

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
OFFICE OF ASSISTANT SECRETARY  
POLICY AND ECONOMIC DEVELOPMENT

IDENTIFYING ECONOMIC PRIORITIES IN INDIAN COUNTRY

TRIBAL CONSULTATION

HELD AT

BIA Southwest Regional Office  
1001 Indian School Rd. NE, Suite 312  
Albuquerque, New Mexico 87104

August 17, 2017  
9:25 a.m.

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A P P E A R A N C E S

Moderator:

Deputy Assistant Gavin Clarkson, Esq.

A G E N D A

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1 MR. CLARKSON: The things that are coming  
2 from the secretary, first of all, is sovereignty, and  
3 that's something. That's something that Secretary  
4 Zinke, he takes that seriously. He's very interested in  
5 self-determination and self-governance, and I know that  
6 many of you are involved in our self-governance program,  
7 and many of you are moving in that direction.

8 One of the things that isn't often  
9 communicated by the federal government is respect,  
10 respect for tribal sovereignty, respect for Indian  
11 Country. The fact that Indian Country is quite capable  
12 and far more capable than historically we've  
13 acknowledged.

14 We're very interested in economic freedom and  
15 economic empowerment, and in many cases what we're  
16 trying to do is reduce the regulation burden of what's  
17 going on in Indian Country.

18 So many of you have heard Secretary Zinke  
19 refer to sovereignty has to mean something. What does  
20 he mean by that or what does interior mean by that?  
21 There are 567 federally recognized tribes at the moment,  
22 all of which have different stories, different  
23 histories, but there's one common thing is that all of  
24 them have had their sovereignty breached. And what we  
25 think is that sovereignty is a zone, that there's a

1 boundary, and no matter where the tribes are on the  
2 spectrum of capability, everybody deserves a vigorous  
3 defense of their sovereignty, and that's part of our  
4 role at the federal government, and Secretary Zinke has  
5 said, now that we're in office, it's our fault. So for  
6 at least the last ten weeks, it's my fault. Whatever  
7 you want to blame me for for the last ten weeks, I will  
8 take that blame, because I am now sitting in the role of  
9 the federal official.

10 But if we look inside this zone, we've got  
11 different tribes with different capabilities. It's a  
12 continuum. No two tribes are exactly the same. We've  
13 got some tribes because of damage or injury on the part  
14 of the federal government or because of economic  
15 distress or whatever reason or even just for desire, we  
16 provide lots of services, those sort of direct service  
17 tribes, and there are some tribes where we have done so  
18 much damage historically, it's going to take more than  
19 one generation to solve the damage.

20 On the flip side or on the other end of the  
21 spectrum are the fully empowered tribes. These are the  
22 tribes that in some sense wish we didn't exist other  
23 than to defend that zone of sovereignty. Those are the  
24 tribes that see us as adding no value. Those are the  
25 tribes that see us as being in the way.

1           And Southern Utes has briefed the president a  
2 couple of times, and their example they use is when  
3 they're drilling off reservation, obviously you know  
4 that's an oil and gas tribe. When they're drilling off  
5 reservation, it takes them about four months to get all  
6 the permitting process off reservation. On reservation,  
7 it takes 31 months for no other reason than it's our  
8 fault. We as the federal government stand in the way.  
9 This tribe, they actually operate on an offshore oil  
10 drilling platform in the Gulf of Mexico. And one  
11 question you might ask is why is a landlocked tribe from  
12 southern Colorado drilling in the deep water off the  
13 Gulf of Mexico? The answer is because it's easier to  
14 drill 10,000 feet below the surface of the earth than it  
15 is to drill in their own backyard because we, the  
16 federal government, are in the way.

17           Ronald Reagan famously once said this is the  
18 worst thing you could hear as a small business person,  
19 is "Hi, I'm from the federal government. I'm here to  
20 help."

21           Let me suggest for at least this  
22 administration our preferred greeting would be, "Hi, I'm  
23 from federal government, and I'm here to get out of your  
24 way." We would like to get out of the way. We still  
25 want to maintain the vigorous defense of your boundary

1 of sovereignty, but we don't want to be micromanaging  
2 inside your territories, inside your reservation, inside  
3 your pueblos.

4           Some of these examples are just silly that --  
5 again, Southern Ute was provided this example that when  
6 they're wiring up grandma's house, and they need to drop  
7 in a utility pole -- think about it. It's a utility  
8 pole. It's a six-foot hole in the ground. You drop a  
9 tree in it, you fill it up with concrete, then you put a  
10 wire up on top. It's not that hard. And yet we, the  
11 federal government, have to go through a NEPA analysis  
12 to determine whether they get to dig that hole because  
13 it's on trust land.

14           Apparently we have to approve the kind of  
15 stucco that's being used on tribal housing because it's  
16 on trust land. These are examples where we, the federal  
17 government, stand in the way far too often for far too  
18 many silly things.

19           We're trying to figure out, working with  
20 Indian Country, how would Indian Country like us to step  
21 away from that sort of micromanagement.

22           Now, our number one priority for this  
23 administration is economic development. How can we best  
24 help tribes develop self-sustaining economies? How can  
25 we focus on jobs and economic prosperity, wealth

1 creation, and independence.

2 Now, this is not, you know, us walking away  
3 from our fiduciary responsibility to defend the zone.  
4 We want to help the tribes develop a ton of revenue, and  
5 a ton of a economic activity and a ton of jobs so the  
6 people are better off within those tribal communities so  
7 that tribes have the ability to provide for more of the  
8 community.

9 The other thing is it's good for all. As  
10 Reagan said, "A rising tide floats all boats." When  
11 Indian Country is prosperous, so too is the surrounding  
12 state. New Mexico is going to be much better off when  
13 all the tribes in New Mexico and the pueblos in New  
14 Mexico are economically prosperous. Arizona is going to  
15 be much better off when the tribes in Arizona are more  
16 prosperous. Pretty much every state will be better off  
17 if tribes, instead of being cesspools of poverty are  
18 instead mountains of prosperity.

19 And obviously with this administration, energy  
20 development is critical to this initiative. It's not  
21 the only area. There are a whole bunch of other areas  
22 for economic development, but energy is something  
23 where -- that's probably the biggest change people will  
24 notice in the previous administration and this  
25 administration, we're trying to advocate for tribal

1 energy and tribal energy development.

2           Number two is tribal empowerment. How can we  
3 best empower tribal leaders. State and local  
4 governments, you know, their job is to provide for the  
5 folks. That's conceptually what tribal leaders have  
6 been doing long before we got here. It's what most  
7 tribal leaders refer to as the tribal leaders and the  
8 tribal governments providing services for the people  
9 rather than the federal government doing it. Not in all  
10 cases, but in many cases.

11           But how can we return economic sovereignty to  
12 the tribes? How can we put tribes in control of what  
13 goes on in their territory?

14           Number three, again -- as a former school  
15 teacher -- human capital development is really, really  
16 important. What is the best way to invest Native  
17 people? How do we create an educated and skilled  
18 workforce?

19           Again, yes, I'm a college professor, but  
20 I'm -- just to share a little bit of a story, my father  
21 was an orphan Indian kid in Chickasha, Oklahoma, during  
22 the depression and dust bowl. He was so broke, and he  
23 would tell you that he was broke and not poor, because  
24 poor is a state of mind. Broke is merely a temporary  
25 interruption in cash flow. He was so broke that he had



1 to dig through other Indians' garbage cans for food. At  
2 age 16 he decided two things. One, he was mad at the  
3 Japanese for bombing Pearl Harbor; two, he decided that  
4 poverty sucks, and so he modified a birth certificate  
5 and joined the Navy and never looked back.

6 By 1948, he was the first American Indian to  
7 fly a jet. By 1962 he was the senior nuclear targeting  
8 strategist for all of NATO. So as an American Indian in  
9 Paris in 1962, he has a computer about the size of this  
10 room with all of 16 kilobytes, and he's doing strategic  
11 nuclear war planning to blow up the Soviet Union. And  
12 yet just a few years before he was digging through  
13 Indian garbage cans for food.

14 I remind my students that I am proof positive  
15 that Indian poverty is not a life sentence. Yeah, I may  
16 go off and do fancy academic things like that, but I'm  
17 still only one generation removed from dumpster diving.

18 So the reason I say that is because we're not  
19 trying to beat the elites. We're not trying to say that  
20 the only thing that counts is a college degree. We also  
21 recognize that in self-sustaining economies, we need  
22 people that build stuff. We need people that work with  
23 their hands. We need plumbers. We need electricians,  
24 bricklayers. We need farmers. We need people who build  
25 stuff, and we need people to grow stuff.

1 I know many of you are involved in agriculture  
2 here. That's important. Those are things to be  
3 celebrated and not made fun of. So we're not just  
4 talking about sending people to college. We're talking  
5 about vocational training and agriculture training.

6 I was fortunate to speak at a national  
7 conference of Native youth involved in agriculture.  
8 There's a whole bunch of Native kids involved in FFA.  
9 That's human capital development too. Many of you have  
10 food sovereignty initiatives. That's awesome, and we  
11 need to encourage that. Every self-sustaining economy  
12 needs to know how to feed itself, build stuff. It needs  
13 to be able to have that money cycling within.

14 We talk about economic leakage. The -- the  
15 economists will tell you that a healthy economy, when  
16 you drop a dollar in that economy, it cycles around  
17 about five or six times before it leaves that economy.  
18 Most of Indian Country, it cycles once or twice.

19 I'll be driving out to Flagstaff here for  
20 meetings tomorrow, and I'll be driving through Gallup,  
21 and fortunately I won't be driving through Gallup at the  
22 first of the month because as most people in this room  
23 know, the largest Wal-Mart on planet Earth, in terms of  
24 dollar-per-square-foot sales, is in Gallup, New Mexico.  
25 You can't park the first of the month in Gallup. All

1 the Navajos get paid. They all drive to Gallup and  
2 Farmington. Grandma sits in the parking lot and sends  
3 the kids in to do the shopping. It's not unique to  
4 Navajo Nation. Second largest Wal-Mart on planet Earth  
5 in terms of dollar-per-square-foot sales is in Billings,  
6 Montana, otherwise known as the Crow-Mart.

7           So we have this huge challenge in Indian  
8 Country where money gets pumped in the tribal nation,  
9 pumps up the tribal economy, and instantly leaves. We  
10 need to create an environment -- we need to allow tribes  
11 to be able to allow tribes to invest in these economies  
12 and invest in infrastructure and invest in human and  
13 capital development so that we can people -- where  
14 somebody earns a dollar, and they can pay somebody else  
15 in that community that dollar for something and they  
16 turn around and spend it, and it cycles multiple times  
17 before it exits that economy.

18           We, as the federal government, are partially  
19 responsible for the fact that that doesn't happen, and  
20 we want to try to figure out how to stop causing these  
21 problems.

22           It's often said when you find yourself in the  
23 bottom of a hole and you want to get out, the first  
24 thing you have to do is stop digging. We want to be  
25 listening to Indian Country. Where do we need to stop

1 digging? Where do they need to be part of the solution  
2 and not the problem? That is part of the strategy for  
3 promoting tribal economic growth and self-governance,  
4 and doing that simultaneously is to have a well-trained,  
5 well-educated workforce in Indian Country.

6 By the way, when Indian Country workforce is  
7 well-trained and well-educated, that benefits the state  
8 overall. There are many examples. If any of you have  
9 done economic studies that have shown when your  
10 economies are prospering -- and one of the things is the  
11 gaming context. We won't talk much about gaming today,  
12 but there are tribes that become major employers of  
13 people off reservation because they're growing  
14 economies.

15 If every tribal member was well-trained and  
16 well-educated, that would be phenomenal for the  
17 surrounding states. And so the states are better off  
18 when Indian Country is well-educated and well-trained.

19 As many of you know, and many of you have  
20 submitted comments in this process, there was an  
21 advanced notice of proposed rulemaking to update the  
22 regulations associated with the Indian Trader statute.  
23 We listened. Now, I was actually on the other side. I  
24 was commenting in the process. I was suggesting it was  
25 good thing to do. I've now been a fed for ten weeks.

1 I'm in week ten, but we have gone through -- and Liz'  
2 office has done a phenomenal job of categorizing and  
3 summarizing the comments to date. So here is what we  
4 heard from Indian Country in the first round of  
5 comments, and that was it's an old statute, and the  
6 regulation it -- the statute was 1790. It was updated  
7 in 1834. The regulations were promulgated in 1957 with  
8 minor technical updates in 1963, so they're due for an  
9 update.

10 The other thing that's also clear, and many  
11 folks pointed this out to us, is the founding fathers  
12 had a vision of Indian Country's economics being  
13 exclusive and separate from the state's economies. This  
14 was what the founding fathers wanted.

15 Chief Justice Marshall, who was, I believe,  
16 the aide-de-camp to General Washington, later President  
17 Washington, described the Cherokee Nation as having  
18 distinct boundaries in which the laws of Georgia can  
19 have no force.

20 If you think about it, that's a simple system.  
21 If you're standing in Cherokee, you're subject to  
22 Cherokee authority, jurisdiction, and taxation. If  
23 you're standing in Georgia, you're subject to Georgia  
24 taxation and jurisdiction. Very simple system, and most  
25 of Indian Country said that was an understandable

1 system.

