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Proposed Rule:
Rights-of-Way on Indian Land

TRANSCRIPT OF
PUBLIC HEARING

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BEFORE MS. ELIZABETH APPEL
-- HEARING OFFICER --

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MS. APPEL: Well, thank you, everyone, for coming out this morning. My name is Liz Appel. I work for the Office of Regulatory Affairs, and I report to the Assistant Secretary for Indian Affairs at the Department of the Interior.

And with me, I have Jennifer Turner, who is from the Office of the Solicitor, and Kayla Danks, who is with the Bureau of Indian Affairs.

So in your handouts, you should have a copy of the PowerPoint presentation and a copy of the rule and fact sheet of sorts.

What I'm going to do, basically, is run through the presentation and then open it up to comments and questions.

This is a tribal consultation, so we ask that tribal leaders and those here on behalf of their tribes be permitted to speak first, and others respect that. And I think that's it.

So let's get started. And we do have a court reporter here, so rather than asking questions throughout the presentation, if you'll just allow me to get through the presentation, and then afterward, when we open for comments and questions, if you could come up on the microphone
and announce yourself and where you're from, and
that way, our court reporter can accurately
capture it.

So we are here to discuss a proposed
rule on Rights-of-Way on Indian Land. And --

MR. LA POINTE: Can I say something, just real quick?

MS. APPEL: Sure.

MR. LA POINTE: My name is Tim LaPointe. I'm the active Regional Director of the Bureau of Indian Affairs, and I just wanted to let everyone know, we do have some additional staff here: Jim Geffre, Realty Officer; Rick Clifford; Carla Clark; Jeff Hunt from OIE is here; and also, Tom Wells from the Agency.

So I just want to make sure that everybody knows that we have additional staff here. Hopefully we can get -- if you have any questions, we'll be able to answer those.

And I think we have a panel set up, too. But I just want to let everybody know that we're here -- we're here, too, so --

MS. APPEL: Thank you so much.

MR. LA POINTE: So if anyone has any questions, please let us know. Thank you.
MS. APPEL: Thank you. Okay. So -- so, this rule came about as part of an ongoing effort to improve the department's management of trust land. And back in 2011-2012, we updated the leasing regulations that addressed residential, business, and wind and solar leasing on Indian land.

And when I say "Indian land," I mean trust and restricted land that's held by the United States in trust or restricted status for an Indian tribe or individuals.

So on the leasing regulations, we had tribal consultations, and we ultimately issued the final regulations in December of 2012. So our next step, having updated the leasing regulations, was to attack the rights-of-way regulations.

So we pulled together a work group of subject matter experts from the Bureau of Indian Affairs and legal experts from the Office of the Solicitor and drafted some revisions. Those were circulated for comment among all the BIA realty officers, and the proposed rule was published this June.

So the current rights-of-way regulations: They're at -- found at Part 169.
They were published back in 1968, and they've been updated a couple of times since then, but no updates have happened since 1980, so they are somewhat outdated.

They rely on statutory authorities that are specific to different types of rights-of-way -- railroads being a main one -- and they impose specific requirements depending upon what type of right-of-way.

So the proposed regulations rely, instead, on the general statutory authority, which is at 25 USC § 323, that authorizes the Secretary of the Interior to grant right-of-ways for all purposes.

So the regulations, by relying on this general authority rather than the specific statutory authorities, is intended to simplify matters.

And as far as our legal team has been able to tell, there is no benefit lost by relying on this general authority rather than the specific authorities, but if anyone disagrees with that or finds some benefit that's lost, please let us know.

And saying that, actually, let me take a
step back: That these are proposed regulations. We are out here today to get comments, and we have -- we are taking comments in written form until August 18th.

So this -- these regulations, though they've been published, they've just been published as proposed; they are not set in stone. Our intention is to update the rights-of-way regulations to make them more streamlined and make them more workable.

So I just wanted to emphasize that these are -- I'm going to go through and explain what the proposed rule says, but -- but we are certainly open to change, according to your comments.

So getting back to the presentation: As I said, we're attempting to streamline the rights-of-way regulations. So we're taking a lot of the approaches that were taken in the leasing regulations that were taken to streamline those.

For example, the rights-of-way regulations established timelines for BIA to review right-of-way applications. It sets up the processes for getting BIA approval of rights-of-way more clearly.
It allows BIA disapproval only if certain conditions are met, and it defers to tribes on what compensation should be provided for rights-of-way on tribal land.

So I'm going to run through the rule as, basically, broken out into 6 different subparts. So I'm going to run through the major changes in each of those. And I may skim some, but if you have questions, we can go back to it.

So Subpart A: Purpose, Definitions, and General Provisions. We've added several definitions to help clarify things. We try to explain what the regulation applies to more clearly. Basically, it applies to Indian land, as I said.

We also set out what happens if a life estate is on the land. And they're the same general provisions that we have in the updated leasing regulations that talk about when a right-of-way is needed, when tribes may contract or compact for the right-of-way functions, what laws apply, what taxes apply, how BIA provides notice of rights-of-way, and what decisions may be appealed.

So for Obtaining a Right-of-Way, this
sets off the process for applying to get a right-of-way on Indian land. A major change that we're making in an effort to streamline is that, under the proposed rule, there would be no BIA approval required to survey the land when someone is preparing an application for a right-of-way. They currently should be getting BIA approval to get onto to the land to survey it. The proposed rule would eliminate that requirement.

As far as the application for a right-of-way, it sets out what must be included in the application and includes all the things you would expect: Legal description, a map. We do add a requirement for a bond or an alternative security instead of a deposit, and we have -- we require a record of consent of the Indian landowners, evaluation in certain circumstances, and other documentation that's currently required.

So consent requirements: Statutorily, you -- if you're applying for a right-of-way on Indian land, you must obtain the consent of the landowners. For tribal land, the consent of the tribe is required. For individually-owned land,
under the statute, a consent of the owners of a major interest in the land is required.

So there are also certain circumstances in which BIA may grant a right-of-way without consent. One of those is if the number of owners of the land is so numerous that it would be impracticable to obtain consent, and these other conditions are met.

And in the regulation, we propose defining "so numerous" to mean "50 or more, but less than 100 owners, where no one owner holds an interest greater than 10 percent," or, "100 or more co-owners." And that comes from the April law -- the American Indian Probate Reform Act. Is that correct?

MS. TURNER: Yes.

MS. APPEL: Yes. The definition of "highly fractionated."

So the bond or alternative security may be in the form of CD, a letter of credit, Treasury securities, surety bonds, assigned savings account.

And that bond should cover the highest annual rent, unless the right-of-way is for a one-time payment; estimated damages from
constructing and permanent improvements to the right-of-way; operation and maintenance charges if it's located in an irrigation project; and restoration and reclamation of the premises.

BIA may waive the requirement for a bond or security for a tribal land if the tribe determines that a waiver is in its best interest.

And then, for individually-owned land, BIA may waive the requirement if the owners of the majority interests request and BIA determines it's in the owners' best interest.

For compensation, we're following the model that we use in the updated leasing regulations. So for tribal land, BIA is going to defer -- defer to the tribe and whatever tribe the thinks is the appropriate compensation.

For individually-owned land, market value is required, unless the landowners waive and BIA makes that best interest determination. An evaluation is required, unless the landowners waive or -- this is another another exception that is new.

If the grantee is going to construct infrastructure improvements that benefit the landowners, and BIA determines that that is in the
landowners' best interest, then BIA may waive their requirement for evaluation.

And the compensation, if it's a one-time payment, then it's due within ten days of the right-of-way grant. Otherwise, the grant must specify when the payments are due.

Direct pay is available under certain circumstances: If there's ten or fewer landowners, and they all agree to direct pay, and their trust accounts are unencumbered.

For reviews and adjustments on tribal land, no review or adjustment of the compensation is required unless the tribe wants to require it.

And for individually-owned land, it's not required if the payment is a one-time lump sum, if the right-of-way duration is for five years or less, or if the grant provides for automatic adjustments, or BIA determines it's in the landowners' best interests.

So really, it's -- although it's written as reviews and adjustments are required or not required in certain circumstances, it's really very limited circumstances where they are required.

So for the process of obtaining a
right-of-way grant, once BIA receives the application package, it determines if the package is complete.

If it is -- once it's complete, then BIA is going to send the applicant a letter acknowledging the date of receipt, so there is a definite start date for BIA's review time.

And then BIA has 60 days to review that application and must issue a decision either approving or disapproving the right-of-way within that time.

So again, the 60-day clock only starts once the package is complete. That means any environmental studies that are needed must also be in for the BIA to start its review. And if BIA misses its deadline, that 60-day deadline, then the parties can file a Notice to Compel Action.

So BIA approval: As I mentioned, there's limited grounds for disapproval. And basically, the BIA can only disapprove a right-of-way grant if the required consents haven't been obtained, if the regulations weren't followed, or if there's some compelling reason to withhold approval.

And BIA can grant -- has the discretion
to grant one right-of-way for all tracts that are traversed by right-of-way, or the BIA may issue separate grants for each of the tracts. So there's some flexibility there.

The grant is going to incorporate any restrictions or conditions that the landowner consent has, and there's a list of restrictions and conditions set out in the regulations that you can read through, and the grant has to incorporate or attach the maps of definite location.

So there's often questions about whether a right-of-way that was granted for one purpose can be used for another purpose, and the proposed rule sets out that a new right-of-way has to be obtained if the original grant doesn't specify the new use, or if the use is not within the same scope of use that the original grant specifies.

And that is a little bit -- there's a little flexibility in there about -- there's some question about whether it's in the same scope of use, and that often ends up being a legal determination.

And BIA will grant a new right-of-way if the new right-of-way doesn't interfere with the use or purpose of the existing right-of-way, and
the existing right-of-way grant team must consent to that new right-of-way.

So Subpart C addresses right-of-way terms, renewals, amendments. The right -- the term of the right-of-way has to be stated in the right-of-way grant. BIA is going to defer to whatever the tribe thinks is an appropriate term.

For individually-owned land, the term has to be reasonable, and the proposed rule sets out guidelines for what appropriate terms may be, depending on what type of right-of-way it is. And we're very open to suggestions and comments if any of those terms seem inappropriate for the type of right-of-way.

BIA will renew a right-of-way if the original right-of-way allows for the renewal and specifies the compensation, as opposed to requiring a new right-of-way.

And there's no change in the size, type, or location of the right-of-way, and the landowners' consent is required, unless the original right-of-way allows for renewal without the landowner consent. And if there is going to be a change in the size, type, location, or duration of the right-of-way, then the grantee has
to get a new right-of-way.

So the proposed rule also sets out the processes for amendments, assignments, and mortgages, and imposes a timeline on BIA to approve any application for amendment, assignment, or mortgage within 30 days.

Again, the clock starts once the BIA receives a complete application package, and BIA will send a letter acknowledging the date of receipt so everyone knows when that time starts.

BIA approval is required for an amendment for a change to any right-of-way provision or to accommodate a change in location of permanent improvements to land that was previously unimproved within the right-of-way corridor.

If the amendment is just to correct a legal description or some other technical correction, then BIA approval is not required. Landowner consent is required for amendments and, again, there's only a limited -- limited circumstances in which BIA may disapprove a request for amendment.

BIA approval is required for assignments unless the original right-of-way allows for
assignments without approval and the parties provide BIA with a copy of the assignment, so BIA knows who the grantee is at all times.

   And landowner consent is required for assignments. And there, again, are limited grounds on which BIA may disapprove an assignment.

   BIA approval is required for mortgages of right-of-ways, and landowner consent is required. And there is, again, limited grounds for BIA disapproval.

   So effectiveness of the right-of-way:
   The right-of-way documents are effective upon BIA approval, even if an appeal under the administrative provisions for appeal is filed.

   BIA will record the right-of-way documents with the Land, Title, and Records Office immediately following approval. If no BIA approval is required, then the grantee still has to provide BIA with a copy for recording so that the LTRO records are up-to-date.

   And the tribe must record a grant on tribal land for a tribal utility that is not a separate legal entity because no BIA approval would be required there, and any grant on tribal land under a special act of Congress that allows
grants of right-of-way without BIA approval.

For compliance and enforcement, BIA may investigate compliance with the right-of-way -- oh, that should say, "and may enter the premises."

That's a typo; it shouldn't say "leased" -- to ensure compliance at any reasonable time upon reasonable notice and consistent with the notice requirements in the right-of-way documents.

And if the landowner notifies BIA that there is a violation that's occurring in that right-of-way corridor, then BIA will promptly initiate an investigation.

And the proposed rule allows for the landowners and the grantee to develop negotiated remedies in case of any violation. Those negotiated remedies may apply in addition to or instead of the cancellation remedy that is available to BIA.

And the right-of-way grant may provide that the tribe will address violations and may specify how disputes will be resolved. BIA is not bound by decisions made in those forums but is -- will defer to any ongoing actions or proceedings, for example, in tribal court.

So the proposed rule sets out what the
process is for issuing notices of violation if there's a violation other than nonpayment. And, basically, it's a requirement for the grantee to address the violation within ten business days.

Again, if the -- there's the process for violation for a failure to pay rent or compensation as required by the the grant.

And for all of these notices of violation, BIA will send a copy to the tribe, if it's tribal land, and will provide constructive notice to Indian landowners if it's on individually-owned land so that, at all times, the landowners are kept in the loop on what's happening.

If the grantee does not cure a violation or provide the payment that's required, then BIA is going to consult with the tribe, if it's tribal land.

And if it's feasible to consult with the Indian landowners, depending on how many there are for individually-owned land, then BIA will consult with them.

And BIA will, together with the landowners, determine what the next step will be: Whether to cancel the right-of-way grant, whether
to use any other remedies, or whether to get the grantee additional time to cure the violation.

And following this consultation with the landowners, BIA may take action and, basically, can cancel the grant without any further notice at that point to the grantee and may invoke other remedies to cancel.

The BIA will send a cancellation letter within five business days of the decision to cancel and, again, will send a copy of the letter to the landowners.

The cancellation letter has to set out certain things about the grounds for cancellation and the right to administratively appeal, and will order the grantee to vacate within 31 days if there's no appeal filed.

The cancellation is effective after that 31 days, or 41 days from the date BIA mailed the letter, whichever is earlier.

The proposed rule also sets out cancellation for abandonment or non-use, and those are separately defined.

"Abandonment" is defined as when the grantee affirmatively relinquishes the right-of-way. So they say that they don't want
the right-of-way anymore.

Non-use is if the grantee, for two years, doesn't use the right-of-way for the purpose for which it was granted.

And finally, Service Line Agreements:
Service lines are defined as utility lines that come from a main line, and it's intended to supply owners or occupants with telephone, water, electricity, or other home utility services.

The proposed rule doesn't have a capacity limitation in there, as opposed to how the rule is currently written.

So the proposed rule does not require a right-of-way grant for service lines, but it does establish that service line agreements should address some factors like mitigation and restoration, and that the agreement should be signed by all the landowners.

There's no valuation required, but the parties should file a copy of the agreement and the plat with BIA within 30 days after they sign the service line agreement, and BIA will record that in the LTRO so that it's aware of the land being subject to the agreement.

Comments on the proposed rule are due
August 18th. We have already had a couple requests for extension of that comment deadline.

So that is under consideration now, and we should know possibly this week, maybe early next week at the latest, whether that deadline will be extended.

E-mail is the preferred method to submit comments at "consultation@BIA.gov". And all of these materials are available on the BIA website.

So once -- the next steps, as far as this rule -- once the comment period closes, we will be reviewing.

We'll pull together the work group again with the subject matter experts in reviewing all the comments and the transcripts from each of the meetings, and we'll make changes to the proposed rule as appropriate. And then, ultimately, we plan on publishing a final rule, then, in the Federal Register.

