybe that's why we're here  
25 today. You might be able to fulfill what was signed

1 at Fort Laramie.

2 The boundaries of the treaty, territory of --  
3 oh, the other thing that I want to say before I read  
4 this is that treaty councils must have signatory  
5 authority on treaty and ancestral lands. That is  
6 our duty that we have been called to fulfill for our  
7 people. Signatory authority, that's very important.

8 The boundaries of the territory of the Dakota  
9 were defined by the 1851 treaty at Fort Laramie.  
10 These boundaries establish our territory reserved by  
11 (Native language) and other members of the Oceti  
12 Sakowin. This reserve tribes not only possessory  
13 rights to treaty territory but also user  
14 fractory (phonetic) rights which inherently run with  
15 the land. This includes hunting, fishing,  
16 harvesting, water use. In fact, I have the winner's  
17 doctrine, which is senior water use. In fact, the  
18 rights to hunting is expressly preserved in Article  
19 5 of the treaty.

20 Although the borders of the treaty were  
21 diminished by federal acts which disregarded the  
22 treaty, we still very much exist today with respect  
23 to the tribes non-possessory interests which is user  
24 fractory (phonetic).

25 Regardless of whether -- oh, furthermore, to

1 Article 3 of the treaty, the United States bound  
2 itself to protect the aforesaid Indian nations  
3 against the commission of all degradations by the  
4 people of the said United States. So you signed a  
5 treaty to protect us against yourself. And that's  
6 what we're dealing with today. We have to protect  
7 ourselves against you. And you represent that  
8 nation.

9 The construction and operation of the pipeline  
10 through treaty territory is precisely the type of  
11 degradation the U.S. should be protecting with the  
12 clause in the constitutions that treaties are the  
13 supreme law of the land.

14 And it is observed with other countries. And  
15 the other countries are watching. While I was  
16 sitting here, I got a letter -- I mean, a Facebook  
17 message, a text message from the Deputy Assistant of  
18 Energy in France. I met him at Comp 21 last year  
19 when I went to France. And he said, "What's going  
20 on," from France.

21 So the world is watching. And so we have this  
22 great opportunity to demonstrate stewardship,  
23 leadership. And so again, I ask you to do that.  
24 We're going to give you these documents. And I just  
25 want to show you this. I'm not going to rave on or

1           rant about it, but what the (Native language) is  
2           doing is we are going further and we're going to  
3           have probably 20 or 30 consultations on this. We're  
4           saying that right now. This is a bio region of the  
5           Missouri River main stem. We are mapping it. And  
6           we are layering it with water scientific knowledge,  
7           water security. We're layering it with indigenous,  
8           traditional, ecological knowledge and ethnobotany.  
9           And you know what? It's going to help your  
10          grandchildren, too, because we drink the same water.  
11          So this is an example that we're going further.  
12          This is going -- and we hope that this change is  
13          going to allow us to do it. Because we're going to  
14          do it anyway. But we can be partners in that  
15          process.

16                 The other thing I wanted to mention is that  
17                 remember I said that like treaties sometimes are  
18                 more important on other nations' level and we're  
19                 ignored? During the Roosevelt era, he signed a  
20                 treaty called the Roerich Treaty. And an actual  
21                 flag came out of that treaty. And so when they were  
22                 at war in Europe, some of the cathedrals, some of  
23                 the sacred sites that were in existence in those  
24                 countries, they actually came up with this  
25                 flag (indicating). And this came from Roosevelt.

1           It's kind of dirty. It's been all over camp. But  
2           this was the Roerich Treaty flag. And they actually  
3           hung this flag on sacred site areas to prevent them  
4           from bombing. And that was an international  
5           agreement. And so we hope that we can develop the  
6           same type of thing, that we can develop or save  
7           those sites, even with the Oceti Sakowin flag. We  
8           need to flag those areas.

9           I have numerous other things, but I think I  
10          need to be quiet now. And we will give you written  
11          testimony. And we'll also give you a copy. I'm  
12          sure you have a copy of the UNDRIP document. Do you  
13          all have that with the cultural resources?

14                 Maybe, Valerie, you could educate them on that?

15          But I will end there, with a request that one  
16          of you or two of you or however many come after the  
17          talks and that we offer this water.

18                 So, Valerie, you, for one, if you could get  
19          some of the other delegation so we could offer this  
20          testimony.

21                 Thank you.

22                 (Applause)

23          MR. TRACY TOULOU: I think we actually have a  
24          couple of elect leaders that we need to have speak  
25          first, and then we'll jump back in, okay?

1           So President Weston, if you want to come up.

2           Larry has got a response here.

3           MR. LARRY ROBERTS: I just wanted to say thank  
4 you for sharing the tribe's protocols with us on  
5 consultation. As we're thinking about and hearing  
6 your words, what was occurring to me was we need  
7 to -- we need to hear where consultation has worked  
8 well and build off of those successes. And so what  
9 comes to my mind is, you know, one of the great  
10 honors that I've had as being part of this  
11 administration is being at a consultation here in  
12 Rapid City on the Indian Child Welfare Act and for  
13 the department promulgating regulations  
14 (unintelligible) for the Indian Child Welfare Act  
15 for the first time since those had been enacted in  
16 law in the 1970s. And the consultation feedback  
17 that we got was from tribal leaders saying, "This  
18 works well. This is a historic consultation that  
19 you're coming here to truly engage in how these  
20 regulations should work for our tribal communities."  
21 And so the more concrete examples we can get,  
22 whether it's tribal protocols or other examples so  
23 that we can incorporate those, the better.

24           The other thing that I just want to say very  
25 quickly is I just want to acknowledge we have a lot

1 of kids in the room here, and I want to acknowledge  
2 them being here, because they're part of history  
3 here in doing this. And they're our future leaders,  
4 right? And so everyone here has a lot of  
5 opportunities to do different things. And too often  
6 we see kids playing video games instead of being  
7 engaged. And so I just wanted to recognize the  
8 young people that are here in this room for being  
9 involved and being engaged. And whether they know  
10 it or not, they're going to be future leaders moving  
11 forward.

12 MS. CASEY CAMP-HORINEK: Could I respond to  
13 your statement? Even though that might have been a  
14 feel-good meeting, there are no existing protocols,  
15 so it's still air in regard to consultation.

16 MR. LARRY ROBERTS: In regard to consultation,  
17 that's right. And it's building off of those,  
18 that's right.

19 MS. CASEY CAMP-HORINEK: There is none right  
20 now. I just want to make that clear.

21 UNIDENTIFIED SPEAKER: Russell, go ahead.

22 MR. TRACY TOULOU: Russell, go ahead.

23 MR. RUSSELL EAGLE BEAR: I don't want to offend  
24 one of our leaders, but we do have some kids in the  
25 room. I invited them. I know you've heard from

1 leaders. You've heard from elders. But I think you  
2 need to hear from the kids on what kind of message  
3 they brought for you.

4 (Applause)

5 MR. RUSSELL EAGLE BEAR: And I know you're  
6 hurting for time, but we want -- hopefully --  
7 they're hungry, too. And they want to address you.  
8 And so hopefully you will give them some opportunity  
9 to do that. I certainly would like to address you,  
10 too, but I'd rather reserve that for our youth.

11 MR. SCOTT WESTON: Are we ready? Okay. First  
12 of all, good afternoon. I want to thank everyone  
13 here. And I want to apologize to my elders for  
14 standing in front of you and speaking in front of  
15 you.

16 But I have been selected from my tribe to stand  
17 in front of them.

18 And I want to thank our young people for  
19 showing that they care.

20 And I want to thank you, the United States  
21 Government, once again for trying to exterminate us.  
22 That may seem blunt. It may seem mean, and it may  
23 seem like I'm not this very likeable guy right now,  
24 but that's me. I can be as cordial and respectful  
25 as needs to be, and I'm doing that, but I'm speaking

1 from my heart. And when I say that, I come in a  
2 good way, but it's in a frustrated way, because you  
3 sit here all day and you sit here for all this time,  
4 through all of these years. Why is this problem  
5 where it is today? Because your laws, your policies  
6 dictate that. So I want to remind you -- first I  
7 should ask you this: How many of you have read the  
8 Constitution of the United States? Our treaties are  
9 mentioned in the Constitution, is it not? Are they  
10 not? So thereby, that should supersede every  
11 policy, every law that's ever been placed out in  
12 front of us that we are dealing with today. That is  
13 the supreme law of the land. It's been mentioned  
14 prior to me saying it.

15 So I have just a few suggestions. When you go  
16 home tonight and you think about everything that was  
17 said today, and I don't know how much you prayed,  
18 but I hope you pray tonight because you are putting  
19 the lives of my people within the Great Sioux Nation  
20 at risk to die. Is that what you want on your  
21 heads?

22 Because from Day 1 the people at the camp have  
23 been respectful, following the government, law,  
24 state, Army Corps of Engineers, Bureau of  
25 Reclamation. We are the third world country in

1 America's backyard, and we do not have a voice,  
2 except for this here. Why do you allow this to  
3 continually happen? Why? And please pick your  
4 heads up and look at me when I speak to you. That  
5 means a sign of disrespect when you look away from  
6 me. I want to be respected. I think I've earned  
7 it. I think our people here have earned a right to  
8 be heard.

9 Because we stand and we love our people so bad  
10 that we will die for it. We will die for that. And  
11 do you want that on your head? And I'm not trying  
12 to make a threat. This is not a threat. We came in  
13 prayer. We came in a good way. And still, you're  
14 still standing there continually doing the same  
15 thing every day. But we're like, going to be like  
16 that cat in the corner, that rattle snake in the  
17 brush, if you threaten them, it's going to bite  
18 back. Is that what you guys want? Our people are  
19 willing to die for that. That's where we have to be  
20 real and forget about our paperwork. Think about  
21 what's in your heart. Think about what's in your  
22 mind. Because if we don't do this today and start  
23 thinking about it today -- because you didn't deal  
24 with it anyway. This amendment Part C or whatever,  
25 you knew about it in 2002. Why wasn't it changed

1 then? Why wasn't it even approached?

2 So let me ask you this: Are you going to do  
3 this or not? Can I get a yes, no, or...? You can  
4 look away. That's fine, too.

5 MS. JO-ELLEN DARCY: Appendix C, earlier,  
6 Mr. Chairman, we did say that we were going to look  
7 at improving it. So yes, we are listening and yes,  
8 we will.

9 MR. SCOTT WESTON: So you will stop it?

10 MS. JO-ELLEN DARCY: We are talking about  
11 Appendix C.

12 MR. SCOTT WESTON: Yes.

13 MS. JO-ELLEN DARCY: And I said earlier that we  
14 are going to work on improving it along with the  
15 Historical Advisory Council.

16 MR. SCOTT WESTON: And then you're going to  
17 stop this altogether, this nonsense. Because our  
18 people are willing to die. I'm tired of being  
19 respectful. And I'll say that because our people  
20 have fought forever and ever and ever.

21 You know, I was a young man in 1973 when  
22 Wounded Knee took place, I was there. We were  
23 there. We were the corridor on the north side in  
24 Porcupine that got the guns in and out, yeah, at my  
25 dad's house, Spencer Weston's house. We seen it

1 all. We were there. We were this high  
2 (indicating). We did it. And I guarantee you what,  
3 if you think -- because I don't know if anybody has  
4 talked about this in any of these other  
5 consultations. I was asked by a lawyer, a state's  
6 attorney, "What do you think will happen?" I said,  
7 "Do you think this was bad, Wounded Knee? You're  
8 going to have a war on your hands. That third world  
9 country is going to come and bite you." And it's  
10 not a threat. We are fighting for our lives. This  
11 is our lives that you are affecting and will affect  
12 for eternity.

13 And we do not need -- I don't -- I don't -- I  
14 hate the paperwork. That's why -- I know this for a  
15 fact. My uncle said this for years and years and  
16 years, a past tribal chairman, and I'm very proud to  
17 carry on that legacy within our family. And his  
18 words that my grandfather passed to him is that  
19 there's one thing that we know of: There's not  
20 anything that a diploma, from a Ph.D., a doctorate,  
21 however, bachelor's, master's, whatever, they cannot  
22 tear our treaties apart. That is the supreme law of  
23 the land. And they didn't need to be educated.  
24 They were already educated because it came from  
25 their heart and from their mind. Those are our

1           ancestors, our men that took care of us, that we are  
2           here today and we'll fight to keep that going.

3           So I don't want to take up a lot of time. I  
4           know some people think I'm long winded. But I just  
5           want you to think about this tonight. When you go  
6           home and you pray about this, honestly think about  
7           it, throw these policies out of the room because our  
8           treaties are the supreme law of the land and should  
9           be forever. As long as the water flows, the grass  
10          grows, our trees will stand, unless America dies and  
11          rolls over. So you think about that.

12          And my good people, to my relatives, I thank  
13          you for letting me stand in front of you today.

14          Aho.

15          (Applause)

16          MR. TRACY TOULOU: Okay, I'm going to check and  
17          see if we've missed any tribal chairs or tribal  
18          presidents. And if we -- do we? Then we're going  
19          to take a break and we're going to come back. We  
20          have a long list.

21          MS. DARLA BLACK: Before you begin, can I  
22          speak?

23          MR. TRACY TOULOU: We're going to take a break,  
24          and then --

25          MS. DARLA BLACK: I'm the vice-president of the

1 Oglala Sioux Tribe.

2 MR. TRACY TOULOU: Go ahead then.

3 MS. DARLA BLACK: (Native language)

4 Our ancestors, our grandfathers, our  
5 grandmothers survived. We didn't come up here to  
6 create conflict. We came here to try to find a  
7 solution. We have to find a solution in a good way,  
8 in a Lakota way.

9 The Oceti Sakowin is a powerful entity. You  
10 have seven of the Lakota, Dakota and Nakota Nation,  
11 and the only way we can accomplish something (Native  
12 language) is through prayer, cooperation, respect,  
13 compassion and generosity. Not all of us Oglalas  
14 are wild Oglalas. There are some of us that were  
15 raised by grandmothers to be respectful.

16 So I ask you today in a kind way, protect our  
17 people at Standing Rock. Protect our women that are  
18 coming up and possibly being raped. Protect our  
19 women from the mace. Protect our women and our  
20 people from what's happening to us. I've been  
21 there. I've stayed there. I went there and I  
22 prayed.