2           Unfortunately, as y'all told us, the supreme  
3 court came in and breached that exclusivity. Now, I'm a  
4 Republican. I work for a Republican administration, so  
5 I can be critical of judicial activism. But again, this  
6 is what we heard from y'all is that there are these  
7 federal common law cases that went in and breached that  
8 exclusivity and stuck outside forces in the middle of  
9 tribal economies. And what's the -- once the federal  
10 common law breached the exclusivity, state regulators  
11 and state tax authorities made the problem worse and so  
12 did we as the federal government.

13           The other thing that y'all told us, and this  
14 is really important, that these are federal common law  
15 cases, not constitutional cases, and the supreme court  
16 is the final arbiter of that which is constitutional.  
17 If Congress has given us a broad statute, and we believe  
18 they have, that empowers us, with Congress' authority --  
19 if you could look to the Constitution, the Constitution  
20 says Congress has the exclusive authority to regulate  
21 commerce with the Indians. And then Congress goes and  
22 passes a statute that delegates to the secretary of the  
23 interior the ability to pass rules broadly to protect  
24 the Indians economically, and the legislative history of  
25 the 1834 act is very clear on this.

1           Then the question is, can we go through and by  
2 revising the regulations go back to the vision that the  
3 founding fathers had. And this is not even in the  
4 modern era, this is not a new concept. Ronald Reagan in  
5 1983 said the tribes need control of their own tax base  
6 and resources.

7           I encourage you to read that presidential  
8 commission report of 1984. But for today the  
9 suggestions that we heard loud and clear almost  
10 unanimously was that Indian Country would like for us to  
11 give tribes the exclusive ability trade and commerce  
12 that occurs on trust or restricted fee lands. That is  
13 what y'all said we should do. Y'all said we actually  
14 have the capability to do that by overruling federal  
15 common law through the process of rulemaking pursuant to  
16 a statute, a broad statute, that Congress has given us.

17           The other thing we've heard people say is that  
18 they would like the ability to -- where an individual  
19 tribe would like to -- to opt out of the oppressive  
20 federal regulatory oversight over some or all of their  
21 territory. There are plenty of tribes that are more  
22 capable than we are of managing the environmental  
23 concerns and the natural resource concerns.

24           Indian Country had been managing natural  
25 resources for tens of thousands of years, long before

1 the federal government existed. Most people think that  
2 Indian Country is likely to be the best steward of the  
3 land and the best steward of the forest, the best  
4 steward of the prairie, the best steward of the desert,  
5 and the best steward of all that we've been blessed  
6 with. Why should we go in and micromanage the depth of  
7 utility poles and the color of stucco? Let's let the  
8 Indian Country be in charge of that, again, with a  
9 robust defense of that zone of sovereignty.

10 So we would want to replace an uncertain  
11 taxation system where it's never clear exactly who's  
12 supposed to be taxing and who's got jurisdiction, and  
13 replace it with jurisdictional system like the states  
14 have. Very clear on trust land, on restricted fee land,  
15 then the tribe's in charge regardless of who it is. I  
16 don't care whether you're black, white, red, or green  
17 from Mars.

18 If we look at what Indian Country is  
19 suggesting, the Navajo Nation didn't necessarily mention  
20 Martians, but if a Martian lands in Window Rock, they  
21 should pay the Navajo Nation tax.

22 That's what we're hearing from Indian Country.  
23 Those are the suggestions we have. Then the question is  
24 if we go back to what our view of comfort is, what would  
25 it look like if we had these suggestions from Indian



1 Country? What would this world look like?

2 Now, you notice I've gone through 15 minutes,  
3 and I have yet to say the word "termination." Let me be  
4 very clear. Termination is not the policy of this  
5 administration. Nobody in this administration is  
6 advocating anything remotely close to termination.  
7 Termination is not part of the conversation and should  
8 not be part of the conversation.

9 To the contrary. My boss, Secretary Zinke,  
10 says we don't want to meet our treaty obligations but  
11 exceed our treaty obligations. We want to create a  
12 robust defense of that zone of sovereignty and allow  
13 Indian Country, allow tribal leaders to decide what's  
14 right.

15 But then we have the question about under what  
16 Indian Country is suggesting, what would this look like  
17 vis-a-vis state and federal actors. If we have state  
18 tax authorities or state regulatory authorities that  
19 want to come in and interpose themselves into tribal  
20 economies, under what Indian Country is suggesting every  
21 time they try to come in, that zone of sovereignty kicks  
22 them out.

23 And same thing with us, the federal  
24 government. If the tribe doesn't want us, if we add no  
25 value, we also get kicked out of that zone of

1 sovereignty in terms of our oppressive regulations. But  
2 within that zone, tribes are sovereign, within that zone  
3 tribes are in charge, and they're the ones that get to  
4 say -- we're not saying that utilities poles don't need  
5 some regulation to determine their depth, based on what  
6 Indian Country is suggesting maybe tribes should be  
7 determining utility pole depths rather than the federal  
8 government.

9 Many of you received your "Dear Tribal Leader"  
10 letter. If you didn't get a copy, please let us know.  
11 it's posted on -- Liz, it's posted on the website,  
12 right? It's posted on the website if you don't have  
13 your hard copy. Hopefully all of you received that, and  
14 it lays out what our challenge is.

15 I mentioned that we're trying to do things  
16 that are in the best interest of the states as well as  
17 Indian Country. You know, why do we care about that?  
18 We exist in a political environment and the advantage we  
19 have in this initiative is everything we're trying to do  
20 here is not only in the best interest of Indian Country  
21 but also the best interest of the people of the United  
22 States. Everybody is better off if tribal economies are  
23 prosperous.

24 And in fact, we think that we already have  
25 some preliminary information that there are billions of

1 dollars sitting on the sidelines waiting to be invested  
2 in Indian Country the moment that the regulatory system  
3 and the taxation system becomes more certain.

4 Uncertainty chases away capital. The most expensive  
5 question is, "Well, it depends." The advanced version  
6 of that, "Well, it depends sometimes." The lawyers love  
7 that question, because that means the lawyers get paid a  
8 lot of money to go through and figure stuff out. But  
9 capital markets don't like that. They want certainty.  
10 They want to know, "Well, if I go in here, what will I  
11 owe." They can determine if it makes economic sense or  
12 not.

13           So we believe there are billions of dollars of  
14 projects sitting on the sidelines that are not happening  
15 in the current regulatory environment and the current  
16 taxation environment, and the only way we're going to  
17 succeed -- and this is the reason we sent the letter.  
18 If we cannot make the case -- I think we can make the  
19 case, "This is good for the tribes." If we don't make  
20 the case, "This is also good for the states," then we're  
21 probably not going to make deregulations. It would be  
22 too much of a political fight. We should not have to  
23 have that fight.

24           It's economically in every state's interest to  
25 have prosperous tribes. It is in every state's interest

1 to have capital investment flowing into the country.  
2 Because guess what? If we have billions of dollars  
3 flowing into Crownpoint in the Navajo Nation, in the  
4 beginning people are still going to drive to Gallup to  
5 buy stuff at the Home Depot to go build stuff. We've  
6 already been through this pattern once in Indian gaming.  
7 If you look at every time a tribe has built a casino,  
8 almost all the capital investment has been spent off  
9 reservation to build the facility on reservation.

10 So what we are looking for and what we are in  
11 desperate need for and what we need your help with is  
12 getting information about projects that aren't happening  
13 but would happen under a new regulatory environment in  
14 terms of capital expenditures. How much would be spent  
15 on projects? What would be the annual revenues for  
16 those activities or for those projects, and how many  
17 jobs would be created?

18 Just to give you an example, here in New  
19 Mexico I got one set of information where there's --  
20 there's a billion dollars worth of energy projects that  
21 aren't happening now because the company said, "We can  
22 make this work, but we can't make it work under dual  
23 taxation, so tribe, will you take a tax holiday?"

24 Tribe says, "No. Y'all go talk to the state,  
25 see if they'll take a tax holiday."

1 State says no, so stuff doesn't happen. So  
2 the state says they're not taking a tax holiday, so  
3 those things don't happen.

4 So we think that that's not unique to that one  
5 county in northern New Mexico. You can imagine -- do  
6 you think New Mexico would be happy to have a billion  
7 dollars of economic stimulus flow into one county?  
8 There are other counties that would have similar  
9 capabilities.

10 We can keep going with the last leg. The main  
11 thing we're asking about is we need the data. Now, many  
12 of you -- some of these may be feasibility studies that  
13 you've already done. You can just summarize those for  
14 us. We don't need all the detail, we don't need the  
15 specific business plan, we don't need any confidential  
16 or proprietary information. What we really need are the  
17 summary statistics. We need what industry it is. It is  
18 as much information as you're comfortable disclosing.  
19 We don't want anybody to put anybody else at a  
20 competitive disadvantage, but we need -- we need the  
21 numbers in terms of energy sectors, in terms of dollar  
22 amounts, in terms of jobs created and so on.

23 That's what we need, because we're going to  
24 put that in a model and demonstrate that states like New  
25 Mexico will be better off and states like North Dakota

1 will be better off and every state in between.

2 We also want to provide this information to  
3 the Harvard Project. We mentioned in the 'Dear Tribal  
4 Leaders' the Harvard Project on American Indian and  
5 Economic Policy has already done a preliminary study of  
6 this, and the folks that are there have said that they  
7 will go through and do their analysis independently with  
8 the data they collect.

9 The Federal Reserve is also looking at this.  
10 Texas A&M is also looking at this. We're going to have  
11 four sets of economists, and maybe five, doing this. If  
12 we can get the data, this will be a robust economic  
13 analysis, and that will make the case. Without that  
14 data, it's going to be really hard for us to do stuff.

15 The other thing we need, if y'all have  
16 prepared any economic impact study of your own  
17 communities, of how much your community already benefits  
18 the surrounding communities, that would be very  
19 beneficial, and if -- if you can identify -- for many of  
20 you we have treaties that we're not necessarily  
21 fulfilling all the obligations under the treaties. If  
22 you can identify for us in your treaties where we have  
23 fallen down in terms of protecting your economies, those  
24 are the things we need to know.

25 So again, capital expenditures, annual

1 revenues, and jobs for the projects and the industries  
2 that those jobs will fall in, economic impact studies,  
3 and finally where we have fallen down on treaty  
4 obligations. And if we can get that data -- and again,  
5 this is a collaborative consultative process. We'll  
6 field it, put the economic case together on our side.  
7 We'll circulate it through our folks, and that'll let us  
8 put out proposed rules.

9           And there will be some people that will not  
10 like the proposed rules off the top. It's hard to argue  
11 the solid economics. That's where we need Indian  
12 Country's help.

13           I've been talking for a while here. The  
14 purpose of this consultation -- we wanted to set the  
15 stage and give you preliminary information. What we are  
16 most interested in is hearing from y'all what y'all  
17 think. You've given us comments in the beginning.

18           Now that we heard the comments and summarized,  
19 we're very interested in any stories y'all have or  
20 information y'all have. Don't wait to give it to us. I  
21 know we said the deadline is August 30th. If you've got  
22 data, start shipping it to us, because we've already got  
23 some tribes giving us data, so we've got our economists  
24 on it already, so if you have preliminary data about a  
25 certain number of projects, feel free to send those to

1 us right away. You don't need to wait until  
2 August 30th to give us anything.

3 You can give us multiple submissions. We will  
4 take anything and everything you have in terms of  
5 information to do the analysis.

6 Do know, again, that all the information that  
7 you give us will become public data. We want to have  
8 that available to other researchers to confirm our  
9 findings to make sure that what we're doing is a robust  
10 economic defense of tribal economic sovereignty.

11 So we have a court reporter here, we've got  
12 the room until noon, and if we want -- if we want --  
13 we've got a microphone here. I don't know if we want to  
14 use the microphone.

15 One thing, since we do have a court reporter,  
16 when you do speak, if you can state your name and your  
17 tribal role or tribal affiliation before you comment.  
18 And hopefully I spoke slowly enough. I'm getting the  
19 smirk that I didn't speak slowly enough. My apologies.

20 Everybody's questions and comments are  
21 recorded. The purpose of today is to listen to y'all.  
22 With that, I'll -- the floor is yours.

23 MS. VELASQUEZ: Good morning. My name is  
24 Maxine Velasquez. I'm the in-house general counsel for  
25 Pueblo of Tesuque, and I also am on the committee for



1 the All Pueblo Council of Governors legislative  
2 committee.

3 What you talked about regarding taxation is  
4 right up our alley as far as what we're battling with in  
5 the state of New Mexico on taxation. Let me just give  
6 you a background.

7 Let me just give you a little background. The  
8 All Pueblo Council of Governors in New Mexico was  
9 originally in the Indian Pueblo Cultural Council -- I  
10 forgot now.

11 MR. CLARKSON: All Indian Pueblo Council,  
12 wasn't it?

13 MS. VELASQUEZ: The IPC was original, and  
14 now it's All Pueblo Council of Governors, and that  
15 switched over about five years ago. It's comprised of  
16 all the pueblos of New Mexico. They're meeting actually  
17 across the street right now on their regularly scheduled  
18 meeting, and we have a presentation to the APCG. The  
19 committee has a presentation to APCG in a few hours.  
20 It's all on taxation.

