

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 20, 2006 Public Meeting**  
4

5           BOB MIDDLETON: We think it's been very useful. I would like to make one  
6 recommendation for folks. A number of people have come up to us during the two-day  
7 process and indicated that they had information that they would like to provide to us. I think  
8 everybody is aware that we're on a very fast track for pulling this information together in a  
9 draft report. So if you did mention to us that you would like to add some information to what  
10 we have already gathered, we really would appreciate receiving it within the next week, if  
11 possible. If not within the next week, if you could send us a written – just a written comment  
12 that you have the information and let us know when we can expect it. That would be most  
13 useful as we're pulling the report together.

14           We realize that the July timeframe for folks to review a draft report has caused some  
15 concerns. I think people are fully aware of what our schedule requirements are, and a lot of  
16 that is being driven by that. However, we are going to commit to you to try and get the draft  
17 report out as soon as we possibly can to give people as much time to review the draft report  
18 prior to the meetings that we intend holding between July 10<sup>th</sup> and July 19<sup>th</sup>.

19           I'd also like to have a little bit of discussion right now about the July 10<sup>th</sup> through the  
20 July 19<sup>th</sup> meetings. The way we have put the meetings together is that our intent is to try and  
21 hold a national meeting to receive comments on the draft report and have a discussion on July  
22 10<sup>th</sup>. Right now we're shooting for Phoenix. I don't know whether it's possible or not.  
23 We're looking at hotels. But we are shooting for Phoenix on July 10<sup>th</sup>.

24           And our intent was that we would then hold three or four regional meetings for  
25 consultation meetings with the tribes. We think it's important for us to get out to the various

1 places in Indian country where we'd have an opportunity to receive comments from the tribes;  
2 however, we also have heard that people are concerned that there's one national meeting  
3 where everybody is going to be involved and then a series of tribal meetings. The reason  
4 we're doing that is because we know there's a number of tribes that are going to want to talk  
5 to us; it's just a matter of time commitment. If we're able to get to the areas where the tribes  
6 are, then we can receive the information in our government-to-government consultation with  
7 the tribes in a more effective manner.

8           However, we are open to have a second national meeting if people desire to have that  
9 with the caveat being that it really doesn't do us very much good, and it wastes your time and  
10 money and it wastes our time and money if we hear the same thing two days in a row at  
11 national meetings. So I'm willing to entertain any comments or discussions people have  
12 about the desirability of having a second national meeting that's an open forum like we have  
13 now.

14           Does anybody – would anybody like to comment on that?

15           If not, you have our contact information, email address. If you would like to send us  
16 comments on it at that email address, we can look at it at the end of the week or the beginning  
17 of next week and when we make our final decision.

18           The regional meetings that we are scheduling, we're tentatively looking at four  
19 locations. We are tentatively looking at Albuquerque, Morongo, Portland, and Billings. And,  
20 again, we would appreciate any comments or any ideas that people have on whether that is an  
21 adequate coverage.

22           We feel that those regional meetings, the way we'd like to structure those is to have a  
23 fairly brief open forum at the beginning of the meeting where we could do questions and

1 answers in the large group. We could answer any questions that people have about the draft  
2 report and our thinking on what we put in the draft report and how we approached the issue.  
3 But then after that, go into closed sessions where we provide government-to-government  
4 opportunities with each of the individual tribes to talk with us about the draft report.

5 So if you have any comments and would like to talk a little bit about that this morning,  
6 we'll be open to that. Otherwise, again, we'd appreciate receiving any comments via the  
7 email address.

8 Was there something else that we wanted to raise up [to person in background]?

9 I think everybody is aware that what we're asking folks is that we receive all  
10 comments in to us that you feel are necessary to provide to us, all information by May 15<sup>th</sup>.  
11 And this will allow us to pull the draft report together as quickly as we can so we can get it  
12 out to you for the maximum review time for you. So we are going to be closing down  
13 essentially all of the information that we collect and start pulling it into a report format  
14 starting May 16<sup>th</sup>. So please adhere to that deadline. We would appreciate that. David?

15 DAVID MEYER: We've heard from the people, sort of expressions of intent; but we  
16 need to know pretty firmly who plans to give us fairly major submissions. We need to have –  
17 it would help our planning in terms of preparing this report if we had some sense of what we  
18 were going to get from different groups, different parties, instead of waiting for the mailman  
19 on May 15<sup>th</sup>. So to the extent you can get us that information, that would be helpful.

20 BOB MIDDLETON: Did we send out our mail address or just the email address on  
21 that? Well, irrespective of that, be aware that if you are actually mailing something to us, if  
22 you could FedEx it or UPS it, that gets to us much quicker than coming in through the mail

1 systems in Washington, D.C., simply because we have a lot of security screening going on  
2 with the standard postal mail system and that actually delays the mail by several days for us.

3 And Rollie reminds me that in fact a number of people have asked us to – that they  
4 would like to provide some additional information for us. And, of course, we're looking at  
5 verification on some of this information. And we do have HRA (Historical Research  
6 Associates) working with us; however, we do need to make sure that the resources that are  
7 available within the timeframe we have available are adequate to cover any of the detailed  
8 analyses that need to be done.

9 So, again, we have to ask that if you have any information or you can identify the type  
10 and extent of information you are going to be providing to us, that allows us to plan better  
11 within the timeframes we have to make sure that we get that information incorporated by the  
12 May 15<sup>th</sup> deadline.

13 With that, I think what I'd like to do is open up the floor and have any give-and-take  
14 comments, that we would like to talk, any questions that you may have on either our process  
15 or how we've progressed, or if you have any additional information you'd like to provide to  
16 us at this time. We, of course, have planned for some government-to-government  
17 consultations with tribal leaders who are here this morning. People did sign up for certain  
18 timeframes, certain hours. However, if we have an opportunity of starting early, we did have  
19 a number of tribes that wanted to do it between 11:00 and 12:00. And if we could start a little  
20 bit early on that with some of the tribes, it will be beneficial because I don't think that one  
21 hour will be adequate time for the four tribes that signed up.

22 So anybody have any questions? We'd like to pass the mic on to you.

1 FEMALE SPEAKER: Two questions about the – Bob was talking about where – the  
2 next thing is going to be the regional meetings, the national meeting, getting information to  
3 them at least about what is coming.

4 MALE SPEAKER: Just a question relative to your scheduling of tribal council  
5 sessions. Are you looking at a particular time of – we're thinking it could very possibly be  
6 that a number of tribes – if your consultation is four hours, it might limit the effective  
7 communication where – because of the number of tribes that are available. Will you be there  
8 – can you leave a minimum of a half hour, hour, what?

9 BOB MIDDLETON: What we'd like to do, next week we're going to be pulling  
10 together our schedule for getting out there. We're going to make that available to folks as  
11 quickly as we can. What we'd like to request that the tribes do is that if they do want to have  
12 government-to-government consultation with us, they let us know. That way we can build it  
13 into our planning process, and we can get information out to the tribes as to a time, let's say,  
14 that we'd be available to sit down and talk with them.

15 Obviously, because we're going to be scheduling these meetings within a short period  
16 of time, we have to allow some travel time between the cities. We will be there at least for a  
17 full day, if not a little bit longer; but, depending on the number of tribes that really want to sit  
18 down and talk with us, that may modify a little bit the amount of time we have available for  
19 each tribe. But we're hopefully there's going to be adequate time.

20 And, in addition, it's not only the government-to-government oral conversation that  
21 we're having, but we also would request that if the tribes have specific comments they'd like  
22 to provide in writing, that would be most beneficial also.

23 Yes, sir?

1 BACKGROUND SPEAKER: [Inaudible question.]

2 BOB MIDDLETON: Sure. Sure.

3 FEMALE SPEAKER: Could you repeat back the question?

4 BOB MIDDLETON: The question was whether our team would have people  
5 available at the mid year NCAI meeting to make a presentation there; and, of course, we'd be  
6 more than glad to go to that meeting and provide people on the status of the study.

7 Awful quiet crowd today.

8 MALE SPEAKER: I have a question.

9 BOB MIDDLETON: And also, we are taping this, so if you could please identify  
10 yourself we'd appreciate it.

11 RONALD NEISS: Good morning. My name is Ronald Neiss. I'm with the Rosebud  
12 Sioux Tribe Utilities Commission.

13 And, Bob, I spoke to you just a while ago about the relevance of treaties and the  
14 importance and the sacredness of treaties, covenants we entered into with the United States in  
15 good faith many, many years ago, which our ancestors had the wisdom to help craft. And part  
16 of – I even believe that our – I had mentioned to you that the Spirits helped craft these, you  
17 know, clear back then. And Article XI, Section Six, which is the [indiscernible] along with  
18 the Cheyenne-Arapaho entered into with the Americans of the United States in 1868. Article  
19 XI, Section Six mentions, you know, rights-of-way and easements and then sort of utilities  
20 right-of-way. It mentions act of necessity, telegraph lines, mill stations, sub stations.

