

**Energy Policy Act of 2005, Section 1813 Study on Indian Land Rights-of-Way:
Transcript of Comments made on the 1813 Draft Report at the August 25, 2006
Public Meeting at Salt Lake City**

MALE SPEAKER: ... we have one for everybody who is in attendance. We would like keep an accurate record of this meeting for our administrative record. We have one, if you'd like to say something during the open session we are going to have immediately following Abe Haspel's remarks, and then we have one if your tribe would like to have a government-to-government consultation one-on-one with us in a breakout room that we have set aside for that, and we plan on going through the tribes that have signed up in order of signing. And we will - you will have the opportunity to talk to us government-to-government at that point. Thanks.

ABE HASPEL: Good morning. We would like to get started with the public portion of today's agenda. My name is Abe Haspel. I am the Assistant Deputy Secretary of the Department of the Interior, and I am leading our small delegation today to listen to comments from the public on the Section 1813 report and then to conduct government-to-government consultations once this public session is completed. I would like to take a few minutes to sort of set the stage and to remind everybody why we are here and what we are trying to accomplish. And in order to do that I have got to get one piece of paper from over here. This is the next phase of the Section 1813 report to Congress. We have held two public scoping meetings in April and May of this year. We have received more than 150 written comments from tribes, individuals and the energy industry, consumer groups and so on. I want to compliment and thank everyone for their interest, hard work, thoughtfulness and help in bringing the report to the point it is at today. We recognize

that, as a draft, there will be numerous constructive comments to assist us in bringing this to an even better place in the final, and that is the purpose of today. I did want to specifically comment on the fact that we contracted with HRA Associates to conduct a historical compensation analysis because one of the items that the Congress specifically asked the departments to do was to answer a series of four topic areas, and I am going to read those so everyone knows that that is the - understands exactly what we were attempting to answer. The report specifically, just to deal with the findings of a study which includes (1) an analysis of historical rates of compensation for energy rights of ways on tribal land. That is the portion that was conducted by HRA. They met with and conducted four case studies. At yesterday's public meeting we had the opportunity to actually receive a briefing from them. Unfortunately they were unable to conduct - to do that again, but it will be in the record. The case studies were selected from a - those tribes who volunteered to make records available for the purpose of this study. It was an open request to all tribes, and these four, in fact, came forward and made that information available. The second thing that the report is supposed to address are recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions and renewals of energy rights of ways on tribal lands. That portion of the report is Section 4, and I call your attention to that. The third area was to conduct an assessment of the tribal self-determination and sovereignty interests implicated by applications for the grants, expansion or renewal of energy rights of ways on tribal land. That discussion is in Section 2 of the draft. And fourth, an analysis of relevant national energy transportation policies relating to grants, expansions and renewals of energy rights of ways on tribal land, and that is discussed in

Section 3. Because of the time limits that were imposed on the Department to conduct this study and then to write the report - it was a one-year timeframe - I am sorry to report that we are going to be late. We did manage to get the draft out in the one-year timeframe, but we have made a commitment to the Hill to have a final report there by September 30. That commitment drives some of the rest of the process that I am going to explain now. Today is about five weeks before that point, and it represents part of a one-week process of getting feedback on the draft report so that we can prepare the final. We will have two more meetings like this one next week on Monday in Morongo Valley and on Wednesday in Albuquerque. They will be similar to this in that they will have a one-to-two hour public comment opportunity followed by government-to-government consultations. We are requesting that any written submissions that you are preparing to make, we would very much like to have them in by close of business on September 1. However, we will accept and commit to you to fully consider any written comments that we receive by 10 o'clock Monday, September 4. We realize that that is Labor Day. We will be working that weekend. That is why we would like to have them by close of business on Friday. We need to be finished with the final by September 15. That is basically two weeks, if we work each week and weekend. In order to get a report to Congress by September 30 there is a internal governmental process we have to go through to get clearances from our principals, as well as clearance from OMB and The White House. We are leaving two weeks for that process. That is a very tight timeframe to get those levels of clearances, but it is our fervent hope, desire and goal to meet the September 30 deadline, and so we ask that any comments from you please be as timely as possible. As I said, we are going to be working the weekend of Labor Day. Some have

asked to have the opportunity to also work that weekend and get it to us on Monday. We will have the capacity to download your comments on Monday, so if you need the weekend, by all means feel free to work. I do not know why you want to work. It is bad enough we have to work, but if you want it, you have it. You know, we are going to be getting now - be getting you with yesterday's public comments, beginning to figure how we will incorporate some of what we heard that we thought was relevant and appropriate and needed to be incorporated into the final. We are taking comments, as you know, orally today. It is all being recorded over here. We are - my colleagues from The Energy Department and Interior will be up here taking personal notes on what we hear, as well as we have some folks in the audience who will be taking notes. All of the comments that we hear, written or received - excuse me, that we hear orally or that we receive written will be given equal time - weight in our considerations. What I will tell you is that if we receive comments after 10 o'clock on September 4, they will be looked at, and to the extent we can deal with them, we will, if it is appropriate. But I cannot commit to you that they will be incorporated because we are up against this very tight timeline. What we would like to get comments on - what we would like to hear from you today is what did you like about the report, what didn't you like about the report, did we miss an option, did we miss reporting on something, are there points that should be made that are not being made, and specifically, do you have any specific information that pertains to the issues that we have identified and that will strengthen either the point we are making or cause us to rethink the point that we are making. Next steps, as I said, are the next two meetings next week. Comments from you all by no later than 10 o'clock September 4. We will continue to analysis and use your information and other information that we are

