

**Energy Policy Act of 2005, Section 1813 Study on Indian Land Rights-of-Way:
Transcript of Comments made on the 1813 Draft Report at the
August 24, 2006 Public Meeting in Denver, CO**

ABE HASPEL: My name is Abe Haspel. I'm the assistant deputy secretary of the Department of the Interior. And on behalf of the Department of Energy and the Department of the Interior, I'd like to welcome you all to this session. We're here today to examine and hear your comments on the Section 1813 draft report that the two departments have made available for public comment. We are looking forward to hearing your views and to better understanding the many comments we already received and your interpretation of what we've done and what we're suggesting at this point, how we can improve it and so on.

I'd like to take a few moments before I invite a representative from HRA to come up and give you a short presentation on the historical analyses, the case study that they did for us, to just give you a brief – or at least to reset the stage for why we're here and what we've been asked to do.

On August 8th of 2005, when President Bush signed the Energy Policy Act, there became enacted a provision in the 1813 that called for a study and a report. The draft report that you're all reviewing is our first version of the report that Congress instructed us to do, and that that report should include – and I'm just going to read verbatim what it is:

One, an analysis of historic rates of compensation paid for energy rights-of-ways on tribal land; two, recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions, and renewals of energy rights-of-way on tribal land; three, an assessment of the tribal

self-determination and sovereignty interests implicated by application for the grant expansion or renewal of energy rights-of-way on tribal land; and four, an analysis of relevant national energy transportation policies relating to grants, expansion, and renewals of energy rights-of-way on tribal land.

Congress gave the department one year. We are clearly late. We've managed to get the draft report out on the one-year anniversary – actually a day late in the Federal Register. And we have talked with many of the interested parties on the Hill, and they are expecting a report on September 30 of this year, and we plan to present them with a report on September 30. And that commitment to the Congress will explain why, later when we give you due dates, why they're so tight; but if you look at today's date, which is the 24th of August, September 30th is only five weeks away. So we don't have a lot of time to complete this task and to provide Congress with the report that they've requested by September 30.

I want to compliment everybody here for the – not only the interest, but the thoughtfulness and the experience that was clear in the comments we've received thus far. We have held two public meetings, one in March and April, to scope this report, and many of you were there. We've received more than 150 written comments from both Indian tribes, individuals, and from industry. All of those were carefully considered and included in our deliberations as we prepared the draft report that was made available for your review on August 8. The report has five sections basically relating to the four major parts that the Congress asked us to. I think you can see the structure is coming from that.

Today's meeting is fully public. We will be having three more sessions like this, one in Salt Lake tomorrow, one in Morongo on Monday, and one in Albuquerque on

Tuesday. But the public portion of those meetings will be very short. They'll be one to two hours, giving members of the public from those locations, who live closer to those locations, opportunity to speak and present their views.

The primary purpose for those other three meetings is to hold consultations with tribes at a government-to-government level. This is a commitment that the administration has through executive order and other policies of department, that as we promulgate regulations, write reports, do anything that will affect tribes, that we in fact will meet and consult with tribes. Consulting with a tribe, however, does not mean that the tribe gets veto power over what we are doing. It is simply a consultation in its truest sense. We are there to talk with them, to hear what they have to say, to ask questions, and to better understand their point of view.

The final product, however, is still the product of the federal government, the product of the department; and, in this case, it will be an executive branch product because we do plan to get clearance through the White House and OMB as well, which will also affect how much time we have to receive comments and to modify the report.

The type of comments that we are looking for today are many fold. We'd like to hear what you liked about the report. We'd like to hear what you did not like. We'd like to know if we missed something, if we misinterpreted something, if we did an injustice to what you provided us. This is our best attempt to date. It is a draft. I want to make clear that, as a draft, my experience has been that departments have to be willing to live with the draft if that's what ultimately goes final, so hopefully we could; but in this case, and as in most cases, if there is new information, additional information, clarifying

information and so on, I fully expect the draft to be different when it becomes final than what you see today, but it is the starting point. And so I call that to your attention.

The other thing that we're looking for in terms of what did we miss, it's not only in the first three portions where we talk about tribal sovereignty or national energy transportation policy or how to calculate fair market value or in the options – are there options that are missing? Are there options we should have considered that we didn't think of? Have you got options that you think we should be considering? We certainly want to hear about them.

And finally, is there any specific information, other examples of – factual examples that have not been made available to us yet but that could be made available to us within the next week that might have a bearing on the report and might cause us to come to a different conclusion than the types of conclusions we have reached thus far?

So not to take up too much time, in conclusion, the next steps are these three meetings. We will take comments, written comments, through 10:00 on September 4th, which I know is Labor Day. We plan to be working that weekend. We'd really like the comments by close of business on Friday, the 1st, but we've been asked to give you all also the opportunity to work on the weekend, though I'm not sure why you want to. I don't want to. And so we will make it 10:00 on the holiday. We have the ability, obviously, since comments are to be posted to the website, to take them down while we're working and to consider them.

Again, the essence of the problem is that taking – having these meetings and taking comments through the 1st or the 4th leaves the folks who have to write the final draft effectively nine days to do that, leaving two weeks for the clearances to get through

the department and the inter agency process. And those of you who have experienced that know that that's an extremely tight deadline. That means everybody has to cooperate in the executive branch, and September is going to be a very, very busy month. And to make sure that this reaches appropriate heights of decision-making is going to be difficult, but we're going to do our best. So that means by no later than the 15th we have to be done with the draft. So we should receive your comments preferably on the 1st, but no later than the 4th, 10:00 in the morning. We would appreciate it.

Now, if we receive comments after that, I'm not telling you that we won't consider them. If the most brilliant piece comes in on the 5th, we're certainly going to read everything. What I will commit to and what the departments will commit to is read every comment that comes in by 10:00 on September 10th, will be given full consideration. We'll do our best to consider whatever comes in after that. That's all we can do in order to meet the deadline. Otherwise, this is an open-ended process and one which we'll never be able to meet the obligation of September 30.

With that, I again want to thank you all for coming. This is a large group. Each of the meetings have been large groups. It's clear this is an important and controversial report, and we look forward to hearing all your views.

I'm going to now take this opportunity to let HRA introduce themselves and what their role was here, and we wanted to give you all at least a short understanding of the historical analysis, the work that was done. It's the giant appendix that most of you probably haven't looked at, but it bears your – at least having some understanding of what's captured in those case studies. So I'd like HRA and Ms. Greenwald to basically give you a short – because, you know, this meeting is really about your talking to us as

opposed to us talking to you. So this is not a filibuster; it is an opportunity for us to just convey this last piece of information to you, and then we'll get going with giving each of you an opportunity to speak.

The facilitator from last time in Keystone will set the rules for that, and we'll let them explain that as opposed to me after we hear the report by HRA. With that, Ms. Greenwald?

EMILY GREENWALD: Thank you.

ABE HASPEL: Thank you. Thank you all again for coming, and welcome.

EMILY GREENWALD: Hi. I'm Emily Greenwald. I'm a historian with Historical Research Associates. And when I found out that this meeting was taking place, I asked if it would be appropriate for me to talk about what HRA did in preparing our report, which is an appendix to the department's reports for the Section 1813 study. And when Mr. Middleton told me he was reserving a room for 200 people, I started to wonder what I had gotten myself into. So I'm relieved that it's a slightly smaller crowd.

Historical Research Associates is a consulting company founded in 1974, and our goal is to research the past to shed light on the present. We're based in Missoula, Montana, and we have offices in Seattle and Portland, Oregon. Our staff of 45 includes historians, archaeologists, and support personnel. Our major areas of work are Native American issues, environmental issues, and cultural resources management. Our clients include federal agencies, such as the Department of the Interior and Department of Justice, various tribes, state agencies, attorneys, and private companies. We also sometimes work for local government.

The types of work we do include water rights adjudication. We write administrative histories of federal agencies, such as the National Park Service, the Army Corps of Engineers, and the Forest Service. We also do litigation support work for cases involving Indian treaty rights and federal trust responsibilities. And then on our cultural resources management side, we do things like national historic register nominations, historic American engineering record documentation, and also archaeological surveys required for compliance with historic preservation and cultural resources laws.

HRA has been under contract to the Department of the Interior's Office of Historical Trust Accounting since 2002 to perform historical research. And that has included research in the national archives branches and in regional and field offices of the Bureau of Indian Affairs. For OHTA, we've also been preparing concise reservation histories of all reservations that have allotted land, and we've also been writing some issue papers. We came to this project through that relationship with Office of Historical Trust Accounting.

We have extensive prior experience working on Indian trust issues and tribal land management. We specialize in research involving federal trust responsibilities toward tribes, and we've studied management of range lands, forest lands, minerals and oil and gas on Indian reservations with a focus on the shared responsibilities of tribal governments and the BIA.

The Department of Interior asked us in March to assist with analysis of historic rates of compensation for the Section 1813 study. We discussed with DOI and DOE what they needed and then proposed an approach for conducting the study of historic

rates of compensation. We were then asked to start the study, and we did the research in April and May and then wrote the report in May and June.

For this project, we sought to collect historical information and present it in a clear fashion without interpretation or judgment. It's not our goal to advocate a position or to offer conclusions in this work. But as historians with expertise and BIA records and federal tribal relations, we were able to find the pertinent records and put them in their proper historical context.

We sought to provide relevant data to assist DOI and DOE in preparing the Section 1813 report for Congress. From the masses of records we examined, we selected those that would illuminate how rates for compensation had been set since 1948.

As we arranged with tribal officials and tribal attorneys to visit the participating tribes, we discussed confidentiality issues, and we agreed to protect confidentiality and proprietary information. For example, we didn't use company names in the Ute Indian Tribe section of the report at the request of the tribe, and we also omitted dollar figures from some of the agreements between the Navajo Nation and energy companies at the request of attorneys with the Navajo Nation Department of Justice.

The departments arranged with four tribes to participate in the study of historic rates of compensation. HRA was provided with contact information through tribal attorneys and staff, and then we arranged to visit each reservation and to conduct research and tribal records and then BIA records, and the four tribes are listed here.

Our main task was to prepare a narrative report tracing the history of negotiations of energy right-of-way compensation on each reservation. DOI representatives told us that electric transmission lines and oil and gas pipelines were the area of interest. And so

while we did collect some information on other energy rights-of-way, like gathering lines and distribution lines, we kept our focus on electric transmission and oil and gas pipelines.

In addition to preparing the report, we also compiled data about energy right-of-way compensation in tabular form. We recognize that for some reservations, like Morongo, it would be possible to collect information for all energy rights-of-way; but for others, like Navajo, there were so many that we had to narrow our scope to major lines, which we did in consultation with tribal and BIA personnel.

Our main deliverable was a report on historic rates of compensation for energy rights-of-way on tribal land, which is the appendix to the department's report. We recommended taking a case study approach. To us, this was the most feasible way to accomplish the work in the time allotted. And at HRA, we frequently use a case study approach using detailed specific examples to highlight both the norms and the exceptions.

The tribal contacts were provided to us by DOI, so HRA did not participate in the selection of tribes for this study. DOI also requested that we conduct research in the records of El Paso Natural Gas Company after El Paso expressed an interest in opening those records for the study. Because EPNG has a significant presence on the reservations of two of the tribes in the study, two of the participating tribes in the historic rate study, and also because we had some time available, we agreed to add the research at El Paso to our scope of work.

The original request was for a draft report at the end of May. With the addition of the El Paso research, we asked for an extension into early June, and we submitted draft

sections of the report during the end of May and beginning of June, and then we submitted the final report on July 7th.

We began by researching and writing the statutory regulatory overview because we wanted to have the policy and administrative history in mind as we conducted our research in tribal and BIA records. So then our next step was to go to the reservation and to work in tribal and agency offices. We reviewed records there, identifying the ones we thought were relevant in obtaining copies, and then we also met with tribal and BIA staff to discuss right-of-way administration to help us get the fuller picture of the context in which these documents fell.

Then we brought everything back to Missoula, and we reviewed the records we had collected, then compiled the tables and wrote the narrative. We limited the tables to those rights-of-way for which we could find fairly complete information. For the narrative, we decided to choose four examples from each reservation to discuss in detail, and we chose those examples based on their ability to illustrate general trends, as well as to highlight exceptions or conflicts that seemed pertinent to the 1813 study.

So I know you've all read the report cover to cover; I'm not telling you anything you don't know, right? The report starts with a statutory and regulatory overview, then it moves to chapters for each reservation. And the chapters for each reservation have four parts. The first explains how the reservation was established, including the legal instruments, such as treaties and legislation that created or altered the boundaries or the land base. Then there's a section providing overview of development of energy resources on the reservation.

The section on energy rights-of-way offers a general history of that tribe's involvement in setting rates of compensation for energy rights-of-way gathered from all the records we've collected. And then each chapter has four case studies, four detailed specific examples of how compensation was arrived at for a particular energy right-of-way. And we tried within a given reservation to provide some variety of the different types of rights-of-way and also to provide some variety of, over time, when the easements were negotiated or renewed and the types of compensation that were involved so that we could at least give a fairly representative narrative of that reservation, although we did have to be selective.

Each of the reservation chapters also include the right-of-way table, and that includes data like when the original easement was consented to by the tribe, approved by the BIA, what the rate of compensation was, what distance it covered or acreage it covered, and things like that and where we had information about the renewals that followed.

In terms of the general trends we saw, it's clear that the amount of compensation has risen over time. Early easements generally provided for a per rod or per acre damages fee, and \$1 per rod seems to have been the typical damages fee in the 1950s. Some early easements involved higher consideration than just these \$1 per rod damages, and sometimes consideration was higher than appraised market value, but that doesn't seem to have been the general practice. Some early easements also included alternative forms of consideration, such as providing electric service.

In 1968, federal regulations were revised to require that consideration be no less than fair appraised market value. Appraisal strategies used from that point forward

varied, but they often involved determining fair market value by looking at the sales price to comparable parcels and then discounting that by a specific percentage because the tribe retained certain rights in the land and only an easement was being granted.

In 1980, the regulations were further revised to say that consideration must be not less than fair market value but is not limited to fair market value. And starting around this time, consideration began to take a variety of different forms in addition to cash payment. These included contributions to tribal scholarship funds, throughput agreements, and interest in pipeline facilities.

Some tribes have been experimenting with alternative strategies for determining fair market value for an easement. They argue that deriving value based on the sale price of comparable parcels is not an effective method for determining the value of the land to the tribe.

The nature of tribal participation in right-of-way negotiations had changed over time. The history of tribal participation though varies greatly from tribe to tribe. Since 1951, when the first regulations following the 1948 right-of-way act were issued, tribes had had to provide consent before an easement is approved. For some tribes, participation in negotiations was strictly limited to providing that consent until fairly recently, say, the last 10 or 20 years. And the process was generally that a company seeking the easement would present the offer to the Bureau of Indian Affairs; BIA would review it and then take it to the tribe, and the tribe would be asked for its consent.

Some tribes were involved in right-of-way negotiations from an early date, and early involvement might have included negotiating stipulations to the easements or negotiating for higher rates. But the general trend over time was that tribes became more

and more involved in the negotiations and in exercising initiative and seeking compensation. So now the general practice is for tribes to negotiate fully and directly with the company seeking an energy right-of-way, although the BIA still provides oversight of the process.

At the same time that this trend in easement management has occurred, tribes have become more directly involved in managing reservation resources, including those energy rights-of-way. Tribes with energy resources in particular are establishing tribal enterprises to develop those resources. This has been going on for a long time, allowing them to retain more of the value of the resource for the tribe. As tribes have developed the resources, they've also become more interested in the infrastructure that collects and transports and even delivers these resources. In some cases, tribes have purchased existing energy infrastructure; and in others, they've formed partnerships with industry to share or jointly develop infrastructure.

That's all I have for you today. I just want to thank all the tribal officials and attorneys and the BIA personnel who helped us with our review of records and made those records available to us, and also to the land department at El Paso Western Pipeline. We also got assistance from Cruseda Grover [phonetic] and other people at Office of Historical Trust Accounting who accompanied us on the research trip. And then, finally, I'd like to thank Departments of Interior and Energy for inviting us to contribute to the Section 1813 study. Historians really appreciate it when people making decisions about the future take the past seriously. Thank you.