23 I utilize my beautiful Lakota language and our  
24 spirituality to try to create change. It was  
25 prophesized (sic) that all races would come

1 together, the red, the yellow, the black and the  
2 white. And that's what you see there. When the  
3 people from Japan came, you have all four colors  
4 there. It was prophesized that we would be standing  
5 up for our water. We all came here knowing this.  
6 But you are our relatives. You have children. You  
7 have grandchildren. Now you've heard how much the  
8 water is important to us. It doesn't just give  
9 live, it's our relative. You heard one of our  
10 sacred grandmothers say that. Because when we say  
11 (Native language) oyasin, we're not talking about  
12 the two legged. We're talking about everything in  
13 this universe.

14 So if there's anything that you take from us  
15 today, please help us, protect our people. Because  
16 your people are up there, too. All four races are  
17 there. No more harm, no more injustices, no more  
18 human rights violations. Because every time I see  
19 those videos, I cry.

20 There's many of us out here that are praying,  
21 many of us that still practice our sacred  
22 ceremonies, and we pray for the safety of our people  
23 that are there.

24 My name is Darla Black, and I'm the recently  
25 elected vice-president of the Oglala Sioux Tribe.

1 And I'm very proud --

2 (Applause)

3 MS. DARLA BLACK: I'm very proud to speak for  
4 the Oceti Sakowin.

5 Mitakuye Oyasin.

6 (Applause)

7 MR. TRACY TOULOU: So we're going to take a --  
8 we're going to take a break. We went through 12  
9 speakers. We have another 14 to go. So let's take  
10 a five-minute break and come back and we'll get on  
11 with this.

12 (Recess taken)

13 MR. TRACY TOULOU: So we've got quite a few  
14 people to get through, and I know that we're going  
15 to run through the lunch hour. If people who are on  
16 the list and asked to speak want to come up and tap  
17 me on the shoulder if they need to get something to  
18 eat now, you know I know -- my wife is diabetic.  
19 She couldn't sit here this whole time. So if people  
20 need to go out and then come back in, tap me on the  
21 shoulder and I'll put you at the end, okay? But we  
22 want to keep running because we need to clear the  
23 room by 3:00. And I'm happy to talk to people  
24 outside, but that's not the same forum.

25 MR. C.J. CLIFFORD: Thank you.

1           Okay, I guess after break here we have the  
2 St. Francis Indian School, and we have their mentor  
3 of three students. And at this time I would like to  
4 call up Ione Quigley who is the mentor of -- the  
5 three students coming up is Jeffrey Castaway, Ricki  
6 Leader Charge and Keshena One Star.

7           And I want to welcome and thank you guys. Come  
8 on up.

9           MS. IONE QUIGLEY: (Native language)

10           My name is Comes Last Woman, and I come from  
11 the Sicangu Nation. And although I have been told  
12 by my oyate and my father to not stand in public and  
13 talk about yourself, I feel that you need to know  
14 who I am and who I bring with me.

15           I am fortunate to have my identity. I have my  
16 language. I know who I am. I know where I come  
17 from. I was fortunate to have a western education  
18 as well. I am a cultural resource management  
19 specialist. I taught at our tribal university for  
20 12 years. And I remember back in 2000 the class  
21 that I was teaching heard me say that, "In this year  
22 we're having a war over oil. Give it 20 years from  
23 now, we will be having a war over water." It's not  
24 quite 20 years. It's 16 years actually, but it has  
25 been coming. Whether we want to admit it or not, it

1 has been coming.

2 I have done consultant work with the National  
3 Park Service. I have done consultant work with the  
4 United States Army on Fort Guernsey. I have done  
5 consultant work with the Corps of Engineers. I have  
6 taught the Cultural Resource Management Program for  
7 13 of those years.

8 In the last four years I have been at  
9 St. Francis Indian School, and my students now are  
10 learning. They are learning about who they are,  
11 about the land that they live on, about their water,  
12 their air. They have been learning about their own  
13 self identity that is connected with their  
14 environment.

15 And I know Colonel -- am I saying it -- Colonel  
16 Henderson, I know I heard you say that a lot of the  
17 words were redundant and repetitive, and you  
18 probably heard it all. You probably even heard what  
19 I'm saying, but the thing is too many adults take it  
20 upon themselves to speak for the children. We have  
21 young ones that have their opinions of things, that  
22 know what they want for the future. We have young  
23 men, young ladies at our school that are realizing  
24 what it would mean if we were to let the Dakota  
25 Access Pipeline go through.

1           We know the (unintelligible) of what is about  
2           to happen should it be allowed, and we stand here  
3           before you today because we think it is very, very  
4           important to hear the children and what they feel  
5           about their future and the water.

6           So right now I want to introduce the three  
7           students whom I have been mentoring, and I want you  
8           to listen.

9           And I want to thank Russell Eagle Bear, our  
10          Tribal Historic Preservation Officer from the  
11          Rosebud Sioux Tribe.

12          I want to thank you, Clifford, for allowing us  
13          to say what we're about to say.

14          And I thank all of you for listening to us. I  
15          think if you don't hear me, if my words are  
16          redundant, please give the respect to these children  
17          and hear what they have to say.

18          And I appreciate all the leaders that have come  
19          and spoke. I appreciate that. But too many times  
20          we overlook our young generation. And right now I  
21          appreciate the fact that you're going to be hearing  
22          from the three students from St. Francis Indian  
23          School.

24          Mitakuye oyasin.

25          MR. JEFFREE CASTAWAY: My name is Jeffrey

1 Castaway, and I'm from the Rosebud Sioux Tribe where  
2 I go to school at. I'm a junior at St. Francis  
3 Indian School. And I'll be honest, I don't know  
4 much about politics. I'm not good at many things  
5 political because I try not to stay involved because  
6 politics, it does take a lot of (unintelligible) and  
7 it does tear people apart in many ways.

8 I'm only 16 years old, and I've been involved  
9 in the Dakota Access Pipeline for four months now,  
10 since the beginning of August. A year ago I didn't  
11 imagine this would be my life because I figured I  
12 was just a young kid.

13 I'm only 16 years old. Last year I was 15  
14 years old, and I figured I'm only a 15 year old, my  
15 voice will never be heard; I will never get a chance  
16 to speak in front of crowds like this. I never  
17 thought I would be here today because I had that  
18 doubt only because I was younger that I'd never be  
19 heard, but I still had hope that I could make a  
20 change and I still had a hope I could change minds  
21 and be heard. And that's what gets me through my  
22 day every day is hope. Even the smallest sliver of  
23 hope still gets me through my day to speak.

24 And this is actually pretty hard, considering  
25 the fact I'm only young. But I am still a young

1 kid, and children my age shouldn't even be involved  
2 in this. This shouldn't even be something that  
3 young kids should (unintelligible). I should be at  
4 home right now or in school, playing video games,  
5 learning, but no, I'm here speaking to all of you  
6 who are years ahead of me, who are generations ahead  
7 of me.

8 And the Dakota Access Pipeline in my opinion  
9 needs to stop. It's not something that is needed.  
10 It's oil. Water is more important than oil. It  
11 powers vehicles, sure, but it -- you know, it gives  
12 us energy; it gives electricity, but we need water  
13 more than we need oil. Water is, it is essential to  
14 everyone's life and wellbeing.

15 This is actually hard. I'm only a young kid,  
16 and I shouldn't be involved in this at all, but here  
17 I am standing before all of you speaking, you know,  
18 hoping that I can change your minds. Because yes,  
19 elders have spoken and yes, you're all older than me  
20 and you have spoken, but you have not heard what we  
21 thought about this because everyone believes they  
22 think they know what their children want, they know  
23 what their children need to say.

24 For vast years I have been mentored by  
25 counselors. They have mentored me. And I am also a

1 young counselor in training. At the beginning of  
2 the Dakota Access Pipeline, when I started getting  
3 involved, I have had children my age contacting me  
4 telling me things that happened up at Standing Rock.  
5 And at first it was things such as they brought dogs  
6 and they were attacking people or they're arresting  
7 elders. But now it's harder for me to even talk to  
8 these children because I have to stay up very late.  
9 The past four weeks I have only gotten three to four  
10 hours of sleep every night because I'd stay up with  
11 these children and talk to them about it. They were  
12 taught to stay strong. They held a sign up because  
13 they are being shot at with rubber bullets, because  
14 they are being stuffed in cages, given numbers.

15 And these are children who are still out there  
16 standing strong. Because the elders themselves said  
17 they are done speaking and that it's the children's  
18 time to speak. And that is why I'm here today to  
19 speak to all of you folks, hoping that I could at  
20 least change your mind about the Dakota Access  
21 Pipeline. Because oil is not essential to life like  
22 water is.

23 We are only children. We don't need to be  
24 involved in this at all. I'm only 16 years old.  
25 I'm barely going to be 17, and I'm already more

1 involved in this than I should be. I don't even --  
2 I didn't even expect myself to be counseling  
3 children my age. Because I was told that they're on  
4 the verge of PTSD or because they don't want --  
5 they're scared to sleep in Standing Rock in fear of  
6 being arrested and stuffed in cages.

7 Children shouldn't be having to deal with this  
8 and neither should adults. We are all one people.  
9 I could look at all of you and, like I said, you all  
10 breathe like me. You all breathe like me; you all  
11 live like me. Some of us have a better life, yeah,  
12 but we still do the same thing every day and that is  
13 to live and to survive and to provide for our  
14 families.

15 And I don't know how many of you have children,  
16 but I think it would be better -- it's a better  
17 choice to go home to your families and tell your  
18 children that, I'm trying to save the water, rather  
19 than going home to your children and tell them that  
20 you're fighting for a pipeline that could possibly  
21 destroy their future and the water that they drink.

22 Adults only think about what they believe  
23 children want, what they believe is essential for  
24 the future, and this pipeline is not essential for  
25 children's future. Our water is.

1           And I want all of you adults to go home and to  
2 go to your families and tell them the truth, that I  
3 am fighting for our water. Tell them the truth, I  
4 am fighting for our pipeline, water, oil. Let your  
5 children know what is going on. Because even the  
6 press aren't allowed at Standing Rock. And words  
7 can be a lie. You can lie with words. And I  
8 believe the reason no one is allowing press up at  
9 Standing Rock is because a picture can't lie. Words  
10 can lie. But once people see -- when people say,  
11 "Natives are attacking us, it's only self-defense,"  
12 they'll believe it. It's a lie. But they see the  
13 picture of Natives standing together in prayer, you  
14 can't lie about that. You can't lie about prayer.  
15 You can't lie about Natives standing together in  
16 peace.

17           The only thing I wish for is that families go  
18 home and tell their children the truth about what  
19 they're doing, whether it's oil, pipeline, and see  
20 how they feel about their family fighting for a  
21 pipeline or their family fighting for water.

22           And that's all I have to say. Thank you.

23           (Applause)

24           MS. RICKI LEADER CHARGE: (Native language)

25           Hello. My name is Morning Star Moons. And I

1 greet you all with a good heart and energy. My  
2 white name is Ricki Leader Charge. I come here  
3 today to talk to you all about the man camps. There  
4 is women from our tribe being taken. And along with  
5 that black snake that's going to come through, which  
6 I hope won't, will bring the man camps.

7 My mom's friend, her daughter has been gone  
8 since August. Even if they find her, that trauma  
9 will never be erased. She would be so abused.

10 And it's very emotional for me to talk about  
11 this because this is my life. I'm 17 years old, and  
12 I have a wonderful daughter, and that is not the  
13 life I want for her.

14 This is what we have now (indicating a glass of  
15 water). You can all drink this, right? This is the  
16 water we drink; am I correct? Okay. So if that  
17 pipeline comes through and it just so happens to  
18 bust, this is what will happen (indicating a glass  
19 of oil). Can we drink that? Can your grandkids  
20 drink that is my question. It's very hard for me.  
21 This is what our life will be.

22 Yes, we have all heard this time and time  
23 again, but they say children are sacred. Once we  
24 grow up, once all of this happens, our life will not  
25 exist. And one of you said that we are the future

1 leaders. How can we be? How can life exist at all?  
2 It breaks my heart, it really does. And I hope at  
3 least one of us can change your mind.

4 Hearing everyone speak today made me cry.  
5 Children are crying, getting hurt, getting shot at.  
6 Why? We shouldn't even be having to go through all  
7 of this. Would you want your grandson or  
8 granddaughter being shot at, being abused? They're  
9 hurting people so bad up there. Some are having to  
10 wear colostomy bags, little boys. That is hard.  
11 There's women missing and there's nothing being  
12 done. So please just hear us out. I beg all of you  
13 just to understand where we're coming from, see our  
14 point of view.

15 And I know it's your guys' job. I understand  
16 that. But it's life. Is money more than life to  
17 you? Please answer my question.

18 (No response)

19 MS. RICKI LEADER CHARGE: Exactly. All  
20 existence will be gone. We'll cease to exist if  
21 water is gone.

22 My 4-month-old daughter, I don't want her to  
23 live like this. That's not the life I want for her.  
24 She needs to grow up in clean water, education. And  
25 that all cannot happen if DAPL goes through.

1 I pray every day that one day I will wake up  
2 and someone will say, Well, DAPL is not going to go  
3 through. I look at my daughter, and she's my hope  
4 to fight. I may only be 17 years old, but I know --  
5 I know what this can do.

6 I have a grandmother. I have a family just  
7 like you, just like everybody else in this room.  
8 And today it is an honor to speak in front of you to  
9 at least try to get my point across. I'm not  
10 fighting just for my family, I'm fighting for all of  
11 you.

12 Numbers, cages, dogs biting pregnant women, you  
13 know, grandmas getting hurt, I have so many family  
14 that's been up there time and time again, the  
15 pictures I see, the videos I see when they come back  
16 and they tell me, it breaks my heart. That's not --  
17 we're all family, mitakuye oyasin, all of my  
18 relations. We don't fight each other. That is not  
19 our way.

20 So today I hope that you will hear us. Because  
21 this is the reason why we fight and we continue to  
22 try and try. I hope that one day we can make a  
23 difference.

24 Pilamaya.

25 (Applause)

1 MS. KESHENA ONE STAR: My name is Keshena One  
2 Star. I'm 18 years old, and I am a senior at  
3 St. Francis Indian School on the Rosebud  
4 Reservation. I came here just like everyone else,  
5 to fight for our water. I also, you know, have hope  
6 that this pipeline won't go through because I have a  
7 sister that lives by the Missouri water and they,  
8 she and her son, they all depend on that water.  
9 And, um, I kind of like -- I feel like I want to  
10 cry, too, because I see, you know, everyone, you  
11 know, fighting, standing up fighting for our water,  
12 and then I see on social media, since -- I see on  
13 social media that, you know, a lot of people who  
14 don't really care for the pipeline. They don't --  
15 you know, they say, "Oh, you know, these Indians,  
16 they're going to be wiped out anyway and, you know,  
17 it's not going to matter in a couple years." But it  
18 is going to matter because we are destroying the  
19 earth.