21 And you mentioned to me that you had a copy of this, you know. You kind of peaked  
22 my interest. So do you have a copy of all the treaties, you know? Because you kind of  
23 mentioned that –

1 BOB MIDDLETON: Yeah.

2 RONALD NEISS: Do you realize the importance – I had mentioned also that, which I  
3 told the Federal Communications Commission in 1993, they sold a lot of airspace to its  
4 Auctions Bureau. So if we say we have rights of the airspace, we really don't, you know,  
5 except preemption, which is a word for eminent domain. They sold our airspace, which, once  
6 again, is a treaty violation. And I told them that the treaty was not an archaic document, is not  
7 a historical document. I asked him if the Constitution of the United States was an archaic and  
8 a historical document; it is not. And it mentions, you know, treaties in relation to us being  
9 supreme by the land.

10 So I'm just interested, you know – I know you have the Constitution of the United  
11 States, but do you just have some sort of a glossary evolved or something of all the treaties?  
12 Do you realize – do you admit to the importance in the treaties? Thank you.

13 BOB MIDDLETON: The Internet is a wonderful thing. Bill Benjamin, who's the  
14 regional director up in Aberdeen, and I had a discussion. And he talked a little bit about the  
15 treaty, and this was in the context of a different subject. And so we were able to go up and  
16 receive the language that was in the treaty of 1868. I actually don't have a physical copy of it,  
17 but –

18 RONALD NEISS: I will get it to you.

19 BOB MIDDLETON: I'd appreciate it and love to have it.

20 RONALD NEISS: We'll make sure you have it.

21 CAROL HARVEY: Carol Harvey. Just to follow up on the comment made earlier, I  
22 have a statement; and the material I had given you that said that the BIA has given the report

1 that 80% of gas reserves on tribal land have not yet been discovered or produced and that 25%  
2 of oil had not yet been discovered or produced. So I kind of see the gold rush is on.

3 And it mentioned also in that statement by the BIA that there are 90 tribes that have  
4 those energy resources on their lands. So I think it would be very valuable to get that list  
5 from the BIA and attach the 90 treaties to your study as an appendix so that we are aware of  
6 what is the language for those 90 tribes that the Bureau of Indian Affairs has identified as  
7 having natural resources on their land, and especially for gas. When you talk about 80% of  
8 the gas on tribal land not yet having been exploited, I think it's very important for that  
9 information to be shared with tribes so they can begin to comprehend the importance of the  
10 issue of energy development on tribal lands that's going to be occurring perceptively.

11 Previously, the gas prices just didn't dictate going on to tribal land, and that's why  
12 they're, you know, undeveloped, which I think is very good for us because prices are really  
13 high now. And so I just think that's a very important issue. The people that spoke yesterday  
14 didn't identify energy policies being affected by the Indian Mineral Development Act or, you  
15 know, treaties or other Indian-related legal matters. Everything they talked about was from a  
16 federal basis because I had read the material they listed yesterday, and it dealt with federal  
17 and state issues. None of it dealt with tribal. So I see the policy and the energy policy issues  
18 that they are looking at are related to – like for the State of the Union address or Senate  
19 Energy Policy Statements, those were all – and I have read them – were federal and state.  
20 They did not specifically relate to tribal matters.

21 Thank you.

22 BOB MIDDLETON: Carol, also if you have a reference to that report by BIA, it  
23 would be useful if we receive that.

1 CAROL HARVEY: It's in there.

2 BOB MIDDLETON: Okay. Thank you.

3 TONY ROGERS: Yeah, Bob, I have a question. This is Tony Rogers from the  
4 Rosebud Sioux Tribe.

5 What exactly is the DOI and DOE looking for, like the existing data needs and  
6 information that you're requesting from the tribes? And does it just pertain for rights-of-way  
7 concerning energy issues like on the reservation?

8 BOB MIDDLETON: We're looking at rights-of-way. Energy rights-of-way is the  
9 issue, and we have asked tribes to help us, as well as any other folks that have any  
10 information, identify appropriate case studies because early on in the process we realized that  
11 there are tens of thousands of energy rights-of-way that are out there in Indian country. We  
12 just didn't have the time or resources to do a comprehensive study of that.

13 We're very interested in looking at potential case studies that would reflect the  
14 universe of rights-of-way that are out there. And, however, we do need more detail than  
15 simply the superficial or the summary information. We need to be able to get in and take a  
16 look at the factual base for those summaries and feel comfortable that we've verified the  
17 information and it's adequately represented.

18 TRAVIS SUTTEE: Good morning. My name is Travis Sutte. I'm the vice president  
19 of the [indiscernible] Nation. My question is I'm curious as to how this whole thing is  
20 formulating, and we would like to have answers, for you to give us some kind of information  
21 on where does this – you know, the tribes, where do you see that – or any kind of information  
22 is saying that the tribes are detrimental to the flow of energy to consumers? And is there any  
23 statistic showing that we have not complied with regulations and prior negotiations to upset

1 the energy to the consumers? Anything of that nature you have information to give us to at  
2 least let us know maybe some of the tribes that are not doing it right or are there any  
3 statistics? That's something that we're looking at.

4 I think what we're talking about is right-of-ways, but what is it actually that the tribes  
5 are doing that they are not doing right as far as getting in the way of producing all this energy  
6 on the Indian land? It's just like saying I'm coming to your back yard, and I'm going to say  
7 I'm going to come down and, excuse me, I'm going to be coming across your property, and  
8 then you have no say-so, you know. And that's the thing that's – it's just kind of the feeling  
9 that we're getting, that, you know, it's not right, and it's infringing on our own property, the  
10 sole right of the government giving us the property to govern on our own with our own  
11 constitution that we have.

12 And then for the BIA as our guardianship to stand up for us to say that, yes, we are  
13 Indian nations within the nation; we have the right to govern our own land. That's what kind  
14 of puzzles me, is I haven't seen anything yet that will – that kind of mentions that somehow  
15 we're not – we're getting in the way of energy to the consumer. That's my question. Thank  
16 you.

17 BOB MIDDLETON: I haven't seen anything that has any preconceived notions that  
18 that in fact is happening. I think part of what Congress is asking us to do is to provide  
19 information to them so they can take a look at the potential effects, and that's what we're  
20 trying to do, is gather information at this point, which is why we've asked everybody to pitch  
21 in and help us out to pull information together.

1           There is no preconception whatsoever on any of this, and we're just in a data gathering  
2 stage right now. We can sit down and pull the report together, answering the four questions  
3 that Congress asked us to answer.

4           CAROL HARVEY: Carol Harvey. Just in response to Councilman Vicente, I  
5 submitted the information where I researched the Internet and everything very extensively;  
6 and prior to January 2005, this issue had not been publicly raised. I talked to El Paso, and  
7 they concurred with me that prior to January of 2005 this issue had not been publicly raised.  
8 They said they had been discussing it among themselves, but it had never been publicly  
9 raised. And I think that's confirmed by the Interstate Natural Gas Association of America,  
10 where they said they are going to submit a survey that they had done back in 1998 that they  
11 had never published.

12           So I also talked to Dr. Tierney, who's an economic analyst and a specialist in this area,  
13 and she said, from her knowledge and her background, there was never anything raised prior  
14 to January 2005. And the matter raised in January 2005, again, related to the dispute between  
15 El Paso Natural Gas Company and the Navajo Nation. I just want to continue to emphasize  
16 that so that it will be present in the report. And I comprehensively studied the matter, and  
17 Tierney, from her expertise in El Paso, concurring with me. And, again, with Inga saying  
18 they're going to now release an unpublished 1998 study, which to me should not be given  
19 very much viability. They should be doing a current study, not submitting something from  
20 1998, which is, you know, maybe historically distorted.

21           REID CHAMBERS: If I may, Bob. Reid Chambers, attorney for several tribes.

22           I think this verification issue is something I want to press you on again – and not just  
23 you, but all of your colleagues – that the tribes are making a lot of effort to submit

1 information that is verifiable and to let your people come and independently verify it. And  
2 my understanding is when they submit reports, they are going to submit them using published  
3 sources and verifiable data.

4 Now, the kind of stuff that was put up yesterday or the day before, I mean, there was  
5 an economist who made some generalized statements for the others in the industry, saying,  
6 well, if tribes increase compensation for rights-of-way, that will discourage investment.  
7 That's just simply an assertion. And our view is that should not be submitted to Congress  
8 unless the energy department has done a verification that that's in fact true from their own  
9 studies. And the same thing with the El Paso guy yesterday, that that's just conversation  
10 when somebody puts up a graph and says these are the figures, unless they're willing to let  
11 your people in and verify it.