gathering to prepare the final report September 30. Hopefully it will be up on the Argonne National Laboratory site for everyone to read and see. So let me conclude by welcoming you all on behalf of the Departments of the Interior and the Department of Energy. We had an extremely productive session yesterday; lots of comments, and I am sure that today's sessions will be equally productive and equally useful. And with that, unless either of you have something you want to add, we will begin the public comment process. You all - there is a sign-in sheet and we are just going to go down the order of that sheet. Everyone will be held to ten minutes. We ask that you respect the opportunity for others to comment by limiting your comments to ten minutes. If you don't need the minutes, that's great. If you need more time, we ask that you end at ten minutes, and if there is time at the end of the session, we are happy to have people come up a second time and continue and/or offer other comments. But there are a lot of people who want to talk and we found yesterday that this seemed to work pretty well, so we ask you respectfully to try to make your comments in ten minutes, and if you need longer, well, please try not to. We have set up microphones for you to speak from. Again, yesterday people chose to use the microphone or to use the podium. Whichever you are more comfortable with, that is okay. I am going to now invite my colleagues, David Meyer from the Department of Energy and Bob Middleton with the Department of the Interior to join me up here and to hopefully hear what you have to say.

MALE SPEAKER: I have a couple of process questions if I could.

MALE SPEAKER: [Indiscernible].

PAUL MOREHEAD: No, sure. Go ahead. Paul Morehead --

ABE HASPEL: That is a good point. Please identify who you are and who you are with so that we can have it on the [indiscernible].

PAUL MOREHEAD: [Indiscernible] and Gardener, Carden & Douglas on behalf of the Northern Ute tribe. From the incredibly picky, Abe, you mentioned on September 4 at 10:00 a.m. would be the cutoff date. That's 10:00 a.m. Eastern...

ABE HASKELL: Yes.

PAUL MOREHEAD: ...emailed in by 10:00 a.m. Eastern?

ABE HASKELL: Right.

PAUL MOREHEAD: Okay. A couple of other points. There was some concern even in the draft report that some of the data and charts and graphs and what have you that have been provided by industry or some in industry were included either without a sufficiently critical analysis or without corroboration. And so one question is, as we ramp up to the September 4th date, I would anticipate there being, you know, additional data put in by the industry and into your good hands. My question is two-fold. One is, will that be subject to the historical associates' review and comment or some other critical analysis? And two, just in terms of raw data, will be there an appendix or a record of all of the submissions that have been included with the final report that goes to Congress by the 30th, or I assume there will be some sort of website or--

ABE HASKELL: Right.

PAUL MOREHEAD: --what have you, an icon to look onto.

ABE HASKELL: Right now everything we receive is public and on the website.

PAUL MOREHEAD: Okay.

ABE HASPEL: So everything we continue to receive will be scanned or - and/or it is electronically received, put up on the website. So that - the as to your latter question is yes. Everything that - this is an extremely [indiscernible]. I hope everyone appreciates transparent process that we have been going through. With regard to your first question about the verification of data that has been included in the report. I am aware that there are differing views on how much verification was done for different aspects of the data that is included in the report. We will clarify in the final the level of verification that was done and the extent to which confidence should be placed in what is being reported. I do not want to comment specifically on survey data versus records data versus submitted in a letter-type data because it is anecdotal. Suffice it to say that we have done our best to verify what we can. Hopefully the unverifiable is not being reported and the use of certain data which are - as a result of instruments and so on, the instruments have been verified. Obviously, answers to instruments are something that cannot be. So in that very general sense, that is an answer to your question. I think I would ask you to rely on our good intentions to do the best job we can, but we have heard the request that we be more specific in the confidence that the reader should place in the data that is being reported in the report, and we will make every attempt to do that.

PAUL MOREHEAD: Okay. Thank you.

ABE HASPEL: Okay, I will just add something to that, and that - in the draft report we actually tried to inform Congress as to which information we have been able to independently verify versus which information was reported to us and we reported as part of the comments that we received. But we will make sure that in the final report that is perfectly clear as to what category the information falls into. We are in a public session -

now speaking session. We have four speakers that have signed up. They are - I'm sorry. I cannot read the last name, but it is William Edward or Eckerd? William, you are first on the list. And then Chairman Van is second. Madame Chairman Maxine Natchez is third, and then we have Charles Vaughn from Hualapai is fourth. And those are our four speakers. So William, if you would be willing to come either forward to the podium or to one of the microphones.