20 And, you know, I feel bad for all the future  
21 generations that are going to have to clean up our  
22 messes and are going to have to live with the fact  
23 that we destroyed our water; we destroyed the  
24 Missouri River and that we destroyed the land.

25 And, you know, my mother went up to the

1 Standing Rock Camp and she was so happy to be up  
2 there because she was supporting all of these other  
3 tribes. She was supporting all these other  
4 families, all of these other fighters that wanted to  
5 help, help mothers.

6 And, um, it breaks my heart that, you know,  
7 these organizations are coming through and they're,  
8 you know, urinating on all of our stuff and then  
9 dumping it on the ground in dump trucks. I've seen  
10 that happen.

11 I've also seen videos of planes and helicopters  
12 flying over and crop dusters are dropping chemicals  
13 onto the camp. And to see such people with no  
14 humanity makes me scared to even have children  
15 because I don't want them, I don't want my children,  
16 my future children to clean up our messes.

17 You know, I'd like to apologize to all the  
18 children out there who are listening to this, who  
19 are watching this. I'd like to apologize to all the  
20 people who have fought so hard. And, you know,  
21 maybe we might lose; maybe we might win, which would  
22 be a good thing, but I'd like to apologize that we  
23 are destroying Mother Earth.

24 And I may not know much about, you know,  
25 speaking publicly because, you know, I'm only 18

1 and, you know, this is my first time speaking in  
2 front of a crowd, and I just want to say that I'm  
3 sorry.

4 Also, I want to say that I also do have a lot  
5 of hope, you know, for our tribes that are fighting,  
6 because I know -- I have friends that are from all  
7 over the world, from Germany, from Australia to  
8 Japan, and they're all supporting us. They're  
9 supporting our cause for clean water, and, um,  
10 they're contributing a lot of art. Because, you  
11 know, I'm an artist, and, you know, I'm contributing  
12 a lot of art. I have some pieces that are, I'm  
13 entering in the L&I art show this year. And one of  
14 my pieces is a drawing, and there's a lady with a  
15 traditional (Native language) on, traditional dress,  
16 and she has a fan, and there's what we call a black  
17 snake, which is the pipeline, and it's wrapped  
18 around her. Because that's how I see this, it's  
19 going to wrap around our tribe and suffocate us.  
20 This pipeline is going to destroy, you know, our  
21 innocence. It's going to destroy our land, our  
22 water.

23 And I just want to say that, you know, I hope  
24 you all think about what you're doing, some of those  
25 who support the pipeline. I want you to think about

1 the children, about the elders that are not going to  
2 have clean water. On Pine Ridge they don't have  
3 clean water either.

4 And, you know, I come from the Rosebud  
5 Reservation, and we're moderately poor but we still  
6 live life. And I have a best friend whose house has  
7 run out of water, and she has to go to this, the  
8 public, um, pump, water pump in another town, which  
9 is like 2 miles away, 3 miles away, and she has to  
10 get clean water for her and her baby. And, you  
11 know, it hurts me because I don't want her to live  
12 like that. I don't want, you know, anyone to live  
13 like that. But yeah, I don't want, you know -- I  
14 don't want my future generation, the future  
15 generation, my generation, I don't want any other  
16 people to live with, you know, they have to purify  
17 their water because there's such contamination.

18 And I mostly speak to you because from what I  
19 understand is that some of you, you know, some of  
20 you kind of do support the pipeline; is that right?  
21 No? Oh, okay. I'm sorry, I'm nervous. But for  
22 anyone who's for the pipeline, for anyone who's, you  
23 know, not in favor of us Natives, I hope you, you  
24 know, look back at thousands of years and think of  
25 our tribes and think of all the treaties that have

1           been broken, and I want you to, you know, reflect on  
2           what's good and what's bad.

3           So please, just listen to our voices, because  
4           we've come a long way. We've come like two hours  
5           away from another reservation to be here today to  
6           speak up for our school and for our tribe.

7           Thank you.

8           (Applause)

9           MS. IONE QUIGLEY: I'd like to leave you with  
10          one last thing, and that is that there was a Greek  
11          philosopher by the name of Thales, and this  
12          philosopher said, If we are to be at peace, then our  
13          water needs to be at peace. Each and every one of  
14          us in this room, we're made of 75 percent water. So  
15          think about it, if that 75 percent of us was oil,  
16          what would that be like? But think about it, that  
17          was Thales, a Greek philosopher.

18          Now Jeffrey would like to say one more  
19          statement.

20          MR. JEFFREE CASTAWAY: When we arrived here, I  
21          seen a lot of people look at us and raise an eyebrow  
22          and look at us with such arrogance and think we  
23          don't know anything. And I already spoke. I hope  
24          that you can see that we know more than we look like  
25          we know. I mean the way I dress, I understand why

1 people look at us as (unintelligible), a torn  
2 sweater, a jean dress. It's understandable that  
3 people would look at me and think I'm just a little  
4 kid with the way I dress. It's understandable to be  
5 that judgmental. But now that you've heard what we  
6 have to say, I hope you can understand that not just  
7 because of how young we are or how we dress, that  
8 you understand that we know more than what we look  
9 like.

10 Because this whole thing at Standing Rock is  
11 for peace, for no oil in the water. I mean, they're  
12 shooting someone with rubber bullets. And the  
13 difference between Standing Rock and  
14 (unintelligible) is peace is free. You don't have  
15 to pay to have peace. It doesn't take a life or  
16 thousands of dollars to throw down a gun and say no  
17 or to open up a cage and say, We're sorry. Peace is  
18 free, and it is a lot easier than it looks to have  
19 peace.

20 That's all I have to say.

21 (Applause)

22 MS. IONE QUIGLEY: Wopila for your attention.  
23 Thank you.

24 MR. TRACY TOULOU: I want to thank you guys for  
25 speaking today.

1           And actually, Jeffree, I think I have that  
2 T-shirt myself.

3           (Laughter)

4           MR. TRACY TOULOU: But seriously, hopefully  
5 with what you guys have said, what everybody said  
6 today, we won't be in this position again at any  
7 time in the near future.

8           But I appreciate your bravery in getting up and  
9 the passion you have at your age. And there are  
10 going to be a lot of other battles. Hopefully it's  
11 not this one. But it's good to know that there are  
12 young people like you who will get up and say what  
13 needs to be said. So thank you.

14           So the next person up is Kip Spotted Eagle.  
15 And I'm going to go down two more rows, so people  
16 know, James Cross from OST if he's around, and Bryce  
17 In The Woods from CRST.

18           MR. KIP SPOTTED EAGLE: (Native language).

19           Thank you for coming. And I'm just up here  
20 right now to go over some, for a matter of record  
21 some talking points that we've gone over and -- or  
22 to speak them up here for the record. I apologize  
23 to speaking in front of the elders. I'm actually  
24 the Tribal Historic Preservation Officer for the  
25 Yankton Sioux Tribe.

1           This has been quite the event for our nation to  
2 be involved in something. And for myself, it's been  
3 very emotional because prior to being the THPO, I  
4 was a Native American studies teacher. And it's  
5 hard to separate what's going on and stay in favor  
6 of what's happening with the government and the  
7 tribal relationship. That's a big task to show that  
8 there's something positive happening.

9           A lot of the perceptions of the kids that I  
10 talk about in my classes wanted to go to the extreme  
11 as far as how badly we're being treated, and as a  
12 teacher at the time it was very challenging to  
13 encourage them that it was going to get better. And  
14 for myself, I hope it gets better.

15           There's some key problems with the existing  
16 framework. Failure to define when consultation  
17 should begin, consultation does not begin early  
18 enough in the federal decision-making process  
19 because consultation policies do not adequately  
20 define when consultation should begin. Phrases like  
21 "as early as possible" are too vague. Policies must  
22 identify what consultations -- or consultation must  
23 start with specificity. By the time an agency  
24 engages with tribes, it's too late for consultation  
25 to be meaningful. The agency has already determined

1 the decision it will reach and consultation is  
2 merely conducted as a matter of course.

3 Agencies view consultation as merely a box that  
4 they need to check off before the action that they  
5 are going to take is formally approved. This  
6 defeats the purpose of consultation and violates the  
7 federal trust responsibility. The tribes have  
8 unique knowledge which is necessary to inform  
9 federal decisions that impact tribal interests.

10 Government-to-government consultations cannot  
11 be a rote exercise. It must be substantive and  
12 meaningful out of respect for the tribal sovereign.  
13 So for myself and the process with Section 106 and  
14 what I'm seeing, I'm a young THPO. I got to watch a  
15 lot of my heroes speak today. And it's daunting  
16 considering what has happened and what has led up to  
17 this point, but there's something that's happening  
18 that has become adversarial between anthropologists  
19 and archeologists and tribal historic preservation  
20 officers and cultural specialists. And the stage is  
21 being set by the Fed. And the reason that's  
22 happening is of course we can say that a THPO has  
23 the same impact and weight as anthropologists or  
24 archeologists, but the state won't accept that. The  
25 state is the one that's going to be a part of the

1           permitting process.

2           Now, I know that there's a lot that needs to be  
3 done. And somebody had told me you have 60 days to  
4 do it before another administration comes in. But  
5 hopefully we can change some of these things.  
6 Because a tribal cultural specialist, there's --  
7 some of the people that I've talked to, people in  
8 the room and I know people that don't have high  
9 school diplomas but they can walk up and they can  
10 find a cultural property site every time and they  
11 have the ability to do that.

12           More often than not what happens is you'll have  
13 an archeologist go onto a property and they'll find  
14 these key features in their mind, but what they do  
15 is they discount all the associated features around  
16 that main site. That site wouldn't be what it was  
17 without those other features. And that's tribal  
18 knowledge.

19           There has to be the same weight given to our  
20 THPOs and our surveyors. And you guys have a lot of  
21 work to do working with the anthropologists and  
22 archeologists of the world, because they don't want  
23 that. That's a hard thing to acknowledge that  
24 someone doesn't want your oral history about your  
25 site because you don't know what it is because

1 history didn't start until Columbus got here. So  
2 everything that we did was prehistoric. Even the  
3 language, that that's said is racist. We don't even  
4 get history. We're pre history. History didn't  
5 start until you got here. So even in the way that  
6 the language is put out, we have to change those  
7 things.

8 The other thing is you're the leadership. You  
9 can start talking to these states and start telling  
10 them, Hey, I know that you don't like it. I know  
11 that your anthropologists in your states don't like  
12 it, but you're going to have to start looking at  
13 them on equal footing.

14 I think that I have probably one of the hardest  
15 situations I ever dealt with, and the next one is  
16 what's going on in Standing Rock, but when White  
17 Swan, the graves came up, that was a situation where  
18 we dealt with the Corps of Engineers. And I got to  
19 experience something where I walked up on the  
20 Missouri River on the bottom, and I got to see my  
21 relatives. And their skulls were looking to the  
22 sky. And we had to fight the Corps to prove that  
23 those were our property. We won that. But that  
24 mentality doesn't work. That's a breakdown.  
25 There's a human law there. You know, there's a

1 natural law. Those are my dead. We have to take  
2 care of those.

3 I urge you -- and, like I said, I'm young like  
4 compared to a lot of the people. I mean, I talked  
5 to a lot of my heroes today in the tribal historic  
6 preservation world. And they know better than me  
7 what needs to change. And we need your agencies to  
8 reach out to us because it's going to take both of  
9 us working together in order to change things.

10 MR. TRACY TOULOU: Thank you very much.

11 (Applause)

12 MR. TRACY TOULOU: Is James Cross here?

13 MR. JAMES CROSS: I didn't expect to talk  
14 today, kind of filling in for our president, John  
15 Steele. But I'll introduce myself. My name is  
16 James Cross, and I'm the chairman for the Economic  
17 Business Development Committee for the Oglala Sioux  
18 Tribe. The committee is the oversight of the Mni  
19 Wiconi pipeline that served Oglala Sioux Tribe,  
20 (unintelligible) Jones and Rosebud. And so with  
21 this it brings great concern for our tribal members  
22 on the Pine Ridge Indian Reservation with the Dakota  
23 Access Pipeline and the progress.

24 But one of the person's name that I haven't  
25 heard here is, and I've sat here all morning, was

1 Donald Trump. He is an investor in this. He has a  
2 share in this. And he also -- in his campaign I  
3 heard he is going to bring up -- he is going to put  
4 the Keystone back so that it continues. So this is  
5 another fight that's coming for Indian country for  
6 Lakota people, another violation of our treaty  
7 rights.

8 Last night I turned on public television, and  
9 the CEO for Energy Transfer Partners was being  
10 interviewed, and he made a comment that this Dakota  
11 Access Pipeline is going to move regardless,  
12 regardless of a consultation, regardless of anything  
13 it's going to happen. So I know it's sitting with  
14 the Army Corps of Engineers, but it is going to  
15 happen according to him. But he was optimistic in  
16 his tone of voice that this pipeline is moving. So  
17 I listened to that and I recorded it. So I just  
18 wanted to share that.

19 And I want to thank all the leaders that came  
20 up here, our tribal leaders, our natural leaders.

21 And I want to thank each and every one of you,  
22 too, for listening to us.

23 My grandma said, when I was little she said,  
24 "Takoja, if you don't listen, I'm gonna put a stick  
25 in your ear and break it so it doesn't go in and it

1 doesn't go out." So in a way I just kind of wanted  
2 to say that so that when I'm done talking and I'm  
3 going to be leaving here, you take the stick out,  
4 you know. That's what seems to happen in the past  
5 years.

6 I was given some practical recommendations for  
7 better consultation. Treaty rights and trust  
8 responsibility: The treaty rights, the Oglala Sioux  
9 Tribe is part of the Oceti Sakowin (Seven Council  
10 Fires or Great Sioux Nation) and has rights under  
11 the 1851 Treaty of Fort Laramie and the 1868 Sioux  
12 Nation Treaty. The United States made many  
13 commitments to us under these treaties and they must  
14 be upheld.

15 The Mni Wiconi Act expressly provides that the  
16 United States has a trust responsibility to ensure  
17 good drinking water from the Missouri River to the  
18 Oglala Sioux Tribe.

19 The Federal Government also has a trust  
20 responsibility to us. This responsibility runs  
21 across all agencies. Federal agencies need to  
22 coordinate with each other to fulfill this  
23 responsibility.

