

1 **Energy Policy Act of 2005, Section 1813 Study on Indian Land Rights-of-Way:**
2 **Transcript of Presentations and Comments made at the**
3 **April 19, 2006 Public Meeting**
4

5 MALE SPEAKER: Information about the length of the lease periods and particularly
6 changes over the years with respect to the length of those periods. We're interested in any
7 information that - - that I have - - people might have. I expect this is more likely to be available
8 on the company side about the downstream impact of the costs of rights-of-way on delivered
9 energy cost to consumers.

10 Let me see if there are other points that are - - that we want to focus on here. Well these -
11 - I won't repeat the points that are up here on these slides. The slide package is being made
12 available in hard copy, and I expect if it's not already available on the table outside it will be
13 shortly. So with that, I'm going to close and I'm going to turn things over to Bob Middleton
14 who's going to - - he has a few things to say to you also.

15 BOB MIDDLETON: Thank you. I think we're still missing potentially one PowerPoint
16 presentation. Again, if anyone in the morning sessions needs to get us a PowerPoint on the
17 computer, please bring it up front.

18 Morning everybody. Thanks again for such a great attendance this morning. I want to
19 personally thank everybody for all of the discussions we had yesterday. I know that again it was
20 more information that we need desperately to be able to pull this study together. I appreciate
21 everybody's help in doing that and all the discussions we had. We're looking forward to another
22 lively discussion today. We have another opportunity to further flush out the information that we
23 can use for the report to Congress.

1 And to start us off this morning we're fortunate to have former Senator Ben Nine Horse
2 Campbell. He would like to say a few remarks and open up the session. And so with that,
3 Senator Campbell?

4 SENATOR BEN CAMPBELL: Okay. Hopefully I'm good to go here. Thank you.
5 Sorry I wasn't here yesterday. I was out of state on business, but I'm just honored to be here
6 today and as I start, let me welcome everyone to the city of Denver. Sometimes called the Mile
7 High City, sometimes the Queen of the Plains. As vibrant and as beautiful city as there is in the
8 United States to my way of thinking. It's always been beautiful, but it hasn't always been
9 Denver. I'd like to talk about that a little bit before I deal with the subject at hand.

10 There was a time, as many of the people, particularly Indian people, in the audience know
11 this was a land of the Arapaho and in the north was the land of the Shoshone and further north
12 the land of the Crow and the northeast land of the Lakota [ph] Friends and to the south the
13 Kiowa and the Apache. And to the east the Cheyenne people - - my father, until what was called
14 the Sand Creek Massacre and which time about 150 innocent women and children who were
15 using the American flag to show that they were friendly were massacred, their body parts cut off
16 and paraded through a city of Denver on the ends of sabers and rifles to cheering of the
17 multitude.

18 They're all gone now, as you know. Only the Utes remain. They've been spread to the
19 wind as their kids too. The ones that weren't killed were put in boarding schools where their hair
20 was cut and they were beaten for speaking their language. And all that happened basically just
21 because they were Indian.

22 And as far to the west as a good rider and a good horse could ride in a month with the
23 land of the Ute people all the way to what is now Utah, named after the Ute people, they didn't

1 know the names of Vail or Montrose or Grand Junction or any of the other things anymore than
2 Arapaho and the Cheyenne knew the name Denver. All they know was that their creator put
3 them on this land and those things above the land and on the land and under the land was put
4 there also by the creator for their use.

5 Must have been a pretty good life. They didn't need a government permit to build their
6 lodge or a government permit to dig for water or a government permit to hunt for their
7 sustenance or a government permit to collect firewood. But the U.S. government felt they could
8 improve on all that on 150 years of change because now there are no more Crow or Shoshone or
9 Apache or Arapaho or Cheyenne in this state except those that live in the cities - - the few that
10 live in the cities. Only the Utes remain on two very small parcels in the southwest part of the
11 state, and they worked very hard over the last century and a half to hang on to those pieces of
12 land.

13 None of the tribes sold their claims to the land. They did not. They didn't trade it. They
14 didn't abandon it. They lost title by adverse possession which is a nice way of saying at
15 gunpoint and under duress. It's a sad commentary to note that in this enlightened age America is
16 fighting all over the world to ensure the rights of people and give them a lifestyle that Americans
17 take for granted and enjoy, while at the same time the goal of some Americans is diminish the
18 rights of the first Americans.

19 Now why am I telling you this instead of dealing directly with right-of-ways? It's
20 because in my view of this debate shouldn't be so sterile. It shouldn't be clinical. It shouldn't be
21 just an exchange between your experts and our experts, and your data and our data, or your
22 graphs and charts and our graphs and charts. There's got to be a human face to it, and that's the
23 reason why tribes badly need money. It's that human face. It's a face of an Indian child without

1 adequate nutrition. It's the face of an Indian elder without adequate medical attention. It's the
2 faces of people, many people, who live in a lifestyle of 75% unemployment. It's a face of a
3 mother whose youngster commits suicide because they find themselves in a dead-end existence.
4 That's the things I wish people would focus on more than all the clinical and dry statistics that go
5 into a study.

6 Naked green in the past history has been cooked in code words like westward
7 expansionism, divine right, many things of that nature – manifest destiny. You know all the
8 things that you read, the history books that were written after enlightened authors began to tell
9 both sides of the picture of the history of the American West and the American Indians. But
10 basically it was new immigrants needed resources.

11 It's interesting you picked up this morning's paper, the Denver Post, I read USA Today,
12 and you know the present time is a great national debate raging all over America about illegal
13 immigration. I imagine there's a few people in this room that can track one ancestor to an illegal
14 immigrant. And you probably know that there are more illegal immigrants crossed our borders
15 last year alone than all Indians together in the United States. According to the Department of
16 Labor, one out of every 20 workers in America now is an illegal immigrant. Undocumented
17 alien I guess is the other word they use. And the nation, if you read the newspapers, is divided
18 on the issue.

19 While there's protest and rhetoric building up on both sides of the issue, people are
20 concerned. Concerned about the potential erosion of their rights, their wealth, their lifestyles,
21 what it is all going to mean. And without making a judgment decision, I can tell you right now if
22 you are one of those concerned people maybe you know how Indians have felt for the past 414
23 years and they have a right to feel that way. Is it any wonder that tribes fight so hard to hang on

1 to what little they have left? They had everything to lose; nothing to gain with a huge
2 immigration growth in this nation and it looks to me like they're still in the process of losing.

3 And while on that subject, they're usually in Congress when legislation moves forward a
4 winner and a loser, although compromises are always strived for, and it seems to me that if this
5 leads to legislation or price fixing of what transmission companies can pay a tribe in the right-of-
6 their-way as some are already advocating, there's going to be a winner and a loser. We've
7 already heard a unified voice the last time I was hear from the tribe [Indiscernible]. Excuse me.

8 I apologize. I lost my wire here. Tribes have already said they're not going to be the
9 winners. Technically challenged here. So if the tribes will not be the winners, will the
10 consumers of Chicago or New York City be the winners? Probably not. Not in my view
11 because to assume that that 2,000 miles of pipelines across postage stamped size Indian
12 reservations compared to the tens of thousands of miles across other lands in America, across
13 non-Indian lands, would drive up the cost of heating fuel to a consumer in New York City at best
14 is ludicrous and at worst is just pure scapegoating.

15 That leaves the pipeline companies. Would they be the winners? In my own view I kind
16 of doubt it. Not in the long run because just as the advocates of 1813 have lumped all tribes in
17 the same category because of one dispute, tribes would be put in the same position and would
18 begin to put all pipeline in the same category to be viewed with suspicion and distrust.

19 In addition, the ongoing agreements that are now up for renewal would be in limbo,
20 thereby putting the many good companies who have been able to work with tribes in the same
21 uncertain position as the few or one, as I understand it, that has not been able to get an agreement
22 with one tribe. If anyone believes the tribes are the cause of increased heating bills in America,
23 you've got to also believe that it was the Eskimos fault because the Exxon Valdez disaster.

1 Once again, tribes have their back to the wall, and make no mistake about it. They'll
2 fight any legislation that may result from Section 1813 in the courts, the halls of Congress and in
3 the court of public opinion. I would wonder as I look at the skyrocketing energy costs in
4 America, costs of gasoline to pump, and natural - - the disastrous of things like the Exxon
5 Valdez, if the transmission companies and energy companies are so popular with the American
6 public that they really want that fight. The real tragedy of this whole issue was that the - - the
7 process of going to a legislative fix could have been avoided.

8 Well who are the winners if both the tribes are losers in my view and the energy
9 companies are losers too? I'll tell you who it is. I just came back from the State of Washington
10 and was interested to find out even still now after all the years there are still groups in Montana,
11 Washington State, Oregon, Idaho, as well as a few others, who they're non-Indian people who
12 cloak themselves in a veil of righteousness, patriotism, and fair play; give themselves very
13 patriotic names, who publicly have advocated for the dissolution and sale of all tribal lands.
14 They have as these goals as their platform. They tried discrimination because they cannot vote
15 in tribal elections and they say their civil rights are being violated because they do not get per
16 capita while they may live on an Indian reservation as the tribal members get per capita.

17 They pursued that agenda both in the courts and in congress, but so far they've been
18 pretty much views as ultra nationalistic extremists pure and simple. In fact, before I was out of
19 office one of the groups came to see me. I'm a little short of words sometimes. I told them to
20 get out and I told them on the way out they can do something I know is physically and
21 anatomically impossible. [Laughter] They didn't come back, but they're still out there.

22 1813 in my view has handed these groups, however unintentionally, a windfall for their
23 misguided cause. Tribes aren't companies or clubs of municipalities. They're sovereign and

1 that's exactly what these groups, perhaps even a few people in this audience, are out to destroy.
2 1813 in my view is the equivalent of blood in the water and there is already circling going on.

3 There are certain principles considered inviolate to all tribes of sovereigns. A number of
4 tribes met just two weeks ago to flush those out. I think they may be going to pass those out
5 today, as I understand, but let me enumerate them in my remaining time. The power of tribes
6 prevent third party from using tribal lands without tribal consent is a critical element of tribal
7 sovereignty and is established in federal law and policy for over 200 years. The tribal consent
8 requirement to the use of tribal lands should be honored and preserved.

9 Second, the tribal consent requirement includes the power of tribes to place conditions on
10 the use of tribal lands including conditions relating to tribal jurisdiction, preservation of
11 environment and cultural resources, duration of use and compensation.

12 And third, adherence to the tribal consent requirement has resulted in greater energy
13 production in Indian country and lower energy cost to consumers, not higher. The tribal consent
14 requirement for right-of-ways has not had a noticeable negative effect on the availability or cost
15 of energy to consumers.

16 And fourth, no right-of-way agreement or other business arrangement that permits third
17 party use of tribal land should reduce the sovereign power of a tribal over its lands or the
18 activities conducted on its lands in the absence of the specific consent of the tribe. Federal law
19 policy should not be changed to require perpetual right-of-ways of automatically renewal so
20 right-of-ways because such changes would deprive tribes of management and control of their
21 lands.

22 Tribes should continue to have the right to negotiate compensation for the use of the their
23 lands. That gives tribes a fair share of the economic benefits produced by use of their lands.

1 Such revenue sustains tribal governments and cultures and helps alleviate the problems of that
2 face that I talked about of the children and the elders and the needy.

3 Indian nations are an integral component in the energy security of the United States, not a
4 threat to the security. History demonstrates that tribes have permitted critical energy facilities to
5 be used pending compensation negotiations even in cases where tribal right-of-ways have
6 expired. Federal law and policy should be providing positive incentive to tribes in industry to
7 foster partnership and the mutual alignment of economic interest related to energy development,
8 transmission and distribution. Section 1813 flies in the face of that goal.

9 As reflected in the Energy Tribal Energy Development and Self Determination Act of
10 2002, which my staff wrote two times before it was finally reintroduced after I left Congress and
11 passed, and of course 1813 as you know was not included in the Indian section. It was put in a
12 different section totally unbeknownst to the tribes, but in that Act efforts to tribal decision-
13 making should remain a fundamental component to federal Indian energy policy.

14 And last, the creation of federal administration evaluation process for fixing tribal right-
15 of-way compensation would be an affront to tribal sovereignty as shown by the disastrous federal
16 management of the Indian allottee resources and could have the same similar effect.

17 Seventy-two years ago Congress enacted the Indian Reorganization Act and I quote “to
18 prevent the sale, disposition, lease, or encumbrance of tribal lands’ interest or lands or other
19 tribal assets without the consent of the tribe.” In 1948 Congress reconfirmed the tribal consent
20 requirement for right-of-ways on tribal lands, and during that time and since that time tribes have
21 been allowed to make consent decisions and negotiate just compensation for access across their
22 lands. Since 1934 the American energy economy has grown to be the largest and the most

1 productive in the world, and there's no indication that the tribal consent requirement has ever
2 staled or inhibited that incredible growth.

3 There are numerable tribal right-of-ways and right-of-way agreements with a vast
4 number of energy companies providing a wide range of power options across thousands of miles
5 of Indian lands without ill effect to consumers. There's a great potential for growth in Indian
6 energy and conjunction with energy industry partners, which I think the vast majority of us
7 support. Any legislation limited sovereign power for tribes not only defeats that purpose, but is
8 another violation of the federal treaties with tribes and in breach of the federal trust responsibility
9 leading to years of confrontational litigation.

10 And as a non-lawyer, the way I understand litigation because the Department of Interior
11 is a trustee for Indian tribes, they would be drawn into it as they have been drawn into it with this
12 study. They didn't write this study and neither did the Department of Energy, but they're up
13 here trying to do the scoping process and trying to find out the views of people because Congress
14 has directed them to do it. Well as I understand it, the Department of Interior would also be
15 obligated to defend Indian tribes as the trustee in those lawsuits. So your tax money is going to
16 be spent, I would think, in a probably on both sides of the issue if this ever went to litigation.

17 The confrontation is not the way to go. I just hope that we don't take America down that
18 path again and tell you very honestly it's time to stop beating up on the American Indians.
19 Thank you.

20 [APPLAUSE]

21 FEMALE SPEAKER: If we can have the panelist for this next session come up here,
22 that would be great. [Indiscernible] the DOI folks, BPA, Warm Springs and El Paso. I think
23 they're already up there. So before we get this panel session started, while they're jumping up

1 there and Rollie making sure that we have our presentations all set up, I just want to quickly go
2 over the day and remind you of a couple of things. Two reminders. If you did not sign in
3 yesterday or register yesterday or today, go make sure that you do sign in or at least check that
4 all your contact information is correct with Sierra out front.

5 There's also a CD. Kastle Weeks provided a CD of - - it's a DVD of the Big Horn water
6 case in Wyoming put together by the Wind River Indian High School. So if you want a copy,
7 they're out - - they're out front. I think there's very few left, so Kastle, if you want to just stand
8 up. So if you're looking for a copy, Kastle's your man if they're not out front. So those are the
9 reminders for today.

10 We've got the presentations this morning is going to be about land appraisal and
11 negotiation experience and the hope is to get the suite or a range of the appraisal processes and
12 how the pieces fit together or how the different perspectives. So you can all see a range of
13 perspectives. My hope is that because the plenary yesterday afternoon was really useful, I'm
14 hoping that perhaps the presenters can be a little brief and that our question and answer session is
15 really going to be questions only and if we get through and there's a couple of comments being
16 made, I'm probably going to cut that off so we can put all the comments into the plenary session.

17 So if we get done a little bit early on the presentations we'll move the break up, we'll
18 move the relevant National Energy Transportation Policy session up a little bit, go to lunch a
19 little early and expand the plenary session as long as we can. If we can expand it a half an hour,
20 that would be great. I think it gives you all more of an opportunity to have the conversation
21 amongst yourselves. And we'll do a very similar process we did yesterday so the front half of
22 the room will turn your chairs around and face the back half of the room so that you all are

1 having the conversation amongst yourselves. It's not you having the conversation with the front
2 of, you know, the front of the - - front of the house so to speak.

3 And then at the very end of the day we're going to have some additional presentations
4 and comments. These are people who have signed up on a list outside. It's about five to ten
5 minutes depending on how many people sign up. Currently we have about seven people signed
6 up so that will be about ten minutes for presentation. If you haven't signed up, go ahead. If we
7 get a lot of people signed up we'll have to drop that number to five. And these are for clarifying
8 things that they had heard so far in the two days; information that perhaps is missing; furthering
9 data offered to DOE and DOI in that final session.

10 So with that, I think we are ready for the presentations. All right.

11 KATHERINE GEARHEARD: First of all, I'd like to thank Senator Night Horse
12 Campbell for letting me sit in the chair he sat in or at least [Indiscernible]. That was pretty
13 exciting, Senator. So that's my thrill for the day. [Laughs]

14 My name is Katherine Gearheard [ph]. [Indiscernible]. Real close? Is this better?
15 Okay. My name is Katherine Gearheard. I'm the Deputy Chief Appraiser for the Office of
16 Appraisal Services Directorate for the Department of Interior. My specific responsibility is for -
17 - to be the chief appraiser and oversight reporting to Ross Schwimmer [ph] for the Office's
18 special trustee for American Indians. I've held this job since February 1st. I have a varied
19 history in problem solving, management of appraisal issues. I hold an MAI designation and I'm
20 very excited about working with the good crew of 12 offices we have across the nation working
21 with the Indian appraisal services.

22 The Appraisal Services Directorate was formed in 2003 as a result of an investigation
23 over many years about appraisal practices and their lack of consistency and independence in the

1 Department of Interior. So in 2003 an umbrella organization was formed to make the appraisers
2 independent professionals with consistent practice according to standard accepted principles of
3 appraisal. So all the Department of Interior appraisal groups were formed into this Appraisal
4 Services Directorate so that includes the National Park Service, Fish and Wildlife, and don't ask
5 me to tell you all the rest of them.

6 BIA appraisers were not included in that appraisal organization, but there was a desire to
7 give them that same independence. The reasons they were not included were varied and really
8 unrelated to the appraisal process. More technical and bureaucratic than anything else. So in
9 2005 Ross Schwimmer issued a contract on behalf of the OST to the Appraisal Services
10 Directorate to set up the independent OAS office, which is the Office of Appraisal Services, that
11 would be the functioning group of the 12 regional former BIA appraisal offices across the
12 country.

13 My phone number is by the way not available to you anywhere else, so I'm going to give
14 it to you right now so you should (1) feel free to call me if you have any questions. I'm on the
15 road a lot, but that's all right. You can call me anyway. I check voicemail. [Indiscernible]
16 particularly questions as the nature of the appraisal process. Is 202-208-5723, Katherine
17 Gearherd. But also I have a lot of faith and trust in the regional managers we have in each of our
18 12 offices and you can reach your local office for advice whenever you need to.

19 The two things I'd like to do for you today is define what an appraiser is and define what
20 appraisal methodology is, both of which are very confusing concepts no matter where we see
21 appraisers used. There's just a lack of understanding as to what the job is and what it does. So
22 that's the only goal I have today is to define those two things for you.

1 It's very important for you to know that the appraiser's professional responsibility is to
2 not be biased or advocate in any way. So it's my intention to not evidence any bias of advocacy
3 of a position today, but to simply provide you with information on what the appraiser is and the
4 appraisal process is because there's a lot of misinformation floating about about what the
5 appraisal process is.

6 A real estate appraiser, now since the savings and loan crisis of the late 1980's, is
7 someone who follows Uniform Standards of Professional Appraisal Practice, and those are
8 equivalent to the accounting standards and must be followed by appraisers who are in most states
9 required to be certified as an appraiser. There are some states that let an appraiser volunteered to
10 be certified, but those people cannot perform appraisals in the federal environment.

11 With this state certificate comes oversight from a national agency called the Appraisal
12 Subcommittee, which is a subcommittee of congress, and they regularly audit the State offices
13 that control and certify appraisers to assure that there is consistent, practical and not fraudulent
14 practice, which was built as a result of the fraud that came out in the savings and loan crisis. But
15 the appraisers who are certified by the State do have oversight by a federal agency to assure that
16 they are practicing ethically, independently and according to standards.