[Applause.]

JODY ERIKSON: Hi. My name is Jody Erikson. I'm with the Keystone Center. Many of you know my face, my name. My colleague today is Sarah Stokes. Mike had an emergency, Mike Hughes, so Sarah is going to help us out today.

I'm going to quickly go over sort of what the process is for the rest of today and then ask you if you want to take a break or whether you want to jump right in. The process for today: We're going to do public speakers. We'd like to try to get everybody to speak. At the moment, we've got less than what we had; but folks are – you folks and some of these folks are going to go to Salt Lake this afternoon or this evening, so we want to end right at 5:00.

Everyone is going to have ten minutes to speak. Sarah or myself will be flip-charting. We'll also give you a signal when you have about two minutes left. I realize that can sometimes be distracting; it's just sort of to give you some help in sticking to ten minutes. We'll also let you know when your ten minutes is up. That way folks can – everyone is able to speak, and that's the most important thing today, is that everyone has an opportunity to speak. So sticking to your ten minutes sort of assures that everyone has that opportunity.

Quickly I want to talk about submittal options. There are several ways you can submit comments. One is verbally today. The other one is in writing. You can hand that to Sierra or Rebecca, who is at the front table. The other way is written comments submitted to the email address that's on this sheet right here. It's also on your agenda in the paragraph at the 10:15 time slot.

As Abe Haspel said, the close is September 4th at 10:00 a.m. Yes, it's a holiday, but that gives them the time they need to integrate those comments and revise the study, if necessary, and get it to Congress.

All of the different ways you submit, all the comments are weighted the same. So whether you submit comments verbally today or whether you submit them in writing via electronically, they're weighted the same. I think the preference is for electronic; it's faster for them to receive, to read, and then also to post on the website. So if you are electronically inclined, definitely go that way. If not, written is also fine.

The thing we have on the agenda is to take a break, but I'm wondering if you all need a break or whether you want to jump right in. I see a couple people saying jump in.

Jump in, okay. We are asking you to limit to ten minutes. If there is time at the end and we get through all the folks who desire to speak, if you want to have a second round or you have more to say, please, we will have that time hopefully at the end. And if you have more extensive comments, remember to go ahead and submit them in writing, and they'll get those comments.

So I'm going to just call out the next three people on the list so you have a little bit of warning before your time is up. But first I'd like to call on Senator Ben Nighthorse Campbell to speak. After him will be Ahmed Kooros with CERT and Nancy Ives from Fair.

BEN CAMPBELL: Thank you, and good morning. I've been scribbling notes all morning, and I prefer to use a podium; thank you. I'll try to limit my time to ten minutes; I think I might have gone over last time a little bit, and somebody asked me to sit down.

I'm not going to speak at the end of this, only at the beginning, so don't – I'm not in a real good mood this morning, so don't ask me to do that again.

First let me – representatives from DOE and DOI, welcome to the great state of Colorado. It's my home state, and I was privileged to represent this state and the people within it for 22 years in office, over half that time in the United States Senate. Thank you for allowing me a few minutes to deal with the draft study on Section 1813 on right-of-ways on tribal lands.

On two occasions – and just historical reference – on two occasions, the very talented staff I had when I was in the United States Senate and the chair of the Senate Committee on Indian Affairs wrote the energy section – the Indian section of the energy bill, as you probably remember. Both times it did pass the committee, passed the full Senate, and got bogged down in the conference due to an unrelated issue. That unrelated issue, of course, was whether to open a certain section of ANWR, as you remember. And so our bill – our section, a good section, the Indian section which was supported by certain many, many tribes, it was the victim of what we call a poison pill. It didn't get out of committee.

I retired about 18 months ago. My friend and colleague and the chairman of the full committee, Senator Pete Domenici of New Mexico, with minor changes reintroduced that Indian section, and it did pass again. And it was signed into law, as you know. At each step of the way, when I was still in office and when Senator Domenici picked up that Indian section, tribes were consulted, and tribes were equal partners in trying to write a section of the energy bill that they could live with.

Unfortunately, as you know, Section 1813 was not part of the Indian section, and that's why it came as such a huge surprise to tribes, and I think is why it has universally created anger among the tribes. They were actually blindsided.

In my view, it was a solution to a problem that didn't exist. And with some exceptions, the summary just released by the agencies supports that view. As I read it – and I did not go through all the details, all the historical analysis, but let me just reflect a couple of observations. I do not believe that the right-of-ways, the tribal right-of-ways, need total restructuring, and they do not need to be standardized either.

Negotiated agreements in a private industry, including energy pipelines and tribes, should go through the free enterprise system, just as all other negotiated agreements do in the private sector. In addition to that, the study does not make any footnotes, as I read it, about how it would affect states. And in our constitution, as you know, states are sovereigns within a sovereign nation, just as tribes are. And tribes thereby benefit of the same kind of many dealings and results in Congress as states are. States I think would be jeopardized by this section if it moved forward in legislation.

It should be noted that many tribes are not here, won't be here. I talked to one just as late as last night; they are just now trying to frame up some kind of a response in writing. The fact is many tribes are very poor; they do not have the travel budget to be able to come and express their comments in person at forums such as this.

I think that the study report generally disputes some of the allegations that the supporters of the 1813 Section claim. First, I saw no suggestion in this study that tribes are somehow or can somehow hold up in consumers or increase the cost to end consumers for energy through their – that accusation was made at one of our first forums

here. I think that is totally wrong. And to my knowledge, no tribe has ever cut off any flow of energy through their land in an effort to try to hold up the negotiations and get a higher price.

The suggestion was also made at our first meeting here that the tribes may pose a threat to national security. That's absolutely ludicrous. I think that it is supported in the study that they do not. In addition, even though the basis of all US and tribal agreements are the treaties, it seems to me there should have been a footnote about the treaty, at least in the historical documentation. I couldn't find any mention of that either.

There was also no mention of the effect of 1813 on ongoing negotiations on existing right-of-ways. Most energy pipeline companies that I know of have pretty good working relationships with tribes; and yet now they are kind of put in a state of limbo because they don't know what's going to happen, where 1813 is going to go. There should have been a footnote about that, too, it seems to me.

There's also no mention, although it might have been in the historical report, no mention of the hundreds of billions of dollars of lost revenue to tribes during the years when sweetheart deals were signed really by the Bureau. The speaker that preceded me talked about the Bureau negotiating an agreement with energy companies and then going to tribes; but unfortunately, historically they didn't do that. They were negotiated between the energy companies or the pipeline companies and the Bureau, and many tribes, the tribes didn't even know about it. Even today some tribes are finding out many surprises they didn't know that some of the right-of-ways across their land were agreed to with the Bureau without their consent. They should have been a footnote about that, too, it seems to me.

The historical review I think was very necessary, and I certainly applaud the people for trying to do that. But I wonder about the sampling, as I was sitting before I came up here, of the 565 or so federally-recognized tribes and another hundred that are trying to be re-recognized after they went through the termination process. I'm not sure a sampling of four tribes is really a valid sampling of what all tribes face. It seems to me that there should have been a broader section and broader study done.

The summary does not address the fact that eminent domain and the condemnation process – in my view, and what little research I've done, that's never been authorized, whether it was in the General Allotment Act of 1887 or the self-determined acts that passed in the 1970s or any succeeding legislation. Certainly it wasn't when I was there. And I can tell you that, in all honesty, almost every bill we worked on when I was there had its roots in that Self-Determination Act. I think it was one of the most meaningful and important acts in the history of American Indians on this continent.

Tribes, after 200 years of poverty, are now just beginning to enjoy the benefits of the free enterprise system that every other American takes for granted. And now, because of one disagreement, as has already been mentioned, between one tribe and one pipeline company, we have unfortunately numerous bandwagon jumpers who see Section 1813 as a vehicle for their own agenda, which in many cases has nothing to do with energy and everything to do with manipulating public policy to further diminish what little tribes have left. And, frankly, I resent that.

Having pointed out what I see as weaknesses in the study report, let me say that I believe, in reading it, that it is probably more good than bad and don't want to diminish the efforts of the DOE or the DOI, and I certainly congratulate them both for all of their

efforts and their patience in dealing with this matter. And I look forward to hearing from people who have a lot more technical expertise than I do. But I do believe that, having served in Congress, that many of my former colleagues still in the nation's capital will come to the same conclusion that I have; that is that we do not need a legislative fix for the problem, and it can be worked out by people of goodwill, as any negotiated agreement can be.

The study offers several options, and I don't know if Congress will even look at those; but, frankly, if I was writing it, I would have included one more just in one word that New York cabbie drivers often use, fogetaboutit. Forget about it. It's not a front burner issue, should not be. And all the work that was done in fact may jeopardize some of the successful pipeline companies that have worked with tribes for years.

You know, back in Congress with just a few limited days, think of this from a broader standpoint of we are all Americans. They're dealing with wars in Iraq and Afghanistan, threats of nuclear conflict in Iran and North Korea, world hunger with kids dying all over the world, the effects of natural disasters like Katrina or the ongoing forest fires – this morning's paper said we have the highest number of forest fires in six years now – the escalating federal deficit, the national debt, rising costs of healthcare, the collapse of social security, the education system falling behind, all industrialized nations, rising gasoline and our dependency on countries that hate our guts, exodus of American manufacturers to other countries and the loss of high-paying manufacturing jobs, dozens of other front burner issues. Very frankly, many of us I think recognize this and ought to be ashamed of ourselves for even distracting Congress and dealing with it, and I frankly hope they do not.

But for the DOE and the DOI, you have done your job, and I commend you for that. You were directed by Congress to do that, and you have diligently produced a document that was costly, time consuming, taken your time from very important issues, and probably will not satisfy either the energy companies or the tribes, either one, and, in my view, has a better than 50/50% chance of not being implemented by Congress.

Having made all those sour statements while you're still on your second cup of coffee, I apologize for that; but I've never really been known for white-washing things. And I think this was a mistake from the very beginning. And I think from a tribal perspective, the study is probably a little more good than bad because it validates three things: One, we have a problem; two, but we can solve that problem, the private sector; and, three, no further congressional action is necessary in dealing with this.

Thank you very much for your time today. I appreciate it.

[Applause.]

JODY ERIKSON: Next is Ahmed Kooros from CERT and then Nancy Ives from Fair, and Terry Richards from Questar will be after that.

AHMED KOOROS: Good morning. I have been involved with this issue of rights-of-way determinations for many, many years. Number one, I should like to mention one thing which was, you know, mentioned before by this study and is often cited. Fellowships and scholarships, all these gestures on the part of the companies were not for rights-of-way issues. They were related to the rights-of-way issues, and it was just a gesture on the part of the companies to actively participate in providing the scholarship and whatever it is to enlighten or to help the tribes.

There's one major event which is actually celebrated every year, which is called the Spread the Word Dinner. It was in fact proposed by Robert O. Anderson, the head of ARCO, at the end of negotiations that the Navajo tribes had with ARCO. He was the one who actually proposed that directly to be upheld for the tribes. And, of course, it was his consent as far as the rights-of-way calculations or structural consent.

Now, let me just – I thank you very much for your remarks, Senator, as they are related to what I am going to discuss.

I don't want to talk about – when it comes to rights-of-way, I do not want to talk about assimilation act and all of the things that happened since 1887 through 1934. But it was in 1934 that the administration actually came out and proposed a series of land purchase deals for the tribe. And for the first time, the Indian tribes actually felt the impact of sovereignty as far as their activities were concerned.

Now, I have to mention to you that I'm the culprit, if you want to shoot me, whatever you want to do, I was the one who actually introduced this formula – you know, what do you call it? – for avoiding cost or substitution, whatever you want to call it. I call it increasing the value of the land in certain respects, which was different actually from the normal way of doing business.

And you want to know why did I do that? This was in 1981. In fact, it was March of 1981 when I was involved with analysis of a right-of-way for the Navajo tribe for the pipeline of ARCO.

I was looking around, and I noticed that, of course, in the regs it talks about – you know, it talks about fair market value, but 'not limited to,' right? So I was curious as to why that 'not limited to' came into that legislation. I look here and there, and I look at

the Constitution. The Fifth Amendment of the Constitution is very clear. It reads as follows – it's the last line of the Fifth Amendment:

“No private property shall be taken for public use without just compensation.”

The reference of that Fifth Amendment is to private land; it never talks about government land or tribal land.

And I went through the legislative history of this, spent some time in Washington here and there to find out what it was. Everything was about private land; there was nothing about tribal land. And then, of course, as you know, just compensation became an issue to be determined, its value to be determined. How do we do it?

There are three ways. People say there are three ways, income metrics, whatever it is; but they all, of course, come to the same thing. Take comparables. Take comparable data. Comparable to what? Now let me read the decision of one court, and there are many cases like that that I have that I will be more than happy to share with all of you. I'm sorry I don't have my glasses, but anyway I'll try to read it.

This is the decision of the court. It says, “In a public utility condemnation case, the market valuation methodology calculated by reference to comparable sales between willing buyers and sellers is inept.” That's what the court said.

Since there is no – there is hardly a market, in the usual sense, for public utility, particularly regulated utility, New York S 2nd 952 83 New York 23205 630 NA 23648 and whatever it is. There are many cases like that.

So the case was – I came to the conclusion that this comparable sale actually is not going to be applicable to the pipeline, is not applicable to the transmission line, is not applicable to all these things that now we are discussing to be out of line, so to speak.

And the fact is that once we – I was convinced that the exposure I was taking was a more acceptable one in a court and so forth. Then I encouraged the tribes for the right-of-way to take – I accepted opportunity and then to move on.

The first one was, as I mentioned to you, the Navajo ARCO. The second one was the second pipeline and the El Paso pipeline, and then on and on and on to over a hundred cases now have been resolved in that fashion. And I am actually sharing with you, you know, the fact that this was basically for the reason that the fair market valuation didn't apply actually to the case. There are not actual comparables and so forth.

Now, the other issue that has been raised recently, not in the past – but before saying that, in all cases that I have had, including this report, it's confidential. I cannot share it with you. The El Paso Pueblo Laguna and El Paso Natural Gas Company right-of-way, I calculate the impact of the right-of-way not only on the company but on the customers. Who are the customers? Well, the fact of the matter is a company has to go to the utility authority to build its cost into the rate base; and who's going to be impacted? Customers and so forth.

Then let me share one of these cases with you. I'm –

ABE HASPEL: Ahmed, if you could be quick, just to be fair to some of the other speakers, we'll be glad to have you come up after everybody has a chance to speak and continue or submit it in writing.

One minute.

AHMED KOOROS: This is a case of a – I just want to say real quick that the rights-of-way, the cost of the right-of-way, if one of the companies, which there are some of them here, it's only to the customer .0001 cents per kilowatt hour. 0001 a kilowatt

hour. It's just so insignificant. It doesn't mean anything to talk about the cost of it. I thank you very much.

[Applause.]

JODY ERIKSON: Next is Nancy Ives from Fair. Then we'll have Terry Richards from Questar, and then Clement Frost, Chairman of the Southern Utes. And if you could state your name; this is being transcribed.

NANCY IVES: Good morning. I'm Nancy Ives with the Fair Access to Energy Coalition. On behalf of the coalition, I would like to thank the Department of Energy and the Interior for their leadership in preparing this draft report. It was issued amidst growing concerns over the reliability and sufficiency of our nation's energy transmission network as a record heat wave was sweeping the nation, taking historic strains on the nation's under funded and underdeveloped power network with higher gasoline prices looming over the shutdown of a critical section of an Alaskan oil pipeline.

We look forward to working with the departments to more fully realize in the final report that the key public policy failure at hand is narrow in scope. We encourage the departments to focus on renewal and geo constrained expansions of interstate energy transmission infrastructure, not EMT or local energy distribution on tribal land.