I don't know the timing on that because it really depends on the scope and complexity of the comments. But once we publish that final rule, then the final rule would become effective 30 days after publication.

So I think with that, I will open it up
to you all. And we have a microphone, if you
don't mind coming up to the microphone. And just
a reminder to state your name and your affiliation
for our court reporter.

And if we can start with -- are there
any tribal representatives here who would like to
make comments first? I don't want to put anyone
on the spot, if they don't want -- please.

DR. DAVIS: Good morning. Thank you for
offering us an opportunity to comment on this --
these regulations. My name is Dr. Carol Davis,
and I am a proxy representative for the Turtle
Mountain Band of Chippewa.

I have a proxy letter with me, and I
would like to read a statement from our tribal
chairman, and it's addressed to Ms. Sally Jewell.

Dear Ms. Jewell: The Turtle Mountain
Band of Chippewa Indians hereby establishes for
the record that we are opposed to Docket ID:
BIA-2014-0001, the proposed rule that would
authorize the BIA to streamline the process for
obtaining BIA grants of rights-of-way on Indian
land.

As a sovereign entity that is a
federally recognized tribe with an enrollment of
36,000 members, we want the record to show that we are capable of negotiating our own rights-of-way on our Indian lands.

This proposed rule negates the tribe's authority by usurping the approval process away from the tribe and giving it to the BIA, which undermines the intent of the Indian Self-Determination and Education Assistance Act.

We recognize that there are several fractionated parcels among our individual allotments. However, we are opposed to granting the BIA the authority to approve the rights-of-way on Indian lands on behalf of the individual -- individual landowners.

The Turtle Mountain Band of Chippewa Indians is not a general allotment tribe and is exempt from the BIA making negotiations on behalf of our tribe -- and on behalf of our tribe and its enrolled members.

This is a serious issue. We are requesting that a special hearing be held on the Turtle Mountain Reservation where all tribal members, especially landowners, will have an opportunity for input. Sincerely, Richard McCloud, Tribal Chairman.
MS. APPEL: Thank you.

MS. TURNER: Thank you so much. This is Jennifer Turner from the Solicitor's Office, and thank you very much for your comment, and we certainly appreciate your -- your comments.

As -- unfortunately, as a legal matter, we are statutorily -- BIA and the Department is statutorily required to approve rights-of-way across Indian lands.

The act that forms the basis for these regulations was passed by Congress in 1948, and it grants the secretary broad approval authority and requires secretarial approval of rights-of-way across Indian land. So that -- that is where these regulations come from, and that is what we're relying on.

That said, we're -- in publishing these proposed rules, we're -- you know, one of the goals is to support tribal self-determination, and we've included a lot of provisions in these regs that give a lot of deference to tribes and to landowners, generally, in negotiating their own rights-of-way, recognizing that the landowners are much better equipped to make all those calls than the BIA is.
So, for example, as Liz mentioned earlier, you know, we're no longer -- for tribal land -- requiring appraisals but, rather, deferring to tribes on setting their own and negotiating their own compensation.

So all that said, we're certainly interested in any ideas that you may have about giving even more deference to tribes and individual landowners.

MS. LITTLE OWL: I have a question. I'm just wondering if the rest of you, maybe -- I think everybody here would like to see these other people be seated up here so that when we're asking questions, that we might be able to look at who we're speaking to.

MS. APPEL: Absolutely. If you are --

MS. LITTLE OWL: If you guys wouldn't mind?

MS. APPEL: -- going to --

MS. LITTLE OWL: Cheryl Little Owl. I'm, kind of, half-and-half: Turtle Mountain Chippewa and Three Affiliated.

MS. APPEL: Sure. If any BIA folks want to come up to the front, feel free.

MS. LITTLE OWL: Or get up so that when
we're speaking, we don't all have to turn around
and -- if you'll be seated up here, it'll be
easier for the people to know who we're
addressing.

(BIA representatives move up to the
front of the room.)

MS. LITTLE OWL: Maybe put their seats
up behind them so we know who we're speaking to.

MS. DANKS: Is it small enough in here
where you can hear us without the microphone?

AUDIENCE MEMBER: What did you say?

(Audience laughs.)

MS. LITTLE OWL: Some of you all have
really squeaky little voices, and we can't hear
you. Like her, for instance (pointing).

MS. TURNER: Was I too quiet?

MS. LITTLE OWL: You're too quiet.

MS. TURNER: My husband tells me I'm
loud.

MS. DANKS: So I guess, just to get
started, what we'll do is, we'll pass the
microphone down and everybody will introduce
themselves, and then -- then we'll take questions.

MS. APPEL: Liz Appel. I am with the
Office of Regulatory Affairs under the Assistant
Secretary for Indian Affairs.

MS. TURNER: Jennifer Turner from the Solicitor's Office, Division of Indian Affairs.

MS. DANKS: Good morning. My name is Kayla Danks. I'm the Superintendent of the Fort Berthold Agency.

MR. CLIFFORD: I'm Rick Clifford, and I'm the Deputy Realty Officer from the Great Plains Regional Office in Aberdeen.


MR. HUNT: Jeff Hunt: Indian Affairs, Division of Energy and Mineral Development.

MR. GEFFRE: Good morning. Jim Geffre: Realty Officer, Great Plains Regional Office.

MS. CLARK: Good morning. Carla Clark: Deputy Realty Officer, Great Plains Regional Office.

MR. LA POINTE: Hi, good morning, again. I'm Tim La Pointe: Acting Regional Director, Great Plains.

MS. APPEL: Thank you, everyone. Now that we have everyone properly introduced, do we have additional comments? Do you want to come up to the microphone?
MR. HOOD, JR.: My name is Carson Hood; I'm the MHA Energy Administrator for Three Affiliated Tribes. One of the undertakings that we took as the energy department of the tribe is, we took it upon ourselves to develop our own right-of-way form, terms and conditions.

As we all know, and the obstacles and the hurdles and that the allottees and the tribes have to jump through to in order to get the right-of-ways approved through the BIA, we developed our own process that only involves tribal surface rights, not the allottees, but we have opened it up for the allottees to use our right-of-way form.

And it's the open form; it's on our website, at our MHA Energy -- MHA Nation Energy dot com website, for you guys to review and take a look at (http://www.mhanation.com/main2/departments/mha_energy_division/mha_energy_website/ROW%20Application%20Form%202014.pdf).

And that's something that we took on because we had a lot of issues that we were looking at in front of us, such as north of trespass. If you got a spill, who's responsible
for remediation? What type of bonding does the oil companies have in case they have a BOP failure?

A lot of these issues that we don't quite understand. Piggybacking, for instance. If we get a utility right-of-way, are we allowed to get a temporary water line on that utility right-of-way?

These are some of the questions that the tribe has with the BIA right-of-way form right now, and so we have developed our own which specifies specifically what type of right-of-way this is going to be used for.

And also piggybacking. You know, for -- for one operator who has the right-of-way to allow another operator to piggyback off of their right-of-way and put a temporary water line into an underground pipeline right-of-way.

And so these are the things that we're looking at as a tribe. And so that's my question to BIA, is: What type of bonding amounts -- what's north of trespass and how that process goes, because we've just had a really big production water spill on our reservation, and it drew a lot of national research.
And so these are the questions that I'm going to be asking the BIA, so -- and if you guys have any questions for the tribe, I would be more than happy to assist you in any manner.

The natural resource director, Clarycia Mandan; Martina Turner, Regulatory Affairs Office, Energy Department; Shannon Aski, our energy attorney, based out of D.C. herself.

And so, you know, thank you. With that being said and, specifically, for the -- for the north of trespass, what's the process there?

I know, my department, when we have spills that, you know, either stay on-location or leave location, what's BIA's process of notifying the landowner and providing adequate compensation? and what is that adequate compensation, and is it adequate according to the landowner themselves, or for the tribe?

MS. MANDAN: Just to add to that: We're experiencing more occurrences where right-of-ways are expired and, in our view, that's trespass.

So what are the obligations of the Bureau to act, and what are your fines, and -- you know, because we're developing our own tribal process on trespass, but we want to make sure
that, you know, we're working with our trustee to
enforce -- the big issue is enforcement.

MR. HOOD, JR.: I think we just threw
three questions at them at once.

MS. DANKS: Okay. Piggybacking: The
proposed regulations. The reason they're using
the 1948 Act and not the older acts is because
piggybacking -- if the right-of-way grant
specifically states the purpose and doesn't just
grant right-of-way, then they cannot piggyback
under the 1948 Act.

Previously, under the 19- -- is it the
1901 Act? If there was some ambiguity on whether
or not they could piggyback, and in some states,
if the state allowed for piggybacking, then they
could piggyback if the right-of-way didn't state
specifically. So I know that's -- and Jennifer
might want to clarify that more.

MR. HOOD, JR.: Well, to add to that
real quick, on the piggyback term, can you explain
to the landowners what the term "piggyback" means
in reference to a right-of-way underground
pipeline infrastructure establishment that's
included with an above-ground temporary freshwater
line?
And is the allottee being compensated for that temporary right-of-way for that freshwater line? Because I'm not sure that the allottees are getting properly compensated, as well as the tribe.

MS. DANKS: The allottees are being compensated. Piggybacking is when you have a right-of-way, and let's say -- I want to use a fake name, here -- The Jones Company has a right-of-way, and they have a road right-of-way, and they decide to run a pipeline down the side of the road, and they don't contact the landowner or BIA and get consent and compensate the landowner for the pipeline, that's piggybacking.

If the right-of-way is an old right-of-way -- and there are a lot of old rights-of-way -- and so, if it's an old right-of-way and it doesn't specifically say, then we have to look at the right-of-ways in the Solicitor's Office to try to see whether or not we have the right to send a trespass notice out there, because that's one of the reasons they're updating the regulations.

And so, basically, we want to improve and make the rights-of-way stronger.
MS. TURNER: Yeah, and to follow up what Kayla was saying on piggybacking. The proposed rule does have a specific section devoted to piggybacking: It's 169.123. And it talks about using a right-of-way for a new or a different use.

So, for example, you have — as Kayla was saying, you have a gas and oil pipeline, and then someone wants to come along and use it for utility purposes.

You know, the question, then, becomes, Well, is that utility purpose, kind of, contemplated under the original purpose of the right-of-way?

And so that tends to become a legal question that's sent to the Solicitor's Office. But the new proposed regs try to provide a little more definition to that process in a way that the current regs do not which, they do not address that in the current regs.

And so, we encourage everyone to take a look at this new section, 169.123, and see if it addresses some of the issues that are coming up. But I guess you had raised a number of questions, in addition, about bonding and trespass, as well. So I'll talk about bonding a
little bit.

Bonding is a new requirement in the proposed regulations. It didn't exist in the current regulations, and it's one of the issues that we've specifically flagged for comment when we were issuing the new leasing regulations.

We got a lot of comments and concerns about bonding -- about bonds: That they're extremely difficult to get in Indian Country, that they, kind of, scare developers away, for example.

But at the same time, we got comments from landowners that, "Well, you need to protect our interests, and bonds make sure that we get rent; that, if anything goes wrong, you know, we're, sort of, covered in terms of protecting the property."

And so, after two consultations in the leasing context, we came up with language that addressed comments on bonding for the leasing rights, and we, kind of, relied on some of that bonding language in these new right-of-way regs.

And so -- trying to find the specific provisions that talk about what's required for bonding (looking through pages) -- but basically, it deals with rent and any remediation costs.
And so, if you're concerned that, with an oil and gas pipeline, there could be a spill, then maybe that's something that we should incorporate in the final rule: That the bond should reflect any potential damages from any spills.

MR. HOOD, JR.: As from an environmental perspective --

MS. TURNER: Yeah, exactly.

MR. HOOD, JR.: Yes. I heard about your waive of process you guys have with the amount of drilling on FBIR. I just don't see no reasonable effort to allow a waive of process in that.

We're talking about -- we just had a big spill that cost multi-million dollars to remediate. And if the BIA is going to allow a waiver on the bond, and then if there was a spill that was happening inside that waiver of that bond, who's going to be responsible?

It's going to be BIA? Is it going to be the BLN? Is it going to be the tribe? Is it going to be the allottees? You know, I just don't agree with that de facto "reasonable waiver" for remediation -- for a bond when it comes to remediation concerns.
MS. TURNER: Okay. And the regs give BIA discretion to waive the bond if they determine it's in the best interests of the landowners. So certainly, with an oil and gas pipeline, for example, that's something in the possibility for environmental damage; that's something that would go into BIA's calculations.

So the waiver's not mandatory, by any means: You need landowner consent, and it has to be in the best interests of the Indians. So again, we're definitely interested in any comments on the bonding provisions.

MS. JULETTA BIRDBEAR: Can I ask you -- and maybe you addressed this at the beginning -- when I read this document, I had to ask myself, "Where is the landowner interests being protected in this document?"

And I'm going to ask you: Who is the working -- who is the working group that put the document together? Can you please provide who they are, who these experts are?

This is a question. My name is Juletta Birdbear. I'm from Fort Berthold; I'm a landowner. I am asking you to please identify for the rest of the landowners here in attendance:
Who are the members of the working group that put together the proposed language on this revision of the ROW?

As a landowner, I fail to see the interests of landowners protected in this document. I do see heavy prevalence of the protection of other interests.

Even the tribe is questioning their interests as not being protected. I want to know who these experts are, and I want to know where's the landowners sitting at that table crafting this document?

MS. APPEL: Sure. I -- I don't know off the top of my head, now, who -- there were several BIA people: Matthew Kirkland, who was the head of Trust Services at the Bureau of Indian Affairs; and then several realty specialists in the regions.

But we can have their names all posted on the website so that you can see who each of them are. And it's certainly not the intention in updating these regulations to lessen the protection of tribal interests or landowner interests.

So if you have suggestions about how BIA
can better protect the landowner interests, please provide us with those suggestions so that we can incorporate them.

    MS. PACKUHEA: As an obligation of the trust responsibility to the landowners, I would suggest that you provide us with a legitimate attorney so that we can have our interests addressed. Elise Packuhea. Landowner: Fort Berthold.

    MS. THEODORA BIRDBEAR: Yes, my name is Theodora Birdbear. I'm from Mandaree, Fort Berthold Indian Reservation. And I see that, in the regulations you drafted, it has very weak notification to the individual Indian surface owner.

          You require only constructive -- you allow the BIA to use constructive notice, whereas you demand that the -- you demand of yourself that you provide a certified mail to the oil companies. I disagree with that strongly. You have an obligation to notify the individual tribal members. And you have an obligation to get their address.

          I disagree with that strongly, and I say that you need to strengthen the notification of
the BIA decision-making to the individual
landowner in the right-of-way decision-making.

I also object to the idea that the BIA
is proposing that they will make the decision on
behalf of the landowners. This is -- we're in the
year 2014, and self-determination doesn't only
apply to tribal councils; it applies to the
individual landowner.

So the individual Indian landowner
should be making that decision, and you, the
Bureau of Indian Affairs, have an obligation to
assure they make an informed decision on any
right-of-way.

And another comment I have to say is, I
am glad the BIA Superintendent is here. I want
some meetings held for the individual surface
owners, landowners, on Fort Berthold, discussing
in-depth what the implications of this draft
proposal is. Thank you.

MS. APPEL: Thank you.

MS. DANKS: I want to thank you for all
your comments because the comments are considered
when they publish the final rule.

So these are -- I just want to say these
are all good comments, and these are only proposed
regulations. And so I'm glad to see that the landowners are here and that they're active and commenting.

MS. JULIE BIRDBEAR: My name is Juletta Birdbear. I read the document as well as I can understand it, and I, too, am bringing the request that our local Bureau of Indian Affairs do hold meetings for the landowners on Fort Berthold.

Fort Berthold is going through the most intensive oil and gas development in history. That activity demands that we understand this document thoroughly if it is going under revision.