17 All the federal appraisers in the Department of Interior hold this certification. They have
18 an exemption in that they are allowed to hold certification in one state and use that to practice
19 appraisal in all states, whereas a private practicing appraiser must be licensed in each state. But
20 federal appraisers under the staff appraisers under the Department of Interior including the OAS
21 group hold state certification, and in the OAS group many of the appraisers held state
22 certification before this was a requirement. So many of them on their own had gone under the
23 umbrella of the oversight to encourage consistent practice.

1 There's another doctrine for appraisers to follow in the federal environment either those
2 who privately practice appraisal in federal environment or who are employees of a federal
3 agency, and that is the famous yellow book. I've been in the appraisal business for a little bit
4 more than 30 years, and when I started this book was about this big and eight pages. So, you
5 know, don't say that they don't just keep increasing that bureaucracy.

6 But this is a standard along with the uniform standards for federal appraisals. It's written
7 with an orientation towards acquisition by federal agencies, but it is also based on all court
8 decisions relative to appraisal practice and is formulated in that regard. So in the Department of
9 Interior, all of the appraisers follow this yellow book which is also known as the UASFLA. If
10 you can make an easy to pronounce acronym out of that, go ahead. It's a Uniform Appraisal
11 Standards for Federal Land Acquisitions.

12 And we use this primarily because of the weight of its legal authority. In the OST and
13 the OAS group we are responsible by law to assure that the Indian people are aware of what their
14 property is valued at at market value. That is our responsibility. We do not control the
15 negotiations or anything beyond that or try to govern or rule any kind of Indian ownership. We
16 simply are responsible to make sure that the Indian people know what the market value of their
17 property is. Now you'll hear the term fair market value and that's used in the - - any country
18 environment because it was written years ago before people realized that fair market value was a
19 contradictory term.

20 And I don't care if you call it fair market value, but accurately the courts refuse to
21 recognize fair market value. They call it market value, and the accountants call it fair value,
22 which basically means the same thing, but market value is the correct term. And it's our interest
23 as we're responsible to give the Indian people their market value appraisals is to prepare them

1 should they be exposed in any kind of venue that has courts involved that the courts would be
2 making decisions. So they have everything ready to go and prepared to address the issues of
3 methodology found in the courts. That's what an appraiser is.

4 Next thing I want to cover with you is the methodology used by the appraiser and it is
5 governed primarily by a body of knowledge, a large library of books that describe what we're
6 supposed to do, and then further refined by the Uniform Standards of Professional Appraisal
7 Practice, also known as USPAP.

8 The yellow book, as well as the body of knowledge, insists that right-of-ways be valued
9 using a before and after method. This is a commonly accepted method by the courts. In fact, it's
10 the only method accepted by the courts, and this is described thoroughly in the yellow book.

11 Thanks to my colleagues at Bonneville Power you're going to get some good PowerPoint and
12 some things to see and have written things to take away that will tell you how to locate these
13 standards if you want to read them.

14 But the before and after method is a prescribed method. In that method the appraiser
15 values the property before a right-of-way would go across it, and then values the property after
16 the right-of-way would go across it. That is a right-of-way appraisal. It is then the responsibility
17 of the courts or the negotiator to calculate the difference in value between before and after and
18 use that difference in value to set the decision made by the court or to set the decision made
19 between the two parties in the negotiation. The appraiser does not value the right-of-way per se.
20 They simply value the property in the before condition and the after condition which is thought
21 of by the courts as a tool to inform the user of the market value and give the negotiators and the
22 courts the ability to make the decisions appropriate to the situation.

1 Now you've heard about methodologies like the percentage methodology. I haven't seen
2 the percentage methodology used in the body of knowledge or in any kind of practice since
3 probably the 1970's. And probably are people out there using the percentage method, but it is
4 not accepted by the courts and it's not in the body of knowledge of the appraisal practice. And
5 frankly, it's just a wild guess pulled out of the air.

6 The across the fence method is a method described in some of the agricultural appraisal
7 textbooks body of knowledge. It describes an alternative. The courts recognize this as an
8 alternative method, but do not want to see it used except in extreme situations. So if you've
9 heard about the across the fence method it is not accepted as the viable way to methodology for
10 valuating property at the Department of Interior at least and we believe in the courts as well.

11 The yellow book and the courts and the Department of Interior also believe the valuation
12 of taking plus damages is not appropriate except in very, very few cases, and even if you use a
13 taking and damages method, the value result should be the same as the before and after
14 methodology. And the yellow book also says that a going rate methodology is not accepted by
15 the courts.

16 So that boils it down to in the OAS office of Department of Interior, our methodology is
17 the before and after methodology. So it's a simple matter of the property is valued at \$6,000.00
18 in the before condition and to its highest and best use and in the after condition the property's
19 highest and best use is again considered. It might change. It might not as a result of the right-of-
20 way, but let's say the property becomes valued at \$5,000.00 in the after condition. The court and
21 the negotiator can then calculate that the difference between \$6,000.00 and \$5,000.00 is
22 \$1,000.00. That's identified as the difference in value between the two properties and becomes

1 the basis for the negotiation. Both based on market value and both prepared according to the
2 standards accepted by the courts so as to limit our exposure to criticism.

3 The appraiser does not value the right-of-way in this method. Only the court or the
4 negotiator does that. This is the only method a certified appraiser can use because to play a role
5 beyond that would be advocacy and the appraiser would be at risk at having his certification
6 taken away from him. That's the methodology.

7 I have to leave you with a couple of comments about why we have problems appraising
8 rights-of-way in Indian country, and tell you what the problems are and then maybe you can
9 figure out a way to solve them through this scoping process. One is that we have problems
10 getting a legal description of where the right-of-way will actually be. I ask you would you buy a
11 house over the internet with only a picture? Probably not.

12 We can't appraise a right-of-way unless we know what the legal division of the property
13 is going to be, and we constantly have arguments about can't you just give us an idea if we tell
14 you that the line will probably be here? And my answer to that is no. We need to know what we
15 are appraising and we would do you a disservice if we don't have a legal description. We don't
16 do you any good if we give you a wild guess and we won't give you a wild guess.

17 And this is, again, yellow book prescription. The court says we must have a legal
18 description. Plus the recent [Indiscernible] legislation to deal with the banking problems also
19 said the appraiser must have a legal description and so do the Uniform Standards encourage a
20 legal description. So if you could help in that way, that would give you miles ahead of this
21 apparently constantly stalled appraisal process if you could come in with a legal description.

22 The other problem that we have, and we are stopping this practice, is that we are
23 constantly asked to review third party prepared appraisals, and by the time we do that it's way

1 too late. We normally have to reject those because they have not been prepared to the yellow
2 book standards or otherwise the scope of work was not correct. We will not - - no longer try to
3 make way in our queue for those third party appraisals prepared by anybody but the Office of
4 Appraisal Services, and it's because we get into a wild circle.

5 When you bring in a third party appraisal, we have to delay the work that's in the queue
6 already to try to review your appraisal which sometimes results in a rejected appraisal. We will
7 accept a third party appraisal where we have played a role in the scope of work process. So
8 we're willing to work with you, but it needs to be from the very beginning and that's with the
9 energy companies, in particular, start with us at the very beginning. Do not come in with a
10 completed appraisal.

11 And this has turned out to be a historically good method as the banks have changed
12 themselves from letting the third party appraisals just come in the door without any input from
13 the staff who's ultimately going to review that. You're going to benefit much more from having
14 us involved from the beginning than being confronted at the end with nobody knowing what
15 we're doing.

16 Another problem we have is determining the highest and best use. And sometimes the
17 highest and best use has been defined as a corridor. The courts have determined that the highest
18 and best use at a corridor is only - - as a corridor is only appropriate when there is unity of
19 ownership and a right-of-way already exists along that corridor. So the only time we could value
20 with the highest and best use of corridor and use corresponding corridor value data, is when the
21 right-of-way goes across a large piece of tribally owned land and already has an existing right-
22 of-way there; otherwise, we have to appraise the property to its economic highest and best use on
23 the individual allotments or parcels.

1 So I think that some of your valuations have in the past been corridor evaluations and
2 used corridor data to support the values, and the courts have determined that that's just not
3 appropriate.

4 My last comment is just - - and I've talked to several of you individually about this and
5 I'd love to hear more about it - - but the body of knowledge of appraisal practice does not
6 address the issue of these sort of midterm easements. The body of knowledge tells us how to
7 appraise the property that's a temporary - - going to be a temporary easement and it encourages
8 us to use rent comparable data on temporary easements, and it says those temporary easements
9 usually range from six months to two years.

10 We also have very carefully defined methodology for perpetual easements. That's not a
11 problem. The methodology and appraisal also tells us that when a term is shorter than
12 perpetuity, a discount is required, but because our comparables are across Indian land, there
13 frankly is not a lot of market data to tell us what that discount should be or even if there should
14 be a discount. So we have to resort to the traditional financial method of providing a discount
15 when the term is less than perpetuity, or actually I could make that more truthful and say less
16 than 50 years because if you have a 50 year term, the value's probably not going to change much
17 different from perpetuity even when discounted.

18 We've gone to the International Right-of-Way Association and I know that some of the
19 Indian peoples or BIA people right-of-way staff have also been talking to the right-of-way - -
20 International Right-of-Way Association recently - - I got one minute left of things to say so
21 we're great - - about coming up with a methodology for this term, but it does cause us problems
22 when you appraise on Indian land, and it would be much easier if we were appraising perpetual
23 easements, but I understand you have some interests and reasons why you don't do a perpetual

1 easement, but I agree that this term issue is causing us all some kind of problems. And I'm not
2 sure what the solution is, but I wanted to bring it up and add it to your consideration.

3 Again, my phone number is 202-208-5723. I'm in the Department of Interior Building
4 on C Street in Washington, D.C. when I'm there, and I'd be happy to help you with any issues
5 that you come up with on appraisal, but also remind you that our regional offices have very
6 competent people and seasoned people that can help you. Thank you.

7 FEMALE SPEAKER: Thanks, Katherine.

8 [APPLAUSE]

9 MARIAN WOLCOTT: My name is Marian Wolcott. I'm the acting Realty Officer for
10 the Bonneville Power Administration. I'll be giving a presentation on the land assessment
11 process. That will be followed by Sonya Tetnowski, who's our Tribal Affairs Officer, sharing
12 some negotiation experiences that we've had. So mine will be the sterile and clinical portion of
13 the presentation.

14 There is no way that I assume that what I've presented here in the handouts, and I hope
15 that you've gotten a copy, is complete, but it will give you an overview and idea of the
16 assessment process.

17 This process has a purpose. As a federal agency, we're responsible to make sure that any
18 landowner is paid at least market value for the land rights that are taken. So what I'll be
19 covering are the appraisal standards and requirements that BPA follows, appraisal definitions
20 and requirements, and some of the comments to Section 1813.

21 So the appraisals that we prepare are prepared in accordance with the Uniform Relocation
22 Assistance and Real Property Acquisition Regulations. I'll refer to this as either 49CFR part 24,

1 but more simply as the Uniform Act. And they have to be consistent, as you've just heard, with
2 the Uniform Standards of Professional Appraisal Practices, and that is referred to as USPAP.

3 So we do use the Uniform Appraisal Standards, or the yellow book, to provide the
4 definitions and criteria for market value. You'll find many, many definitions of market value
5 that are used by appraisers, so we're consistent by using the yellow book; highest and best use,
6 economic use; a brief explanation of the jurisdictional exceptional rule to USPAP; exposure time
7 and sales requiring extraordinary verification. I've also provided web links so you can look at
8 this in more detail. There's a lot of information that's available on the web.

9 So probably the most important definition is market value, which is the amount in cash or
10 in terms reasonably equivalent to cash for which in all probability the property would have sold
11 on the effective date of the appraisal after a reasonable exposure time on the open and
12 competitive market from a willing and reasonably knowledgeable seller to a willing and
13 reasonably knowledgeable buyer with neither acting under any compulsion to buy or sell given
14 due consideration to all available economic uses of the property at the time of the appraisal. And
15 as I said, we have a responsibility to make sure at least market value is paid for any land rights.

16 For highest and best use, it's the most profitable use for which the property is adaptable
17 and needed or likely to be needed in the reasonable near future, and we use a guideline of
18 approximately five years to determine that reasonable near future. A proposed highest and best
19 use requires a showing of reasonable probability that the land is both physically adaptable to
20 such use and that there's a need or demand for such use in the near future. Physical adaptability
21 alone is not sufficient. So the highest and best use must also be a legal use.

22 For economic use, the appraiser's estimate of highest and best use must be an economic
23 use and a non-economic highest - -

1 MARIAN WOLCOTT: [Indiscernible] is not a valid use upon which to estimate market
2 value. So for USPAP's jurisdictional exception rule, it simply means that the appraiser needs to
3 follow USPAP, but if in some instance there is policy or jurisdiction that contradicts that, you
4 need to cite that as an assumption and limiting condition.

5 So an example of that would be BPA follows the Uniform Act that says when you're
6 reviewing your subject property, you look back five years to the sales history. On the other
7 hand, USPAP says look back three years and the yellow book says look back ten years. So if we
8 were to be preparing a condemnation appraisal, we'd totally follow the before and after approach
9 – the yellow book, but otherwise we're following the Uniform Act and we follow the five year
10 guideline.

11 For exposure time the yellow book has been clear to say that they're not going to define
12 how long a property has been on the market for the appraisers consideration. Property's value in
13 markets, markets vary, so that's the appraisers job to document and clarify what an appropriate
14 exposure time would be.

15 So comparable sales requiring extraordinary verification, the federal courts have
16 traditionally held that in general sales to the government are inadmissible, but the recent trend
17 has been to admit them with the view that such evidence goes to its weight, not it's
18 submissibility. So the appraiser really has to take a good, hard look at any sales that involve the
19 federal government to make sure that it meets the definition of market value. And there are some
20 instances where that might be the case, but filling the definition of market value – willing seller,
21 willing buyer, we're generally compelled to buy the route that's been identified in our
22 environmental process. So there is a compulsion for that one right-of-way.

1 So the agency has the responsibility to assure that the appraisals it obtains are relevant to
2 its program. So as I said for those rare cases that we condemn, we do follow the yellow book,
3 but otherwise you can identify that you might need to prepare a fully self-contained appraisal or
4 simple appraisals you might be able to do a restrictive appraisal where a lot of the support
5 document is in the appraiser's files. Whatever we prepare, we prepare that in coordination
6 discussing up front with the tribes, BIA, Department of Justice, whoever we need to coordinate
7 with to see what the appropriate appraisal would be, the format.

8 Under the Uniform Act we're required that either the owner or the owner's designated
9 representative shall be given the opportunity to accompany the appraiser, and this is a benefit to
10 the appraiser and the landowner. The landowner knows more about their property, maybe some
11 special physical attributes or can share some items on their title policy. Maybe there's an
12 unrecorded lease or unrecorded use that the appraiser should be aware of.

13 So it's our responsibility to clearly and accurately set forth the appraisal in a manner
14 that's not misleading, contain the information so that the appraisal so that you can understand it
15 properly, and clearly and accurately disclose all the assumptions, extraordinary assumptions and
16 limiting conditions. So the idea is is that when you get an appraisal in hand, you can confirm
17 that they did a good job analyzing the market, that their valuation approach makes sense, that
18 their calculations are correct, that you would follow the same valuation conclusion to the opinion
19 of value that the appraiser set out, and if a landowner questions that approach, finds that we
20 missed a sale, finds that our calculations are correct, our appraisers are more than happy to
21 modify their appraisal. So it's important when you have an appraisal to discuss that with a
22 landowner so there's a clear understanding between the parties.

1 So essentially I've got six points and I don't want to take the time to read all of these
2 points, but the general requirements of the appraisals are listed in the six steps that you need to
3 describe the property, describe the approaches that you've used, good descriptions of your
4 comparable sales, and your statement of values, statement of known encumbrances. You have
5 to have a title policy to know what the encumbrances of the parcel are. And you need to have
6 the effective date of the valuation, and when we're following the Uniform Act that date is
7 typically the last date that the appraiser inspected the property. If it were to be a condemnation
8 appraisal, it would be the date of the declaration of taking or the date that the government took
9 possession of the property.

10 So for the Section 1813 comments regarding market value, we've stated that BPA favors
11 a market value approach to valuing land rights. As I mentioned, the federal government has a
12 responsibility to make sure that at least market value is offered to the landowner. And we'd want
13 criteria developed that allowed for the flexibility to negotiate for other than monetary
14 consideration equivalent to the value of the right-of-way identified as a result of this study, and
15 in Sonya's presentation you'll see that we have done that in past negotiations.

16 Although BPA's preference is to have perpetual easements, we understand that many
17 tribal governments are unwilling or unable to commit beyond 20 years. So consideration relative
18 to the term of the easement would need to be addressed.

19 So I'll let Sonya talk about our negotiation experiences.

20 SONYA TETNOWSKI: I don't like the big stand. Sorry. Thank you. [Speaking
21 Indian] My name is Sonya Tetnowski. I'm a Macaw tribal member and my Indian name is
22 Sunfire. Thank you and I understand looking around the room this is dry material. There's no
23 way to liven it up so I'll just apologize up front. [Laughs]

1 But we appreciate everyone being here and inviting us to talk about some of the practices
2 that Bonneville has experienced recently, and some of those lessons learned that we've been able
3 to utilize to work with tribes in a much more partnership and relationship building approach.
4 And as several folks mentioned yesterday, there's ways to find common ground. It takes a lot of
5 work to get there. You have to understand and take a moment to figure out what the underlying
6 issues are, but it is possible.

7 And so part of what I'm going to do this after - - or this morning is just share with you a
8 few examples of that. I highlighted them at the last March meeting, but I'm going to give you
9 just a little bit more detail about that. So with that, thank you. So I'll be covering ways to
10 improve communication, some historical trends in negotiation and a few comments on Section
11 1813.

12 As I mentioned earlier, part of what we've been working on diligently is finding ways to
13 create opportunities to build a relationship that's sustainable. So it's not just about a one-time
14 deal. We want a long-term relationship with the tribes that are within our service territory. And
15 we have our service territory for the Bonneville Power Administration is Washington, Oregon,
16 Idaho, Montana, a piece of Nevada and part of California. So just checking with my colleague
17 over here to make sure I didn't miss any states.

18 Part of what we've had to do is educate internally and externally both the agency and the
19 tribes about part of the purpose, sort of where we're going, understanding the tribes' political
20 makeup, their community issues, some of the goals that they're trying to achieve in this new
21 approach to negotiating right-of-ways with Bonneville. As we continue down this process we
22 have a long way to go and I understand that, but at least we're really trying to take a step forward
23 in understanding what the underlying issues are.

1 Go ahead. One of the things that's always been a challenge with any federal agency is
2 we have so many compartments within the Bonneville Power Administration and we've been
3 trying to demonstrate the willingness to listen and make an effort to understand what the tribe is
4 concerned about, where they would like to go. We want to find cooperative solutions that are
5 beneficial to both parties. And we have learned over time that flexibility is the key which is why
6 you've heard us say more than once now that our concern of just having a methodology that may
7 or may not just be financially driven is of concern to us because there are many times, at least in
8 our experience where the tribes would like different things from us, and I've shared with you
9 before that we've done many creative negotiations in order to get us to resolution to long, long,
10 long standing right-of-way concerns with the tribes.

11 I did want to share that everything that we're doing we try to be respectful for both
12 parties. So sometimes there are situations like we heard from the Yakama Nation yesterday that
13 we had a negotiator within the Bonneville Power Administration that had basically a personality
14 conflict with the tribe, and so we tried to address that. We changed negotiators. We moved
15 forward. We found new ways to do that business and sustain that relationship with that
16 particular tribe, and it was great to hear her talk about that yesterday as an example.

17 We understand every tribe is differently. Inside Bonneville spent a lot of time educating
18 the people on the ground so that they understand that every interaction with the tribe is an
19 interaction with a sovereign government, and what that means and really what their underlying
20 history is and a better understanding about a government itself. We really do try to support our
21 overarching issue of being a trustworthy steward.