WILLIAM: Yes, my name is William Edmer with the Shoshone Bannock tribes. I have attended several of these hours on the behalf of the - our tribe, and our tribe has submitted written comments. And that would be my first comment is that I think the comments should be received by large land based tribes. There are several tribes that do not have the land base and they are not really impacted by the energy corridor of Section 1813 of the Energy Policy. So I would think that you would give more weight to the comments written by large land base tribes, and even though you can recognize the smaller tribes with very little land base, I think the large land base tribes have more voice. And then as far as historical, there's other things related to historical data. When the railroads were initiated by Abraham Lincoln in 18 - I think it was 1876, it was for national security purposes. And when the railroad went through our reservation, they just went through our reservation. They did not have the right-of-way. They just literally went through there. So they have transgressed many times historical, and I think that should be pointed out in your - in the historical records that Indian tribes have been transgressed by other entities; the railroads, the miners, the farmers and ranchers. And the other thing about Pocatello, we owned all that land around Pocatello. The City of Pocatello started as a railroad town and those people were - that built the railroads - lived

in tents and everything. So they kept complaining to the federal government, so that is how we ended up losing that ground where Pocatello is to the federal government. And the City of Aramo, my grandfather, Chief Aramo, lived right there where the little town of Aramo is. Because the railroad guy that went through there spoke to him and he was very cordial to my great-great grandfather and talked to him when he was - railroad guy was impressed and I [indiscernible] is in - written in history. And so we named that town after Aramo, and that is our name. But it got [indiscernible] by the Anglo conversion is Edmo, but our real name is Aramo. The other thing is that historical timeframe is - should be listed into the times from the BIA negotiated with - rather was into perpetuity to the - like to Addo Power, BPA and those other energy people - corporations, direct service industries. And so the BIA literally - they just gave them a shake-hands agreement. They did not consider the loss of the land, and in fact two of our right-of-ways are in perpetuity, and I do not think our tribe would have ever agreed to that. But the BIA was dealing under the table when they dealt with the idle power and the other electric industries. So I think that should be pointed out too, because many times our tribes have been treated very, very, very bad. All tribes, not just ours. Thank you.

ABE HASPEL: Thank you. Chairman Van?

CARL VAN: Thank you. My name is Carl Van. I am the chairman of the Crow Tribe. I am also the chairman of tribal leaders in Montana and also the chairman of large land base tribes in America. The history part of it is very important to Indian tribes. Where we as tribes have given and given and given to this nation, I mean, I can set a example from my tribe. My own PPL had a 50-year lease without tribal consent. And then we are talking about today, if the government can set standards or what they can do

for industry. I completed negotiations with a large company PPL going through my reservation. But first of all, without tribal consent the first 50 years, I made them pay for the first 50 years to the individual allottees and also the tribe. I also negotiated for 20 more years instead of 50 years. But we had federal government or the BIA do an appraisal. Their appraisal was only \$5.00 a rod. If you look up the total cost of right-of-ways and easements for Indian country or for industry and America, and if we take a big piece of pie, it is only 3% of the cost. And industry wants more from Indian tribes? I do not think that is right. You know what? People have morals in this country. Where we as tribes are tired of giving and giving. We want to be able to negotiate. We successively negotiated with PPL, and now it is before the BIA to approve. You know, from \$5.00 a rod to about \$4,000.00 an acre is quite a bit. We also had been paid taxes. The idea was, you know, we as sovereign governments, if the government is taking or is going to do away with sovereignty or jurisdiction and stuff like that from Indians, you know, we are not kids anymore. We as tribes and governments have educated attorneys and people who negotiate for us. I think it is time we recognize this government-to-government relationship, because we want to become self-sufficient. Isn't that why we have self-determination today? Not for Big Brother in Washington to say, "Your land is only worth so much. You have to sign a 50-year lease." I think them days are gone. We as Indian people are beginning to learn that we have given and given, and them days are gone too. It is very important all of us realize it is a new time in history for Indian tribes, for now we know what we have with [indiscernible], with the new energy bill and stuff. I congratulate D.A. Moore for all the help they have give us. But otherwise we know that to cut us short or to cut us off by the knees or our shins, that would only hinder tribes.

We want to because self-sufficient. We have a chance to do it. Give us that chance. Let us do it. Do not think for us. We want to do it ourselves. One of the biggest things I really disagree with is treaty tribes. You differentiate from treaty tribes to IRA tribes. The biggest treaty tribes are the Navajo, the Crow, and the Shoshone in Wyoming. What biggest energy companies - where are they going? Through Navajo and Crow. We do not want to be a victim. I know that is only a solicitor's opinion. We should not stand on that because when the federal government makes regulations for Indian tribes, it does not differentiate from treaty tribes to IRA tribes. But if you are going to do that, then give the treaty tribes what you ultimately signed with their treaties. You know, then it would be equal. But no, it is not a time to differentiate. You are only hurting the Navajo and the Crow tribe and the Shoshones [indiscernible]. That is, I felt it was very unfair. And the gentleman before me, the large land base tribes and most all the right-of-ways in these, and the leaders that I have talked to are willing to sit down and negotiate. Before my tribe, when the Interior 50 years ago approved them leases, the Crow tribe did not receive one penny. Some individuals - the total amount that was received was \$5,200.00 for 50 years. So that was not right. From 5,000 to now to over \$2 million for 20 years, then paying the first 50 years makes more sense to me. And it should to all the Indian leaders in this country. So it can be done. We have shown that we can negotiate with large energy companies. Give us a chance. Stand behind us. Do not let us lose that jurisdiction and our sovereignty. Thank you.