12 My understanding is tribes are willing to do that, and I think it's very important that –  
13 I'd give no weight to some study that's just somebody's assertion that you can't verify. I  
14 don't think it's responsible for the government to submit that to Congress in the report.

15 BOB MIDDLETON: Thank you, Reid. I appreciate those comments. I do have to  
16 again thank four tribes who have stepped forward and are providing us access to information.  
17 The Northern Jutes provided us a great deal of information last week. We had a team of folks  
18 in working with them and working with our BIA agency office. Southern Jute is scheduled  
19 for next week. And then Morongo and Navajo have also agreed to allow us to come in and do  
20 some verification on some of the information. So thanks so much to those tribes.

21 I also have to mention that during the meeting a number of organizations have come to  
22 us and also have asked that we pull a team together and go in and take a look at the  
23 information. So I can assure you that if we present anything to Congress as part of our report,

1 where we are using it as information for any of the four parts, that it will be independently  
2 verified by the federal government. We just won't put reports forward as true unless we're  
3 comfortable that in fact there is some substantial verification of those reports.

4 Then again, we do have people providing information to us, and that information is  
5 part of the public record, and it will be represented as such that, presented by an organization,  
6 and not – has not been independently verified.

7 LISA CAMERON: Hi; I'm Lisa Cameron. I just wanted to respond to the gentleman  
8 who spoke earlier about the wisdom of using economic law in analyses of this kind. And I  
9 just want to point out that we use economic law just to guide our public policy decisions all  
10 the time. We don't like to see only two companies in an industry merge without any further  
11 checking on what this might do to markets because we know – economic theory tells us that  
12 then there's a monopoly, charging monopoly prices; consumers will be harmed.

13 Similarly, in this case, when companies are charged monopoly prices for rights-of-  
14 way, we know that consumers will be harmed. That is a consequence of economic logic; and,  
15 again, we use economic logic in setting public policy standards all the time, and we should  
16 use it more.

17 RONALD NEISS: Thank you. I wanted to –

18 [Overlapping conversations.]

19 RONALD NEISS: – Section Six of the treaty.

20 BOB MIDDLETON: Please identify yourself again.

21 RONALD NEISS: Ronald Neiss for Rosebud Sioux Tribe. My grandmothers and  
22 grandfathers – I've become a grandfather now – always told me that I take the document with

1 me, you know, wherever I travel, and this will be the foundation of all our dealings with  
2 particularly the federal entities with the United States.

3 And Article XI, Section Six says they withdraw all pretense of opposition to the  
4 construction of a railroad now being built along the Platt River and westward to the Pacific  
5 Ocean. They will not in the future object to the construction of railroads, wagon roads, mill  
6 stations, or other works of utility or necessity, which may be ordered or permitted by the laws  
7 of the United States. Should such roads or other works be constructed on the lands of the  
8 reservation, the government will pay the tribe whatever amount of damage may be assessed  
9 by three different commission members to be appointed by the president for that purpose.  
10 One of said commissioners shall be a chief for admin of the tribe.

11 Now, what it mentions here, it mentions damages. Incidentally, this comes right after  
12 we will no longer scalp any white men. It comes right after that section. When it says that  
13 there had to be some wisdom, I think that our medicine people were part of crafting this  
14 instrument to make sure these things were mentioned, you know, 100-and-some years later.  
15 Now if these damages – I’ve always thought – it’s been said for years that we need to create  
16 that, come up with a commission at some point. I see now that with this study, this could be  
17 another – if this is detrimental to the interests of the tribe, that’s one more brick, a giant brick  
18 of wall of the damages permitted by the Act, permitted by the laws of the United States.

19 So if it is detrimental, we’re looking at huge damages, and I’m hoping those  
20 companies are willing to help the American government pay for these damages because  
21 Article XI, Section Six, when the three district members, one shall be a chief for admin of the  
22 tribe, this would be [indiscernible] or one of our allies with Cheyenne or Arapaho. But when

1 I talk about these things, I look at, you know – well, for one thing, in our country, it's a Sioux  
2 tribe, but there's other tribes, also.

3 We do things in concert, anything that has long-term effects we need to do with the  
4 brother/sister tribes. And I look at the creation with the other treaty people, you know,  
5 sovereign people, people that left the jurisdiction, be key number one. And one of those  
6 questions talks about jurisdiction. And I haven't – and this is very relative, very relative to  
7 that question. And I haven't been here the last three days. I wanted to be, but I just couldn't  
8 be. So I don't want to go on repeating.

9 Tony is the smart one; I'm the mouthy one. He is going to be doing the study. But  
10 someone needs to be mouthy. Someone needs to bring these points up. And Rosebud, we've  
11 done permanent rights-of-way and easements for years. The companies that rate our  
12 resources, they've taken advantage of us. They've cheated us. They deprived us. They've  
13 hoodwinked us for all these years. Permanent rights-of-way, these are unperfected rights-of-  
14 way. These were instruments before the '48 Act. You know, even after the '48 Act, these  
15 rights-of-way easements were signed by the Board of Indian Affairs only. There were no  
16 tribal signatures. There's no tribal chairman. There's no tribal secretary. To me, these are  
17 unperfected rights-of-way, and Rosebud is in danger of giving them permanent rights-of-way  
18 and easements.

19 We're finally getting the wherewithal to look at our own interests. You know, it's  
20 being taken advantage of, you know, for nothing. Bow down and so, oh, we get light, we get  
21 electricity. These are our rights. That has to stop. So I don't want to repeat too much of  
22 what's been said the last three days because we've got Bob Roth here. We've got Tony  
23 [indiscernible] Tribal Line Enterprises, so I won't repeat that. But I will never let go of the

1 treaty, just like my grandfathers and grandmothers told me. Article XI, Section Six, Bob, read  
2 it.

3 BOB MIDDLETON: Thank you.

4 Back of the room.

5 SHENAN ATCITY: Good morning. Shenan Atcitty with Holland & Knight,  
6 representing the Apache Nation and other tribes. I just want to make a few comments about  
7 the whole economic logic approach, and specifically the presentation that was made yesterday  
8 and point out that it ignores the legal characteristics of tribal trust lands.

9 And on that basis alone, I don't see how the government can give any credence or rely  
10 on it for that single purpose. Tribal trust lands, reservation lands, they are not created and  
11 were not set aside for the public benefit. They were set aside for Indian people as a  
12 permanent and viable homeland. And we have hundreds of years of case law, statutes,  
13 regulations that recognize this trust and expound on it. And for that simple fact alone, you  
14 know, for the government not to buy into this economic logic because it simply does not have  
15 a place here. Thank you.

16 BOB MIDDLETON: Thank you.

17 MALE SPEAKER: My name [indiscernible] counsel. I think you got a dose of what  
18 emotional issues this is from yesterday. You know, I got pretty emotional. But when we're  
19 talking about our tribal rights and our treaties and our lands, that's really dear to us.

20 I guess I thought about it last night and couldn't sleep at all. What the lady said is  
21 true. Why are the tribes made to get down on their knees in front of these energy companies?  
22 Because we're talking about our land. Right now we're being – our sovereignty is, like I said  
23 before, it's being equal to costs now.

1           Now, the energy company is wanting what they want. Our sovereignty is being equal  
2 with energy companies. Our sovereignty is not [indiscernible]. Sovereignty is equal to US  
3 government. That's where the discussion should be. These energy companies, they're the  
4 ones that are getting all the [indiscernible] and everything. They're the ones that are getting  
5 the full ear of the Congress. And those people that came in yesterday, the Congressional  
6 members, they kind of let us know what the attitude was and what the feelings are with  
7 Congress. I just hope Congress will be able to see through the smokescreen that has been put  
8 out there.

9           Like I was saying before, we need facts and figures on this, not emotions. One of the  
10 things that Darlene asked is – keeps asking us and asking us. You're going to verify all the  
11 facts, and the document is going to come your way. Are you going to have time to do all  
12 that? We're looking at hundreds of years. If you total those hundreds of years that each tribe  
13 went through, you're looking at almost probably endless, thousands and thousands of years of  
14 abuse and corruption.

15           When those Indian agents came out in the 1800s, they were managing our affairs.  
16 And what they were doing was they were taking all the food that was coming to the  
17 reservation to the Indian people. They were taking some of that and selling it, and they're  
18 giving [indiscernible] to the people. They were supposed to be eating that, thousands of  
19 people.

20           We're talking about a treaty. That's the most fundamental document in the United  
21 States. It's the basis of our existence. We ought to be pretty equal with energy companies  
22 with their concerns. You know, that's not a trust responsibility. A trust responsibility is

1 saying I'm watching over your people. Energy comes over and tells you that they want this  
2 and they want that, it's your duty to go towards the energy companies. You back off.