22 Some of the historical trends that we've experienced is considerations, easements were
23 sold for at least market value, some sold at higher than market value. And the term out of that

1 897 tribal tracks, 224 have 50-year easements. The remaining 673 tracks are perpetual. Those
2 are just statistics within the Bonneville Power Administration.

3 And there was a discussion earlier about having clear and accurate documentation. One
4 of the things that we've been trying to do in the last four years I guess is try to make sure that we
5 do have that clear documentation and we've re-verified many of the tracks to make sure that we
6 either had signed witnesses or thumbprints or the X or the actual signature of the allottee to
7 ensure that there is true documentation associated with our perpetual easements.

8 I'm not going to cover the Warm Springs. They're up after me so they're going to be
9 talking about their process of negotiation with Bonneville, as well as a couple of other examples,
10 so I'm going to go ahead and go past that.

11 The negotiation with the Nesquali [ph] Tribe was very unique. One of the things that
12 they were trying to accomplish was they wanted the transmission line moved off of their right-
13 of-way, and we were able to partner with another federal agency, the U.S. Army, to talk about
14 how do we meet the need of the tribe, which was they were looking for economic development.
15 And through this process, it's really a great example of when you think creatively there's way to
16 find solutions.

17 The Army and Bonneville agreed that there's a way for us to move this small portion of
18 line. We would support them in trying to get that land transferred back into trust. So the Army
19 let go of the land, we transferred it back to the tribe, who then applied for it to be transferred into
20 trust land with the Bureau of Indian Affairs, but for the tribe itself - - for those of you who have
21 never been to Nesquali, it's a very, very small reservation that basically had an Army base put
22 over the top of it. And so through this process we were able to transfer 118 acres of land back to
23 the tribe.

1 Now talk about thinking creatively, this was a huge success for the tribe itself. It was a
2 great relationship process for Bonneville, and it built a relationship with the U.S. Army for which
3 it did not have before. There was a lot of contention there and so it allowed us to be really a
4 facilitator to make that happen.

5 So I'm happy to share more detail. I've got the two-minute mark, so I'm going to move
6 it along.

7 With the Umatilla Tribe we had other interests that the Umatilla Tribe was looking at and
8 considering as we entered into negotiations with them. And we did do a combination of both
9 monetary and goods and services, and others had shared earlier about - - actually I think it was El
10 Paso who talked about ways of doing things that were a little different like scholarships. Part of
11 what we did with the Umatilla Tribe was there was education, there was training, there was
12 technical assistance, there was - - and the technical assistance was around supporting them to do
13 other areas of energy, education like renewable development feasibility studies, those kinds of
14 things where as a federal agency we have access to those resources far greater than the tribe did
15 at the time. And so we are appreciative of the Umatilla for working with us on that.

16 Section 1813 comments – BPA has had an opportunity to work with many tribes and
17 landowners to provide some services in lieu, and I talked about those a little bit. BPA will also
18 be providing historical data regarding the 899 tracks across tribal properties. And in information
19 that we've been able to gather to date, we may not have to provide that level of detail for all of
20 the tracks we have. We may be just providing a few case studies where we've been able to go
21 from beginning to end in the negotiation process.

1 And with that, I'll go ahead and close. I'd like to give time for the Warm Springs to give
2 their presentation. I thank you all for your time. I'm here for the rest of the day. Maryann's also
3 here today and tomorrow, so feel free to stop us in the hall. Thank you.

4 FEMALE SPEAKER: Thank you.

5 [APPLAUSE]

6 FEMALE SPEAKER: While Jim Noteboom from Warm Springs comes up here, I just
7 want to say that BPA's presentation is in the back and there are a couple of very helpful elves
8 that passed it out so I want to thank those folks who were helping them pass it around. They
9 may not have gotten to the front, so those of you in the front you're going to have to go back
10 there, but. [Laughs]

11 [BACKGROUND CONVERSATIONS]

12 FEMALE SPEAKER: Mike's our helpful little elf. He's good like that.

13 JIM NOTEBOOM: [Indiscernible]. Can you hear me now? All right. Good.

14 MALE SPEAKER: [Indiscernible].

15 JIM NOTEBOOM: My name is Jim Noteboom. I'm attorney for the Warm Springs
16 Tribe. I've been a tribal attorney for Warm Springs for 30 years now. Our firm has actually
17 represented them for over 50 years, and during that entire 30 years I've had involvement in
18 rights-of-way issues such as we're talking about now in one way or another.

19 And yesterday there was a lot of talk about the metric that ought to be applied here.
20 What is the appropriate measurement here? And we've heard about appraisal techniques. The
21 first thing I want to start out is really supporting Senator Campbell's statement that we shouldn't
22 be too technical here. We've got some bigger policy issues at stake here and we can't get
23 bogged down too much in the technical part of it.

1 Having said that, I want to talk about the technical part of it and right now the tribes and
2 the other parties are like ships passing in the night because the appraisal techniques that we've
3 talked about or that were talked about in the yellow book, and assumption of the industry is that
4 these payments for right-of-way are really going to be based on the use of land for other than
5 energy transmission purposes.

6 We heard a little talk about maybe using linear corridor value in limited instances for
7 tribes. Linear corridor value and all that is is you could have a linear corridor for an energy
8 transmission, a road, a canal, a telephone line, anything. That corridor in and of itself has an
9 economic value, and the viewpoint of the tribes is that any payment to them must reflect some
10 portion of that economic value. And yet the methodologies that are now being used in the basis
11 for many of the past payments are at odds for that.

12 And I know from Warm Springs' point of view and from my view as an attorney if we
13 don't consider the economic value for use of that corridor in valuation, it's a nonstarter. Don't
14 even ask us. Don't even come to us. We're not even going to talk to you about it because it is
15 essential that the tribes be able to derive some of that economic value.

16 Having said that, if you do consider the economic value for us of a corridor, there are
17 valuation methodologies that will put you in the ballpark. It will give you a range of values that
18 are appropriate. And those - - those valuation methods are well established. And I'm going to
19 cover just a few of those, but those can provide the basis for the tribal industry discussions. It
20 can get us in the ballpark of where we need to be talking about. And, in fact, many tribes have
21 used those. I'm going to cite an instance here in which the Bonneville Power Administration 30
22 years ago used that methodology. And it is inured to the benefit of Bonneville, the Warm
23 Springs Tribe, and all the citizens of the northwest.

1 Let me give you the example. Let me talk about it. Bonneville wanted to put a new
2 transmission corridor across the north end of the reservation, and they got their yellow book
3 appraisers and they came up with a value of I don't know \$100,000.00 or something with some
4 timberland and the tribe already had one BPA corridor across the reservation. They said no. I
5 mean we're not going to do that. They're big. They're ugly. They take a lot of space. You've
6 got to cut trees down. We don't want to do that.

7 BPA said we'll give you \$100,000.00. The tribe said no. We don't even want to talk to
8 you about it. Don't even come to us. And the BPA really wanted that corridor and they had Don
9 Odell leading the agency at that point, later Secretary of the Interior, and he was creative enough
10 and farsighted enough to think that maybe there is a different way to do this.

11 And in that case, and I've heard discussions here about well how much would it cost to
12 go around the reservation. That was the basis. Don said well it would cost us \$8 million. And
13 we said okay. Give us four and we'll split the difference. And that's a valid appraisal technique.
14 It's called substitution. What would an alternate facility cost? That is not extortion. That is not
15 irrational. I mean it is perfectly logical. So for \$4 million Bonneville got a perpetual right-of-
16 way.

17 Now people could say well geees that 40 times the appraised price, but the fact is my
18 guess is if you computed the cost of the millions or billions of megawatt hours that have now
19 flowed across that transmission line and will flow across it in the future, it's probably a fraction
20 of a penny per megawatt hour. But it was fair to the tribe and it also set the stage for a future
21 good relationship with Bonneville Power. Bonneville Power is generally viewed by Indian tribes
22 as being a fair agency. We have our differences, but they're willing to come to the table and

1 listen to reason. So there's one method or one instance in which linear corridor value was used
2 and a substitution methodology.

3 Many of these energy facilities are multi state and each state each year goes through a
4 valuation process to determine what portion of that utility's total value is within that state so they
5 can levy property taxes and they can levy income taxes. Why can't there be a valuation of the
6 portion of the energy facility going across the Indian reservation and some portion of that
7 economic value assigned to the tribe? I mean that's logical.

8 Under the FERC Order 888 for open access on transmission facilities, utilities with
9 transmission lines are required to levy a wheeling charge to other utilities wheeling energy across
10 their transmission lines. It recognizes the value that those transmission lines and the right-of-
11 way that they sit on have value to other entities. Why can't the tribe get something akin to a
12 wheeling charge for the transportation of energy across their property? We now have market
13 sales of transmission systems. We can look at comparable systems now to arrive at the value of
14 these systems, and why can't the tribe get some of that value?

15 My point here is that there is a rational way to value these facilities across Indian
16 reservations, and unless the tribes get some of that value, it simply is going to be a nonstarter.
17 And so we have to do a - - I think an adjustment of the mindset of people about what tribes
18 should be entitled to.

19 Well, you know, it may be said well no one else gets that value. I mean they all get
20 valued as rangelands or whatever they are. Well that's not true. That - - and I went through in
21 the prior Denver meeting a little bit of length about the Federal Power Act and the Pelton
22 Hydroelectric Project, and I want to cover that in just a little bit more detail because I think it
23 does address each of the issues.

1 In many ways a hydroelectric site is an energy right-of-way. In fact, the document that
2 the tribe executes in favor of the developing utility contains flowage easements, easements for
3 rights-of-way for roads, for borrow pits, for all those sorts of things. It is viewed much like an
4 easement or a right-of-way.

5 And the way that - - the Federal Power Act was passed in 1920. Prior to that time
6 Congress had set aside federal power site reserves to keep them from being homesteaded. They
7 reserved federal lands from further entry. And they had a second category - - legal category
8 called Indian power site reserves, and those Indian power sites were reserved for the benefit of
9 Indians. The federal power sites were reserved for the benefit of the public as a whole, and in
10 Section 14 of the Federal Power Act the developer can condemn non-Indian lands or lands off of
11 the reservation, and they typically do and they use the yellow book and generally those folks
12 aren't going to get any value for power production purposes.

13 But tribal lands are treated very differently under Section 10E of the Federal Power Act.
14 Under tribal lands, first of all they can only be used with the consent of the tribe, and then with
15 the consent of the tribe they can be used if there is a reasonable annual charge paid and there - -
16 and that annual charge can be adjusted after the first 20 years of the license and each ten years
17 thereafter.

18 There's another category of property under Section 10E that gets that very special
19 treatment. That is you look at the energy production value of the property and that is
20 government dams. If you have a Bureau of Reclamation dam in there, then the Bureau of
21 Reclamation is entitled to the - - to value for the use of its facility for power production purposes.
22 Federal lands are treated quite differently. Federal lands don't get that sort of treatment. They
23 aren't valued for power production purposes. There's a general schedule that's politically set

1 basically over the years and there's a lot of controversy about whether the United States really is
2 getting fair compensation for these very valuable licenses that are granted for hydroelectric
3 facility.

4 But tribal lands are treated differently and you don't look at appraisal techniques. You
5 don't look at highest and best use. Instead the methodology that's used - - been used for going
6 on a century now and has done very well is to take a look at the use of the tribal lands for power
7 generation purposes. And the Federal Power Commission, now FERC, has used a methodology
8 called the sharing of the net benefits methodology, and the first step in that is to determine what
9 the net benefit of that site is and they do that by looking at the next best site available to that
10 utility for development of an energy facility.

11 Now this is much akin to how much would it cost to go around the reservation. The net
12 benefit - - the economic benefit of that site is the difference between those two costs. And then
13 the methodology says well you can't allocate at all that value to the landowner. You can't
14 allocate at all to the developer because they both bring something to the table. One brings a truly
15 unique site that they own; the other brings capital and takes a risk with that. And in that
16 methodology, typically the way it's worked is that the landowner gets one-half of the net benefit
17 and the developer gets one-half of the net benefit and that's fair.

18 In the case of Warm Springs, the - - we use that methodology in some FIRC proceedings,
19 arbitration proceedings; we're in litigation with Portland General Electric for many years - - ten
20 years or so - - very bitter litigation because PGE did not want to really recognize the economic
21 benefit of that. And it eventually became so painful for both of us that we settled the case.

22 In the 1950's and '60s the original payments to the tribe were able \$300,000.00 a year for
23 the use of their lands. It's a 440-megawatt facility. We eventually settled it in 1985 for the

1 remainder of the license period through 2001. At the end of that period we were getting
2 approximately \$11 million a year. And again if we had been looking at just value for range, it
3 would be a tiny fraction of that. Just a tiny fraction of that. And would that be fair?

4 There's a widespread recognition that the payments that the tribe got were fair. The
5 Oregon PUC looked at those rates and included them in the rate base finding that they were fair.
6 The utility consumers when it was explained to them the basis for it and why it was done
7 believed it was fair. And ultimately it's been good for the consumer. At the expiration of the
8 license, the tribe and PGE began competing for the new license and midway through the
9 competition we reached an agreement that we would join forces and we did, and the tribes
10 bought a one-third interest in the project from PGE and over time will acquire the controlling
11 interest in that project. We're now exploring other energy projects with PGE.

12 And so for a period of years we were at each other's throats literally and because of this
13 valuation issue. When we finally got over that and we began to look at our common interests,
14 we found ways in which there could be mutual benefit and the earth did not fall in. Basically
15 what I see here though is that that attitude adjustment has yet to take place in a larger context,
16 and it needs to take place among utilities and the tribes, and it needs to take place with the
17 agencies and with the Congress, and they have to understand that Indians do need to get fair
18 value.

19 And let me talk a bit more about why the standard appraisal techniques, while they can
20 give us some starting point for discussion, are not the be all and end all. What we're really
21 talking about here is policy, not so much law. What the courts have said on some appraisal
22 methodology is really it's informative but it's not very relevant. That with tribes they take a
23 different look at the future and let me give you an example.

1 A number of years ago I did some research in the National Archives about the use of
2 timber resources on the reservation, and the timber companies in the teens of the last century
3 came to the tribes and said we want to buy your timber, and the tribal members considered it and
4 it was very interesting. This was a report from the Bureau of Indian Affairs, and the response
5 was look we're poor and we know that, but we know how to live off of our land. Our young
6 people are losing that skill and we know that in the future they will need that money. So no,
7 we're not interested in selling our timber now because we know that future generations will need
8 that money, so they didn't cut any timber for another two generations.

9 And so when I hear the yellow book say well you can't look at more than five years what
10 would be a reasonable basis for these lands, and that you attribute no value to non-economic
11 uses, I mean that's just a different world. I mean get real. That's not how tribes do or should
12 think. They think over the long term. A rancher out there thinks about he and maybe his
13 children and his grandchildren and it never goes any further than that. The tribes think about a
14 thousand generations into the future and what impact is a permanent commitment of their
15 resources going to have on those future generations.

16 It would be easy now to say with regard to that Bonneville Power Administration they're
17 the highest and best use if it wasn't for transmission on that easement was for timber growing
18 purposes. Now that land is situated such that the highest and best use may be resort development
19 in which the land is worth hundreds of thousands of dollars per acre. And this is yet a mere 20 or
20 30 years past the event.

21 And the tribes take the long view and your methodologies force them, force everyone, to
22 take the short view. They force the tribes to take the view that it's only current economics that
23 matter; that long distant future economics and non-economic uses have no value at all when

1 those are the things that are the most important to the tribe. The current economic value is not
2 necessarily of great importance to the tribe.

3 And so what I see in this valuation thing is that there is a way for us to enter into an
4 intelligent discourse about what fair compensation for the use of tribal lands is. It's not - - it's
5 the beginning of the discussion, not the end of the discussion. There's a lot of other thing that
6 have to be discussed, but it provides us with a basis, but until the energy companies and until the
7 agencies recognize that, we're not going to go anywhere.

8 [APPLAUSE]

9 DAVE ANDERSON: Can you hear me now? All right. We're giving Verizon a lot of
10 plugs here, aren't we? My name Dave Anderson and I'm not a lawyer. I'm not a lobbyist. I'm a
11 right-of-way negotiator. That's what I do for a living. Hold it closer? There you go. I'm a
12 right-of-way negotiator. That's what I do for a living. If I ever come across any of your
13 properties with a pipeline, it will be me or someone in my department who's probably going to
14 talk to you.

15 I'm an engineer by trade. Okay. So what I'm going to do is I'm going to show you a
16 little bit about our negotiating experiences. I'm going to - - I'm going to bring in the Navajo.
17 I'm going to bring in a couple of other tribes and we'll go ahead and go from there.

18 Tell you a little bit about El Paso. El Paso is a - - it's a nationwide corporation. I'm the
19 land manager for the western portion of the system. If you look at - - if you take Midland,
20 Texas, go north and head all the way to the Pacific Ocean, we're in every state except for
21 Oregon, Idaho and Washington. We currently cross ten tribes, and I'll be honest with you.
22 Some of our negotiations have gone very, very well. They have. Both sides have got together.
23 We've communicated, traded ideas, and we've come up with a mutual solution. Sometimes we

1 have made deals that were not in the company's best interest, but were in the tribes best interest.

2 Okay.

3 And I'm just going to briefly talk a little bit about myself and my philosophy. In the last
4 12 years - - well I'll go back to the last five years. That's probably a better barometer. We have
5 had 12 major expansions throughout the west that my department has been in charge of acquiring
6 right-of-way for. I keep hearing this idea that we only go through tribes so we can avoid
7 hundreds or thousands of condemnations. It's my experience, and I've had 12 major pipeline
8 expansions in the last five years, that our condemnation rate is way under one percent. Okay. So
9 major energy companies, myself and the others in this room do not view condemnation as a big
10 hammer to stick it to everyone. That simply is not the case.

11 I want to talk a little bit about the Navajo negotiations and I'm going to keep it short.
12 We've been on the Navajo tribe for 50 years. We have great respect for the Navajo people. I'd
13 like to think it would mutually benefit us and them working together. We have Navajo
14 employees; we support charities; fairs; rodeos in addition to providing right-of-way payments,
15 and of course over the years we've built roads for them, provided water wells and all sorts of
16 other things. So it's been a good experience for all of us.

17 And I really believe in my heart of hearts - - and you guys have read all the numbers. I
18 don't need to go through all the numbers with you, but I really believe in my heart of hearts we
19 will come through with a settlement for both sides. All right. I really believe that.

20 Our we far apart now? Yes we are. And I'm just going to touch on this for about 30
21 seconds and I'm going to go on, but we know that - - we know one of the problems on the
22 Navajo Nation are rising electric rates. All right. All you need to do is pick up the *Navajo Times*
23 and read about it. One of our proposals right now is to provide free electricity due to our waste

1 heat systems on our compressor stations. We don't want to be the kind of company who comes
2 in once every five, ten, 20 years with a big paycheck, hand it over and leave. We believe, you
3 know, Ms. Harvey talked about the lack of facilities on the Nation. We know that. We're not - -
4 we're not proud of it nor are we the cause of it.

5 So anyway with that, I'm going to go over three slides - - three slides that talk about
6 numbers. I ask that you guys please - - whenever people start talking about numbers people
7 automatically shut off. I have three slides. I'm going to talk about numbers, get through them
8 quickly and go from there.

9 All right. This is the first slide. It's a historical reference of El Paso and other companies
10 on the Navajo Nation. Okay. It shows the escalation of rates from the 1950's for the last - -
11 through today. I'm going to start off in talking about 1952. And by the way this isn't only El
12 Paso data. Okay. There's other mainline transmissions on the Navajo Nation and this is
13 accumulation. I hope that dispels the rumor that this is a one pipeline one Nation problem.

14 Okay. In 1950's you see two points almost identical with one another. The truth of the
15 matter is, if I could expand this slide a little bit, we have paid - - we paid the Nation basically
16 double what we paid private landowners in the 1950's. All right. Two times. So let me put this
17 in perspective. If I'm crossing any of your property, I might be giving you a \$100.00 check for
18 this particular length of right-of-way; we gave the Navajo 200.