ABE HASPEL: [Indiscernible] good morning. My name is Maxine Natchez. I am chairman of the Uintah and Ouray Tribal Business Committee of the Ute Indian Tribe. Our reservation is located 150 miles east of here in an area known as Uintah

Basin. We appreciate the opportunity to comment on the draft report on tribal rights of way recently released by the Departments of Energy and Interior pursuant to Section 1813 of the Energy Policy Act of 2005. We live in our area there and it is presently the site of considerable oil and gas development activities. The revenue generated from the tribe's active management of mineral development on the reservation is critical to the long-term financial success of the tribe and its members. For that reason, the tribe has a vital interest in the issues addressed in the Section 1813 study. The Ute tribe has been an active participant in the study and previously provided detailed comments to the Department of Energy and Department of Interior and made tribal records available to Historical Research Associates. The tribe has reviewed the draft report in detail, and while it appreciates the magnitude of the task in assembling that report, the tribe submits these comments on the draft report to address a few critical shortcomings. First, the agencies must better distinguish between supportable facts identified by commenters and mere anecdotal evidence of speculation and accord such comments appropriate treatment in the draft report. Like many tribes, the Ute Indian Tribe expended considerable time and effort compiling and synthesizing right-of-way data for use in Section 1813 study. It is troubling, then, when the agencies provide attention in the draft report to unfounded and unsubstantiated claims. For example, the draft report repeats the claim of one trade group that trespass fees could cost utilities hundreds of thousands, or even millions, of dollars, but then repeated unsupportive assertions can only serve to create or perpetuate misconceptions about operating in Indian country and contributes nothing toward the statutory mandate of studying the issue. The agencies must not allow opinion to substitute for supportable data. Second, the draft report provides an incomplete and

potentially miscomplete [sic] - misleading encapsulation of the case summary covering rights-of-way on the Uintah-Ouray reservation. As the tribe commented to the agencies during the scoping period, the tribe has in the past negotiated a through-put fee system and other approaches to compensation from natural gas pipeline owners operating on reservation lands. The draft report, however, only captures older and often more antiquated compensation methods in the case study of the Ute Indian Tribe. Without identifying more recent terms like the through-put fee system, it is impossible for the draft report to fairly reflect the historical evolution of right-of-way compensation on the Uintah-Ouray reservation. Third, the draft report makes two facts abundantly clear: (1) the present system of right-of-way compensation on tribal land does not have a significant impact on energy prices paid by consumers, and (2) the present compensation system does not pose a threat to energy security by the reliable delivery of energy to market areas. The only possible conclusion that could be reached is that there is no problem requiring congressional action. Yet, despite these clear conclusion, the agencies present as options for potential congressional action such a radical notion as establishing a federal entity to determine fair compensation for all energy right-of-ways across tribal land, requiring binding third-party arbitration of right-of-way negotiations and authorizing the taking of land against the will of its tribal owners. These drastic notions are options to solve a problem that the agencies acknowledge does not exist and are inappropriate in the draft report. Furthermore, these options for consideration by Congress contravene the fiduciary obligations of the United States toward Indian tribes. Under federal case law, when an agency faces a decision for which there is more than one reasonable choice, it is obligated to choose the alternative that best serves the interests of

the Indian tribe. Here, the agencies are proposing alternatives that could adversely impact tribes and which are not remotely reasonable in their relationship to the findings of the agencies. The decision to propose such options as part of the draft report is not in keeping with the fiduciary obligations of the United States to seek alternatives that promote the best interests of Indian nations, and such options must be removed from the draft report. Thus far, the Ute Indian Tribe has committed close to \$1 million in combating this encroachment to our sovereignty, but we are committed to further participate in the Section 1813 study to ensure the continued success of its commercial relationships with its energy industry partners and to protect our sovereign interests, as well as the sovereign rights of Indian nations across the country. The Ute Tribe looks forward to continuing the dialogue with the Department of Energy and Department of Interior as this process continues throughout the coming months. And finally I would like to say that I thank those tribal leaders who have shown the interest to attend the hearings, because to me this is one way of really threatening the sovereign rights of tribal nations, because if they take away our consent, what is next? This could set a very dangerous precedent, and I encourage all of you to stand up now and let us be heard as one voice as we go to Washington and educate the congressional leaders who must make this important decision which could affect our future for all generations to come. So again, I thank you for coming here and welcome you to the State of Utah and hope that you have a great stay here, and thank you.

ABE HASPEL: And Charles Vaughn, Hualapai, fourth speaker.

CHARLES VAUGHN: Want to compliment you for saying the name of the tribe. For the first time you pronounced it rather correctly. But my name is Charles Vaughn. I

am chairman of the Hualapai Tribe in northwestern Arizona. Translated into English, that means people of the tall pine. This issue is a concern for us. We are a medium-sized reservation in Arizona. The reservation is roughly a million acres. We do have a power utility that processes our reservation. The right-of-way lease on that utility was negotiated in the 60's. About 1968 we negotiated the lease with Arizona Public Service at that time. The lease was agreed - that was agreed to was for \$10,000 for 25 years. In the early 1990's, 1991, 93, the lease expired and we renegotiated it. And the tribe hired an economist - and this is some of the things that the tribes are doing. We have become empowered. We are able to stand on our feet. We are able to utilize the resources at our disposal. We hired an economist that valued that right-of-way. When we finalized the lease, it was worth \$2-1/2 million for an additional 25 years, and those utility companies that were involved in these, Arizona Public Service and Southern California Edison did not run to the Department of Energy and cry foul. They were more than happy to sign onto that lease. As I mentioned, we have become empowered. We are standing on our own two feet. To come in and try to take away the sovereignty that we enjoy is an affront by the energy company touting mixed messages that these right-of-way leases are a threat to national security is an affront to every tribe that - in this room and every tribe across America. When you look at the statistics in regard to American Indian patriotism, per capita more America Indians serve in the military than any other race - that's including Anglo. So it really is an affront to our patriotism. And to return to this spirit of paternalism that was visited on us by the Bureau of Indian Affairs in the past is not the way to go. It is something that we have experienced in the past, and as you have heard testimony earlier, the BIA did not really defend our position or the resources of the many