21 The things we're struggling with here in New  
22 Mexico is dual taxation. New Mexico is very unique in  
23 America in that we have some really, really good state  
24 tax laws that were negotiated in the last 20-something  
25 years. Gas tax, for instance, if anybody goes on the

1 reservation at this point in time -- Conroy Chino is  
2 here. Perfect timing.

3 For instance, with gasoline tax in New Mexico,  
4 state law says that if anybody, whether you're a tribal  
5 member, a non-tribal member, me from Laguna Pueblo, or  
6 non-Indian goes onto Tesuque Pueblo and buys gas, we  
7 keep a 17 cents gas tax. It helps pay for essential  
8 governmental services.

9 What's been happening in New Mexico in the  
10 last five or six years, unfortunately, with the change  
11 of some legislators that do not know the history, the  
12 hard-fought negotiations over time, they're trying to  
13 pull that back from us in state law.

14 What this gas tax has done for tribes, as I  
15 said, is essential governmental services. It's paid for  
16 natural resource departments, the education, helps  
17 leverage the money for loans, but we're having a lot of  
18 issues in New Mexico with the state trying to take that  
19 back and pull that back.

20 We have gas tax, we have cigarette tax, we  
21 have gross receipts tax, we have services tax, special  
22 fuels tax. Those are hard-fought negotiations, so  
23 whatever we can do on the federal level to change that,  
24 as you said. In Indian Country, if it's on trust land  
25 or pueblo land, in that regard, if it's there, and it's

1 bought there, we should be able to keep the taxes.  
2 That's our issue in New Mexico. We are trying to prove  
3 that by retaining these taxes, we give back to the  
4 communities, non-Indian communities, private  
5 communities, and it's good for the economy in the state  
6 of New Mexico.

7           What we have been doing, the legislative  
8 committee, we've been collecting data. You talked about  
9 data. 23 tribes collected data from 11 tribes through  
10 the APCG legislative in what we call the Native American  
11 Petroleum Coalition. We're all working together, and  
12 what we're trying to do is prove to the state that we  
13 are contributors to the New Mexico economy and what we  
14 do in Indian Country is good for the state as a whole.  
15 We employ non-Indians. We pay money off the  
16 reservation. We pay revenue to the state in gaming.  
17 We're huge contributors. The state these days is  
18 constantly stating what are they taking from us?  
19 They're not giving back.

20           With the data we collected we're going to  
21 engage the UNM guys to help us put this data together so  
22 that we can use that to articulate in a business sense  
23 to the legislators that this is good for New Mexico. So  
24 if there's any way that your office or any other  
25 organization, the Harvard Project, can help us with

1 putting this data together or even helping us fund this,  
2 we'd very much appreciate it.

3 This, I think, is -- the last time the tribes  
4 in New Mexico did a data collection was probably 2001,  
5 so that data's outdated, and since then we haven't done  
6 anything. This is our big push to move forward about  
7 data collection. Any help you all can give us in that  
8 regard, we'd appreciate it.

9 Everything we talked about about the economies  
10 in the states and the -- and the working relationship  
11 with tribes. I mean, that kind of needs to be heard not  
12 only by tribes to the state but by you and your office,  
13 if you would.

14 Just for example, next week we have a  
15 presentation to one of the state committees, and this is  
16 our first pitch for the season, as you may, to go out  
17 and start working on these gas tax issues and other  
18 issues in Indian Country when it comes to taxation.

19 Conroy, is there anything you'd like to add?

20 MR. CHINO: Good morning, Secretary  
21 Clarkson. I was across the street in another meeting  
22 with the pueblo governors. They meet every month.

23 I'm Conroy Chino. I work with the Pueblo of  
24 Acoma, and I also am a member of the pueblo council of  
25 governors legislative committee, and just to sort of add

1 on to what Ms. Velasquez has shared with you and the  
2 group this morning with regards to the collection of  
3 data, the help that we would seek from your office is  
4 money to help us complete a survey that's -- the one  
5 she's talking about is a real narrow slice of what kind  
6 of economic activity is going on on our reservations and  
7 gas along with the taxes on that sale of gas.

8 But more than anything, I think this data  
9 accurately reflects the amount of economic activity  
10 going on on reservation and traditional homelands here  
11 in New Mexico, but I think we'll also really reflect the  
12 shared economies that exist here in New Mexico and the  
13 contributions that tribes make.

14 We find ourselves fighting -- for those of us  
15 that have to deal with lawmakers and policymakers here  
16 in New Mexico are oftentimes a lot of misconceptions and  
17 stereotypes that exist out there and the perpetuation of  
18 those because of the lack of understanding and  
19 misinformation that exists.

20 So this data and the survey, and hopefully the  
21 results that come about as a result of this, will become  
22 an additional tool we can use to help lawmakers and  
23 others, elected officials, better understand tribes and  
24 tribal communities. So, you know, we could really use  
25 the assistance financially, especially, if there's a

1 chance and a possibility that there may be grant money  
2 available to finish out this particular survey.

3 And the survey will cut across a broad section  
4 of areas, not only when it comes to gas tax and the  
5 issues surrounding that but all the way to, you know,  
6 hospitality and travel centers and hotels and the number  
7 of jobs that we create on tribal homeland.

8 So that's the ultimate goal, and I'm hoping  
9 that maybe you would assist us in some way in finishing  
10 out this survey. I think it will be a very useful tool  
11 not only for individuals like myself and Ms. Velasquez  
12 but also for fellow leadership as we come to you.

13 MR. CLARKSON: Thank you for your  
14 comments, and the governor from Pojoaque is also here,  
15 and we were talking last night. We both happen to be  
16 fans of the ancient General Sun Tzu that wrote the Art  
17 of War. It's not always about warfare. It's not always  
18 about people being -- sometimes you have allies on the  
19 other side. They just don't know that they're allies.  
20 As you say, there's misconceptions.

21 One of the quotes that's my favorite in there  
22 that's relevant in this process. Sun Tzu said, "The  
23 general who wins the battle does many calculations in  
24 the temple before the battle is fought. Those  
25 calculations lead to victory."

1           The other quote is, "Supreme excellence is not  
2 winning all the battles. Supreme excellence is  
3 convincing your opposition not to strike."

4           This shouldn't be a fight between the tribes  
5 and the states. It's in the state's best interest for  
6 your economies to be thriving and prosperous. My office  
7 would like to help with that. I wanted to mention my  
8 colleague Dr. Bradford who runs the office of energy  
9 policy programs at the Department of Energy wanted to be  
10 here but was unable to make it. His office is also  
11 interested in trying to help, particularly with the type  
12 of energy questions to be asked.

13           I don't know what grant money we have  
14 available. I certainly know we have a lot of economists  
15 ready to do analysis. So we may not be able -- I don't  
16 want to commit we can send money. I don't know. I do  
17 know I have bodies available to do that analysis.

18           It's a question that we want to know. It's a  
19 question that y'all want to know. Any data that you can  
20 provide us now will help us get this process advanced,  
21 but we absolutely want to work with your communities to  
22 help make the case.

23           Everybody's better off when Indian Country is  
24 better off. Anything we can do to help, please let us  
25 help. The folks at the Federal Reserve are interested

1 in that same question. The Department of Energy is  
2 interested in that question. If my office can't do it,  
3 I can certainly coordinate with folks that can.

4 You mentioned, you know, that the issue -- you  
5 have dual taxation rising up here in New Mexico. One of  
6 the big common law cases that's of concern is a case  
7 involved with the Jicarilla in New Mexico.

8 And if you have information and data about  
9 those kind of situations, the more you can tell us, the  
10 better it is for us to be able to make the case about  
11 something needs to be adjusted. It needs to be made  
12 more fair and more equitable.

13 Governor, did you have any other thoughts? I  
14 know y'all have to head off to your other meeting.

15 GOVERNOR TALACHY: Joseph Talachy,  
16 T-a-l-a-c-h-y. You know, I think in New Mexico in  
17 particular the agreements are so loose, and I think it's  
18 refreshing to get a top-down approach as opposed to work  
19 our way up to state legislature or trying to negotiate  
20 terms which ultimately the -- the states are thinking in  
21 a backwards manner; whereas, let's get our money through  
22 your taxes as opposed to stimulating an economy.

23 I think in New Mexico in particular, you know,  
24 we really need to change the paradigm, the thought  
25 process, in how to promote or encourage economic growth



1 in Indian Country. If you look throughout America, who  
2 are the people who are needing more federal subsidies  
3 than anybody or state subsidies than anyone? It's  
4 Native Americans. We're in the most rural areas.

5 We don't have a bunch of resources, and if we  
6 do, we don't have access to them, as you had mentioned,  
7 because the state's got a stranglehold on it. It's a  
8 breath of fresh air to see we're working from the top  
9 down.

10 I think for all of Indian Country there needs  
11 to be clarity, not just to the pueblos, the tribes, but  
12 the states as well. I think what the states do is they  
13 see that there's an economy in Indian Country, and they  
14 want their share. Under true sovereignty, and I like  
15 your motto with the exterior boundaries, we have every  
16 right to the revenue -- or tax the revenue generated  
17 within the interior boundaries of our revenues, our  
18 pueblos, as the state does. That's important for the  
19 states to understand that. However, there's uncertainty  
20 and ambiguity within the rules, the laws that are in  
21 place now.

22 So I'm hopeful to get the information we need  
23 and to articulate to the states how it's beneficial to  
24 them to stimulate tribal economies and allow them to be  
25 self-sufficient and have strong self-governance.

1 MR. CLARKSON: Some of you are familiar  
2 with macroeconomics, and most of you are tribal leaders,  
3 I'm sure that's something you implicitly understand. If  
4 a dollar gets paid into a reservation and immediately  
5 leaves, that's only \$1 leaving to the surrounding state.  
6 If that dollar stays within that tribal community and  
7 grows and multiplies, and by the time it leaks out,  
8 that's a natural process, it's five or \$6, and that is a  
9 bigger pot for the state to participate in.

10 If we help tribal communities grow and  
11 prosper, we'll make a big pie. People are going to have  
12 to be patient in waiting for the pie to bake.

13 We've been using the agricultural analogy. At  
14 Ysleta del Sur, y'all -- you've got people growing  
15 cotton nearby, and those of you familiar with the  
16 agricultural history of the United States, we had a big  
17 problem with an invasive species called the boll weevil.  
18 It would suck the life out of the juvenile cotton plants  
19 before they had a chance to be productive and prosperous  
20 and produce the cotton to make the textiles. And it was  
21 a national effort to go and do an eradication of the  
22 boll weevil, but in some sense the -- it -- if we have  
23 economic myopia, and people don't realize that we need  
24 to let things grow first, you'll end up having a tax  
25 weevil coming in and sucking the life out of the tribal

1 economy before it has a chance to grow.

2           The analogy my colleague Dr. Bradford uses is  
3 some fancy people will go to Whole Foods and buy bean  
4 sprouts to put on their salad, but you can feed a whole  
5 bunch more people if you wait and allow it grow into a  
6 bushel of beans. Rather than grabbing the bean sprouts  
7 early, we should wait until there's a whole bushel of  
8 beans and thousands of bushels of beans and take care of  
9 a bunch of folks both on reservation and off  
10 reservation.

11           And we're getting a lot of purchase with the  
12 agricultural analogy, because people understand. You've  
13 got to wait until the crop is done. You've got wait  
14 till it's ripened until you harvest it. That's  
15 obviously something that Indian Country has been  
16 demonstrating for thousands of years. So again -- but  
17 the data is critical. We've got to get the information  
18 in order to make the case just as y'all are trying to  
19 gather the data to make the case.

20           People don't think about this, think about  
21 his, but once you have solid data, and we run it through  
22 a rigorous process, the data will speak for itself that  
23 the states will be better off if tribes are prosperous.  
24 We want to come up with something that's in everybody's  
25 best interest.

1           In some sense, that's sort of my role. I view  
2 myself -- for those of you lawyers, I'm a fiduciary  
3 trust officer of a publicly traded enterprise, and my  
4 responsibility is to the tribes, but I nonetheless work  
5 for a CEO, and I represent the people of the United  
6 States as the shareholders. I want to recognize their  
7 economic value but maintain my fiduciary responsibility  
8 to the job.

9           Based on what is suggested, I don't see that  
10 there's any problem. I see that there's alignment  
11 between Indian Country and what's best for the people of  
12 the United States. Everybody's better off if Indian  
13 Country is better off. But we can say that, but just  
14 saying it won't make it happen. We need the economic  
15 information. We need the capital expenditures, the  
16 annual revenues, the job data, the industry sectors and  
17 the impact study. That's what we need to collectively  
18 do. And this is what consultation should produce, is a  
19 joint effort between Indian Country and the federal  
20 government to go out and do the right thing.

21           But we've got to be able to convince people  
22 it's the right thing. If they're intellectually honest  
23 and look at the data, we hopefully will be able to make  
24 that case. We need your help. I can't say that any  
25 stronger. I've got to have your help.