19 As you can see, and again let me bring up this point. In the '50s it was one and done, all
20 right, with private landowners. You paid them one time, you were done paying them. All right.
21 With the terms, as you can see, we had to come back in the '70s. We came back in the '70s;
22 came back in the '80s; did some expansions in the '90s, and in 2004 was another company's
23 right-of-way cost across the Navajo.

1 I ask you a simple question. I have a lot of lawyers in this room. If any of you saw your
2 building rents go up that type of curve or homeowners if your rents went up this percentage,
3 what would you do? You're leasing it. And that's a good point. We're leasing it. And, you
4 know, most of you would say I'd pick it up I'd move. We don't have that option nor do I think it
5 is a good option.

6 Secondly, okay we changed this. This is good. If you took the 1985 onward, what I did
7 is I took the 20 years from 1985 to today. All right. The Y-axis is no longer cost per rod. The Y-
8 axis is now percentage of increase. All right. So I have three components here – the private
9 sector, tribal and government data CPI. All right. Since 1985 the private sector and CPI for
10 costs of rights-of-way are about the same. There's a little difference in there but it's
11 insignificant.

12 As you can see, there's been a 2000% increase in the cost of right-of-way across the
13 Navajo Nation; 2000% increase since 1985. Can any of you name me anything else that's gone
14 up 2000% since '85? Put that in perspective. A gallon of gas would now be \$25.00 to \$30.00 if
15 it went up 2000%. I graduated from college in '85, bought a Toyota Corolla for \$10,000.00. At
16 a 2000% increase that car would now cost me \$200,000.00. These types of costs are
17 unsustainable.

18 The other argument we often here sovereign; we're sovereign. I can condemn Farmer
19 Jones, but I can't condemn the Native American, nor - - nor do I want to get - - nor do I want to
20 leave the impression I'm condoning that.

21 So let's go to the next slide, please. What I did with this slide is I took - -

22 [tape ended]

1 DAVE ANDERSON: It would cost the State of Arizona \$8.14 per rod; state of New Mexico
2 \$25.54; State of Texas \$26.00. Now University of Texas really charges a lot. They charge us
3 \$60.00. BLM, I don't know how you get anymore sovereign than that, charges \$3.03. This is
4 what we're facing as a company.

5 Next slide, please. For sale of assets – you know I've talked a little bit about the
6 compensation component. There's a couple of other components as well. I talked to
7 [Indiscernible] yesterday about our dealings with the Red Cedar. That's one of those that I
8 consider we made a deal. It was a bad deal. I still get - - myself and my negotiating team still
9 get criticized about it. All right.

10 The deal was basically - - well let me - - I'll just go into brief summary. We had 14 miles
11 of transmission line, 160 miles of gathering system. It was all due to expire on a certain date.
12 We had people who were interested in buying the gathering system. We no longer wanted to
13 own it. But because the rights-of-way were expiring in a year or two and we couldn't get a
14 renewal, the assets were - - were basically going down to zero.

15 We had no choice at the time. Our only choice at the time we came back and said look - -
16 and this was our counsel's opinion - - you do not want to be in trespass. We'll just stop all the
17 facilities and we'll go from there. Okay. We sold it. We sold it to Red Cedar for pennies on a
18 dollar. And I'm not criticizing them. They were smart businessmen, but, you know, it's the way
19 the rules are right now and we're not the only company who's had this happen to us.

20 Next slide, please. I'm glad, you know, Mr. Campbell you talked about the faces.
21 Senator. I'm sorry. What did I call you? Senator Campbell you were talking about the faces.
22 This is one that really breaks my heart and I'll tell you the story. I was project manager and head
23 right-of-way guy for a fiber optic project. Okay. This tribe was adjacent to one of the top ten

1 populated cities in the country; did not have internet service; didn't have it for schools; didn't
2 have it for its libraries; didn't have it for its government offices or its people. Okay. We wanted
3 to cross the tribe with fiber optics.

4 So we negotiated for about a year. Came to them and said you know what, we took the
5 use path, you know, the standards, this is what it's worth; put what I call a premium on it like we
6 always do, and in addition to that we were going to provide them two conduits smack dab to the
7 downtown of this top ten populated city which would help the entire tribe get internet service.

8 We were about at the point of signing the deal until the tribe - - and let me tell you the
9 telecommunications company on their reservation was joyous. They wanted us there. They saw
10 the potential of free conduit laid to the last mile of a major city. This was going to do wonders
11 for their people, their schools, their libraries. The tribe and basically said sorry, not enough
12 money. Not enough money. I went back to my management and basically we made the decision
13 to move around.

14 And I ask you is this really the policy that helps tribal entities? You know do you - -
15 right now I'm on the committee - - whenever we have new projects we go out and scope routes.
16 I can tell you I go around Native American Tribes because of the cost uncertainty. Okay. The
17 infrastructure that you all are looking, every tribe that we cross we're provisioned in there to
18 provide gas tax. All right.

19 Now obviously due to laws we cannot be a distribution company. You know federal
20 government tells us in laws we cannot do that. But the lack of infrastructure, the employment
21 losses you lose, charities, there's countless charities that when any tribe comes to me and says
22 Dave, I need money for this rodeo, this fair, I need to send a basketball team to Orlando I write a
23 check. All right. We want to be good stewards. We want to be good citizens.

1 Like I said this is the one the telecommunications guy, natural resource committee chief
2 weeks after this happened were calling me up saying Dave, please come back. Please bring your
3 company back. I asked them are you going to negotiate al title on the price? No. This one
4 really hurt me because I saw the good that could have come from this.

5 [Indiscernible]. This is a broad issue. Many - - it deals - - you know it's so easy to put El
6 Paso and the Navajo in the spotlight. Probably neither of us want to be here, but this is a many
7 tribe/many company issue. All you need to do is talk to Meg Hunt; talk to the Ingo rep. Talk to
8 any people - - any of the industry folks in here. Ask them if they have concerns about this. I
9 think they'll tell you they do.

10 Second point, and I agree with this. I believe there should be a Native American
11 premium. All right. That's my boss back there. He's probably going to fire me, but I really do.
12 I believe there should be a Native American premium, but again I don't know what that is. I
13 know we have paid it in the past. I know it's going exponentially out of control, but I don't
14 know what that premium is.

15 One minute? Finally, move-arounds and acquisition of assets which have been utilized,
16 this doesn't help us. It doesn't help the tribes, doesn't help anyone.

17 And finally, that curve that you saw - - exponentially curve - - it's not going to make a
18 sudden turn to the right. It's not going to do a sideways level out and come down. And this is
19 the certainty predictability that companies are asking for. Should there be a Native American
20 premium? Yes. We're just asking let's put some certainty to the matter.

21 I'll be around the rest of today if any of you want to talk to me, but thank you all very
22 much.

23 JODY: Thanks.

1 [APPLAUSE]

2 JODY: Based on time what I'm going to have to do is panel folks if you want to just stay
3 up front. If you've got questions specifically for the panel folks we're going to have you come
4 up here. We're not - - we're going to take a break so that we can stay on time so that your
5 plenary session is longer so we're not going to do Q&A right now. We're going to take a ten-
6 minute break. Be back here - - actually 15 minute break. Be back here quarter after. If you've
7 got a question, come up here, talk to them one on one. Quarter after right back here.

8 [SHORT PAUSE]

9 JODY: Okay. We're going to do a little screen changing.

10 LIZ: This part of the study - -

11 JODY: Get closer.

12 LIZ: Okay. All right.

13 JODY: Be close. Make friends with it.

14 LIZ: This has to do with the relevant National Energy Transportation policies and how
15 they relate to rights-of-ways on tribal land. And again, as you pointed out in the slides that were
16 shown yesterday and again this morning, we've identified several sources of documents that
17 have policies in them that do relate to National Energy Transportation.

18 The first of course would be Title 5 of the Energy Policy Act of 2005, particularly
19 Section 503 which lays out the TERA. And I think everybody is familiar enough with that, but
20 I'll just give a brief background on that. Through the TERA program if a tribe has entered into a
21 TERA agreement with the Secretary of the Interior, the tribe could grant a pipeline transmission
22 or distribution right-of-way over tribal land without Interior's approval, again if a TERA
23 agreement is in place. And the term for the right-of-way would be 30 years or less and the

1 renewal of the right-of-way is at the discretion of the tribe. That's under the Energy Tribal - -
2 Indian Energy part of Title 5.

3 The other major area that we've found some National Energy Transportation policies is
4 the National Energy Policy, which was issued in 2001 by the Administration. There are several
5 things in there that I think are relevant to this study and one of them is that there's a general
6 sense within the National Energy Policy, the NEP, that the recommendations in it generally
7 revolve around repairing outdated transmission line and pipeline networks, expanding the
8 Nation's energy infrastructure, and ensuring that - - and this is a quote - - "energy supplies can
9 be safely, reliably and affordably transported to homes and businesses."

10 So from those major recommendations there are just a few so recommendations that
11 came out. One of them is to expedite pipeline permitting. Another is to expedite permits for any
12 kind of energy related projects. And again basically overall just to expedite any kind of energy
13 development policies throughout the United States.

14 And from those recommendations, two executive orders were issued. One of them is
15 Executive Order 13212 which basically has to do with - - I'll give you the actual title - - Actions
16 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. And
17 then there was a subsequent Executive Order that was passed that amended that first executive
18 order to allow pipelines, and basically what these two executive orders do is that they establish
19 as administration policy that all federal agencies and departments are to expedite projects that
20 increase energy transmission. And an interagency taskforce was formed to assist agencies in
21 expediting those - - those activities. And there are several of MOU's, Memoranda of
22 Agreements, that have been entered into by several of the agencies to expedite those activities.

1 One other area, again with the State of the Union address this last January, 2006, and the
2 emphasis there was on decreasing the nation's reliance on Middle Eastern oil. And then of
3 course the other policies that we'll be looking at for inclusion in the order are DOE and DOI
4 policies on energy use and development in tribal areas.

5 So that's basically what we have found so far on relevant National Energy Transportation
6 policies that are related to rights-of-way. We're certainly open to hearing any other observations
7 or comments, suggestions you might have. We came up with these primarily through our own
8 independent research, but then also comments that were made at the March meeting and
9 comments that have been submitted all along on the study.

10 So thank you very much. That's all I have. I'll be able to answer questions afterwards
11 outside probably. Thank you.

12 JODY: Dave, you want to talk about 368?

13 DAVID: I want to say just a few things about Section 368 of the Energy Policy Act.
14 Section 368 directs the Department of Energy and the Department of the Interior, the U.S.
15 Department of Agriculture and the Defense Department to jointly work together in identifying
16 energy corridors, that is multipurpose energy corridors, on federal lands in the west, and federal
17 lands are interpreted as meaning Forest Service lands and Bureau of Land Management lands
18 only.

19 And we are to identify these multipurpose corridors so that - - and that the identification
20 will be incorporated into the land use plans and resource management plans of the federal
21 agencies, particularly Forest Service and BLM. And so that these are in effect pre-approved
22 corridors for future use for transmission - - electric transmission lines or pipelines, and the idea is
23 to facilitate the construction of these facilities when needed and where needed, and give some

1 degree of predictability as to where these facilities would go making it easier to plan the sensible
2 development of these things on a long term basis.

3 The - - this - - we are to make these designations of these corridors by August of 2007,
4 and a federal environmental impact statement is being prepared now, and but it - - most - - many
5 of you are asking well what's the relationship of designation of these corridors to Indian lands?
6 And the central point that I want to make today is that these corridors are being - - there are
7 active discussions underway with tribes that are interested in having such corridors cross their
8 reservations.

9 Warm Springs is interested in that way, and I understand there are some discussions
10 underway with the Navajo that are - - those discussions are still underway. So if tribes are
11 interested and see that as something of interest to - - from their perspectives, that is being
12 incorporated into the planning process here.

13 And the next steps here - - well let me give you a little bit of what the - - quick snapshot
14 of the work that has been done thus far. A great deal of data and information has been collected
15 from industry, from various planning groups to identify future needs, how are the needs evolving
16 and how are they expected to evolve over the next ten to 15 years so that we can anticipate where
17 these corridors are likely to be needed. And then that - - those projected needs are being mapped
18 against the topography, against various kinds of environmental no-go areas or areas that would
19 be extremely difficult to negotiate - - to traverse in terms of the topography; just a host of
20 considerations of that kind.

21 So where things are now is that a sort of preliminary map of such - - where such corridors
22 are being considered, again on federal lands only, a map has - - is available or it's - - has been

1 developed and it's - - there are meeting with governors that are going on now and with tribal
2 leaders to show them these - - these preliminary maps and get feedback from them.

3 And there is a - - we had earlier yesterday a dear tribal leader letter, a copy of that letter
4 out there. I looked just now and I see that there are no copies out there at present. If we can find
5 a blank one we could have some additional - - an unmarked one for you we could have some
6 additional copies run off here at the hotel. But if you need or want a copy of that letter and don't
7 have one yet we can certainly get one electronically to you.

8 So with that, I'm going to stop and we'll go on to Jody's next step.

9 JODY: Thanks, David. I'm going to have Paul Fry come up here and then again I think
10 we might actually be able to let your - - your caucuses be longer, so when Paul's done we're
11 going to break, send you off to caucuses and lunch, and then we'll meet back here at 1:30.
12 [Indiscernible]. All right. [Indiscernible]. So I guess Paul and Tom are going to talk. So
13 questions for Liz and David about 368 and the relevant energy policy, transportation policies,
14 grab Liz or David when we start to - - when we break for the caucuses, ask them - - ask them
15 privately. That allows you all more time for caucuses.

16 PAUL FRY: Thank you. Obviously I'm not - - I didn't come prepared to do any
17 refutation or rebuttal of what El Paso said. You know I have the initial reaction of the old
18 Saturday Night Live skit, Jane, you ignorant slut, but that's totally inappropriate. And I - - and I
19 want to emphasize that I view Dave Anderson as a man of good faith and I share his optimism
20 that we will reach a solution in this negotiation.

21 I won't violate the confidentiality agreement that we have agreed to with El Paso for
22 these negotiations, so any numbers that I state here will be those that were released by El Paso as
23 part of its public relations campaign in the early part of the negotiations when we didn't have a

1 confidentiality agreement. I'm just going to provide a little bit of clarification of some of the
2 numbers that Mr. Anderson had on the charts, and then I'm going to focus my talk on Dean
3 Suagee's hotel room here. And you'll understand why perhaps later.

4 The clarifications are that the 1985 negotiations that were referred to with El Paso
5 included not just the main transportation line, the big trunk line, but also some gathering lines
6 and product lines. So the current negotiations, and some of the other points on the graph, really
7 are comparing apples and pineapples. The current negotiations only include the main trunk line.
8 As I understand it, El Paso shed its gathering facilities and other things to a different company,
9 and I think the Navajo Nation has already reached agreement with that - - with that company for
10 the gathering and product lines.

11 In 1985 El Paso agreed to a 20-year term for the pipelines. What had happened before
12 then was there's different right-of-way applications approved at different times so there were just
13 almost enumerable rights-of-way expirations occurring at random times. So what we did then
14 was with El Paso and for our mutual benefit we consolidated all of the rights-of-way into one
15 package with one expiration date, and that expiration date was October 17th, 2005.

16 There was an additional agreement with El Paso in 1995 that was reflected on Dave's
17 chart, and that agreement then provided a ten year period for the term of the right-of-way, and if
18 you expand that to a 20 year term and adjust it for inflation, the current published demand of the
19 Navajo Nation, this is our high end going into negotiation, is 57% more on a pro rod basis than
20 what El Paso agreed to in 1995. So my guess is that the cost of natural gas, cost of gasoline at
21 the pump, executive compensation, energy corporation profits have more than kept pace with
22 that 57% increase over the past ten years. El Paso made \$1.23 billion in 2005.

1 So now we come to Dean's room. Dean got here late and they didn't have any standard
2 rooms, so he got a fine suite on the whatever floor it is, and he agreed, sort of like El Paso
3 agreed, that he'd only stay there two nights. But Dean, I understand, really likes this room. And
4 what Dean has now, as I understand it, Dean has told hotel management here that, you know,
5 he's been here two days. He really likes it here and even though the agreement says he's going
6 to leave in a couple of days, he's going to extend his stay. And he'd like to be here another
7 couple of months, but he doesn't think that the \$170.00 room rate that he got as a function of this
8 conference is really fair. He's only going to be \$110.00 and by God if he has to get Congress to
9 help him he will.

10 And that sort of vignette there makes me wonder why are Indian contracts different than
11 everybody else's contract in the eyes of some? Is it just because - - [Applause] - - plenary
12 authority puts us under the thumb of Congress and the companies know it? Is it - - Tom will talk
13 about the right-of-way negotiation that El Paso had with Southern Ute, but why shouldn't
14 companies be held to their contracts? I mean why should Congress bail out companies that have
15 agreed to limited terms, eyes wide open, and that have agreed in some cases that when they leave
16 - - and El Paso has agreed to this in some of its other arrangements with the Navajo Nation
17 relating to its compressor sites - - that after the term of the right-of-way or the lease, they will
18 turnover the improvements to the Navajo Nation? That's valuable consideration. That's part of
19 the deal. So I leave that question for everybody's consideration.

20 Lastly, in 1975 the U.S. Commission on Civil Rights did a study of the Navajo Nation
21 and what they found in a report entitled The Navajo Nation – An American Colony, was that the
22 Navajo Nation had been colonized for energy for the benefit of other people, and Louis Jeanette
23 Sossee [ph], the Navajo Nation Attorney General, talked at the previous meeting here about how

1 ironic it is that having been colonized, and we heard the name Don Hodell and anybody that
2 knows Peabody's leasing situation on the Navajo Nation knows how Don Hodell treated the
3 Navajo Nation again in a colonized kind of fashion.

4 Isn't it ironic that what we're doing here is trying to prove the negative; that what we are
5 doing isn't hurting California consumers? In fact, maybe if we got everything we wanted in the
6 published statement of our negotiating position, the California consumer might pay a nickel a
7 month extra as opposed to if we gave away our land for free. And isn't it ironic that we're
8 worried about that nickel for the people living the most energy inefficient lifestyle on the planet,
9 while the Navajo people have virtually nothing?

10 One Senator - - I'd just love to have a Supreme Court Justice or a Senator go out and live
11 the way the Navajo people are forced to live because of state discrimination and federal neglect,
12 and we're trying to do the best we can for our citizens and for the creation of business
13 opportunities there. So, again, we look forward to continuing our negotiations with El Paso. We
14 hope we can conclude these in a way that people can at least be equally dissatisfied at the end of
15 the negotiation, and then build on that relationship in the future.

16 Thank you.

17 [APPLAUSE]

18 TOM SHIPPS: I'm Tom Shipps and I served as the - - I serve as general counsel for the
19 Southern Ute Indian Tribe and was in that capacity at the time that we did several years ago
20 renegotiate renewal of rights-of-way with El Paso, and I'd like to also echo what Paul said. I
21 think Mr. Anderson, El Paso's representative, is a man of good faith and we treated him as such
22 in the course of our negotiations, and they were like most negotiations on business transactions.

1 There were, you know, two sides to the negotiations and we worked hard and did reach an
2 agreement.

3 In the course of presenting his - - his presentation though about those negotiations, as I
4 mentioned yesterday there was a significant omission and again today there was one which I
5 think leaves a very misleading impression as to what happened during those negotiations. Like
6 the Navajo Nation, the Southern Ute Indian Tribe has, in many cases with companies that have
7 multiple rights-of-way, developed consolidated agreements. So you may very well have
8 hundreds of rights-of-way rolled into one master agreement and rather than having those rights-
9 of-way expire on a daily basis, all of the rights-of-way expire at the same time and it's
10 contemplated that the parties at that point will renegotiate the master agreement. And such was
11 the case with regard to El Paso.