It's also important to note that the departments have a responsibility to ensure more cost efficient energy resources for Americans to the extent that the tribes are permitted to increase their cost exponentially, a risk violating their obligation to Americans as a whole. We commend the departments for documenting in the draft report no methodologies currently exist for determining fair and equitable standards for rights-of-way. Decreasing the duration of rights-of-way agreements and increasing uncertainty

and delays in negotiating rights-of-way agreements with tribes demanding ever greater consent payments and, in some cases, outright ownership of transmission infrastructure crossing tribal land.

While we are encouraged by some aspects of the draft report, including the recognition that Congress has the authority to solve the problem, more work needs to be done in order to reform this narrow public policy failure. Specifically, we are disappointed that the following themes were predominant in the draft report:

Data was selectively overlooked. For example, Sempra Enterprise Products and New Mexico Oil and Gas Association entries were not fully recognized. Costs to consumers, direct and indirect, were overlooked. Right-of-way renewals and geo constrained expansions were ignored as key policy failures, and the draft study as a whole focused on the past and disregarded evidence of the looming crisis on the horizon.

Fair would like to see the following priorities to be included in the final report to Congress: recognition that while a national crisis has not yet occurred, it's important for Congress to take proactive steps to avert a national emergency. More fully address the serious consequences that may be in store for energy consumers unless action is taken, including substantial cumulative increased costs. Include the status of current negotiations in the final report in order to fully demonstrate the magnitude and scope of the problem. And recognize that the key policy failure is renewal and geo constrained expansion of interstate energy transmission infrastructure; again, not EMT or local energy distribution on tribal land. And finally, focus on the future "storm on the horizon," not on past negotiations.

It is the hope of energy consumers and business interests alike that the final report will recognize that serious difficulties arise when no certainty exists and tribes are able to charge right-of-way fees that are sometimes hundreds of times higher than the fair market value of the lane, essentially creating a right-of-way tax on consumers. We appreciate that, for the first time, the government officially explored energy rights-of-way on tribal land and provided Congress with a list of legislative options to address the difficulties that arise in these negotiations.

While Fair prefers an intermediate solution, it recognizes tribal sovereignty – that reconciles tribal sovereignty with the certainty that infrastructure stakeholders so desperately need, the eminent domain option is certain preferable to the status quo, which provides no certainty and is not based on any legitimate principals or standard of value.

We look forward to working with the departments to reform this narrow public policy failure and to include a more robust look at the aggregate effect that these rights-of-way costs have on consumers and on the nation's energy system in their final report to Congress.

Thank you very much.

[Applause.]

JODY ERIKSON: Next is Terry Richards from Questar, and then we have Clement Frost and then Lisa Cameron.

Terry is not here, okay. Clement Frost, Chairman of the Southern Ute.

CLEMENT FROST: With your permission, could I use your podium?

ABE HASPEL: Please.

CLEMENT FROST: Good morning. Representatives of the Department of Interior, Department of Energy, tribal leaders, and members of the public, I am Clement J. Frost, Chairman of the Southern Ute Indian Tribe.

I am glad once again to speak to you about the issue that has captured our attention for many months. On August 7th, 2006, the Department of the Interior and the Department of Energy released its draft report regarding energy rights-of-way over tribal land. My remarks today reflect our preliminary reaction to the draft report. We also intend to submit more detailed written comments to the Department on or before September 1st.

The Southern Ute tribe continues to believe that the final report to be issued by the Department in the near future will be an extremely important document. The report addresses the role of tribes and the issuance of rights-of-way that cross tribal land. As the report discusses, Indian tribes have the power to control their land for right-of-way purposes. For many decades, Congress and the Secretary of the Interior have assured tribes that no rights-of-way will be permitted to cross our lands without tribal consent. In response to claims by some energy transporters that Indian tribes were abusing their powers, Congress mandated this report. Early efforts will continue by some industry representatives to have Congress strip away the power that tribes possess to control their land.

The findings and conclusions in the final report will be a vital part of the future discussions in Congress about whether changes in current law are needed or whether tribes should continue to exercise sovereignty over tribal land. We appreciate the efforts of the many governmental officials who have participated in issuance of the draft report.

You have reached out to Indian country and to the public to learn more about this subject and to separate truth from fiction.

In response to claims that current tribal practices threaten national security, the departments found no evidence that the requirement of tribal consent contributed to an emergency situation. Contrary to claims that energy consumers were being hijacked by Indian tribes, the Department found that the compensation paid to tribes for energy rights-of-way does not appear to be consequential for the nation or consumers.

We applaud the Department for investigating these issues and for reaching these important conclusions. Although we are encouraged by many aspects of the draft report, there are areas where the report could be improved.

First, it is unfortunate that the draft report did not include an executive summary even though space had been reserved for it. Because the executive summary is what many members of Congress and the public were focused on, it is extremely important that the final executive summary emphasizes the conclusion reached by the departments about national security and consumer impact. We have presented detailed economic studies showing that tribal right-of-way compensation is an insignificant part of consumer energy bills. We dispute energy suggestions to the contrary even if one were to believe that the industry estimates; however, the report fails to believe that there are many other factors, such as stockholder dividends that impact consumer energy prices much more significantly than tribal compensation.

We believe the report should mention at least some of these other factors. For example, the report should give Congress an easy way to compare the impact that state and local taxes and franchise fees have upon consumer prices in relation to tribal

compensation. We believe that even with regard to energy facilities located on tribal land, state and local governments often recover far greater revenues than the affected tribes.

As the Section 1813 study began, the departments clearly stated that information would not be included in this report unless verified by the department or by the independent analysis. Our tribe and several other tribes opened our records for inspection so that our contribution to national energy supplies could be verified and so that the departments can see how important right-of-way compensation has been in tribal government.

Officials from the Historical Research Association spent almost a week pouring through our files and records. However, we feel that the basic rules about information verification have been ignored by the departments in Section 5.5 of the draft report. This entire section consists of unverified survey information supplied by Edison Electric Institute and Interstate Natural Gas Association of America. The lack of verification casts doubt on the accuracy of the survey information.

For example, in our tribe's negotiation regarding major transmission facilities, the duration of grants have been longer than those negotiated in the 1970s and 1980s. Without verification, inaccurate facts can lead to false trends and ultimately to unnecessary legislation.

Finally, we are concerned that the departments have not affirmatively recommended that no new legislation be enacted. Having found that national security is not an issue, the consumer impacts are inconsequential and tribes and industry almost always reach resolution. The departments should also recognize that the current systems

remain in place. In other words, if it ain't broken, don't fix it. In these circumstances, we believe that the departments owe Indian country, Congress, and the nation that recommendation.

Without that recommendation, we are concerned that certain legislative options identified in the report, including potential condemnation of tribal land, will be looked at more seriously than justified.

In conclusion, we appreciate your efforts in tackling a difficult subject. It is clear from the draft report that our participation in this process has been important in your consideration. We look forward to providing you more detailed suggestions for improving the final report; however, we urge the departments to maintain the basic finding and conclusion so that legislation removing tribal control over tribal land is unnecessary in a conflict of law and policy.

Thank you.

[Applause.]

JODY ERIKSON: Next is Lisa Cameron from Fair, and then we have Virginia Blaylon and Melissa Hickey.

LISA CAMERON: Hi. My name is Lisa Cameron. I am an economist at the Fair Access to Energy Coalition, and thank you very much for the opportunity to provide some responses to the DOE, DOI report.

On behalf of Fair, what I'd like to do in the ten minutes that I have is explain why the four justifications offered on page 24 of the draft report are based on faulty economic reasoning.

The first – and you’ll see here the four justifications for why this is a problem of no national importance. The report’s first justification for its conclusion of no national importance is that energy transportation accounts for only a small share of overall energy costs. Now, Congress clearly recognizes that energy transportation infrastructure is of great importance, even though energy transportation accounts for a small fraction of overall energy costs. And that’s why EPAC Section 1221 directs Congress to designate natural energy corridors in order to – national interest electric transmission corridors in order to ease deciding requirements for this very important element of infrastructure.

Similarly, Section 368 of EPAC creates natural energy corridors on federal lands in the west in order to decrease regulatory hurdles to deciding of this vital infrastructure. Unfortunately, these initiatives are going to be very much diminished in value by the fact that still there is no deciding issues on tribal trust land, which are part of siding infrastructure, still remain unresolved.

Why is Congress taking these initiatives? Because electric transmission lines, gas pipelines, and oil pipelines play a vital role in our nation’s economy. They connect customers with distant sources of supply and vice-versa, and they ensure that different regions of the country pay similar prices for energy. And they also enhance the reliability. So that’s why it’s important to cite energy infrastructure. Tribal trust lands are one of the places where energy infrastructure is cited, and policies to tribal trust lands need to be harmonized with the rest of the United States in order to be deciding issues.

Second, the report’s justification that the fraction of energy infrastructure that is currently on tribal trust lands is also small, and the effects are not large enough to have a significant impact on overall energy transportation costs, and the total cost of delivered

energy paid by consumers suffers from two fatal flaws. First, current ROW pricing policy has already been very costly to energy consumers and to companies in regions where ROWs were recently renewed. Moreover, these costs can be expected to increase as additional ROWs come up for renewal. There are hundreds on the horizon for energy companies that are serving constrained areas. And moreover, increasing numbers of companies are choosing to build around tribal trust land rather than face the possibility of disproportionate ROW costs, exorbitant ROW renewal fees, and a hostile negotiating environment.

However, when we look forward in time – see, that’s just the past. So when we look forward in time, these price impacts are likely to increase substantially. We have an illustrated calculation which shows that, assuming current rights-of-way fees that have been demanded for gas pipelines and electric transmission lines, the price impact for existing pipelines and transmission lines alone could be as much as \$725 million annually. And this figure is not necessarily an upper bound on those annual fees.

Moreover, to the extent that new transmission and pipeline capacity continues to be required in areas that border on tribal trust land, we can expect consumers and companies to continue to incur the costs associated with building around these areas. That is when projects can still meet the economic hurdle of getting built. In the case of Sempra, we have seen that the cost and delays and building around in a vital energy infrastructure area, like Southern California, can be enormous.

The report offers another justification, that the problems may be essentially self-limiting. This argument is flawed because even problems that are self-limiting can cause

a great deal of wasteful expenditure. And one of the chief economic goals of policy intervention is to avoid wasting resources.

While companies can build around tribal trust lands if their project is still economic when those build-around costs are taken into account, the cost of these build-arounds can be enormous; and this is not something that we should be imposing on the American consumers and on the nation's economy. And to go back, what are the standards that are required to make a problem worth looking at?

The federal government is required to evaluate the cost and benefits of all major regulations that are likely to result in (a) an annual effect of \$100 million or more and (b) a major increase in cost or prices for consumers, individual industries, federal, state, or local government agencies or geographic region, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of US enterprises to compete with foreign-based enterprises in domestic or foreign markets. These are OMB standards for evaluating regulations. They have to do a cost benefit analysis on every regulation that costs over – that is expected to impact the economy at a cost of over \$100 million a year.

The companies have offered a great deal of evidence on the costs that are expected from ROW policies on tribal trust lands, both now and in the future. However, what we have not seen is a corresponding analysis that the benefits provided by current policy outweigh these costs.

Thank you very much for the opportunity to discuss these issues with you.

[Applause.]

FEMALE SPEAKER: Ahmad, he said that, you know, .0001% - - I mean one cent per kilowatt hour is really insignificant, and the second is that there's no threat to national security, and even if there is there's an allo - - there's an assertion in the report, which other people will talk about, that national security is not an issue.

One thing we talked about among ourselves here was the - - the options that are for consideration by the parties, the voluntary. Some of those have already been obviously adopted by many tribes so I won't go into those, but the options for Congress I think that the idea - - the report - - the statute says they have to make a recommen - - they want a recommendation. Congress wants a recommendation. Recommend the issue for fair market value and or not fair - - standard valuation practice or whatever.

And instead the Department has listed five options. Those five options, the first one is fine and that should be the recommendation no change at all is needed. The second one a legislative correction to a couple of statutes we could do that. That wouldn't be a problem. Then you open it up for all kinds of things. But the last - - the last two are totally unsupported by the facts in this study. So it's unclear to us why they're in there and if they could in the final report at least take the last two out we'd be very grateful. Huh? Four and four - - four and five and that's in Section 4.4.2. Yeah? Okay.

The other thing I wanted to address was the failure in the report - - and I don't think it was deliberate; I just think it was an oversight - - to really talk about inherent sovereignty. Inherent sovereignty is the - - there are four - - six attributes of sovereignty - the power to determine the form of government, the power to determine a tribe's membership, the power to legislate and tax, the power to administer justice, and five - the

power to exclude persons from tribal territory, and six is the power over nonmembers which is a separate power that is sort of new.

But the fifth - - the fifth power, the power to exclude, is the corollary is the power to consent. If you let somebody on you can consent to that. This needs to be worked I think more explicit in the report that - - that when you start fooling around with the right to consent, you're fooling around with underlying sovereignty and this is a very important legal proposition, and I got these right out of the new Cohen Handbook, the one that was issued last year 2005 edition. You want it, it's on Chapter 4.01(2).

And I just wanted to make those two points. Thank you.

[APPLAUSE]

FEMALE SPEAKER: So Perry Richards from Questar is next; then we'll have Mark Schaffer and Craig Richardson.

PERRY RICHARDS: Hello. My name is Perry Richards and I've Vice President for Questar Gas Management Company and I'm thankful for the opportunity to address you this morning on this topic. Take a little bit of your time to do that.

We've had a longstanding relationship with the Northern Ute Indian Tribe. Questar is a business that has a lot of different types of functions. We have a local distribution gas company that's regulated by the State of Utah. We have a FERC regulated pipeline company, as well as exploration and production companies and midstream gathering and processing businesses. And we - - each of these businesses we deal with the - - with the Ute Tribe on right-of-way issues, and I would estimate that considering all of our classes of businesses, we probably occupy more total right-of-way than any other entity on the Ute - - Ute lands. I would say history going back with the

Ute Tribe we probably had right-of-way on their lands going back 30 or 40 years in some instances.

While we've had a longstanding relationship with the tribe over the last several years, it became apparent that we had so many renewals that the parties should seek to roll all of our different classes of agreements into one - - one document, and after outlining our goals to the tribe and providing tribal leaders the opportunity to explain their goals, we successfully negotiated a global concession agreement. We did it basically because we had a willing seller and a willing buyer. We were able to do that on all of our businesses so that we didn't have to deal with each business unit separately, and I found that the tribe was very amenable and very willing to do business and to allow us to conduct our business on their lands under this concession agreement.

My concern today and why I'm here today is that I do not feel that legislation is the answer. And again as I look at the draft report, it's proposing options for Congress to consider without constraint and does not measure the effect of the options on existing commerce for those companies that have already played by the rules on Indian country. Our company has invested time and capital under the existing laws and regulations and successfully worked out deals time and time again with the tribe. We'd had to see rules change and who knows what it would lead to going forward.

In addition, in our dealings with the tribe we've also since that time put together other business arrangements with the tribe where we are jointly going in and helping to develop assets associated with their lands both from a mineral perspective on our exploration and production side, as well as putting pipelines in the ground on tribal lands.

One of the things that we've been trying to do is stay ahead of the curve. In the Uwina [ph] Basin there's a lot of activity taking place and because the tribe has control over their lands, companies like Questar can make timely decisions to invest capital alongside the tribe and build infrastructure in advance of exploration and development or provide major transportation solutions in advance of bottlenecks. Changing the longstanding regulations will impair a tribe's and industry's ability to timely solve problems. We are concerned, however, that if you change the existing rules, you create the potential of hurting our investments by devaluing them with new rules that establish set rates.

So again I would like to reiterate that we think the current model and regulations and the current way things are running are very satisfactory and we've had very satisfactory experience with the tribe and we are of the opinion that while we do not think that legislation is a good idea, that - - or I'm sorry, that we think that legislation is not a good idea and we think that the way that the model that we have used and the way that we have dealt with the Northern Ute Tribe is an exceptional model to follow. It's a model that where two willing participants got together and negotiated out a common concession agreement where both parties are happy and very satisfied moving forward. Again, thank you for your time.