tribes that it spoke for. Currently, we are involved with practically every agency under the Department of Interior from the BIA to the National Park Service to the BLM, and we do not need them to exert paternalism over the tribe. We can speak for ourselves. And we, as you heard, we really cannot depend on that assistance from the Bureau. When you look at what is occurring in the country today, we are at war in Iraq, billions of dollars are being spent on that effort. Billions more will be spent on rebuilding that country. And when you look at reservations across America, I feel that people across America really do not understand what reservation life is. Property tax does not exist on reservations, so we are dependent on these sorts of revenues to generate the income for the tribes. And to take that away from us is certain - would certainly present a tragedy to the tribes.

Another issue is that we heard mention of small tribes as opposed to large tribes in regard to these leases. One thing we do share in common is tribal cultural properties. Energy corridors is another issue that is part of this bill that may be established. If the ability for tribes to assess those tribal cultural properties is taken away and a corridor is established, that is another affront to the tribe. We have to maintain the capability of being involved in those discussions. When you look at Hualapai, as I mentioned the reservation is a million acres, but the footprint of our tribe covered roughly five million acres. And we are one of the tribes that are unique to America in that we have a reservation established on what was our traditional homeland. So all across that vast area we do have tribal cultural properties, and these energy corridors that are being entertained, they are being established without really any dialogue between the tribes and the DOE to identify some of these issues. So as a sovereign we need to speak to that. And hopefully you will consider these comments and include them in the final draft. We are - Hualapai is

currently in discussion with Navajo - their power utility - as well. As I mentioned, we do have a utility - well, a power line that crosses the reservation - and they are interested in constructing a power line. So they know that the way to acquire a right-of-way from the tribe is to sit down and negotiate with them. And it is clear that some of these energy companies do not want to do that. They want to come to the Department of Energy, cry foul, and circumvent the process. Thank you.

ABE HASPEL: Those are the four speakers who have signed up for the open session. Is there anyone else here who would like to shout?

SCOTT ANDERSON: Hi, Scott Anderson of Davis, Braim & Stokes on behalf of the Northern Ute Indian Tribe. Just a couple points to add some clarification. First, a reaction to some of the things we heard yesterday from El Paso and its proxies about the nature of the study and the scope of the study. And it is my impression that there is a retreat going on among those who advocated the 1813 study. I noted speakers for those groups who noted that the only concern was with pipeline renewals, not all energy rights-of-way, that the only concern was with interstate or FERC-regulated pipelines and not other types of energy rights-of-way. A speaker said from Edison Electric Institute that they were not concerned with price anymore and recognized there should be some sovereignty premium, whatever that is, and also that they were not concerned with increasing sophistication the Indian tribes. And I think that those are significant concessions about what the scope of the study is and what the point of the study should be. I hope you will note those things and consider narrowing the focus of the study as it goes forward. More particularly, I noticed in argument yesterday that there is no problem today - nothing wrong so far, save the El Paso situation - but there is a looming crisis.

There is some disaster on the horizon that we need to address. I also noted the speaker from HRA said that we should look at history to inform the future. And what history tells us is that there are hundreds of thousands and energy rights-of-way, and so far only one problem. There is really no evidence of any crisis that is looming. And the speaker from Questar yesterday, Perry Richards, made it clear exactly how those rights-of-way renewals were going to be addressed in the future. Questar had exactly the same situation where they had all sorts of different pipelines and rights-of-way and energy activities on the Northern Ute reservation. We started off with a tense negotiation that turned into a very sophisticated, useful, mutually beneficial result, and I think if there is any evidence in the record about what is going to happen in the future, it is the testimony of Mr. Richards that is the evidence, and not mere speculation about some looming crisis. Finally, the last point on comments yesterday, the EEI survey noted that its members were dissatisfied or unhappy with some of the results of the negotiations. It is my experience that if both parties walk away from the negotiating table mildly dissatisfied, you probably got a fair result. Nobody got everything that they asked for. So I think that that psychological fact probably does not tell us very much about whether the negotiations resulted in a fair result. Finally, just a real - kind of a technical issue on the draft report relating to the Northern Ute case studies. First, I have heard that there might be some mistakes in the Case Study No. 4. We are looking at that; we will provide written comments specifically addressing that fourth case study. More significantly, there were three case studies described in a report from the analysis group submitted on behalf of the Ute Tribe that were not included in the draft report. We think those case studies are important because they show the modern approach to rights-of-way. They are

more complicated because they are part of global negotiations, and it is harder to sort of tease out exactly what the surface use and energy right-of-way issues are, But they are important benchmarks for the state of current sophisticated approaches to dealing with surface use issues. Our commitment is that if HRA needs more data or backup so they can verify those, we would be happy to provide that. I wanted to let you know that right-of-way so that we can talk about what we need to do to get you the information so that you can verify the data in the analysis group report and include those. But again, we think that those are critical to be included in the draft report because they show how tribes that are actively engaged in energy development are dealing with those issues today and over the past five years. We would like that benchmark and that data point included as well. Thank you.