12 El Paso had in addition to gathering lines that crossed portions of the reservation, also
13 had a 14 mile segment of major interstate gas transmission line and all of those were up for
14 negotiation at the time that the master agreement expired or was coming up for expiration. In
15 fact, as part of the package negotiations, the Southern Ute Indian Tribe did buy the gathering
16 assets that were associated with these expiring rights-of-way for several million dollars and Mr.
17 Anderson indicted that he felt that that was a forced sale and that he didn't think that it was a fair
18 negotiation presumably because I guess he believes that the tribe automatically should have
19 granted a renewal of the limited duration easement for nothing perhaps. But in any event, we did
20 use the gather - - the position that we had in the negotiations to purchase those assets.

21 The thing that's omitted and I think is also important is another part of that package, and
22 that was that the Southern Ute Indian Tribe granted an additional 20 year extension to the major
23 interstate gas transmission line for no additional consideration. So I guess the - - I don't think

1 that tells a fair story in terms of the slide that was presented. Actually in those negotiations the
2 tribe ended up paying several million dollars to El Paso to purchase gas gathering facilities and
3 in addition granted a 20-year extension for their interstate pipeline. I just thought that that
4 should be communicated as well.

5 [APPLSAUE]

6 JODY: I know that some of you are probably antsy in your seat to keep this part of the
7 conversation going, but what I'd like to do is give you the time for caucus. I know that people
8 have expressed interest for it, so I'm going to let you go. I don't actually know exactly what
9 time it is. Lunch - - we're going to do the caucus and lunch so be back here 1:30 and if you're
10 back on time - - if we start on time you get that full time for plenary. I know that we tend to
11 come back from lunch late, kind of straggle in, but when you're stragglng in you're stragglng
12 into a plenary. So come back. Please be on time so we can get as much time for the plenary
13 session and the discussion as we can.

14 I just - - one quick note. Tomorrow - - and I'll keep reminding this - - tomorrow the
15 meeting room is going to be upstairs a little bit closer to the elevators. So just going to remind
16 you it's going to be in the capital building. Have lunch. Enjoy it. It's a beautiful day outside.
17 The caucuses will be - - I'm assuming the tribal would be here and the industry would be in the
18 next room if it's open.

19 MALE SPEAKER: And we do in fact have microphones, so do we have a taker?

20 SONYA: The power of the mike is a wonderful thing. I'll start.

21 MALE SPEAKER: Good. Sonya, please.

22 SONYA: One of the things that I thought at least for me in looking at how to be helpful
23 to the process (1) understand where it was going, but (2) also we have a lot of data inside the

1 Bonneville Power Administration historically, and so it was helpful to get clarity about exactly
2 what kind of information and in what form you'd like that information submitted into the - - into
3 the company that's actually going to be writing the report. So I know that wasn't feedback from
4 either of the caucuses that occurred because I didn't participate in those, but at least for a
5 summary of the session for me personally that was helpful, so.

6 MALE SPEAKER: Thanks, Sonya.

7 SONYA: But I do have the microphone so I would like to feel free to - - all right. I've
8 got a taker.

9 MALE SPEAKER: Great. It always helps when someone begins.

10 SONYA: I have another one.

11 FEMALE SPEAKER: [Speaking Indian] On one of the things Holly Anna Pinkham [ph]
12 Yakama Nation that I heard a couple of different times during our caucus but not only during the
13 caucus did it come to my attention is I would like to bring some attention to the clarification of
14 definition. One of the things that I noticed is that there were lots of - - people were talking about
15 highest and best use - - use of the land. The definition by my standard or by the standard of my
16 tribe or my people or even neighboring tribes or Indian tribes as a whole is going to differ from
17 that of the book that I heard referred to, the yellow book, or even the utility companies or your
18 own American definition or the dictionary definition by that standard.

19 I have a problem with that because in speaking with one particular group, Bonneville, and
20 talking with them about you might see weeds, but it might be one of our foods, one of our
21 [Speaking Indian] celery, of if you see rocks we might see historical - - a historical piece of land
22 where our people used to live, where they used to hold functions, whether it was name givings or
23 first foods or whatever the case may be.

1 And so I ask for respect in definition because I grew up speaking the English language
2 first because my parents were raised in a boarding school. I took the initiative to learn my own
3 language. [Speaking Indian] With my heart I speak my language. And so in speaking about the
4 [Speaking Indian] the land, my definition of land and your definition of land are going to be two
5 different things.

6 So I ask that you - - if you do not have the desire to actually cooperatively work with a
7 tribe on their level with their definition, then maybe you need to send somebody who does
8 because, you know, all the tribes here we all have a different definition of [Speaking Indian] and
9 there are probably 14 different words for the water. Choosh [ph] is just one of them. That
10 means like the Holy Water. To drink the Holy Water. If you talk about Chiwana [ph], the big
11 river, that's a different type of water or Took-Took [ph], the rainwater. All these words are
12 different but they're the same.

13 And so when you're talking about paper and you're talking about definitions of, you
14 know, what is - - appraisal of what? What are you appraising? You're appraising the land. I'm
15 appraising my - - my history, where I come from, who I am, and where I'm going. And I have to
16 face my children. I have to face my grandparents. I have to face my family and if I don't speak
17 [Speaking Indian] from my heart for them not just for myself, then I can't go home.

18 So just be aware that the definitions of the words that you speak are going to be very,
19 very different and I am not a tribal leader, but I am a [Speaking Indian] I'm a traditional leader of
20 our medicine people and it is my job and my duty to go home and advise our leaders, and I do,
21 do not sign anything if you cannot translate it into our language because that's - - that is the basis
22 - - that is the foundation of who we are.

1 MALE SPEAKER: Thank you. Again, two mikes available if there is more you want to
2 add to the conversation at this stage.

3 MALE SPEAKER: I'm about to do what I get in trouble for doing at work which is to
4 talk about economics on rate design. It's an - - and it's an incredibly boring topic for a lot of
5 people, but I wanted to address a comment that Jim made earlier when he said that under FIRC
6 [ph] Order 888 utilities were encouraged or required to charge a wheeling fee, a wheeling charge
7 for energy transmit over the transmission lines. And then proposed that perhaps tribes - - or
8 asked the question of why tribes would not be able to have a wheeling charge for the lines also.

9 From my understanding of FERC Order 888, Order 2000, the failed attempt at standard
10 market design and hundreds and hundreds of FERC orders, rate decisions, rate approvals, it's
11 really - - FERC's policy is really going in the other direction. The FERC, the Federal Energy
12 Regulatory Commission, has been trying and succeeding for more than ten years at removing
13 what we call pancaked wheeling charges where if power flows from one company over the lines
14 of the next company over the lines of the next company to the final consumer, that each company
15 would charge its own transmission rate along the way. The rate pancaking was adding costs to
16 the delivered power, so FERC has been developing and companies have been ordered to set up
17 transmission charges which really reflect a broader - - a broader distance or a longer distance.

18 More important though is that the prices that transmission providers, utilities that are only
19 in the business of providing transmission or utilities that have combined services, the prices that
20 they charge for that service, for the transmission, are on a cost of service basis. They are
21 completely divorced from the value or the market price of the energy itself. So the notion that
22 first there might be additional wheeling charges by individual transmission owners or by the land
23 owners over whose - - over whose land the rights-of-way travel is contrary to the FERC - -

1 FERC practice, and the idea that the transmission - - that the transmission price that is charged or
2 the revenues received by the transmission provider for transmitting the energy are somehow tied
3 to the per kilowatt hour or per megawatt hour of the electricity is also incorrect.

4 So I just wanted to make sure that there's an understanding that transmission services are
5 separate or the electricity sector are separate from the market price of electricity. Transmission
6 prices are not set on a market basis. They're set on a cost of service basis which is heavily
7 regulated by the FERC based on the long run cost of the facilities, the short run operations and
8 the maintenance costs of the utility, and a return on equity which is usually in the eight to ten
9 percent range.

10 MALE SPEAKER: And if you would identify yourself as you begin, that way folks can
11 have a sense of where you come from.

12 JOHN DRESH: Good afternoon. John Dresh [ph], Ewinobe [ph] Tribe. Just an
13 observation and want to make a point in regards to this morning's session regarding the appraisal
14 process. I heard some good information. I'm sure most of the attorneys in the room understand
15 that I'm about to bring up, but want to make sure that we all do.

16 In regards to these appraisal processes, when you go to 25CFR169 12 I want to make
17 sure everybody understands - - just read you an insert here. Except when waived in writing by
18 the landowners or representatives as defined in Section 1693 of the CRF and approved by the
19 Secretary, the consideration for any right-of-way granted or renewed under this part 169 shall not
20 be less than, but not limited to, the fair market value of the rights granted plus severance and
21 damage.

1 So in Indian country we have certainly practiced when we look at those appraisals with
2 the exception of those offered by Jim Noteboom that that's the bare minimum that tribes will
3 receive under that appraisal process. Thank you.

4 MALE SPEAKER: Thank you.

5 JIM NOTEBOOM: Let me respond about the comments about the wheeling charges and
6 it - -

7 MALE SPEAKER: And you are?

8 JIM NOTEBOOM: Oh my name is Jim Noteboom.

9 MALE SPEAKER: Okay.

10 JIM NOTEBOOM: The Warm Springs tribal attorney.

11 MALE SPEAKER: Thank you.

12 JIM NOTEBOOM: I wasn't suggesting that we get the FERC 888 wheeling charge.
13 What my point was that the wheeling charge is a recognition that the transmission system has
14 value in that it's a means of measuring that value, and I understand the problem with pancaking
15 of wheeling charges and that FERC wants to adjust that and that seems logical to me. What the
16 potential for something akin to a wheeling charge is that it is a potential solution for the long
17 term because one of the problems with the right-of-way system is that the interests of the parties
18 are fundamentally misaligned. That is that the landlord wants to get absolutely as much revenue
19 as possible, and the tenant wants to pay absolutely as little as possible.

20 And so if you've set that system up, particularly over the long term, it's a formula for
21 discord among the parties. If - - if the compensation to the tribe is based roughly on the market
22 value of the product it has to sell, that is a right-of-way, and that the compensation of the tribe
23 goes either up or down according to the marketplace, then you don't necessarily need

1 readjustments to take into account changes in market conditions. And so if you had a charge to
2 the tribe - -

3 [change of tape]

4 JIM NOTEBOOM: ...tied to some portion of the market value was fair compensation to
5 the tribe and everyone would say it was fair compensation to the tribe, then you don't necessarily
6 need readjustments because the market is going to readjust what the tribe gets as is appropriate.
7 That's my only point. It's something - - it's not a wheeling charge, but it's looking at the same
8 type of principle that a wheeling charge recognizes. Thank you.

9 MALE SPEAKER: [Speaking Indian] Section 1813. [Indiscernible] names
10 [Indiscernible] Clark come from the Aqua Nation. I work in the [Indiscernible]. I actually in the
11 lead of the rights-of-way. Sitting here I was actually sitting here actually [Indiscernible] see
12 what these power companies are actually talking about, and it's just sitting here it kind of just
13 really makes me mad just listening to you guys and, I don't know, if you guys - - like I know
14 [Indiscernible] so bold for me I'll actually go back to my tribe and actually tell them to actually
15 oh fight you guys, to actually fight you guys all the way about this Section 1813.

16 I'm actually - - I really can't speak for my tribe, but I actually talk from my heart and I'll
17 actually go back to my tribe and actually tell them what's going on and actually do the - - do the
18 very best [Indiscernible] that I can for them, me and Pinkham here, and I just want to actually tell
19 you guys that for us as tribes we're not actually - - I don't know. For me I actually went to
20 school and came back to actually work for my tribe and actually the - - do the very best for them.
21 So I don't know. I guess my comment I'm just here to actually see what these - - I don't know to
22 actually see what all these - - I don't know to actually see what you guys are actually talking
23 about. But I'm just here for my tribe and I tell them what's going on. [Speaking Indian]

1 FEMALE SPEAKER: Good afternoon. [Speaking Indian] that means my people.

2 [Indiscernible] I am Yakama Nation leader Tribal Council [Indiscernible] land, irrigation, law
3 and order and head of the Commerce Department, Tax Department, the Chairman of that.

4 This morning when I was listening to I believe it was Mr. Anderson, and I don't want to
5 go away with a negative feeling about this whole two days that testimonies I've been hearing
6 because where there's a will there's a way for the Indian people, and if you really want
7 something to work you will work at it.

8 But when I heard Mr. Anderson say this morning that he said when I give donations to
9 these rodeos and I give donations to this and I give donations to that, well I'm sitting back here
10 and I know the Navajo Nation is a good nation and it crosses many miles. How many of those
11 rodeos do you donate to and how many others [Indiscernible] Navajo's need you to donate to?
12 Because to me for these companies it's a - - it's a tax write-off for their nation. So they're not
13 getting - - they don't give nothing for nothing. So they get a tax write off of whatever they
14 donate.

15 And another thing too when they're talking I thought well does the Navajo Nation or
16 does any of its tribes have a what they call a fee business license fee that they're charging? Any
17 of these companies or anybody that comes on their land to do business, because we do. We have
18 a business license.

19 I had my two girls over there, Pat [Indiscernible] and Anna Wood and Elmer wood.
20 [Indiscernible] would you please stand? They run the tax-exempt [Indiscernible] tax committee.
21 They're part of that and they collect the business fees and we tax any of those business that come
22 on with cigarettes or any other of these things. So we watch them very closely and they collect
23 the money from these people that have to pay dues to the tribe. And that's one thing I'd like to

1 encourage you on and I know what is Indian people doing paying, you know, collecting taxes.
2 Well the white man collects taxes all the time and they make big money off of us. As you heard,
3 we pay into federal taxes but we don't get reverted [Indiscernible] back with that money. We
4 just go somewhere else.

5 So I would like to see us really gear up on this against this 1813 here as tribes and we're
6 powerful within our own rights. We have that power to get this thing defeated and if we work at
7 it in the next ten days like they gave us and like I said the other day they couldn't learn about this
8 hundred and something tribes in the United States within two days and yet they cram this down
9 our throats and want us to get done with it until the 60 days, 90 days, six months.

10 And you know the first ones to ever violate the right-of-way is the BIA itself because this
11 morning I was sharing with these ones here that I traded some land with a sister of mine that's
12 now deceased and it was 40 acres to give my children home sites and when they were giving the
13 survey they discovered this pipeline going through there and I told them well where did this
14 pipeline come from? It's been there since 1903 or 1902 or 1903 and it was put in there by the
15 Bureau of Indian Affairs.

16 I said well take it out. I don't want it on my land because it depreciates the land. He said
17 well we can't. We can't take it out. Then I says well you better think of something because I
18 don't want it there. It's my land now and I don't want it there. And that's a - - that's a right-of-
19 way issue now for me because the BIA was the first ones to cross the line and they're the first
20 ones that [Indiscernible] set these rules and regulations out there to protect us and that's their
21 trust responsibility to protect [Indiscernible] what was [Indiscernible] to your treaty.

22 And now I'm going to back home and I'm going to make an issue out of this now
23 because it is on my land and there's a lot of other things that goes through our reservation that

1 like I said our tax committee that we have here we watch them very closely. They can't just
2 come in and say I'm going to do business with you just like these what they call for the seller
3 phones. This company came in and said they only wanted one year. Then we have to go deal
4 with the tax commerce because you have to do a business license, then we're going to have to
5 tax you on whatever you put out there. You can only have it for that one year and that's it. It's
6 gone after that. And a lot of these companies should be bringing us in as partners.

7 It's like you heard earlier the Warm Springs Tribe finally got into being a partner and
8 that's what these companies are really afraid of for me to be a partner because they don't want to
9 share that almighty dollar with you that they make off of us. So I'd just like to encourage all of
10 us here and I know tomorrow I probably won't be finished until afternoon because I have to fly
11 into Spokane for another meeting, but I would just like to leave that with you today that we do
12 need to make a stand against this bill. And as an Indian nation here in Indian country there's
13 enough of us to do.

14 This is just a drop in the bucket for what's here today. We have a lot more that we need
15 to get out to embrace to and tell them you need to get on board here because we need all the
16 support and help we can get from every tribe, and maybe there is a tribe that's not having this
17 problem, but they can support us anyway because that's what we do in Indian country is support
18 one another and [Indiscernible].

19 And the paper this morning was really very negative for me to read in that Rocky
20 Mountain and that's what I said yesterday. The lack of interpretation of us Indian people and
21 that's exactly what was in that paper this morning. We misinterpreted everything that was said
22 here in the last day.

1 I'd like to uphold the Denver news for what they - - [Indiscernible] forefront that we have
2 for the Indian people because they were right on the nose there for us. You know, all we're
3 trying to do is reserve our treaty rights that was given to us and our treaty rights are not
4 negotiable like they said the other day, and it's up to the BIA to uphold their responsibility to us.
5 And for those of you that work for BIA to go back and say this is what we heard, this is what we
6 know. We know more now today than we know 150 years ago and we're ready to fight and
7 stand for that. Thank you.

8 [APPLAUSE]

9 MALE SPEAKER: [Indiscernible] here and in the back. Yeah.

10 JOANNA MERRICK: Good afternoon. Joanna Merrick and I'm an individual
11 landowner. I've sat here the last two days and been pretty upset and really feeling very strongly
12 that we have been overlooked again as being some stupid Indians. But I have with the tribal
13 principles and our caucus that I would really like to make sure it is inserted in there are the
14 treaty. The treaties to the tribe should be upheld and number four, prevention of tribal
15 jurisdiction, no right-of-way agreement or other business arrangements that permit third parties
16 use of tribal land should reduce the tribal sovereignty.

17 And then as you go down to number ten we as the individual landowners in the northwest
18 are going to be the most impacted by these rights-of-ways, and the tribal sovereignty should also
19 be inserted in there. We are a treaty tribe.

20 I want to give you a little history of what my family has been facing with rights-of-way
21 currently on our allotments. We have documentation on one that my ancestor received \$240.00
22 for a 50-year right-of-way electric. Do the math. Doesn't buy a loaf of bread everyday, let alone
23 a year, but yet in the papers today we're the greedy ones.

1 The energy companies had made millions if not billions of dollars off of federal Indian
2 lands improper rights-of-way. In '87 I tried to work with WWP at the time, who is now Avista,
3 to renegotiate a right-of-way lay dormant. December of this 2007 will be 20 years of trespass.
4 Millions of money made by this energy company, but yet in the newspapers we're the greedy
5 ones, right? Also piggybacked off of that right-of-way is Clearwater Power. They're 57 years in
6 trespass, but we're the greedy ones, right?

7 The federal government wants to look at us as well as all of these energy billionaires;
8 we're the greedy ones. They won't sit at the table and negotiate with us because they say we
9 want too much money. Who really does want the money? We want to be compensated because
10 every one of you energy billionaires would not like it if I went on your land, built a house, put a
11 road through it, put my own wind turbines on there to generate money. You would have me in
12 court and prison, plus paying you.

13 My family has tried to sit down with these energy companies. They don't want to work
14 with us. We're going to see it to the end because we have other countries that are willing to
15 come put wind turbines and put gas lines and stuff and help us. Those other countries know that
16 the Native Americans in the United States are the most discriminated against race. They're
17 finally seeing the truth and I think it needs to be heard. It's from my heart. We're not being
18 treated fairly and the government needs to know that. The President needs to know that, because
19 we do have some of our own plans.

20 Like I say how many of you out there would love to see us Indians come and squat on
21 your land for nothing? And then when you want to kick us off, say no we don't have - - that's
22 our land to begin with. We didn't say you could take it. When that was done to our people four
23 or five hundred years ago they didn't understand the truth that they were going to be ripped off.

1 We're just in the 21st century and faced with these energy companies wanting to take
2 what's left. And we want to sit at the table and try to be because you tell us to get educated, try
3 to work with you people but nope like they say attorneys intimidate. But you know what? We
4 say no. We have been saying no. Those trespasses on my land we own those power lines, those
5 phone lines. Those are ours now. There's no legal right-of-way. And they've - - a couple of
6 them have already said we're going to move it off. Well move it off because we're going to have
7 others come in and we're going to establish our own.