3 If you want something done, you go through the proper channels to do it, but our  
4 government is with the government straight across. That's where it should be. I don't really  
5 – I don't like really being put on my knees in front of these bigger energy companies and  
6 begging. You know, don't do anything to us, you know. [Indiscernible] when those  
7 legislators – those Congressional people came in. They already have it in their minds to do it.  
8 That's what they're going to do.

9 And, you know, like I said before, I'm not going to back down. It's just too dear to  
10 me, to a lot of people. But we're being made to kowtow to energy companies because  
11 Congress wants this, Congress wants that. So I think the history is a tragedy to me basted on  
12 treaties. We have all treaties, every one of the tribes in documents. Let these Congressional  
13 people see it. Let them see all the history that's in these treaties. That's what we need to do.  
14 That's what you need to do.

15 When you say government-to-government consultation, the government is here, the  
16 government to the energy constitution. That should be government-to-government. Right  
17 now we're doing government to energy companies, and that's not the way government should  
18 be functioning.

19 Thank you.

20 BOB MIDDLETON: Thank you. I hope everybody realizes that we are openly  
21 talking with all parties that are interested in this issue. And Congress, in fact, in the law  
22 requires that the two departments consult with the industry about consumer groups, as well as  
23 the tribes. So we're trying to do the best we can to talk with everybody, gather all the

1 comments from anybody who has anything to say on the issue, and that will all be part of the  
2 record.

3 Senator?

4 BRUCE CAMPBELL: My name is Bruce Campbell. I recognize that you have to  
5 gather information and comments from everybody before we start running scared. To the  
6 gentleman that just spoke, the people that showed up yesterday were not from Congress.  
7 They were state legislators from right down here a few blocks at the state capitol. They have  
8 no voice in national affairs, and clearly a state legislature can pass a resolution of support or  
9 opposition to anything and send it to Congress. But those four over here that were here, as  
10 near as I can tell, were pretty much coaxed to come over here by a vested interest that's here.  
11 They didn't come over on their own volition.

12 In fact, Dave Ivo, who is with me, he questioned a couple of them, and it was very  
13 clear that had they not been told ahead of time or asked ahead of time to come over here by  
14 one of the vested interests, they wouldn't have known a darn thing about it. At least three of  
15 the four were pretty much beginning legislators. I don't think they know one damn thing,  
16 frankly, about Indian policy or how things work; and the responsibility of making any policy  
17 does not lie at the state level. I just wanted to pass that on before we start – Indian people  
18 start getting worried that some elected officials are over here. They were absolutely talking  
19 out of turn and didn't know what they were talking about.

20 Thank you.

21 BOB MIDDLETON: Thank you.

1 CAROL HARVEY: I'm Carol Harvey, again. And I appreciate what Senator  
2 Campbell said, and I also appreciate that people have described what occurred yesterday by  
3 those state representatives as equivalent to a drive-by shooting.

4 I'm the executive director of the Native American Holocaust Museum, and I see many  
5 of the issues that are occurring as just part of the continuing holocaust that Native Americans  
6 experience. I'm also the past chairperson of the Center for the Healing of Racism in Houston,  
7 Texas, which I joined in 1991 because of my concern about the institutional racism within the  
8 energy industry. As I told you yesterday, I advanced from attorney to counsel to senior  
9 counsel at Conoco while I was there, and I never met another Native American professional.  
10 In 1991, that became intolerable to me, and I joined the Center for the Healing of Racism, and  
11 I have made presentations nationally and internationally on the subject of institutional racism.

12 And while industry is going to be contacted extensively on this matter, I can assure  
13 you that their viewpoint will be from the angled viewpoint because they do not have minority  
14 people in executive management or executive authority positions. And so they are not going  
15 to be effectively able to respond to the Native American concerns because they really don't  
16 understand them, and they really haven't made an effort to understand how the institutional  
17 racism within the energy industry is affecting other people.

18 But institutional racism is a systematic deprivation of rights to other people, and it's  
19 something that they are not really concerned with. There's a law about it, and they have  
20 maybe a few people, but that's it. And I'm the best testimony to that because I worked in the  
21 industry for 23 years, and I've never met another Native American professional.

22 Thank you.

1           DARRELL WALTERS: I'm Darrell Walters, senior civil engineer with  
2 [indiscernible] in Palm Springs. I have a question with regard to the Morongo meeting.  
3 Would it be possible to combine a meeting on both the section of 1813 and, given the number  
4 of corridors that are going through [indiscernible] tradition use areas, that we could also  
5 include a discussion on 368?

6           BOB MIDDLETON: I'm going to defer to Dave, who is working with the  
7 Department of Energy on that. It's something we'll probably have to go back and talk with  
8 folks about.

9           DAVID MEYER: We could look into the possibility of having someone from –  
10 who's working on 368 at the meeting to speak on the subject. Right now I don't see any  
11 reason why we shouldn't be able to do that.

12          ROLLIE: The other thing that I think would be extremely helpful here, especially  
13 after listening the last three days, I think that the problem statement is very poorly presented  
14 on the study request for the 1813 study request. And given the broad scope of impact that  
15 those four questions actually address – and I think, also looking at what the focus is for the  
16 underlying emphasis for doing this study – I think it's reasonable to request that the  
17 department give some kind of a problem statement and focus statement that we can work on  
18 to respond to. If that would be possible to get prior to the May 15<sup>th</sup> submittal deadline, that  
19 would really radically help the tribal side formulate an accurate response.

20          BOB MIDDLETON: Thank you, Rollie. It's something we'll have to discuss with  
21 our team. David, do we know –

22          MALE SPEAKER: I'd just like to echo the comment that was just made about the  
23 potential relationship with the 368 study with what you guys are undertaking. Certainly, as

1 we're going through right now and as you are in the data collection process, we can't help but  
2 anticipate to some extent – and may urge you as well with regard to the substantive content of  
3 the recommendations that may flow from the study. But one of the things that has at least just  
4 recently jumped out I think of the conversation piece has been the potential relationship,  
5 particularly in this inner space pipeline or transmission line context. The relationship of the  
6 tribe voluntarily consenting to have its language included in the federal designated corridor  
7 and the potential effects of that designation, both upon the certainty of renewals, of pipeline  
8 rights-of-way or electric transmission rights-of-way in those designated corridors that have  
9 been voluntarily so designated by a tribe, and also the potential opportunity that may exist for  
10 not just compensation flowing from the industry occupants of those rights-of-way, but also  
11 the potential for a shared relationship in terms of economic development that might be offered  
12 by the United States to tribes in exchange for that concentric designation of the federal  
13 corridor. There's been very, very little I think in anticipate of what recommendations might  
14 be made in the study to bring those two things together.

15 But it certainly strikes us as being something that's worthy of additional dialogue and  
16 might actually get past this point where you've got frustrated industry partners who are  
17 suggesting that there be essentially a retroactive forced grant or renewal of tribal lands in  
18 violation of existing law versus the uncertainty and the unreliability that they've raised the  
19 specter of that with regard to...

20 [change of tape]

21 MALE SPEAKER: – essentially of trying to melt those two things together a little bit.

22 BOB MIDDLETON: Okay. We'll continue that discussion. Of course, volunteer Bill  
23 Lamb is heading up that effort, and nobody from BLA is here, so...

1 Others, please?

2 ROB NORRIS: Good morning. I'm Rob Norris with the Navajo Nation. There are  
3 two issues that have led to the study. One was the concern that Indian tribes are going to  
4 disrupt the energy supplies to consumers, and that we have already addressed. Everybody is  
5 in agreement that that's never been the intent, and it's never going to happen.

6 The second part is the cost, and consumers have been led to believe that because of  
7 right-of-way costs on Indian lands, their electricity rate or gas bill is going to increase very  
8 dramatically. And that's not the case. And the study must extensively address those two  
9 issues, that the energy supplies to consumers are not going to be disrupted and the cost is  
10 going to be minimal.

11 I saw Dr. [Indiscernible] yesterday. The average rate on [indiscernible] on electricity  
12 to California customers are just 30% somewhere. And our preliminary evaluation shows that  
13 the gas bill is just a nickel or even less, you know. So Congress must need to understand that  
14 Indian tribes are not certain to disrupt energy supplies to consumers. And the cost to  
15 consumers are not going to [indiscernible] some people would like them to believe, but it's  
16 just going to be a minimum that they're not going to pull any effect of that.

17 Thank you.

18 BOB MIDDLETON: Thank you. And, again, also, I mean, you raised a number of  
19 points, a number of issues. And any information you can provide us that would provide us  
20 some solid calculations or facts, we'd like to have that as part of our analyses.