ABE HASKELL: Thanks, Scott. John, were you moving forward because you would like to get up?

JOHN JURRIUS: Thank you. John Jurrius of Ute Tribe. I want to thank Mr. Anderson for covering most of our points. Again, want to reiterate Section 1.2. We think that we would encourage focus on scoping, as Mr. Anderson has pointed out, to include just renewals regulated through affairs, whether those be electric or natural gas transmission, and only if there is a dispute. In Section 1.3.2, Increasing Cost of Energy Right-of-Ways, I think it is very important to scope the magnitude of the problem. While we are not complete, as we look at the largest energy base tribes, and if we included what is public regarding the Navajo nation, I just want to ask the DOI and DOE if they understand that we are talking about an annual problem of approximately \$50 million versus the profit-taking of the corporate sector, supply sector, transportation sector of tens

of billions a month. And it is easy to get lost in the language of it all, so to speak, of the issue. But when you quantify the total annual compensation of all lower 48 tribes - and while we are not complete, we hope to be complete - we think it should be referenced as to what that dollar number is today, and that is a very small problem. And I believe that answers the rest of the problems, is a very small dollar amount. So want to bring that to your attention. In Section 1.33, we talk about increased delays. And I just want to point out that tribes have taken the burden in this study for those delays. Before Mr. Mills at RBIA agency, we had right-of-ways even though they were required to be acted on, within whether it be 60 days or 180 days, that did not get acted on for seven years. So I want to point out that the BIA should take credit for some of these delays - in my experience, a lot of credit for those delays. In regards to the Section 1.3.8, Standards for Valuing An Energy Right-of-Way, it seems that we missed that, while we did not - that your report does make reference to tribes have the responsibility of providing for their membership, these other sovereigns, I do not believe that we have articulated well that tribes not only need to receive compensation, but need to offset direct costs of managing those - of those lands, believe an issue that we discussed a great deal. Something that disturbed me greatly in Section 4.2, the - there are comments that Indian country tribes reject market principles. I disagree wholeheartedly from the standpoint that there are at least two tribes that I know of now - probably four - that have completed a complete marketplace. For instance, the second - some will say the second and some will say the fourth - but the Ute Tribe represents one of the largest land base tribes in the country. Market is established, with the exception of one transaction. All split of state issues, which is the most litigious word in the West these days, as well as surface issues, have

been resolved. It is a very integrated system of through-put, as the chairman for the Ute tribe has stated. And so the tribe does not reject market principals; it believes that there is a different market principal on tribal lands, and that market is well-defined. So any transporter, electricity or natural gas, from the wellhead to midstream, when they step on the Uinta and Ouray Reservation or the Southern Ute Reservation, they know exactly what those terms are. It has been well-defined, in fact, of 20 major producers in midstream, 19 are subject to the same agreement. So I just want to point out I do not believe Indian country rejects market principals. They have a differing opinion, and I think they have established that market. In regards and a couple final comments. Section 4.42, Options for Consideration by Congress, I do not believe measures, while it talks about the longstanding relationship between and the change that would be necessary between the federal government and Indians tribes, we feel these options are - with the exception of the status quo - are unconstrained options because we are unaware that those options have been measured as to the effect. We can certainly say that the existing law in CFR 25 and 169 have been in effect over 50 years. I believe we have measured the ripple effect to all aspects of self-determination, etc. Our concern is that these options are unconstrained, and they do not measure what is the true effect on commerce from wellhead to thoroughfare. If you have measured those, we would certainly like for you to state those effects in the report. Finally, 5.41, Case Studies. Mr. Anderson touched on these. Again, we believe the case studies that best represent the Ute Reservation had to do with our through-put models and the actual case studies that have been, again, entered into by 90% of our energy partners on the reservation, and whatever we need to do to assist your staff, if there has been an error in communications, we want to solve that.

And in closing, I would just like to say to DOI and DOE that we appreciate the findings, we appreciate the hard work. We know you did not ask for this report. It is a substantial undertaking. At the same time, there has been a lot of talk about the balance of the report. I have only been in Indian country now for about 18 years. While Congress has asked you to do this report, we certainly think that there should still be a tone of advocacy. I think any beneficiary of any trusting relationship would expect their trustee to be - to have an advocate. And so, while the report needs to be well-documented, well-researched, well-balanced, I believe if you are not the tribal advocate, they do not have one. And so what I would expect in the corporate world is, upon any study, any research, a general statement that if we do not find an overwhelming need to change, then there will not be one. And so I just want to point out that, again, if Indian country - if you are not Indian country's advocate, they do not have one. Thank you.

ABE HASPEL: Thank you, John. Yes sir?