24 There exists a unique federal responsibility to  
25 Indians. Through treaties, statutes and historical

1 relations with Indian tribes, the United States has  
2 undertaken a unique trust responsibility to protect  
3 and support Indian tribes and Indians. The  
4 fiduciary responsibilities of the United States to  
5 Indians also are founded in part on specific  
6 commitments made through written treaties and  
7 agreements securing peace, in exchange for which  
8 Indians have surrendered claims to vast tracts of  
9 land, which provided legal consideration for  
10 permanent, ongoing performance of federal trust  
11 duties; and the foregoing historic federal-tribal  
12 relations and understandings have benefited the  
13 people of the United States as a whole for centuries  
14 and have established enduring and enforceable  
15 federal obligations to which the national honor has  
16 been committed.

17 Impacts to our treaty rights and the federal  
18 trust responsibility to us must be considered when  
19 the Federal Government approves infrastructure  
20 projects. If the Federal Government is taking  
21 action that impacts our lands, resources or rights,  
22 then it needs to obtain our informed consent.  
23 Without meaningful consultation and tribal informed  
24 consent, federal infrastructure projects jeopardize  
25 our lands and resources, threatens our cultural

1 survival and infringes on our sovereignty.

2 Purely procedural consultation requirements  
3 with little oversight or check-the-box consultations  
4 have been wholly insufficient in protecting our  
5 rights and our interests. This has led us to the  
6 situation like the standoff over the Dakota Access  
7 Pipeline. DAPL currently poses a threat to our  
8 treaty-protected reserved water rights and the Mni  
9 Wiconi Project, which is held in trust by the United  
10 States and which provides drinking water to our  
11 tribe, as well as our tribal and non-tribal  
12 neighbors.

13 Obtaining our consent whenever the Federal  
14 Government makes infrastructure decisions affecting  
15 our lands, resources or rights is grounded in our  
16 treaties and the trust responsibility. It is also  
17 consistent with international law and best practices  
18 for facilitating infrastructure development.

19 Federal agencies must be mindful of their  
20 consultation obligations. There should be no  
21 confusion between government-to-government  
22 consultation under Executive Order 13175 and  
23 consultation under 106 of the NHPA. The Federal  
24 Government needs to send decision makers to the  
25 consultation sessions.

1 Federal notices for consultations should  
2 include detailed information about the project or  
3 initiative so tribes have all the necessary  
4 information to meaningfully consult. Tribes should  
5 not have to spend its own resources on experts and  
6 attorneys trying to determine exactly what the  
7 consultation is about. Notices should include  
8 potential effects to the tribe. Federal agencies  
9 should also consider the costs.

10 Federal notices do not always reach the correct  
11 person at the tribe. There must be a mechanism for  
12 ensuring the notice was received by the tribe. The  
13 federal agency should not be able to simply send a  
14 letter and check the box that consultation was  
15 attempted.

16 Each agency has its own consultation processes.  
17 Tribes need to conform to these several different  
18 processes and sometimes we have to for the same  
19 project when multiple agencies are involved.  
20 Consultation requirements should be consistent so  
21 tribes are not burdened with learning and conforming  
22 to multiple different processes.

23 Consultation sessions are often located in  
24 places tribes need to travel to. This costs tribes  
25 money. Funding is needed.

1           We have frequent contact with the Bureau of  
2 Reclamation and engage in constructive dialogue to  
3 reach agreement on issues. Further, when necessary  
4 to move a piece of project forward, the tribe calls  
5 consultation sessions with the relevant federal  
6 agencies. In these meetings we openly identify  
7 issues and discuss action steps to address them.  
8 Federal agencies need to participate and fully  
9 engage in tribally-generated consultation sessions  
10 to make such sessions productive. Federal agency  
11 staff needs to be accessible and proactive in  
12 building relationship with tribal leaders and staff  
13 and in keeping them informed of issues, upcoming  
14 projects and initiatives. There should be ongoing  
15 dialogues.

16           We urge the Administration to take swift action  
17 during its remaining days to ensure that tribal  
18 rights are protected when the Federal Government  
19 engages in infrastructure decision making.

20           E.O. 13175 needs to be updated to require  
21 tribal informed consent for infrastructure  
22 development projects that have the potential to  
23 significantly impact tribal lands, resources or  
24 rights. The responsibility to ensure that tribal  
25 rights are not violated lies with the Federal

1 Government. In each relevant agency, a position  
2 should be created to preliminarily assess a  
3 project's impacts to tribes, ensure notices are  
4 received by the correct tribal officials,  
5 proactively engage in consultation and ensure  
6 informed consent is obtained.

7 The Secretary of Interior should have to verify  
8 that projects with tribal implications that are  
9 authorized by agencies outside of the Department of  
10 the Interior are being implemented in a manner  
11 consistent with the United States' treaty and trust  
12 obligations. When Interior permits or oversees a  
13 project, the Council on Environmental Quality should  
14 verify treaty and trust compliance.

15 New legislation such as H.R. 5379 is needed to  
16 authorize judicial review of compliance with tribal  
17 consultation and consent requirements.

18 You know, there are two issues. You know, one  
19 is a federal one, and the other one is a state. You  
20 know, the tribes deal with is Obama -- Obama stopped  
21 the Keystone, but when it came back to the state, it  
22 fell on the Public Utilities Commission, and that's  
23 where it stands today. And so with this new  
24 President coming in, we all know that he going to  
25 sign up for that project to proceed.

1           So these are the things that the tribes face.  
2           And we're always going to probably, you know, face  
3           issues like this. I always say if it's not one  
4           thing it's another. And it'll probably always be  
5           that way for us.

6           So I want to thank you for listening to me.  
7           And hopefully everything that was said here, we take  
8           it into consideration.

9           Thank you.

10          (Applause)

11          MR. TRACY TOULOU: Thank you.

12          So just to move it along --

13          Thank you very much.

14          -- Bruce (sic) In The Woods. And then after  
15          Bruce (sic) would be Greg Cournoyer.

16          MR. BRYCE IN THE WOODS: Yeah, that's Bryce,  
17          Bryce In The Woods --

18          MR. TRACY TOULOU: Sorry, Bryce.

19          MR. BRYCE IN THE WOODS: -- for the record.

20          (Native language)

21          I'm here as an elected official, again elected.

22          And we always remember our Creator first  
23          because you're on his territory that we come from,  
24          that my ancestors are from clear back before Jesus,  
25          clear before it was the United States, clear before

1 the Constitution. And the Constitution is based off  
2 of the (unintelligible) confederacy, which was  
3 finally recognized through resolution.

4 The apology coming from the United States is  
5 just an apology. There's nothing behind it. Yet we  
6 have to recognize our Creator. And that's a mandate  
7 on us because we're talking about consultation. And  
8 when I first got elected in 2000, George Bush got  
9 into office. I believe Gore had the majority vote  
10 and the Supreme Court ruled that he was president.  
11 That should have told the U.S. citizens something.

12 And then again in 2008 I was elected again into  
13 this position. And President Obama came in, got a  
14 Nobel Peace Prize and became the most drone striking  
15 president, killing indiscriminately women, children,  
16 old people. We know that last year, very clear.

17 I served in the U.S. Army. And I served in the  
18 National Guard, too. Because we love our country.  
19 When we say "our country," it belongs to us. You  
20 guys are here, welcomed here, but this belongs to  
21 us. You gotta understand that.

22 And now I'm coming into an elected position  
23 again, representing my district, representing all of  
24 Cheyenne River, probably representing all three  
25 hundred plus million Americans now with what we're

1 talking about. And we're going to see because  
2 President Trump is coming into office. And when you  
3 have oilmen running the country, I believe it's like  
4 nine hundred plus lives (unintelligible) that these  
5 oilmen told the American people, two wars, trillions  
6 of dollars missing. Some of my nephews and  
7 relatives that served, they're still suffering from  
8 that, unless they know what we have to do to heal  
9 from that.

10 And then consultation, we were in consultation  
11 in the forest service, Bureau of Land Management,  
12 the U.S. Corps of Engineers, the Nuclear Regulatory  
13 Commission, the FFA, the FCC. Our EPA is the only  
14 one that seems to keep (unintelligible) strong.  
15 They come up environmental protection, but it seems  
16 like when a new administration comes in they even  
17 get fired when they start defending the people and  
18 their sources of life. Good Americans, good people.

19 Article I in the treaty says, '68 treaty says,  
20 it has the Bad Man Clause in there. So if you lie  
21 to somebody, shouldn't that make you a bad man when  
22 you're a liar? And you not only lie to tribal  
23 governments but you lie to the entire American  
24 public. Now we're being lied to.

25 And I see good federal employees, good

1 soldiers. And usually when those good soldiers --  
2 I'll give you an example right here. We had a  
3 consultation with the Corps. And I was hunting the  
4 Corps for two water permits. I was trying to get a  
5 response from Sioux Falls. He didn't show up. He  
6 sent a woman that was pregnant in uniform. I waited  
7 until the last minute to bring it up. I said,  
8 "Where is those permits going?" No answer.

9 So came back over here in 2008, '9, and there's  
10 a general and a colonel, a good colonel. Probably  
11 wanted to (unintelligible), a good man. I got up  
12 there and I talked about trying to hunt these water  
13 permits down, "How come the Corps is not giving us  
14 no answers under consultation for it?"

15 And now it's back there again, and the fight is  
16 heavier now. And it means every one of us. Like  
17 they say, you know, (unintelligible) and everybody.  
18 Because we're at that time now in history. We're at  
19 that time now. And there is time limits. Don't get  
20 me wrong. I'm not sitting here talking as Bryce In  
21 The Woods. I'm sitting here talking as the  
22 representative of my people. And usually I like to  
23 find out facts. And when you have a hard time  
24 finding out where two water permits are going, now I  
25 know where they're going with what we're dealing

1 with now.

2 So there's a document here you have, first time  
3 I got to see it and Rapid City is the last  
4 consultation. But some of the questions you ask,  
5 and I want to kind of give you a consultation model.  
6 I think that's what you're looking for. And we  
7 can't have the truth hidden from us or, you know,  
8 not told to us.

9 And I'm going to go back to the colonel, a good  
10 man, they sent him to Asia; they sent him to  
11 Afghanistan. The General heard him talking to me  
12 and he said, "You know what you were saying up there  
13 was the truth." And, you know, I was up there in  
14 that Bakken area and what they're doing in some of  
15 those holding ponds and he said, "You know what? I  
16 got physically sick just being around that area."  
17 So right now, was a community health representative  
18 for six communities.

19 And what we're talking about here is a health  
20 issue, so the HHS should be here because it's a  
21 major health issue what's going on with the land,  
22 the air and the water. You can't separate them.  
23 Let's follow the law, the natural law, God-given law  
24 that we have the freedom to enjoy. And now we have  
25 to defend it. The chemicals they're spraying over

1 us constantly and how it's affecting that with the  
2 respiratory problems we're having now and the barium  
3 that's in the water now that we're drinking, cold,  
4 flu, pneumonia symptoms, we're facing that right  
5 now. That's the water we're drinking.

6 Now we're putting our intake into the Missouri  
7 River because of the asbestos water lines and all of  
8 the heavy metals coming down when it floods. You  
9 know, they're probably buried in sand. The Corps  
10 has to open up the dam when that happens. And the  
11 six times that they have, they tried to play a  
12 balancing act.

13 Which if we had a catastrophic natural event --  
14 which Keystone XL couldn't answer. They had two  
15 attorneys with them, of course, and the state  
16 department had their attorney with them, and there  
17 was only about three or four elected officials and  
18 our THPOs that were talking. I brought up these  
19 disasters that we're going to face. I brought up  
20 the earthquake. And we did have a few tremors here  
21 in South Dakota. Oklahoma is leading California  
22 now. I lived in California. I know what  
23 earthquakes are. You get used to them after awhile.  
24 But Oklahoma has more earthquakes than California.

25 So Keystone XL couldn't answer the question.

1 "Oh, we got it covered. We don't have one leak  
2 yet." And then Keystone 1 started leaking, manmade  
3 errors. Mr. Warren (unintelligible) just  
4 (unintelligible) through. I was up there when he  
5 reclaimed 51 treaty territories. Like I said, we  
6 own the land, the water. We're supposed to be the  
7 caretakers, land defenders, water protectors.  
8 That's what the system made us to be.

9 And there's a lot of good people, but there's a  
10 lot of bad people, too. And I would rate some of  
11 these people that are pushing these issues  
12 (unintelligible) are bad people, (unintelligible).

13 All federal agencies are supposed to have a  
14 public hearing, public information sharing with all  
15 of Rapid City right now. They do it through the  
16 Federal Register, but nobody reads it. Nobody  
17 knows. It's an unknown consultation. Just like  
18 this, how many knew? If I didn't get elected back  
19 on, I wouldn't be standing here. And I thank the  
20 Creator for having me stand here because I'm really  
21 concerned.

22 So we have this consultation model. It  
23 involves physical and it involves mental and  
24 spiritual and timetables. But on top of that it  
25 also involves truth, justice, wisdom and timelines.

1 It's kind of made up in directions. Because we come  
2 from all directions and the elements of policy which  
3 start from that.

4 For example, (unintelligible) right now. And  
5 the (unintelligible) are contributing, and so is all  
6 of that methane that (unintelligible). And the  
7 pipeline that they're rushing through, that should  
8 have NASA here at the table, too. NASA needs to be  
9 at the table.

10 Ever since Area 51 and all of these  
11 technologies that have come, and a lot of it has  
12 benefited mankind, but every time NASA, scientists  
13 or somebody or EPA talk for the betterment or for  
14 protection or to do something better or "Don't do  
15 that because you're going to destroy the water," the  
16 door shuts on them; they shut up, be quiet, gag  
17 order. Sent you to the front lines.

18 On the spiritual part of it, the Hopi prophecy  
19 came true when the Deepwater Horizon exploded and  
20 created the head of this black snake. And we still  
21 don't know what that has done. We know how it's  
22 affected tribes down there and their food supply and  
23 their subsistence, the economy. Everything that oil  
24 did down there, nobody wants to talk about it.  
25 Let's talk about it right at consultation at the

1 table with NASA and the EPA taking the lead.

2 Solution to manmade disasters, let's talk about  
3 that as part of the policy that we're going to  
4 develop complication. What are the solutions?