In other locales, the Bureau has held meetings for individual Indians. We know this. But that is lacking here on Fort Berthold.

We have to come to Bismarck in order to speak to this issue. Bismarck is located two hours off the Fort Berthold Reservation, where all the oil and gas development is happening.

In looking at this document, there is a section there that allows -- it's 169.008, Section A, Section 3, Section (iii) -- three dots. And what that does is allows for State jurisdiction over an ROW. And I'm not sure who put that in. Who put that suggestion into this document? Maybe
someone can respond to that.

And I see someone has already asked you to extend the deadline, and that you're responding to that within this one week.

So maybe you can give me a response right now as to who put this requirement -- consideration for State jurisdiction. Page 29.

You must be familiar with your own document.

MS. TURNER: Yeah, I'm just trying to figure out which subsection you were referring to. But it generally --

MS. JULETTA BIRDBEAR: It says, "In lieu --" or: If the landowner expressly agrees to the grantee -- the oil company, the pipeline company -- to waive and to allow the State, then that will happen.

My -- my big concern is, a lot of people are not familiar with the legal terminology on documents that are placed in front of them, nor is an explanation provided, and that a landowner may inadvertently sign a document without full consent of the legality of that document, and it will forever hold.

That is dangerous language that is being put in this document. I want to know who put it
in there. If we are talking about expanding and
respecting the Indian's right to make a decision,
an informed decision, who put that language in
here?

We're aware that we do have the right to
consent, and that is an issue in itself.
Self-determination gives my tribe and myself the
right to make that decision about my land.

This document is still based on the
previous language that allows the Bureau of Indian
Affairs to make that decision without my consent
in various forms.

That goes counter to self-determination.
That is counter to my right to make that decision.
I wish -- and I must tell you -- I reserve that
right to make that determination about my land.

MS. TURNER: We appreciate your concerns
about the applicability of State law. And the
language in the reg -- regulation comes from a few
different sources.

First, there are certain circumstances
where Congress or the Courts have actually made
State law applicable, and so the regulations are
responding to that.

And, you know, we don't have --
Unfortunately, we don't have control over what Congress may or may not do. And then, the same goes with Courts.

And as far as the provisions where parties to a right-of-way voluntarily agree to have State law apply, we've had situations where tribes, for example, have come to us, and said, "Well, we don't have our own code governing X, Y, and Z."

And so, in the absence of that code, we're voluntarily choosing to adopt the applicable state or local law on that issue. And so --

MS. JULETTA BIRDBEAR: As a trust agency for a tribe and for individual Indians, should you not be focusing on helping these tribes develop their own codes rather than defaulting to a state?

MS. TURNER: Yes. BIA does, you know, support -- certainly supports tribal self-determination and their rights to do that.

But in some instances, for example, if the tribe wants the lease right away and has not gone through the formal -- you know, its formal governing process of adopting specific tribal law provisions, you know, it's -- we, certainly, defer to their choice to adopt State law.
And that may just be temporarily, for example, until they adopt their own ordinances. But, you know, we are not going to second-guess their decisions to -- for a temporary or even on a permanent basis to adopt State law if they think that the State law works for them.

So we -- I, certainly, appreciate your concerns, and at the Solicitor's Office, we are constantly battling against the applicability of State law.

And so it is, you know, funny for me to see that State law may apply because -- given that we are fighting against State law applying.

But, as I said, in some cases, we're left with no choice because Congress has imposed on us or because the new landowners themselves have chosen to make it apply in specific situations. But, certainly --

MS. JULETTA BIRDBEAR: But that doesn't answer my question. That language does not belong in this document. Period.

MS. TURNER: Okay. And thank you for your comment. As others have mentioned, once the comment period closes, we will all review -- we go through the comments one-by-one-by-one, and we
consider them, and argue over them, to come up
with the final rule. And so we'll certainly take
that under consideration. Thank you.

MS. JULETTA BIRDBEAR: All right, so you
don't have an answer. I'm going to ask you about
page 43 on the valuation: 169.111, section B,
section 2.

And the comment I have is that that
phrase is a direct conflict, whereby it allows the
grantee -- who may be an oil company, who might be
a pipeline company -- to make a determination in
the appropriate valuation mechanism used.

And I want to know: Who put that
language in this section?

It's not in any other section in that,
if you're going to -- if you look carefully. But
it's in there, and that's a direct conflict.

MS. DANKS: I want to make one comment
about jurisdiction, to step back. One of the
things in the other regulations that kind of --
this elaborates more, but we want comments on
jurisdiction, and I'm sure we're going to get
them, but there is a U.S. Supreme Court case
called the Strate case, whereby the --

MS. JULETTA BIRDBEAR: I understand; I'm
familiar with that.

MS. DANKS: Okay. I'm sure you are.

MS. JULETTA BIRDBEAR: But I would like an answer --

MS. DANKS: And one of the things --

MS. JULETTA BIRDBEAR: -- to the direct conflict which I am asking you to respond to.

MS. DANKS: One of the things we have our tribes do is, they assert in the right-of-way document that they have jurisdiction.

And so that's why we're trying to elaborate more on jurisdiction, so that the tribes can be aware that they need to throw that in there, in that right-of-way document.

MS. JULETTA BIRDBEAR: This is on valuation, Superintendent. This is not jurisdiction.

MS. DANKS: I just wanted to add that.

MS. TURNER: Yeah. And so, on your question about the accepting -- the Bureau accepting other valuations --

MS. JULETTA BIRDBEAR: No, it's not accepting other valuations. It's accepting other valuations determined by the grantee, as well, in that. You read that on section B, number 2.
MS. TURNER: And --

MS. JULETTA BIRDBEAR: And that is a direct conflict if that grantee is, then, involved in that process.

MS. TURNER: Yeah, and I appreciate your concern. The regulations first require certain -- place certain requirements on those other valuations.

So it's not the grantee, you know, just making up a number and then saying, "Well, that's how much compensation you're going to get on the right-of-way."

Those compensating -- those other valuation methods have to comply with USPAP, which is a method of doing appraisals.

And in addition, there's the extra level of review of BIA having to approve that. And so BIA is going to take a look and not just accept it wholeheartedly and say, "Yeah, that's good enough."

They are going to look at those appraisal methods. So the regulations, as drafted, do have that second level of review and the requirement for USPAP.

But we will certainly take your comment
under consideration, and concern about the --

who's doing the valuations.

MS. JULLETTA BIRDBEAR: Who is -- who is
in charge of setting up the criteria for the
valuation? Who is making that selection? Is it
the same party that, then, is a party to that
action?

That's my concern. That's a direct

conflict. And the way it is written now, if it
remains, it is a direct conflict.

And the other comment -- and I will
submit these in writing: I'd like to know if you
will, Superintendent Kayla Danks, if you will hold
an informational session on Fort Berthold for the
landowners so that we don't have to travel two
hours to come here to listen to this.

MS. DANKS: Yeah. I'm happy to hold
one. But the thing is, this is a consultation.
So all comments are recorded, and then they're
used in formulating the final rule.

If it's informational, then that would
be just discussion-based, because only the
secretary can promulgate regulations. And so --

MS. JULLETTA BIRDBEAR: You're not --
we're not promulgating regulations during these
comment periods; you're collecting our comments.

    MS. DANKS: Well, I'm going to --

    MS. JULETTA BIRDBEAR: This is a collection process of this rule-making regulation.
And our -- and according to this document, participation is required -- is a federal mandate in this document. It's a requirement.

    It shouldn't be a requirement to jump in your car and put gas in and go two hours to participate.

    MS. DANKS: Well, I'm happy to have an informational meeting with the landowners. But I wouldn't --

    MS. JULETTA BIRDBEAR: And we need "comment" attached to that. The reason I said "informational": We need to understand this document before we can make an informed comment.

    MS. DANKS: And -- so, I would need time to set that up. So definitely, we need an extension.

    MS. JULETTA BIRDBEAR: We need a comment period on Fort Berthold. Let me be very clear about that.

    AUDIENCE MEMBER: Yes. For the landowners.
MS. DANKS: Yeah, if I'm authorized to do it. And I have bosses, too. So if I'm authorized to do it, I'd be happy to set that up.

MS. JULETTA BIRDBEAR: I need to know now. We have a deadline to meet of August 18th.

MS. APPEL: Yeah, and I'm going to interpret your comment as also formally requesting an extension of the comment period.

So since that -- an extension would have to happen in order for that informational hearing to happen, it sounds like.

MS. JULETTA BIRDBEAR: Let me clarify for your -- so you understand me 100 percent.

MS. APPEL: Mm-hmm.

MS. JULETTA BIRDBEAR: The hearing on Fort Berthold will be for the purpose of collecting comments from landowners on Fort Berthold, which -- these comments will be considered and implemented into the final daft.

MS. APPEL: Okay.

MS. JULETTA BIRDBEAR: It's not just informational.

MS. APPEL: Right. Okay. Right, we -- sorry. We were picking up on your characterizations. It'll be --
MS. JULETTA BIRDBEAR: First we need to understand this document.

MS. APPEL: Right, it'll be --

MS. JULETTA BIRDBEAR: First, we need to be able to access this document on Fort Berthold.

MS. APPEL: All right, understood. And I also wanted to point out that we are having a teleconference on Thursday for people who want to call in.

That information is also in the Federal Register notice. But we have heard your request for a meeting specifically on Fort Berthold, so --

MS. JULETTA BIRDBEAR: A hearing: A comment hearing. So don't reduce it to an informal session. It is a comment hearing; the same level that's happening here.

MS. APPEL: Got it.

MS. JULETTA BIRDBEAR: Mm-hmm. And can anyone from Regional respond to this today?

MR. LA POINTE: To the formal request?

MS. JULETTA BIRDBEAR: Yes.

MR. LA POINTE: I mean, I think that's part of -- that's going to have to be part of the process. I mean, this hearing is not just for Fort Berthold.
MS. JULETTA BIRDBEAR: I understand.

MR. LA POINTE: This comment period isn't just for Fort Berthold, so --

MS. JULETTA BIRDBEAR: I understand.

MR. LA POINTE: We have other concerns other than just Fort Berthold.

MS. JULETTA BIRDBEAR: I understand.

MR. LA POINTE: We're trying to collect as many comments as we possibly can. That's why we're here.

I mean, I think that -- you know, if you look through this, it was published -- the dates were published we were going to be here.

And I think that, if we go out to specific reservations, that would, probably, also have to be published, right?

MS. APPEL: Yes.

MR. LA POINTE: So that's something we'll have to take back and make a decision on.

MS. JULETTA BIRDBEAR: Perhaps if it had been better planned --

AUDIENCE MEMBER: Exactly.

AUDIENCE MEMBER: Yes.

MS. JULETTA BIRDBEAR: -- at the beginning, then you wouldn't have to be making a
hard choice on that. Public participation is a requirement of this document.

    MR. LA POINTE: And that's -- and again, that's why we're here. And we want your comments, and that's -- we want your participation.

    MS. JULETTA BIRDBEAR: No, you don't. When you set it outside of our area, that is an implied message that you don't.

    MR. LA POINTE: Well, we're within the Great Plains Region, so we're trying to set it up in a situation where we can get to as many people as possible.

    So I don't know what else to say, other than: We will take your considerations back and make the determination if we can make specific trips to certain reservations.

    MS. JULETTA BIRDBEAR: You're already located on Fort Berthold.

    MR. LA POINTE: Correct. But the individuals who would be doing the consultation are not.

    MS. APPEL: And I would like to say that Bismarck was chosen because we are aware of, in the area, there being rights-of-way interests and rights-of-way -- and rights-of-way issues. That's
also why the other location in Arizona was chosen.

And unfortunately, we're limited by resources and how many places we can go, but we have heard your request loud and clear and will go back to the assistant secretary with that request.

MS. JULETTA BIRDBEAR: The other -- thank you. The other issue has to do with the appeal process. In this document, there is no appeal section referenced.

It does -- and also in this document, there's references to other -- such as "Chapter Two," which is not a part of this document.

In order to make an informed comment, we need to know what it is this is based upon. And when you refer to a document outside of this document, that makes it extremely hard to make an informed comment.

MS. APPEL: So Jennifer may be able to answer this better, but we can -- we can make the Part 2 -- 25 CFR Part 2, that governs the administrative appeals procedures -- they govern, broadly, basically, any administrative appeal of a BIA official.

But we can make that available, as well. Those are not currently under consideration for
amending.

MS. JULETTA BIRDBEAR: I understand. But you make reference to it, and whatever part you're referencing, you should attach that to this document so we can --

MS. APPEL: That's a great point, yeah.

Thank you.

MS. JULETTA BIRDBEAR: I have a question on the bonding -- the new bonding requirement: I fail to understand where a tribe or an individual Indian may waive their right to require a bond that's going to protect their property, their assets.

MS. APPEL: So are you saying that there shouldn't be any -- any possibility for a landowner to waive a bond; am I --

MS. JULETTA BIRDBEAR: I see a waiver as being beneficial to an outside third party, not of this document's interest. That's where I see the waiver being beneficial.

MS. APPEL: So do you --

MS. JULETTA BIRDBEAR: To a grantee that is not a tribe and not an individual Indian. So, yes, there should be no waivers.

MS. APPEL: Okay. So delete the
waivers?

    MS. JULETTA BIRDBEAR: Do it.

    MS. APPEL: Thank you.

    (Audience claps.)

    MS. APPEL: I really appreciate this picking up -- we haven't heard these comments, so it's great to get your input. Do we have other comments?

    MS. MANDAN: Clarycia Mandan. I'm natural resources administrator for the Three Affiliated Tribes. We've worked, as Carson said, very extensively on the right-of-way issues.

    Probably, because of the volume, we have a lot more experience in dealing with right-of-way issues than, maybe, some of the other tribes in the region, just because we've been presented with so many questions on them.

    One of the questions I have is: I see in the slides, here, that it looks like the permission to survey more -- or, the permission to survey has been foregone in the new proposed reg.

    It says that there is no BIA approval required to survey land. But it also goes on to say that they must include, when they present the right-of-way, a record of consent.
So I guess I'm a little confused as to -- are you intending to do away with "Permission to Survey" consent forms altogether for landowners? Is that what the intent of this proposed rule is?

MS. TURNER: So there's a couple of steps in the right-of-way process. And the first, as you know, is the permission to survey.

And so, in the past, BIA approval was required which, kind of, lengthened the approval and granting process.

And so, in recognition of the fact that landowners do best know how to manage their land and to, you know, decide who comes and comes off their land, for the survey issue, we have completely eliminated the requirement for BIA approval.

But third parties are still required to get the consent of the landowners. So BIA will, at the request of the third party, will give them the landowner information, so that the third party can, then, reach out to the landowners to get consent to go on the land to survey it.

But then, when it comes to actually granting the right-of-way itself, BIA approval is
still required, and landowner consent is required again for the right-of-way.

So it's two consents for survey and the right-of-way itself, but only one BIA approval.

MS. MANDAN: So there does have to be -- there has to be proof of consent for a survey filed with the right-of-way?

And is that a BIA form, then? Or is that -- what would that be, then, under the new rule?

MS. TURNER: Sorry, I'm looking for the exact language. I don't think it has to be on a form.

But certainly, as we do implementation of this rule, I think we can talk about forms, if that would be helpful.

MS. MANDAN: Well, it would certainly help to outline what would be an acceptable form of proof of consent. And I think that might get very confusing for companies.

We deal with this all the time: With companies coming on the reservation who aren't familiar with the BIA requirements or the trust land requirements. And oftentimes, they don't realize the extent of majority consent, you know,
to obtain -- for permission to survey.

And I really don't see how you can get around that trust function, myself, because you would have companies coming on with misunderstandings about, maybe, getting one landowner's signature, but that landowner might not be the majority.