1 MR. CRUZ: My name is Rudy Cruz, Junior,  
2 and I'm a tribal councilman for Ysleta del Sur Pueblo,  
3 and I want to start off by reading to y'all the  
4 definition of sovereignty. This is the "Power of a  
5 state to do everything necessary to govern itself, such  
6 as making, executing, and applying laws, imposing and  
7 collecting taxes, making war and peace, and forming  
8 treaties or engaging in commerce with foreign nations."

9 That's something that's already been  
10 established by Indian Country and no longer has to be  
11 fought for in our eyes.

12 Secretary Clarkson, you have a pretty good  
13 overview of our tribe, our Indian Nation, and some of  
14 the questions that my pueblo people kind of wanted me to  
15 ask here today and go on record is how is the  
16 information being used? We're a data driven pueblo, and  
17 we have all the information that you all are seeking as  
18 far as job creation and potential revenue and all the  
19 numbers. We're wanting to know how the information is  
20 being used, and we want to know what tool or method is  
21 being used in the collection of this data as far as it  
22 being gathered in uniform fashion.

23 I feel that there needs to be an  
24 apples-to-apples data. That's our concern with that.  
25 That's my question for you today.

1 MR. CLARKSON: Let me echo your question.  
2 Ysleta del Sur is a data driven tribe. And I've had the  
3 fortunate opportunity to work with them in the past.  
4 I've taken my students out there on field trips to visit  
5 the facilities.

6 And so to answer your question specifically,  
7 we're trying to gather the data. We laid out the very  
8 specific elements we're trying to gather. We're looking  
9 for a given project -- we don't necessarily need the  
10 details about the project. We don't need confidential  
11 information. We need the information about the project  
12 enough to identify the industry sector, whether it's an  
13 industry project or a retail project. We need the  
14 information about the one-time capital investment that  
15 would be made. So we need to know if it's going to be a  
16 building or something that's a start-up investment that  
17 goes in. We need the information about how much annual  
18 revenue would be generated on a year-by-year basis, and  
19 then we need the number of jobs to be created by that  
20 project. Those are the major data points, industry  
21 sector, giving a description of the project, capital  
22 investment, annual revenues, and jobs.

23 Those are the three sets -- technically the  
24 four sets of data. The descriptive piece is the  
25 industry sector and the three sets of quantitative data.

1 We want to get that from as many tribes as possible.

2 I've got a whole army of PhD economists that  
3 are building a macroeconomic model. So basically what  
4 we can do is we can show if all of a sudden -- let's  
5 just take the Ysleta del Sur Pueblo. Let's say that  
6 company X wants to come in and invest in Ysleta del Sur,  
7 but says they're not ready to do it or doesn't quite  
8 pencil out. We change the environment. Now that  
9 project is ready to go forward. What does that mean at  
10 Ysleta del Sur?

11 We're going to spend \$500 million to invest in  
12 this factory. So it's a one-time investment. But then  
13 that's going to be generating annual revenues. Let's  
14 just say hypothetically that's \$80 million a year in the  
15 economy and creating 100 jobs. We'll start with that.  
16 And then through standard economic modeling you show,  
17 well, if I have a one-time infusion of \$500 million, and  
18 I have annual generation of \$100 million in the pueblo,  
19 and we now allow the pueblo to grow and thrive, what's  
20 going to be the multiplier of that within the pueblo?  
21 That naturally leaks out to the broader El Paso County  
22 community.

23 What is the multiplier? That's the thing  
24 often what you hear used in that situation. The  
25 multiplier effect. Let's say X amount is going to leak

1 out after one cycle; X amount will leak out after two  
2 cycles we'll then be able to say that that \$500 million  
3 investment one time in Ysleta del Sur Pueblo will equate  
4 to more than a billion dollars in impact in a broader  
5 economy.

6           It's the sort of analysis that y'all did with  
7 Speaking Rock and showing how important Speaking Rock  
8 was to the surrounding community in terms of when money  
9 gets invested there what does it mean in terms of jobs  
10 and so on.

11           It's the same sort of analysis. We're not in  
12 the gaming context. We're in the broad economic  
13 development context. The type of work y'all have done  
14 already to demonstrate the importance of what you do in  
15 the surrounding community, we just want to do this for  
16 all of Indian Country. All of Indian Country is subject  
17 to these uncertain regulatory and taxation frameworks.

18           How the data will be used. The purpose of  
19 that is we're going to do that analysis, but  
20 everything -- I want to make sure everybody understands.  
21 We want to be able to have multiple sets of eyes looking  
22 at this. So we want to have the Harvard Project of  
23 economic development go through and do its analysis. We  
24 want the Federal Reserve and its Indian Country  
25 Development Initiative to go through and do its



1 analysis. We want -- the folks at Texas A&M are  
2 focusing just on the energy side of things. The  
3 Department of Energy's economic analysis group is going  
4 to do this.

5 We're going to collect the data. The data  
6 will be public datasets so it's not like we're hiding  
7 anything. This is what Indian Country is telling us.  
8 If we change the rules, the regulations, if we make  
9 things more certain, here's what would happen, what it  
10 would mean.

11 Everybody -- we're trying to be open and  
12 transparent and make sure that everybody sees we're  
13 trying to do first and foremost what is in the best  
14 interest of Indian Country. What's in the best interest  
15 of Indian Country is good for New Mexico, Texas,  
16 southern Colorado. Good for every single state with  
17 tribes for those tribes to have their emerging economies  
18 unleashed and able to invest in infrastructure, invest  
19 in human capital, invest in jobs, invest in business.

20 So our goal is to use that to show not only  
21 the positive benefit for Indian Country but the positive  
22 benefit for everybody.

23 And you mentioned, you know, you all use the  
24 taxation, the taxation revenue you get. Obviously there  
25 is a need in Indian Country that's not being met, and

1 the only way that that -- realistically, the only way  
2 the needs are going to be met is if tribal communities  
3 have the ability to capture portions of that economic  
4 activity as you described. In the normal course of  
5 things, sovereignty is the right to impose taxation  
6 exclusively.

7           And so as Indian Country has suggested, if  
8 Indian Country has the exclusive ability to control and  
9 tax economic activity within its borders, it can access  
10 the economic wherewithal to provide infrastructure and  
11 jobs and schools and education and care for seniors and  
12 all the things that state and local government has to do  
13 as part of taking care of their citizens, but tribes are  
14 unable to do because of the current system. At least  
15 that's what we've been hearing.

16           So the more you can do -- if that is, in fact,  
17 what's happening, the more you can give us data -- tell  
18 us stories. If you could given us examples of projects  
19 where somebody came in and said, "We'll do this, but the  
20 double taxation makes it impossible," or "We'll do this,  
21 but the regulatory burden is going to be way too  
22 expensive, so we'll go do it off reservation, and let  
23 the off-reservation community get it," and Indian  
24 Country gets left out again.

25           All of those stories are stories we need to

1 hear. Rudy, is that -- you said you had a couple other  
2 questions.

3 MR. CRUZ: I have some follow-up  
4 questions. We'd like to ask for some type of like  
5 Microsoft Excel template for all tribes to fill in and  
6 submit that to you, and the data is collected in a  
7 uniform fashion. We wouldn't want any data gaps in that  
8 information that's being provided to you all.

9 Another question is would it be aggregated or  
10 would it be regionally?

11 MR. CLARKSON: We'll do it on a  
12 state-by-state basis. That's our goal, because each  
13 state has its own concerns, and each state has its own  
14 challenges.

15 Some states like Nevada have passed  
16 regulations if the tribe's tax level is the same as the  
17 state, there's no additional state tax. Some tribes  
18 have done that. Every state will be a different case.  
19 We want to try to gather as much data from all the  
20 states that have tribes so we have an analysis state by  
21 state. New Mexico is a challenging case, because New  
22 Mexico probably has the most challenging financial  
23 circumstances.

24 North Dakota is another state where we have to  
25 do a special analysis, because North Dakota -- those of

1 you who are familiar with the Bakken Formation, North  
2 Dakota took a billion dollars in revenue out of ground  
3 for the three affiliated tribes, and they told us that  
4 they invested -- after taking a billion dollars back,  
5 they put in \$2 million back into the tribe. So that  
6 would potentially be a big swing.

7           The preliminary information we're getting from  
8 the tribes in North Dakota is that there's way more  
9 projects that will happen under a new regulatory scheme,  
10 so that North Dakota will be far better off if they  
11 allow the tribes to generate the economic activity and  
12 then have it leak off.

13           MS. VELASQUEZ: Are your economists  
14 collecting data from New Mexico, from the state agencies  
15 on, like, revenue share and gas tax?

16           MR. CLARKSON: Right now -- we're not  
17 focused on necessarily what's happening right now. What  
18 we're focused on is what's not happening. We're trying  
19 to ask -- we're focused on creating new jobs, and we're  
20 focused on creating new opportunities. We think because  
21 of the existing situation being what it is, Indian  
22 Country is being held back tremendously.

23           So all of a sudden if we release those  
24 constraints, we allow tribal economies to grow and  
25 thrive and prosper. We think what Indian Country is

1 doing now is only a fraction of what it potentially  
2 could do. If we just take the status quo, if we adjust  
3 the status quo, I don't know what the data will show.  
4 If we look at what would happen, if all of a sudden the  
5 constraints are removed from Indian Country, that's the  
6 kind of data we're trying to capture.

7                   PRESIDENT BEGAYE: Russell Begaye, Navajo  
8 Nation. I think from her perspective the states are  
9 sucking the tribes dry in different ways. One is the  
10 federal government giving federal authority to the  
11 states, and so we have to -- gaming is one example. On  
12 the Arizona side, tribes have given over a billion  
13 dollars to the Arizona economy, to the governor's  
14 coffer. If that billion dollars stayed on the nation,  
15 we could to a lot more.

16                   On the New Mexico side, it's the same thing.  
17 We have to deal with the state legislature that don't  
18 know us. If the federal government could stop giving  
19 their authority to the state, and we maintained the  
20 federal government authority, we would be better off.

21                   Federal government has given authority to  
22 them. We're dealing with legislators that don't know  
23 anything about the Navajo Nation. We're always battling  
24 the entire legislative body in the state. Some of them  
25 are not pro-Indians, so to speak.

1           In this case, for example, the gasoline tax  
2 that they want to impose on Indian land, it will kill  
3 all of our gas stations on Navajo. And the comment was  
4 made by the cosponsor of the legislation they want to  
5 bring in, the legislator said, "Up in my town I pay  
6 \$2.79 per gallon gasoline. When I'm driving by the  
7 Indian tribe, and I see they're charging only \$2.30," he  
8 said, "It is not fair to pump gas in my hometown,  
9 nonreservation land, a higher amount than other people  
10 are paying on Indian land," so he said, "Indian tribes  
11 are not anteing up their portion in the state coffer.  
12 We want to impose this." They know we're going to court  
13 if they try that.

14           In order to bypass a lawsuit, they go to  
15 where -- the oil company before they pump it into their  
16 tankers and deliver to the tribe, they'll charge them  
17 there, and the companies will raise their prices where  
18 now we're buying higher prices for gasoline. So they go  
19 around different ways before companies come on Navajo.  
20 They have to pay up-front fees. Rather than calling it  
21 taxes, they call it fees. When they're operating on the  
22 nation, they have to raise their prices. We're paying  
23 more for produce, hamburgers, whatever. The state has  
24 imposed up-front fees. It is not called taxes. The  
25 states are finding ways to get money from the Indian

1 Nation.

2 We will share with you figures what the Navajo  
3 Nation income is, how much money is made on Navajo  
4 versus how much income is produced in border towns. We  
5 have a much higher income revenue on Navajo than all the  
6 border towns that are -- some of the border towns. And  
7 so -- but you look at how much money that they spent on  
8 the nation, it's just the opposite. Talking about the  
9 Wal-Mart is one example.

10 So that needs to change, is that the federal  
11 government needs to stop giving federal authority to the  
12 states, because that -- that really is one of those  
13 things that we have to -- to deal with.

14 The other thing is we need to have full  
15 authority over our natural resources. Appreciate the  
16 Southern Ute in Colorado, their reservation and up  
17 there, and the way they're doing things off the  
18 reservation and using their oil money and so forth, so  
19 there's now one bill that's going through that is  
20 preempting all federal laws for right of ways, so we  
21 will not be able to impose right of way fees, those  
22 types of things, on electricity that is going through  
23 one part of land that we're being given in the Zunis.

24 So if that bill passes, that could have --  
25 that could even be imposed on tribes across the nation,

1 and so we'll be -- we'll be sitting on site line  
2 watching power lines, waterlines being built with us not  
3 having the authority to charge right of way fees and so  
4 forth.

5 So these are the dangerous thing that are  
6 happening at the federal level, through Congress, that  
7 needs to be dealt with.

8 The dual taxation is real. On the Arizona  
9 side we're trying to -- and what they tell me on the  
10 Arizona side is -- because I ask them. I said, "What  
11 determines the state imposing fees for each gasoline  
12 station on Navajo?"

13 They said, "Well, we just determined that  
14 80 percent will probably be Navajos, 20 percent will be  
15 non-Navajos. We take 20 percent automatic, and we  
16 impose fees on the gasoline station, and it goes to the  
17 state."

