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**BUREAU OF INDIAN AFFAIRS
INDIAN TRADE AND COMMERCE CONSULTATION
IDENTIFYING ECONOMIC PRIORITIES
IN INDIAN COUNTRY**

**HELD ON
WEDNESDAY, AUGUST 22, 2017
9:30 A.M.**

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8
9 **MR. SPEAKS:** Good morning. Thank you for
10 coming and being a part of this consultation
11 session. We welcome you as we move into this tribal
12 consultation session related to increasing economic
13 opportunities and promoting tribal self-governance
14 and license and in trade regulations. With that,
15 I'd like to ask you to stand for the opening prayer.

16 Our Heavenly Father, oh, Great Spirit of
17 mankind, we are pleased with your presence. We call
18 upon you and your many blessings. Bless our tribal
19 members that are here and those that are at home.
20 Father, be with us as we journey into means of
21 promoting the prosperity and well-being of our
22 Northwest tribes and tribes across the nation, that
23 our tribes will excel in providing and controlling
24 their many needs. We ask these blessings in your
25 name, Amen.

1 You may be seated. This consultation
2 session, of course, will be more or less conducted
3 by a new person to the Department of Interior, Dr.
4 Clarkson. And he holds a bachelor's degree and MBA
5 from Rice University. He earned a doctorate in
6 technology and operations management from the
7 Harvard Business School, and he was named as the
8 Deputy Assistant Secretary by Secretary of the
9 Interior Zinke.

10 Dr. Clarkson comes with a background very
11 specific to economic business development and
12 financial business degrees. He is an individual
13 that -- not only a graduate of very outstanding
14 college or colleges, he holds a series of degrees
15 and licenses and has had lots of experience in
16 financial industrial regulations authority. He has
17 helped to lead the inclusion of two billion tribal
18 economic bonds in American Recovery and Reinvestment
19 Act of 2009.

20 Dr. Clarkson is a great supporter of
21 Native students in higher education. He's a
22 lifetime member of the American Indian Science and
23 Economic Society, AISES, and served as chairman of
24 the AISES Foundation from 2005 to 2009. He's also
25 been a member of the Indian Law Section, the Federal

1 Bar Association, the Licensed Executive Society, and
2 Native American Finance Officer Association, and the
3 State Bar of Texas. It is a pleasure that I
4 introduce Dr. Gavin Clarkson, Deputy Assistant
5 Secretary for Policy and Economic Development and
6 thank you for coming.

7 **DR. CLARKSON:** We can now go on the
8 record. (Speaking Native American.) My name is
9 Gavin Clarkson and I'm a proud member of Choctaw
10 Nation of Oklahoma, and it is my distinct pleasure
11 to be here this morning. We're going to get the
12 video up here in just a second.

13 Oh, it needs power? Of course that
14 happens just as we get started. We can go back off
15 the record for a second.

16 **(Off-the-record discussion.)**

17 **DR. CLARKSON:** Can we just go around the
18 room and do a quick set of introductions and we can
19 go ahead and do that on the record.

20 **MR. RYBURN:** Good morning, all. My name
21 is Jerry Ryburn, Oklahoma Cherokee. I'm a
22 contractor with the BIA Loan Guarantee Program, also
23 known as Division of Capital Investment.

24 **MR. ROSS:** (Speaking Native American.) My
25 name's Michael Ross, Snoqualmie Tribal Council,

1 elected last year. Can I just get a copy of your
2 intro? Because I was trying to type it in and it
3 was far too long so --

4 **DR. CLARKSON:** Sure. It's in the press --
5 he just quoted from the press release.

6 **MR. ROSS:** All right. Great.

7 **DR. CLARKSON:** I'll make sure you get it.

8 **MR. ROSS:** Mine's just short so thank you.

9 **MR. SMALL:** Tony Small, Ute Indian Tribe,
10 Vice Chairman.