21 ARVIN TRAHEIL: Thank you. My name is Arvin Traheil. I'm the executive  
22 director for the Division of Natural Resources for the Navajo Nation. I'm still trying to figure  
23 out what town I'm in.

1           But I had the opportunity to be in the meetings the last couple of days, but I've been  
2 getting reports from my staff, as well as individuals working with the nation. But, again, as  
3 we look at the study, maybe one aspect, too, to take a look at is the ability of tribes or how are  
4 we becoming more successful in what we're doing. As the lady noted here earlier, her  
5 experience with corporate life, and again working within the corporate structure – I too  
6 worked in there for most of my career, coming over to the tribe recently back in '99. Again,  
7 our ability to look at things from an economic standpoint, as well as looking at the number of  
8 challenges that present itself to our tribes – and I know that are relevant to many of the tribal  
9 folks here, is something that we try to balance as we go through this process.

10           I've been through tough negotiations. I've been up in the Powder River Basin. We  
11 didn't have a chance to run to Congress to say, you know, we're not getting enough money  
12 for our coal. It was people coming in and saying coal is going to be at this cost, figure out  
13 how you're going to survive. That's not to say that the energy companies or we're forcing  
14 people to – in a position to where they have to survive. But we are getting better at what  
15 we're doing and how we do it and our outlook.

16           And the investment that tribes have made in their own people, getting their people out  
17 there, getting them educated, I see a number of lawyers here who are Native American. You  
18 know, as we get better at this and as we begin to play the game just the way the Anglos play  
19 the game, then we start seeing new ways of trying to attack us.

20           So, again, you know, it's a matter of looking at the four questions or the questions that  
21 are being presented. But I think as people are noting, there are also other outside issues in  
22 terms of how we get better and how we're doing it. Are negotiations tough? All our  
23 negotiations are tough, but that's our job. And so, again, we are showing some success, and

1 we're beginning to develop our abilities to justify how we look at life and how we negotiate,  
2 not only with energy companies but a number of different companies.

3 And so, again, where do we strike that balance and what do we call market value and  
4 market viability? You know, oil is going up to \$71 per barrel right now. There are new  
5 opportunities that are arising. Does that translate to the transportation piece in terms of  
6 natural gas? I don't – you know, I do know. But, again, that's part of our strategy, and that's  
7 how we continue to look at these opportunities.

8 So, again, you know, it's not singling anybody out, but it's coming back and saying  
9 that we, too, are becoming very good at what we do. So don't put a black checkmark beside  
10 our tribe just because we're doing a good job. You know, we should be rewarded or we  
11 should continue to do our business as we see fit and then work these things out with the  
12 companies, whether they be energy, whether they – you know, there are a number of  
13 companies, like I said, that we involve negotiations with. And so, again, I think that's one  
14 aspect. As we begin to look at the report that may need to be brought out in some form or  
15 fashion as we continue.

16 Thank you.

17 BOB MIDDLETON: Thank you.

18 FEMALE SPEAKER: [Inaudible question.]

19 BOB MIDDLETON: I'm sorry. Can you use the mic so we can capture this?

20 FEMALE SPEAKER: I don't know that many people are aware, but their coalition  
21 has been reported as a lobbyist group for El Paso, and right now their coalition speaker is  
22 going to speak, and she has been near – the El Paso general counsel has been conferring with  
23 her. And so, again, it's very important for us to understand that the message that the coalition

1 is giving is being provided in large part by El Paso. And maybe the El Paso general counsel  
2 would desire to address the group such that we could understand their position rather than it  
3 being funneled through another person.

4 Thank you.

5 FEMALE SPEAKER: I'd like to respond to that. Regardless of discussions between  
6 the El Paso general counsel and myself, what I'm going to talk about here is very standard  
7 economic analysis, and the economic doesn't go any other way. So what I want to mention is,  
8 in responding to Ron Neiss's comment and the comments that were made earlier by a number  
9 of other folks, we've been talking about the minimal rate impact of price increases in right-of-  
10 way. And I know that Mr. Chorus yesterday showed a visual in which we demonstrated that  
11 the transportation rates are a small fraction of overall delivered prices.

12 Now, I think that that analysis needs to be looked at carefully. But regardless of what  
13 the outcome of that analysis is, it's also important to think about all of the indirect costs. And  
14 I know it's very important for this study to take into account all the indirect costs that result  
15 from monopoly pricing of land, rights-of-way lands, on tribal trust lands. And the factors  
16 which need to be taken into account is the spending – if pipelines are paying competitive  
17 prices, fair market value for the rights-of-way rather than monopoly prices, that we would  
18 potentially be seeing many more pipelines, a much more efficient number of pipelines from  
19 an economic perspective, a much more efficient number of transmission lines from an  
20 economic perspective, many more options for consumers.

21 And I think that it's very important to realize that the impact of monopoly pricing is  
22 what the – here is what the impact of monopoly pricing is in every instance. Consumers do  
23 not like to pay monopoly prices because they can afford less of the good that's desired and

1 less of that good is available to them because the good is artificially restricted. So this is just  
2 a standard application of economics. It's econ 101 monopoly pricing. It doesn't require  
3 concentration with anybody in order for that point to be made.

4 So thank you very much.

5 BACKGROUND SPEAKER: [Inaudible.]

6 BOB MIDDLETON: Carol, can you just – thank you.

7 CAROL HARVEY: Since you asked me to respond, I have an undergraduate degree  
8 from the University of Denver in political science and economics, a double major. I also have  
9 a double minor in art history and mathematics. I have an MBA from the University of Denver  
10 with almost straight As. I have my law degree from the University of Denver. I have my  
11 Bachelor of Arts degree from the University of Houston in Spanish with honors. I've  
12 continually taken classes in geology and environmental science and other issues from the  
13 University of Houston so I could become more knowledgeable in this area.

14 And I don't subscribe to your view. I want to know what is the across-the-fence value  
15 of the Gettysburg battlefield. I want to know what the across-the-fence value is of the Statue  
16 of Liberty. I want to know what the across-the-value of the Arlington Cemetery is. You  
17 know, we are not looking at those issues at all. We are thinking that tribal lands are just like  
18 any other land anywhere. And I put a video together that I showed yesterday that I hope to  
19 convey the sacredness of our land, the deities that live on our land, the gifts of deities to all  
20 people. [Indiscernible], which is the word for Navajo, means "five-fingered ones." It doesn't  
21 mean five-fingered white ones; it doesn't mean five-fingered Spanish or any other. And I  
22 truly believe that we are one. In that video, I talked about the oneness of humanity and how,  
23 through racism and through other political practices, we've been separated from each other

1 and we are fighting and competing against each other for what we believe are not abundant  
2 resources.

3 And I can tell you that when Changing Woman created the [indiscernible] people from  
4 the skin from her breasts and her back and mixed it with corn poly, we did not get the sense  
5 that this was a land of scarcity. We were told this is a land that has been created for us, of  
6 abundance and of harmony. Thank you.

7 ANNA WARD: My name is Anna Ward. I'm a member of the Yakama Tribe. I  
8 don't speak on behalf of the Yakama nation. I'm just speaking because I'm here and I'm  
9 listening to what I hear here.

10 This lady over here talks about economics, but, you know, over the hundreds of years  
11 that we've been raped of our lands and the white men have come in and pillaged and brought  
12 disease, these people who – these monopolies have rights-of-ways, and they haven't paid fair  
13 market value from the beginning, nor have they taken into consideration in their negotiations  
14 their economic impact to the people and the lands that they're encroaching upon now.

15 Tribes have the right to regulate within their boundaries who comes on their land and  
16 what's done on their land, and one of the things that I'd like to see you report just as a person,  
17 member of a tribe, how much of these companies made at the cost of the different tribes and  
18 their land – how many billions of dollars have they stolen from our mouths to give to their  
19 customers?

20 The consumer might pay a bigger price, but I've been doing some research on my  
21 own, and there's excess billions of dollars out there in companies. And I also read an article  
22 that was published in February where excess dollars generated in energy are going to leave  
23 some of that to the DOE to fund Bush's war. If they have excess money out there, then, you

1 know, they deserve to pay for the privilege of putting their lines and their pipes through our  
2 reservation. And so I really would like you to address in your report not only the small cost  
3 that they pay, but the percentage of income that they need off of that.

4 BOB MIDDLETON: Thank you for your comment.

5 JIM NOTEBOOM: I'm Jim Noteboom, attorney for the [Indiscernible] Tribe, and I'd  
6 like to respond to this point about monopoly pricing. The federal government sets prices for  
7 the use of its lands, and they set the price. They have a monopoly. So does that hurt  
8 consumers?