[APPLAUSE]

FEMALE SPEAKER: Mark Schaffer from INGA and then Craig Richardson and David Lester will be after that.

MARK SCHAFFER: Good morning. My name is Mark Schaffer. I'm the Director of Public Policy for the Interstate Natural Gas Association of America. I'm also the Executive Director of the INGAA Foundation which is research arm.

INGAA, as you all may know, is a national non-profit trade association that represents the natural gas pipeline industry that operates in the United States today, as well as comparable pipeline companies that operate in Canada and Mexico.

INGAA's members account for virtually all of gas transported and sold in the interstate commerce, and we appreciate the opportunity to appear today as this report is important to our members. This issue - - the issue addressed in the report is not a one company, one tribe issue. It's important to many of our members, particularly those that operate in the west and who transport gas by rights-of-ways over tribal lands; thus, INGA has a strong interest in the success of this effort.

I'd like to note that INGAA's general counsel, Joan Dreskin, has attended several of these public sessions on the issues and she regrets her inability to be here today. I am here in her place to emphasize the importance of this issue to INGA, and hope my comments and those of the INGA member companies that speak to you today will help the Departments in refining their draft report to Congress to ensure that it meets the directives of Section 1813.

I only have a few brief comments on this draft and I will keep them at a high level. INGAA and its member companies or the member companies that will talk today will detail their views more specifically in written comments, and if necessary and if we have the opportunity later in the day we'll look forward to participating in whatever dialogue develops.

I also would like to recognize the efforts of DOE and DOI in this process and recognize that it is a first draft; however, I do have a few brief comments. The current draft in our view does not sufficiently recognize the long-range implications of cost escalation for right-of-way renewals. While it minimizing customer cost impacts, it does not address the long-term impacts increase costs can have on risk assessment by financial institutions and attraction of capital for investment.

The potential for build-arounds or cancellation of projects is not discussed in detail; thus, the implications for long-term development of needed national infrastructure are largely [Indiscernible]. Just recent - - this is ironic to me and just recently DOI just issued proposed rules for tribal development of oil and natural gas resources. Production of these resources or successful production of these resources will require adequate takeaway capacity to allow the tribal interest to benefit - - obtain the economic benefits from the production.

Further, the draft does not adequately in our view discuss issues related to increasing the increasing length of time for negotiations and the difficulty of negotiations. It doesn't recognize that just because the agreements are reached, the negotiation process is not always viewed as being successful by all parties involved.

And I would just like to note, and this is not necessarily an INGAA position so I'll put that disclaimer in there, there are a couple of sections - - Section 43 and 441C that seem to imply that negotiations that have not gone well are based on the fact that some of the parties have not done an adequate job developing tribal relationships, I just think that the implication of this is something that the drafters and the further iterations that the document ought to look at.

And with that, I'll stop with my general comments and defer to the INGAA members to make their more specific comments, and I thank you again for the opportunity.

[APPLAUSE]

FEMALE SPEAKER: Craig Richardson from El Paso Corporation and then we'll have David Lester and Ronald Neese after that.

CRAIG RICHARDSON: I'm Craig Richardson with El Paso. First of all I'd like to begin by thanking the respective Departments for the energy and time that they've obviously instilled that they've devoted to a very difficult issue in a very short period of time with always scarce governmental resources. Thank you for your public service that you've brought to this and the diligence that you've brought to this and we appreciate the very good faith that you've brought to this.

I have tremendous respect for Senator Campbell. I've admired him for many years and immensely grateful for the 22 years of service that he's given to this country. Frankly it's second to none. I think his stature commands that we respond to some of the points that he made which I would like to do in the spirit of that tremendous respect.

The Senator discussed private sector solutions - - business solutions here. If you sort of look at this question what is the private sector solution off tribal lands? It's imminent domain. And that was born of 100 years of experience - ranchers and farmers exercising their Jeffersonian or Berkian [ph] sovereignty. I've decided to try to capture the entire public benefit of infrastructure, then railroads for themselves. They tried to bring that value to society to a deal that they could strike with the railroad, and we decided as a country, as a society, that that was a public policy failure; that we were

going to address that phenomenon, very human phenomenon, very understandable phenomenon, of trying to capture that public benefit to one's own property by having a process that was neutral, that was objective, that had standards.

We came up with the process, and I'm not suggesting it should be the process here, far from it, but a process there in that private sector is imminent domain. It disciplines greed. It forces the parties to sit down and try to negotiate and if they can't they go to court and a judge helps them decide what the truth is. And that process I would submit has worked remarkably well for over a century with non-Indians.

That is not to say that we recommend that as a solution here. Sovereignty counts in the view of El Paso and we believe there is an intermediate solution that would provide for a premium to fair market value to compensate tribes for the very important self-determination principles that our Congress has decided.

Another point that Senator Campbell made that I think is worthy again consistent with the respect he deserves of response. This is not a one company, one tribe phenomenon. The presence of INGAA, and you will hear from EEI, demonstrates that palpably. This is a broader phenomenon that is worthy of a very rich, a very careful, very thoughtful, very mutually respectful policy debate.

I am not surprised that the gentleman from Questar does not view this as a problem. Twenty percent of Questar's business is interstate transmission, 80% of it is exploration and production, much of it with its very important stakeholder in the Northern Ute.

Third point, Senator Campbell talked about the national security issues here and let me just clear the air. El Paso and certainly no company that I respect has any question

about the patriotism of Native Americans. I am a veteran of Operation Enduring Freedom in Nobel Eagle. I've served with Native Americans. My company just honored the first casualty of the Navajo in Operation Iraqi Freedom and let me just make it very clear that that's not what we're talking about.

What we're talking about is that this is a global marketplace. We, along with tribal stakeholders, are competing with liquefied natural gas from Indonesia and so every tax, every cost, every incremental penny on the MMBTU means that we are going to be importing more energy from abroad. That is the national security issue and I respectfully suggest it's a national security issue that the President has taken a position on, and I guess that's one question I have later - where is the President's policy in this study on that question?

In terms of now moving from responding to Senator Campbell's points to my specific comments about the study, one fundamental point, the study overlooks a distinction that's found in the words of the statute and is fundamental. The statute talks about grants. The statute talks about expansions. The statute talks about renewals. I think Congress identified distinctions there that matter in this policy debate and the richness of that policy debate is not fully captured in the study as drafted.

We see renewals as the key public policy failure here. I can't emphasize that enough. Let me say that again. Renewals are the key public policy failure here. The reason we believe that is because with respect to grants and even with respect to - - or new projects as they're called or with respect to expansion of existing projects, there are forces disciplining the two sides that ought to produce fairly reasonable outcomes.

In the case of new projects, a company can walk. It's not held hostage to as we are 900 miles of pipeline buried six feet in the ground. It can decide not to proceed with the project. On the other side, the tribe is interested in incremental revenues. And so there are reasons to suspect, in that scenario, that tribal energy encounters will produce more reasonable outcomes than the case of renewals of infrastructure that has been present for in our case half a century.

The other richness that isn't fully captured in the study that's part of this is the distinction not only between renewals, grants and expansion, but between types of infrastructure. Interstate transmission passing through a tribe but without inherent physical nexus to the tribe is more susceptible to this sort of behavior in terms of asking for increasing rights-of-way fees let's say, than other kinds of infrastructure – exploration and production infrastructure for example or distribution infrastructure tend to have the alignment of interests between the two sides that will produce reasonable constraints on the greed of either side.

In the case of an interstate transmission pipeline that doesn't bring energy that's located on the tribe to consumers of tribe, there's not that alignment of interest, and that doesn't distribute energy on the tribe by regulation we are precluded from doing that. We cannot be a distributor of gas. We have to pass through by regulation.

We are most susceptible to the sort of leverage, for lack of a better word, that I think is the central public policy failure here that cries out for some sort of objective transparent standard and a neutral decision-making process when the parties cannot - - and in many cases they have in the past - - it's not impossible, but when they cannot

reach an accommodated negotiated solution. I would respectfully suggest that standards in a decider will also help produce more negotiated outcomes.

Lastly, I would have a question about scope. Did you talk to the Federal Energy Regulatory Commission and its staff? I would respectfully suggest that there are some wildly different views at FERC than our contained in the draft study, and it might benefit from the wisdom of those regulators - - the study's excellence might benefit from the wisdom of those regulators.

And my last point, which was really I alluded to earlier, the President has staked out a position in the view of El Paso rightly so that is international interest to prefer domestically produced energy to imported energy. What are the impacts of this phenomenon, however incremental, on choices that consumers and suppliers and transporters of energy make in that global marketplace? Will this incrementally cause Indonesia to be preferred to say gas from the San Juan Basin or the former Soviet Union to be preferred to gas in the Rockies? Daunting questions; questions that are directly implicated by the President's policy. Thank you.

[APPLAUSE]

FEMALE SPEAKER: David Lester from CERT, and then we'll have Ronald Neese, Sr. and then Jim Noteboom.

DAVID LESTER: I, as the other commenters, I'm David Lester with the Council of Energy Resource Tribes, appreciate the tremendous effort put forth by the Department of Energy and various offices within that large department, as well as the Department of Interior.

The thrust of Indian energy today is to bring the enormous potential that we have both in conventional energy, as well as alternative and renewable energy to meet the growing demand for energy both for prosperity, as well as for our security. Since this process has begun I've become acquainted with Craig Richardson, the representative from El Paso, and I've come to see him as a man of integrity and yet I can't reconcile that judgment with the fact that the industry made a midnight attempt to change long settled Indian policy without that careful objective discussion and examination that he suggests the issue deserves.

It leaves me to suspect there's a divergence between corporate interest and personal integrity. Unless there's some other explanation for the dissonance that I see, fair raises a lot of hypothetical questions, provides no data to support there except the fact that it is consonant with the 19th century concept of Indians as the barrier to the civilization of North America. We are full participants in the American economy only because Congress adopted in 1975 the policy of tribal self-determination and official recognition of tribal sovereignty both inherent and those that have been created are defined through statute and court decisions.

Given the HRA's deep experience in analysis of tribal treaty and trust issues, it's surprising to find that a discussion of those important doctrines are not included in the report as it affects and has an - - as they are tied to the doctrine of tribal consent. A very serious omission in our opinion.

A number of presenters have talked about the rising costs the industry are paying to industry tribes for rights-of-way. We don't dispute that, but we don't see that as a problem. Those rising costs indicate the rising value that tribes are contributing to the

marketplace to America's energy, diversity and domestic supply, and to the supply that the consumers ultimately need. The consumer interest is not just price; availability of product is equally valuable if not more so. As indicated by consumer response to \$3.00 gas, we're still driving our vehicles because that available supply is more important to us than a penny or two a gallon as consumers.

Options that have been cited are all in the negative and punitive tone partly because the way you ask a research question determines the direction of the research effort, and without discussion and dialogue with the tribes, the research question that Congress - - that was put into the Act assumes that there was a problem that needed fixing. A false assumption takes a research effort to false conclusions. Fortunately they did not go that far because the facts did not support the assertion. But the consideration of incentives for cooperation, incentives for both parties in terms of the policy were not examined nor discussed.

Good policy from a national perspective should not encourage constituencies to go to battle with each other; should encourage cooperation and productive relationships. We're not external to the American energy marketplace. We're integral components of it valuable to all other Americans, and to push us out as if we were foreigners in our own land goes back to the failed policies of the past.

Good Indian policy is just as valuable to America as good energy policy. Not just from an economic and political point of view, but also from a moral point of view for a democratic, free society. We look forward to continuing our dialogue with INGA, the natural gas community, as well as the transmission community to find reasonable

solutions that help bring us together because it's our children, my grandchildren and my nephews and nieces who are in Iraq defending this country now.

I say this with - - because I have found in my over 40 years of working in Indian development that there are more good people in private industry than there are those with mal intent, and having the privilege for working for tribal elected leaders. I can tell you that there is a great deal of deep integrity that they possess as they represent their people before the American economy as well as the American political system. I say this in humility. I hope that we can move forward with this study to find new avenues of communication and cooperation. Thank you.

[APPLAUSE]

FEMALE SPEAKER: Ronald Neese, Sr. from the Rosebud Sioux Tribe Utilities Commission and then Jim Noteboom will be next, and Maxine Natchez will be after that.

RONALD NEESE, SR.: [Speaking Indian] Good morning. Hello my relatives. I greet you with a handshake and a good heart. My name is [Speaking Indian] Spotted Eagle Who Helps Them [ph], otherwise I'm known as Ronald Neese.

You know in response to the 1813 study, the Rosebud Sioux Tribe, we're one of the only tribes in the - - probably the only tribe in the plains region who is fighting this attack on tribal sovereignty. We've called our response The 1868 Response. We're the 1868 team. Rose Cordier [ph], Rose [Indiscernible] way back there. She's part of our team. The Treaty of 1868 - - the Treaty of 1868 this was written with the U.S. Congress with the Cheyenne, Arapahoe [ph] and Sioux Tribes. And so this is a - - we do this in our - - our team as its honor, respect and spirit of the Treaty of 1868. The Ochetti Shakowi [ph] I'm here speaking in their behalf, not just the Rosebud Sioux Tribe. The Ochetti

Shakowi are the seven council fires. The Lakota, Dakota, and Nokota tribes. We don't have the money to give to these things all the time. They're not being held in our region and we feel, the Sioux tribes, I know we feel a sense of exclusion in all these proceedings.

And the Treaty of 1868 we brought this up at the - - during the meetings in April, the initial meetings in April and May, and there were set aside meetings afterwards with the Department of Interior and Department of Energy. We were very, very adamant that treaties be included. We're very pro-treaty in the Rosebud Sioux country and throughout Sioux country. I know our relatives and our allies, the Cheyenne and Arapaho, and all of us.

If I read something from the Treaty of 1868 you know there's good as long as the grass grows and the water flows. That's what it said. But [Indiscernible] they're convenient. It's become a I think the powers that be see them as inconvenient; something to be trivialized, to be ignored. I don't think one power, one country can pontificate to another about keeping treaties when they haven't kept one on their own homelands. You know honorable men they would - - they would honor the instruments their ancestors had the wisdom to create, that I'm speaking about treaties.

The Treaty of 1868, Article 11, Section 6 - - I'm at the age where I can see better without my glasses, so. Article 11, Section 6 the treaties have relevance and I believe our ancestors helped craft them because there are things in here that even what we're speaking about today, Article 11, Section 6, they withdraw all pretense of opposition to the construction of the railroad now being built along the Plat River and westward to the Pacific Ocean. They will not in future object to the construction of railroads, wagon

roads, mill, stations, or other works of utility or necessity which may be ordered or permitted by laws of the United States, but should such roads or other works be constructed on the lands of the reservations, the government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners be appointed by the president for that purpose; one of the said commissioners to be a chief or headman of a tribe.

You know if imminent domain is granted, we suffer damage. We've been suffering damage from right-of-ways of easements all along. I kind of welcome this 1813 study because it will show what's been - - what we've been trying to say in Sioux country for a long time. We've never been compensated. Rarely have we been compensated for rights-of-way and easements. One of the few times we did a - - we were compensated, you know, we had - - we had issues with - - with the company in the mid '70s. The - - you know what the tenure of the lease or the rights-of-way is? It's without duration.

This is the norm in Rosebud country. Compensation [Indiscernible] mentioned hundred of times. We don't receive a penny. Why? Because it said - - it's part of the we should be thankful that we're getting electricity, but I say that through the - - since the creation of the REA's and the pipeline since the energy providers have entered, you know, Sioux country, a lot of us we're not the same. We've been flimflammed. We've been swindled. We've been taken advantage of.

And this is also - - and I too - - I should thank the gentlemen. I shook their hand and I thanked them, but I also say they've, as long with the Cobal [ph] case, they've failed in their trust responsibility. The study here, our study, our comments, it's not

mentioned in the footnotes in the study. There's no mention. There's no mention of the treaty. We took some time out. This is not just a couple of pages. There's a few pages in here and this - - what happens in Rosebud is indicative what happens throughout Sioux country, what happens in the Plains. So I think, you know, this - - I hope somebody at least read it. I'm sure there are, but there are major concerns here. That's in regard to the study.