5 I was talking to the Nuclear Regulatory  
6 Commission, and we went out to about 90 miles south  
7 of Pumpkin Butte. Pumpkin Butte is a stronghold.  
8 And when you look straight from Pumpkin Butte west,  
9 you see the summits of the Big Horn Mountains,  
10 icecaps, very important, icecaps. It's 175 miles  
11 (unintelligible). That's where we start from. And  
12 what they've done to that area with the issuance of  
13 permits from BLM and NRC is there was a spill over  
14 the next butte over, uranium. And the production  
15 bleed is how the companies, the corporations  
16 manage -- if they're spilling into the aquifer and  
17 they're drilling into the watershed and then you're  
18 disturbing the whole ecosystem, well we will check  
19 our -- it's bleeding out, we'll suck it back up, and  
20 that's how they'll tell if the uranium is escaping.  
21 Well, what if that fails? We'll have to reverse  
22 osmosis the aquifer, which means that we're  
23 bankrupt. Key word now, "bankrupt". So the Hopi  
24 prophecy is true, has been true for several years.

25 Now the Lakota prophecy is the body of the

1 snake. You have the head of the snake in the  
2 impact zone, and now you're talking about the body  
3 of the snake, prophecy, our spiritual soul-searching  
4 issue.

5 And I know when I was in the (unintelligible)  
6 with the 9th Infantry, there was a major that was  
7 coming on the local news channel there up in  
8 Seattle. And we were sitting in the barracks, and  
9 we were waiting for a football game, and this  
10 military intelligence major came on. He was daring  
11 the 9th Infantry to kick him out of the military.  
12 He had a black garb on, and he looked like a  
13 warlock. But what he said was he was the high  
14 priest of satan and that there was three hundred  
15 plus churches of satan here in America and two  
16 hundred plus churches of Jesus Christ here in  
17 America. So we know there's some bad people here  
18 that don't care about mankind, don't care about life  
19 forms, don't care about water, don't care about  
20 nothin'. That's a fact. But it's a spiritual  
21 issue.

22 So part of this that, on the back page here you  
23 have some of the legal framework, you need to add  
24 the American Indian Freedom Religious Act. You need  
25 to have the U.S. Constitution that was mentioned

1 earlier and the treaty as part of your consultation.

2 But it does now go to the (Native language),  
3 the nuclear waste into the water. Now if we can  
4 develop policy that would ensure that we can -- this  
5 is all secretaries, along with all the tribes,  
6 develop a policy, would have to really develop a  
7 natural -- an international emergency operation plan  
8 to address the disasters that are forthcoming;  
9 they're coming, so Keystone XL couldn't explain or  
10 couldn't even tell us with their attorneys what it  
11 would do if an earthquake struck. And they still  
12 haven't answered that question.

13 And like I mentioned before, there's been some  
14 tremors here in South Dakota, unheard of. So we do  
15 need NASA involved in (unintelligible) technology.  
16 We need an emergency operation plan, and we need a  
17 health plan from all the secretaries. And hopefully  
18 President Trump will support that because we need to  
19 convince him that this is a health issue and this is  
20 planning for emergencies. Where right now there's  
21 no plans for emergencies. If we have another  
22 nuclear -- let's say an earthquake hitting a nuclear  
23 facility reactor, we have that spill, and there's no  
24 emergency personnel that can get there. Just like  
25 up here, all of these pipelines that are in the

1 ground, they rupture or leak and nobody can get  
2 there, it's not a guarantee (unintelligible), out a  
3 billion dollars. Like what I said, this corporation  
4 said that if they had to reverse osmosis aquifers in  
5 Wyoming, (unintelligible), it would bankrupt them.

6 So then I found out that they throw this on the  
7 backs of the taxpayers and they put the burden on  
8 the federal agencies to back up those corporations  
9 that have railroaded the U.S. Constitution and  
10 controlled the monetary, the politics in D.C. and  
11 the military. That's a fact. It's out there now.  
12 There's no -- so we need this public hearing policy  
13 to educate every U.S. citizen so they know these  
14 things are real and coming. That's a fact, too.

15 So these two water permits that I was hunting  
16 for, I guess that's where I start now. And I think  
17 that the CFOs or the solicitors need to be involved  
18 with the federal agencies so they can develop some  
19 real solutions for all Americans here, not just  
20 tribal governments, state governments.

21 We're finding out now that a lot of conflicts  
22 of interests. The two concerns I have is the  
23 conflict of interests and the bar attorneys and  
24 judges. Can anybody tell me what bar stands for?  
25 Anybody? Anybody an attorney in here? What does

1 bar stand for? Look it up. It's the British  
2 Accredited Registry, British Accredited Registry,  
3 "bar". So the real imports of Britain are running  
4 us over here. So it's an international issue. And  
5 we really need to put this spiritual wisdom on the  
6 table as part of our consultation because of these  
7 bad men that are out there that are doing this to  
8 mankind and to the planet. (Unintelligible).

9 I got some figures here, and you guys need to  
10 really get this. You know, Exxon Mobile spent  
11 decades lining up global --

12 MR. TRACY TOULOU: Bryce, I'd be happy to look  
13 at the numbers.

14 MR. BRYCE IN THE WOODS: Okay, this is a --

15 MR. TRACY TOULOU: We need to wrap up  
16 because --

17 MR. BRYCE IN THE WOODS: This is -- this is the  
18 high risk financing behind the Dakota Access  
19 Pipeline, that's what it's called. And I'm sorry  
20 that I'm bringing up extinction level discussion  
21 here, but that's what I'm bringing up, extinction  
22 level events happening. You're not prepared and  
23 we're not prepared; the Federal Government is not  
24 prepared; South Dakota is not prepared. Nobody is  
25 prepared.

1           So solutions: Let's get NASA to help out on  
2           some of the technologies that are not there and then  
3           the Federal Advisory Committee and the PA that was  
4           talking (unintelligible).

5           Corps, do not grant the section  
6           (unintelligible) permission until you order a full  
7           environmental impact statement. And the loopholes  
8           that are with the Nationwide Permit 12 that DAPL was  
9           using, we need to close those loopholes and we need  
10          to consult with the real landowners that are treaty  
11          descendents.

12          I will leave you with one comment. The  
13          pipeline business will overbuild until the end of  
14          time. I mean that. That's what competitive  
15          projects do. You know who said that? Kelcy Warren.  
16          End of times, he said it. Remember that now.

17          Thank you very much. Pilamaya.

18          MR. TRACY TOULOU: Thank you.

19          (Applause)

20          MR. TRACY TOULOU: So coming up is Greg, whose  
21          name I butchered from Yankton. And then after  
22          Greg -- is Richard White still around? After Greg  
23          is Richard. After then after that is Jason Cooke,  
24          if he's still around. We've only got about a half  
25          an hour, guys. So I'm sorry. Thanks.

1 MR. GREG COURNOYER: (Native language)

2 My Indian name is (unintelligible). I come  
3 from the Yankton Sioux Reservation down in the  
4 southeastern part of the state. I'll read black and  
5 white here some bullet points that I want to cover.  
6 And then I'll talk real talk for a few minutes. And  
7 I don't want to take forever, five, maybe ten  
8 minutes.

9 MR. TRACY TOULOU: Great.

10 MR. GREG COURNOYER: Failure to comply with  
11 consultation policies and lack of accountability:  
12 Federal agencies have (unintelligible) violated  
13 their own consultation policies. And while it is  
14 good to have consultation policies, those policies  
15 are meaningless if they're not enforced.

16 There's currently no accountability for agency  
17 violations of consultation policies. Most agency  
18 policies expressly state that they're not judicially  
19 enforceable and that they do not provide  
20 consequences for the agencies if they violate the  
21 policies.

22 Tribes must be able to enforce their  
23 consultation rights without having to resort to  
24 litigation. Consultation policies must, at a  
25 minimum, include financial repercussions for an

1 agency's failure to comply with consultation  
2 requirements and prohibit an agency from proceeding  
3 with an action when consultation policies have been  
4 violated.

5 The ACHP needs to have increased authority. It  
6 is often the only seemingly neutral party when  
7 there's a dispute regarding consultation. The ACHP  
8 must be able to not only make recommendations but  
9 also enforce its decisions.

10 Failure to identify when a project will or may  
11 impact tribal sovereign interest: Agencies  
12 frequently fail to recognize when their action will  
13 or may impact tribal interests. For example, with  
14 respect to Dakota Access Pipeline, the St. Louis  
15 District of the Army Corps of Engineers failed to  
16 consult with the Yankton Sioux Tribe entirely. No  
17 attempt was made at all. Presumably this is because  
18 the corps was unaware of the tribe's extensive  
19 history in Iowa. As a result, the tribe's unique  
20 knowledge of its culture and history in this region,  
21 including burials, was not taken into account by the  
22 corps.

23 I've been up at the camp for two months out of  
24 the past three and a half months. I've been out of  
25 the Marine Corps for 17 years, and it looks like

1 PTSD when I go up there. I read about terrorism  
2 awareness when I was in the Marine Corps. I see it  
3 up there, war tactics. I don't like it. There's a  
4 young marine in me that wants to break out in a  
5 rage, but there's an older sun dancer in me that  
6 tells me to follow my heart and pray. So that's why  
7 I went up there.

8 According to our constitution I have to serve  
9 our people, and I did that for our camp up in  
10 Standing Rock. And I came home after a month and a  
11 half. I've been up there. This is my fourth time  
12 back up there. We just got back the other night.  
13 And I don't like the things that I see up there. I  
14 don't like to see our people getting hurt because  
15 they want to pray. We're people of prayer,  
16 tradition and culture. And I commend all of them  
17 warriors and women warriors up there that are  
18 standing.

19 I have two grandsons. And yes, I am standing  
20 up for our children and their children. This  
21 pipeline, we want it stopped. And I know there's a  
22 lot of people that are pro DAPL and they're for  
23 this, but we were the first inhabitants of this  
24 earth, the first nation people here, and to  
25 constantly be treated like a third world party in

1 this country is a downright shame to me.

2 I fought for the government. I wasn't in  
3 during war time, but I fought for a government that  
4 underappreciated me, I guess. I got out with an  
5 honorable discharge and I'm happy. I took that  
6 four-year oath to defend the Constitutions of the  
7 United States, foreign and domestic, but now I stand  
8 up for my people because I took an oath to do the  
9 same thing for our people. And if I wasn't standing  
10 here right now, I wouldn't be doing my job. I just  
11 want you guys to know that.

12 I got two daughters, and they mean the world to  
13 me. I have two grandsons. They mean the world to  
14 me. When you go home tonight, remember your  
15 families because you're going to be looked at by  
16 your kids and your grandkids and they may ask you  
17 one day, you know, Why did you guys do that?

18 And it seems like a lot of this media has been  
19 covered up by these stingrays that they've been  
20 using, like I said, these military tactics. It's  
21 never fair. It's never been fair. But I think we  
22 all know that life, in life, you know, it's never  
23 going to be fair, maybe at times.

24 But there's a lot of things that I've seen,  
25 good things and bad things come on both sides.

1           There's a camp up there. They're highly funded.  
2           They're very unappreciative, and they are your  
3           agitators. They do not have permission from the  
4           Oceti Sakowin Council. Our (Native language) and  
5           (Native language), we meet at the council lodge. We  
6           bring those messages back to our camps. Remember  
7           that, we're a peace and prayer camp and that we are  
8           unarmed.

9           But there's -- I'll put it this way, I seen him  
10          here earlier, Mr. Taken Alive, he said it best in  
11          that council lodge. He said, "How dare this camp or  
12          this camp," I won't say their names, "how dare they  
13          take direct action? They don't have permission by  
14          this council and this lodge. They're jeopardizing  
15          our prayer." And that's right. And I brought that  
16          back to our camp. And, "By a show of hands, oh, we  
17          need warriors up to the front lines," and I call our  
18          guys and, "By a show of hands who wants to go to the  
19          front lines?" Every single hand went up and I said,  
20          "That's what I thought." I said, "Well, you guys  
21          go. Be careful. But know that when you're up  
22          there, you do not have permission from the elderly  
23          and the Oceti Sakowin Council to be up there. And  
24          when you leave, you could possibly get hurt; you  
25          could possibly get killed."

1           And out of all due respect for Chairman  
2 Archambault, I took his words with my heart. I  
3 don't want anybody to die. You know, we're guests  
4 and we're called upon to go up and help pray, so  
5 that's what we did. But now, you know, what I see  
6 is like an act. It's like what if these weren't  
7 rubber bullets, you know? If they were real, look  
8 how many deaths there would be.

9           I don't like the fact that police officials are  
10 covering up -- they're putting "deputy" and  
11 "sheriff" on their license plate, covering their  
12 badges. Some of them are wearing masks, too. I  
13 mean, yeah, there's reports that talk about sticks  
14 and rocks. Come on now, you gonna really put that  
15 against bullets and bear mace, sandbag rounds?

16           It's not fair what's going on up there, but I'm  
17 going to tell you now, our people aren't going to  
18 leave up there. There was so many. Even a man that  
19 came into the council lodge, he said, "Watch. You  
20 listen. Go back down to your medicine men, and one  
21 day he's going to tell you to put these down," and  
22 he said, "our chanunpas, our prayer pipes, to fight  
23 for your people." I didn't even know him, but I'm  
24 related to that guy. And that's what's going on  
25 here.

1           Our spirit is very strong. We're very strong  
2           hearted people, ceremonial, traditional, and it  
3           hurts to see what's going on up there, getting  
4           pulled out of sweat lodge, getting hit, shooting  
5           medics.

6           One of my good friends is up there. He  
7           messages me all the time, "I'm ready, Brother. I'm  
8           ready to die today." Well, he's not the only one.  
9           There's a lot of them up there for this. There was  
10          even an elder grandmother. She said, "I've been  
11          waiting for this my whole life." And that's --  
12          that's why we're standing up there in solidarity.  
13          And I do it through prayer.

14          You know, Chairman Archambault said, Well, this  
15          isn't Greasy Grass and this ain't Wounded Knee. But  
16          when I looked around me, I seen how easily we could,  
17          at any time, get wiped out. You know, I still think  
18          military mindedly, too, but I carry a chanunpa now.  
19          So, like I said, there's a young marine in me that  
20          wants to act out in rage, but there's an older sun  
21          dancer in me, too, that tells me to stay in prayer.  
22          And, you know, I wore not this uniform. I wore a  
23          Marine Corps uniform.

24          And I want to commend you guys. I know you're  
25          just doing your duties.

1 Colonel Henderson, I know you got a heavy job.

2 And you Federal Government officials, I'm just  
3 another common man. I'm a (Native language). I'm  
4 an elected official; I'm a councilman, but I don't  
5 like putting that word with a sun dancer in the same  
6 sentence because politics get ugly.

7 But I continue to pray with my pipe (Native  
8 language), and that's what helped save my life. I  
9 had to deal with PTSD. I wasn't in during war time,  
10 but I was in Iwakuni, Japan. North Korea sent two  
11 missiles over our base to show us that they had fire  
12 power and they were willing to use it. You know, I  
13 got out in 2000 and went home.