9 State government and county government set prices for the use of their resources. Is  
10 that a monopoly pricing? I suppose so. Does that harm consumers? I mean, that's the wrong  
11 question. Tribes are governments. They have the right to set the prices for their use of their  
12 resources, just like any other government does. They are not private industry where the  
13 argument about monopoly pricing may have some validity. In the context of Indian tribes, it  
14 simply is irrelevant.

15 DON CLEARY: Hi. I'm Don Cleary, and I represent Pechanga. I'd just like to draw  
16 a brief analogy with something in my experience. About eight years ago or so, the utility  
17 industry was hit with a concept called deregulation. And I'm not sure about the rest of the  
18 country, but certainly in California, when they were hit with that with the rules being changed  
19 all of a sudden out from under them, what they did was take a look and say, oh, we're going  
20 to be impacted here.

21 And they certainly immediately requested that they be totally compensated for any  
22 investments that they had made at that point in time because their monopoly was being  
23 threatened. And I think what really concerns me in this circumstance is we have a situation

1 where, as the previous speaker stated, we have governmental agencies, tribes, who are  
2 basically being required now to unilaterally change their expectations as to the way things are  
3 going to be operating. And we have not had a chance to truly evaluate and find out how are  
4 our economics going to be impacted here? What is going to happen?

5 And I don't think you can take the standard condemnation type of measures that we  
6 were talking about yesterday and equate that immediately into the kind of impact that the  
7 tribes will be suffered. So I'd like to make sure of it, and I would urge the other tribes, we'll  
8 certainly be looking at this, looking at the other tribes of impact – economic impact that I  
9 think would be perpetually devastating that would be visited upon the tribes by this kind of a  
10 fundamental change in the system.

11 BOB MIDDLETON: Thank you. And, again, if at all possible, any information that  
12 can be gotten in to us by May 15<sup>th</sup>, we'd appreciate that.

13 Carol?

14 CAROL HARVEY: Carol Harvey. I just wanted to add that, while I was at the  
15 University of Denver, I was initiated as a member of [Indiscernible] Delta Exalon, which is an  
16 honorary economic society, based on my performance in the field of economics. I was also  
17 initiated as a member of the Political Science Honorary Organization, and I graduated Phi  
18 Beta Kappa from the University of Denver.

19 Thank you.

20 BOB MIDDLETON: Questions or comments, please?

21 RONALD NEISS: Ronald Neiss of Rosebud Sioux Tribe. I'm looking through my  
22 own documents here. I don't see them, but I'll speak from memory here. There's a power  
23 company from even another state where our boundaries are enjoined by South Dakota and

1 Nebraska sovereign nation. And when people ask me what state I'm from, I say Rosebud  
2 Sioux Tribe. Our nearest neighbors are South Dakota and Nebraska. But there's a power  
3 company that came in from Nebraska, and they bought the rights-of-way and easements from  
4 the investing company from the cooperative for \$14,000. Permanent right-of-way and  
5 easement permanently.

6 And now we're building the – we're working with the Department Energy, as a matter  
7 of fact. We thank the Department of Energy for working with us in the past on a renewable  
8 energy project for wind turbines, wind turbine development. But this one company we want  
9 to wield the transmission from one point to another, this point being 50 miles, they want  
10 \$50,000 a year. They've got the rights-of-way, easement, 14 permanent rights-of-way  
11 easements. So the tenure is perpetually, without duration – excuse me. The tenure is without  
12 duration. So they're charging \$50,000.

13 We don't have a case study, Mr. Middleton. I have brought up the point for many  
14 years and years and years to Rosebud that we need to do a comprehensive rights-of-way and  
15 study the easement. Had we done this, we would have a case study. But our copies of those  
16 rights-of-ways and easements, we were hoping to come here and speak with brother and sister  
17 tribes, maybe some of the consultants about, you know, perfected rights-of-way, unperfected  
18 and perfected. The rights-of-way and easements, they haven't met all the conditions that are  
19 within the provisions of that agreement.

20 Permanent rights-of-way and easements, you know, they want \$50,000 to wield this  
21 power. I see that as ridiculous because these were never – they're unperfected. The tribe did  
22 not sign off on these, the Bureau of Indian Affairs. The covering offers and resolutions say  
23 that any documents will be signed by the secretary and the president of the tribe. But they

1 weren't. It was just by the Bureau of Indian Affairs. Again, that adopted its responsibility to  
2 our tribes.

3         So I'm looking to talk to others that are here in confidence. I won't say the name of  
4 the companies, you know. But, you know, this is just one thing, Mr. Middleton. Others we  
5 have passed for years, you know, without compensation. As the gentleman said to bow down,  
6 the lady said well, we're bringing you electricity; you can watch TV; you can turn on a light  
7 bulb. So bow down before us. Oh, great, you brought us something. This cooperative I  
8 talked about, we have 82% Native Americans, Rose and Sioux; yet there has never in the  
9 history of that organization – they call themselves cooperative; I say an organization – never  
10 been a Native American on their board.

11         You know, so that's just one more issue. And how can we sue part of this  
12 cooperative, you know, when they come to us? They say that you're in the cooperative;  
13 you're a member of the cooperative, so you're getting electricity. But, you know, we still  
14 disenfranchise. We've been taken advantage of since forever. We finally get the wherewithal  
15 to say, well, we'll not stand up anymore and the companies can say how dare you, how dare  
16 you speak out. You know, the gravy train ride is over. We just want just compensation. In  
17 Rosebud, we've got no compensation whatsoever. Unperfected rights-of-way also are to  
18 individuals, and I've been saying for years that elders that came up to me and told me that  
19 these companies came over to their land, they never received a dime. The Bureau of Indian  
20 Affairs again signed away their rights-of-way, and they never received no compensation.

21         And many of them have passed on. And we in Rosebud, we're just not getting to the  
22 point where we can address these issues. It's like I said, I might not be the one to do this  
23 study, but somebody needs to do a study. Some tribes have a rights-of-way and easement

1 specialist. I want to talk to them. Rosebud [indiscernible] because we've neglected ourselves  
2 as leadership. We've been neglecting to do this rights-of-way and study of easements. Had  
3 we done that, you would see a – Bob, you would see a good case study of our tribe has been  
4 screwed since forever, since the treaty of 1868, which I said is so important. We've been  
5 damaged many, many times over. And we don't have a case study, but we'll try to get you  
6 everything we can, fast tracking this, you know. Tony will be doing that. Again, I'm  
7 standing up being mouthy, knowing Tony is going to do all the work, so I can do that.

8 Thank you.

9 BOB MIDDLETON: Thank you.

10 Questions or comments? Over here.

11 FEMALE SPEAKER: [Indiscernible.] I greet you good morning in my language.

12 Bob, I want to know, when you guys do this report, you know, all the statements and the  
13 testimonies that our tribal people have been talking about, all the injustice that has been done  
14 to our tribal people, are you going to write some of these things in your report to Congress?

15 BOB MIDDLETON: Well, we're still in the stages of trying to formulate how we're  
16 going to pull the report together. But everything that's been submitted to us will be part of the  
17 public record and available. And I anticipate that Congress is going to want to see some of  
18 the information that we've collected.

19 FEMALE SPEAKER: And I was wondering, the people that are wanting this, the El  
20 Paso people and also the government, how come they're not here to, you know, come and talk  
21 to us face-to-face of what they want? Why is it that they're not here?

22 BOB MIDDLETON: I believe that's a question you probably need to ask of El Paso.

1 FEMALE SPEAKER: And the Congress people that are wanting this change on  
2 rights-of-way from Indian tribes?

3 BOB MIDDLETON: Well, I have to say that actually there was a member, a staff  
4 member of the Senate Energy Committee here for most of the meeting, but she couldn't be  
5 here today because of other commitments.

6 FEMALE SPEAKER: Oh, wow. I wasn't aware of that. I wasn't made aware of that.  
7 But anyways, what I would like to say is that, you know, time and time again my Indian  
8 people have stood up and spoke about the injustices that the government and mainstream  
9 society has done to our Indian people. It's the fact that – you know, what I was told by my  
10 grandfather that, you know, we're Indian people, and that we owned this great country before  
11 and that our tribes were civilized in their own ways and that they were not, you know, in the  
12 eyes of the non-Indian people, they're saying that we're not civilized, that we're heathens and  
13 whatever. But in our own Indian societies, we were highly developed.