And we - - this company - - things get worse with this company. Things have only gotten worse. Now they're in violation of tribal law and they don't even have a tribal business license. They've ignored our request for them to get a business license and I won't go into details. That's kind of confidential what our study's about, but what we think is their [Indiscernible] 1813 study they'll say, you know, they'll - - well, you know, the Congress intercede, you know, and then we could just ignore the tribes like we always have.

[Indiscernible] and I what I - - what I meant to say at the beginning to for my remarks as we do in our country with my elders have told me anything I say if I offend anybody, you know, I apologize in advance, but it's critical truths I speak of. And you know what I hear things about imminent domain? What brings to mind - - I heard words like Jeffersonian. It brings - - brings to mind, you know, the term manifest destiny, when one group of peoples were oppressed so they came over to cross waters to oppress another group of peoples and they killed - - they killed the whole nations of people and they say that God, the creator, gave them that right. With things that led to the holocaust, the dissemination or near decimation for entire groups of beautiful people and holocaust still continues. You know I just - - I just shake my head in wonderment.

And I'm waiting for the two minute deal here, but - - okay. But I got a little more time so if I had time I know there are a lot of speakers and I know that [Indiscernible] have some comments to fire back maybe a little later or to speak about matters that concern, because like - - like I said we're the only - - it's hard for us to get here and I know that when I - - I - - I speak from my heart. You know I don't go by, you know, a prepared text. If I wing it it seems to work out better for me in the past so that's what I do. But these hearings aren't being held in our country. You know we would have been more included, you know, if they would have been held, you know, in Rapid City or Bismarck or somewhere like that.

And I spoke to the - - to the - - to the lady. Thank you for - - I asked you the question about the historical research associates, what Sioux tribes were there, what were the Plains region and they said there were none. You're not going to get a flavor. You're not going to get the true landscape. There's my two-minute sign. You're not going to get the landscape of things that are happening. You're not going to get that, you know, so that's not fair to the Sioux tribes or it's not fair to the tribes in the Plains regions.

Okay. I'm just going to read here from, in closing, something that I wrote that was published [Indiscernible] papers I wrote about a paper called The Myth of Tribal Sovereignty, and I included the rights-of-way and easements and I called it the 1813 study. There is presently an attempt by powerful utilities companies to have imminent domain on rights-of-way and easements over and across Indian country. They and their powerful allies approached the American Congress and said they were taken advantage of by tribes for Congress to grant them imminent domain over and across tribal lands. How ludicrous. Their arrogance and greed is amazingly alarming.

The Indian is basically altruistic. We are concerned for the welfare of others - Arteelshby [ph], the Uwati [ph], our people as a whole. These corporations are concerned about their pocketbooks, the almighty dollar in God we trust. They can't take enough. More alarming, Congress conceded and inserted a Section 1813 in the 2000 Energy Act. This directs the DOE and DOI, Departments of Interior and Energy, to do a study on rights-of-way and easements in Indian country and to see if there is merit to these corporate complaints. Our tribe, Rosebud, is one of the tribes fighting against this attack on tribal sovereignty. I am proud to be a part of this effort.

For more than 14 years I have impressed the need of a comprehensive rights-of-way and easement study and evaluation. Dedicated tribal member has been delegated to do a thorough study on at least one utilities company doing business here on the Rosebud. We will prove that the Seechongo, Rosebud Sioux, have been grossly taken advantage for [Indiscernible] years, that's many, by utilities companies and the BIA has been an accomplice. We will not swallow our pride and look the other way.

In the end, this so-called Section 1813 study will prove to be our tribe's advantage. The poors are economically taken advantages by the richest, the American way. If we are to stop the erosion and diminishment of tribal sovereignty we must make the treaties the foundation of our safeguarding; that and our spirituality. We must pray for protection. There are enemies of our sacred treaties from Congressmen who would abolish them, to newspaper editorial writers who use smoke signals to belittle them. I believe the treaties are sacred because the spirits of our ancestors helped craft them will continue to guide us if only we believe.

The U.S. Constitution is not an archaic historic document, neither are native treaties. The American Constitution says treaties are the supreme law of the land after all. [Speaking Indian] Thank you.

[APPLAUSE]

FEMALE SPEAKER: Jim Noteboom from Warm Springs Tribe, then we have Maxine Natches and after that will be Melissa Schlicting [ph].

JIM NOTEBOOM: My name is Jim Noteboom. I'm attorney for the Confederates Tribes of the Warm Springs Reservation of Oregon. And first of all, I'm going to spend most of my time criticizing the report because I think there need to be some changes made, but also want to recognize that in fact the report got a lot of things right and I commend the authors for doing that.

I want to focus on the valuation piece because that's a place where I think the report got it horribly, horribly wrong, just absolutely wrong. And we're talking about a critical component for the tribe as to how much money they're going to receive for that and what that should be based on. And the report to its credit goes through and identifies a number of ways in which valuations have been determined and those were - - that's a good laundry list of means, but where it goes wrong is it begins to say we need to look at well what is the market value of this, and then they proceed to use methodologies that have absolutely nothing to do with the market value of these rights-of-way.

To illustrate that, let me pause at a situation. Let's say the tribe or maybe even an energy company or a non-energy company decides look we know in the United States that we need new transmission rights-of-way and so we're going to go out and we're going to begin purchasing lands and we're going to be the - - putting the things together

that we know will create something with real value. That is a right-of-way. And then we're going to go out in the market and we're going to sell that right-of-way because we know it will have real value to these companies.

If you read the report here you will conclude well the way we do that is first let's go out and see what the BLM is charging for the use of their lands. Okay. That will tell us what this thing is worth. Well, you know, the - - the - - the situation with regard to federal lands and what their charges are, we all know that those rarely bear relationship to the marketplace whether they're grazing leases, whether they're mining concessions, or whether they're use of federal lands for rights-of-way.

And that's not inappropriate because when the federal government sets rates for the use of its lands, it has other considerations than economic considerations to take into account. And so that's appropriate. But would - - would that energy company or the entity that assembles this right-of-way certainly would not look at what the BLM charges are. They're irrelevant to the right-of-way.

So would they then go to the standard federal appraisal method to determine the market value of their right-of-way? I don't think so. Particularly as the report notes that that method says the value of the right-of-way is specifically not considered in that methodology. So you don't consider its value for a right-of-way.

What would happen - - and let's assume the tribe puts together this assemblage of lands and they may have to get some fee lands with in the reservation and they may have to go get some rights from allottees and there would be tribal lands. And then they would have to say okay now we want to realize the economic benefit of this and how would we

do that? Well if they put together an assemblage that has no real value of for a company that wants to use it, the value of that right-of-way of zero. It has no value. None at all.

On the other hand, if it puts together a right-of-way that has tremendous value, it's the right location, it's easy to build on it, the few environmental issues, it leads to a major energy market, that right-of-way has tremendous value. Why shouldn't the tribe be entitled to be paid for that value if it occurs? That's what the market value is. It's how a user would view its value because they will pay for what it's valued. And it used to be in a regulated industry that was difficult to determine what the market value was because there weren't comparable sales, but there are now.

And so are we saying that the report would say that if an energy industry out there assembles right-of-way and then chooses to sell it, like they do, that by God what they should be looking at is what the BLM charges for its lands, and we know they wouldn't do it nor should they do it. Why should tribes do that? If they don't have to do it why should we? That this - - this methodology for valuation is just fundamentally wrong and unfair to tribes.

The - - the - - if you look at the report, and David Lester brought up the point, of the options that are presented there, Congress works with carrots and sticks. Okay. And other than your no action alternative, which your report here gives Congress a number of sticks that they can use to whack tribes over the head and get them into line here, the report - - and I don't know the study group - - should look at options in which you can align the interests of the parties in which you can take the situations in which energy companies, and there are many of them that work in good faith with Indian tribes, can

continue that and do even better, and there are lots of ways to do that. But I don't see any indication.

So what these options do is threaten America's energy picture because you're going to set up a war here; a war between the energy industry and tribes. This study has already sewn great seeds of distrust quite justifiably, okay, quite justifiably between Indian tribes and energy companies. Don't create a report here that just makes that worse and that's where these options are headed. They're going to make it worse, not better.

I want to address because this - - this really made me angry this national security issue. When I hear that the national security issue, as well the tribes if they get more money, you know, the cost of energy goes up and that this is a threat to national security. What we hear here are the world's richest company making billions and billions and billions of profit in the current energy market asking some of the poorest people in America to bear the burden of energy costs. What's their responsibility? [APPLAUSE]

Finally, the Warm Springs Tribe in every significant decision it ever makes considers the impact and the implications of its treaty and its continued existence as a tribe because if they lose that, they lose everything. And I want to read you the language from the Warm Springs Treaty that was negotiated and signed on June 25th, 1855. It describes the reservation and then goes on to say "all of which tract shall be set apart and so far as necessary surveyed and marked out for their exclusive use, nor shall any white person be permitted to reside upon the same without the concurrent permission of the agent and superintendent."

That's what we mean. This - - this tract of land belongs to the tribe and they get to choose who comes on it and who doesn't. All of the options except the no action

option are direct violations of this treaty and treaties are the law of the land. And there is very little of any discussion of that fact in the study, that what these options that have been laid out are asking Congress to do is to abrogate treaties such as the Warm Springs Treaty and that's a significant issue.

And I'm particularly concerned that, you know, the Department of Energy or Interior, which is one of the lead federal agencies responsible for ensuring that Indian rights are protected, would so lightly make these options available that are in direct violation of Indian treaties and there are many, many, many other Indian treaties that contain these exclusive use provisions.

In summary, the big picture on this report is that to the extent there is a problem, and it does say there isn't much of a problem, but to the extent there is, we ought to be looking at ways in which we can foster positive relationships between energy companies and Indian tribes. We're working and negotiating with energy companies in the northwest right now looking at new production. We're looking at rights-of-way with the Bonneville Power Administration. We like those people and we work well with them. You're driving a stake between Indian tribes and energy companies that want to work together.

The thrust of this report ought to be that there should be a strong message to the Congress that look let's find ways to bring Indian aboard. Let's find ways to align interests. There isn't a problem now and the best way to avoid the problem is to align the interests of the essential parties. Thank you.

[APPLAUSE]

FEMALE SPEAKER: Great. We'll have Maxine Natches who's Chairman of the Ute Tribe and then Melissa Schlicting from Morongo and John Jurrius. And if you'd like to speak, if you could please sign up. We only have a few more people signed up so I would suggest we press through to lunch, but if you have not signed up and would like to speak, please come back here and we'll make sure to get you on the list.

MAXINE NATCHES: [Speaking Indian] Good morning. My name is Maxine Natches. I'm Chairman of the Uintah and Ouray Tribal Business Committee of the Ute Indian Tribe in northeastern Utah. We appreciate the opportunity to comment on the draft report on tribal rights-of-way recently released by the Departments of Interior and Energy pursuant to Section 1813 of the Energy Policy Act of 2005. Several representatives of my tribe will attend a meeting scheduled in Salt Lake City tomorrow and the Ute Tribe will provide detailed comments on the draft report in Salt Lake City.

The Ute Indian Tribe, as I said, resides on the Uintah and Ouray reservation in northeastern Utah which is presently the site of considerable oil and gas development activities. The revenue generated from the tribe's active management of mineral development on the reservation is critical to the long-term financial success of the tribe and our membership. For that reason, the tribe has a vital interest in the issues addressed in the Section 1813. The Ute Tribe has been an active participant in this study and previously provided detailed comments to the Departments of Energy and Interior and made tribal records available to historical research associates.

The tribe has reviewed the draft report in detail and while it appreciates the magnitude of the task in assembling that report, the tribe submits these comments on the draft report to address a few critical shortcomings. First, the agencies must better

distinguish between supportable facts identified by commenters and mere anecdotal evidence are speculation and accord such comments appropriate treatment in the draft report.

Like many tribes, the Ute Tribe expended considerable time and effort compiling and synthesizing right-of-way data for use in Section 1813 study. It is troubling then when the agencies provide attention in the draft report to unfounded and unsubstantiated claims. For example, the draft report repeats a claim of one trade group that trespass fees could cost utilities hundreds of thousands or even millions of dollars, but then reveals that the commenter provided no specific data or actual instances of such a problem. Repeating unsupported assertions can only serve to create or perpetuate misconception about operating in Indian country and contributes nothing toward the statutory mandate of study the issue. The agencies must not allow opinion to substitute for supportable data.

Second, the draft report provides an incomplete and potentially misleading encapsulation of the case summary covering rights-of-way on the Uintah and Ouray Reservation. As the tribe commented to the agencies during the scoping period, the tribe has in the past several years negotiated a throughput fee system and other approaches to compensation from natural gas pipeline owners operating on reservation lands. The draft report, however, only captures older and often more antiquated compensation methods in the case study of the Ute Indian Tribe. Without identifying more recent terms like the throughput fee system it is impossible for the draft report to fairly reflect the historical evolution of right-of-way compensation on the Uintah and Ouray Reservation.

Third, the draft report makes two facts abundantly clear. One, that present system of right-of-way compensation on tribal lands does not have a significant impact on energy prices paid by consumers. And two, the present compensation system does not pose a threat to energy security via the reliable delivery of energy to market areas. The only possible conclusion that could be reached is that there is no problem requiring congressional action, yet despite these fair conclusions, the agencies present as opinions options for potential congressional action.

Such radical notions as establishing a federal entity to determine fair compensation for all energy right-of-ways across tribal lands requiring binding third party attribution of right-of-way negotiations and authorizing the taking of land against the will of its tribal owner. These drastic notions are options to solve a problem that the agencies acknowledge does not exist and are inappropriate in the draft report.

Furthermore, these options for consideration by Congress contravene the fiduciary obligations of the United States toward Indian tribes. Under federal case law, when an agency faces a decision for which there is more than one reasonable choice, it is obligated to choose the alternative that best serves the interests of the Indian tribe. Here the agencies are proposing alternatives that would adversely impact tribes and which are not remotely reasonable in their relationship to the findings of the agencies. The decision to propose such options as part of the draft report is not in keeping with the fiduciary obligations of the United States to seek alternatives that promote the best interests of Indian nations and such options must be removed from the draft report.

Thus far, the Ute Indian Tribe has spent close to \$1 million in combating this encroachment, but we have - - but we are committed to further participating in the

Section 1813 study to ensure the continued success of its commercial relationships with its energy industry partners. And more importantly, to protect our sovereign interests as well as those rights of the Indian nations across the country. This could have been spent on programs to benefit our membership such as for the elders, education, law enforcement, housing, healthcare, and other programs, but the Ute Indian Tribe continues to work on this option.

I say this because we believe this money was not well spent in a way because there is no problem to resolve. The existing process works. And we are fortunate in that we can fund these trips and consultants and attorneys, but there are many, many Indian tribes across the country who do not have the resources and it's hard for us to get to some of the meetings at times.

And I agree with the representative from Rosebud. More regional meetings should have been set up so that the tribes don't have to spend so much money in traveling. In fact, this meeting should have been maybe more - - more publicized more a little bit so that more tribes can get here as well. As I've attended the meetings I see not too many tribal leadership attending the meetings, but its staff, but I commend those tribal leaders who have made the efforts to make sure that they get to these meetings because we're the ones that are responsible for making these decisions. But we look forward to our continue dialogue with the Departments of Interior and Energy within the next couple of days in Salt Lake City.

With that I say happy journey to you all and we'll see you at the next meeting.
Thank you.

[APPLAUSE]

FEMALE SPEAKER: Melissa Schlicting from Morongo and then John Jurrius from Ute Tribe and then [Indiscernible].

MELISSA SCHLICHTING: My name is Melissa Schlicting. I'm an associate attorney with the firm of Parshmer [ph] and Associates which is general legal counsel for the Morongo Band of Mission Indians. I'm here at the direction of the tribal council of the Morongo Band of Mission Indians which is located near Cabazon, California.