11 **DR. CLARKSON:** Could you just speak up
12 because we're trying to get this --

13 **MR. SMALL:** Tony Small, Ute Indian Tribe
14 Vice Chairman.

15 **MR. PATTERSON:** Good morning, I'm Jeremy
16 Patterson, member of the Cheyenne River Sioux Tribe
17 and an attorney with Fredericks Peebles and Morgan.
18 We serve as general counsel to the Ute Indian Tribe.

19 **MR. HARJU:** Hello, how are you? My name's
20 Phil Harju. I am the Vice Chairman and General
21 Counsel for the Cowlitz Indian Tribe. Welcome all
22 of our guests from around the country.

23 **MR. SPEAKS:** I'm Stan Speaks, the Regional
24 Director for the Northwest Region here in Portland,
25 Oregon, and I welcome each one of you here. I am a

1 promoter of the economic and business development
2 for the Northwest Tribes, as I have been for tribes
3 across the nation. So thank you and it's a pleasure
4 having you here.

5 **DR. CLARKSON:** If you can move the
6 microphone down that way we -- you can just put it
7 between those two. Also, this is Ashley Fry from our
8 office in DC. Ashley is also a proud member of the
9 Choctaw Nation of Oklahoma. And we got two more. Go
10 ahead and introduce yourselves real quick.

11 **MS. DANDURAND:** My name is Sarah Dandurand
12 and I'm a member of the Brothertown Indian Nation
13 and I'm here on behalf of Hobbs, Strauss, Dean &
14 Walker attorneys, and we're just covering this
15 meeting for several different tribes.

16 **DR. CLARKSON:** Okay.

17 **MS. DANDURAND:** And I apologize I'm
18 sitting in the back. I just need to plug in my
19 computer the whole time.

20 **DR. CLARKSON:** Understood.

21 **MS. PAWWINNEE:** I'm Mari Pawwinnee and I'm
22 with the Ute Indian Tribe.

23 **DR. CLARKSON:** All right. So we'll go
24 ahead and get started. This will -- this is -- this
25 is my second ever consultation so I'm still learning

1 this process. As many of you know, 11 weeks ago, I
2 was still a school teacher, you know, in shorts and
3 tennis shoes planning summer school. So, you know,
4 I appreciate your encouragement as I learn this
5 process of being a Fed. But I'll start off with
6 talking about some things that Secretary Zinke has
7 asked me to communicate every time we have one of
8 these kind of meetings.

9 Because, you know, it's important to note
10 that these thoughts are not just -- you know, these
11 aren't just, you know, for one group. These are
12 themes from the top, from the administration. And
13 Secretary Zinke, having -- having worked with tribes
14 in Montana and worked with tribes all over the
15 country, understands sovereignty and -- and that's
16 what he always wants to lead off with is a notion of
17 that, sovereignty is important.

18 Sovereignty is the major theme that we
19 want to convey and we want to try and figure out how
20 best we as the federal government can help tribes
21 have a more expansive capability to exercise their
22 sovereignty through the process of self-
23 determination, through exercising self-governance.

24 But the other thing that we need to do is
25 to be respectful. And it's probably fair to say

1 that the federal government has not necessarily been
2 the most respectful of tribal sovereignty over the
3 years. We are very in favor of economic freedom and
4 tribal empowerment, and part of what we want to do
5 and part of what is the initiative behind this
6 process is a reduction of the regulatory burden.

7 And so, you all have heard Secretary Zinke
8 saying sovereignty has to mean something. And each
9 one of us in this room has their own concept, you
10 know, what does sovereignty mean. You know, and
11 most of you all -- the tribal leaders, you exercise
12 sovereignty every day on behalf of your people so
13 this is not something that new -- that's a new
14 concept, but how might we as a federal government
15 view sovereignty.