14 But I don't want to outwear, overdo my welcome.  
15 I want to thank you all for listening.

16 I see another chairman, another councilman back  
17 there from Standing Rock. I was very glad and  
18 honored to meet a lot of the elected leaders up  
19 there at the camp. Yeah, there may be bad things  
20 going on, but there's a lot of good things that are  
21 going on up there, too. In the Marine Corps we used  
22 to say the 10 percent, those are the ones that are  
23 acting up. And it is just like that. And it's kind  
24 of uncontrollable at times.

25 But I had a guy tell me, you know, something I

1 didn't want to hear. And I said, "That's fine, you  
2 know, but I'm delivering a message. So you go tell  
3 them elders that you can get mad at me, but all I'm  
4 doing is delivering a message. You're just hurting  
5 this prayer and this camp."

6 So I look at things that way now. It's what  
7 saved my life this chanunpa I picked up. And I'm a  
8 single father of two daughters. Usually it's a  
9 single mother, but I'm a single father. And this  
10 pipe saved my life. There's a lot of pipe carriers  
11 in that camp.

12 I want to thank you all for listening to my  
13 side.

14 I want to thank that youth council that came up  
15 earlier and all of you (Native language) and leaders  
16 up there for our people.

17 Thank you. Mitakuye oyasin.

18 MR. TRACY TOULOU: Thank you.

19 (Applause)

20 MR. RICHARD WHITE, JR.: Everybody, thank you  
21 for your time and everything.

22 I just want to apologize to my elders for  
23 speaking in front of them.

24 I'm a pretty young director right now. I work  
25 for the Oglala Sioux Tribe. I am the Director of

1 Natural Resources. And I come to you. I realize  
2 the short timeframe here. I'll speed it up as fast  
3 as I can. I did take a lot of notes. A lot of the  
4 information that was given today, you know, we want  
5 to stay focused on that government-to-government  
6 side of things. And so I brought a lot of  
7 information, but I know the pressed time and  
8 everything like that. That's one thing that we  
9 always came across with tribes is our limited time  
10 for us to speak, and I'll go through this as fast as  
11 I can without rambling on.

12 I've been in there. We talked about  
13 qualifications for, you know, your positions and  
14 what you have and everything. You know, we went  
15 through -- I went through a lot of college and  
16 everything, and it sparked my interests from, you  
17 know, water quality to contamination to diseases on  
18 our reservations.

19 As we went through, you know, I'm very much  
20 qualified for my position. I do have an extensive  
21 engineering, chemical, natural sciences and  
22 environmental science background.

23 One thing that we need to understand is that a  
24 lot of these are government-to-government relations  
25 that we need to speak about to be able to meet on a

1 mutual level with the tribes and with us, not only  
2 for your policies but also for us to be able to  
3 decipher your information and basically your  
4 paperwork that comes to us, because a lot of it  
5 tends to be really lengthy and worded for a very  
6 high educational level to be able to understand  
7 what's actually put into a lot of that paperwork.

8 One thing I wanted to say is we are the Great  
9 Sioux Nation. It extends not only to the U.S. and  
10 Canada but Mexico and our relatives to the north and  
11 south. You know, that's why we say mitakuye oyasin,  
12 because we're all related in that area.

13 And with our ancestors, you know, Columbus,  
14 whenever we discovered him, you know, it was the  
15 beginning of the breaking of our circle of life.  
16 Our unity was what pretty much saved us and shows  
17 our way of life to all that is sacred.

18 The four hours that we were allowed, you know,  
19 you went over that and everything, so I'll try to  
20 rush through a lot of this. But a lot of the  
21 concerns that were outlined, you know, we did have a  
22 lot of repetitiveness and redundancy throughout the  
23 presentations, but that's one thing that we've  
24 always stood for is what was burned in our minds  
25 from the Federal Government side of things, so you

1 need to understand where we come from from a lot of  
2 our talks, it does come from the heart. But we also  
3 need to understand what's coming from the other side  
4 of things also.

5 So I came from Omaha last night. I was at the  
6 MRRIC, the Missouri River Reclamation and  
7 Implementation Committee. A lot of processes that  
8 went through with that committee were not consulted  
9 by with the tribes. I feel a lot of the operations  
10 that are going on with the river, the plans, the  
11 draft environmental impact statement, a lot of that  
12 stuff is very, very limited on the side of tribes.  
13 They do mention a lot of it in there, but it has a  
14 whole other focus that needs to be looked at.

15 The tribal cultural properties that everybody  
16 talks about, you know, that are really significant  
17 to us as a SHPO entity, the state historical  
18 preservation officers, they have a whole different  
19 idea of what is actually sacred and what we consider  
20 sacred. They have the criteria of five items, I  
21 believe it was, but us as Native Americans,  
22 everything is sacred to us. The water is one of our  
23 main life sources. We can't live without it. You  
24 guys can't live without it. We need that.

25 And not only that, but a lot of what goes on

1 with especially MRRIC is not considered, especially  
2 with those water levels that go up and down, so the  
3 focus of that MRRIC has come to a head that to me is  
4 only focused on the river. It's not including these  
5 pipelines, these influences from the tributaries  
6 that come from our creeks, rivers, streams, things  
7 like that. And you have to understand that a lot of  
8 these, they're heavy metals; they're contaminations,  
9 (unintelligible) that's used in fracking operations.  
10 A lot of this uranium mining that's going on, these  
11 are heavy metals; these are heavy materials. I'm  
12 pretty sure you guys all know, but I want everybody  
13 else to educate the public on that these elements  
14 leach down or they go down. They filter down to the  
15 bottom. So as these water levels drop, these are  
16 exposed. Graves are exposed; towns are exposed,  
17 things that were flooded out for this river  
18 operation, not to mention the damming, the  
19 hydropower, the thermal power that's going on. A  
20 lot of this hasn't even been consulted with.

21 I realize the THPO offices are recently  
22 developed and everything like that, but for an  
23 aboriginal territory to be in that area, the Dakota  
24 Access Pipeline, I don't see how the plans can  
25 change from going north of Bismarck, the city can

1 put in their input but yet the tribes never even had  
2 input for them to come through that property, and  
3 that's treaty territory right there. It's just  
4 south of Bismarck, and it's very much through a lot  
5 of that area, not considering everything that goes  
6 on down the river, too, with stakeholders, land  
7 owners. That's why you see the support throughout  
8 the United States, throughout the world, you see  
9 people supporting, "No DAPL, no Dakota Access  
10 Pipeline." And so I just came up to feed some  
11 information and background on a lot of that.

12 You know, just a lot of operations that are  
13 actually going on are kind of very limited on that  
14 draft environmental impact statement. The time  
15 frame that we're allowed to actually review that is  
16 really short also. So I would request for that to  
17 be extended for the tribes to be able to give that  
18 to the lawyers and actually decipher a lot of that  
19 information for, you know, a proper consultation.

20 You know, and for you guys, like us to have to  
21 go to the government meetings, you know, as a  
22 government to government, you know, I believe that  
23 you guys should make some effort to come to us. We  
24 always have to go to the government. We have to  
25 spend our money. We have to spend our allocated

1 monies to come to you guys all the time. And I  
2 realize you're just doing your jobs. I'm not trying  
3 to be negative or anything like that. You guys need  
4 to hear this, too. And it's coming from different  
5 aspects, as you can see, from our elders to the  
6 younger generations.

7 But I definitely wanted to speak on a lot of  
8 that because the recommendations that come across,  
9 especially with these operations with MRRIC which  
10 will directly affect the river, the operations, you  
11 know, with all of this stuff that's going on, the  
12 damming and everything, I don't see why, if this  
13 is -- if our treaty territories outline our  
14 territories as the east bank of the Missouri River,  
15 I don't see why we wasn't consulted with on a lot of  
16 this or why the tribes aren't being brought into  
17 this power that is produced and put into the grid in  
18 this WAPA. And for me, why aren't the tribes having  
19 free power? Why aren't we having, you know, better,  
20 more consultation that, you know, will take into  
21 consideration what the tribes want?

22 It's really difficult to get on the schedule  
23 and especially for you guys to come out. Because I  
24 really commend you for actually coming, and  
25 especially the bad weather that's coming. But

1 that's South Dakota for you, one day it can snow,  
2 and the next day it's sunny and 90 degrees, so  
3 that's a perfect example.

4 A lot of the operations that are going, you  
5 know, I think for that consultation, you know, then  
6 we have the opportunity to bring up such thing as  
7 your Endangered Species Act, your NEPA. The 106  
8 process in under NEPA; the NHPA, the National  
9 Historic Preservation Act; NAGPRA, Native American  
10 Graves Protection & Repatriation Act.

11 And these, like the water quality and  
12 everything is so far down on your list of  
13 priorities, it's just come to the realization that  
14 this is not a priority. To me these should be  
15 really at the top for all of us, not just the  
16 tribes. We really need a lot of this.

17 And for the, especially up here like, you know,  
18 the desecration of known identified sites that fall  
19 under the NHPA and by DAPL in these energy  
20 transfers, you know, that's very unacceptable for  
21 them to desecrate graves like that. Nobody would  
22 agree for anybody else to go through, per se, one of  
23 the national cemeteries. It'll be the same kind of  
24 situation. For us it is. These endangered species,  
25 the habitat destruction, the ignorance by the

1 recreation, the sand and gravel on the Missouri  
2 River, these draft environmental impact statements  
3 is upwards of 3,000 pages, and the tribes' portion  
4 is ten pages. That is less than 1 percent. And  
5 that -- you know, that just kind of shows and tells  
6 me that we kind of have a long ways to go to  
7 actually see us on an individual -- or a level  
8 playing for us to have a say-so in what needs to go  
9 on.

10 I really feel that, you know, these endangered  
11 species, the pallid sturgeon, the (unintelligible)  
12 Clover, all of these endangered species, they're all  
13 sacred. Like we keep saying, they're mitakuye  
14 oyasin. We're all related. We think of everything  
15 as sacred, the water, the plants, the rocks,  
16 everything. Everything we use in some way or  
17 another. But that's what the circle of life is, we  
18 all mend together. It all goes around. We all help  
19 each other. But we're going away from that. We  
20 need to step back and actually look at what the  
21 tribes want and take that into consideration.

22 Put us in the beginning stages of your  
23 environmental impact statements, no at the end.  
24 We're so far down in it we've got to the middle  
25 stages of where your consultation is. And, you

1 know, it's getting there, but it's small steps, I  
2 realize that.

3 But the amount of information that we received  
4 over the past few days, especially on MRRIC, is very  
5 much -- it's so much information at once.

6 And I'm kind of just zooming through my notes  
7 here because I realize the short time there. I'll  
8 try to stick to it as best as I can.

9 But we just won't be ignored anymore. We want  
10 to be, have a seat at the table. We want to see you  
11 guys on a level playing field. We want you to see  
12 us on a level playing field. We want to be able to  
13 consult with you guys regularly and to tell you what  
14 our rights are, what our thoughts are, you know,  
15 have some real, real input back and have an impact  
16 for a lot of things that need to go on.

17 We all need water. This watershed feeds  
18 millions of people, towns, Omaha. Omaha takes a lot  
19 of their water right there, a lot of our tribes.  
20 They -- there's so many straws in the river right  
21 now that it's increasing. And the reservoirs  
22 behind, the water behind the actual dams, what is  
23 that being used for? What is it being reserved for?  
24 Is it for the oil? Is it for fracking? Because I  
25 know that takes a lot of water. And for that to go

1 away, you know, basically everything is going to go  
2 away.

3 I have a lot of friends that can actually light  
4 their faucets on fire at their homes. That is too  
5 sad to see for me, and in my heart that really  
6 bothers me a lot. It does. I'll put it out there.

7 But, you know, in the end we just want proper  
8 tribal consultation. We want to be able to protect  
9 things. We think everything is sacred, so we want  
10 our water. We want our treaties. We want life. We  
11 want all species to survive.

12 And we want an excellent future for not only us  
13 that are here. We have a future ahead of us. I  
14 have kids. I want them to be able to drink water.  
15 I want them to be able to have their lands. And it  
16 almost chokes me up to be able to say a lot of this,  
17 but I just want you guys to understand where we come  
18 from because it's all from the heart. This is all  
19 just consultation. We want to be able to meet with  
20 you guys on a mutual level without having to  
21 practically italianize (sic), "Well, this is what  
22 you're doing wrong," when we could have been there;  
23 we could have told you that these were there; we  
24 could have told you guys things that went on.

25 So with that -- I'll end with that. I really

1 want to thank you guys for your time and coming out.  
2 And (Native language) and wopila.

3 It's very good to, you know, see all of our  
4 support and everything at Standing Rock. I'm behind  
5 them. I've been there three times. And, I'm sorry,  
6 but we won't stand down from a lot of that. We have  
7 a lot of people that are ready to take every  
8 initiative that we need to to protect our water, and  
9 you guys have the opportunity and the chance to save  
10 all of our futures.

11 Thank you.

12 (Applause)

13 MR. TRACY TOULOU: Thank you.

14 We're going to take a break now. We've got  
15 about a half a dozen more people. We have less than  
16 an hour in the room, but I'm feeling hopeful.

17 (Recess)

18 MR. TRACY TOULOU: Let's start with Phyllis  
19 Young.

20 MS. PHYLLIS YOUNG: (Native language).

21 I am a woman who stands by the water and a  
22 woman who loves the water. I come from the Oceti  
23 Sakowin Camp. And I bring you greetings of a unity  
24 in my homeland that I'm privileged to witness that I  
25 never thought I would ever envision in my life. I

1 wish that more of our people who are elders who  
2 fought and struggled in the last 40 years could be  
3 here.

4 I want to thank you for being here. You  
5 represent the United States Government and the  
6 treaty partner, and we will accept no less. So I'm  
7 honored that I can speak here today. I waited, but  
8 it's worth it.

9 I am a child of Oahe. And I know homelessness,  
10 and I know hunger in my homeland. In the national  
11 interest we have given. We have sacrificed  
12 incredibly. And we used to talk to each other.

13 The children, I'm glad you had them here today  
14 because we have to bring them along with us, like  
15 our families and the women.

16 So many of my constituents, my relatives at  
17 Standing Rock, we talked about suicide. "Would you  
18 ever commit suicide? Hell, no. I want to live."  
19 And there was a little girl when we all said we were  
20 going, we were ready to die for this cause, and many  
21 are, but this little girl behind us said, "I don't  
22 want to die. I want to live." So I said, "Is that  
23 what you want me to say?" So we're moving forward  
24 with the fight for life, not only for our children,  
25 for our grandchildren but for all of humanity.