The Morongo Tribe wants to express its appreciation for the efforts that the Department of Energy and Department of Interior have devoted to the preparation of this draft report. Morongo is gratified that the report affirms the value of cooperative relationships that exist today between the tribes and power companies. Together with tribes around the country, Morongo is helping to deliver electricity to millions of families all over the country, and tribes are doing all of this at a cost of only a little more than a penny a month for average consumer.

The success of tribal partnerships with America's energy providers has been built on the laws that guarantee that tribes will have the right to consent to the use of their lands for energy rights-of-way. Findings of this report affirm that system of tribal consent is working well. The Morongo Band of Mission Indians is satisfied to see that the findings support the conclusion that there is no need to change the law.

Morongo will have detailed comments on the draft report when the Departments of Interior and Energy conduct one of the next public meetings at Morongo on August 28th. For now the tribe wants to express its support for the draft report and our commitment to do our part in helping to meet America's energy needs in the future. Thank you.

[APPLAUSE]

FEMALE SPEAKER: It's from the Ute Tribe then Meg Hunt and Harrison Socee [ph].

MALE SPEAKER: Good morning. Like those before me, I want to thank DOE and DOI for the work that they've done. This is not a job that they asked for, and knowing what other jobs that they have before them, it's been quite an undertaking.

With not intending to speak today, we'll be speaking tomorrow in Salt Lake, however, just as Mr. Richardson and I believe it's Mrs. Cameron from Fair said there were issues raised by Mr. Nighthorse Campbell that needed response, I believe that Mr. Richardson and Mrs. Cameron raised some issues that certainly deserve response. Excuse me.

I believe that Mr. Richardson stated that he was drawing the conclusion that EMP and midstream companies might have more in tandem with tribes that provide an impetus to negotiate and maybe not abuse leverage. I have not seen an attempt to narrow the scope by industry and by coalitions. And so I would urge you to try to narrow that scope in - - in the way that you've suggested.

In regards to Fair, you bring about that the report does not demonstrate the benefits that might offset these perceived costs that - - that you've brought to the attention of DOI and DOE in Indian country. Again we accept your challenge. Please urge DOI and DOE to include the benefits that Indian country is contributing to solving the national energy problem and we're more than happy to provide it.

Third, I did feel that I needed to respond to the issues regarding the President's policy of domestic production over foreign production. I will agree that costs drive

activity and ultimately maybe a share of the market, but what I don't understand if we're going to regulate cost that have an impact and would provide a greater market share and greater production in this country, the last item on the list of influence that you would regulate is tribal right-of-way. You would regulate corporate profits, service companies, transportation cost at all levels, not just at the public transportation and public utility companies.

So I just wanted to bring to the attention that it seems, and as Mr. Noteboom notably is somewhat disturbing, certainly perplexing, that when you look at all the issues that impact the consumer pricing or impact the ebbs and flows of the marketplace, tribal right-of-way is not at the top of the list or even material, but yet it's first of an action in a long needed energy bill to be attacked by industry. Thank you. Appreciate it.

[APPLAUSE]

FEMALE SPEAKER: Meg Hunt and then Harrison Socee and Margie Schaff.

MEG HUNT: Good morning. The Edison Electric Institute appreciates the opportunity to provide comment on the draft Section 1813 report prepared by the Departments of Energy and Interior and we do so on behalf of our member companies who have rights-of-way across tribal lands throughout the United States.

While we acknowledge the sensitivities that have been bruised by the mere fact of the Energy Policy Act requirement of this report, we believe that the public discussion spurred by the report has been valuable to all parties and we appreciate the Department of Interior and Energy's effort to try and facilitate that dialogue and to keep it constructive.

We have tried to be constructive and focused in conveying the concerns of our member companies with the present approach to negotiating rights-of-way on tribal

lands. We understand, they understand, the need and the desire and the authority of tribes to control the types of activities that are allowed to make sure of their lands. It is out of this respect for that need that our companies have hoped that we could begin a dialogue about how to address the dispute arising between us about the negotiating process, particularly in the context of right-of-way renewals.

We also understand that there are many who dismiss the concerns that we have raised believing them not to be significant or merely a complaint about rising costs that flow from the increased sophistication of tribes in obtaining value for their precious resources. We deeply appreciate tribal members and representatives who have acknowledged that we have a perspective and believe there is a problem and are willing to sit down and talk with us how we might talk through those and we are appreciating as we have sat through this discussion with you how difficult that may be and how complex and challenging that may be, but our companies are committed to trying to do that.

And I just sort of wanted to lay that out as a predicate to providing some comment on the report, and because of the limitations on time I would love to sit here and tell you what we like about the report, but I think we will reserve that for written comments and we will be more - - we will address both general and some very specific concerns in the written comments that we will submit to the department. We will try to submit them by September 1, but appreciate having - - having the weekend. We are still in substantive dialogue with our member companies and so I will raise some general points now and when you see them in written form they may be expressed more strongly or expressed in a slightly more modest manner depending on how - - how we go through.

But I'd like to say as constructed I think the lengthy introduction of the report really sets the stage for what follows and it significantly affects how the reader perceives the rest of the report. And I think some of the observations that I will make, while in some areas the report there may be some issues related to this that are reflective in other areas of the report, they're actually magnified when you actually read through the introduction.

One, we believe the report significantly mischaracterizes industry's concern as one of a complaint about rising costs. And industry is not complaining about rising costs, neither is industry complaining about the need to pay Indians, nor the increasing sophistication of the tribes to value their own assets. In fact, in talking to our member companies, they appreciate the increasing sophistication and the growing capacity of the tribes to enter into the discussions about - - about rights-of-way valuation. Our companies expect to pay more. They are willing to pay more. The dispute is over how - - how you go through those negotiations and what standards you use to reach that and the uncertainty and the risk that the companies face based on methodologies that are presently being used and that are resulting in amounts that are far in excess of what often times are negotiated with tribes in a willing buyer context for a new transaction.

Which brings me to the next point that I think is that we think the - - well let me come - - I'll come back to that. The second issue that I think we want to bring up is the draft report fails to adequately explain the importance of the context to the outcome of a right-of-way negotiation. It does not clearly distinguish between right-of-way renewals, new siting, right-of-way renewals and new sitings that are specifically related to production of oil and gas facilities on production on tribal lands. And by failing to do

that, it fails to properly inform Congress and the public about what is - - is beginning to happen.

In almost every instance where the draft report states and industry concern or our concern that largely arises out of the renewal context facilities not associated with the development of oil and gas resources and tribal land. And example of the successful negotiations or assertions if there are no problems are drawn from examples that are specifically related to the production of oil and gas - - production of oil and gas on tribal lands, and we think there is a - - they are different animals. It's like apples and oranges and we think that it's important to clarify that context in order to focus the discussion and properly understand what's happening.

The draft report I think in a number of places takes the position that a completed negotiation is a successful negotiation, and we disagree with that viewpoint and did provide in our survey documentation or provided in our survey a sense from our companies of how they felt about each individual renewal transaction that they had engaged in in the past five years. They - - that was not reflected in the report and we think that - - and I understand there may have been a view that if you didn't have it in a source document like an expression of unhappiness with the negotiating process in your easement that that, therefore, couldn't be verified.

We think that's an unreasonable verification standard to apply in this context and that the subjective - - admittedly subjective viewpoint of our companies that they were unhappy with the negotiations for these rights-of-way should have been reflected in the survey data. And so it - - we think that our companies' expression of dissatisfaction with

the negotiation process is equally - - equally valid as the subjective view of the tribes if those negotiations had been successful.

We also believe that the draft understates a potential magnitude of the fee issue by failing to make clear that we are, at least for our industry, we're in the beginning of a transition from 40 to 50 year permit terms to 20 to 25 permit terms with upwards of 95% of existing facilities yet to be renewed.

And we - - we recognize that this causes some difficulty in assessing, you know, what the potential cost and the parameters of this, but we think it's important to make absolutely clear that from the electric utility perspective this is an emerging issue and for which - - and we hope - - we hope we can reach an agreement and find a way to resolve this so that the current trend lines which we think we documented in the survey and which were in fact verified by DOE looking through the source documents from the negotiations that - - I just lost my train of thought - - that it is an emerging issue. The - - and what the trends are based on the renewals that have been seen in the past five years.

We also believe that the conclusion in the report that the fee issue is self-limiting cannot be sustained based on the data and the other information in the report. For facilities not associated with oil and gas production on tribal lands, the report contains no information to suggest that tribes have an incentive to reach a reasonable result in negotiations or that there is a mechanism for encouraging tribes, and I guess for that matter companies, to reach a resolution. It assumes that companies can realistically plan and move facilities and in some cases companies may have the option to move, but then they may not be approved by their PUC and the assumption is, you know, as long as you

have the renewals out there and the renewals are occurring every 20 years, the problem exists, the uncertainty remains in terms of what - - of how the issue plays out.

And maybe over time companies find ways to move facilities off tribal lands, but I - - but that's a pretty difficult process and no evidence to think that that - - that that will be possible.

We are also I think somewhat - -

[change of tape]

MEG HUNT: The energy industry and, you know, and the tribes and we don't think at least EEI doesn't think it's in the long term interest of either the tribes or the government or our industry to have facilities because of the uncertainty out there automatically sited around tribal land. We believe that there may be tribes out there who want to host these facilities who will in effect have their right to consent to receive these facilities denied because of the marketplace and the uncertainties regarding these right-of-way negotiations will have that decision made for them.

And we're - - our companies are interested in a long-term relationship. We understand the challenging complexities associated with that and we have - - we are committed to trying to find a way to work through these things.

We will be a good deal more specific - - oh on the cost issue, we will come back with some additional thoughts on the cost. I would say that you primarily looked at the cost to consumers and we think this is an issue that is very hard to decide in the aggregate. It's very much a site-specific concern. Depends on the number of renewals a company has, what they pay for those renewals, what the cost of - - what the customer base is that they have over which to spread those costs, and depending on what the, you

know, what the individual factors are will depend on whether the - - whether the impact to the customer is significant or not.

We also think the report does not adequately understand the significance, at least our member companies, of a one percent or a five percent rate increase. It sounds pretty minimal but it is significant. We're going to try to do a better job to - - to explain - - to explain that.

We really do appreciate the effort of the Department of Interior and the Department of Energy in producing this report. We understand the challenges that they faced. We appreciate the opportunity to talk with you, the tribes, and we hope that we can continue the discussion and that over the course of time that we can better understand the respective positions and find a way to work through them.

FEMALE SPEAKER: We have left on the list - -

[APPLAUSE]

FEMALE SPEAKER: And if your name is not on here and you'd like to speak, please come see me so we can make a decision around lunch as well. Harrison Socee from the Navajo Nation Department of Justice is next and then Margie Schaff, Amy Magnella [ph], Don Cleary and Jacob Moore is who we have on the list.

HARRISON SOCEE: [Speaking Indian] I'm Harrison Socee. I'm the Deputy Attorney General for the Navajo Nation and wanted to talk a little bit about our introduction a little bit first. This introduction of the Navajo greeting [Speaking Indian]. Ya [ph] means universe in Navajo and Yatay [ph] means it is good. So I'm greeting you saying the universe is good. Today is good. And has far reaching implications because the law deals with relationships, how we all relate to one another within the universe and

within this greeting we talk about how we relate to one another and it's the Navajo's recognition that the universe is one entity and people within that universe to a certain extent have certain relations to one another and how they interact with one another. And I see that as part of the discussion today and so that's how I greet you.

There's two things that I want to talk about. First of all is authority for 1813. The second thing I want to talk about is this appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions and renewals of energy right-of-ways on tribal lands. And I'll give you a little different perspective than from the tribe because as a member of the Navajo Nation we do also have a different perspective of this discussion also. So I'll bring that to light.

First of all, it's my assumption and the discussion of authority that the study, or Section 1813 of the Energy Policy Act of 2005, was sanctioned by Congress under the theory or the doctrine of the federal government's trust responsibility over Indian lands. So that's my general assumption. And what does that encompass and what does that mean?

What I see as missing in the document is this discussion of the federal government's trust responsibility. Who is the trust responsibility to and it's the assertion that there are certain intended beneficiaries of this particular trust responsibility and those people are not mentioned. Is it tribal members? Is it the Indian tribes? Who does the federal government have a trust responsibility to? And it's unresolved here.

There has been some discussions that the American public will bear the burden of increased rights-of-way fees, grants, easements and so forth, and it's my proposition that the rightful beneficiaries of the federal government trust responsibilities are Indian tribes

and the tribally enrolled members. Therefore, the federal government has a responsibility to tribes and their members. However, the assertion being made here is that their - - national security or people down in Los Angeles or Las Vegas or Phoenix may suffer because the Navajo Nation or the Navajo people in this particular discussion may want to get a certain value for rights-of-ways across their lands.

Now that having been said, the question for the federal government representatives is, and Congress, is do they have a trust responsibility to people in Phoenix and L.A. and Las Vegas or everywhere else? So the proposition at least I'm putting forth here is that responsibility is to Indian tribes and these Indian tribal resources should not be managed to subsidize the people in L.A., Phoenix, Las Vegas or elsewhere as historically how these resources have been managed in the past. So that's at least one of the components that we would like to mention.

Secondly, on this issue of appropriate standards and procedures for determining fair market and appropriate compensation for Indian tribes, this is where I'll have a little bit of a personal discussion because my family, my mother and my father, sisters and brothers, they live out on the Navajo Nation on a certain piece of ground and over this piece of ground there's highway - - U.S. Highway 160 that crosses right down the middle of it. There's the WAPA, Western Area Power Administration. There's a 230 - - I believe it's a 230-kilovolt line high voltage transmission line that goes right through the middle of it. There's the Questar Southern Trails Pipeline that goes right through the middle of it. Then there's another 69 KV line that goes right through the middle of it.

And then there's my mother, there's my sisters. They live without power. They have to haul water. They have to haul firewood. They don't have any of the modern

conveniences as the people in Phoenix or in L.A., Vegas or everywhere else, but nevertheless, these transmission facilities cross over what we call our lands, yet we don't have any of the modern conveniences. So the question on this issue of appropriate standards and procedures for determining fair and appropriate compensation is that really going on here because my mother's not getting any of it? Certainly I'm not getting any of it.

So it's a daunting task, but these officials up here have been given the task of putting some parameters around this difficult discussion of Indian trust lands and we do as a Navajo people thank them for this task, but it involves further discussion. It's not just a discussion between the tribes and energy companies. It's also a discussion between tribal members, tribes, Indian or energy companies and anybody else.

So those kinds of discussions I don't see as taking place in this particular document. And that's just kind of the reminder on this theory of who the tribal trust beneficiaries are. Is it the tribe? Is it my mother? Is it my sisters? Is it myself? So that's I see as the real underlying issue here and those kinds of considerations are missing from this particular document.

And I just want to restate and remind the federal officials and Congress that the trust responsibility extends to enrolled tribal members and Indian trust resources should not be used to subsidize non-tribal members while I get nothing. Thank you.

[APPLAUSE]

FEMALE SPEAKER: Take a break for lunch at this point. It is noon and come back at about 1:15. We think that should give you enough time to get something to eat and we'll continue on with the next [Indiscernible].

FEMALE SPEAKER: [Indiscernible] I just have an announcement. There's a tribal caucus in the Lookout Room and you can order lunch in the Lookout Room, so if you're in the tribal caucus just head for the Lookout Room and you can order your lunch from there.

MALE SPEAKER: And also if I could ask, to the extent that you have written comments that any of the speakers spoke from today, if you could share those with us it will give us an opportunity to review those in detail along with our notes so that we can get a jumpstart on reviewing the comments that you have.

MALE SPEAKER: Ladies and gentlemen, we'd like to begin. Seems we've given instead of the full professor rule we've given it to the president of the university and so I'm going to turn this back to the facilitators to tell us who the next three speakers are. We believe there are only four or five speakers currently signed up, so if you wish to speak, even if you want to speak again at this point, please see the young lady with her hand up in the back, the red hair, and we're set to go.