16 Well, there are 567 federally-recognized
17 tribes at the moment, all with different stories,
18 all different backgrounds, different histories of
19 interaction with the federal government. Different
20 stories of how the federal government has failed in
21 its responsibilities to protect tribal sovereignty
22 or live up to its treaty obligations or anything
23 like that. So, you know, we have a -- we have
24 different capabilities, different notions, but every
25 single tribe has its zone of sovereignty.

1 Now, within that zone of sovereignty, we
2 have a range of capabilities. There are some tribes
3 that, you know, that -- because of damage or
4 hostility or, you know, or out of need, you know,
5 they need us, the federal government, to continue to
6 do certain things for them. You know, so we're --
7 those are the ones where we're providing a
8 significant portion of services. Those are direct
9 service tribes. You know, sometimes they're in that
10 situation because of things that we did and, you
11 know -- but over time, tribes have been able to move
12 more, you know -- take over more and more of their
13 own functions, resume or go back to the self-
14 governance that they had pre-1492, and those are the
15 fully-empowered tribes. Those are the tribes that
16 really, for lack of a better term, wish we didn't
17 exist, other than to defend their -- defend their
18 zone of sovereignty.

19 And these are the tribes where, you know,
20 we basically add no value for them. We provide very
21 little useful to them other than to defend that zone
22 of sovereignty. And unfortunately, many times what
23 we do is we detract value. So you're colleagues --
24 the Southern Utes were talking about, you know, that
25 when they're trying to wire up grandma's house with

1 electricity, and they have to dig a hole to put a
2 utility pole in. I mean, think about it. It's a
3 hole. You dig the hole, you put a tree in it.

4 You fill it with concrete. You hang a
5 wire on it. It ain't that hard. And yet, all of a
6 sudden we, the federal government, because it's a
7 hole dug on trust land to wire grandma's house, have
8 to go through an invasive NEPA analysis. I've had
9 tribal chairmen tell me that NEPA also is required
10 when they -- when they re-stucco somebody's house.

11 You know, the amount of ways that we, the
12 federal government, are in the way on trivial things
13 is just annoying. But it's also economically
14 disastrous for many tribes. So the Southern Utes
15 were at a briefing with the President and they
16 described it, as many of you know -- I know the Ute
17 Nation is also actively involved in -- in energy
18 development. But for them, you know, they are --
19 they do a lot more than gas, but they do a lot more
20 than gas off reservation too. In fact, they have an
21 offshore oil platform in the Gulf of Mexico.

22 You know, the question is why would a
23 landlocked tribe in Southern Colorado be drilling
24 for oil below the ocean's surface in the Gulf of
25 Mexico in the deep water? Well, because it's easier

1 for them to dig 10,000 feet below the surface under
2 the ocean than just to drill in their own backyard.
3 They presented a chart that shows that off
4 reservation they can get their drilling permit
5 process up and running and get things going in about
6 four months. On reservation, it's 31 months. And
7 why is that? Us, the federal government, we stand
8 in the way of so much of tribal economic development
9 and tribal prosperity.

10 Ronald Reagan famously once said that the
11 worst thing you could hear as a small business
12 person was, Hi, I'm from the federal government.
13 I'm here to help. Well, let me suggest to you that
14 the way this administration would be prefer to be
15 is, Hi, we're from the federal government and we're
16 here to get out of your way. And maybe you have
17 never heard that from a federal official, but we
18 actually mean it. We are committed to reducing the
19 regulatory burden on tribes to allow in helping
20 tribes become fully functioning robust, developing
21 economies. And so our number one priority is
22 economic development. Basically, we're asking the
23 question, how can we best help tribes develop self-
24 sustaining economies, to promote jobs, wealth and
25 prosperity?

1 And when we talk about self-sustaining
2 economies, we're talking about -- you know, if you -
3 - if you are familiar with the economic literature,
4 economists will describe a healthy economy as one
5 where the money cycles around five or six times
6 before it leaves that economy. Unfortunately, in
7 most of Indian country, it maybe cycles once, maybe
8 twice.