18 And so that's 20 percent more we could be  
19 using on Navajo. So they're sucking us dry, is what I'm  
20 saying, and all because of these regulations.

21 And I see the gaming as a gold mine, as gold  
22 in Dahlonega, Georgia. The reason why the Cherokees  
23 were sent on the trail of tears is because of gold in  
24 Dahlonega. And the same thing they see gold mine in the  
25 gaming industry that the Indian tribes have. All the



1 states -- Colorado I don't think they charge in --  
2 there's no sharing of revenue there. Arizona, New  
3 Mexico is that we contribute heavily to the state  
4 coffer, and we -- all of those dollars can be used to  
5 really improve the economy on our land, and we did give  
6 out a 12-page comment on the -- so that's -- you guys  
7 have that already.

8 But as far as some of these new information,  
9 we'll be sharing the data also in terms of the income  
10 level on Navajo, the border town income level, how much  
11 we spent on Navajo versus off the border towns.

12 The other thing is that we -- we're probably  
13 down to about 70 percent of all contracts that come in  
14 on Navajo. When I -- and I sign off on all contracts.  
15 About 70 percent of it goes to off-reservation towns,  
16 Albuquerque, Phoenix, Salt Lake, so we are building  
17 communities and towns and cities in the states.

18 The water is one thing, for example, NGS and  
19 Peabody, is that we built the entire city of Phoenix and  
20 Tucson with Navajo water coming out of the Colorado  
21 River. So there's all of these restrictions.

22 I always say between the 1922 meeting between  
23 the seven states that allocate all of the water system  
24 in the Southwest was illegal because tribes were not at  
25 the table when these allocations were made to the

1 states. Now we have to go to the upper basin and lower  
2 basin states to get water. That's economic  
3 development -- that's prohibited in economic development  
4 in our nation, and we're barely given a little bit of  
5 water when we should have had the first right of refusal  
6 type of authority with the water system.

7 We can't build our economy in Arizona because  
8 we don't have water. We're limited on our nation again  
9 because of the water system, but -- but Phoenix is what  
10 it is and because of the resources which was generated  
11 from the Navajo Nation, and so we are building, and we  
12 have built cities and towns in the states by federal  
13 government working in concert with states, taking  
14 natural resources out with very limited revenue going  
15 back to the tribes.

16 So now that we're beginning to assume control  
17 and that we have the ability to drill our own wells and  
18 develop our own economy is that now other reservations  
19 are beginning to be imposed. Part of it is the state  
20 getting federal authority. It's tribal nation to state  
21 government negotiations going on when it should be  
22 tribal nation to US nation.

23 But I do like the restricted fee that was  
24 developed, and that's going through Congress. This only  
25 applies to one part of the land, which is restricted fee

1 land, and their definition is one that land shall be  
2 owned in fee by the Indian tribe, and the whole land is  
3 conveyed.

4 Number two, this restricted fee land status  
5 shall be part of the Indian tribe's reservation and  
6 expressly made subject to the jurisdiction of the Indian  
7 tribe.

8 So the entire land that is now going through  
9 Congress is being voted on, that piece of land, not all  
10 the Indian land, that particular property, is that all  
11 of it will be subject to jurisdiction of Indian tribes,  
12 meaning surface, mineral, whatever, subsurface, shall  
13 not be sold by Indian tribe without consent of Congress,  
14 shall not be subject to taxation by any government other  
15 than the government of the Indian tribe. We like that,  
16 is that there's -- on this piece of land there will be  
17 no taxation by any government other than the government  
18 of the Indian tribe, meaning Navajo and Zuni.

19 And shall not be subject to any provision of  
20 law providing for review or approval of secretary of  
21 interior or review of another party. It's a new  
22 definition of land that has been developed and is going  
23 through Congress to be voted on, and we would like that  
24 same restricted fee land status to be provided to all  
25 nations, and that's a game changer.

1           So we are finding anything and everything we  
2 can within the federal legal framework to take advantage  
3 of -- of the status of the Indian Nation.

4           For example, we developed a corporation where  
5 we can bring companies under that corporation, and they  
6 don't have to pay federal taxes, for example, or state  
7 taxes, and so it's a -- it's one that we've developed.  
8 It's going through the process. As soon as we get a  
9 stamp by DOI, we're ready to roll with that. It's in  
10 the process.

11           You have all of our comments on the various --  
12 these are some new things that's not on there. Wal-Mart  
13 wanted to come to Chinle. Dual taxation killed that  
14 one.

15                       MR. CLARKSON: Could you tell us the  
16 story?

17                       PRESIDENT BEGAYE: When Wal-Mart or large  
18 companies come, they look at the whole economic scenario  
19 on Navajo Nation. When they see dual taxation, they  
20 know they have to raise prices, because they're paying  
21 higher. That's not only a company wanting to come to  
22 Chinle, the prices have to be raised. You're paying  
23 state taxes, federal, and Navajo Nation prices. These  
24 companies are not willing to do that. They're known for  
25 low prices but to add five more percent when they know

1 they can go to Gallup or Farmington or Phoenix or  
2 Albuquerque when they can buy higher price at Navajo,  
3 that would kill that Wal-Mart.

4 Dual taxation does that. The states don't  
5 realize that they're collecting -- the companies are  
6 paying -- are having to pay state taxes, federal, and  
7 the tribal tax, and so that additional tax is what  
8 companies are saying, "We don't want to pay."

9 Like, for example, Peabody. We had to make a  
10 deal with Peabody not to impose our taxes in order for  
11 them to come on Navajo. Same thing with some companies.  
12 We're having to waive our taxes so these companies come  
13 in, generate money, X number of jobs. The tribe is  
14 saying, "No, we don't want to waive our taxes. Let the  
15 state waive their taxes."

16 The same thing is happening and has happened,  
17 so the same thing will continue to happen unless we deal  
18 with this taxation, and our initial comment is let's  
19 just get rid of the whole thing.

20 Coming back, let's combine it into one  
21 regulation rather than having separate statutes. Let's  
22 bring all of it into one and develop a true federal --  
23 traders regulation that will empower Indian tribes, and  
24 that will happen. That's our comment.

25 We put in our own treaties, like you

1 mentioned, and a lot of statutory laws, as you put it.  
2 It's more likely a legal document. So those comments  
3 are there. It's been registered. I believe it's in the  
4 federal registry.

5 I just want to say that we're bringing in  
6 Boeing. We finally convinced one huge international  
7 company, US company, to come on Navajo because of what  
8 we've developed using federal laws to our advantage, and  
9 so we have to do that, take these extra steps in order  
10 for us to take advantage of these federal laws to bring  
11 big companies without them having to pay additional tax  
12 to the state.

13 So we shouldn't have to do that, and that's  
14 why we need help in terms of dealing with all of these  
15 other issues.

16 Medicaid. Today's a meeting -- our folks are  
17 meeting today in the capitol, Santa Fe. 80,000 Navajos  
18 are on Medicaid. The state, their data, 432 million --  
19 almost half a billion dollars goes to the state by  
20 treating Navajos and using the Medicaid dollars. We're  
21 saying, "Let's give that to Navajo, and let's let Navajo  
22 run its own Medicaid."

23 Congressional study says Navajo has capacity  
24 to run the Medicaid program. The Congresswoman here  
25 said, "I'll write it for you, because I'm not going to

1 sponsor it, because it may collapse the state's health  
2 system if you take the Navajo Medicaid away and give it  
3 to Navajo." She made that statement to me.

4 We're having to deal with these -- we could  
5 have half a billion more added to the Navajo coffer.  
6 We're trying to find ways to grab that Medicaid dollars  
7 and give it to Navajo. That needs to change.

8 I know the voters are in the states, and New  
9 Mexico is a Republican state, Republican governor and so  
10 forth. To do that -- Arizona, the same thing. It's a  
11 Republican state. Take some of these authorities back  
12 and give it to Indian Nation is going to be a big, big  
13 fight. Politically we're going to lose. In the courts,  
14 we may. We may. The Supreme Court used to be our  
15 friend. In the recent times it's been up and down. And  
16 now we're trying to get to Congress to help us with some  
17 of these, but it's an uphill battle. The only thing we  
18 can revert back to is our treaties.

19 We quoted a section of our treaty to economic  
20 development. Not all of it. There's several more  
21 provisions within the Navajo Nation's treaty with the US  
22 government that we should raise that would lead to  
23 economic development in terms of education.

24 For every 30 Navajo children -- I mean, for  
25 every K-through-12-aged Navajo, the government will

1 provide facilities, whatever, teachers, all that, for  
2 30 percent. It's there, and it's not enough. The  
3 facilities are falling apart. We can't scholarship our  
4 people like we can.

5 If you live up to the treaty, we can do all  
6 that. We can have attorneys, engineers, economists. We  
7 can have all that of. That provision we did not put in  
8 our comment.

9 I just want to point out some of these. So  
10 Raytheon is there, and they're willing to pay state  
11 taxes and so forth. When we bought the mine, Navajo  
12 mine, from -- from the company that we bought it from,  
13 immediately the county lost over a million dollars in  
14 taxes, because now Navajo Nation owned it. San Juan  
15 County lost over a million dollars in taxes. Okay.

16 "What do we provide to Navajo that we need to  
17 cut because we lost a million dollars," and so they're  
18 cutting our -- the fire department, saying, "We're not  
19 going to run our trucks on Navajo. If we do, we're  
20 going to charge you," and it's expensive by them running  
21 the firetruck onto Navajo and in the county, and now  
22 we're having to pay each trip like 40,000 to the county  
23 because they're running their firetrucks on Navajo.

24 We're saying, "Don't run the trucks," but they  
25 do it anyway. They're going to charge us. Since the



1 county lost tax dollars since we now own our own mine,  
2 now they're imposing different types of -- they're  
3 limiting services even though our people are still  
4 buying goods, and we're contracting a lot of companies  
5 out of Farmington and so still pouring our money into  
6 it, but they're restricting services now because they  
7 lost a million dollars from the mine. Those are some  
8 discrepancies.

9 We are building the states. We are building  
10 the cities and the states. We are already doing that.  
11 The states will fight us tooth and nail to keep those  
12 revenues flowing, and they outnumber us in terms of  
13 voting, as far as voters concerned.

14 I hope that this administration will really  
15 get in there and start dealing with the state. It's  
16 going to be an uphill battle, and we know that. We need  
17 to take advantage of everything we can so we can keep  
18 our money home and by removing all these restrictions,  
19 all these other things, all these states and counties  
20 that are pulling monies away, revenue away, in this case  
21 for Navajo Nation.

22 In all different ways -- and that's going to  
23 continue. We just need to be treated as a nation, if we  
24 can get there, rather than quasi nations, meaning that  
25 full control over natural resources is one. Full

1 control over right of ways. Right now we don't control  
2 the right of ways. We have to still go to the BIA to  
3 get right of ways. We should have that control totally.  
4 Through the Hart Act we should be given authority. The  
5 right of way is something that belongs to BIA.

6 And minerals. We know why minerals we don't  
7 have authority over, because these huge, giant companies  
8 don't want to deal with us. They want to deal with the  
9 feds to gain our minerals. We know that. Anytime that  
10 comes up, and we try to attach it as an amendment to one  
11 of the bills, it gets shut down real quick because of  
12 the huge lobbying and army of lawyers that these  
13 companies have. They vote it down each time.

14 When we get to the point we're able to  
15 convince members of Congress to give us that authority,  
16 we would be a whole lot better off, and we would be able  
17 to develop our economy like we should. We have these  
18 things, and we've written some of these in here.

19 We do want to see this regulation amended, and  
20 I think that -- that -- that this is the time to do it  
21 with this administration, and we fully believe that, and  
22 we want to see it happen with your leadership and others  
23 and Secretary Zinke and his stance on sovereignty and  
24 support of that. I think we need to define it, and this  
25 is what we need to position ourselves to raise our

1 economy.

2 We are finding ways, like I said, for  
3 companies to come on Navajo and not pay state taxes, and  
4 this is taking advantage of the system that's in place  
5 now, and so I just want to add it to the 17-some pages  
6 or whatever pages we submitted earlier. Thank you.

7 MR. CLARKSON: Thank you, Mr. President.  
8 I'm glad we have a court reporter. That's a whole bunch  
9 of information we're going to have to consider when we  
10 get back. I appreciate that.

11 The example you give of the Wal-Mart in Chinle  
12 that doesn't happen but would happen, that's the exact  
13 kind of story we need.

14 You can identify a specific case, and it's the  
15 company and so on. If everybody else -- if y'all are  
16 comfortable identifying those opportunities that could  
17 have happened but didn't happen, give us specifics. I  
18 presume you have data how much that Wal-Mart would cost  
19 to build and the capital investment and the summary  
20 data.

21 Now, many of your comments are sort of beyond  
22 the scope of what the regulatory reform would do. These  
23 are comments that are going to be captured and shared  
24 with anybody who wants to take a look. I do want to go  
25 back to Councilman Cruz briefly. The one thing was the

1 Excel spreadsheet. Did you have any follow-up comments?

2 MR. CRUZ: Will the individual tribes be  
3 named, or will they remain anonymous?

4 MR. CLARKSON: The individual tribes will  
5 be submitting something where they don't put it on  
6 letterhead and say, "Here's a comment," and identify as  
7 Tribe X. They'll be identified as Tribe X. We need to  
8 know what state. Everything given to us is all going to  
9 become public data. It will be up to the disclosers to  
10 determine what information they're comfortable with.  
11 Again, we want to have multiple sets of economists  
12 beyond our office looking at this.