1           So I come here having taken back my  
2 spirituality, having lived the struggle in 1970  
3 answering the national call of (unintelligible) crow  
4 to create that sun dance as a spiritual sacred sun  
5 dance, which is on sacred lands.

6           I'm privileged to be a witness today that we  
7 continue that struggle. And I exercise my freedom  
8 of religion in a good way. Like the veteran before  
9 me said, we only have a collective memory of trauma.  
10 We have a collective memory of war. And that we  
11 have many peacekeepers in our camp who want to help  
12 us create a positive mindset of peace. And have you  
13 taken that back? What belongs to us in our language  
14 and what we interpret and what is in our collective  
15 memory of who we are, we are a peaceful people.

16           So I have transitioned from being the biggest  
17 malcontent on the Great Plains to a very serene  
18 person who has to fight for my children and my  
19 grandchildren. The only time that I lost it was  
20 when they shot one of our children and killed a  
21 horse, then I didn't care. My challenging spirit  
22 came out.

23           Our freedom is in our DNA, and so we're not  
24 from a box, a square box. We are from a circle.  
25 And I went to the front lines. I prayed for myself.

1 I had my prayer ties with me. But they took my car  
2 and impounded it. Had to pay probably 20 times  
3 more. And that -- and I didn't know how to pray for  
4 a car. I didn't know how to make a tobacco tie for  
5 it. So that's the extent.

6 And so today I just want to let you know that  
7 we have never -- the Oceti Sakowin is a cultural  
8 presence. We have never conceded, relinquished or  
9 given up anything that was natural to us.

10 The Oceti Sakowin is the seven council fires,  
11 and we represent a cultural presence that makes us  
12 the predecessor sovereign of America and that we are  
13 exerting our cultural presence, our ancestral law  
14 and natural law that predates any written law,  
15 including the Constitution of the United States and  
16 the treaties. But we are partners with the United  
17 States, (unintelligible) from the government to  
18 protect us.

19 And so I brought with me -- I'm going to do --  
20 I'm going to be short and sweet, I told one of the  
21 coordinators, which was very hard for me to be sweet  
22 and, short and sweet in my life.

23 I'm a child of Oahe, and I have struggled all  
24 of my life. There were 197 homes inundated at  
25 Standing Rock. And I'm still waiting -- I said 40

1 years I asked for a mansion on a hill, but standards  
2 have changed in America, so I'll settle for a cabana  
3 or a houseboat, a one-room house on the shore.

4 So I want to say that -- I want to present for  
5 the record the Dakota Territorial Act which was  
6 ratified by the United States Congress, Session 2,  
7 Chapter 85, 1861, which is included as the statutes  
8 that large treaties and confirmation of the United  
9 States of America from December 5th, 1859 to  
10 March 3rd, 1863. So I want to present that for the  
11 record, as well as three documents, the Sioux Nation  
12 of Indians, the declaratory statement from the  
13 Library of Congress from the United States of  
14 America.

15 And we are issuing treaty identification cards  
16 now. We will become citizens of the treaty  
17 territory. And we will -- initially we're doing  
18 just the treaty ID. We are looking at driver's  
19 licenses, and we are looking at hunting and fishing  
20 as well.

21 We cannot wait another lifetime for our  
22 children to go through the hunger and homelessness.  
23 There were ten people shot, including three of our  
24 children. Now, if I'm 70 years old and I tell you  
25 my children might be 40, so when the government --

1 when we made that statement, the State of North  
2 Dakota said, "Well, you'd better get the Indian  
3 Child Welfare Act out." So we'll get it out. But  
4 they might say, Well, you're not covered under this  
5 because you're 40 years old. So they're trying  
6 everything.

7 But I feel like I'm in a war zone, and I feel  
8 like I've been abandoned. And so I brought with me  
9 the tribal resolution that is a part of the United  
10 States agreement with us. And I was one of the  
11 negotiators for Standing Rock as a tribal council  
12 member for the Standing Rock Sioux Tribe versus  
13 Salazar. And so I brought the entire 20-page  
14 justice settlement that we have with them. And it  
15 covers Oahe. It covers the shoreline. We made  
16 those commitments, and those were protections for  
17 our people, and those have to be processed.

18 We have a dispute resolution in this Justice  
19 Department Agreement, and it calls for interaction  
20 for 90 days. There are three steps to it. So I  
21 will -- I will give that to the Chair of this  
22 committee that we made those agreements. So we  
23 expect dispute resolution for 90 days, and then  
24 we'll go from there.

25 We also have people who are proceeding with

1 major class-action lawsuits on the dams. We are  
2 owed 4.99 billion, as in "boy," for under the Pelton  
3 court, circuit court decision on the construction of  
4 dams. We are looking at 56,000 acres of mineral  
5 rights that no one has done anything for 40 years.  
6 So that comes to about 50 million. And then we're  
7 also looking at the riverbed, which is 20,000 acres,  
8 and we're doing evaluation of five parts, which are  
9 water rights.

10 So that -- we have adopted criteria at Standing  
11 Rock known as the social impact assessment  
12 methodology, and we hope that we will be able to  
13 promote that methodology for Indian country, as well  
14 as America. People have taken it.

15 And we have to protect our neighborhood. 40  
16 years ago it was in our backyard. Right now it's  
17 coming out of our water faucets. And we all need  
18 drinking water, so there has to be a methodology.

19 When they destroyed the village in, the Tlingit  
20 Village in Alaska, the government almost created a  
21 methodology, but they fell short. So nothing was  
22 ever done about it. But time is running out.  
23 Mother Earth is tilted, and we don't know what time  
24 we have, 20 years, 35 years, maybe another  
25 millennium. But we have an obligation. We are the

1 green keepers of Mother Earth. That's our tradition  
2 and our culture. And so it's very serious. America  
3 needs to take a look at our culture, and so we  
4 created a social impact assessment.

5 We also created social accounting so that the  
6 private sector valuations are not placed on the  
7 general dam federal project, mixing them. So we  
8 have a comprehensive report on social accounting  
9 that has been negotiated with the general accounting  
10 office by Robert McLaughlin who is one of our  
11 members who is the economist, graduated from  
12 Princeton. And that methodology was used in the  
13 additional compensation for the Missouri River basin  
14 tribes.

15 You know, I, all my life, refused to be a  
16 victim. I went hungry. I know what that is. I  
17 know homelessness.

18 In the national interest, I think the  
19 partnership has been a little bit crooked and not  
20 balanced. So we want something for our children and  
21 our grandchildren. And there are four issues that  
22 need to be resolved. We know America's treasury  
23 does not have the money for us, but some humanity  
24 has to be restored on that river.

25 The only time that I became so overwhelmed with

1           anger was I witnessed a helicopter using its landing  
2           gear to knock one of our children off a horse. So  
3           that has been submitted to the United Nation Human  
4           Rights Council, when the woman was shot accidentally  
5           but the target was an Indian man.

6           So I bring this from our camp where we are, we  
7           are not going to leave. We are not going to let the  
8           doctrine of discovery happen again. It's happened  
9           for 500 years. You need to amend the Constitution  
10          of the United States with a Latin term in it that  
11          describes us. We are not wandering beasts. We're  
12          not sub human. We went to the United Nations in  
13          1977 and we declared that we are the red race. We  
14          are a race of people. We are human beings. And the  
15          United States Government has to acknowledge that.  
16          It's in the reports for the (unintelligible).

17          So I'm going to try to finish with the water  
18          rights are protected in the justice department  
19          document that we have, the agreement, and that  
20          speaks for itself.

21          We have -- we have a railroad claim. We have  
22          five of them. And we have -- it's in the Federal  
23          Register in 1982. Governor -- the governor of North  
24          Dakota, Dalrymple, is one of the owners of the  
25          railroad and has infringed on the Dakota territory,

1 territorial act, and that's why we need our day in  
2 court. But we know we're not going to get favorable  
3 from the court.

4 The court, the Federal District Court approved  
5 a northern border gas line overruling the PUCs, the  
6 public utility commissions in North Dakota, South  
7 Dakota and Minnesota, so we know and we defy the  
8 unilateral action of the federal district courts  
9 because they're a conflict of interest, the conflict  
10 of interest that Dalrymple owning a railroad. And  
11 we are owed. We stopped it.

12 We have five railroad claims, and those need to  
13 be addressed. That is in the report. That is in  
14 the agreement with the Justice Department. We have  
15 until 2018 to move forward with any kind of lawsuits  
16 against the government, so we are prepared to be in  
17 discussion, in dialogue, in dispute resolution  
18 peacefully.

19 But during this process and during this time  
20 our people are not going to leave. Desecration,  
21 tell me about it. Colonel Henderson knows my  
22 history. My grandmother, where is my grandmother?  
23 Where is my grandmother? I had a beautiful,  
24 beautiful grandmother who -- our family was the  
25 poster for the North Dakota Historical Society for

1 generations. And my grandmother was in a mass grave  
2 at Standing Rock. You only have a mass grave when  
3 you had a massacre. And people ask me all the time,  
4 "Are you going to settle for that? Your grandmother  
5 is in a mass grave." You know what happened to her?  
6 There was contracted grave robbers by the Army  
7 Corps.

8 So my grandmother's grave, she didn't have all  
9 the beautiful regalia. She didn't have anything  
10 because her grave was robbed. And the Army Corps  
11 has to answer to the NAGPRA that has occurred on  
12 Standing Rock. They think they're just going to run  
13 over us and dig underneath? We own the subjacent  
14 rights. The Oahe Act public law 85915 states it  
15 very clearly, "above, under".

16 So this is a real petition to you as federal  
17 agents, to you as the members of the government who  
18 are obligated to our people. We took an oath, I  
19 did, for the treaty that we would be partners, but  
20 I -- we also petitioned President Obama during his  
21 tenure as President to declare that we were no  
22 longer prisoners of war. My prisoner-of-war number  
23 is SRU10258.

24 I want to be an honorable treaty citizen. And  
25 so when there is a national dispute about treaties

1 and you have an international, we have to get there,  
2 then international law prevails.

3 We have adopted the UN study treaty, and I  
4 believe that it's incumbent upon the United States  
5 to go there, that we are not just to be consulted.  
6 I'm not satisfied with an executive order for  
7 consultation, no matter who the President is. It  
8 has to be a treaty process with the Congress to  
9 establish a new relationship. And it has to be  
10 based on (Native language), which is a nation of  
11 laws, and (Native language), which is honor and  
12 respect, two principles. The treaties have to be  
13 based upon that. And it can't be just consultation  
14 because it's your rules that dictate to me. I am an  
15 equal.

16 And if this America is still a republic and you  
17 are governed by the Constitution and treaties are  
18 the supreme law of the land, then we will prevail.

19 And if America follows its own laws and  
20 agreements that you have made with us in the taking  
21 of over 300,000 acres from Oceti Sakowin and you  
22 have not compensated the 197 homes on Standing Rock  
23 and now you come and you want to use our water, we  
24 have protections in this, in these very legal  
25 documents, and all we're asking for you is to obey

1 the laws of this country, the honor of this country.  
2 I spent 20 years going to Geneva, Switzerland for  
3 human rights because I couldn't get it here. But  
4 we're at a new threshold for all of humanity.

5 So I'm going to -- I'm going to just say that  
6 in natural law, the force of water, the movement for  
7 the force of water outdoes any manmade law, and  
8 there will be a spill. If you appreciate the force  
9 and if you tried to tame the Missouri River by dams,  
10 you have to answer to the consequences that will  
11 occur with that movement, with the force. The  
12 natural force of water endures and it will happen.  
13 We know that. No technology, no human being is so  
14 great that they can build something better than  
15 Mother Nature has created.

16 So we need our time. We need the course.  
17 We're not subject to the rule of law or the color of  
18 law. We are treaty people. We stand on it. We are  
19 sovereign. We made noble agreements with the United  
20 States of America.

21 And I have a letter to the Department of  
22 Interior on the right-of-ways. The tribe has a  
23 letter coming on all the Type 13, including all the  
24 pipelines that we want from the northern border  
25 pipeline. And there is no archeological report with

1 that. That was terminated in 1981. And we have the  
2 documents. So technically you have no right-of-way,  
3 so how can you piggyback on a right-of-way that  
4 doesn't exist? And everybody is trying to move on  
5 the right-of-way of that border pipeline, northern  
6 border pipeline. So we have a very serious issue on  
7 that that we'll be submitting to Interior, the  
8 records. And we will be giving these documents to  
9 Justice. And we have comprehensive documents for  
10 the U.S. Army Corps of Engineers.

11 We have -- Standing Rock, we have an act of  
12 Congress. Public Law 85915 was negotiated language  
13 based on a federal lawsuit to stop that we entered  
14 into court to address the just compensation. And  
15 this is our second lawsuit. However, we have lost  
16 confidence in the Federal Court System.

17 And we are not going to move, and we are not  
18 going to allow anyone to go under our, under our  
19 river. We have treaty territory no matter who tells  
20 us that we have no standing.

21 We are fighting with the Organization of  
22 American States in January. We have filed with the  
23 National -- with the United Nations Committee to  
24 eliminate racial discrimination. And based on  
25 moving the route from Bismarck, because it was going

1 to contaminate their water, they moved it 10  
2 miles -- 40 miles south to Standing Rock. So that  
3 case will be heard this month. We've gone to the  
4 Human Rights Council, to the Amnesty International,  
5 who will all be coming up with reports.

6 But I pray that the people who have been  
7 injured will heal and that we will not have to  
8 suffer the PTSD. We have peace trainers coming from  
9 all over the country. We have -- we're trying to  
10 create a mindset of peace from the Quakers. So  
11 we're doing a lot for our nation. This has -- this  
12 has created many tentacles of all kinds.

13 And we intend to do legal. We have over 500  
14 people that have now been arrested, have been  
15 subjected to, you heard, having numbers written on  
16 their arms, having hoods over their heads, being put  
17 in dog cages. Is this the new America? If it is,  
18 we're the canary in the mine again and as usual, and  
19 you need to put your heads up and see what's  
20 happening in your backyard.

21 Thank you for this time.

22 (Applause)

23 MR. TRACY TOULOU: Thank you.

24 Jason Cooke?

25 So I'm going to switch mics.

1           So next would be Kenny Frost.

2           Let me get a new mic for you, Kenny.

3           We've only got a few minutes, guys.

4           MR. KENNY FROST: Good afternoon, the tribal  
5           leaders who are still here, and especially the  
6           grassroots people and the treaty people who are here  
7           today and the Tribal Historic Preservation Officers  
8           who are still here.