9 So the example we used at the first
10 consultation which was in Albuquerque, the single
11 largest Walmart on planet earth in terms of dollar-
12 per-square-foot sales is in Gallup, New Mexico. Why
13 Gallup? Because all the Navajos get paid at the end
14 of the month. They all drive to Gallup on the first
15 of the month. They sit in the Walmart parking lot.
16 Grandma's sitting there, she sends the kids in to go
17 shopping, and that happens every single month. So
18 the money gets paid on the reservation and instantly
19 leaves the reservation. That's not unique to
20 Navajo.

21 Second largest Walmart on planet earth in
22 terms of dollar-per-square-foot sales, is in
23 Billings, Montana, otherwise known as the Crowmart.
24 Same phenomenon. Money gets paid on the reservation
25 and it immediately leaves the reservation. We do

1 not have self-sustaining economies in Indian Country
2 for a whole host of reasons. And one of the things
3 we're trying to figure out is, you know, where are
4 we at fault or where are the regulations that we put
5 in place or where are the things that we have
6 allowed to happen interfering with creating robust,
7 self-sustaining tribal economies.

8 Because -- and most of you all figured
9 this out here in the Northwest, that when tribes are
10 prosperous, the surrounding communities are
11 prosperous. That, you know, a rise -- Reagan also
12 famously said, "A rising tide floats all boats."
13 When -- when tribes are mountains of prosperity
14 rather than cesspools of poverty, the surrounding
15 communities and the surrounding states are always
16 better off.

17 Now, energy develop is critical to this,
18 but we're -- we also are cognizant that this -- that
19 these issues affect a whole host of tribal economic
20 development, not just energy. But tribal
21 empowerment is our second-most important thing or
22 second-most priority. And it's basically helping --
23 how -- how can we -- how can we create a system
24 where tribes are deciding what's right? Where tribes
25 are in charge, how tribal leaders are empowered to

1 meet the needs of their communities. And, you know,
2 how best can we return economic sovereignty to the
3 tribes. And we also know that we don't have all the
4 answers. We recognize that the federal government
5 has been imposing its will for far too long, and
6 what we want are ideas from Indian Country. What we
7 want is suggestions from Indian Country about how we
8 can get out of the way and allow tribal leaders to
9 act in a fully-empowered manner.

10 Number three, and again, I mentioned to
11 you I'm a school teacher by training so human
12 capital development is very critical to both
13 priority number one and priority number two. What
14 is the best way to invest in Native people? It
15 can't just be college education. You know, as -- as
16 the regional director, you know, it was very kind to
17 introduce me, yes, you know, I've got a few fancy
18 degrees from a few fancy schools. But I'm going to
19 tell you a story, and some of you have heard this
20 story, but my father was an orphan Indian kid in
21 Chickasha, Oklahoma, during the depression of the
22 dust bowl. And he was so broke -- and he would
23 tell you he was broke and not poor, because poor is
24 a state of mind. Broke is merely a temporary
25 interruption of cash flow.

1 But he was so broke that as a teenager, he
2 was digging through other Indians' garbage cans for
3 food. And you know it's bad when you're digging
4 through other Indians' garbage cans for food. So at
5 age 16 he decided two things. One, poverty sucks.
6 And two, he was mad at the Japanese for bombing
7 Pearl Harbor. So he forges a birth certificate and
8 joins the Navy and never looks back.

9 By 1948, my father became the first
10 American Indian to fly a jet. By 1962, he was the
11 senior nuclear targeting strategist for all of NATO.
12 He had a computer about the size of this room with
13 16 kilobytes. And he was doing strategic war
14 planning to help figure out how to blow up the
15 Soviet Union. That's a long way from digging
16 through garbage cans in Chickasha, Oklahoma. So I
17 -- you know, I tell my students, I am proof positive
18 that Indian poverty is not a life sentence. But
19 it's a heck of a lot easier when the federal
20 government gets out of the way.