13 As President Begaye pointed out, this is a big  
14 lift. We're trying to make this not be a fight, because  
15 if we don't do this kind of homework, it will be a  
16 fight. If we put the regulations out and say, "It's  
17 like this," we'll get sued seven ways from Sunday.

18 If we show there's dramatic benefit to the  
19 state, then why would they sue if it's in their best  
20 interest to have more economic activity flowing into  
21 their state? So that's the --

22 But we've got to be able to have the data, and  
23 the more individual validation of our economic  
24 conclusions, the better. That's why we want to make  
25 sure everyone understands that the data we're going to

1 be getting will be being provided to other people  
2 outside the department of the interior. Yes, Governor?

3 GOVERNOR TALACHY: A lot of the pueblos,  
4 I think we're all walking on eggshells because of the  
5 gas tax regs and the gross receipts taxes. They are  
6 loose agreements, and given the current circumstances in  
7 the state's economy, it seems like every time there's an  
8 issue with the state's economy they subsidize their  
9 economy by crippling ours.

10 One of the things we suffered was an attack on  
11 the gas taxes, which in some circumstances for the  
12 tribes or pueblos would have crippled their economy and  
13 the ability to provide services for their people. That  
14 itself is a double-standard of sovereignty. And I  
15 appreciate the councilman's statement of sovereignty --  
16 definition of sovereignty to try to get the tribes to  
17 bend to their will to the tune of harming our people.

18 Oppression exists in many different forms. In  
19 this case it is economic oppression that is being  
20 imposed onto tribes. If we don't get the support or  
21 boundaries and structure, a foundation set by, you know,  
22 our federal partners, we can continue to expect the same  
23 issues that we're facing today.

24 And I know there's specifically individuals in  
25 this room that are at the legislature constantly

1 fighting to maintain our ability to grow economically  
2 and tax the gas we sell. I'm not too sure if they would  
3 have any other comments on it. There is increasing  
4 frustration. Not only are we restricted from growing  
5 businesses, we are essentially terrified that the  
6 businesses that do exist and the revenue that we do  
7 generate from taxes may be taken away at any given time  
8 given the stroke of a pen from our legislature.

9           It's critical to think about not only the  
10 growth of business but also the crippling effect of the  
11 state's actions and the uncertainty and ambiguity of the  
12 structure that exists can potentially damage our tribes  
13 dramatically.

14           MR. CLARKSON: I think that's what we  
15 heard, is uncertainty is devastating. Couple of  
16 comments back to Councilman Cruz.

17           We specifically didn't try to ask for a very  
18 specific format. We're going to do the data assembly,  
19 so we'll make the Excel template. Not everybody has the  
20 same level of data capability that y'all do. I'm happy  
21 to call in and go over and work with you in sort of  
22 getting any sort of data like that. Again, within our  
23 zone there's 567 tribes, and not every tribe has as much  
24 capability as every other tribe.

25           We thought we would ask questions and ask

1 people to give us back the responses, and we'll use our  
2 labor and use our interns to put the final spreadsheet  
3 together. If y'all have spreadsheets, we're happy to do  
4 it. We didn't want to force anybody to go a certain  
5 way. They might have had a study that outlined this in  
6 a text format. When they send that to us, we will pull  
7 it out.

8           So we're going to microscope every piece of  
9 data that comes in. We're doing freeform data  
10 collection we'll go through. But certainly if you have  
11 a spreadsheet you want to use, by all means use it.

12           One other thing, we did not put proposed  
13 regulations out with the "Dear Tribal Leader" letter.  
14 As President Begaye said, many tribes have already  
15 submitted significant comments. I know Ysleta del Sur  
16 did as well. There were four tribes that put together  
17 proposed regulations, and one of the things that's clear  
18 for this administration generally if the idea is just  
19 coming from us, and we're the people imposing the  
20 decisions, they generally don't turn out so good.

21           We want to make sure that anything and  
22 everything that we're doing with Indian Country is in  
23 consultation, and if possible have the ideas come from  
24 Indian Country.

25           I know many tribal leaders have looked at

1 issues of dual taxation and regulation before we started  
2 asking for comments. There were four tribes that  
3 submitted draft regulations. Let me see if I got this  
4 right. Citizen Potawatomi, Otoe-Missouria, Lac Vieux  
5 Desert, and then Lummi also. There were four tribes  
6 that submitted regulations. We've collected those and  
7 distilled those.

8           If you, in this comment process -- I know we  
9 didn't ask for it this time. If you have suggestions of  
10 possible regulations that would be beneficial we don't  
11 have, we're still listening. We are open to more  
12 suggestions about what regulations might look like.  
13 Again, it has to be within the scope of what our  
14 authority is under the Indian Trader statute to make  
15 rules for the protection of said Indians, but we can't  
16 go beyond the scope of our authority in the statute.

17           If there are additional suggestions from y'all  
18 and additional colleagues that you talk to, we're  
19 certainly incorporating peoples' feedback into -- if we  
20 do reach a point where we can come forward with proposed  
21 regulations -- once we make the economic case, then it's  
22 more likely to come forward with proposed regulations.  
23 From our perspective, it would be -- it would be  
24 phenomenal. It was very clear that those proposed  
25 regulations came from the tribes.



1 Ms. Velasquez, did you have a question?

2 MS. VELASQUEZ: Making an economic  
3 case -- and you heard this from President Begaye --  
4 limited resources in the state of New Mexico and any  
5 state, so Wal-Mart -- we want it on the reservation,  
6 county certainly wants it, you know, in their  
7 jurisdiction so they can collect the taxes.

8 So we have to figure out how to get through  
9 the us versus them and for the general good of the state  
10 we live in. I think that is the issue.

11 We are starting to get charged for services --  
12 at this point you're taking our economic engine away  
13 from us, and you're putting it in your jurisdiction, and  
14 therefore you charge us.

15 What's starting to happen in northern New  
16 Mexico with a few tribes, regionalizing and working with  
17 our prospective counties to figure out how to offer  
18 services and work together. Hopefully we can do that a  
19 lot better, and it serves the community as a whole.

20 That takes a lot of work, too. In order to  
21 get -- to make this economic case, we have to get  
22 through that obstacle of us versus them and find out  
23 resources for both jurisdictions.

24 MR. CLARKSON: There are some tribes when  
25 a fire happens, they'll send a tribal firetruck off

1 reservation to fight the fire. And obviously the Navajo  
2 Nation, we honored your hotshot crew. They'll go  
3 anywhere to fight a fire.

4 So it doesn't have to be combative, and that's  
5 what our hope is. To quote Governor Talachy's favorite  
6 author, supreme excellence is winning your battles  
7 without picking a fight, to remove the incentive to  
8 oppose you.

9 So that's why the economic data's so critical,  
10 because together I think we can prove that it's in  
11 everybody's best interest for tribes to have the  
12 economic sovereignty that they used to have.

13 You're describing it with a new model. I  
14 might argue that in fact it's an old model. The  
15 founding fathers had the notion of distinct boundaries,  
16 and so I think the legislative history -- at least the  
17 1834 version of the statute is clear. The relationship  
18 between the federal government and the tribes as a  
19 nation-to-nation relationship to the exclusion of the  
20 states. The states should not fear this, because,  
21 again -- maybe if I can follow up. For the Wal-Mart in  
22 Chinle, did it ever happen?

23 PRESIDENT BEGAYE: No.

24 MR. CLARKSON: Did it just open up  
25 somewhere off reservation?

1                   PRESIDENT BEGAYE: Farmington and Gallup.  
2 Chinle was being proposed first, and then west side of  
3 Farmington is where that one went. So you have two  
4 Wal-Mart in Farmington. One on the east side, and one  
5 on the west side. The west side is supposed to be on  
6 the nation, and they got all kind of incentives, waiving  
7 this and that for years. They moved there. So that's  
8 what happened.

9                   MR. CLARKSON: This is something else I  
10 believe y'all put in your original comment. For those  
11 of y'all who have similar experiences, states and local  
12 governments do tax abatements to recruit business. The  
13 Navajo Nation has a hard time doing that.

14                   You can't impose the taxes in the first place  
15 because it would make it economically infeasible. And  
16 so that's another challenge the tribes have is the  
17 inability to attract businesses through tax abatements  
18 because they can't tell -- they can't abate all the  
19 taxes.

20                   Yes, sir? State your name again, please.

21                   MR. CHINO: My name is Conroy Chino. I'd  
22 like to add on to some of Governor Talachy's comments  
23 and your requests for solutions, if you will.

24                   One of the things that was in effect for the  
25 last executive session was the -- I don't know if that

1 executive order is still in effect. I think what would  
2 help is for Secretary Zinke to push to have an executive  
3 order by this administration put back in place. But in  
4 a more broader picture and a larger approach, here in  
5 New Mexico there's something called the State Tribal  
6 Collaboration Act which was passed back, I believe, in  
7 2009, and many in this room were instrumental, including  
8 Governor Talachy and the State Senator Shendo from Jemez  
9 Pueblo of getting it passed.

10 I don't know if there's any chance or  
11 possibility of something like that passing. This  
12 particular act applies to all executive agencies,  
13 forcing them to consult with tribes whenever there's an  
14 issues that might unduly affect tribes in New Mexico.  
15 It calls for consultation, it calls for communications,  
16 and it calls for coordination between the executive body  
17 and tribes. Unfortunately, it's not applicable to  
18 lawmakers, and they can do whatever they want and issue  
19 legislation and policy that oftentimes we don't find out  
20 about until a bill has been introduced.

21 So those are two things that I would certainly  
22 offer as possibilities of being able to continue the  
23 dialogue, and I appreciate the fact that you're here  
24 taking comment and input from tribal representatives and  
25 especially tribal leaders.

1 MR. CLARKSON: I believe that executive  
2 order is in place. The executive motion is still in  
3 effect in terms of consultation. From Secretary Zinke's  
4 standpoint the consultation is the way we want to  
5 approach Indian affairs. We don't want to be the ones  
6 imposing anything.

7 Sometimes we have to announce that we're going  
8 to be thinking about things and then start the  
9 consultation process, but I don't think -- from my  
10 understanding, we're not going to have a finished  
11 product coming out of interior that affects Indian  
12 Country that do not involve some form of consultation  
13 procession. We take it very seriously. That's  
14 something I tried to put forward with this initiative.  
15 I would like for this initiative to meet a gold standard  
16 for consultation.

17 Again, we are encouraging Indian Country to  
18 contact us often and voluminously. We need to help, and  
19 we need to hear from y'all about what you think ought to  
20 happen. Again, on this initiative, we're bound by the  
21 confines of what Congress would authorize. We can't  
22 regulate beyond our statutory authority. We have to  
23 stay within the confines of the statutes that we have.

24 And some of your comments -- again, all the  
25 comments the court reporter is going to be capturing.

1 These will be made available to anybody and everybody  
2 that wants to look at them.

3 In terms of the data that we need, information  
4 about the facility in Chinle that wasn't built, where  
5 you are at risk, where the uncertainty of taxation is  
6 making things difficult, how do you provide services if  
7 your tax base disappears tomorrow. What we need is as  
8 much information about those kind of stories as  
9 possible.

10 Yes, sir?

11 MR. HARVIER: Good morning, everybody.  
12 By way of introduction, my name is Martin Harvier. I'm  
13 the current vice president of the Pima-Maricopa Indian  
14 Community. Also like to recognize staff with me. I  
15 have my tax manager for the community government, Doug  
16 Patterson, and also Gary Bohnee, office of legislative  
17 affairs, that came this morning.

18 First of all, Dr. Clarkson, thank you for your  
19 recent visit to Arizona, taking time out of your  
20 schedule to visit. We did have an opportunity, in the  
21 timeframe that you were there, to kind of talk about  
22 this issue. It looks like you made your plane.

23 MR. CLARKSON: Yes, I did.

24 MR. HARVIER: I just wanted to really  
25 thank you and our community council wanted to thank you

1 as far as hosting this event today and revisiting the  
2 Indian Trader Regulation Act.

3 A little about our community. Our community  
4 resides just east of Scottsdale. Our boundaries,  
5 eastern boundary is Scottsdale, the northern boundary of  
6 the city of Mesa, Fountain Hill surrounds kind of our  
7 north side, so we're surrounded by those cities.

8 We are a gaming tribe, and like a lot of other  
9 gaming tribes, it wasn't until we got into gaming that  
10 we were able to invest in economic development, which  
11 had been a real benefit to our community. Being located  
12 on the boundary of Scottsdale, Mesa, economic  
13 development is very important to us. Right now we've  
14 been able to get enterprises that the Tribe owns and  
15 operates. My understanding now, the tax dollars stays  
16 with the community.

17 Most of the land base along the corridor where  
18 economic development happens is allotted land, meaning  
19 individual members of our tribe own the land. That no  
20 longer is an enterprise of the development. Whatever  
21 funds is raised through those developments, a lot of  
22 that is taken off the community. A lot of those funds  
23 are important to us.