8 And I can't say it anymore clearer, people. We are the most discriminated race in this
9 country are the Native Americans. Thank you.

10 [APPLAUSE]

11 [BACKGROUND CONVERSATIONS]

12 FEMALE SPEAKER: I'm very saddened. I believe the government, you know,
13 Congress owes a grave apology to the Native peoples here for this trauma that we are
14 experiencing. They aren't here. Where are they? I don't see them here listening to us. I see
15 Indian people talking to Indian people telling each other our stories that we already know.

16 Where are the companies? They sent their spokesman. Edison Electric Institute they
17 sent one person to tell us they're unhappy. INGAA sent one person to tell us they're unhappy.
18 At least El Paso had the courage to send a few low level people in the company. Why did they
19 put Dave Anderson up there today? Where was their CEO? Let's let - - he'll just - - we'll just
20 put it on him and let him carry the brunt of the El Paso problem. He's a low level person in that
21 company. He's the manager right-of-way western division. Where's their CEO?

22 I want to read this from the final report of a first nation research project by the Solicitor
23 General of Canada because I believe it's equally true for us in the United States. For hundreds of

1 years, in some cases as many as 300 years, Canadian Aboriginal communities experienced wave
2 after wave of debilitating shocks and traumas that left whole nations of people reeling and
3 broken.

4 These shock waves came in many forms – diseases such as influenza, small pox, measles,
5 polio, diphtheria, tuberculosis, and later diabetes, heart disease and cancer. The destruction of
6 traditional economies through the ex-procreation of traditional lands and resources; the
7 undermining of traditional identity, spirituality, language and culture through missionization,
8 residential schools and government day schools; the destruction of indigenous forms of
9 government, community organization and community cohesion through the imposition of
10 European governmental forums such as the Indian Agent and the elected chief and council
11 system which systematically sidelined and disempowered traditional forms of leadership that led
12 to the breakdown of healthy patterns, of individual, family and community life.

13 And the gradual introduction of alcohol and drug abuse, family violence, physical and
14 sexual abuse; the loss of the ability to have or maintain intimate relationships, the loss of the
15 ability to love and care for children, chronic depression, anger and rage and greatly increased
16 levels of interpersonal violence and suicide.

17 It becomes clear when considering these various sources of trauma that the eventual
18 impact of trauma originating from outside Aboriginal communities was to generate a wide range
19 of dysfunctional and hurtful behaviors such as physical and sexual abuse, which then begin to be
20 recycled generation after generation inside communities. What this has meant is as many as
21 three to five generations removed from externally induced trauma, the great-great grandchildren
22 of those who were originally traumatized by past historical events are now being traumatized led
23 by patterns that continue to be recycled in the families and communities of today.

1 I don't think DOE cares about this whole process. They've been assigned to do it and
2 they're here and they're going to do their job. This is just to me trauma. One more instance of
3 trauma. They can go back and they can say we consulted with tribes. They all got to stand up
4 here and say how upset they are and how hurt they are about everything going on, and that's the
5 end of the story. And then they'll go ahead and just have, you know, pipelines, you know,
6 whatever else is going to go through our lands go through our lands.

7 You know I'm really saddened, you know, at what's occurred here. To me this is a
8 mockery. Where are the companies listening to us? They don't care. All they - - they're going
9 to look at is their bottom line at the end of the day. Where is Congress? Where? You know
10 we're here. Indians are here. We can talk to each other, but we already already know our
11 stories. We already know what's happened to us. You know, our lawyers can speak for us, you
12 know, but the bottom line is that we're talking to ourselves.

13 You know Edison Electric Institute is a person representing a trade association. He's not
14 a member of a company. You know, INGAA is a trade association. They're not a company.
15 You know he's going to go back and say well they were unhappy. And so I think Congress owes
16 us an apology for this trauma.

17 [APPLAUSE]

18 FEMALE SPEAKER: Good after - - can you hear me?

19 MALE SPEAKER: Indeed.

20 FEMALE SPEAKER: Good afternoon.

21 FEMALE SPEAKER: I'm sorry. Also - - sorry - - I wanted to say something else.

22 When I submitted my comments last time similarly to what Senator Campbell said this morning,
23 they didn't get on the website, but I submitted comments addressing the social realities that

1 Native Americans face – child abuse, teenage pregnancies, poverty, lack of education,
2 unemployment, crime, incarceration, suicide, health, gangs, substance abuse and mental illness,
3 violence by intimates, you know, genocide and none of that got on the site.

4 You know I really see that what has happened with Native American peoples is we
5 internalize the European message of better dead than red. You don't have to kill us anymore.
6 We'll kill ourselves and we'll kill each other.

7 MAXINE NATCHES: Good afternoon, ladies and gentlemen, relatives, friends. My
8 name is Maxine Natches. I am the Chairman of the Uintah and Ouray Tribal Business
9 Committee in Ft. Duchesne, Utah of the Uintah and Ouray Reservation, and it's been a very
10 educational process to be here. We came here the last time and we come again today for this
11 meeting.

12 Folks, Indian people, Indian relatives, we have been challenged greatly. We all know the
13 injustices that have been done to us over the years. We all know that. But now we need to move
14 forward. This is law. This has become part of legislation signed by the President to respond.
15 We do not have very much time to do it. Let's use our energy to get all of this data together.
16 Let's show Congress that we can do it, the injustices are there; we all have case studies that will
17 point out the very injustices that have been done. We've not been equally compensated for our
18 lands. We all know how sacred the land is to us. We all know that from childhood on up and we
19 recognize that, but our greater job is to show Congress that this is where we're coming from.

20 So I would just say let's respond to the timeframe that's left to us. We don't have much
21 time. It's taken a lot of money to be here, taken - - as for the Uinoh Tribe it's taken a lot of
22 money to put our data together, money that could be used to benefit our tribal members back

1 home. We have to scramble to find overtime funds for our law enforcement because the BIA
2 can't do it. We have to do it ourselves. So, you know, we do have a great challenge there.

3 And the ten principles that was presented here, last night the tribal council met. We
4 adopted those principles because to me it shows solidarity for Indian people. And the way I see
5 it is we have those ten principles as a guide. Adapt it to your own need. Uintah is an executive
6 order reservation. We're not treaty. So every reservation is different, but adapt it to fit your own
7 situation, but let's move on.

8 And these ten points I would like to point out those are our principles that we have to
9 show Congress, not industry. It's the - - they're not to be negotiated; they're not to be
10 compromised in my opinion because we've got to move on. Our time is very, very short. And I
11 believe we can demonstrate that if we all pull together, get our data together that we can meet
12 this challenge, and that's what it is. And we are continually being challenged for our
13 sovereignty, our tribal rights, our land.

14 I have allottee interest at home created through inheritance from my family. Some are
15 also in that same situation. But overall as elected by my people I have to represent everyone's
16 interest and that's why we're here today. And we do have business licenses. We require every
17 individual, every company that does business with the Ute Tribe to have a license and that
18 includes tribal folks as well because they're there to do business. We have a severance tax
19 program because as - - as we do not have the luxury to create property taxes on our own people
20 to generate interest.

21 We have to be creative in order to bring the funds up so that we can meet the basic
22 services to our people. And part of that is the rights-of-way and all of these things that we have
23 to regulate and it has cost us thousands of dollars to even do the regulatory process for our tribe.

1 It's cost us attorney time, staff time, costing our energy and minerals people who go out and
2 monitor, our fish and wildlife, all of these things cost dollars and we have to foot it ourselves.

3 So I guess what I'm saying here is let's get together here now, let's move forward and
4 let's meet these deadlines. That's the big challenge that we have today is to move forward and
5 do the very best we can to show Congress we are competent, capable people because we have to
6 educate these legislators all the time. Even our non-Indian neighbors who's lived within our
7 boundaries here for a long time we have to continue the education process.

8 And we all know where we come from. And I've said this before; we are a people who
9 survive. This is one more challenge that we are going to survive providing we all unite, have a
10 solid front, and continue on and show the people that we can do it again and the challenge will be
11 for the young people to carry on because, you know, that's where our future is.

12 And for industry I say to you face up to it. Native American people have come of age.
13 We know what's out there. We know the value of our lands. So if you want to do business with
14 us, hey give us a fair shake. Listen to us. Work with us. We're not there to say you're not
15 welcome here. We're there to negotiate and that's where it is negotiation. And we can do it. So,
16 you know, we just have to work together. That's my basic message. Let's get on with what the
17 major task that we have. Thank you.

18 [APPLAUSE]

19 MALE SPEAKER: After a few more we're going to being to move to that list of sign-
20 ups which is the next part of our agenda. The mikes are still moving around so we have time for
21 some more.

22 [SHORT PAUSE]

23 MALE SPEAKER: Or not. [Indiscernible] here.

1 RON GRILLS: I'm Ron Grills from the Uintah & Ouray Ute Reservation. In the past
2 two days it's really interesting that we look and while we look at the challenges that the non-
3 Indians the government's responsibility for Native Americans. You have CFR regulations. You
4 have FERC. You have appraisals for Indians for their values. But the Indian himself we have
5 values that aren't comparable to the non-Indian world. That part is very difficult for companies
6 to understand. Those things are intangible. Those have been given to us by our forefathers, our
7 grandparents, and if we could sell ourselves, some of us have, as for the Ute Tribe part of our
8 brothers and sisters sold themselves in the '50s. Considered themselves as being more
9 Americans.

10 Yet today we have that challenge again with energy companies. They come. You hear
11 about FERC regulations, wheeling and pancake. [Indiscernible] infrastructure of Indian tribes
12 we're grasping this and we understand those things. What industry doesn't understand is this is
13 that - - is that one person who has an oil well out there, who has to make that road, who has to
14 take care of it, all they're paying for is the right-of-way. The Indian tribe gives them a permit
15 and it has many different assets that it has to expend from the law enforcement [Indiscernible]
16 infrastructure of the tribe spends its money. How much dollars [Indiscernible] for a pipeline
17 going across the reservation for law enforcement [Indiscernible] or whether if it's police officers.
18 Roads to be maintained. Do you pay enough with your right-of-way? No you don't. You think
19 you're going to be there and it's going to be given to you for free. Say permitting.

20 The other thing is Indian tribes have been taxed by their own states and their own
21 counties. Do you as energy companies pay that? Do you go and say well we've got to pay this
22 much to the Indians and this much to the - - no. We handle all that for you. So when you come

1 back and when Indian tribes start to understanding the infrastructure that they're building, it
2 costs money.

3 Oil companies, whatever companies – transmission line, electric companies, you don't
4 understand, and then you tell us well you have to come into the 21st century, then when we do
5 come to the 21st century you want to push us out again. Well your price of your land is too
6 valuable. We look at our land as priceless because it's been there for centuries. It's never been
7 explored. Some of our reservations have no human contact on it, only wildlife, and somebody
8 has to take care of those resources on the land. Native Americans do that. We go out there and
9 hunt, gather berries, vision quests, do different things there, but yet industry encroaches on our
10 sacred lands because there has to be development out there.

11 You tell us that there has to be development out there. I didn't ask you. You said you
12 can make this much money out there. Money is not what we want. We want a fair share to sit at
13 the table. We are tired of the United States Government and the Bureau of Indian Affairs
14 standing in front of us. We're tired of Congress telling us well CFR laws control you. Well
15 what was the whole idea of Indian organization 1934-36 if those rules and regulations legislative,
16 judicial and executive for Indian tribes to be self governed? [Indiscernible] oil companies, gas
17 companies, transmission lines, even the Bureau of Indian Affairs and other companies.

18 Take for instance 1964. It's called the Central Utah Water Project. The federal
19 government and the State of Utah had to come to the Ute Tribe because we had water rights.
20 They wanted to create the upper Colorado basin and the little Colorado basin. And many tribes
21 go through this. On the Columbia River all those dams they had to come to the Indian tribes and
22 ask them can we build - - build the dams over here. The federal government neglects it's own

1 policy when if it's for Indian tribes, but for the general public it will bend over backwards for the
2 constituents it's supposed to obligate itself to, fiduciary responsibility, trust responsibility.

3 DOE could you tell me how much fiduciary responsibility you have towards El Paso or
4 any other company or Congress? I bellyache because they have more rights than Indians. How
5 did 1813 start? Well I don't like the Indians down there and they're [Indiscernible]. Where can
6 I have my rights?

7 These are the only Americans - - Native Americans - - are controlled by a government
8 who is derelict. Why do I say they derelict? They cut money that goes to Indian tribes to pay for
9 the war, to do Katrina, and yet we don't ask for very much. All we want to do is negotiate at the
10 table. We have many people who have PhD's. We have many people who have gone to
11 Congress who are Native Americans. You can't tell us we can't sit at the table anymore.

12 One day it's only - - it's only the edge of what we're calling the infrastructure of Indian
13 tribes. Indian tribes are going to build and they're going to build a government and anybody that
14 comes across their land will have to pay. We have learned that from the states that we live in.
15 The districts that we live in in those many states we see the process.

16 We understand Ben Franklin. We understand Jefferson what he is trying to communicate
17 with the great America. But being an American Indian, while I'm really not an American
18 because every person in this - - on this place here has a little card that tells you you're a member
19 of some reservation and you have to carry that with you everyday of your life.

20 Now you tell me, Mr. El Paso, do you have a card like that that tells you you are a
21 minority? That tells you how you're regulated everyday of your life? I bet that Mr. Campbell
22 can look through the federal files and look up 449 Bureau of Indian Affairs number on the Uinoh

1 Tribe and he would know everything there is to know about me or any Indian tribe because
2 Congress does that. It keeps data.

3 We're the only nation within a nation that has rules and regulations that are set against us,
4 not for us. If you're a government agency you have FERC, you have the yellow book, all these
5 different things for other agencies that are operated by the federal government, but Indian tribes
6 when we tried to do our infrastructure they say no. We need to give you to the states or the
7 government itself will take care of you.

8 But remember, think, as the lady from my tribe has said, solutions as [Indiscernible]
9 tribal leader, the great one who crossed and went to Canada when the United States government
10 was following him; Chief Joseph what he had to go through; other people like Chief Seattle what
11 he said about the non-Indians. One day we will understand that we are truly brothers and sisters;
12 that we did come from one God, those kind of ideas.

13 We as Indians get mad and get humiliated. We don't know how to stand here and say
14 okay we are going to go past this. You can do whatever you want to us, but we're going to still
15 survive. Four hundred – five hundred years standing here we're still here. You're not going to
16 take this to Congress to steal our land. That only will insight one thing. If El Paso pushes it,
17 then Indian tribes will then go back, like Cobell, sue you. Fiduciary responsibility again. So it
18 gets bigger than what you intended it to be.

19 It is going to be worth the fight? For Indian tribes it will because United States
20 government will have to stand up for somebody and hope it is for its fiduciary responsibility for
21 every Indian reservation. Thank you.

22 [APPLAUSE]

1 MALE SPEAKER: We still have more opportunities – a couple of more hands that are
2 going up. We're beginning to get ready for the 3:15 session. Given our late start, we're going to
3 proceed without a break if that's permissible because we've only been at this a short while. We
4 provided lots of different ways for people to talk. The one that's coming after the next few
5 speakers will be an opportunity for those who didn't - - who weren't afforded a presentation
6 opportunity in advance to sign up. If there are others who still want to sign up there's still room.

7 And I'm just going to call the first few names so that if there's a PowerPoint presentation
8 or something you're getting ready you can get it ready. Tom Sansonetti first. Ahmed Kooros. I
9 Apologize if I'm getting names pronounced badly. The third one it looks as though the Northern
10 Ute signed up and the n it's crossed out and then there are just two letters CC. So I don't know if
11 that is - - if there's a speaker there I need to pay attention to of if I'm skipping over that one, so
12 someone can let me know. Skip over that one? Okay. And then Corey Gardner, Greg Brofey
13 [ph], Shawn Mitchell, Jeff Crank, Carl Harvey, Reed Chambers, and Fred - - I'm not going to be
14 able to read your last name - - Gardalee [ph], Gardaplee [ph]. Sorry.

15 So again apologize for the - - for the terrible pronunciations. That's the list I have. If
16 you want to add your name, great. We'll give you five or ten minutes and we're going to start at
17 3:15 and go to 5:00 o'clock with that group. But we still have a couple of more minutes for
18 those who just simply wanted to take the microphones spontaneously.

19 So, please, sir.

20 KASSEL WEEKS: Okay. Thank you. My name is Kassel Weeks of the Eastern
21 Shoshone Business Council. One of the discussions that we did get into was emotions. Right
22 now the United States is in an emotional mode and with the Iraq war that's going on and with
23 Homeland Security and the 9/11, this is bringing out a lot of issues that should be dealt with

1 logically that it isn't. So I just hope the energy companies aren't using that as opportunity to
2 pass or spearhead their legislation through based on emotions because once you deal with
3 emotions, all logic flies out and you need to stick to facts.

4 One of the discussions that we also got into as tribal leaders, we have tribal leaders here
5 that need to speak. Tribal leaders should be sitting up there. We are the ones that should be the
6 lead agencies as tribal leaders to spearhead this. All I see DOI and Bureau of Indian Affairs or
7 energy companies spearheading this. It should be tribal leaders that should be up there on the
8 panel being asked questions and telling everybody how it is. So that's what I think tribal leaders
9 need to express their concerns here.

10 And one of the things we discussed was the data that the Department of Interior is going
11 to be gathering. That's going to be a lot of data that's going to be - - and they're going to be
12 verifying that and I don't know how they're going to do that because it's going to take a long,
13 long time. They're not going to have enough time to verify all these facts within that time in
14 July I think it is.

15 And some of the things that - - that Indian tribes - -

16 [change of tape]

17 KASSEL WEEKS: We're not like that. We're not that kind of people. We've already
18 been dealt with by the U.S. Government and it hasn't been - - they haven't been dealing with us
19 fairly at all.

20 So that [Indiscernible] we're on the - - when we're on the defensive - - I'm just trying to
21 gather my thoughts here. I'm kind of like in emotion mode too, so. Well there was another - - or
22 [Indiscernible] council people, Valeria Arkinson, had expressed a concern too and she gave a
23 good speech and I think she needs to be heard too, so.

1 [MALE SPEAKER WHISPERING IN BACKGROUND]

2 One of the things that we run into all time back in Wyoming is we - - we do a lot of
3 presentations to the delegates, the legislative people in the State of Wyoming, and one of the
4 things we always run into is the majority of Wyoming people don't even know there's a
5 reservation in Wyoming.

6 And that's - - that's - - that's pitiful when you think about it. That's what we're trying to
7 explain to you that we exist and these reservations is ours and we're going to fight for it. I'm
8 going to fight for it. Valerie's going to fight for it. Tribal leaders are going to fight for it. Our
9 weapons are sitting right here - lawyers. They're our weapons and some of these lawyers got it
10 in their heart to fight for it and - - and I do believe that these lawyers that's here, tribal lawyers,
11 they got it in their heart to do the work for us.

12 We're already at that stage where we're going to start fighting for our rights, and we're
13 not going to back down from it whatsoever. And because of the lawyers, the good work that
14 they're doing right now, they're giving us a lot of technical aspects of that side. We're on the
15 administrative side and our mouths is the ones that's going to do our part. We're going to speak
16 and we're going to let you know that we're not going to back down whatsoever.

17 So hopefully energy companies are not going to be playing emotions that's going out
18 there right now. We need to stick to facts - - facts, figures, and history. So that's all I wanted to
19 say. Thank you.

20 MALE SPEAKER: Thank you.

21 [APPLAUSE]

22 MALE SPEAKER: If you have your agenda handy, I'd like to call your attention to
23 tomorrow's agenda, and let you know that we are now going to begin to sign up for individual

1 tribal consultation and individual meetings with the agencies which will end the two and a half
2 day meeting.

3 So if you take a look at that agenda, you'll see DOI staff available to consult and discuss
4 study progress with tribal staff. So these are individual tribal consultations, and other
5 representatives, so individual meetings, individual public - - individual members of the public or
6 representative of an organization. Those meetings will begin at 11:00 o'clock and run through
7 the end of the day tomorrow. Sierra, who's standing right there in the back, has the sign up so
8 we're going to begin taking that sign up now and we'll just move through that order in time.
9 Once we see how many people sign up, then we can figure out just how long each of those
10 meetings can take.