FEMALE SPEAKER: Great. The next speaker we have on the list is Margie Schaff with the Affiliated Tribes of Northwest Indians, if she's still here. She is? Okay. We will keep her on the list. Amy Magnella from the White Mountain Apache Tribe [Indiscernible], and then Don Cleary from Holland and Knight and Jacob Moore will be next.

AMY MAGNELLA: I'm short so I'm going to stand up here, otherwise you might not be able to see me behind the microphone on the floor. I'm Amy Magnella. I'm an attorney representing the White Mountain Apache Tribe from Arizona. And so most of my comments are going to reflect back on Arizona related aspects of things that

were mentioned earlier. I'm not going to try to accurately relate back to individual speakers, but I will try to reference general comments that were made this morning.

First of all, I want to point out - - I think I did this at a prior meeting, but now we have even more data, so I want to point it out for the record that Arizona Public Service Company in Arizona has filed a rate increase for - - for customers in the state of approximately 25%. I think I had mentioned that at a prior meeting. Now last week or let's see what's today - Thursday - I think it was Monday, Tucson Electric Power, which is the third largest utility in the state, has also sought a rate increase of 24%.

So for anyone suggesting that, you know, in the scheme of things the pricing for the rights-of-way is significant, we need to consider obviously to the consumer from the consumer's perspective, which I think is kind of what's really been brought up here, which they would consider to be significant and I think that answer speaks for itself. I know that if I look at my personal utility bill I now have to care about these rate increases. I have to care quite significantly because I am a Tucson Electric Power customer and 24% of what I already pay in the desert is a large amount of money on an annual basis.

I also wanted to point out that - - that I disagree with the notions made this morning that cost is not an issue. At best I think I'm very confused by that remark. It was made several times by several different industry representatives and I would like to point out that one of the other things I get to do at the moment in my day to day life is act as an administrative law judge, and as an administrative law judge when people present information to me that is conflicting, I disregard it.

The entire issue gets thrown out and that is consistent with the legal system in our country and so I would encourage you all as decision makers here trying to evaluate how to proceed on this issue that if a party is going to cherry pick their position, you have to disregard all of those conflicting - - conflicting arguments, otherwise it creates quite an unjust, unfair outcome.

So if you're looking at reducing the report, if the industry representatives want to continue to say that cost is not an issue, then I would assume that the valuation process can be deleted and the report can be shortened in that fashion.

I also want to comment that the Section 1221 issue, I'm concerned and took special note of the fact that there was reference made to FERC being quite opposed to the - - the conclusions brought out in the report as it's written in the moment. I'm not sure that that's - - that that can be - - that can be stated by anybody.

There is a brand new commissioner who has come on to FERC who is from Arizona who was on our Arizona Corporation Commission. I'm familiar to some extent with his position on certain types of issues and I encourage the folks here, you know, from DOI and DOE to basically ignore that and just proceed without concern for another agency's potential stance on this issue.

I also want to point out that I thought the argument that was made with respect to the Questar posture was nonsensical to say that an entity that relies so heavily on dealings with the tribe and has done so successfully to its commercial advantage would somehow be a bad example of - - of how industry should be considered in this process is just something that again if I was the judge or jury of this process, I would disregard. Thank you very much.

[APPLAUSE]

FEMALE SPEAKER: Don Cleary with Holland and Knight and then Jacob Moore and Pat Spears will be next.

DON CLEARY: Good afternoon. I'm Don Cleary from Holland and Knight and I'm representing the Pechanga Tribe and I just wanted to respond briefly to a comment that was made earlier by I believe it was one of the Fair representatives who indicated that - - or they were complaining about the fact that certain allegations that had been made by Sempra were apparently overlooked in the report.

I just wanted to reiterate that and I made remarks to this effect at the last meeting here in Denver that there is no evidence the Sempra has incurred any costs by being forced to avoid Indian reservations. The example that was used by Sempra in their comments justify this premise was the Rainbow Valley line that they sought to build. Sempra suggested that the Pechanga Tribe's opposition to a proposed route which would have threatened a sacred site, and again this was not an economic concern, caused the line to fail is simply incorrect. The line was not approved because the California Public Utilities Commission found that it wasn't needed. Therefore, any arguments that Sempra's current cost associated with the Sunrise line which is the line which they state their building as a substitute for the Rainbow Valley line, that they're incurring increased costs because of this are simply incorrect. There's no evidence that any tribes are opposing this line.

What this does do, however, is underscore something which I think wasn't adequately dealt with in the draft and that is the tribe's interest in protecting cultural and historic resources. This interest is an important distinction that separates tribal interests

from the interests of others and illustrates why condemnation cannot be an acceptable alternative for tribes. Tribes have sacred and historic sites that must be protected. This is like other areas that the average rancher or farmer had. Consequently, a condemnation alternative and valuation approach is simply not analogous and cannot be applied to tribal lands. Tribal sovereignty must remain intact so that these resources can be protected. Thank you very much.

[APPLAUSE]

FEMALE SPEAKER: Intertribal Council of Arizona and then Pat Spears and then Margie Schaff.

JACOB MOORE: Good afternoon to those from the Department of Energy, Department of Interior. Thank you for giving me the opportunity today to come up and speak. Also to those representatives of both industry and tribes and other interested parties. Again my name is Jacob Moore and I'm actually working with Intertribal Council in terms of conveying sharing information back to the Arizona tribes, not necessarily including Navajo. There are 22 tribes in Arizona including Navajo why they work together in terms of their relationship. The Navajo Nation is not a member of Intertribal Council.

And just to start out, the one concern which is not necessarily related to the report but feel necessary to express is the concern that this meeting was not held in Phoenix and I'm sure that there are reasons why that can happen, but it did prevent those 22 tribes to be able to actually attend this meeting had it been in Arizona. And obviously they can attend either in Salt Lake or Albuquerque or in California, but many of the tribes also don't have the kind of resources to be able to do that, so I find that unfortunate.

With that being said, I do respect the efforts that have been put into this report. Obviously it was a major undertaking and not one that we would probably want to wish on our worst enemies, but with that being said that there were some good things in the report. The issues of the structure or the components that on the issues of national security and cost to the consumers have been determined to be unfounded claims. I think the major concerns that we have is not so much specific detail about sections, but primarily to the structure and the conclusions or the lack of them.

I believe that those components of the report that were pretty self evident that included both strong representation of self determination and self governance as federal policies was well stated, but there wasn't a natural follow through to these obvious conclusions that that was avoided. And I understand the reasons for it but there's a couple of reasons why I have a problem with that, and one is that as a landowner for tribal land I've been fortunate enough to be a member of one tribe but really come from four tribes, so I have the land interest in Montana and South Dakota and Arizona, and a tribe that is not allotted but is simply tribal land that there's an unwillingness of my trustee who's responsible for overseeing that land to make a recommendation that is in my best interest.

There's been a lot of talk from the Department of Interior and action in terms of trust reform, trust reorganization. We have an office of special trustee who's taken great effort to be able to express their effort in protecting the trust, particularly in light of Cobell [ph], major funding that has been moved to build the infrastructure responsible for trust management. But when the Interior's been given the opportunity to express its concern and protection of tribes when it comes to right-of-ways, they've punted on the

issue and decided that in any report in terms of developing your evidence and developing conclusion that there is not a conclusion, but really options versus recommendations.

With that being said, there is this opportunity to demonstrate the integrity of this duty within this report regardless of the pressures of OMB and the energy industry. Removing tribal consent amounts to the taking of land, which was one of the primary goals of establishing the federal trust relationship in the first place. And regarding the political influences that the trust duty is paramount to Department of Interior's responsibility and to do something less is simply a breach of that trust duty. But I don't want to spend a lot of time on that. I think that there are other solutions outside of the report.

There was someone that raised the question this morning - - a couple of questions. One was from an economic perspective in terms of what potentially could happen; another in regards to what is the administration's position and the President's position.

On May 9th, 2002 President Bush honored Milton Freedman with a Lifetime Achievement Award in the area of economics and in his statements President Bush said Milton Freeman has shown us that when government attempts to substitute its own judgment for the judgment of free people, the results are usually disastrous. In contrast to the free market invisible hand, which improves the lives of people, government's invisible foot tramples on the people's hopes and destroys their dreams. Freedman also refers to this as the debt hand of bureaucracy.

Milton Freeman is obviously well known for his affair or free market in which the market decides what the appropriate way to address certain issues versus government and bureaucracy. It's something that energy companies do understand from an economic

perspective. I think the energy companies understand well the elasticity and the inelasticity of demand over price, but tribes are also learning these rules of the game and for the same reasons contained in some of the concerns from the energy industry, tribes have those same concerns in terms of getting the best price.

It was mentioned also earlier about the - - I guess to summarize there's this concern about the conclusions and the structure of the report, also the premise of the report in terms of why is it necessary for government to try and resolve this issue, and the last is the consequences. I think that it's also important to understand that tribes are certainly energy providers and participants in the energy industry and look forward to those opportunities to expand those partnerships and to work not only with that industry, but also with the United States in general. And I would like to see those opportunities for us to be able to partner versus the consequences of potentially establishing a huge fight over this issue of energy right-of-way.

That concludes my comments. Thank you very much.

[APPLAUSE]

FEMALE SPEAKER: Pat Spears of the Intertribal Council on Utility Policy and then Margie Schaff and Shenan Atcitty.

PAT SPEARS: How, my relatives of many nations that are here and respected representatives of the government and industry. My name is Pat Spears and I serve as the President of the Intertribal Council on Utility Policy. We represent tribes in four states and there are 12 now that are members of COO [ph] who are also developing an intertribal wind project and transmission access and new construction of electricity transmission are really key issues that we are focusing on.

I am a member of the Lower Brule [ph] Sioux Tribe, which is located on the Missouri River and surrounded by the state of South Dakota. Transmission is something that has been looming large in our picture since they flooded our homelands and built the dams on the Missouri River. Access to some of that power, let alone transmission, is something that our leadership worked long and hard for.

We've been used to taking of our lands ever since our reservation was created in 1889. The ink was hardly dry and our boundaries were reduced by one half of what they are today and opened up to homesteading, as they were in North Dakota, Montana and enabling acts that - - that followed the congressional acts that created reservations.

So after that, you know, there was other taking of our lands within the boundaries for homesteading again because I guess it was figured there wasn't enough - - there was more land than we needed and we weren't using enough of it. Whatever the justification was it was down without our consent and so now the 50% of the land within our boundaries are deeded lands and owned by non-Indian people.

So it's something that, you know, we look at everyday when you look at flooded homelands, you look at huge transmission towers carrying electricity operated by the Western Area Power Administration cutting across lands and looking at that economy and wondering why we never participated. You know that's something we worked on for a long time to get a small piece of the hydropower from the Missouri River reservoir system, only four percent of the available pool, which amounted to some 65 megawatts among 27 Missouri Basin tribes.

Well 65 megawatts of energy most of our tribes at home can produce that in our backyards behind our houses, if you will. We have huge wind resources there. And we

also realize there are growing markets for energy in the not only in the Midwest but either side of the Continental Divide of transmission in this country which runs right through Rapid City, South Dakota.

So we're very aware that right-of-way access, energy security, you know, are serious issues not only for tribes but for everybody in America. And we want to proceed with access to energy whatever form that takes, you know, we are supportive of that for whatever tribes choose to develop there.

We also support tribal sovereignty. You know from both regulatory as a tribal government, you know, and economic perspectives with a right to - - and the necessity to provide for our young people and who are many times younger than the rest of the median population of this country. Half our people are under the age of 18. That's serious and very significant.

We also know that the treaties amongst the Indian nations and the U.S. government are the basis for the recognition of tribal government sovereignty and the regulation of commerce. So the authority is clear that's there.

We've had some bad experiences with right-of-way and taking of lands. Some for the construction of dams and then the easements for power lines coming from there. Just compensation has always been an issue, but many times the tribes weren't even asked and had to - - had to fight, had to demand that it be done and had to bring that issue up again. So we've learned over the course of years and learned through litigation and some serious negotiation, learned from other tribe's experience that we have to be at the table, you know, or as many say you're on the menu. But we're tired of being on the

menu and we need to be part of negotiation. We need that respect and we need to be compensated fairly.

Our involvement in those negotiations and getting some fair market value for access right-of-way isn't going to impact cost of energy at all. In fact, we look, you know, we look to those tribes that have had successful negotiations for transmission and other distribution pipelines of energy and such and have respect for that, and I think there's more potential in negotiating and partnering.

You know most of the federal law that's in place there, you know, does support consent and just compensation for right-of-ways, but there are other tribes, you know, including the Coo Tribes in the northern Plains that look forward to investment partnerships as my friend from Arizona just said. That is wide open for us to negotiate some good partnerships and some good business opportunity that lies out there.

So we're especially looking at partnerships with our treaty partner, the federal government, and its power marketing authority such as Western Area Power Administration, to partnering with us, to provide power for a diminishing hydropower resources and the use of existing line that's there, but the off-ramps and the new lines that can be built are upgraded to accommodate more wind energy not only for our region in the Great Plains there, but to those growing markets both east and west of the United States. And we, you know, we hope to be able to provide some of that demand for clean power.

The Western Governors Association has set a goal of 30,000 megawatts of renewable energy by 2015. When COO set out a goal of 3,000 megawatts of wind energy on 20 reservations in the northern Plains people thought we were dreaming.

That's way too much to be thinking of. We know it's not. That's only ten percent of what the governors are looking at doing. So we want to be part of that planning and that negotiating. So we are at those tables with those groups, utilities, environmental groups, business groups and all those who want to see increased transmission so that we can help provide for energy security of the United States.

We also have alliances with cities that want to lessen some of the pollution in their cities and want more clean cities. We've seen hydropower allocations diminish from 100% renewable to 80% renewable in the northern Plains and others areas of the country. So we - - we look forward to negotiating and having the government there at our side as partners in helping deliver clean, affordable energy at a stable cost.

So thank you for the opportunity to address you here and provide some comments on this study. [Speaking Indian]

[APPLAUSE]

FEMALE SPEAKER: Affiliated Tribes of the Northwest Indians and then we'll have Shenan Atcitty and Andrew Emerick [ph].

MARGIE SCHAFF: Well thank you everyone very much for the opportunity to give these comments and I also very much appreciate the hard work of Departments of Energy and Interior and all of the time they spent putting this together. I have two general comments and then the lawyer in me took over and I have five kind of particular comments on specific sections of the report.

First of all, my general comment, my first general comment, is that the statutory background in the report leaves all - - leaves out all but a brief mention of treaties, and it's incredibly important to include the treaties and the variety of the different treaties in

the statutory basis for the law that underpins what's happening here. Further, there isn't nearly a strong enough mention of the federal trust responsibility.

Secondly, the report has not made any recommendations as is required by the act. Options instead were included in the report and this is a quotation "to avert concerns that could arise." So these options are basically responsive to hypothetical situations. A number of the options are inconsistent with the conclusions in the report and could be construed as tacit recommendations. These options violate the federal trust responsibility and they could lead to violations of tribal treaties and violations of America's moral duties to tribes.

Now for my particular sections that I would like to address. Section 1.3.4 describes a lack of uniform standards for valuing tribal right-of-ways; however, the description of the unique and diverse nature of the many tribal lands is wholly inadequate, and the legal basis of the differing treaties that apply to the differing lands is also not there.

In Section 1.3.6 the report talks about the potential for curtailing facilities in trespass for tribes to "curtail," and that's a quoting word, facilities that are in trespass. This section should be deleted from the report because it's never happened. In numerous cases of trespass and eventual settlement of the issues are in the record. I could say that similarly 1.3.7 has the same issue.

MALE SPEAKER: [Indiscernible].

MARGIE SHAFT: 1.3.6 and 1.3.7.

MALE SPEAKER: And the first one was [Indiscernible]?

MARGIE SHAFT: 1.3.4 was the first one. The next one is 3.2.1. Mentions emergency authorities of the Secretary of Energy and I would just like to have a citation for these authorities because I really don't know what we're talking about here.