24 Right now we're going through -- like a lot of  
25 tribal governments, we're going through our tribal

1 budget for the upcoming year. We talk about services we  
2 provide to our community members. Anybody that comes  
3 into the boundary of our community -- now mind you, we  
4 have two freeways that go through our community that my  
5 understanding over 375,000 vehicles a day go through our  
6 community. If there's an accident within the boundaries  
7 of our community, we are the first responders. We  
8 provide services, whatever's needed. Some of these  
9 taxes that are taken off the community would be  
10 important for us to recover just for that fact.

11           The more that we grow, the more services are  
12 needed, and those dollars that are taken off the  
13 community are very important in just that area alone as  
14 far as public safety to those that come into the  
15 boundaries of our community. Those dollars that we're  
16 talking about are very important as far as trying to  
17 maintain the community.

18           We talk about our developments that come into  
19 our community. Recently our community has been on the  
20 local news about development of professional stadiums,  
21 soccer stadiums, I think a basketball arena. Right now  
22 we have a spring training center in our community.  
23 Because it's an enterprise, we're able to keep the tax  
24 dollars in our community. But because we don't have the  
25 tribal land base, if another stadium was to be built, we



1 don't have control over those taxes that would be  
2 garnered in that facility.

3 So those are some of the concerns that we have  
4 as far as development in the community and trying to  
5 provide for members of our community.

6 One of the things I wanted to touch on that I  
7 kind of jotted here is information. We get a lot of  
8 data. We employ in our casinos over 3,000 employees,  
9 our tribal government's over 2,000 employees. Now, mind  
10 you, not all of our employees are community members that  
11 reside in our community.

12 In our enterprises, the outside services we  
13 receive, how we benefit those outside services that come  
14 in, and we purchase from those vendors. We have the  
15 information, and we try to educate the surrounding  
16 cities on what we do for the state of Arizona. That's  
17 important. There's a lot coming from the community that  
18 we believe is important.

19 One of the areas of taxation that would  
20 benefit, like all other tribes, is tobacco tax. Our  
21 tobacco tax is a real benefit to our community as far as  
22 the tax dollars we get. \$1 from every pack goes to the  
23 tribe. Right now the state wants to know who's buying  
24 the cigarettes. They want to know if it's a tribal  
25 member or non-tribal member. Our question is why? Why

1 do they want the information? Our community has kept  
2 the financial information confidential to ourselves, and  
3 one of the reasons President -- when they buy something,  
4 and somebody else don't benefit, now they're going to  
5 pay more from whatever is taken from them. That's the;  
6 way tribes are going to feel. If they're going to choke  
7 somebody off, they're going to choke you. And that's  
8 the fear, I think, that tribes have of sharing  
9 information and letting the information get out to the  
10 public.

11           So when grants or anything else are available  
12 for tribes to apply for, maybe they're going to pull a  
13 paper up and say, "Wait a minute. These guys are making  
14 an awful lot of money. Maybe we should give it to  
15 somebody else." I think that's why we want to make it  
16 confidential. One of the fundamental questions is  
17 who -- who's responsible for the betterment of the  
18 people?

19           Dr. Clarkson, President Trump is responsible  
20 for the betterment of all the people. In our state  
21 President Deasy is responsible for the betterment of the  
22 citizens of Arizona. Some of that is through those tax  
23 dollars that he wants to keep in Arizona.

24           As tribal leaders, our responsibility is the  
25 betterment of our people in our community. That's who

1 we need to take care of. The question is who. Who is  
2 going to have those difficult discussions with the state  
3 or even with our neighbor -- our cities? So, you know,  
4 that's the difficult question in going forward, and  
5 that's why we really feel that federal legislation is  
6 needed in going forward with the discussion we're having  
7 today.

8 MR. CLARKSON: Thank you for your  
9 comments. One thing I want to latch on to. I want to  
10 make sure, you know, I hear you, is the fear about  
11 sharing. That's not unique to this process. We were  
12 trying to figure out how to we make the case. We have  
13 to make the case economically; otherwise, we fail. If  
14 we can't make the economic case, we can't go forward.

15 So what we tried to ask was less about what  
16 you're doing now and more about what you could do.  
17 We're asking you to speculate a future and a future  
18 where you have complete and economic sovereignty, which  
19 is what Indian Country suggested. If we want to  
20 implement Indian Country suggestions through the tools  
21 we have available, we've got to be able to preempt the  
22 state pushback by saying, "States, you're going to be  
23 better off too."

24 We intentionally asked the question not about  
25 what's going on now. But feel free to tell us what's

1 going on now. Very specifically, the questions that  
2 we're asking are not about what you're doing now, you  
3 thought about doing something, or you could do  
4 something, but right now it doesn't make economic sense,  
5 because it's overly taxed, or -- and we're focusing a  
6 lot on the dual taxation, but don't forget the  
7 regulatory burden that is imposed by the state and  
8 federal government as well, because sometimes it's a  
9 triple whammy. It's the dual taxation, the federal  
10 regulation, state regulation, all of which make the  
11 project too expensive, not economically feasible.

12 We're cognizant that every tribe has a right  
13 to control it's proprietary information. We're not  
14 trying to disclose proprietary legislation. We tried to  
15 craft our "Dear Tribal Leader" letter to be asking for  
16 things that we're not trying to try to disadvantage one  
17 tribe relative to another, relative to anybody, and it's  
18 more what is it -- what would the world look like if you  
19 had complete economic sovereignty over the entire  
20 territory of Salt River. What could the world look  
21 like?

22 As somebody that's been trained in economics,  
23 I think y'all have amazing potential. Every tribe in  
24 this room has amazing potential to be an order of  
25 magnitude bigger of an economy the moment we stop, you

1 know, yanking out beansprouts and harvesting beans.  
2 That's a heck of an agricultural product. Y'all are  
3 good at growing beans. That's something I'm sure that  
4 everybody there can say, "Hey, yeah, you get money for  
5 beansprouts, but you get a whole bunch more money, and  
6 you can feed a whole bunch more people and everybody's  
7 better off with a truckload of beans."

8 But I do want you to know that we are  
9 sensitive, and we're cognizant of the concerns the tribe  
10 might have about sharing data, naturally.

11 Sometimes, well -- the other thing is  
12 anonymize. Instead of saying, "We had this Wal-Mart in  
13 Chinle," which you've already disclosed. That's fine.  
14 You could have said, "We had a big-box retailer approach  
15 an opportunity in part of our nation, but because of the  
16 dual taxation, it didn't happen. It would have been  
17 \$120 million building, generated X amount of revenue,  
18 this many jobs." You could just call it "big-box  
19 retailer," and that would be sufficient for our purposes  
20 in the economic modeling without necessarily disclosing  
21 the specifics about any given any project.

22 So for the tribal leaders here and the support  
23 working on this, we don't need to know it's Wal-Mart.  
24 It's good to know it's Wal-Mart if you're comfortable  
25 disclosing that. For reasons of maintaining your

1 private information, "Project A, a big-box retailer  
2 wanted to come to our territory but couldn't because it  
3 wasn't economically feasible because of the current  
4 situation. Here's how much capital, revenue, jobs we  
5 lost because of the current situation." That is useful  
6 data for us.

7           The other thing is where you have chosen to  
8 forgo taxation in order to attract -- you're subsidizing  
9 the jobs by foregoing the taxation. Not every tribe is  
10 doing that, so we didn't put that. If you have  
11 information about how much tax revenue you're putting up  
12 because you've chosen to be more forward-thinking and  
13 waiting for the job creation, even though you can't  
14 provide the services because the money is flowing out,  
15 that would be good data for that to show that the  
16 situation at the moment is -- let's go ahead and say  
17 it -- inherently unfair. You are being denied the tax  
18 base to provide for your community, and therefore at  
19 Navajo and people at Salt River and people everywhere  
20 else, the needs are being unmet, because nobody's  
21 providing for those needs.

22           Tribes -- for what we're hearing from Indian  
23 Country, Indian Country says, "We're ready to start  
24 providing those services. We're ready to start  
25 providing for people. We need the tools and resources

1 to do it, and those resources are within ourselves, but  
2 not under our control."

3 PRESIDENT BEGAYE: Also I'd like to say  
4 that we can issue federal taxes and bonds now, and  
5 that's helping with infrastructure needs and stuff, but  
6 we also want to issue private bonds. That's going to  
7 widen --

8 MR. CLARKSON: Private activity bonds?

9 PRESIDENT BEGAYE: Yes. We're putting  
10 these in place. We feel like we're moving in the right  
11 direction with our economy, and we're looking forward to  
12 being one of the biggest employer in the southwest.  
13 We're just taking advantage of these. We just need some  
14 help with the regulations and some of these things. We  
15 do have -- when we sent you the spreadsheet, we do have  
16 the income. Our people do make money in the nation.  
17 It's all flowing off the nation.

18 MR. CLARKSON: I want to emphasize that  
19 point. I was involved with the tax exempt bond  
20 initiative that came out in the stimulus package back in  
21 2009. I testified in front of the senate finance  
22 committee and there are still allocations of tribal  
23 economic development bonds available. The challenge is  
24 for -- those private economic development bonds are  
25 equivalent to the tribal private activity bonds.

1 Right now I think you're one of the only  
2 tribes that issued a general obligation bond, because in  
3 order to have a general obligation bond, you need to  
4 have the tax base to do it. That's how the City of  
5 Albuquerque does stuff, is issuing general obligation  
6 bonds, taxes -- we're all going to do it if we eat lunch  
7 here in Albuquerque.

8 If there are things that you can't do because  
9 you don't have access to the tax base to fund a general  
10 obligation bond, those are projects that would happen  
11 but aren't happening because you don't have the tax  
12 base. If you have in your plans, "We could issue a bond  
13 for this infrastructure project, but we can't because of  
14 dual taxation denying us the tax base," if that is  
15 what's happening, that is useful information to know.

16 If you want to build a hospital, a health  
17 clinic, roads and schools and sewers and all the things  
18 governments build, but you don't you don't have the  
19 ability to have a tax base backing a tax exempt bond,  
20 then this is potentially something -- again, Indian  
21 Country has given us suggestions that if you follow it  
22 to a local conclusion, leads us to an environment where  
23 that's possible.

24 Again, if we, the federal government, are  
25 responsible for defending this zone -- and again, it's a



1 whole separate conversation for us to have about  
2 self-governance versus direct service. We are obligated  
3 to provide a certain amount of dollars, whether it be in  
4 the form of dollars for hiring bureaucrats who provide  
5 direct service or direct payments to tribes in the  
6 self-governance program, but that -- regardless of whose  
7 in office, I am fairly certain there will never be  
8 enough money coming from Washington to meet all the  
9 need, so the only way that we collectively will get to  
10 the point to meet those needs -- the federal government  
11 is bringing in money, whether it's in the form of direct  
12 service or self-governance payment, but have tribal  
13 economies be robust and active to provide services.

14           It's not going to be solved with a check from  
15 Washington, because there's not enough money, but there  
16 is the ability -- there is untapped potential. Tribal  
17 economies could legitimately be characterized as  
18 domestic economies with tremendous growth potential. We  
19 need to figure that out. We, as the federal government,  
20 how can we best help tribes build self-sustaining  
21 wealth, prosperity, and independence for all.

22           We think that the revisions to the -- to  
23 the -- the revision to the regulations to the Indian  
24 Trader statute, that's an opportunity for us to be able  
25 to help remove some of the restrictions on tribes. We

1 can't fix it all with just this, but if we can bolster  
2 tribal economic sovereignty through this measure, based  
3 on what Congress allows us to, that would enable the  
4 tribes to generate tax revenue and be beneficial to the  
5 states.

6 PRESIDENT BEGAYE: Indian Country is the  
7 emerging market, as you're saying, and that's the way we  
8 see it, but we know that as the emerging market in the  
9 United States there's going to be certain barriers,  
10 certain thing, certain reservations that arise. Where's  
11 the emerging market?

12 People want to invest in the emerging market,  
13 and so we're taking advantage of this administration and  
14 saying we're going to reshore it, and we're going to be  
15 heavily involved in reshoring, and we already sent our  
16 proposals to the administration saying, "This is how we  
17 want to reshore, bring the companies home." They're not  
18 going to come home to what they left from, and so we've  
19 created our nation, similar to Korea -- South Korea and  
20 China, and so they can come back, and we can reshore not  
21 to the United States but to the Navajo Nation.

22 MR. CLARKSON: That's where the  
23 uncertainty comes in. Right now putting something back  
24 in Navajo is an uncertainty, if we can, through this  
25 process, reduce that uncertainty. Make those capital

1 investments and make those long-term commitments because  
2 of reduced uncertainty.

3 PRESIDENT BEGAYE: I like to see it  
4 there, because I know that we're getting there, and  
5 we're getting there rapidly. Emerging market, people  
6 want to invest now. We have companies lined up asking,  
7 "What is it that you guys are talking about here? What  
8 have you created on Navajo? What federal laws have you  
9 taken advantage of that will assure us we will not deal  
10 with dual taxation," and so that we need to deal with,  
11 because we're moving there.