And unless you can show that third party, you know, the land ownership and the requirement for majority consent, I think we can have a lot of problems with a lot of trespass and "survey without consent" issues. That's just my personal feeling on it.

The other thing I would like to ask about is: I see, also, that you've changed the ability to direct pay for just ten or fewer landowners.

I know that third parties have always wanted to be able to do direct payment for right-of-ways. But I'm questioning why do you have a direct payment allowance just for the ten or fewer landowners?

Why don't you have the direct pay allowance for all landowners when you receive a -- when you obtain a majority interest consent?
I know, speaking on the behalf of -- I don't know if the companies will comment today, but I know companies have always asked for that, and felt that that was -- would have been a quicker way to do business on the reservation.

But I don't understand why you just have it for tracts with ten or fewer owners.

MS. TURNER: The direct pay provisions in these regs are actually copied from the direct pay provisions in the newly updated leasing regulations, and so the "ten landowner" limitation was established in the leasing regulations because that was viewed as, kind of, administratively the easiest to -- you know, it wasn't too many but not too few, in the leasing regulation context.

And so we're certainly open for comment here if that's considered to be too many or too few, you know.

We'd love to hear what everyone's views are on the direct pay provisions and the number of landowners, so thank you for raising it.

And if you would prefer that it be opened up to as many landowners then, you know, that is certainly something that we will consider.

MS. DANKS: Currently, right now, the
Bureau of Indian Affairs requires 100 percent for allotted land for direct -- they would have -- 100 percent of the landowners would have to come in and ask for direct pay. And so, basically, we don't have any direct pay.

MS. MANDAN: -- situation --

MS. DANKS: It all goes to -- goes through the Bureau of Indian Affairs because we have a lot of allotted land.

And so we opened it up for comment just to -- this is proposed, so certainly, that's good. We want to hear comments.

MS. MANDAN: And then, I'd also like to comment on the assignment divisions. I'm glad to see that the BIA is finally addressing this.

This has also been something that we have really been grappling with because, the way business is done in, particularly, the energy industry -- maybe not so much with the utility right-of-ways or the road right-of-ways, but with the energy industry -- the way business is done is, companies will come in -- smaller companies will come in and develop, by obtaining the right-of-ways, and then flip them.

And they'll flip them at quite a large
profit. We've seen them flip them for -- obtain
them at ten cents on the dollar and then flip
them, you know. So I'm glad that this is being
addressed in the new rules.

And the -- you know, we, as Carson had
just indicated, adopted a right-of-way provision
of the tribe, that we -- since we couldn't require
them to get our approval for assignment under the
current regulations, we adopted a provision that
said that at least they have to give us notice,
you know. So that wasn't even being done in the
current situation.

So I think, you know, as long as
companies are aware that, once they take the
right-of-way, if they attempt to sell it, they are
going to have to provide notice to the owners and
get permission again for that sale.

And I don't know what that will do to
the valuation of our right-of-ways on the
reservation or what it will do to Industry, and
maybe they would want to comment on that later on.

The other one was on mortgages, and that
was also a very big concern that we had. As you
all know, under the current 25 CFR, an Indian
landowner themselves cannot mortgage or convey or
sell their land without the BIA's permission, but once it was taken in the right-of-way, any company that wished to mortgage or sell or convey their property, this was being done.

So I think this is a -- I think I really do endorse, you know, supervision of the mortgages and the approval requirement.

I know it may become onerous for the companies, but it's a rule that we as the Native American landowners have lived with for a long time now, so I think why, if it applies to us, why shouldn't it apply to the companies?

But I do have concerns about how quickly the BIA will be able to approve both the assignments and the mortgages.

My concerns are that you've given yourself a 60-day timeline, I think see, here, in the approval of the right-of-ways themselves.

And I think that 60-day timeline, in terms of business interests, should also apply to the approval of assignments and the approval of mortgages, strictly because that is not the way business works in -- particularly if you're dealing with the energy industry or utility assignments or mortgages.
We need to be able to -- as an agency, you can't promulgate a regulation that will, basically, kill the economy on Fort Berthold or anywhere else.

So you need to be able to make sure that you can respond -- if we put these rules into place, that you can respond and make these approvals.

Then we don't have these long delays like we are currently experiencing with the right-of-way approvals themselves. If you don't, you, basically, will probably have shut down the industry. And there was one more comment I had --

MS. APPEL: Before you go on, can I ask for a clarification on that? So were you saying that there should be a -- because the proposed rule has a 30-day time period for BIA to approve assignments and amendments and mortgages.

MS. MANDAN: Oh, it does have a 30-day --

MS. APPEL: Yeah.

MS. MANDAN: Okay. I didn't see that.

MS. APPEL: Does that sound reasonable, do you think?

MS. MANDAN: I think it's reasonable for
Industry: A 30-day period.

MS. APPEL: Okay.

MS. MANDAN: But, you know, we really have to make sure that we -- that the BIA isn't executing a regulation that they're not capable of carrying out.

MS. APPEL: Yes. Right.

MS. DANKS: The -- I just want to make one comment on that -- and this is with the leasing regulations, too, that were finalized. The 30-day timeframe for approval, I guess, for mortgages -- is it 60 for rights-of-way? -- but the timeframe starts when we have a complete application.

MS. MANDAN: Yeah, a complete application.

MS. DANKS: And a lot of times, people, when they come in, they get the addresses and, you know, consult. They think it starts then. But we have to have the complete application; we have to have NEPA compliance; we have to have all of the consents and evaluation.

MS. MANDAN: You're not saying you need NEPA compliance for the mortgage or assignment provisions, though, do you?
MS. DANKS: I'm talking about the right-of-way application.

MS. MANDAN: Just for the right-of-way?

MS. DANKS: Yeah, just for the --

MS. MANDAN: I just want to make sure.

MS. DANKS: Yeah.

MS. MANDAN: And then the last question that I had is: I see that you do provide appeal process for denial of a right-of-way or other assignment or such, but my question goes to this, is: Would a third party company that was seeking this have appeal standing?

Because I know in the past, under the current appeal regulations, sometimes third party companies have been denied the appeal process because they have no standing under the regulations because they're not an individual Indian or a tribe.

So I want to know if the companies will actually have standing if they're denied a right-of-way under the current appeal regulations.

MS. TURNER: The proposed rule provides that if BIA does disapprove the right-of-way, that only the landowners can appeal that disapproval.

And the logic behind that is that -- you
know, let's say that the oil -- you know, the energy company doesn't have all of the consents because the landowners don't want the right-of-way.

So our position is: Well, then, why should the energy company get to appeal that denial and create all sorts of headaches for BIA and the landowner when the landowners don't want that right-of-way on their land?

So the regulations are very clear, here, that only, as I said, the landowners may appeal a right-of-way denial.

MS. MANDAN: Okay. So if a company failed to provide something like a -- you know, a bonding, or something like that, and the right-of-way was denied, then there is, basically, no due process for the companies?

MS. TURNER: They don't have an appeal right. But if the landowners -- you know, they can talk to the landowners, and the landowners can still appeal.

So if they feel -- if the landowners and the company feel that BIA wrongfully denied the right-of-way, then, certainly, the landowners can appeal, and it will go through the administrative
process.

MS. MANDAN: Okay. Final question: You mentioned earlier the USPAP standards that would be used to provide a market valuation for the right-of-ways.

And I'm just wondering about -- the BIA has -- in other areas, they have a USPAP requirement for appraisal, as well -- and we have this situation now on Fort Berthold -- and I'm just wondering how BIA is going to handle it: Under these proposed regulations, if you have -- the OST is the office, currently, that still does the appraisals, correct?

MS. TURNER: Yes.

MS. DANKS: Yes.

MS. MANDAN: Okay. So is it possible, then, for the BIA to be able to appraise the right-of-way for, let's say, an oil and gas purpose or a utility purpose, under fair market value USPAP standards, and still appraise that same land for a grazing permit purpose?

Because currently, USPAP standards are supposedly used under the grazing permits for valuation of fair market value of the land. So are you going to be looking at highest and best
use, or -- you know, because I see a potential conflict.

If we have a right-of-way that's in a range unit that's under a grazing permit, and that right-of-way has been appraised at a fair market value of -- I'll just throw a number out there -- $25 an acre.

But that same right-of-way has more valuation to a pipeline company who's running, you know, gas or multiple gas and oil lines through that same right-of-way, how is USPAP going to be applied?

And how is the Office -- OST going to make those determinations? That's all I have. Thank you.

MS. APPEL: Do we have other comments from tribal reps?

MS. JULETTA BIRDBEAR: Where's the answer to her question?

MS. APPEL: About the appraisal? We are going to have to talk to the Office of Special Trustee; they determine how the valuations are put together.

So we're going to have to check with them. But that's a really good point, because it
should be -- you would think that --

MS. MANDAN: Fair market value would be fair market value.

MS. APPEL: Right. Fair market value would be for the purpose that it's going to be used for. So if it's a pipeline, then the fair market value should be for that and not grazing.

MS. DANKS: I guess we don't have an appraiser here, but I can tell you that, when we submit the appraisal, we do provide a scope of work, so it's specific -- we provide them with the information on what the appraisal is for. But we'll have to get OST out.

MS. APPEL: And maybe that's something that we could codify in the regulations: That BIA is going to specifically communicate with OST about what the purpose --

MS. MANDAN: Well, just to add to that: The reason I ask that question, the background behind that is because, on Fort Berthold, now, because we've had an explosion in energy work and the installation of infrastructure and right-of-ways: Well paths, roads, land lines.

We actually have them being installed on top of federal grazing permits. So basically, the
land is already under lease with the federal permittee, and we've got top leasing going on, basically, on Fort Berthold.

And that land has already been paid for and valued by the USPAP appraisal for grazing purposes, and then we turn around, and now we need to do a USPAP appraisal for fair market value for the right-of-ways.

And we're going to meet later on today about some of those issues, but one of the problems we have is that the BIA is not currently deducting that land from the permits.

So the landowner's collecting for dual purposes on that -- on those properties: They're being paid a grazing rental, and they're being paid for the right-of-way.

And that is an issue that I think, probably, needs to be addressed, maybe, in this rule-making, as well. I don't think that, you know, it's legal to do that, on behalf of the BIA.

Because when you put a right-of-way or a pipeline in -- pipelines are different, maybe, because you can still graze them after they're installed -- but there's no damage payment to the permittee for that, and there's no deduction in
the lease and the EUMs in the permit.

And we didn't think it was that big of an issue at first, but it's turning out to be a significant amount of acreage being deducted from these range units now.

MS. DANKS: Yeah, we're meeting with the tribe later on -- on that. And modification is looking like it's necessary because of the oil boom.

DR. DAVIS: I'd like to comment on behalf of the Turtle Mountain Band of Chippewa. In 2011, our tribe passed a resolution banning fracking on our reservation. A significant amount of the water that comes into our aquifer is off-reservation.

And therefore, we are working very hard with tribal members and so forth to protect the water.

We understand that there are other tribes who are considering banning fracking, and the reason: It's not because of the oil; it's because of the chemicals involved in the process.

And I think the regulations need to protect the tribes who are against using chemicals in the energy development process.
If they have laws that apply, and ban fracking and chemical use in the energy development, that that be honored by the Bureau of Indian Affairs when your lease requests are made, and not go -- I guess, go beyond the requests or the laws of the tribe to grant rights to oil companies.

MS. TURNER: Just briefly on that point: The regulations at 169.008 specifically note that tribal law does apply. So -- and there are some limited exceptions which we've already discussed here today, but yes, tribal laws do apply. And, you know, this certainly -- and there's other requirements in the regulations that is part of the application process that the grantees make sure that they're complying with tribal law and applicable tribal environmental requirements.

MS. THEODORA BIRDBEAR: Yes, this is Theodora Birdbear from Mandaree, North Dakota. I'm wondering -- on page 51, 169.122: A grant of right-of-way over Indian land may include a provision, et cetera, requiring the grantee to give a preference to qualified tribal
members, based on their political affiliation with
the tribe.

Now, what is the intent behind that, and
where did it come from?

MS. TURNER: This provision, actually,
is from the leasing regulations, and it actually
grew out of concerns that, you know, certain
tribes wanted to only give -- require their
business partners to give preference to tribal
members as opposed to Indian preference to members
of Indian tribes, generally.

And so, for -- I'm just giving you an
example: So at Navajo, the preference would be
to -- you know, that Navajo nation has an
employment -- or, a provision that says preference
shall be given to members of the Navajo nation and
not, for example, to members of, let's say, a
tribe from New York, for example.

It's recognizing that, you know, they --
tribes -- it's a Navajo resource, and so they want
to give a preference to Navajo members.

And so, that's what this provision is
attended to address: Is to say, some tribes do
this, and that can be incorporated in the
right-of-way document.
MS. THEODORA BIRDBEAR: Is that up to interpretation, that particular sentence?

MS. APPEL: I think you, specifically, were concerned about that political affiliation phrase?

MS. THEODORA BIRDBEAR: Right.

MS. APPEL: So that, from what I understand, is legal language because -- to address any concerns about, basically, discrimination based on race.

So it's pointing out that this is a permissive -- permissible provision because of the unique relationship that the federal government has with tribes as political entities.

And so, tribes are entitled to allow a preference to be given to their tribal members because they're political entities, not because of a race-based --

MS. THEODORA BIRDBEAR: It says, "political affiliation of the tribe."

MS. APPEL: I see how, yeah, we could clarify that.

MS. TURNER: That's a good point.

MS. APPEL: A good point. Yeah, thank you.
MS. THEODORA BIRDBEAR: And secondly, the working group of your subject experts is going to be meeting again. I'm currently requesting that landowners be participating in that meeting to represent the interest of the landowners.

MS. APPEL: Thank you.

MR. CODY HALL: My name is Cody Hall from the Cheyenne River Sioux tribe. Now, these landowners from the Fort Berthold made pretty good points.

Points, obviously, you guys got to address. And a short time period isn't acceptable. You know, you've giving yourself an August 18th deadline.

But what's being told to some of our people down at Cheyenne River -- you know, a lot of them, they don't have the amenities, or they don't have that luxury of what's happening at Fort Berthold. We have a lot of our people that are "hooshka," that are poor.

So what's being told by the BIA is that, "Okay, if you sell your land, we'll promise you this amount of money off of this deal, here."

And so a lot of people, they don't -- you know, they don't have anything. So if you're
being promised money, of course you're going to say, "Oh, great, because I need that. I would love that," you know. "That's going to help."

So some of the points that were stated in here, the misuse of words, and then here you are binding on a contract, and then saying, "Well, guess what, you signed off on this document that states you gave us this land," or, you know, "states that you signed over."

Our people don't understand that. So then they say, "Okay, well, we just got a bunch of money."

Well, in essence, you're just, like, turning things over. So I think what needs to happen is: You guys have to come to different reservations and explain things more in detail, not just say, "Okay, let's meet in Bis," because a lot of our people -- you know, we don't have representatives, obviously, from my tribe here.

So when some people are like, you know -- in fact, I got informed by a childhood friend about this meeting.

So I made a quick call down -- because I'm already doing business up here -- and I said, "What questions do you guys -- you know, do the
people have?"

Well, a lot of that was, "Well, we're being promised x amount of dollars if we do this, if we sign off." So that's what's being told there.

The landowners, here, up here, have the definition issues. So it's kind of like a snake-in-the-grass type of thing.

My interpretation is: Okay, here's the different perspectives, here's the different views from different reservations. How can we go about this, you know?

I just see it as a forever thing that, you know, you give yourself quick deadline and say, "Okay. It's for us." But then what about us the people, here?

You know, we -- I am going to go back and talk to some of the people from different communities, because it's not just councilpeople that you speak to, or whatever.

Because I'll tell you right now, our councilpeople don't even inform us of meetings like this down in Cheyenne River. I don't know what it's like with other tribes up here.