11 I still have the sign up for today if you want a few minutes now to make a presentation,
12 and we're going to move to the first one. So again Tom Sansonetti, Ahmed Kooros, Corey
13 Gardner, Greg Brofey, Shawn Mitchell, Jeff Crank, Carol Harvey, Reed Chambers.

14 MALE SPEAKER: May I - -

15 MALE SPEAKER: That's the list.

16 MALE SPEAKER: If I just clarify something. The consultations tomorrow - -
17 government consultations with individual Indian tribes and so what we'd like to do is have tribes
18 if they would like to sit down and meet with DOE and DOI on a government to government basis
19 sign up and in the order that you sign up we'll allot time and sit down and talk with you and you
20 can pass your thoughts on to us in that consultation process.

21 MALE SPEAKER: Okay. Our next presenter has a presentation on PowerPoint so now
22 we are going to go that way. So if you would turn yourself that way, we'll give the microphone
23 to Tom.

1 TOM SINSINETTI: [Indiscernible]. Yeah, I think I'll just use the lapel pen if that's
2 okay.

3 MALE SPEAKER: Um-hum.

4 TOM SANSONETTI: Good. My presentation today is going to revolve around the
5 second prong of the 1813 study, and to get more specific as to options that might be out there for
6 the DOE and the DOI to put in this study that will go to Congress, which obviously has the final
7 decision-making authority under the study. The study being required by Congress; the report
8 goes to Congress.

9 The Section 1813b portion says that the Secretaries of Energy and Interior shall submit to
10 Congress a report on the findings of this study including recommendations for appropriate
11 standards, that's one, and procedures, two, for determining fair and appropriate compensation to
12 the Indian tribes for grants, expansions and renewals of energy rights-of-way on tribal land.

13 Now we've heard from several of the folks over the last couple of days as to what is the
14 status quo on tribal lands today. There currently are no set standards or procedures on tribal
15 lands and consent is now given for new projects, expansions and renewals only if a bargain can
16 be reached between parties based on the highest negotiated value. Therefore, Congress has
17 concluded that the status quo is not an option and they are seeking recommendations for
18 standards and procedures.

19 Now in regard to standards, Congress could consider the following statutes. All need to
20 be placed in front of Congress for their consideration. The first one is to remove tribal consent
21 authority and to establish the status quo on non-tribal lands which is of course the just
22 compensation clause under the Fifth Amendment of the U.S. Constitution as it now exists for

1 American citizens not on tribal lands. That includes fair market value, terms of perpetuity and
2 the immediate right of entry onto the land.

3 A second consideration would be to maintain tribal consent authority and establish a
4 standard of fair market value for a term of years. It could be 25 years, 50 years, 99 years, ten
5 years, whatever.

6 Number three would be to maintain tribal consent authority and to establish a standard of
7 fair market value plus with the term being one of perpetuity. Now in regard to the word “plus,”
8 that could be objective or it could be subjective. The fair market plus if it was objective could be
9 just a flat multiple for sovereignty so that it would be fair market value times three, fair market
10 value times five times, fair market value times ten, with that plus being for the value of
11 sovereignty.

12 It could be subjective. It could mean fair market value plus an additional monetary
13 enhancements for geographic considerations, cultural considerations, other existing lines,
14 etcetera, etcetera. That would be the subjective portion of the plus. And down the same lines,
15 the Congress could consider maintaining the tribal consent authority and establish a standard of
16 fair market value plus for a term of years as opposed to in perpetuity.

17 They also would have to consider the problem regarding renewals that consent once
18 given to a project coming onto the land is given for the life of that project until abandonment.
19 Now the establishment of a standard works both ways. It benefits the tribes that are currently
20 being underpaid or feel that they are being underpaid. It benefits the companies that feel that
21 they are overpaying.

22 Now the statute that was passed in 1813, 1813b under prong two, also talks about new
23 project grants, renewals, and expansions. And Congress has asked both of the departments –

1 Energy and Interior – to think about the types of energy infrastructure that would be included in
2 the study. Congress identifies three types of infrastructure in 1813b. As I say the new projects,
3 expansions to existing projects, and to renewals of existing projects.

4 Now the greatest area of concern to the companies is renewals because currently they
5 believe there is not a level playing field during negotiations because the life of any project is
6 greater than the right-of-ways term of years. The costs are already sunk into the pipe or the
7 electric transmission lines and the sunk costs create an opportunity for an unreasonable
8 compensation request. On the other hand, the least area of concern are new projects because
9 there you have no sunk cost. An industry player can walk away from an unreasonable request
10 unless geography prevents a build-around.

11 A number of speakers over the last couple of days have said if the price is too high or we
12 don't get what we feel should come our way, then you should build around the reservation. That
13 can be done at the beginning before a project has even begun. And of course some tribes would
14 also want new revenues. Some already have some right-of-ways across their land; would like
15 additional revenues from new right-of-ways. Some do not have any right-of-ways at the present
16 time, but could take advantage of new opportunities.

17 The expansion portion is somewhere in between the new project and renewals of existing
18 projects, and I think it's time for the group to begin a conversation on how we would handle
19 expansions off of existing projects. There are lots of options that could be discussed down that
20 line.

21 Now the second portion of the study's requirements under the second prong says that
22 there shall be submitted to Congress recommendations in regard to procedures. It's one thing to
23 have a standard, but it's another thing to be able to go to a decider, someone that can finally

1 make the final decision, applying that standard to the facts of a particular case. And right now
2 tribes that are being underpaid have no place to go to demand their fair compensation.
3 Companies feel that they are overpaying have no place to go in regard to the designation of a
4 decider.

5 So among the many, many ideas or options that are out there, I would put forth four
6 today. The first one, of course naturally, would be the federal court system. It is already in place
7 with the purpose to resolve disputes. That is the job of judges. There are places within the
8 federal court system, such as the Court of Claims, that already hear a number of Indian disputes
9 and claims; same with federal district courts. There would be the right of appellate appeals to the
10 Circuit Court of Appeals and of course to the United States Supreme Court. That is a system
11 already in place.

12 Another possibility is the Federal Energy Regulatory Commission. After all, it is the
13 FERC that presently grants the certificates for energy delivery systems throughout the United
14 States. None of the companies can come through any land, tribal or non-tribal, without a
15 certificate from FERC to build, and likewise they cannot remove or stop the delivery of product
16 without a certificate from FERC to abandon. So given that they have got the responsibility under
17 the laws that exist right now to get product to the consumer from point A to point B, they might
18 be a place to go as far as determining the fair and appropriate compensation based on a standard.

19 A third idea would be a special commission to handle right-of-way disputes. It could be
20 composed of any group of people. Ideas could include retired or senior judges. It could Indian
21 officials and a mixture of Indian officials and energy industry folks familiar with the subject
22 matter.

1 A fourth idea is binding arbitration where the parties select the arbitrators, put forth their
2 best foot as to why they deserve so much money or should pay so much money, and have the
3 arbitrator make the decision as to what the final amount to be paid should be.

4 But the job of Energy and Interior in this study, which they are required to do, is to
5 submit recommendations, and I think that we should start to begin to make sure that a wide
6 variety of options and recommendations is given to the people from Energy and Interior so that
7 they could all be included in the study that goes to Congress. Thank you for your time and
8 attention.

9 [APPLAUSE]

10 MALE SPEAKER: Mr. Kooros, I don't know if you have a presentation, if you wanted
11 to speak from where you are, if you want the big chairs. Up to you.

12 AHMED KOOROS: [Indiscernible].

13 MALE SPEAKER: Certainly. Wherever you're most comfortable and we'll make sure
14 you have a microphone.

15 [SHORT PAUSE]

16 MALE SPEAKER: Then Corey Gardner, then Greg Brofey.

17 AHMED KOOROS: Good afternoon to all of you. I'm awfully sorry that you have to
18 turn around. I prefer to be among the people. I'm Ahmed Kurose and I've been in the service,
19 with humility of course, of Indian tribes for the past 27 years, and I've enjoyed every minute of
20 it, and I've grown larger and bigger in my heart because I learned from being in tribes how to
21 speak from your heart.

1 I became a member of the Council of Energy Resource Tribes on June 21st, 1979, and I
2 left that organization on August 26th, 1995 to pursue a number of academic interests that I've had
3 in my life, plus other things as well. My boss is sitting over there.

4 The first thing that I had to do at CERT was to assess the value of surface and subsurface
5 rights of the tribes for the 25 Indian tribes. And I have reviewed of course a number of rights-of-
6 ways of various kinds across Indian tribes, and also subsurface substance dividers subsurface
7 substances as well. And I came to the conclusion immediately that the fair market valuation
8 which has been proposed to you again is not only nebulous, is a mere guess and is totally
9 relevant. The judges have accepted that kind of directive.

10 So I said to myself if I cannot translate a principle to mathematical formulation, then that
11 really doesn't amount to anything. Precision is very important. You have never seen in my
12 whole life of 27 years I've seen a lot of appraisal estimates submitted to the tribes. I have never
13 seen a number to the right of the decimal point. Zeroes are always to the right, also zeroes to the
14 left of it. That shows how guesswork these assessments have been.

15 So we decided to do something more appropriate. The energy companies when they go
16 to the utility authorities they have to submit two proposals - - two applications. One is what is
17 known for the optimal route and the other one is for the second best route. It's a good way to
18 start.

19 The second best if it is on the reservation it means the other one is better, but if the
20 [Indiscernible] the first application is for the Indian reservation that means that land is optimal in
21 value. I think I have no more than ten minutes, do I? Ten minutes? All right. I'll try to be - - to
22 shut up fast. [Laughs]

1 What is the difference? The difference is tremendous because with that optimality
2 principle we can really go to the very last penny and actually measure the extent of the value of
3 the land which is right - - which is to be encumbered by the energy companies. So what we did
4 we said we take the optimal route; we take the, you know, the second best except subtract one
5 from the other, whatever is left over is what the surplus value. We divide it into two; 50% of that
6 would go to the tribes, the other 50% would be [Indiscernible] to the companies. If Federal
7 Regulatory Energy Commission accepted that, utilities have accepted that, so what is wrong with
8 it? It's totally as a matter of, you know, as a principle is very, you know, completely adequate
9 and complete and not nebulous anymore.

10 So here comes - - here comes a very courageous area director of BIA in Albuquerque
11 who issues a verdict. His name is Sid Mills [ph] and area director - - a number of other area
12 directors followed that directive. Let me read it to you. It said we agreed that in order to grant
13 the right-of-way, there must be compliance with the Bureau of Indian Affairs right-of-way
14 regulations in 25CFR.

15 Included in this is compliance with the NEPA and the fact the Pueblo of Laguna,
16 including that - - pardon me - - included in this is compliance with the NEPA as the fact the
17 Pueblo of Laguna must give its consent to the granting of the new consolidated right-of-way.
18 The regulations state that the consideration shall be not less than, but not limited to the fair
19 market value, plus severance damages. We must agree that this approach sets just a minimum
20 amount to assist the tribe in negotiations as a bargaining amount. The actual amount depends
21 upon what is negotiated within the parties and what is - - and what the tribe agrees with.

22 The tribe has already established a new methodology of land assessment for negotiating
23 and arriving at conversation for right-of-way. The tribe has developed and applied the

1 opportunity cost method to obtain a better economic return in their settlement with previous
2 companies. They agree that the new precedent has been established and followed.

3 118 other companies cases would approved by various area directors around the country.
4 The Phoenix area director accepted. The Aberdeen area director accepted. All of them accepted
5 to be the case. The precedent has been established. My recommendation to you people to the
6 tribe is do not deviate from what has already been established for you as a precedent. It is fair
7 and I will show you how fair it is.

8 I met these, of course, the intent of 1813 is actually to see to it that the consumers, the
9 energy companies, everybody would come together in order to be able to do what? To come - -
10 to come to a meaningful so-called meaningful method of appraising rights-of-way. It's already
11 been established. Where do we go? It's very precise, extremely fair and I would show you
12 exactly what it is. How much time do I have? That much? All right.

13 I did these things - - allow me a couple of more minutes. I can negotiate. When I saw - -
14 let me tell you this - - when I saw Ruben Snake [ph] shaking hands with the director of Nebraska
15 Power Public Department, I said my God what was supposed to be handled and settled on the
16 train of the broken treaties, in the ditches of Wounded Knee, was done right there. When I saw
17 the chairman of the Wanopie [ph] Tribe attended to [Indiscernible] people at the Southern
18 California Eddison I said this is the end of that trail of tears.

19 So I have been accused of many things and I see the second one - -

20 MALE SPEAKER: [Indiscernible].

21 AHMED KOOROS: Oh. I have been considered [Indiscernible] don't worry about what
22 you've read in yesterday's newspaper. This is what they wrote about me back in 1979.
23 Supposedly we are to pony up cheerfully so the news of escalating energy prices can be

1 tightened around our necks. The people who manipulate Indian policies are indulging in such
2 nonsense. Admittedly, justice has not always been dispensed equally, but is it the sufferance of
3 our national government dedicated to tribal advancement that gives the tribes to act with more
4 independent than other Americans.

5 But limits there are, the article says, imagine what would happen if some advisor, Ahmed
6 Kooros, persuaded - - Ahmed Kooros persuaded the tribal group to sign a treaty with Libya
7 which Ghadaffi was to ship Russian missiles to the reservation to guarantee the tribes' integrity.
8 That was Denver Post editorial page August 13, 1971. I went lived those days and I have been
9 stronger as a friend of the tribes and I'll pass [Indiscernible] one more.

10 On the question of the fairness [Indiscernible] forgot, we talk about fairness from, you
11 know, as far as - - I mean the Indian reservation, you know, the right-of-way negotiation are
12 unfair. This is a very clear case of March 2006 from a customer in southern California. Let me
13 read it to you. The customer uses 293 - - this is an actual case. This is not [Indiscernible] and it
14 doesn't come from my, you know, the back of my imagination. The customer consumed 293-
15 kilowatt hours and the charge per kilowatt - - and paid - - and the customer paid \$31.26, which
16 comes to 10.6700 cents per kilowatt-hour. The electricity alone was \$27.97 and some change,
17 which comes to 9.3506 cents per kilowatt-hours. City and the State taxes amounted to \$3.54,
18 which comes to 1.21 cents per kilowatt-hours.

19 I went back to date a case which was related to this electricity transmission and I
20 amortized the amount of money that the tribe received and put it back into the rate base. For the
21 tribe's part is only 0.3223 cents total in that bill which comes to 0.0011 cent per kilowatt-hours.
22 Can you imagine? The City and State in that area getting how many times more than the land

1 which for the - - the tribe received for the land that it had to be encumbered for the same kind of
2 transmission.

3 What is fair? What the tribe received through that system why don't you dispute it? I
4 mean people from the industry can sit down and dispute. This is something which I detect I took
5 from the, you know, from someone's household in southern California. What is - - what is so,
6 gigantic about what the tribes have received in their - - pardon me for my aggressive attitude, but
7 my recommendation to you people as I did it back in 1971 is stay it, keep a steady path, value the
8 land that you have because it cannot be replaced, make sure that your - - that your sovereignty
9 would not be impeached.

10 In 1813 I'm afraid I see the smell of another termination policy of 1953. That is this
11 section 169.3 subsection C - - Section C is the only thing that you have left - - the Indian tribes
12 have left as far as the [Indiscernible] tribal sovereignty is concerned. Don't let it go - - get away.
13 Thank you and I'm awfully sorry for the extent of my time.

14 [APPLAUSE]

15 MALE SPEAKER: Corey Gardner. Corey Gardner. Going that way? No? We got
16 them up here.

17 STATE REPRESENTATIVE COREY GARDNER: Good afternoon.

18 MALE SPEAKER: They're on - - on the bottom.

19 STATE REPRESENTATIVE COREY GARDNER: Very good. Good afternoon. Can
20 you hear me out there? Very good. Good afternoon. I am State Representative Corey Gardner
21 and I truly appreciate the opportunity to be with you this afternoon and to testify on this very
22 important issue. It's an honor to be before you and I thank you.

1 With energy prices rising and the attendant impacts of that on our economy, this hearing
2 is a particularly important issue to address in the context of a national energy policy. I hope that
3 the outcome of this study will be geared towards objective criteria for valuation of rights-of-way
4 in order to ensure that tribes, consumers and utilities are treated equitably. There should be little
5 doubt or objection to a standard that establishes a fair market value for egress, one that provides
6 certainty and recognizes equitable and legitimate costs of encroachment.

7 The current process I believe lacks clarity. It is driven by factors that make it difficult to
8 ensure that a secure national infrastructure can be consistently maintained and routed in the most
9 efficient manner. I also strongly believe that tribal sovereignty must be a part of a discussion and
10 must be respected. Therefore, we should look to other practices and see how they are treated and
11 try to use those approaches to ensure that all parties are treated equitably.

12 For example, when a utility crosses - - needs to cross BLM land, there is a formula for
13 establishing a price for egress across that federal land. A similar structure to that process could
14 be established for tribal property as well. I have no doubt that such a price setting structure
15 would allow for certainty to the utilities and tribes who are negotiating continued access for
16 existing rights-of-way, as well as utilities who are seeking new access.

17 The important first step towards addressing this critical part of national energy security is
18 for the 1813 study to recommend to Congress that they pass legislation establishing objective
19 criteria. The passage of such legislation would allow for fair compensation to tribes and address
20 and uncertainty in our national energy policy.

21 I thank you and thank you for coming to Denver, Colorado to hear our opinions.

22 SENATOR GREG BROFEY: Thank you. I am State Senator Greg Brofey from Senate
23 District One here in Colorado. Thank you to everybody in the audience and to the members of

1 the agency and the committee that will be hearing this testimony. Thank you for coming to
2 Denver and thank you for taking this testimony on this important issue of rights-of-way across
3 tribal land for your report due out in August of this year.

4 While this issue has not garnered the attention of other energy policy issues currently
5 before us, it is an important issue deserving attention. Once the respective agencies have
6 reviewed the testimony from this set of hearings and the previous hearing, it is my hope that you
7 will recommend to Congress that they pass legislation which will establish objective, equitable
8 criteria for the valuation of rights-of-way across tribal lands.

9 In order to have a cohesive energy infrastructure, we need to ensure that utilities have
10 predictability in pricing and access to land necessary to move energy across our country. With
11 the exception of tribal lands, all other lands – federal, state, local and even privately controlled
12 lands have mechanisms which establish a way to determine fair market value for utilities.
13 Because of this, certainty is assured in accessing land so that energy can be moved throughout
14 our country.

15 The issue has begun to arise on tribal lands where there is no objective method for
16 determining the appropriate price of a right-of-way across tribal lands. This has led to drawn out
17 negotiations, charges of inflated pricing and uncertainty for utilities that seek to ensure an
18 adequate and predictable supply of energy for our country. It is important to emphasize that the
19 method needs to recognize tribal sovereignty; however, even federal government agencies like
20 the BLM have a mechanism that is transparent and objective that determines a fair price for the
21 use of its land for utility purposes. No one has made the claim that the sovereignty of the federal
22 government has been irretrievably breached by this process. A similar process on tribal lands
23 would not set a precedent the federal government has not already established for itself.

1 If the outcome of these hearings is that no objective system can be found which will
2 guide negotiations toward an equitable valuation, then a simpler method for resolving these
3 disputes could be an extension of condemnation right across tribal land.

4 Thank you very much for taking the time to come to Colorado and hear a variety of
5 points of view. It is my hope that after reviewing all of the testimony and in writing your
6 recommendations to Congress that you recommend that they establish an objective and fair
7 criteria for valuation of utility rights-of-way across tribal lands.