12 MR. CLARKSON: And one thing just to  
13 point out, it's not in the slide, we did get some  
14 comment from Indian Country regarding having these  
15 activities apply not only within the boundaries, also  
16 intertribal commerce. There's opportunities to trade  
17 between two tribes that isn't happening, and more of  
18 that could happen. That's good information to have.

19 I know the pueblo governors had to head off to  
20 their meeting, but I'm sure there's commerce between the  
21 tribes that could be increased or enhanced in a more  
22 certain environment. So that's -- that's a comment that  
23 we -- is the need for these regulations -- the revisions  
24 to also facilitate intertribal commerce?

25 Also some potential is intertribal commerce

1 across boundaries. Some of y'all -- some of the tribes  
2 here have -- I mean, some of the tribes in the southwest  
3 actually have relatives in Mexico. Some of the tribes  
4 in the Great Lakes -- even in Oklahoma are descended  
5 from people who have families in Canada. If  
6 intertribal -- or trade between first nations and tribes  
7 is something that could be enhanced with revised  
8 regulations. Those are things we like to hear about.  
9 Those opportunities aren't happening now, but they could  
10 happen.

11 So -- we have -- we have about 30 more  
12 minutes. I want to make sure -- I want to make sure  
13 anybody who hasn't had a chance to speak gets a chance.

14 Yes, sir?

15 MR. BOHNEE: Gary Bohnee. Salt River  
16 Indian Community. I just had a quick question that  
17 relates to the interplay of supposed regulatory process  
18 and this -- as you mentioned before. Salt River, for  
19 example, 1995 appellate court case, decided against the  
20 community as it relates to transactional privilege tax  
21 on the reservation.

22 Have there been any discussions internally of  
23 you and, I guess, solicitors just in terms of how you  
24 guys might -- as you're looking at the scope of what you  
25 might be doing with the trader regulation as to the

1 concerns -- any expression of concerns internally about  
2 how far it can be taken? Obviously that's one of the  
3 obstacles, of course, is the case law's there that  
4 limits legally. Some things have been decided. But as  
5 I heard you say, we would all agree -- tribes might  
6 agree that the regulatory effort, if this is the place  
7 to do it to make a broad statement to perhaps rework  
8 some of that case law.

9 MR. CLARKSON: Okay. So, yes, we are  
10 examining internally what the scope of the authority we  
11 are granted under the statute is, because we can only  
12 move within the scope of the statute. We can only go so  
13 far as Congress said we can go. We're analyzing what  
14 the boundaries of that authority are.

15 In terms of the -- the ultimate impact on  
16 federal cases that are problematic to Indian Country,  
17 ultimately the courts will have to decide exactly what  
18 that is. They will go back and determine, you know --  
19 they'll analyze the scope of our authority, assuming we  
20 move forward with regulations, I'm sure some people will  
21 ask the court, "Did we act within the authority?" So we  
22 are trying to make sure it's within the scope of the  
23 authority granted by Congress, what the effect that will  
24 have on any given case.

25 It's whether the court views it as a case or a

1 common law case or some sort of hybrid or statutory  
2 interpretation case. So the -- we have the ability  
3 through the regulatory process to -- if Congress  
4 interpreted -- if the court interpreted the regulation,  
5 and we modified the regulation, it's a new regulation.

6 In terms of the ability to preempt things on  
7 certain acts, vis-a-vis the tribes, we're going to go as  
8 far as our statutory authority says we can go. Again,  
9 we're only going to be able to do that in the economic  
10 case. I hate to be a broken record. I can't emphasize  
11 that enough. Our hope is that once we remove the  
12 restrictions on tribal emerging economies that we will  
13 generate -- will generate not only internally but also  
14 externally, and so everybody will see the moment you  
15 reduce the tax and regulatory burden on business and on  
16 Indian Country, it's amazing the good things that  
17 happen.

18 And so predicting the future is something  
19 historically we've been bad at, but we can go through  
20 and recognize that when you overtax and overregulate  
21 activity, you kill it.

22 To go back to our agricultural analogy, we're  
23 trying to make sure that we remove the impediments  
24 producing bushels and bushels of beans. If we can show  
25 the economic case that it's in everybody's best

1 interest, then we hope the courts will take notice of  
2 that. They're a co-equal branch of government, and they  
3 do their own thing. But we do have the ability to  
4 overturn federal common law circumstances if we work  
5 through our statute.

6 Liz, do you have anything to add to that  
7 particular answer? Liz in our office has been doing  
8 this much longer than I. She's an expert on the  
9 regulatory items, but she's more involved.

10 Yes, sir?

11 MR. LOMAYESVA: My name is Fred  
12 Lomayesva. I'm with Pascua Yaqui Tribe. Does the  
13 administration see the changes to regulations pursuant  
14 to the Trader Act as facilitating tribal economies into  
15 great regional economies, and also what variables are  
16 you looking at in your molds, and last, should we be  
17 looking at international trade agreements as the model  
18 to reform the regulations?

19 MR. CLARKSON: Well, just to be clear,  
20 the statute -- we're not proposing revisions to the  
21 statute. That's for Congress to do. What we're  
22 proposing -- what we're evaluating is making revisions  
23 to the regulations that implement the statute. We  
24 want -- it is a priority of this administration to help  
25 tribes to become self-sustaining, robust economies,

1 creating jobs, wealth, and prosperity. We can envision,  
2 especially in rural America in many cases, Indian  
3 Country may be the best way to provide an economic  
4 engine.

5 So depending on how you're defining a  
6 regional -- we certainly would love to have -- you know,  
7 we have 567 federally recognized tribes. It would be  
8 awesome to have 567 engines of prosperity driving up the  
9 economic prospects for all the communities surrounding  
10 those tribes and those communities.

11 In terms of variables, the main things we're  
12 looking at right now are one-time capital investment  
13 dollars in a given industry sector, so we want to  
14 identify the sector for a project, capital investment  
15 for a project, the revenue potentially generated by the  
16 project, the jobs that would be created by that project.

17 This will be listed in our "Dear Tribal  
18 Leader" letter. Those are the main things we're trying  
19 to capture. If there's qualitative data in form of  
20 stories that people would like to share about specific  
21 instances, that adds to a richer narrative that we can  
22 incorporate into our analysis.

23 The qualitative data we're trying to get is an  
24 industry category or if you can identify the project if  
25 you feel comfortable doing that, that's great.



1           Quantitative data is both -- we can -- on an  
2 individual project basis -- and again, these are  
3 projects that are not happening now but could happen in  
4 a new regulatory environment, would be capital  
5 investment, annual revenues, and jobs created. And then  
6 we will factor that into a macroeconomic growth model to  
7 show how it's not only better for Indian Country, and  
8 the Indian Country would be able to prosper and grow,  
9 but also how the natural prospect would trickle out to  
10 the state economy and be of tremendous benefit to the  
11 state economy.

12           And I use the term economic leakage. That's  
13 an economic term that's been in use. Indian Country has  
14 already demonstrated in many cases, when dollars get  
15 invested in Indian Country, what happens to the  
16 surrounding state? The tribes in Montana did a study  
17 that showed -- they just looked at the BIA payroll  
18 revenues going into tribal economies and the billions of  
19 dollars of activity that happened outside of those  
20 tribal economies. That's existing economic modeling  
21 that we can pattern after.

22           I know many of the tribes have already started  
23 doing these economic impact studies for their gaming  
24 operations. I know Oklahoma just issued one and Seneca  
25 issued one in California, and so those are going to be

1 models that are now widely accepted that we're going to  
2 be able to use and incorporate.

3 The inputs are primarily capital investment,  
4 annual revenue, and jobs.

5 Last one, you talked about international trade  
6 agreements. We are very eager to facilitate  
7 international trade between Indian Country and the rest  
8 of the world, and we think there are multiple markets  
9 for tribal goods and services around the world.

10 As the president said, we'd like to on-board  
11 or on-shore many of these businesses that have left  
12 because under the previous administrations it was an  
13 unfriendly business climate. We want to try and attract  
14 those businesses back. We think Indian Country can have  
15 a significant role in that. While that's something  
16 we're definitely interested in advocating for, I think  
17 potentially that's beyond the scope of what this  
18 particular regulation would cover. I think that's  
19 probably more than we can potentially accomplish with  
20 these regulations, but we're certainly -- we want to  
21 look at both international trade and intertribal trade.

22 If you have information to share more about  
23 what y'all are thinking, we've still got some time. We  
24 capture it here with the court reporter, or if you're  
25 going to submitting written comments as part of this

1 process -- we want to consider all possibilities and all  
2 ideas. We want this to be a collective and  
3 collaborative effort between the federal government and  
4 Indian Country.

5 MR. WALKER: My name is Ron Walker. I'm  
6 a tribal consultant. I retired from the bureau about  
7 ten years ago. I looked up your model here, and I have  
8 a question, and I hear the words fiduciary and trust  
9 responsibility all the time, but the question that I  
10 have, when I worked a good part of this country -- these  
11 567 tribes cover 35 states and millions of acres. The  
12 question I have from the Jay Treaty up north. I'm from  
13 Montana. The question I have is how is the government  
14 going to ease power from the government? From your  
15 spectrum here, you've got direct-service tribes, and  
16 then you've got fully empowered tribes. To me that's a  
17 self-governance tribe. Going back to '95, '94.

18 That's the question I have, because 25 CFR 140  
19 is what we call the Old Peddlers Permit. That's where  
20 those regulations -- very seldom used, because we used  
21 process under 162 permits. I really come from the old  
22 school.

23 The question I have is what is the secretary  
24 going to do, the government going to do to ease the  
25 power from the tribe in order for them to negotiate

1 their agreements from taxation, get away from dual  
2 taxation, triple taxation. That is the question to me.

3 MR. CLARKSON: Thank you for the  
4 question. We are still in the process of gathering  
5 comments from Indian Country how to best do what you're  
6 talking about. I encourage you to submit your thoughts  
7 and suggestions how to best do that.

8 Given your longstanding experience, we do  
9 think the notion of the federal government going in and  
10 issuing licenses to every trader going and doing the  
11 reservation and we micromanaging all those activities,  
12 we think that's an outdated model.

13 Most of Indian Country has told us that  
14 federal micromanagement is unnecessary, unneeded, and in  
15 many cases bad. What we're looking for is a new model.  
16 We're not trying to invent the new model. We're trying  
17 to listen to Indian Country and say, "What do y'all  
18 think is the best way?" We have our own thoughts and  
19 ideas, and a lot of ideas we have are based on what  
20 Indian Country has already said. We want to make sure  
21 that people have a chance to suggest to us how to handle  
22 that.

23 MR. WALKER: I'm a certified paralegal,  
24 but the question I do have -- you have a lot of  
25 attorneys, I guess, in this room right now, but I would

1 like to understand the definition of plenary power. Can  
2 anybody explain that? There's about three or four  
3 attorneys here in this room. I think that's where it's  
4 going to lie.

5 MR. CLARKSON: Well, anything that we do  
6 obviously would have to be pursuant to the authority we  
7 have from Congress. Based on my understanding of where  
8 the courts have said that plenary power lies, if it lies  
9 in Congress, we, as the agency, Bureau of Indian  
10 Affairs, Department of Interior, we only have as much  
11 authority as Congress gives us.

12 MR. WALKER: Well, it came from Congress.

13 MR. CLARKSON: And we are examining the  
14 legislative intent as expressed in both the 1790 version  
15 and all the intervening acts. I think the final statute  
16 that was passed was 1834. That's part of our process,  
17 to examine what the scope of our authority is, is to  
18 examine -- we can only do what Congress has empowered us  
19 to do. We're going through and examining that now.

20 But also we're not limited to our own  
21 examination. If any of the tribal leaders or any of the  
22 tribes have thoughts or comments or their own  
23 interpretation of that legislative history, we want to  
24 hear. The more eyeballs examining and the more brains  
25 focused on this issue, the better.

1           If anybody here has done an analysis or wants  
2 to look at the legislative history of the Indian Trader  
3 statute, those comments are more than welcome. I know  
4 some of the people that commented in the advanced notice  
5 of proposed rulemaking period discussed the legislative  
6 history. We are open to all comments. We want to hear  
7 as many comments as possible.

8           MR. WALKER: When are they due?

9           MR. CLARKSON: This round, they're due  
10 August 30th.

11          MR. WALKER: Thank you.

12          MR. CLARKSON: Are there anymore  
13 comments? Anybody else? Is the convention -- I know we  
14 opened with a prayer. Should we close with a prayer?

15                           (Consultation concluded at 12:02 p.m.)

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1 STATE OF NEW MEXICO )  
2 )  
3 COUNTY OF BERNALILLO)  
4

5 I, ROBIN A. BRAZIL, Certified Court Reporter for  
6 the State of New Mexico, hereby certify that I reported,  
7 to the best of my ability, the foregoing proceedings;  
8 that the foregoing is a true and correct transcript of  
9 my stenographic notes, which were reduced to typewritten  
10 transcript through Computer-Aided Transcription; that on  
11 the date I reported these proceedings, I was a New  
12 Mexico Certified Court Reporter.

13 Dated at Albuquerque, New Mexico, this 4th day of  
14 September, 2017.

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ROBIN A. BRAZIL, RPR  
New Mexico CCR No. 154  
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46 Shawn Lane  
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