14 And what I'm trying to say here is it seems like what my grandpa told me is that – you  
15 know, he said you're an Indian person, and he said all Indian people are wards of the  
16 government. And he said that you'll never be free of the government; the government just  
17 gives us land to live on. But eventually they're going to take it back. And I believe we're  
18 coming to that day where our rights are being totally ignored by groups such as this El Paso  
19 Coalition lobbyist that spoke up earlier. And, you know, today our Indian people are  
20 becoming highly educated. And today our Indian people, we can thing for ourselves. Today  
21 we no longer want BIA to be telling us, you know, you're going to do this. Today, as Indian  
22 leaders, I know for myself that I can speak up for my people, that I can stand firm and strong.  
23 And the number one thing that I stand strong on is our Indian sovereignty.

1           Our Indian sovereignty is a right that we have, and I strongly feel that, you know, the  
2 government is always making decisions for us, and I feel, like I mentioned yesterday, I feel  
3 really frustrated because I know that Congress has already made up their mind of what they're  
4 going to do about this rights-of-way. And just as a polite gesture, they're asking us Indian  
5 people, you know, to make comments. And for the last three days that I've been here, I've  
6 been – you know, we've been talking about all the injustices that have been to the Indian  
7 people for centuries. And it seems like we continue to do this, and we're doing it on deaf ears  
8 because I feel that no matter what the Indian people try to do – and today our Indian people  
9 are educated, and we stand up for ourselves. And we know that they can no longer hoodwink  
10 us.

11           And that's why this El Paso company ran to Congress and wants this rights-of-way  
12 changed. And as Indian people, our land is something very sacred to us. I have to reiterate  
13 this, that we revere the earth as our mother earth. And we're part of mother earth. We come  
14 from her. And the reason that we're alive is because of mother earth, because she feeds us.  
15 She carries us on her back. And as Indian people, our forefathers never really had any  
16 knowledge, or they never considered owning land because our forefathers felt that we were a  
17 part of this mother earth. So they had no idea when the white Europeans came in. You know,  
18 they were taking the Indian people, their land away from them; but the Indian people thought  
19 that they were just sharing it with them.

20           But low and behold, now today our people are sitting on reservations that the  
21 government gave us, and the government thought that they were placing the Indian people on  
22 land that they couldn't survive. But low and behold, the lands that we are sitting on are  
23 goldmines. And now the government wants to take that away from us. And so I feel, as a

1 tribal leader, that in order to resolve this issue and to make Congress aware, I feel that we  
2 need to have a panel of tribal leaders be involved in this. And I feel that tribal leaders need to  
3 be the ones to say what they want.

4 And I'm sorry, but, you know, today in America, everybody's out for the dollar. And  
5 today all we want is justice. All we want is a fair price for the land that they're using, and for  
6 decades they haven't been just to us. And that's all we want, is justice. Thank you.

7 FEMALE SPEAKER: Bob, I think we've got a couple more people, and then I think  
8 we're at time.

9 CRAIG RICHARDSON: I'm Craig Richardson. I'm the general counsel of El Paso  
10 Natural Gas. I wanted to thank the young lady there for her very moving remark and  
11 acknowledge how important it is for us to listen to those sorts of histories and stories.

12 I've been here for all three days. El Paso is represented by me and others here. I  
13 reported directly to the president of the company, and there's nothing I would have rather  
14 done than been here. I learned a lot from you. I think I found a sense of humanity in a  
15 difficult question, which is always I think redeeming.

16 El Paso has tremendous respect for all the tribes represented here, and particularly the  
17 tribes that we see as stakeholders in our company and whose destiny we see as tied to our  
18 destiny. Jim Clearly believes this; he's our president. I believe this. We will not succeed if  
19 the tribes who are stakeholders in our system do not succeed. It's that simple. We hope that  
20 tribes will see themselves as stakeholders in El Paso.

21 We've learned a lot these three days, and we'll continue to learn. I'm encouraged.  
22 I've heard about the possibilities, continuing dialogue, continuing communication, exploring  
23 the possibility of middle ground, which I think is where we need to be. There are no easy

1 answers here. To use a phrase that's been used, monopoly, there is no monopoly on the truth.  
2 There is no monopoly on the facts. Both sides have something to contribute to a meaningful  
3 convergence of news.

4 It is not just El Paso that has this concern. I hope the tribes have seen in the last three  
5 days that there are other companies that have these concerns. We have the two largest  
6 industry organizations in North America in energy, the Edison Electric Institute and INGA,  
7 who have expressed, on behalf of their members, similar concerns. Are we in the spotlight  
8 right now with our friends in the Navajo Nation? Of course we are. It happens to be the  
9 controversy of 2006. But there will be more controversies if this looming problem is not dealt  
10 with in a responsible way that's respectful of the tribes and respectful of the stories that we've  
11 heard today that give credit to the notion of consent, that realize that there is a profound  
12 history of distrust.

13 My good friend, the former president of the Navajo Nation, now a state senator in  
14 Arizona, Albert Hale, told me once don't forget that there's a profound history of distrust that  
15 was in the room before you ever walked in. And I would be remiss in not acknowledging that  
16 profound history of distrust here. It will take time. It will take commitment. It will take  
17 courage. It will take devotion to one another to begin to build that sense of trust. It's not  
18 done over night, and we realize that.

19 So I want to thank you again for the opportunity to listen to you, to learn from you, to  
20 spend some time with you. We do too little of that in corporate America today. I don't know  
21 about tribes slowing down, going for something for three days, and listening is an  
22 underestimated and underrated way to spend one's time in the hurly-burly world of 21<sup>st</sup>  
23 century America. I feel like I've gained an enormous amount of information, of

1 understanding, and of a sense of humanity from all of you. And thank you for spending your  
2 valuable time and devoting your valuable resources and devoting those important stories,  
3 ma'am, to this conversation.

4 Thank you.

5 BOB MIDDLETON: Thank you.

6 MALE SPEAKER: I'm very interested in the comments from the gentleman from the  
7 El Paso corporation and my [indiscernible] sister, too. Let me tell you, I think I can speak for  
8 any person in this room, and that is if there wasn't distrust before, there darn sure is now  
9 throughout Indian country. It's a ripple effect.

10 The ripple effect of that one disagreement between the Navajo tribe and El Paso has  
11 created a tremendous unsettling throughout Indian country, and it's been growing. They're  
12 really worried nationwide. They're worried. I've always been a friend, as you know if you  
13 track my voting record to energy companies throughout the country, and part of that, of  
14 course, was driven because I understand that we're getting more and more dependent on  
15 federal – excuse me, on foreign countries for our energy, and there's a national security  
16 component to be more dependent on foreign countries. So I have been and will continue to be  
17 a supporter of energy companies. But that is not to say I sell out my heritage for an energy  
18 company because I won't do it. You can't do it.

19 I think that there's a lot of misconception in non-Indian country about what  
20 sovereignty means. These Indian people talk about it all the time, but I know that some  
21 people think that sovereignty was granted by the federal government. It was not granted by  
22 the federal government. Indian tribes were sovereign long before there was any federal  
23 government. They were sovereign long before this was America. They've always been

1 sovereign. If you look at our constitution, it recognizes four. The US Constitution recognizes  
2 themselves as sovereign; it recognizes states as sovereignties within sovereignties. It  
3 recognizes foreign countries like England, France, Japan, and so on as sovereignties. And the  
4 fourth one the constitution recognizes is tribes.

5         You will find nowhere in the constitution that I know of where it recognizes  
6 municipalities, counties, or corporations as sovereign. And so I think the lady, my sister from  
7 [indiscernible] tribe understand this. Basically, as I understand it, what she's saying and other  
8 people are saying here is, wait a minute, there's something wrong with the dialogue because  
9 what we basically have is a management person from a company negotiating with a  
10 sovereignty. I don't know of any other place in the world where that's done.

11         Sovereignties negotiate with sovereignties. That's the way I understand it. And that's  
12 always been a very touchy thing. But I did want you to know that we've talked, Dave Lester  
13 and I and a few others have talked with some folks in El Paso and from the representatives of  
14 the Navajo and have volunteered to try to act [indiscernible] to see if we couldn't get this  
15 thing settled down before it just spins out of control. And it draws all over something that  
16 none of us want, none of us that I know want. Energy companies don't want protracted  
17 litigation and all kinds of bad feelings and increased anger in Indian country. [Indiscernible]  
18 they need the jobs. They need the income to provide for their children, their people. So it  
19 needs all of us, industry and Indian tribes, to find some common ground and get this single  
20 disagreement behind us and move forward before this goes down and let's distrust all of the  
21 energy companies that have worked well with tribes. And I know they all haven't worked  
22 well. I know there are different degrees of how they have been able to work with tribes.