STEVE LOZAR: [Indiscernible] My name is Steve Lozar. I am on the tribal council of the Salish Kootenai tribes of Montana, and I - my comments are twofold. One, more of a personal basis, and then one certainly on behalf of my tribes. The personal basis is the sense that, while I am enrolled at Salish Kootenai on the western side of Montana, my mother and other members of my family are members of the Assiniboine and Sioux tribes at Fort Peck. And in 1953 oil was discovered on my mom's allotment at Fort Peck, and the Bureau of Indian Affairs managed that well and the pump for nine months. It was called a closed well, which means that no Indian could get information as to any parts of what was generated by and for them by the Bureau. They had a pump for nine months and then it was capped by the Murphy Oil Company, and right across the

fence on non-Indian fee land a well was sunk by Murphy that pumped for 20 years. And my mother got revenue for nine months and missed revenue for the next 20 years. And during that time our family lived in substandard housing. We went without a great deal, and that was a difficult thing for me as I became an adult to reflect back on that there was a real inequity there. And now when I see these proposals, it hits me as a tribal leader and it hits me personally again of the inequity of it. The word homeland is very popular right now, and we hear about homeland security obviously. The homeland has always been popular to us. It is at our very core. Our homeland on the Flathead Reservation is truly the home of our ancestors' bones, and we revere that land. We revere everything about it. It is a holy place. So for us as a sovereign nation, we must be able to have a say-so in energy needs and all needs that affect our tribal membership and that affect the land that we live on. I am very happy to be here today to spend time in the government-to-government negotiation. We do not want government to ward negotiations anymore. We look at the needs of our reservation and we see that the federal dollar is being cut back continually. And all my brothers and sisters in this room are experiencing the same thing. That is an "is", and we have to be able to take care of our tribal membership, and in doing so we have to be able to generate our own resources. And power and energy is part of that opportunity, and we want to be full and practicing partners in that on our homeland. Right now we are funded at 40% of our health needs by the federal government, which means that, on our reservation if you are a tribal member and you are sick, you do not get care unless it is to life and limb. And so it is important to us as tribal leaders; it is incumbent; it is our call; it is our very duty to be able to provide for the healthcare of our membership, especially the children and the elders. And so in closing, I

think that if you were to come to our residence address and you were to go to our Kootenai summer celebration, you would see that our celebration and dance grounds, our powwow grounds, are located underneath Bonneville Power Transmission lines. And the same Bonneville Power that told us, it is probably a pretty safe place to park your cars. And yet it is the traditional place where we dance and celebrate our very life, and perhaps there is an inequity there too. So I ask you and I ask you respectfully, I ask you firmly and government-to-government [indiscernible].

ABE HASPEL: Yes sir? Y

DON LAVETTER: Hi, my name is Don Lavetter. I am one of the legal counsel for the Crow Nation. You heard Chairman Van speak earlier. Wanted to be brief and provide a few comments on three - largely, three things. One is, comments on the options and some specific details here. Two is to reiterate an example of a success story, and I would like to see that reflected in the report that the success stories I think are high in number, but we are looking - focusing perhaps on the problems. And third, kind of just some basic Indian law and history to tie it all up. So with the options, as mentioned earlier under Section 4.4.2, the first two options largely seem fine, which is A, do nothing at all, B, codify for tribal consent. I do not see how people could really be opposed to that, and I am glad to see that there is some measure of reflection about providing for tribal consent. The other three, as we have heard in prior testimony here, that substantial problems and largely they are unacceptable. Condemnation speaks for itself under the plenary power, and I want to just leave that for the last part of my comments on kind of Indian law principles in general. But first I would like to focus in on valuation. Under the draft report right now, it says that it would be patterned after federal entities, and it

refers to the Bureau of Land Management in particular. The problem in comparing either an optional set of tables based on federal lands or even mandatory tables as through the recommendations provided, is that oftentimes the federal government touches an economic transaction seven times. They have a federal income tax, they have got gross proceeds taxes, they have got royalties, they have got numerous things where, in fact, then the rates that are allowed for leasing them are not as significant, whereas in stark contract, the tribal governments, oftentimes that is a major part of their revenue. It is not touched seven times. It is touched this one primary time. And so, to compare, it is like comparing apples and oranges, because the federal government is going to get its share through various taxes and other measures of regulatory aspects of it, versus tribes here, we have this one avenue to try to capture what we believe is finally fair market value. So I do not think those tables are helpful or useful, or in fact should not be used as a comparison. The - I think that is enough really said about the valuation tables. We have serious problems with those and we will try to get that in some written comments by the deadlines you have provided. Success story - so there's options. Success story is, we are energy partners. Always have been, and want to be, players in the field. And that is an aspect of maintaining tribal consent is to, in fact, be a player in the market to determine for us what the value of that is at fair market value reasonable rates, of course. And there has not been fair up to date. I just wish that these success stories, for example, with Crow, and I have heard a couple others that have been successful, that they be reflected in the report as well, and perhaps other people can come forward on what has been possible and feasible. In light of that success story, I just want to comment on kind of energy partners and economics and business in general. And I know Mr. Middleton here is an