9           And thank you, federal agencies, for being here  
10          and allowing me to speak.

11          And especially for our people up there in  
12          Standing Rock who are camped, our prayers are with  
13          them and our thoughts are with them.

14          I'm Kenny Frost, and I am a Native American  
15          consultant. And I help a lot of people. I have a  
16          background in natural resources, a little bit in law  
17          and got out of that for self-preservation purposes  
18          and (unintelligible).

19          And I've been doing this since the very  
20          beginning in '89 when NAGPRA was going to be passed  
21          and fought for NAGPRA and many different laws and  
22          even gone to so many historic preservation meetings  
23          regarding all the federal statutes that govern  
24          Native American sites, particularly our sacred  
25          sites, the procedures, trained, certified, federal

1 archeologists, state, federal, private, as well as  
2 government directors, and trained them under use of  
3 the federal laws. And some of you look familiar  
4 because you were still here when I was doing that.  
5 And we have that working relationship that we have  
6 worked so hard to work with the Native tribes and  
7 push those.

8 And just as you said, there are two processes  
9 to a consultation, and there shouldn't be two  
10 processes. It was supposed to be streamlined to be  
11 one. But it's so hard that federal agencies have to  
12 say, "We have to go this way," depending on which  
13 federal agency you talk to. Because another federal  
14 agency, "No, this is the one that we have to do.  
15 And I don't know why they're going that route." So  
16 then you have the inner conflict between federal  
17 agencies. And it shouldn't be that way, but it is.  
18 And that's what makes it hard and it makes it  
19 difficult.

20 Now, I've been involved with the Army Corps  
21 since '92, '93. And I have talked to Colonel  
22 Henderson who I'm glad I got to meet. To give you a  
23 little bit of that brief history before your  
24 predecessors were here, and that was managing the  
25 Missouri River from boundary to boundary, and I

1           helped them do that and get that, and that's how  
2           Standing Rock got to have that part of the river.

3           Technically the Great Lakota Nation should be  
4           in charge of the whole river, but unfortunately due  
5           to us being placed on reservations and our  
6           traditional homelands are no longer there -- we  
7           should all be managing the river. But it doesn't  
8           work out that way because of what happened.

9           We cannot change what happened in the past when  
10          we were forced to Indian country in Oklahoma. We  
11          can't change to where we're at today on those  
12          reservations, but we have these laws to help us  
13          manage these things.

14          And in the Army Corps' own documents there's a  
15          section that even Army Corps has, and that says  
16          "Water is life" in the Army Corps' documents, "Water  
17          is life." We are still saying that today, our  
18          people at camp, the Oceti.

19          Many here, the people talk passionately from  
20          their heart. Each and every one of you federal  
21          directors, you have heard this constantly over and  
22          over and over. And I've been to those consultation  
23          meetings where you have heard people talk. You have  
24          heard them cry. They have pleaded with you. And  
25          unfortunately (unintelligible) directors or

1 agencies, "This is how it is. This is how it's  
2 going to be, and this is what we're going to do."  
3 It doesn't work that way. Regulations. Even the  
4 Army Corps of Engineers' own documents site  
5 (unintelligible) laws, 1906, NEPA of 1990, the  
6 Indian Freedom of Religion Act, '78, and the  
7 amendments. And there's even a section that says if  
8 a native tribe wants to come in or people want to  
9 come in onto the Army Corps' lands to worship, no  
10 problem. And that's what our people were doing.  
11 Even when you look at the videos of our protectors  
12 trying to cross the Missouri to go over to that  
13 mountain where the burial sites are there, all they  
14 wanted to do was pray for those ancestors. Because  
15 those sites are desecrated.

16 I was there September 3rd when the dogs  
17 attacked us. And where they bladed, unless you're  
18 trained to identify those burial sites, you can look  
19 at the ground at a certain angle and you can see the  
20 indentions of those burials. But only a trained eye  
21 has that ability to see that. And those were there.  
22 And even to a point that an archeologist says,  
23 "Here's the human remains."

24 In the Army Corps' documents it also talks  
25 about work stoppage. The key point was if human

1 remains are discovered on Army Corps' lands, as well  
2 as other federal lands that also have that same  
3 statement, work stops immediately. That did not  
4 happen.

5 What should have happened was the tribal  
6 archeologists should have come in on site, along  
7 with the Army Corps officials, because that's in  
8 every federal agency's document, if we find human  
9 remains, the project stops until we get that  
10 cleared, get the human remains relocated or reroute  
11 that route in order to protect those humans remains.  
12 And I've been to so many of those with federal  
13 agencies that they stopped the project totally.  
14 That did not happen.

15 So what we're going to do is I'm going to read  
16 some of the things. And mind you, what I'm reading  
17 is Army Corps' language, not the Native tribes',  
18 Army Corps, what they wrote. And, like I said, they  
19 even had it in their own documents, "Water is life."

20 And we went and I worked with the tribal SHPOs  
21 yesterday, and we went through the Army Corps  
22 documents. We accessed them and got them. And  
23 there was quite a few documents that we went  
24 through, but we highlighted the key points which are  
25 very important.

1           And this was done with your predecessors before  
2           you. And this is going to be a training session.  
3           That's why the tribes, that some of the people were  
4           saying we need to have a training session with you  
5           to train you to bring you up to par. Unfortunately  
6           federal directors change hands in a few years, and  
7           then we have to go back, retrain them. Directors of  
8           different agencies within the federal agency, have  
9           to go back in and retrain them, "This is what the  
10          documents say. This is what was said. This is what  
11          was agreed upon." And it's always a continuing  
12          cycle to train government officials sadly. And  
13          unfortunately each one of guys are going to be  
14          leaving.

15                Okay, good.

16           MR. JAMIE CONNELL: I'll still be here.

17           MR. KENNY FROST: That's good.

18           MR. BRUCE LOUDERMILK: I'll be here.

19           MR. KENNY FROST: So even though you guys are  
20          going to leave -- and we always go through this  
21          process when a new President comes in, because he  
22          wants to put in his own staff. Just because you're  
23          leaving, you can still make an impact; you can make  
24          a positive impact. And that's what you want to  
25          leave with is: I did this. I helped the tribes. I

1 can do it. And I want you to do that with that  
2 frame of mind here, remain positive.

3 Now, the Army Corps in their own agreements  
4 regarding access to religious and cultural sites,  
5 they have cited all the federal laws that govern  
6 Indian tribes, from even the archeological law,  
7 NAGPRA, Indian Freedom of Religion Act. That's all  
8 in there and it's addressed. There's even  
9 definitions, which sometimes a couple of the  
10 definitions say a little bit more than what we would  
11 say in there, but it's in there. And the Army Corps  
12 wants to do the right thing, and that was good. I  
13 was like, Hey, that's pretty good. That's stronger  
14 than what I would have said, but it works.

15 Because some of what happened before the PAs  
16 even existed, we had draft MOUs and MOAs, and those  
17 are still in effect. The tribes expect the Corps to  
18 exercise genuine stewardships with respect to places  
19 that hold religious and cultural importance for the  
20 tribes and to share the stewardship of these special  
21 places with tribes. Whether this is called shared  
22 stewardship or cooperative management and other  
23 items, the tribes expect a relationship that  
24 develops between the corps and the tribe to be  
25 respectful and cooperative, with the ultimate

1 objective of protecting these sacred and culturally  
2 important places and reassuring access to religious  
3 and cultural activities, Army Corps' words. And  
4 that's what the tribes are saying today. And this  
5 is in their document.

6 Finally, tribes anticipating that this shared  
7 stewardship document will ensure that our sacred and  
8 cultural places are regarded and understood from a  
9 Native standpoint with our values and customs  
10 applied to the protection and not necessarily of  
11 those archeologists, archeology, which means that  
12 the sacred sites, that we can go up there and do  
13 worshiping and the Army Corps agrees to that, as  
14 long as we let them know.

15 And there's always that working with federal  
16 lands and agencies is we always have to let the  
17 federal agency know, "Hey, we want to take a group  
18 up there and go pray. We're going to pray and then  
19 we're going to leave, leave everything untouched,  
20 just take what we need. We get back out." And  
21 that's what we've always done with a lot of  
22 different Indian tribes, we have gone to those  
23 special places. In the Army Corps of Engineers' own  
24 PA regarding the National Historic Preservation Act,  
25 they wrote -- they have stated this. This is a very

1 important in black and white as per their own  
2 agreement.

3 Now, the kicker here is, and I've been saying  
4 this from the very beginning is, which I've been  
5 saying since September 16th, Army Corps speaks of  
6 the federal undertaking, meaning all federal laws  
7 kick in on private and state lands on any federal  
8 projects with dollars, manpower, phone calls made to  
9 the government and with state officials. And every  
10 federal agency that I have worked with has that.  
11 Even though it's Army Corps, U.S. Forest Service,  
12 BLM that's traversing through private and state  
13 lands and it's a federal project fully funded by the  
14 Federal Government, those federal laws kick in  
15 automatically. And we know that, and the Army Corps  
16 has that, saying that that's a federal undertaking.

17 The State of South Dakota is saying, No, we  
18 have jurisdiction over this land. But we don't  
19 because it's federal dollars by Army Corps, and  
20 their approval. And even in Colorado there could be  
21 a project that the State of Colorado was doing that  
22 one phone call to the federal agency, those federal  
23 laws kick in automatically because now you just been  
24 communicating with the federal agency, and those  
25 federal laws kick in. And that's how we stop a lot

1 of projects to make sure that these federal rules  
2 are adhered to and in working with, together.

3 And even in the compliance of the National  
4 Historic Preservation Act, in the "whereas" in the  
5 Army Corps' documents, "Whereas the Corps is  
6 responsible for complying with the National Historic  
7 Preservation Act as amended here in the NEPA 8965  
8 Public Law and amended including Section 110 that  
9 requires federal agencies to establish a program to  
10 preserve, protect, identify and evaluate and  
11 nominate historic properties under the jurisdiction  
12 and control, including traditional cultural  
13 properties and historic properties under their  
14 jurisdiction and control, including traditional  
15 cultural properties and historic properties in which  
16 tribes attach religious and cultural significance in  
17 consultation with others and, two, to give full  
18 consideration in the preservation of historic  
19 properties not under the jurisdiction or control but  
20 to affect a federal agency undertaking. Once again,  
21 talking about the undertaking.

22 Whereas, the Army Corps main stem system  
23 operation and management action under the definition  
24 of undertaking for the purpose of Section 106 of  
25 NEPA and therefore the Army Corps is responsible for

1 complying with Section 106 and these actions and  
2 whereas the Corps is required by Section 101,  
3 Section C6 of the NEPA to consult with any Indian  
4 tribe that has attached religious and cultural  
5 significance to historic properties that may be  
6 affected by a proposed federal undertaking in  
7 Section 106.

8 MR. TRACY TOULOU: Ken, we're going to have to  
9 cut off here because we've lost the room. It's four  
10 o'clock. We'd love to see your materials.

11 I think the army, since you're mostly  
12 addressing them, they would be happy to talk to you.

13 MR. KENNY FROST: Yeah. Let me -- let me --  
14 let me just say this one point then. In Army Corps'  
15 own documents they cite all the federal laws that  
16 deal with sacred religious sites' protection, and  
17 they have not abided by their own rules and their  
18 own words, and that's why I'm freaking out because  
19 they need to do that and try to work as quickly as,  
20 with the tribes.

21 Mind you, even in one of the documents in the  
22 Army Corps' own language they consulted with 19  
23 tribes in May and then the following year in April  
24 consulted with those same 19 tribes a year later,  
25 everybody from Montana from the head waters of the

1 Missouri, but they didn't consult with the tribes  
2 that came in from Canada. And they also need to be  
3 included because there was no imaginary lines. So  
4 it's important that -- and there's a signature --  
5 Mr. (unintelligible) said there was only four. I  
6 have the document that shows well over 17 signatures  
7 on the Army Corps document that I have in my  
8 possession.

9 So I want to say thank you. And we're going to  
10 turn this in as part of the testimony because it's  
11 something that needs to be brought up from Army  
12 Corps' own words.

13 So I'm going to say thank you --

14 MR. TRACY TOULOU: Thank you.

15 MR. KENNY FROST: -- for allowing me to speak.

16 (Applause)

17 MR. TRACY TOULOU: So we're going to have to  
18 wrap it up.

19 C.J., I really want to thank you for everything  
20 you did in facilitating this.

21 Jim, I would like to talk to you maybe outside  
22 in the hall. I'm sorry, I think you're the last one  
23 and we're out of time. I apologize.

24 MS. FAITH SPOTTED EAGLE: Could we have a  
25 closing prayer, too?

1 MR. C.J. CLIFFORD: I just kind of -- we wrote  
2 something down here, if you guys can all take a  
3 look. And we're hoping that -- this is just a  
4 couple of things that we put down, but many things  
5 were said today that are relevant. So in the near  
6 future I'm hoping that after we look at it, there  
7 will be more added to it as we go along.

8 MR. TRACY TOULOU: I'll take a picture.

9 MS. FAITH SPOTTED EAGLE: Thank you.

10 As you know, women are caretakers of the water.  
11 So as grandmas, I'm going to ask Casey to stand with  
12 me as we talk to the water. The water has been  
13 listening to the (Native language) all day long, and  
14 this is from the (Native language). So what we're  
15 going to do -- we're in a watershed. So we're  
16 gonna -- we know that Rapid Creek is polluted with  
17 the tailings from Homestake. There's uranium that  
18 goes down the river. So we're going to give this  
19 water in prayer to this watershed. So if you could  
20 close your eyes, then we're going to offer -- I'm  
21 going to offer just a couple versus of a song that  
22 tells how proud we are of who we are as a people.

23 So if you could just pray with me for Mother  
24 Earth and the water and for the decisions that will  
25 be made by these people up here, that it'll be done

1 in a strong way.

2 (Closing song)

3 \* \* \* \* \*

4 (The proceedings concluded at 4:07 p.m.,

5 November 17, 2016.)

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1 STATE OF SOUTH DAKOTA )  
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I, CINDY K. PFINGSTON, hereby certify that the foregoing pages numbered from 1 to 232, inclusive, constitute a full, true and accurate record of the proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 28th day of November, 2016.

\_\_\_\_\_  
CINDY K. PFINGSTON  
Registered Professional Reporter

My commission expires:  
February 4, 2022

|   |  |  |
|---|--|--|
| \$  | 1970s [1] 129/16   | 51 percent [3] 13/14 13/21<br>14/10  |
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