1           They're all going to get pulled in this thing. I don't think they want to get pulled into  
2 it. And if it gets much worse, very frankly, I can guarantee even the companies that have had  
3 good relations with tribes, like [indiscernible] and others ones, when they try and go to a new  
4 tribe they haven't worked with and they ask them to negotiate, there's going to be a lot of  
5 suspicion. It just happens to be human nature, not just Indian. That's human nature. When  
6 you get burned – you know, I used to be a policeman years ago, a Sheriff's deputy. And it's  
7 unfortunate; you get burned by one deputy or one cop and guess what? All those cops are  
8 bad, right? It's human nature to sort of put people in the same bag when you have a bad  
9 experience with one. We don't need that in industry, and we don't need it in Indian country.

10           So I would hope that we understand a little bit more about sovereignty so that we  
11 move along and understand that we have got to find some solution to this. And hopefully –  
12 1813 is already a law and obviously DOE, DOI has got to proceed with it because they're  
13 directed by Congress to do it. Hopefully the darn thing will collect dust forever and not just  
14 be put on the shelf for a year or two and then brought down by somebody that really wants a  
15 legislative fix rather than just a study, and obviously that's already what we need to worry  
16 about. What's going to happen two years from now or three years from now when somebody  
17 back there, some new young congressman perhaps that does not have an Indian constituent,  
18 doesn't know a thing about them, and therefore it's in a solid district you might say, and he  
19 gets talked into initiating legislation based on this study. That's one of the real worries. The  
20 first shoe that drops the study, we worry about when the second shoe is going to drop, and  
21 that's why it's so important that we've got to get this thing settled down.

22           Thank you.

23           BOB MIDDLETON: Thank you.

1 FEMALE SPEAKER: I think you've got one more.

2 RONALD NEISS: Ronald Neiss again of the Rosebud Sioux Tribe. Sovereignty  
3 [indiscernible] Rosebud Sioux Tribe, we have a word, you know. We have our own language  
4 [indiscernible] in our language means to stand alone. [Indiscernible.] To me, that's  
5 sovereignty. I've written a paper called "The Myths of Tribal Sovereignty," and a question  
6 mark. We've given so much sovereignty, we've [indiscernible] too much to state and federal  
7 entities, to many of them. And it's what the [indiscernible] is. And my paper illustrates that,  
8 you know, that we – they never civilize sovereignty, never civilize in our jurisdiction to  
9 protect what little we have left, what little we have that's not been stolen from us – and he  
10 was right; sovereignty wasn't given to us. There's nothing we have left but ourselves. We're  
11 giving it away also, especially with the advent of the casinos. You know, we've – so often we  
12 don't want to upset the – we don't want to fear the feds.

13 You know, there were times when I was [indiscernible] first one to tribal council – I'm  
14 not now, but years ago. He stood up to the feds, to the state. The state said they were going to  
15 have – they were sending the police to the – there was some state decision that was eventually  
16 overturned by the Eighth Circuit Court and was refused to be heard by Supreme Court. They  
17 were going to, you know, assert jurisdiction. But they stood up and said, no, you will not  
18 send them. We will stand up. We will protect our homeland.

19 And so when I hear someone talking about sovereignty, I say too often many of us get  
20 up but we never mention treaties. We never mention the beauty of the land in our children,  
21 the sacredness. This lady over here, when she had mentioned sovereignty and jurisdiction,  
22 she mentioned the beauty of the land. I appreciate that. We did not [indiscernible] for an  
23 invader. They took from us what little we have left, and we're always at these meetings

1 fighting for, you know, rights of what little we have left, you know, not given to us but what  
2 we have left that we thought that we held onto. And we hold onto the beauty of our culture.  
3 Culture is not stagnant, does not stand still. It evolves.

4 I come from a family of medicine of people, of singers, of dancers. That will always  
5 remain the same. Our songs, we might adapt through song, like Mickey Mouse and Minnie  
6 Mouse, like that. But we have those medicine songs, those sun dance songs. We have those  
7 ceremony songs that will never change. So while we adapt, we have to interface with  
8 companies like Edison. There are many companies throughout the United States, and  
9 someone said that this is – the next time we won't be heard, and that's true. I've been at this  
10 game a long time.

11 In fact, I'll go home, and companies – I'm not saying you, but companies, even federal  
12 officials, will go beyond their closed doors and laugh at us. They'll laugh at us, and that's  
13 what will happen. But we still fight on, and we have to retain – we have to go back to our  
14 spirituality, to our ceremony, to our sacred places. We pray.

15 You know, like the judge of [indiscernible] congressional people, they are not – there  
16 is no one above the creation, no one above the creator. No matter how we worship him – him;  
17 it could be a her. But we pray. We go home and we pray to this. That's our answer. I have  
18 some people like Tony and them, it will give them inspiration. You know, just to fight for  
19 what little we have left.

20 The thing I would also say, too, we are so alike in our spirituality. [Indiscernible]  
21 mother earth, how we protect here in ceremonies. I pray every single time there's  
22 organizations and different environmental networks. And those [indiscernible]. The move  
23 "Day After Tomorrow," it's going to happen. That's how we'll – but to me, the growth has

1 yet to happen. Some day at some point [indiscernible] will finally protect herself. She'll rise  
2 up. She'll roll over. She'll roll up. And that's how it's protected.

3           Until then, I think what has been stolen from us will eventually be returned to us. In  
4 the meantime, it is our – we're called the [indiscernible] so even when we...

5           [change of tape]

6           ...we're not looking to exploit, to overdevelop [indiscernible]. We're looking just to  
7 protect her. And we're not – even though we have the spirituality, we have the sacredness of  
8 our children, the things we hold dear and precious are so different from a lot of other people,  
9 from a lot of what other races have. We have our children. We have the beauty of the land.  
10 We protect her. But yet – and these exercises again were looked at by these companies by  
11 congress.

12           The senator had mentioned some new – some freshman senators who looked at  
13 Indians as all the same. And that's not true. We are the same in those things I mentioned, but  
14 area by area, the way we've developed our infrastructure, our economy, our – they're  
15 different. We're not all the same. Even in the state of South Dakota with the [indiscernible]  
16 casinos I don't see as actually a good thing, even though I'll play a machine every once in a  
17 while. I'd say we've lost our sovereignty to them.

18           But, you know, even in the state of South Dakota, tribes are all different. We're at  
19 different levels of infrastructure. We're different populations. Yet, we're held to the  
20 standards that have been created for one tribe, one smaller tribe, God bless them.

21           So we're in the same situation because even South Dakota, which has a frontier  
22 mentality, which is probably the most racist state in the so-called union; but, you know, we're  
23 held to the standards of one tribe. And that's not – this exercise treats us all the same.

1           And don't go home and just, you know, laugh at us and say it's just another – because  
2 that's probably what will happen. And that's all I've got to say on that. Thank you.

3           BOB MIDDLETON: Thank you.

4           CONNIE MANNING: Connie Manning [indiscernible] and I'm also a citizen. And I  
5 know the United States has its 9-1-1. We have our 9-1-1 going way back to the  
6 [indiscernible] and no longer are we going to take it and beat for payment. It's no longer – all  
7 we want is our fair share of the pie. And our fair share of our pie is only a sliver, and the rest  
8 goes to the other companies, billions and billions of dollars. It's not going to hurt them. And  
9 they're trying to say we're going to hurt the economy. That is not true.

10          And that's all I have to say.

11          BOB MIDDLETON: Thank you for your comment.

12          Well, we're going to do a little bit of wrap-up here. David, would you like to say a  
13 few words?

14          DAVID MEYER: A very simple thank you to all of you who have offered comments  
15 this morning, and a special thank you to those who have been here all three days. I see many  
16 here in the room that I know have been here for the whole time. And this has been very  
17 effective, very helpful for us. We appreciate your participation. Thank you.

18          BOB MIDDLETON: And I would also like to echo David's thank you. I think what  
19 we heard from both Rosebud Sioux as well as the gentleman from El Paso is that this is  
20 something we're in together. It's a small part of the journey, but it's something that all of us  
21 in the room are working on together to try to come to some resolution. So I very much  
22 appreciate everybody's input. I think we had a very effective dialogue and conversation over  
23 three days. I know it was very useful for our team, and it's going to help us greatly.

1           We do have some aggressive timelines. I'll remind everybody again the sooner you  
2 get information in to us, the sooner we have a draft report out for your review. But I think  
3 that the three days that we've spent together have been very beneficial, and we are looking  
4 forward to getting back and talking amongst ourselves, coming up with an approach,  
5 scheduling the meeting for after the draft report comes out. And I want to thank everybody  
6 again.

7           I'll make one mention that we do have five tribes that are interested in going to  
8 government-to-government conversations. Darrell Francois, if you'll raise your hand. Tribes  
9 who signed up, the people who signed up, if somebody could get in touch with Darrell  
10 because we'd like to start scheduling those a little early so we make sure we have – everybody  
11 has enough time to talk with us, I'd appreciate that.

12           And with that, I thank you again and say we will see you at the next meeting.

13           [Meeting Concluded]

14