economist anyway, but the economics is a lot about certainty and predictability. Trying to quantify these transactions. The report actually seems to upset settled expectations and creates uncertainty. I have heard from other representatives of other tribal nations that energy companies heard this report is coming down, and so now they are refraining from the negotiation process. That has created uncertainty. What we want to do is provide certainty, I thought. That was why this whole study was commissioned in the first place, right? And I think, you know, that the steps towards the table in tribal consent certainly are - it looks like recommendations towards that, but as I said earlier, we have problems with the tables. So what we would like is status quo in tribal consent where there is predictability and certainty, and the energy companies then can deal with tribal governments as a government. Now, finally, the Indian law principles - I referred to this earlier and it really hit home - which was the trust responsibility and plenary power both. I see in the report itself the citations to plenary power. I thought, of all things, it would be *Lonewell v. Hitchcock*, which is the Dred Scott of Indian law where the Kiowas and the other sister tribes had their land stolen through fraud and coercion, and Congress turned its eye and said - or the Supreme Court turned its eye and said Congress has plenary power in Indian affairs. There was not even that citation in there, was a bunch of district court ones, and I know it focused on the Condemnation Act. Plenary power is largely a legal fiction. Its source of authority has no basis in the Constitution. It is, in fact, an extra-constitutional power that is exercised to steal Indian resources. That is its origins, and now we have here today, a century later, possibly a smaller vision of the same type of thing happening. I would hope that today, five generations later, that we would say we reject the plenary power as even a legitimate constitutional consideration.

In fact, it is unconstitutional, and I imagine over time, I would hope that better minds would come to say that plenary power is a shame in our history. So let's definitely not have that reiterated or reaffirmed in any way, shape or form. The trust responsibility as a matter of federal Indian law actually requires the highest fiduciary duty and the most exacting standard under two cases. The *Seminole* case of 1942 and the *Pyramid Lake* case, which there may be some representatives here on the *Tricky River* litigation. And it bears mentioning because it says, the highest fiduciary standard - higher than anything else - that is what the Department of Interior's trust responsibility is to be.

Recommending plenary power is not meeting the highest fiduciary standard. And I know that the problems that have been created in the transactions which have led to that, and I really would like to add this to the factual part of that, the El Paso, which everyone knows is a 900-pound gorilla discussion here. In El Paso, for their attorneys and their brief to Interior, they actually cite - they rely exclusively on an Interior Department memo. That is the entire basis of their case to not require tribal consent. Parenthetically, the Interior Department memo - which is not official law; it is simply an internal position of the Department - that actually dealt with the condemnation to create Yellowtail Dam on the Crow Indian Reservation. And they said, because we are a treaty tribe and a non-IRA tribe, this Interior Department memo justified the taking of Crow land to create Yellowtail Dam, which we never wanted in the first place. Ironically, the chairman at the time and the BIA superintendent, Robbie Yellowtail, never wanted the dam. And they turned around and named it after him, and that is why it is called Yellowtail dam to this day. But the fact that El Paso, the central part of their argument, says we do not need to get consent because there is this Interior Department memo out there that says if you are

a treaty tribe, we do not have to get consent. That is a disingenuous legal argument at best. If anything, if you have a treaty, you are in a much stronger position and you did not opt into the IRA, because then you do not need federal approval. Nevertheless, just some interesting notes on the case law and kind of plenary power more generally, and I will tie it up here with this last card, which is a tie-in to previous testimony. History to inform the future. It bears repeating. Land sessions. Settlers coming in. Railroads. Dams. Highways, and today this generation is talking about energy rights-of-way. Let's not repeat the same stuff that has been going on again and again. It is just the contemporary version of all these other public necessities that have occurred, and we just respectfully request - and we do appreciate the hard work and how difficult it is to try to put a balanced report when you have opposing sides on this. But let's maintain tribal consent, protect and honor the treaty rights, and move forward as energy partners. Thank you very much for your time.

ABE HASPEL: Thank you for your comments. Would anybody else like to speak in open session? If not, we are currently - oh, yes sir?

CHARLES VAUGHN: In regard to the tribal consent issue, I think what--

ABE HASPEL: I'm sorry. Could you identify yourself again, please?

CHARLES VAUGHN: Charles Vaughn, Chairman of the Hualapai Tribe. In regard to tribal consent, I think one issue that you have to consider is the fact that many tribes have viable constitutions that are in place that speak to how these resources are sustained by the membership of the tribe once the council decides what course of action they are going to pursue in regard to leases. Some constitutions, such as my tribe's constitution, requires the approval of the tribal membership. So there is a constitutional

requirement. And to merely grant consent to an energy company would seem to me that you violate the tribe's constitution. And then any member of the tribe, because of that, could hypothetically defend that constitution and take the energy company, as well as DOI or DOE, whoever is responsible for that act, to task on that matter. So I think that is an important consideration you have to look at.

ABE HASPEL: Thank you. We are now nearly at 10:30. What we would like to do is take a 15-minute break, and Daryl do you have the list of government-to-government sign-ups? Bring it up here so I can sort of let people know what order it is. What we would like to do is take a 15-minute break and regroup. And it is in Parley 1, is that right, Darryl? And Room Parley 1 is where we have set the breakout room where we can go government-to-government with an individual tribal representatives. We would like to - in order to make our timeframe, we would like to keep the tribal government-to-government consultations to about 20 minutes, if at all possible. However, if we are in some significant discussions, we, you know, obviously we are not going to cut things off. What we have scheduled is Northern Ute first, Confederate Salish, Kootenai tribes, Northwestern Band of Shoshone, Hualapai Tribe, northwest Arizona, Crow Tribe, and the Yakama Nation. What we are going to do is leave this room open for tribal members to caucus and be able to talk among yourselves. And then we will come back in and we will ask tribes to come into the individual breakout room so that we can start the government-to-government consultations as that time. So if we could, at 10:45, Madame Chair, if we could have the Northern Ute in the parlay room, and we will start our government-to-government consultations. Thank you.