21 But we need to be able to invest in a
22 Native people, not just for fancy college degrees.
23 And the elites have all -- you know, one of the
24 problems is that the elites have all said that
25 people who work with their hands are somehow less

1 worthy of respect. But if you think about it from
2 an economic development standpoint, you got to have
3 people who do stuff in the economy. You need to
4 have carpenters, and plumbers, and brick layers, and
5 roofers, and electricians, and all the people who
6 fix things and make things and do things.

7 We need to have farmers and ranchers and
8 people who work with their hands because -- I mean,
9 I was speaking at a food -- or at a Native
10 agriculture youth summit and food sovereignty is a
11 big deal. And, you know, we -- you know, if all
12 you're doing is importing your food all the time
13 from the outside, you know, you're always sending
14 your money away. But that's another way for money
15 to cycle within that economy is to be able to, you
16 know, to have much of the food grow locally and the
17 farmers and the ranchers. But that requires people
18 to have agriculture extension education.

19 So when we talk about human capital
20 development, it's not just sending Native kids to
21 college. And I'm a big fan of sending as many Native
22 kids to college as possible. But I also recognize
23 that we need people with the skill trades. And at
24 least from this administration, we don't look down
25 our noses at the folks who work with their hands.

1 Those are people to be celebrated and honored and
2 cherished just as much as everybody else.

3 But if we go back to it, the states are
4 going to be better off. I mean, state of Oregon,
5 state of Washington, state of Utah; they're all
6 going to be better off if the tribal workforce is
7 better trained and better educated. That benefits
8 the state as a whole. And human capital development
9 is the only long-term strategy that truly does lead
10 to fulfillment of a vision of tribal self-governance
11 and tribal economic development.

12 So that leads us to the exercise we're
13 here for today. As many of you know, and many of
14 you have already submitted comments, and I want to
15 thank you for those comments because we actually did
16 read through every single one of those comments.
17 Ashley went through and documented step by step by
18 step, and categorizing each category exactly what
19 people were saying. And so we -- we really
20 appreciate what Indian Country told us. But I just
21 want to sort of summarize a little bit about what
22 Indian Country said.

23 So first of all, everybody identifies that
24 we're talking about a really old statute. You're
25 starting all the way back to 1790. And it was last

1 updated in 1834. But the other thing Indian Country
2 pointed out to us was that the legislative intent of
3 the founding fathers excluded the states from
4 interference in tribal economies. That economic
5 activity on the reservation, whether it involved the
6 Indians or non-Indians was subject exclusively to
7 either tribal or federal regulation, but not the
8 states. And the founding fathers made that very
9 clear.

10 And I'm a Republican. I actually get to,
11 you know, look favorably upon legislative intent and
12 the words of the founding fathers and look for
13 textural originalism. And so as a textural
14 originalist, I was inspired by Indian Country's
15 references to the legislative history. Now,
16 unfortunately, federal common law, supreme court
17 decisions, and federal court decisions breached that
18 exclusivity over time, and Indian Country pointed
19 that out. That in many cases what was a good
20 system, and Chief Justice Marshall described the
21 Cherokee Nation as having distinct boundaries in
22 which the laws of Georgia can have no force in
23 Western Georgia. That's a case that all the Indian
24 law community understands.

25 That system was very administrable, but

1 unfortunately, over time, the courts stepped in and
2 -- yeah, I can lament to you the activist judges
3 stepping where -- you know, where they might not
4 need to step in. But, nonetheless, they passed
5 these federal common law decisions that breached
6 that exclusivity of tribal and federal regulation
7 commerce.

8 And so then the federal and state
9 regulators compounded the problem and made it that
10 much more difficult. And so if we look at the
11 situation of tribal economics today, you know, we
12 can go all the way back to 1790 and see that, you
13 know, in the beginning, we had -- we had a good
14 system, and then we went away from that good system.
15 The question is -- you know, Indian Country is
16 asking us how do we get back to that good system.