So we have to physically -- people from
the community got to get up, rise up, and say, "Okay, let's attend these meetings, you know. Let's get out there and let's hear things."

I'm just letting you know: That's what's being told to our people down there, is, "Okay, sign off on this. You'll get your money, you know."

And so I think you guys need to address that. You need to come in and speak. And I'm saying, don't come to the council and say, "Okay, here's what's got to happen," because that stuff doesn't get filtered to us.

You need to come out in the communities and meet. I don't care, man. You're not meeting in a fancy place like this.

You might meet at an old, broken-down church or something, you know. Come to our level and speak with us and interact with people and talk to them about this.

Because, like I said, if it's happening in Cheyenne River, what's happening in Crow Creek, you know? What's happening down in Rosebud or Pine Ridge or Flandreau, you know?

So, you know, you speak of the Great Plains. Yeah, but there's a lot of people that
can't afford to come right here and meet.

So you guys need to -- with your resources, you, obviously, have better resources to go and meet with the people, you know.

So anyway, like I said, I don't represent the tribe in any way. I'm just a concerned enrolled member from our tribe to say, "This is what's being told to our people down there." Way different than, you know, what's being written down on this piece of paper, here.

So I'll go back and I'll talk to my people and let them know, "Hey, don't sell out," because, yeah, it's great. It sounds like, "Oh, you're going to be promised $27,000 if you just sign off on this paper."

I can tell you right now just how many people are talking right now. The tires are turning, saying, "We need -- we could use that money, you know."

But then there's stuff in here that these landowners talk about that's kind of like the fine print, or it's not really there, or it's kind of sneaky stuff, you know.

So anyway, this is just something that, maybe -- it's a huge concern that I can see, not
just for the people up here, but for our people
down there, too: As you speak of, the Great
Plains as a whole, you know.

(Audience applauds.)

MS. APPEL: Do any other tribal
representatives want to make a comment?

MS. LITTLE OWL: Maybe we should
represent -- I mean, get people to act as a tribal
representative, like this woman, here (pointing):

Very well -- I mean, very eloquent in how she
spoke about everything.

MR. BIRDBEAR: Can you hear me? My name
is Roger Birdbear. I'm the interim chairman for
the Landowners Association. I missed some of the
beginning, but I heard some mention about tribal
authority over these regulations.

We're opposed to the tribe regulating
allotted lands. The Supreme Court decision called
A-1 Contractors said anything alienating is not
subject to tribal jurisdiction.

So allotted lands, homesteaded lands,
and lands given through right-of-ways are not
subject to tribes' jurisdiction. The tribes don't
have the capability, nor do they have the same
interest.
That guy back there that just told you why he can't depend on the tribes proves this epidemic problem. You are our trustee -- us allotted Indians. You're our trustee.

You have to watch out for us. You can't let the tribes run roughshod over us -- I heard a regional director say that once before -- and they have been.

They are arbitrary and capricious. They're interfering with our rights to our revenue while you sit there and do nothing about it.

Allotted lands are not tribal lands. Your duty is to maximize that revenue for us. We can't depend on the tribes. It's been proven since 1936 at Fort Berthold.

So if you allow the tribes to any right to interfere with us, you know, under Hodel -- that Supreme Court decision, Hodel v. Irving -- that it's going to be a Fifth Amendment taking.

And that's going to be a legal basis against the BIA for allowing this to happen, this mismanagement of trust and responsibility to us, the beneficiaries. I gave you two legal bases right now why they shouldn't.

And that guy who just spoke before me,
he told you factually what happens: They don't
tell what's going on, they have secret meetings,
and they're only watching out for themselves.

There's a lot of controversy at Fort
Berthold right now, and the controversy is Fifth
Amendment taking.

Tribes have no right over allotted
lands. But the Bureau says, "Well, we got to see
what the tribe wants."

And I'm just speaking candidly, and
it's -- for those of you that went to law school,
you know that's a Fifth Amendment taking.

The only reason it's not -- nobody
brings it up is because nobody's sued the BIA yet.
There's a lot of Cobell claims still to come
because of this mismanagement.

And for that reason, us landowners are
opposed to any tribal right to regulate allotted
lands.

Right now, there's an equal protection
problem. You don't -- you recognize there's no
right on fee lands. We're both alienated
right-of-ways: Fee lands and allotted.

But for us, you might let the tribes do
it. You've violated the right-of-way easements.
You say that tribe can't regulate right-of-ways under the A-1 Contractor decision.

And under Montana use, it said what their jurisdiction is, and they're going outside. Right now, there are Fifth Amendment claims pending because of this tribal interference. So I wanted to point that out.

The other question I had was: Who initiated this revision to this regulation? Was it Industry, or was it Tribe?

Because nobody asked us, the beneficiaries. And I'd like to know that. Who initiated this process? Can someone tell me?

MS. APPEL: Sure. Ultimately, it was the Secretary of the Interior who determined that this would be the next step in the Indian -- the improvement of Indian Trust Management Regulation Reform.

That reform began back in 2005-2006. There was a department-wide effort to take a look at all the trust management processes and, as part of that, they identified that many of these regulations were sorely out-of-date.

So among the ones that have been updated so far are the probate regulations and then the
leasing regulations, as we've talked about.

And because the leasing regulations --

rights-of-way are, sort of, a complimentary piece
of that, we heard a lot during consultations of
the leasing regulations that the rights-of-way
really should be next in the priority list.

So the Secretary determined that the
rights-of-way were -- would be our next area of
focus, and the land management regulations.

MR. BIRDBEAR: Oh, okay. You know,
under Babbitt, they ruled that Indian Land
Consolidation Act unconstitutional, and now we're
pushing for (inaudible -- sounded like "April")
being unconstitutional because that's all it does:
It takes away our right to give away our land.
Those are my comments that I want to make. Thank
you.

MS. APPEL: Thank you.

(Audience applauds.)

MS. APPEL: So since we have a lull, do
we want to take a break and reconvene in ten
minutes?

AUDIENCE: Yes.

MS. APPEL: Yes? I hear "yes." All
right. So why don't we come back in ten minutes,
and we'll pick up where we left off.

(Off the record from 10:17 a.m. until
10:33 a.m.)

MS. APPEL: All right, let's get started
again. Looks like we have someone ready to give a
comment.

MS. KARY: Yeah. My name is Marilyn
Kary, and I'm a member of the Active Citizens for
Tribal Truth from Standing Rock, and I'm a
landowner. I found out about this meeting through
Facebook.

AUDIENCE MEMBER: Yup. That's how I
found out about it, too.

MS. KARY: So here I am. And I look
around, and there's no one else here from Standing
Rock, you know. And it's a shame. It's really a
shame.

So I think that I agree with the people
who stated that you should come to the
reservations and speak to the landowners because
we need to be heard, too.

And now, if I wasn't on Facebook, I
wouldn't be here. There would be no one from
Standing Rock here.

So please take that back for me: That I
think you need to meet on the reservations with the landowners. Thank you.

(Audience applauds.)

MS. APPEL: Thank you. And if you have suggestions about how we can better publicize these meetings -- we sent letters to each of the tribal leaders. We had --

MS. JULETTA BIRDBEAR: No, that's the problem.

MS. APPEL: Yeah.

AUDIENCE MEMBER: It is the landowners that need to be notified.

MS. APPEL: And if you have a, you know, suggestion for how we can better reach out to the landowners about these --

MS. JULETTA BIRDBEAR: You know, on Fort Berthold, when the pipeline company and the oil company needed to find us, they found us.

AUDIENCE MEMBER: Mm-hmm. Yes, that's true.

MS. JULETTA BIRDBEAR: Shouldn't be any different for the local Bureau, sitting on Fort Berthold permanently, to find us.

MS. LITTLE OWL: And what -- how much does it cost to put an ad in the paper? Because
we had to look in the Facebook, and somebody was like, "Cheryl, there's a meeting."

And I found that out last night, so --
and we're --

MS. APPEL: Yeah, I --

MS. LITTLE OWL: We didn't get any papers or any letters of notification, which is, kind of -- really unprofessional, considering you guys -- I know there's not a lot of money, but, I mean, they can afford to send us something. Put an article in the paper.

MS. APPEL: So that's a good suggestion: Article in the paper. We are making everything available on the website, I encourage everyone to routinely check the BIA website for information.

MS. LITTLE OWL: It's, like -- not everybody's online, on Facebook.

AUDIENCE MEMBER: How many reservations have access to that? You know, even talking about access to an Internet -- so how are we supposed to access BIA or Facebook or --

MS. LITTLE OWL: Or even a newspaper, honestly? When I was living in Belcourt, I mean, I don't think we had anybody coming to our door with a newspaper.
So if you guys were to send out a letter to the landowners -- I know we got those little checks from New Town. I got that in the mail; I could have got a letter in there that said, "We're having a meeting," you know.

MS. APPEL: That's -- that's a -- actually --

MS. LITTLE OWL: I would have brought the doughnuts had I known about it earlier.

MS. APPEL: That's a good idea, actually, to include, like, a flyer in letters that you're getting anyway from the Bureau.

MS. LITTLE OWL: Yup.

MS. JULETTA BIRDBEAR: You know, for the Bureau, there's permit imprint mail, which is the very least expensive mail you can use through the postal service: Mass mailing.

There's no reasons not to send a notice to the landowners on Fort Berthold, Standing Rock -- all the surrounding landowners, here.

And the other other reason why it needs to be done, is: We're the landowners. You're notifying everyone else except us. We're the landowners.

MS. DANKS: You're thinking MHA Times?
We're also talking that the Interior's on Facebook, but I don't know that Interior posted that on Facebook.

MS. JULETTA BIRDBEAR: Not everyone has access to the Internet.

MS. DANKS: But not everybody has Internet, so --

MS. JULETTA BIRDBEAR: No.

MS. DANKS: -- we're just thinking about the other options.

MS. LITTLE OWL: We were all standing in little groups around here, trying to make our way to visit everybody. And we were talking, and the only way -- you guys are asking for ideas on how to better communicate with the public, talking about the newspaper, talking about Facebook.

If you were to get one person to be a spokesperson for the tribe, like this woman right here.

I told her I was going to get up here and pray, "Heavenly father, please bring this woman to speak for us on our behalf."

So I'm doing it. But we need somebody who's knowledgeable in the terminology that you guys are offering.
My husband's got many letters from people that are saying, "Okay, we're going to give you $1,000 if you sign this paper," so what has he been doing? He's been signing the paper.

Did he have knowledge of what he was signing? Not really, because the terminology is that of an attorney.

And I don't think -- as long as I've known him, he never went to college to be an attorney. So the terminology sucked for him.

Because of that, who knows, you know, how much -- how many other people have been taken advantage of by the terminology. If we could get someone, like the Sioux tribe talked about, get someone to go to their tribes.

And it's not something that we're just asking for; it's something that's a need. It's like, every day, we need to eat; every day we need to drink to survive. We need to have the knowledge that you guys have.

And the only way we're going to get it is if you guys have a representative or somebody that's going to care enough about us and what we're signing that you come out and share your knowledge with us. That's all we're asking: Come
and share what you know with us.

Because, I mean, we're just -- I mean, we're like children when it comes to that legal jargon. We're like, "Well, what does this mean, and what does that mean?"

I went to college for nursing, and I didn't understand half of what was said on there. And it was all legal language.

But if we could get a representative from each tribe, like her. She was very well-read; she did her homework. I never seen any of this paper until we sat down, so I don't know what was going on in there.

And had it been sent out to us, we would have all had the opportunity to take a look at it, read it, make our notes, and come in here with a little bit of knowledge behind us. We all came in here just kind of, like, not knowing what's going on.

If I didn't look at my Facebook before I went to bed, I would not have known that there was this meeting today. I think that's unprofessional.

And all of you people up there look like professional people. I don't see any dummies
sitting out there.

So, I mean, somebody could have put something out. I don't know who's in charge of your public relations, but maybe they should be contacted because of this.

But like I said, I don't know if every tribe that's being represented in here -- we have Turtle Mountains, we have the Standing Rock Sioux tribe, we have -- what was your tribe?

MR. CODY HALL: Cheyenne River.

MS. LITTLE OWL: The Cheyenne River, and I'm not sure who else is here, but they are acting as representatives without even knowing it because they are here speaking on behalf of their people.

This woman here, I believe she's -- well, these two women, here, spoke for Three Affiliated.

And if we could get someone nominated like that for each tribe, the whole tribe would be represented; you know what I mean? We would know who to talk to.

If we have a question, go up to this woman. Say, "This is how we're feeling about this. This is the questions we'd like to ask."

Because not everybody wants to get up
and speak. My husband can't be dragged up here to say a word, but I'm sure he has a thousand questions, and they were all asked by this lady when she got up here.

He's like, "That's the question I wanted to ask. Yes, she asked everything I was going to ask." So -- yeah, so I applaud her.

(Audience applauds.)

MS. LITTLE OWL: What was her name?

What was your name?

MS. JULETTA BIRDBEAR: Juletta.

MS. LITTLE OWL: This is Juletta Birdbear. But anyway, I applaud her for asking all these really good questions.

And I thank you guys for listening to me. I'm sorry I sound like a crazy lady, but that's all I'm asking, is: Just listen to us. Come out and tell us, you know, exactly what you're putting down. Thank you.

MS. APPEL: Thank you.

(Audience applauds.)

MR. CODY HALL: Cody Hall again. Say, what I forgot to mention the first time I talked to you guys: When we look at the BIA as a whole, okay, there's so much wrong. And we're trying to
make it right, you know. That's what I was saying.

A lot of our people have to activate now. We're telling people, "You got to get up, make a movement, you know."

So when we do that, you guys label us, and within -- those that work within the tribe, too, that look more Native, okay, than the non-Native, that work within the BIAs and stuff -- then we're labeled AIM activists or we're labeled militants.

No, we're not. We're just standing up because enough's enough. We all know, from different tribes, here, we have scandals. We have mishaps that are going on.

I can tell you right now: In our tribe, our superintendent is one of those guys that thinks he's a czar. But he's not.

My mother who worked at the school, there, found a misuse of funds between BIA and BIE. She caught it, so she brought it up. She got fired for that, because she was standing up for our people.

So I go and I questioned the superintendent because all -- there was four main
people: There was the superintendent of our tribe, it was a lady -- or, the superintendent's wife that signed off on this transfer.

    Well, see, there's a lot of that stuff.

So we come out to you, and we try to talk to you guys about it, but yet you look at us like, "Oh, that's just kind of crazy stuff, or whatever."

No, it's not. You know, we have people losing jobs over standing up for things.

    You know, Ms. Birdbear talked about 2014. We're in this day and age, now, where we're still coming in amuck. And you guys sitting here are supposed to help us, be interpreters.

    And I always think -- I was told old-school stories by my grandfather, who was a chairman down there, about how we worked as a people as a whole. Even BIA people came in and sat down.

    So I was thinking of those old-school methods, and I think of nowadays where, you know, money's a corrupt thing, and money's the level of all things. It statutes who you are, you know. That's what you go by.

    I don't believe in that stuff. So anyway, you know, yeah, it may sound like speaking
of craziness or whatever. But no, this is real talk.

I'll tell you right now, when I spoke against the superintendent, and I questioned him on it, and I said, "You allowed this transfer. You pulled funds. You pulled people's salaries to make it look like that's where a million dollars was going to. Where did it go? We caught the scandal."

Well, guess what? When I brought it up to him, I'm no longer on the records on Cheyenne River as an enrolled member.

Because I had to fill out some paperwork, so I went to go get a copy of my tribal enrollment. "Cody Hall" isn't found on Cheyenne River anymore.

I called Aberdeen. They won't issue anything. You have to file certain, you know, procedures in order to find records. You got to pay $50 in order to find your record.

I said -- so then she's telling me, "Okay, talk to the Records Department on Cheyenne River."