In Section 3.2.2, there is a description of the various executive branch policies as it relates to this topic, and that fails to mention BIA's trust responsibility and citations for that. It fails to mention the DOE tribal policy and the FERC tribal policy.

In Section 4.1, which is the valuation section, I would kind of echo what Jim Noteboom said earlier. This section recites valuation methods that are inappropriate and inconsistent with federal Indian law and it also ignores the beneficial use of the lands the tribal uses of the lands and these valuation methodologies should be deleted.

In 5.1, we should clearly describe the previous report to Congress. I think there's a footnote in there someplace about it, but clearly since we already have a report to Congress that goes over this issue that's a number of years old but it's certainly relevant, that should be described in this report, as well as the special masters report that came out of the Cobell case. That's clearly a federal report that was done by an independent body that directly is relevant to this case.

MALE SPEAKER: [Indiscernible].

MARGIE SHAFT: In Section 5.5, there is survey information in the report that's not been independently verified and should be deleted from the report. Thank you very much.

[APPLAUSE]

FEMALE SPEAKER: We have Shenan Atcitty from Holland and Knight, and then Andrew Emerick and then I don't have any more speakers on my list so if anybody

else would like to speak or say something else that they haven't said yet, please just come find me.

MALE SPEAKER: [Indiscernible].

SHENAN ATCITY: Good afternoon everyone. My name is Shenan Atcitty. I'm with Holland and Knight. I'm very pleased to be here today. I also want to start by thanking the Department and acknowledging all of their very hard work in putting this report together and for the very well organized consultation meetings that occurred leading up to the report. I also want to acknowledge all of my colleagues, my Holland and Knight colleagues. We have had a pretty big team on this working for a number of tribes and tribal organizations in this overall effort. Just want to thank them all for all their efforts.

I agree with all of the comments - - the substantive comments made by our tribes and tribal representatives today, but my comments are just going to focus on a couple of issues and specifically for Rosebud Sioux Tribe and we will be submitting more extensive written comments following this meeting.

But just real quick with the Rosebud Sioux Tribe, the background of how we address the comments was in the context of what was - - what was provided as a road map to the tribes during the consultation meetings which was we have a limited amount of time, we're looking more at case studies on how to go about examining the issues and being responsive to the requirements set forth in the Section 1813 language, that provision.

So we decided to do our own type of case study. We took one set of rights-of-way, did the research, did the background and our analysis and our - - and our - - our

findings we put together in our comments which was basically a wholesale lack of regulatory, statutory and most importantly treaty compliance in the appraisals, evaluation, the monitoring, every aspect of the rights-of-way that there's a complete lack of compliance, and what we considered serious unperfected rights-of-way issues.

Unfortunately though none of those issues made it into the draft report and we are hoping that in the final report that that is included and we think it's very important because it informs on the first point of the study which is the historical rates of compensation paid for rights-of-way on Indian lands, and without having that knowledge and that background and that analysis of how these rates were arrived at, you're - - you're really starting from almost a blank slate and I think that's one of the major points that the tribes are trying to make here today that, you know, we have a whole history dealing with this issue and to ignore that history does not do justice to what we think is the outcome of this exercise. So we're hoping that those comments make it into the final report.

The second comment I want to talk about is the notion that, you know, we now try to cherry pick - - I like the word. I think Margie used it or another person used it on, you know, what do we focus on. We're hearing now that we want this study narrowed so that it only addresses renewals. Well that ignores a major component of what was supposed to be examined which is the historical rate, so we're hoping that the Departments will reject that notion of only focusing on renewals and the future because there's a lot of history there and I think the Department did a great job in putting together the proper framework in terms of sovereignty interest and I hope that survives in the final report.

The other notion we're hearing today is the scare tactics and I hope the Departments do not incorporate that into the final report. I know I for myself as an

American voter I'm sick and tired of those scared tactics and we don't need a report perpetuating that type of fear, a fear of the unknown, fear that if we don't do something now those Indians are going to go out of control and wreck the whole rate structure for the American public. That's a wrong approach and I hope it's rejected in the final report.

And my final comment relates to the whole notion of viewing tribal lands as if it's subservient - - tribal lands and resources being subservient to a general public interest. That is wrong. We all know it's wrong. It ignores the fact that these are federally protected treaties, agreements. Statutes protect these lands as a matter of federal law, as a matter of constitutional law, and that cannot be ignored. To say that the industry is harmed because it cannot have its avenue of choice to put up a transmission line or a pipeline, it's a wrong analysis and I hope that's rejected.

We already have great precedents in the law governing tribal lands, tribal sovereignty, but we also have situations of federally protected forested lands and other sensitive areas. The industry can't just put a pipeline or a transmission line through those types of lands and we're not hearing that, you know, we need a federal remedy - - federal statutory remedy to allow that to happen. So if anything I hope none of - - none of those themes are included in the final report.

And then on a personal note, I am a member of the great Navajo Nation and I'm very concerned about the situation with El Paso. Other than myself and my two nephews who are in Iraq, my entire family is on the Navajo Nation and the issues of, you know, access to clean water, reliable and affordable energy supply is very, very important to our future. We're not going anywhere. Those are our lands. That's our homeland and I hope that that comes out in this report because we have people living there, families.

You know it's not - - it's not a hypothetical exercise. It's not a, you know, an example that exists in the abstract. There are people living, breathing, dying there everyday and I hope that someday - - I know many of you have been to tribal lands, but I hope some of you can go out there, go to the Black Mace [ph] area. Go out to eastern Navajo where there's no water, no electricity and, you know, and consider what you're trying to ask the federal Congress and the federal agencies to do. You know give the subsidies and continue back to the notion of when Indian lands were viewed and treated as energy colonies for this country's development. That's wrong. We're in the 21st century and I hope that none of those things survive or make it into the final report.

Thank you, gentlemen.

[APPLAUSE]

FEMALE SPEAKER: The Fair Coalition. Andrew Emerick with the Fair Coalition.

ANDREW EMERICK: Good afternoon. My name is Andrew Emerick. I'm here on behalf of the Fair Coalition. Instead of going through in great deal a number of comments that have been made earlier, I'd just like to highlight a couple of points that I think deserve amplification in light of the number of the comments made this morning and early afternoon.

These comments basically fall into three categories. The first is that in response to the report, Fair Coalition believes the report in its final form deserves more consideration and more adequate and fuller consideration of the National Energy Transportation Policy considerations. Secondly, I'd like to touch on an issue regarding

valuation. And thirdly, I'd like to discuss briefly the section in the report that deals with the options or the recommendations for policy changes to Congress.

First of all, occasionally when trying to discern the will of Congress it's actually helpful to look at the text, and I think this may be one of those cases. The report did a good job of actually siding to the specific text that came from the public law, the National Energy Policy Act. And set - - the paragraph four of that is one that I believe and that I believe the Fair Coalition believes has gotten somewhat short shrift in the draft report and could undergo fuller development in the final analysis.

To quote from the Energy Policy Act, paragraph four says - - and this is one of the things, by the way, that the two agencies were tasked with in providing information back to Congress - - an analysis of relevant National Energy Transportation Policies relating to grants, expansions and renewals of energy right-of-ways on tribal lands. The organization in the draft the agencies have put that in their Chapter Three.

And I guess I would submit while I think that there are some initial thoughts in there that are helpful, there are some other thoughts that would be - - go quite a ways in flushing this out. Craig Richardson spoke about a few of these this morning, as did EEI, but to sort of separate out I think the way the report is structured it reads a little bit as if the considerations dealing with tribal sovereignty and the inherent rights of tribes, which in the organizational structure of the draft report are put in Chapter Two - - is that right - - Chapter Two. Reading through the report it has a tendency to sort of bleat over as if Chapter Three is a continuation of Chapter Two.

Now while the two are related, we would submit that there are other considerations that have - - that are deserving of consideration that are not related directly

to the tribal or the sovereignty interest. Among those are the interests that Mr. Richardson mentioned this morning. The fact that in a globally competitive market it bears mention to consider the impact of increases in right-of-ways to the market not just domestically but how that puts American companies at a disadvantage potentially with their international competitors. That's something I think that, you know, could deserve adequate further development in the final report.

I think it's relevant to ask this question which is that Congress specifically gave the agencies direction to answer four questions and it seems that we would respectfully submit that Congress has the inherent constitutional authority to ask the question what is the best energy policy for all Americans, Indians and non-Indians alike.

There have been some discussion this morning that I found a little bit curious as if Congress itself had simply a trust responsibility to the Native American Tribes and, therefore, should not consider the downstream impacts to municipalities like Phoenix, Los Angeles and Las Vegas. We would submit that Congress has a responsibility for the public welfare and consideration of all Americans and the section dealing specifically with the section of what is a good - - what impacts does this have on the National Energy Transportation Policy should in fact consider the impacts on all Americans.

Secondly on the question of valuation, there's been a good deal of discussion today that valuations should somehow consider either primarily or largely the benefit to the companies that have the right-of-ways. This sort of turns the valuation methodology on its head. The purpose of determining the right-of-way is what harm or lack of valuation impact does this have on the land itself, not what benefit does it have to the companies that ultimately obtain the right-of-ways. That's not the way valuation is done

in any other context and we would submit that the proper mode of valuation, fair market value or some increment of fair market value, is determine what impact, harm if you will, on the land of the tribes through which these right-of-ways pass.

Thirdly, in dealing with the options presented to Congress, it seems like there was a fair amount of discussion of people who were upset about the direction that Congress ultimately gave to the agencies and what questions they asked. And while it's perfectly reasonable for people to disagree on what questions should or should not have been asked, the reality is that the agencies were asked four specific questions.

One of the things that the agencies were asked to do were provide options, recommendations to the ultimate policy makers for potential change in this area. Again, quoting from Section 1813's study itself, paragraph two, the agencies are to provide and I quote "recommendations for appropriate standards and procedures for determining fair and appropriate compensation to Indian tribes for grants, expansions and renewals of energy right-of-ways on tribal lands."

I think it's important in considering the various options as the agencies go forward in the next few weeks to keep two things in mind. One is what are the appropriate standards; secondly, what are the appropriate procedures for determining fair and appropriate compensation to Indian tribes.

There's been some discussion that the final two options should be deleted from the final study. The final one dealing with condemnation and the second to the last dealing with some form of binding arbitration. We would submit that would do injustice to the specific requests made by Congress to the agencies. Both of those recommendations, whatever their final merit and we're not endorsing either one of those

today, but at least they are both options that answer the specific questions, namely what should the standard be and secondly, what should be the mechanism for ensuring that that standard is implemented or at least that the parties if there is some final disagreement have the ability to take that disagreement to some disinterested third party. So those I believe are two options that are relevant and answer the specific questions tasked by Congress of the agencies, and, therefore, should not be eliminated.

One final footnote if you will on the issue of condemnation, obviously there's been a good deal of talk about that of whether it would be a private use or not by the energy companies. I think it's relevant to say that when regulated energy companies exercise the power of condemnation or eminent domain they essentially are exercising a delegated power of the United States, not their own legal power.

In other words, the only way that regulated entities in any context are given the right of eminent domain is because Congress has seen that they, whatever use it is that they're serving, satisfies the public use requirement of the U.S. Constitution. So as such, having that authority delegated is not some independent free willing right that would be exercised by the companies, but rather recognition by Congress that under certain limited demarcated circumstances that it can be appropriate if there were no other options available.

Again we're not here to advocate eminent domain or condemnation, but I think that clarification is worthwhile. Thank you very much and again I thank the agencies, as many others have, for their hard and tireless work and inevitably their hard work over the next four or five weeks bringing this to completion. Thank you very much.

[APPLAUSE]

FEMALE SPEAKER: Those are all the speakers that have identified themselves to us anyway. Is there anybody else who would like to speak? If not, I'll hand it back over to the front table.

JIM NOTEBOOM: I'm Jim Noteboom representing the Warm Springs Tribe. I'd like to respond to one of the last points and on the valuation point saying that the proper measure here, the proper valuation depends on what is the impact on the land. That's absolutely incorrect. The key to appraisal theory is that land is valued at its highest and best use. The lands that we're talking about overwhelmingly the highest and best use of those lands is as an energy transmission right-of-way. That's the fact. And that what we've been advocating is that tribes are entitled to the value of their lands for - - for that use.

If - - and again if tribal lands have very little utility for rights-of-way, their valuation or the amount of compensation they can expect for use of rights-of-way is zero. But - - and rights-of-way are never equal. There are too many components that make up the value of a right-of-way, and the value of that right-of-way has to be done with the specifics in mind. And if the tribes have a very valuable right-of-way, they should get more money than if it's a very invaluable right-of-way, and yet the valuation methods that is being suggested, that is looking at the impact of the lands, would give a very good right-of-way precisely the same value as a useless right-of-way. How much sense does that make? Because if we're looking at what BLM lands are valued at, then that is independent of whether it's a good or a bad right-of-way.

If we look at what the impact on the lands are, that is we can do less grazing or we can do less or this or that, again the value of the lands that is arrived there is going to be

the same whether it's the best right-of-way in the world or one that has absolutely no utility. And that just doesn't make sense. You know all tribes have - - many tribes have are their lands. That's all they have. And they have to make do with those. And what we're doing now or attempting to do is apply concepts that are used in other context and other situations to a very, very different situation, and that's simply inappropriate. Thank you.

[APPLAUSE]

KELLY RUDD: My name is Kelly Rudd. I'm an attorney for the Northern Arapaho Tribe at the Wind River Reservation, and I'd just like to chime in here on the subject of fair market value and the proper valuation mechanisms.

The schedules that are proposed in the draft study fail almost utterly to account for the biggest driver of real property valuation which is the uniqueness of the land itself. Excuse me. It seeks to commodify tribal lands like a bushel of corn or share of stock, and any realtor can tell you the biggest driver of any parcel land is location and what these valuation schedules purport to do is strip the from the value of tribal lands the value of that uniqueness. And that's not - - that's not consistent with the trust responsibility, as we've heard a lot about today.

Furthermore, it's not consistent with Native American cultural and spiritual values inherent in the land. I think that a final version should do more to account for that and try to grapple more straightforwardly with both the sacred value of lands and the unique value of all lands in the sections which would purport to create a valuation schedule. Thank you.

[APPLAUSE]

BOB MIDDLETON: Last chance. Anybody else? Well then we'd like to close out this meeting with a heartfelt thank you everybody who attended, and everybody who attended the original meetings that we had. We realize and it was mentioned a number of times that this really has taken everybody's time, it has taken money, it has taken effort, but we really appreciate the fact that you are willing to help us put together the best report we could and get that to Congress.

We do have - - you as well as us have a few days here in which to finalize this report. We look forward to receiving your comments in a timely basis as we can and again if you have some written comments that you spoke from today, if you could make those available that would give us a little bit of a jumpstart on our preparation; however, obviously we will wait until 10:00 a.m. on September 4th to receive all the written comments from everybody in attendance.

Abe, anything you'd like to say to close out?

ABE: I'd just like to reiterate what Bob said. I'd like to thank you all. It's clear you all did a lot of hard work going through our draft. We appreciate that. We are looking to present Congress with a very fair and balanced report and look forward to getting your comments in writing.

We would appreciate if you could highlight those pieces that you think we should pay particular attention to. We're going to get - - you all have a very great talent to send us very long documents and it takes a lot of effort for us to go through them and really discern what's the important piece of information you're telling us and how much of it you're just telling us.

So if you could - - because you're going to do a lot of work anyway, but tell us what's really important, what we really need to pay attention - - you've done a wonderful job here telling us what you wanted us to hear. When you write them, please let us easily be able to tell what it is you want us to read and what you'd like us to include because it will make our job not only easier, but it will make it more direct that we can be responsive to the concerns that have been voiced here today.

And with that, safe travels. Those of you who are going to be in Salt Lake, we'll see you tomorrow, and the rest of you, you know, God speed.

[BACKGROUND CONVERSATIONS]

MALE SPEAKER: Brevity is an art form, Abe. [Laughs]

[END OF RECORDING]

TRANSCRIPT CONCLUDED