8 MALE SPEAKER: Thank you. Shawn Mitchell, Jeff Crank, Castle Weeks, Reed
9 Chambers.

10 SENATOR SHAWN MITCHELL: Is the microphone still on? Good afternoon. My
11 name is Shawn Mitchell. I'm a State Senator from Colorado. I'm honored to be addressing this
12 body on the issue of energy security and on the reasonableness of the costs there incurred due to
13 negotiating and renewing rights-of-way across Indian tribal lands.

14 We're heading into the summer season. Energy costs are rising. We know that that's
15 going to impact our economy. We know that that reminds us the importance here is coming up
16 with a better policy to protect energy security and to harmonize it with a national energy policy.

17 The value of this study will be its recommendations from the Departments of Energy and
18 the Interior and the Bureau of Indian Affairs, the recommendations to Congress to come up with
19 clear objective criteria to set a fair process for valuing that right-of-way.

20 As I understand it, since 1948 there's been a law in place that's governed these
21 negotiations and originally the concept of right of consent or reasonable consent to allow Indian
22 tribes to protect their interests in the negotiations that placed rights-of-way across the land. Over
23 time, however, that concept has metamorphosed and expanded and now in some instances some

1 tribes demand unreasonable compensation, demand unreasonable conditions, even demand
2 transfer of ownership of infrastructure into tribal hands.

3 MALE SPEAKER: [Indiscernible].

4 SENATOR SHAWN MITCHELL: Well I'm saying things that I'm informed and read
5 and doing my best with the information that I've reviewed, sir. Now it's important to note that
6 that's not what happens in all cases. It happens in some cases, and that's why this issue is so
7 important because this uncertainty hurts not only consumers, utility companies, and the
8 economy, but it also hurts the tribes that approach this issue fairly because if they don't
9 overreach they aren't treated as well as their cousins that are more aggressive.

10 Friends, now is the time to recommend to Congress clear standards for setting fair prices.
11 There are models for accomplishing this. [Short Pause] There are models for accomplishing this.
12 Right now when an energy company needs to cross the land of a sovereign, for example, BLM
13 Land, the Bureau of Land Management, there is a formula for valuing the right-of-way.
14 Sovereignty of the BLM and the United States that it represents is respected and a fair price is
15 established.

16 Of course in this process it's important that we do continue to respect the sovereignty and
17 the authority of the tribes and that's why I suggest it's a fair model to consider how other
18 sovereigns are treated when land crosses - - when right-of-ways cross state owned land or
19 federally owned land. Is any autonomous or sovereign group entitled to better treatment than
20 state governments or the federal government? I suggest not and if you can't hear that point then
21 we really can't engage in a constructive conversation.

22 A standard that establishes a fair market value for egress across tribal land will provide
23 certainty to industry. It will recognize the legitimate costs that tribes bear in these transactions

1 and it will actually protect the economic interests of tribes. Because right now of insoluble
2 conflicts force a company to reroute it's pipeline or force a company to consider condemnation,
3 then the result will be a huge impact to a large revenue source for the tribe. This is a better
4 alternative, a fair alternative that it approaches the issue peacefully and it attempts to reach a
5 resolution without a drastic outcome entirely in favor of one side or the other.

6 The Energy Policy Act of 2005 created the important first step towards arriving at this
7 understanding by setting up the process for this Section 1813 study. It's my sincere hope that I
8 can contribute to a discussion that will arrive at a formula that treats all interests fairly - the
9 tribes, the utilities, their consumers and provides economic - - economic benefit and energy
10 security.

11 Thank you for letting me join you today. I applaud the open-mindedness of those that
12 can listen, and I'm disappointed in the other attitude of those that can't listen, but God bless
13 America. Thank you.

14 MALE SPEAKER: Thank you.

15 [APPLAUSE]

16 MALE SPEAKER: Jeff Crank.

17 JEFF CRANK: Well thank you for the opportunity. I'm Jeff Crank from Colorado
18 Springs and I want to - - it's nice to have you come to Colorado to take testimony on the Section
19 1813 scoping process. And it's also nice to be able to provide the input here in our own state
20 versus traveling to Washington, D.C. I'm here to provide my input into this important issue as
21 someone who has worked in economic development and also in government for some years.

22 The Section 1813 study was an important component of last year's energy bill and the
23 purpose of the study was to try and achieve some balance between tribal sovereignty and the

1 need for certainty and reliability for energy infrastructure in our country. I don't believe these
2 goals are mutually exclusive and have the hope that the final report due to Congress this August
3 will make a recommendation for the establishment of objective standards for valuation of rights-
4 of-way across tribal land.

5 The current system for valuation of rights-of-way across tribal land has no method for
6 establishing an objective value of the land a utility will use for [Indiscernible]. The current
7 system is an ad hoc negotiating process that leads to wide margins with respect to pricing among
8 the different tribes. Ultimately this process doesn't serve the tribes, utility companies or
9 consumers very well. All parties' interests need to be treated fairly during price setting and the
10 factors that establish the price need to be transparent. This will ensure the tribes receive fair
11 value for the encroachment upon their property and that consumers are not paying inflated costs
12 because of high right-of-way charges.

13 As the debate on this issue has gone back and forth to cost to consumers due to high
14 rights-of-way charges have been an issue that has received considerable attention. In some
15 quarters, this issue has been downplayed because the claim is made that the cost to consumers
16 because of this is not too much or is only pennies on the dollar. That's really not the point. The
17 point should be are consumers bearing the cost for an unreasonable charge? If the answer to that
18 question is yes, then the next question needs to be how do we stop that from occurring?

19 The fact that a high cost can be made to look smaller because it is spread out over years
20 isn't how we should be rationalizing the cost in the first place. Instead we should be looking at
21 the cost and making a determination on how the cost was arrived at and was it done objectively.
22 In the case of accessing tribal land we don't know if the price is fair because there's no objective
23 measure for determining the value of the rights-of-way.

1 For these reasons, the outcome of this process should be a recommendation to Congress
2 establishing an objective valuation method for new and existing right-of-way on tribal land.

3 Thank you.

4 [APPLAUSE]

5 MALE SPEAKER: Mr. Weeks. Reid, you'll go next and then Amy McNilla [ph]. So
6 Reed - - we're ready for you. It takes - - there's a little bit of delay so once you turn it on, give it
7 a bit of - - on the bottom. On the bottom bottom. There's an on/off.

8 [BACKGROUND CONVERSATIONS]

9 REID CHAMBERS: That will work now. It does work. Well thanks. I have a different
10 point of view but I see all the state representatives are leaving and not hearing it and I guess
11 everyone else is left, so maybe I should treat this as a consultation with the federal
12 representatives who are - - who are still here. Well let me recommend how I think you should do
13 the study and you'll not be surprised to hear - - I'm Reid Chambers, by the way. I've been
14 representing tribes for almost four decades in one form or another - - one - - and for the last 30
15 years in private practice in Washington.

16 And I was - - I suppose I'll star by responding to my friend Tom Sansonetti. We don't
17 always disagree. We've often agreed on things, but we strongly disagree on this. There is
18 absolutely no basis for saying that Congress in Section 1813 determined the status quo was not
19 an option; that Congress in fact specifically rejected that proposal. The proposal was put forth
20 before Congress by Tom's client, El Paso Natural Gas and others, that Congress abrogate the
21 tribal consent requirement of existing law, and - -

22 [change of tape]

1 REID CHAMBERS: [Indiscernible] essentially an imminent domain process. Congress
2 rejected that and Congress asked your departments Bob, Interior, and David and Rollie the
3 Energy Department, to do a study and I'm going to address the issue about standards and
4 procedures for fair and adequate compensation for Indian tribes.

5 I think the tribal position is clear and what you should do is conclude that the existing
6 system should not be changed unless you should find that there are clear and specific instances
7 that require some change or would require a consideration of some change.

8 I unfortunately wasn't here at the March 7 meeting. I had other obligations, but I have
9 read all of the presentations there and I've listened carefully over the last two days. Nothing that
10 has been presented has given any clear indication of any instance, for example, where supplies of
11 energy of any energy product in any market to any customers has been disrupted. All that has
12 been said is that that could happen if a tribe were to disagree on having a right-of-way across its
13 land or renewing a right-of-way of way, and if it did happen then that might be disruptive.

14 That's not a basis for changing the law. No specific instance has been offered where
15 there's been any increase at all to a consumer price of a delivered energy price in a market.
16 Again there are statements that energy prices are high and they could get higher and - - and - -
17 and that consumers obviously no consumer wants to pay higher prices, but to connect that to
18 tribal rights-of-way is a long jump and there's been no correlation on it.

19 What we do know is that transportation costs - - this is from testimony before Congress -
20 - [Phone Rings] - - sorry. Let's end that [Indiscernible]. That we know from FERC testimony
21 last fall before Congress by the Chairman at FERC that gas, transportation - - transportation
22 costs, all transportation costs are about six percent of the total cost of a product. For oil we know
23 it's one percent the FERC Chairman said. Williams Pipeline testified - - gave a figure of ten

1 percent. So transportation costs are not high. We also know from studies in the Energy
2 Department that of all transportation costs, right-of-way acquisition costs are very small – three
3 to six percent of total transportation costs.

4 So it would be very surprising and tribal right-of-way costs are of course rather small for
5 what the - - what the acquisition costs would be. So there's no reason to make a change based
6 upon generalities or based upon abstractions. There's been nothing specific offered.

7 Now what has been offered in terms of the tribal consent requirement by tribes is that 200
8 years of federal law demands that tribes consent - - treaties require tribal consent when you're
9 going to use Indian land for non-Indian purposes. That's 200 years of law. For 35 years you've
10 had the Indian self-determination policy, a bipartisan policy, established by President Nixon
11 most eloquently, preceded by a message to Congress by President Johnson and ratified by every
12 President since then Republican or Democrat. This wasn't something that was given to tribes. It
13 was something tribes fought for. Tribes will fight to keep it. Tribes will not stand to have their
14 rights abrogated, particularly for no reason.

15 Now in terms of the procedures that the energy industry has offered you, every procedure
16 offered by the energy industry, including by my friend Mr. Sansonetti this afternoon, was a
17 procedure where somebody other than a tribe, some federal agency or perhaps arbitration, would
18 make the decision as to what tribes would be paid. Well we know what happens when that
19 occurs. That was the old discarded paternalistic policy that's been done away with for decades,
20 and we know and the case studies that you will do will show you. I'm confident that tribes were
21 paid very little most of the time when the Bureau of Indian Affairs was making these
22 determinations. It would be unthinkable to return to that kind of procedure.

1 The other procedure that the energy industry is suggesting is simply some form of
2 imminent domain, a court makes the decision. Somebody else based on some standard other
3 than the tribal landowner makes the decision as to what a tribe will be paid. Again, that's
4 retrogressive, and again that's simply another form of imminent domain.

5 Now in terms of the standards, you've just heard the representatives who left talk about
6 objective standards. Well the value of Indian land is not so objective across the fence standard.
7 You've heard tribal representatives testify in March and testify here that tribal land has unique,
8 religious, cultural and historic significance for every tribe. We heard some testimony yesterday
9 about the Pechanga Tribe in California rejecting a right-of-way over a sacred site. That is
10 something, again, that can't be valued any more than someone wanting to construct a pipeline
11 around Old Faithful or a 500 KV line down at the bottom of the Grand Canyon, where no
12 sensible person would argue that was okay or that you value that land based on some kind of
13 across the fence value.

14 And that's the other reason why you can't look at BLM land or any other kind of federal
15 land. Indian land is not like most kinds of federal lands. Maybe the very best national park
16 service land, it's something like that, which is for all the American people for the same
17 significance that tribal land is for tribes.

18 So federal standards are not - - I mean we've heard presentations about how other federal
19 land is valued. That's not a precedent for tribal land and tribal land isn't replaceable either.
20 You've had a few situations. BPA gave a situation and I think Tom Shipps gave one earlier
21 where actually there was a situation where actually there was a situation where a tribe could go
22 out and acquire some historically significant land in return for a right-of-way grant. That's
23 creative, that's good when that can happen. That is unusual. So that's not comparable.

1 Also the federal government, state governments can tax and can regulate energy
2 companies using their land because of a series of court decisions in which the energy industry
3 has been a prime participant to try to limit tribal powers why tribal powers are more limited than
4 those of other governments. So that's not comparable.

5 But also I was struck today with Mr. Anderson's slide about BLM charging the very least
6 for El Paso crossing its land. The policy of the federal government for years has been to
7 subsidize energy companies crossing their land, and that's reasonable for the federal government
8 to choose to do that with its own land because the federal government is benefiting the economy
9 as a whole.

10 If you look at Indian country it's exactly the opposite. Indian country is the most
11 underserved area in the country in terms of gas and electricity, and Navajo and Hopi, for
12 example, about a third of the homes at Navajo and Hopi don't have basic electric service, yet the
13 resources from those reservations are wheeled across the reservations to go to other places to
14 provide electricity, natural gas, or places where the Indians just simply don't benefit from it.

15 Now I understand when Mr. Anderson says that's not El Paso's creation. It's a
16 transportation company, but it is something that the industry and the government has allowed to
17 happen and it should not have happened and it should not be allowed to continue, and at the very
18 least tribes should not be considered at all in the same position as the BLM or the federal
19 government in terms of providing subsidies for the energy industry.

20 The energy industry has been using tribes as a passive conduit in most cases where they
21 go from point A outside the reservation to point B outside the reservation and just bring it
22 through the reservation. When they haven't been doing that, like Tom Shipp was pointing out
23 at Southern Ute, there have been partnerships established. Well there can be partnerships

1 established with tribes where there are conduits. There can be partnerships established to get
2 electric service and gas service to Indian reservation.

3 It's a national shame. It's something the energy industry ought to work with tribes and
4 ought to work with the federal government to fix, and the federal government in this report
5 should recommend that it be fixed because at the end of the day the federal government is not
6 just a neutral arbiter.

7 The federal government, your agencies both are trustees and you've been directed to do a
8 report, but you also have a trust responsibility, a trust responsibility deriving from treaties of the
9 United States and deriving from practice going back to John Marshall's decisions. I urge you to
10 do it. I urge you to put in your report that this consent requirement is not broken and that it
11 should be continued. If Congress chooses to change it, tribes will fight that in Congress but
12 that's not your concern.

13 Thank you very much.

14 [APPLAUSE]

15 MALE SPEAKER: Two speakers and then we'll talk again about tomorrow's agenda
16 and make sure that the sign up is clear and that we're clear about the agenda for tomorrow. So
17 Amy McNilla? No? Going to pass? Okay. Kassel Weeks.

18 [SHORT PAUSE]

19 KASSEL WEEKS: As you all know my name is Kassel Weeks with the Eastern
20 Shoshone Business Council. I'm very disappointed with the delegation that was here just a little
21 while ago. They just walked out. Wasn't even willing to listen to us. Wasn't even listening - -
22 wasn't willing to, you know, at least acknowledge us in here.

1 Seems like they've already got it in their plans to just do whatever they want. They're
2 just going to bypass tribal sovereignty, tribal people. They're just going to bypass the tribes. If
3 they duly cared those delegationers here they would have stayed here and listened, but to me
4 they already had it in their - - what they were going to say on paper and that was it. Shame on
5 them. They're not representing their American people. We are American people. We're the
6 original people on this planet; on this earth.

7 I spoke a little while ago. I'm not having my emotions come up. That seems like
8 hopefully it's not going to get to that point. I've already mentioned if this doesn't - - if the 1813
9 passes through Congress, I've already mentioned that is very serious. If these energy companies
10 start coming on the reservations, start digging into our burial sites and to our cultural sites, we're
11 going to have to break that one treaty that we have with you, the United States Government,
12 that's the one we're supposed to put down our arms.

13 It's getting to that point, people. Listen! We cannot afford to have disruptions like this
14 in the United States. We went through 9/11. We're going through the Iraq war. And let's not
15 get to that point. The sovereign people are sovereign. This is our land. We gave up a lot to hold
16 on to what we hold dear. We've been put on this lands, shoved on the lands, land that you
17 people, the American people, that came back - - came from Europe. They put us on this
18 reservation and thought that reservations were just wasteland. They put us on that land and said
19 here, farm it. And then when we couldn't make farming, we all ended up alcoholics; we all
20 committed suicides, depressions. You know we didn't design our own destiny. You American
21 people - - non-Indian American people designed that destiny. It's called manifest destiny. And
22 it seems to me that's still going on.

1 You don't want to recognize Indian tribes; you don't want to recognize our sovereignty;
2 you don't want to recognize that we exist. Those people that was here they should have just
3 stayed and listened to us. What kind of representatives are there for you American people? Is
4 that what you people voted for? The republican and the Bush administration republicans are
5 slowly designing all the policies that they're doing to slowly terminate Indian tribes. Let's face
6 it. That's what's happening right now.

7 I for one as a tribal leader am not going to let that happen. I'm going to fight for what I
8 hold dear. My land is my heart. The people that are buried on our land is my heart. They're the
9 ones that kept us alive. We're survivors. A lot of our people were hung because of emotions. A
10 few settlers got killed so they went after the whole tribe. They took all the chiefs and hung them
11 so they could punish - - to try and punish one that did the deed. They hung everybody. It seems
12 to me we're on that road again.

13 I'm going to fight for what I believe is our right to survive and to live in peace and
14 harmony as long as the grass grows, as long as the river flows. But this is it seems like that - -
15 that the man who was up here just talking about listening to him he was trying to explain to you
16 that the reservations are different. They're not from BLM, [Indiscernible] Bureau of Land
17 Management. We're not the same as that. Bureau of Land Management is following the
18 doctrine of the Bush administration. They're giving energy companies subsidies. They're
19 giving every right they can go.

20 We're having trouble with Johanna Field in Wyoming. That's where they've got all the
21 gas - - coal bed methane gas. And right now they're giving the companies to go ahead and do
22 every - - whatever they want on that land. And there's people called the Red Desert Force
23 that's trying to fight it because they believe in a natural world. They believe in animals having

1 the right to leave. They believe in our cultural ways. That's the most important. They don't
2 want to see these gas companies going around tearing up our cultural ways, and they believe in
3 the cultural ways. They believe in the old ways and these are non-Indians.

4 Well you know it seems like always at a defense, defense, defense. Just trying to fight
5 for what is ours. So hopefully you people will understand our side. There are so many years and
6 years that we fought, our ancestors fought, to keep the lands we have. And hopefully
7 [Indiscernible] let's just hope Congress doesn't pass this 1813 and make it into a reality because
8 if somebody comes around and starts digging into my burial grounds they're going to have to
9 answer for it. And it's not going to be pretty, people. I sure hate to say this, but there might be
10 bloodshed into it too. I'm just very disappointed the congressional people isn't here to hear this.
11 Very disappointed. [Indiscernible] Thank you.

12 [APPLAUSE]

13 MALE SPEAKER: We've completed the list and I want to thank you all for the hard
14 work today. A couple of things about tomorrow. The agenda, again, if you'll take a quick look.
15 The Departments of Interior and Energy are going to recap what they've heard over the last two
16 days, give you a sense, again, for additional meetings, where the data gaps are; we'll continue to
17 focus in on that subject; A plenary session to allow you to wrap up any comments that you want
18 to make collectively; and then there will be a break and individual government to government
19 tribal and federal government consultation can take place. Again, the sign up is outside. If
20 agencies, organizations, associations want to have individual meetings with the agencies, those
21 will be integrated there as well so these will be individual conversations starting at 11:00 o'clock
22 and going all the way until we exhaust that list.

1 This will not be the location for tomorrow. The Capital Room, which is a level up, rooms
2 five through seven – Capital five through seven. So when you get off that first escalator keep
3 going. Take another one up and you'll find that there.

4 Several people have asked me about some of the impromptu PowerPoint presentations -
5 the statement from Albuquerque, etcetera. Those will be posted along with all the other
6 information. Transcript will take several weeks, but it too continues and that transcript will be
7 made available a little bit longer. Hopefully the presentations and the other materials that we put
8 on that computer by early next week.

9 So with that we're adjourned. Tomorrow morning upstairs Capital rooms five through
10 seven. And again the sign up for the individual consultations and individual meetings tomorrow
11 right outside. Thank you.

12 [END OF RECORDING]

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