I did. I'm not found because I stood up for what was right. So you guys need to hear this
stuff, you know. And you might take it and say, "Eh, whatever. That's just how it is."

We got business at hand, so that's just a fallen issue, you know. But I'm telling you: This is real talk. This is real people.

We're activating, you know. Yeah, we don't have some people that don't understand that legal talk, you know.

But I've gone and got educated off the reservation and came back, and I wanted to empower the people, but yet I get blasted. So here I am.

You guys, you know, within BIA, you have people that have GEDs that are working versus those of us that have the proper education, and you allow that because of those things, you know.

"Oh, just keep it hush-hush. That's right. I'm looking out for my family, so we're keeping him in there."

Yeah, they got a GED; they're not going to say anything. "Oh, you got this gentleman over here who's got a college education; he's got degrees. Well, we'll pass him up and keep this person in here."

That's what's happening at Cheyenne River. Is it happening at Fort Berthold? Is it
happening at Standing Rock? It's happening all over Indian Country. You guys need to plug in to that.

But I know I'll get hate, and I'm okay with that. I call people out. Same thing down in Pine Ridge when we get a protest for one of our members, and they hired this lady.

The regional officer said, "She's Indian." That makes her okay? Well, just because you tan a little differently, that's okay? She didn't know what was going on; she was just a puppet.

So that's what, you know, we call out. So guess what? I might be called a militant, and I might be called, you know, something. I'm not. I'm just sick and tired of all this. We got to stand up.

So you guys may hear this. I'm just one out of hundreds and thousands that are just saying, "Enough is enough," you know.

And, like I said, those are just prime examples. I put myself out there, so, yeah, I'm not enrolled anymore at Cheyenne River.

I'm not even found on the rolls because I stood up for what needed to be done for our
people.

You guys need to take that back, and say, "Hey, there's some craziness going on." You know, we don't have our representatives here speaking, you know, standing up, because they don't want to.

All they care about is getting that check, heading out, or passing resolutions under the table and not letting the people know.

Like I said, I'm just telling you what Cheyenne River's doing. There's more people that are going to come out and talk about Fort Berthold, Standing Rock, you know.

We are the proud Seven Bands of the Ochethi Sakowin. We still believe in our treaty rights. I don't know if you guys still believe in your treaty rights; we still do.

But yet that gets overlooked. Our council, our people, who say, "Oh, okay" -- even BIA officials that work down at Cheyenne River say, "That's old law. Nah, we don't need to listen to that."

That's supreme law: The treaty, 1868. That's the supreme law. "Well, just worry about that old law. That's old scriptures."
Hello, the U.S. still goes by the Constitution, do they not? How many years ago was that written? But they say, "Okay, well, we just look at Indian people as" -- in the words of Ted Nugent -- "varmints. Low-lives. Dirty." That's how they still view us.

So anyway, I'm sorry. It may sound like I'm rambling, but you know what? Like I said, you need to take that back to the higher-ups in D.C. and say -- because you guys have unlimited caps on resources.

You can come out here and travel. Look at what you're doing: You're probably traveling to Arizona tomorrow. So you can't tell me that there's a certain amount of -- you know, limited amount of funds and resources.

It's happening. You guys, you know -- I can't fly down there. I'm sorry but, you know, that's just the realness of it, you know.

So I'll probably get branded, and I'll probably, you know, some of you will get called down and say, "Hey, one of your tribal members by the name of Cody Hall stopped up here and talked up here and, kind of, raised the roof; got mad."

Whatever. That's fine, you know.
Because they're too chicken to talk. But you know, when I walk into the little LTM store down there, they get scared. They find an excuse to turn away. They don't want to speak. "Oh, that's the truth coming." They look away.

So I'm just letting you know, you know: That's what you can take with you. I'm frustrated to the gills on it so, like I said, I need to speak my mind on it for you guys to take home, take to your higher-ups, you know.

And I know, I can go off -- I see some of that documents, here. One of those it says signed off or written by Kevin Washburn. I've seen Kevin Washburn make promises in Indian Country, and he reneged.

So, you know what? Hey. It's happening. It's evident. Our people now are plugging in. I call it "Red Nations Rising."

You're damn right it is. It's about time. Thank you.

(Audience applauds.)

MR. BIRDBEAR: Another comment I had was, I alluded to it -- or, I mentioned it: That the beneficiaries really should write these regulations to benefit us.
I just finished two years on the ONRR rule-making committee on oil wealth evaluation, and they made attempts to take away the price of our oil. There was an attempt. And you can speak with the director, Greg Gould, or else Deborah Tschudy.

But the thing about ONRR, I'll say this for them: They let allottees, the Indian mineral owners, be on that rule-making committee. That's something that needs to be looked at.

Indian beneficiaries have been ignored too long, and we're the ones that suffer. We have no money, and we have to live in poverty. But my comment is: We should write this regulation.

AUDIENCE MEMBER: Mm-hmm.

MR. BIRDBEAR: We've got a good example right now. There was a production water contamination, and my guess is there was a right-of-way issued by the Bureau of Indian Affairs for that. I could be wrong, but my guess was there was one.

Now, is the Department of Interior, the BIA, looking out for the allottees' land that was contaminated?

You really need to ask yourself that,
because you know, for those few of us who
understand this -- who will pursue our claim for
trespass and for loss, not just for grazing, but
for the value of that land -- while you let that
production water contamination go on and nobody's
paying those landowners, those Indian landowners,
for that loss, you let the tribe tell other Indian
landowners what they can and can't do with their
own land, and their own water.

I just heard recently, a mobile tower
wanted to go on this Indian landowner's property,
and TERO came and said, "You can't come here
unless we approve of it." You know that is a
Fifth Amendment taking.

That tribe had no right to interfere
with the landowner and a buyer. They had no
right, but they did. That was arbitrary and
capricious.

There was no fact and no law for that
TERO person to go to that mobile tower

While you let this production water
contamination get worse, that landowner may not
even know that happened to her land yet. But
you're letting the tribes interfere.
Therefore, my comment, again, is: Us Indians, us real ones, who own this land, we should write this regulation, just like ONRR let us.

There was some Indian mineral owners from Oklahoma and from other areas. They let three representatives be on that committee, that rule-making committee. I was one of them.

So you need to let us -- this deadline of August 18th is too short. If it does go in, maybe there could be an injunction filed to stop this until we say something.

Because the tribe isn't watching out for us. The tribes are our worst enemy on the reservation. They pick and chose who they want to help, and who they don't want to help.

And they don't have that right. But you, as our ben- -- as our trustee, is supposed to protect us against that.

Right now, the Garrison Dam is flooding allotted lands, and you do nothing about that. That's a violation. That's a trespass. They don't even have an easement to have that Garrison -- that water on our land now, today.

I sent in a request in May. You might
think that's not long, but they've been flooding
my land since 1949. I mean, that -- that's
unreasonable.

That's why you really need to consider
us. And as far as this tribal consultation goes,
the Bureau really needs to look at what they're
consulting about.

At Fort Berthold, if you're talking
about land, it can't be with the tribe. Most of
you know that entire reservation was either
allotted or homesteaded. So there was no tribal
land.

So we need to know these: What are our
protections, here, in these right-of-ways? Are
you going to let a million-gallon production water
contamination go unaddressed? Or are you our
trustee?

There's a Mitchell case that says you
have to watch out for us. And if you don't, we're
entitled to money.

The DAO said they can't put facts and
figures together to say what's going on, what's
wrong with oil and gas at Fort Berthold. That
just came out in April, I think.

So at a minimum, you should consider us
when you conduct these consultations. If you want
to talk to the tribe about travel, about how much
their salaries could be, that's all right. But us
landowners, that affects us.

We have a TERO that told this mobile
tower, "You can't come here," with no right today;
with no reason, other than that it's a different
family member. It's arbitrary.

So you need to consider what -- who
you're representing. And you're representing us,
the landowners. You have a duty of loyalty,
skill, prudence, and care to us.

So I had to say this because right now,
the abuses being committed by the tribe and the
Bureau looking the other way are going on. And
we, as a result, have no money. And that is a
Fifth Amendment claim. That was all I had to say.

MS. APPEL: Thank you.

(Audience applauds.)

MR. VOCU: My name is Lane Vocu; I'm an
enrolled member of the Three Affiliated Tribes.
And I'm not going to get up here and pretend to
understand the document you guys have provided us
with.

I do understand parts of it, but I think
the problem I'd just like to reinforce that I
think everyone here -- the landowners, and, you
know, Mr. Hall back there -- you provided notices
to our BIA representatives, but they did not
communicate with our landowners.

Or also, you know, you provided notices
to our council, and stuff like that. In
situations like this, they don't inform us.

So I'm just getting up here to comment
on -- I'd like to reinforce her statement that we
need representatives like her (pointing) who are
specifically designed to help us.

Or reinforce -- you know, taking into
consideration -- I know Cheyenne River Sioux is
going through an election process. We're going
through an election process.

And, you know, it's just upsetting that
you guys don't think about things like that,
because we had four councilmembers up for
re-election.

That could change -- I mean, that's our
majority. For all we know, in three to four
months, there's going to be a completely different
movement. They might not be for energy standards.

But deadlines like this that show up on
the 18th, you know, that stops our ability to, you
know, make an informed decision with our
representatives.

I have to come in here and speak, and
I'm obviously really nervous, because I don't
understand what I'm speaking on.

But I just wanted to get up here and
comment on that because I feel the more of us that
get up here and talk, the better chance of you,
you know, really taking that into consideration.
Thanks.

(Audience applauds.)

MS. PACKUHEA: Elise Packuhea, Fort
Berthold landowner. As the comments that you
heard today, in many ways, the right-of-way -- the
proposed rule, 25 CFR 169 -- is taking away the
rights of the landowner. It's like negative
history repeating itself.

It also states that you plan to go
across the other reservations: The Navajos,
Alaska, New York; is that not true? That you're
making the same proposed CFR regulation changes?

MS. APPEL: (Nods head.)

MS. PACKUHEA: I would like to know
their stand on this, as well. If there's any way
that that could be, that North Dakota landowners
would find out their feelings about this, as well,
because I'm sure they're going to concur with the
landowners.

And also, it just seems like this is
eminent domain in a fancy term.

(Audience applauds.)

MS. APPEL: We are making all the
comments that we receive on the regulations
available on the website.

So if you go to the "BIA.gov" page,
there will be a link with the comments and stuff
that were discussed.

MS. PACKUHEA: I think what would be
helpful would be to network with the other tribes,
as well. And then -- like we said before, a lot
of them don't have Internet access.

MS. APPEL: Do we have anyone who -- oh,
great.

MS. THEODORA BIRDBEAR: Yeah, my name is
Theodora Birdbear, Mandaree. On page 32, it says,
"For purposes of appeals from BIA decisions,
'interested party' is defined as any person whose
own direct economic interest is adversely affected
by an action or decision."
From the landowner's perspective, I want my trustee to tell me: Who all is excluded in this definition that could benefit the land-- the individual Indian landowner? Who's excluded in this definition and why?

MS. APPEL: Would you mind telling us what the section -- I don't think that our page numbers are matching up.

MS. THEODORA BIRDBEAR: It's 169.011.

MS. APPEL: Okay, great. Thank you.

MS. TURNER: Sure. This definition of "interested party" is, again, from the leasing regulations.

And it was a comment that we got in the leasing context to try to limit who can appeal from BIA decisions so that, for example, someone concerned about environment -- purely environmental issues is not going to be covered by this definition because it refers to "own direct economic interest."

So, like, a landowner would clearly be covered by this provision. But, you know, someone in New York who has environmental issues with fracking in North Dakota isn't going to be covered by this definition.
MS. JULETTA BIRDBEAR: You're assuming -- you're presuming that Indian landowners who have maintained control of their land and have not even considered reliequishing that land, you are presuming they have no environmental conditions to that land?

How presumptuous of you to say that. The reason we hold onto that land is to protect it.

MS. TURNER: Yeah.

MS. JULETTA BIRDBEAR: That is why we are speaking.

MS. TURNER: And so, this regulation is not intended to exclude landowners. As I said, "interested party" does, necessarily, include a landowner.

It's, rather, that if someone's not a landowner and is, you know, an environmentalist from New York, this regulation is excluding them from the scope of review. That said, this is only a proposed rule. And so --

MS. JULETTA BIRDBEAR: That said, I have an interest to protect my land. If I choose to get help from an outside source, I will do that, and that person or organization needs to be
MS. THEODORA BIRDBEAR: Yes, I object to that -- the language in that, because I believe that's definitely an exclusion which is undermining the landowner.

So I really have questions about the intention behind that: Who put it in, why they put it in.

Again, this shows that the Bureau has failed to include the landowner interests in these rights-of-way across landowner lands.

MS. TURNER: And this -- this provision is reflecting, in part, existing IBIA -- that's the Interior Board of Indian Appeals -- and federal court case law on who may appeal and who may not appeal.

And so -- but, certainly, these regulations can -- you know, we, certainly, can change the definition.

And so, we're interested in your views on this. And, as I said, this is just a proposed rule.

MS. JULETTA BIRDBEAR: I think this goes back to this statement that Roger Birdbear made: The landowners need to be at that table,
redrafting this document, to satisfy the interest
of the Indian landowner.

AUDIENCE MEMBER: For the record.

MS. THEODORA BIRDBEAR: Yes, this was
clearly written with the industry in mind and to
expedite the Bureau's processing of the
rights-of-way. There was -- the landowners'
interests were not included in this document.

MS. TURNER: And just on that point,
this provision was actually added, as I said,
through the consultation process on the leasing
rights.

And we had received comments from
landowners they were concerned that, if they
wanted their right-of-way approved, and they
wanted to get the rental income -- or, you know,
they wanted their right-of-way approved, and that
just anyone could come up and could, without an
economic interest in that, try to block that
right-of-way or that -- in the leasing context, it
was a lease -- from going forward.

And so this was, actually, not adopted
to address Industry concerns, but was, rather,
initially adopted to address landowner concerns.

So your comment that it could actually
undermine landowner authority over their land is very helpful to us, but I can assure you, that was not the original intent.

MS. THEODORA BIRDBEAR: Well, we are concerned about that. You've received our message about that, and we want you to address that in language. And we want to see that language in advance of any deadline -- well in advance of any deadline.

We're not -- you know, I'm just an individual tribal member. I'm not an attorney. But I'm concerned about this.

I know that this is the language, here -- a lot of it is used by attorneys. But, you know, we're astute enough, I think, to guess that there's some implications for what you are proposing. And these implications are not in the best interest of the individual Indian landowner.

On the appeals -- I mean -- I'm sorry. The second item is: You talked about appraisals and valuations.

Are you proposing to use the same mass appraisal idea that is -- was proposed for the Cobell land settlement? Is the mass appraisals a part of this process, in this language?
MS. APPEL: No. Not as far as I understand.

MS. THEODORA BIRDBEAR: Can it be? I don't support it, but I want to know: Have you considered the full implications of the language you've drafted?

MS. DANKS: 25 CFR 169.111: It does say "market analysis." And so, if you're opposed to that --

MS. THEODORA BIRDBEAR: I'm talking about mass appraisals.

MS. DANKS: Yeah, that's a mass market analysis, would be the --

MS. THEODORA BIRDBEAR: I guess I object to the mass appraisals.

MS. DANKS: Okay. Then I wanted to make sure to point that out.

MS. THEODORA BIRDBEAR: So you're saying that mass appraisals are a part of this valuation process? Could be?

MS. DANKS: A market analysis is included in here, which is -- would be the whole. So if you're opposed to it, then --

MS. THEODORA BIRDBEAR: I'm opposed to Cobell mass appraisals.
MS. DANKS: -- we'll take your comment.

Okay. Well, duly noted.

MS. THEODORA BIRDBEAR: On page 20 --

MS. DANKS: And I want to say, this is good because we -- generally, we ask for specific language, if you have any specific language you want to submit.

MS. THEODORA BIRDBEAR: Well, I guess we're looking at the implications of the language you submitted, because I think -- I'm wondering who thought of this, and what was the full intent of this.

On page 20 -- that would be 169.002 -- and this has to do with definitions -- what -- the definition for immediate family:

In absence of a definition under applicable tribal law, such and such, a spouse, brother, sister, aunt, uncle, lineal ancestor, lineal descendent, or member of the household.

What is -- who is the member of the household? Who -- how is that interpreted?

MS. TURNER: The intent of the definition of immediate family was intended to be as broad as possible and to defer, where applicable, to, you know, tribal law definitions
of immediate family.

    But where there isn't a tribal
definition, then this list was intended to, you
know, be very broad and encompass different types
of relationships.

    So recognizing that, you know, a
household may consist of more than just husband,
wife, children.

    And so it was intended to be broad. So
there's no specific definition here. And if you'd
like us to provide more guidance on that, we're
happy to do so, but the intent was to be very
broad.

    MS. THEODORA BIRDBEAR: Well, it could
be anybody in that household, then. It doesn't
necessarily have to be a biological parent --

    MS. TURNER: Correct.

    MS. THEODORA BIRDBEAR: -- biological
person.

    MS. TURNER: Correct.

    MS. THEODORA BIRDBEAR: Is that the
essence of what you're saying?

    MS. TURNER: Yes. If it's part of the
household, as I said, it doesn't have to be
somebody -- you know, a blood-brother or, you
know, blood-parent; it can be much broader than
that.

MS. THEODORA BIRDBEAR: I guess I have
questions about that, but I will need to reread
where you're referencing that in this document.

The last question, I think, that I had
was -- and I'm glad Elise brought it up -- about
the eminent domain.

What role does eminent domain have on
allottee lands in regards to these right-of-way
regulations?

MS. TURNER: I think what we've heard
today is concern that these regulations could be
somehow illegally taking landowners' interests in
their land, and I can assure you that's not the
intent of these regulations.

These regulations are implementing our
statutory authority to approve right-of-way
grants.

And so, you know, were not intended
to -- we're not intending to take interests
without compensation.

As I said, they're just implementing
statutory authority, and the intent behind the
regs was actually to give a lot of deference to
landowner determinations regarding the use of their land, whether it be, you know, through requiring consent of the landowners before approving right-of-way, and whether it be through requiring landowners' consent with compensation provisions.

And so we're not intending to, as I said, take landowners' property interests without consent. They are, in fact, intended to protect landowners.

And so we're interested in whether -- and you've given us a lot of reasons today why you think that they're not doing so, and we'll consider those. But that was certainly not the intent.

MS. THEODORA BIRDBEAR: What is the role of eminent domain on allottee land right now?

MR. WINTER: There is none.

AUDIENCE MEMBER: Thank you.

MS. APPEL: I mean, I -- I don't know. I don't know. That's --

MS. LITTLE OWL: I think this gentleman just answered it, right here.

MS. THEODORA BIRDBEAR: We don't know who he is.
MR. WINTER: I'm Norm Winter with Targa Resources. I don't believe that eminent domain is even contemplated in the regulations.

MS. APPEL: Yeah, no, no.

MS. TURNER: No. The regulations are not about eminent domain, yeah.

MS. APPEL: Right, right.

MS. THEODORA BIRDBEAR: He's from the industry. What is the role of eminent domain on --

MS. LITTLE OWL: Which industry is he from?

MS. THEODORA BIRDBEAR: -- allottee lands?

MS. APPEL: So I -- you're asking a factual question, I think, that I don't -- these regulations don't address eminent domain. They don't contemplate --

MS. THEODORA BIRDBEAR: Yes, they don't. But what is the role, currently, on allottee lands?

MS. APPEL: Kayla just pointed out, there's a statute regarding eminent domain.

MS. TURNER: Yeah, she's citing to the right-of-way -- the authority for the right-of-way
statute.

AUDIENCE MEMBER: Could you read that, please?

MS. APPEL: The --

AUDIENCE MEMBER: Eminent domain.

MS. APPEL: Oh, that. So, she -- I was mistaken. She was pointing out the statutory authority for rights-of-way.

MS. DANKS: For right-of-way consent.

MS. APPEL: Not for eminent domain.

MS. DANKS: Consent.

MS. APPEL: Right. So I -- the regulations require landowner consent for rights-of-way. They require that compensation be paid to the landowners.

There's no -- there are certain limited situations where they can be waived or BIA can consent on behalf of the landowners.

And if you think that those are so broad that they, essentially, amount to eminent domain --

AUDIENCE MEMBER: Yes.

MS. APPEL: Then, yeah, let us know where that should be limited. Because, as the gentleman earlier said, you know, we want to
protect the federal government, as well, from lawsuits. So, if it is a Fifth Amendment taking, you know --

MS. THEODORA BIRDBEAR: You have not answered my question, but I know you referenced leasing regulations which the BIA finalized in December 2012.

MS. APPEL: Yes.

MS. THEODORA BIRDBEAR: And you referenced other documents. So I'm just asking about other documents regarding eminent domain on allottee lands in regards to rights-of-way -- pipeline rights-of-way.

MS. APPEL: What -- I -- I'm -- I guess I'm not understanding your question.

MS. THEODORA BIRDBEAR: Well, I'm just asking: What does eminent domain -- what laws of eminent domain apply to allottee lands in regards pipeline rights-of-way, or any other types of rights-of-way, across allottee lands?

MS. APPEL: I would think the standard eminent -- the Fifth Amendment taking laws apply. Do you want to explain more?

MS. TURNER: Yeah. I mean, to the extent -- you know, to the extent that there is
concern that these take an interest without compensation, then, yes, it would be your standard, constitutional claims.

And there can be litigation like there was in, you know, Hodel v. Irving, on the Indian Land Consolidation Act.

But it certainly -- the statute -- Congress's right-of-way authority says that rights-of-way can be granted in certain circumstances with the consent and with the payment of just compensation.

And these regulations are, you know, implementing that authority. And so, we don't -- I guess, if you view it differently, that this is a taking, then that would be a question for the -- for Federal Court.

MS. THEODORA BIRDBEAR: The reason -- one of the many reasons I asked is because I have been threatened with condemnation because I have refused to sign the leases, and I've been threatened with it by the industry.

I filed a letter of comment to the local BIA superintendent at the time. And so, you know, that's part of the reason I raised the question. But I believe you have not answered it. Thank
you.

MS. LITTLE OWL: Does anybody have an answer for her?

AUDIENCE MEMBER: Just give us the definition of eminent domain.

MS. APPEL: Are you saying that we should add a definition for eminent domain in the --

AUDIENCE MEMBER: You did.

MS. THEODORA BIRDBEAR: No, I'm not asking for that. I'm just asking: What is the current role of eminent domain on allottee lands?

You reference other materials that we're supposed to identify that we're supposed to look at in regards to this, so what is the eminent domain laws on allottee lands, if they're anywhere? If not, just say so.

MS. APPEL: In the U.S. Constitution, the Fifth Amendment sets out that the -- that private property may not be taken for public use without just compensation.

And I presume there are many, many cases that -- and much case law interpreting that, that I don't know off the top of my head. Do you want to --
MR. BIRDBEAR: Well, what would happen if you didn't get our consent? That might be another way of asking the question.

What would happen? Would you, yourself, condemn it? Or would Industry have to file an application?

MS. TURNER: Yeah, so it sounds like there's a couple things. So, you know, BIA's authority to grant rights-of-way without consent is limited by statute.

So BIA is going to be following the statutes and the rights in deciding whether to grant rights-of-way.

But the separate issue, I think, that I'm now hearing is that, you know, if Industry might become frustrated that they can't get sufficient consents to build their oil pipeline.

And so there is a question, then, of whether, you know, BIA will somehow get involved in that situation on behalf of Industry, or whether, you know, Industry will go to court to try to condemn those lands so it can build the pipeline.

And so, I guess, that's separate and apart, you know. BIA has to act within its
statutory responsibilities. And so what Industry may or may not do is a separate question. It's not answered in these regulations that we're looking at today.

MR. BIRDBEAR: Well, do the regulations address non-consent at all? If you're not going to get my consent, what are you going to do then?

MS. TURNER: Yeah. If there are -- the general rule is majority consent. There are certain circumstances that are spelled out in the statute that BIA can consent on behalf of landowners or can grant the right-of-way without consent. Those are extremely limited.

So if those situations aren't implicated, then BIA will not grant the right-of-way without necessary consents.

And so the next step would be -- and there's actually -- there's language in the regs saying, "When will BIA disapprove a right-of-way?"

And I think the first thing under there is no consents.

So hopefully -- this has taken a while to answer your question -- but hopefully, that --

DR. DAVIS: My name is Carol Davis from Turtle Mountain, again. There's been some
discussion about valuation. And I -- it brings to mind that our tribal chairman did request a meeting on our reservation, as the other tribes did here.

And I would suggest -- or, I would recommend -- not suggest; I would recommend and request, on behalf of our tribe, that whoever is handling our land in Montana be present at that meeting.

We have an office set up, I believe, at Fort Peck. I'm a landowner in Montana, by the way, and I don't even know where that office is.

But I know my mother went there when she was about 80 years old. She wanted to visit with this person about her land because she owned a portion of land there and was getting, I believe, $40 a year rent.

And when she got there, they directed her -- someone from -- this woman wouldn't meet with her -- it was a woman, I guess, who wouldn't meet with her -- but someone at the agency, she had the description; told her where the land was. And so my sister took her to where this land was, and the farmer that was farming it had a big mansion on this land, and she was being...
compensated, like, $40 a year.

    So there's issues with the Montana lands. I give that as one example. Another example: I have another brother-in-law who owns 160 acres of land in the Medicine Lake area, where all the oil is supposed to be.

    And he went to the Bureau with a request from Industry to lease his land, and they were offering him $6 an acre.

    And the Bureau of Indian Affairs who represented him at Turtle Mountain that he went to see asked him, "How much are you getting for the land now?"

        And he said, "Nothing." He said, "I'm not leasing it right now."

        And he said, "Well, sign it. You'll get something."

        Six dollars an acre. And there's oil everywhere there. I'm not sure if he signed it, but that was -- he was telling us what response he got from the Bureau.

        And he was asking us for suggestions on where he might get information on what -- how much is this land -- what's the value of this land there, if it's sitting in the middle of an oil
patch.

And so we were suggesting he visit people from Fort Berthold because we knew that there was oil development going on there. And this was about six, seven years ago.

So we do have a representative in Montana that we've never seen. So we would recommend that, whoever that is, that they be at that meeting on Turtle Mountain to meet with the landowners, people who own land in Montana.

And I'm not sure if you're aware of Turtle Mountain's situation: When our reservation was established, we were 32 townships. They reduced us to two townships by the time they got done with giving all the land away.

And because there wasn't enough land for the rest of the tribal members, they gave us land in the Williston-Trenton area, and on into Montana, all the way to Rocky Boy's Reservation.

So we've got all kinds of land in Montana, and all kinds of landowners on the Turtle Mountain Reservation who have never seen their land. Thank you.

(Audience applauds.)

MR. TEX HALL: Good morning. I'm Tex
Hall, the tribal chairman for the Mandan, Hidatsa, and Arikara tribal nation.

I just want to, first of all, acknowledge all of the staff at our Fort Berthold agency and our regional office in Great Plains for doing a lot of the right-of-way and a lot of the leasing.

We are now the number one oil- and gas-producing tribe in the country. Probably about 80 to 90 percent of all our gas is produced at Fort Berthold, and it doesn't happen just by itself.

There's a lot of work that goes into it, so I wanted to acknowledge all of the staff that help do that.

From our tribal regulatory -- we've created regulatory departments: Oil and gas, environmental, truck safety, we have a hazardous spill code, and numerous entities that are cross-deputized to provide compliance.

And then finally, we've created a new right-of-way form. And we also have a trespass form that has just did its second reading -- we require three readings of any new codes -- so our August meeting will be the third and final reading
before approval of our trespass.

And that is very important because in our right-of-way, there are no permanent easements anymore. The permanent easements have been abolished and their terms and conditions.

And if the company complies, then they keep the right-of-way, but are maxed at 20 years and do not exceed 20 years.

If they do not meet or maintain that right-of-way adequately, then that right-of-way can be taken away by the tribe.

And there's also a different compensation for pipelines, and there's also -- it's a one-time for the pipeline approval, and then there's an annual rental.

And that annual rental provides for compliance because the tribe believes it knows best how to comply and enforce our regulations.

Overall, though, just in brief, the proposed right-of-way rule should very clearly state that State law authority -- there is no State law authority over Indian lands.

Rights-of-way and Indian commerce laws on Indian lands is pre-empted by federal law, federal policy, tribal law, and Indian
self-determination.

Secondly, the Secretary should make a clear finding that State taxation of improvements on Indian lands interfere with reservation development, undercuts Indian economic development, and inhibits the generation of Indian Country value.

Thirdly, the proposed rule should say more clearly that Indian tribes possess jurisdiction to conserve, protect, and regulate activities on Indian lands, including the authority to tax to defray the costs on providing tribal governments to enforce and comply, should this be required for companies.

The proposed rule should recognize that tribal law may supersede the regulation to provide for greater protection of tribal lands, provided tribal law is consistent with federal statute.

For cases of trespass and holding over, the proposed rule should acknowledge that tribal governments may act pursuant to tribal law and enforce tribal trespass laws and codes and collect damages.

And that the Secretary will assist tribal governments to enforce tribal law. This is
big in our proposed trespass code. I believe it's a $25,000-a-day fine. I'm not certain what the BIA's -- I think it's, maybe, $2500.

Also on bonds, it should be required for the value of the right-of-way for that particular project, not $75,000.

And our proposed right-of-way requires -- will require bonds to the value of the project, so there is no dollar value on it.

Unless otherwise negotiated by Indian tribes, the terms of rights-of-way should not be more than 20 years. And that's in our new right-of-way policy. Rights-of-way grants under the proposed rule should be permits rather than permanent easements.

And the Secretary should reserve the right to amend a regulation consistent with Indian self-determination and federal statutes.

And finally, I also support the extension of consultation. I think it's very critical. These proposed regulations apply to all landowners. We have thousands of individual landowners, and I'm the only tribal chairman here.

And there are -- I do belong to the Great Plains Tribal Chairmen's Association which,
I am the chairman of that and, obviously, I will, you know, provide information and a report to the other tribes.

But clearly, there needs to be an extension of time, for August 18th is not enough time. Thank you very much.

MS. APPEL: Thank you.

(Audience applauds.)

MS. ROME LIGHT: My name is Tana Rome Light. I have a problem with BIA. I had a home site four years ago.

I signed all the documents, and everything was okayed. So I went back up to the BIA, and none of those documents were found.

So I'm starting a new one, but I don't know what happened to my paperwork. So I wonder if it's at the BIA office?

MS. DANKS: I'll sit down and meet with you specifically on that. I'll sit down with you after this meeting.

MS. ROME LIGHT: Okay. You found them? The old ones?

(Audience laughs.)

MS. DANKS: You're talking about a home site.
MS. ROME LIGHT: Well, I thought I'd bring it up since BIA's here.

MS. DANKS: Yeah. We will meet specifically with you on that, because I think you already came to the BIA office.

MS. ROME LIGHT: I figured maybe, hey, if they could take care of my home site --

AUDIENCE MEMBER: There you go.

MS. DANKS: We have to get consent.

AUDIENCE MEMBER: Do what you have to do.

MR. BIRDBEAR: Again, I wanted to remind you, the law says: Land alienated from tribes is not subject to tribal jurisdiction.

That is the law. Just because the Bureau hasn't been enforcing it doesn't mean it's right. It doesn't mean the tribes can have this jurisdiction over allotted lands.

I think this latest scandal at Fort Berthold of a million gallons of production water contamination proves tribes are incapable of administering any jurisdiction, let alone something that involves our own personal lives.

I'm saying this to you, our trustee. You got to watch out for us. And now, if this
happens, of all things, this right-of-way should never, ever concern tribal jurisdiction.

That's what A-1 Contractor was all about. There was a car accident on Highway 8. And because the Bureau gave that land to the State through a right-of-way, that alienated that. So tribal jurisdiction could never apply.

Now in this case, if you're contemplating of giving tribes jurisdiction in the name of this fake reason of self-determination, then you are playing with Fifth Amendment claims.

Already, we have Indian landowners who can't develop their own water on their own land. And the Bureau isn't looking at what the law is. Those are Fifth Amendment claims right now. There are claims right now.

Just because nobody knows enough or has money to hire a lawyer to sue them doesn't mean it's not there. They're there.

And this will be a Fifth Amendment taking when you let the tribes administer any scintilla of administration over our right-of-ways on our lands.

So I just wanted to give that reminder to you. It might take us a while, but we'll get
answers. And you owe them to us.

The Supreme Court decision already said that you got to tell us the facts. You don't have to tell us the claim, but you got to tell us the facts.

What does Fifth Amendment mean? What does non-consent mean? We can't even develop our own land on our own property without interference by the tribe.

Earlier this spring, the Bureau said to this one landowner, "You don't need a tribal permit to develop water on your land." Now, five months later, they say, "Well, we don't know. Maybe you do."

That is a Fifth Amendment claim, and that's coming, because that denied that Indian landowner that revenue without his consent.

And all of these 200 spills that occur on Fort Berthold, where is the Bureau watching out for us?

Because they gave that right-of-way for those oil pads and those pipelines. They have to sue for that land that's lost forever.

You think contamination is nothing because you're off in D.C. or in your office, but
to those of us who are here, there's radioactive activity going on. It's going to be a desert here. And this is where we live.

So there's going to be a lot of liability established if you allow tribes -- it'll just compound in claims, is all. And I just wanted to everybody to be reminded of that, because it seems like you're going too far in recognizing tribes.

That million-gallon scandal just proved they don't know what they're doing, and they don't know why.

And the basis of that ignorance is legal, because those allotted and homesteaded and right-of-ways: Those are alienated from the tribe.

And I'll say this: You know this. At least you know today, August 5th, 2014.

(Audience applauds.)

MS. APPEL: Thank you. We have about 20, 15 minutes left. So if there's anyone who hasn't made a comment yet that would like to speak, please take the opportunity now.

MS. GUTIERREZ: My name is Sara Gutierrez: Three Affiliated. I was reading your
flyer that you conveniently handed out for us, and it says that you're the representatives from the BIA, right? And it's for 56 million acres, and they only send you two?

And also, you guys seem like you have taken a lot of time and educated yourselves in all of this, and we haven't. We've only found out today.

I only found out about it yesterday. And you're only making two trips: Here, to North Dakota, and to Arizona? You haven't given a lot of landowners a lot of time.

And you're -- and you have 56 million acres that you're saying that you hold, and there's only two of you here.

And you're supposed to be looking out for our best interest? Why weren't we given sufficient time for this?

MS. APPEL: So I'm taking that as a request for extension of the comment deadline.

MS. LINSETH: Hello. Can you hear me? Okay. I'm Clarine Linseth; I'm from Fort Berthold. And I'm talking to you people of the Bureau. When I look at you guys, I see the United States, right?
And when I look at all the people here, I see Native Americans, First Nations. You guys are supposed to be our people that are supposed to watch over us. Why is that? We can't look out for ourselves?

Is that what you're saying? Because we took in Lewis and Clark a long time ago. Why? So he could come up here and document everything.

You think he's seen oil coming up out of the ground when he was going over to Washington? I think so.

I think you guys knew this was coming even before we did, back in 2006 or 2005, when Halliburton probably came and talked to whoever, the lobbyists, and started talking to this industry.

And then you guys -- they told you guys, your bosses, "Umm, I think we need to fix the right-of-way. We need to start putting in the language. We need to fix this a little bit."

You guys knew this was coming. And we got steamrolled. We always get steamrolled. Because back in 2010, 2011, 2005, leases were going for $6 an acre.

No, that's not right. That's really not
right. You're taking advantage of us again.
You're letting these guys, all these Industry
people, take advantage of us again. You're not
doing your responsibility to watch out for me or
her or him.

If I was a mad black woman, you would be
really paying attention to what I'm saying. Or if
these guys were all mad black people, you'd be
looking at us differently.

You'd be saying, "Oh, yeah. Power."
But when we say something, we're uprising. Why is
that? We're not uprising; we're trying to be free
like we were before. We don't like being taken.
We know when we are.

You know, I've lived on -- I grew up on
that rez. But I lived off the rez, and so I know.
And when I came back and I seen that, and I'm
like, "You guys, you need to hold on. We need to
get a little bit more."

This was back in 2005. I said, "You
guys don't -- you know, spread the word.
Everybody. Spread your word. Spread the word.
That's not right."

And so I'm a whistleblower. I am. And
I'm probably blacklisted at Fort Berthold for
doing that, but I'm going to -- and even when I'm saying this -- like the guy from the Cheyenne Reservation, you know -- or whatever he was, here --

MS. LITTLE OWL: Yeah.

MS. LINSETH: You know, I speak on behalf of the Turtle Mountains, too, because I'm quarter Turtle Mountain.

And where are you guys heading to? You guys are going to pave the way right here. You guys are putting in your foot right here at Fort Berthold, because you guys want to pave the way up there. I know that. I know that's where you're heading. The whole industry.

I work for the -- I used to work for the industry, you know. But I don't anymore, because it's too bad over there. You should see it. There's a million-gallon saltwater spill.

When Mr. Birdbear said, "I don't even know if that lady knows." She might; she might not. She might be in California.

Did you guys tell her? Did you guys contact -- did you guys find out who owns that piece of property?

Another thing: I'm a pipeliner. Who
checks this stuff? Right? Who does the x-rays?
Who makes sure that when that fluid, that heavy
fluid, goes through that pipeline and goes up a
hill, it's not going to break?

That it's going to be sealed enough that
it's going to hold up to that pressure, that head
pressure on that pipeline. Well, it's just a
plastic weld. Who's checking that?

You guys are supposed to. You guys are
supposed to get on that BOR and say, "Bureau of
Reclamation, how come you guys are not checking on
my people?" That's what you're supposed to say.
Those are my people.

But you're not. You're the United
States Government. You did break treaties with
you. And we trusted you.

You need to take care of us. You need
to go back and tell your senators and our
senators, here: We vote for them, you know?

So -- and who is going to clean that up?
Is it still sitting there? I bet you anything, if
I went up there today, I could take pictures of a
big, long, dead streak.

And nobody's going to care. Nobody's
going to care because it's still there. I can
guarantee that. You're supposed to care.

And those pipelines that sit under the
ground for years and years and years, as
Councilman Hall was saying, those are going to be
there forever. They are.

Because I've run pipeline through Tioga,
and they get old. And they corrode. And that
stuff is highly corrosive. Right?

So not only when we talk
right-of-ways -- when we talk right-of-ways, that
stuff is in there forever. I'm with -- we should
write land-use laws.

That's what you guys should talk about.
Because I know the guys in Watford City do that.
They get whatever -- whatever goes through their
land underneath, they get a percentage of all that
oil that goes underneath.

Now, the tribe wants part of that?
Great. They can do it, they can subdivide it;
whatever.

But when it goes through a landowner,
that should be that individual allottee, the heir
of that original allottee, our ancestor. It
should go -- we should get paid for that. But
we're not.
And we're not even getting anything for the gas that's being -- that's what I say. It's toxic over there. But you don't know that. And everybody's trying to explain that to you in a real nice way.

But I'm not like that. I'm like the mad black woman. And I'm like all the other individuals who get mad at town hall meetings when government and city hall doesn't listen to them. I'm that person.

So I'm not going to talk real nice or nothing like that, because you're going to think I'm weak. You're going to write me off. You're going to think, "Okay, let's go back to D.C.," or wherever you come from.

And yeah, they put you in a tough place. They put you on the hot seat. Because now you're talking to us people.

And you're here to hear what we have to say. And I know you're taking all back there. And you can take it all back to there, and they can hear this.

Because we need to talk. We need to say what we want to say, without being -- saying that we're being uprisers. We need to be able to
protest safely because it's our right, because we were made citizens, right?

We're still Native American, but we're still citizens, and so we have that right. We don't have a Martin Luther King yet, but hopefully we will.

MS. APPEL: Thank you. Those are some excellent comments. And I think that the proposed rule may help address -- so I encourage you to look through it and let us know --

MS. LINSETH: Yeah, I just got done looking through it.

MS. APPEL: Yeah.

MS. LINSETH: And see, that's another thing: Notification. You know, we've talked about that earlier. We need to come back to that. You guys have my number, you all have my number, and you have my address. Because we're numbered. We're just like the Jews.

We're numbered. And you got our addresses, and you know exactly where we are all the time. So there's no sense in you guys owning the United States Post Office.

You all work for the United States, so you guys can throw that flyer in the mail, no
problem. Right? We're still segregated. All right. Thank you.

MS. APPEL: Thank you.

(Audience applauds.)

MS. APPEL: Some of the points you made, I think -- like, of the pipelines being there forever: We do have some proposed term limits on rights-of-way.

And you're also talking about making sure that, you know, as the infrastructure decays, that someone is watching out to make sure that it's -- it doesn't cause an environmental issue.

And you were also talking about getting the throughput fees: Getting compensated not just for the land as a pipeline, but for getting, you know, some percentage of what the oil, or whatever, that's traveling through there.

And I think we did -- we did think about that in drafting the rule, that we'll have to look at that again and make sure that it's clear.

MS. LITTLE OWL: They do that a lot, though, with that fracking. We were just in New Town a couple weeks ago, and we talked with a fellow up there who told us that when they frack or come down, it doesn't always go straight down;
it goes to the right or the left --

MS. APPEL: Like, horizontal drilling?

Right.

MS. LITTLE OWL: -- a couple miles. So it's going through someone's land. And that's exactly -- I mean, we sat and we looked at the documents.

And we've looked at -- we've got maps upon maps of our own land and looked at it and spoke with specialists who have told us, "Okay. Well, we've got so-and-so's land over here, but they did fracking."

We didn't even know what the heck that was, but they did fracking over here, and so -- and it went a couple miles across your guys' land.

And so what do you get for that? A big hole in your land? Well, that's about all you're getting.

Well, this lady that got up here, she made a lot of very good comments. I appreciate her getting up there, and I appreciate her being the mad black woman up there.

But it's like, you know -- I'm serious. When you get an Indian to stand up and start talking, the first thing you get -- no pun
intended, but the first thing a white person does is, they want to shut their ears because we're not known to do that.

But the Indian people are known to be quiet and keep their mouth shut. The women are supposed to be passive and hold their head down. Well, not anymore.

MS. JULETTA BIRDBEAR: I wanted to ask a question. And it had to do with valuation, but this is a different aspect of valuation of your land.

In the event that a pipeline is placed upon your land, and the consent is granted through majority interests, can you explain to me the impact that that pipeline that carries, say, production fluid -- can you tell me the valuation impact upon land when that so-called "improvement" is placed in your land?

MS. DANKS: Again, we're not appraisers here, but when we order an appraisal, the appraisal will give the value of the land, and then the value of the land after the improvement.

MS. JULETTA BIRDBEAR: Can you clarify? Is that --

MS. DANKS: I'm not --
MS. JULETTA BIRDBEAR: I'm not asking for figures; I'm asking for a general understanding of that concept.

When a pipeline is placed in the land which carries, let's say, hydraulic fracking fluid or production fluid, and we don't know the contents of the chemicals because, legally, that is protected under that Trade Secrecy Act, but the potential is there for that pipeline to leak, because pipelines do degrade.

Can you tell me: What is the valuation, up or down, when a pipeline is placed within the land?

MS. DANKS: Well, the value does -- of the land goes down, and the value -- because they take away the portion of the land.

And I'm not an appraiser, so just generally, what I've seen on appraisals is, the portion that's separated out, that is taken away from the whole.

MS. JULETTA BIRDBEAR: So, as I understand it, what you have told me is that, if I sign a right-of-way for a pipeline -- someone comes to me and says, "We want to put a pipeline on your land."
I should know that, when I sign that document, the valuation of my land decreased from that transaction?

MS. DANKS: You should be compensated for the portion of the land that is within the right-of-way.

MS. JULETTA BIRDBEAR: That's -- that's the actual physical soil that has been lifted up and taken away; is that what the valuation is based on?

MS. DANKS: Generally, it can be in between -- it depends on the pipe, I guess. But it can be various sizes.

MS. JULETTA BIRDBEAR: Sure, sure. It depends on what the pipe carries and what --

MS. DANKS: Yeah.

MS. JULETTA BIRDBEAR: -- the width of the pipeline is, the length of it across the land.

MS. DANKS: Yeah.

MS. JULETTA BIRDBEAR: Okay. The other thing is, I wanted to --

MS. DANKS: I'd like to get appraisers out to, maybe, address your questions, because I think that would be better.

MS. JULETTA BIRDBEAR: Mm-hmm.
MS. DANKS: I mean, you can get a more specific answer. I don't want to frustrate you.

MS. JULETTA BIRDBEAR: Well, you're not frustrating me. I think you're frustrated because you don't know how to answer the question.

MS. DANKS: Well --

MS. JULETTA BIRDBEAR: But what I'm trying to do is just try to come away with more information than what I came here with.

That's what I'm trying to do. And I know that we'll probably meet again in New Town, which is a good thing.

MS. DANKS: Yeah, yeah. So --

MS. JULETTA BIRDBEAR: So that will give you some time to, maybe, find --

MS. DANKS: I guess what I'm trying suggesting is, maybe, if I can get an appraiser out, also.


And I'd like to also add on to and just re-emphasize what Roger Birdbear spoke to you, and that is to allow the landowner to craft this draft in its revision form.

We're the landowners. And, especially
on Fort Berthold, we're the majority; we're landowners.

And that relationship between the federal government, the Bureau of Indian Affairs, and me, is -- I'm a landowner -- is still there. I haven't relinquished it to a tribe, and Congress hasn't, either. That relationship is still there. Thank you.

MS. DANKS: Thank you. These are all good comments.

(Audience applauds.)

MS. APPEL: We're just about at the noon hour, so I think we're going to wrap it up, unless we have anyone who hasn't spoken yet who's dying to make a comment.

MS. PACKUHEA: Can you make that list available that Juletta asked for to begin with about who drafted this?

MS. APPEL: Yes, absolutely.

MS. PACKUHEA: Thank you.

AUDIENCE MEMBER: And when will the transcripts be ready?

MS. APPEL: Usually, it takes the court reporters a couple weeks to get them pulled together, and so we'll get them posted, and --
MS. LITTLE OWL: Are they going to be mailed out?

MS. APPEL: They will be posted on the website. Thank you, everyone, for coming.

AUDIENCE MEMBER: Thank you.

(The hearing concluded at 11:59 a.m.)
NOTARY REPORTER'S CERTIFICATE

I, Elizabeth H. Lundquist, a Notary Public and Court Reporter, do hereby certify that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicted.

I do hereby further certify that the foregoing one hundred fifty-six (156) pages contain an accurate transcription of my shorthand notes then and there taken in Bismarck, North Dakota, on August 5, 2014.

I further certify that I am neither related to any of the parties or counsel, nor interested in this matter directly or indirectly.

WITNESS my hand and seal this day of August 25, 2014.

____________________________________________
Elizabeth H. Lundquist
Notary Public
Anoka, Minnesota

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