17 And again, we read through every single
18 one of those comments. And the nice thing is that
19 not only were they saying, yes, things need to be
20 changed, but Indian Country also provided
21 suggestions on what we should do. And this goes
22 back, again, to where we as a federal government
23 don't want to be telling Indian Country what to do.

24 We want to listen to Indian Country for
25 suggestions on what might be possible and what makes

1 sense for Indian Country. Because we know that we
2 just -- if we're just the federal government
3 imposing our will again, you know, the same thing
4 will happen over and over and over again.

5 So now, if we can get suggestions from
6 Indian Country about how best to improve the system
7 -- so some of the suggestions are to give tribes the
8 exclusive ability to tax and regulate trade and
9 commerce that occurs on trust or restricted fee
10 land. Put tribes back in charge, the way the
11 founding fathers envisioned. Again, that's a
12 suggestion from Indian Country and that's something
13 that we're looking at.

14 Allow tribes to opt out of oppressive
15 federal regulatory oversight of some or all of their
16 Indian Lands. Again, you know, why does -- you know,
17 why does the Ute Nation need us to figure out if
18 they're going to wire our grandma's house, do we
19 need to do a NEPA analysis of a utility pole? Why
20 does any tribe in this room, for that matter, need
21 us to tell you about digging a utility pole? If
22 grandma wants power, let's get grandma some power.
23 You know, you don't need the federal government to
24 bless that.

25 But finally, it's to replace an uncertain

1 taxation system with a jurisdiction-based system
2 just like the states have.

3 So you're -- you're from Snoqualmie? So,
4 you know, if somebody -- you all got a C store?
5 Okay. So, you know, if somebody walked into our C
6 store, you know, on your reservation, it shouldn't
7 matter whether they're black, white, red or green or
8 from Mars. I mean, if Martians land in Snoqualmie,
9 they should be paying tax to your tribe. You know,
10 if we're implementing Indian Country suggestions,
11 that's a system, you know. So I'm -- we're not
12 necessarily going to incorporated a zombie
13 apocalypse or martian invasions into these
14 regulations, you know, it shouldn't matter. And
15 according to the founding fathers it didn't matter,
16 and according to the suggestions coming from Indian
17 Country, it shouldn't matter in the 21st Century.

18 So what would the sovereignty zone look
19 like if we were to implement Indian Country
20 suggestions? Well, again, every single tribe
21 deserves a full and robust defense of its zone of
22 sovereignty. Again, just as a reminder, you notice
23 I have not yet said the -- and I won't use the term
24 termination. Because we don't see termination as a
25 good policy. We see it as a failed, bad policy.

1 We think every tribe deserves to have its
2 zone of sovereignty defended. What happens within
3 that zone, you know, that's going to vary, but we
4 always have a responsibility to defend the zone of
5 sovereignty on behalf of tribes. We're never going
6 to abrogate that. We are never going to -- you
7 know, at least not in this administration, you know.
8 So we will always have that responsibility. So that
9 to us is the opposite of termination. We are
10 defenders of that zone of sovereignty.

11 But within that, you know, obviously there
12 are going to be tribes, you know, with varying
13 capabilities. But if we implement Indian Country
14 suggestions for how trading commerce should be
15 regulated, what does that look like? Well, we have
16 well-defended the zone of sovereignty, but then when
17 we have state regulators come in and taxation
18 officials, every time they try to breach that zone
19 of sovereignty, they should be kept out.

20 And similarly, every time we, the federal
21 government, wants to come in where we're not needed
22 or wanted, we should be kept out. That zone of
23 sovereignty should mean something. That boundary
24 should mean something. And looking at Indian
25 Country suggestions, that's what the -- you know,

1 that would be the natural conclusion of what an
2 environment would look like.

3 So then the question is, well, how do we
4 get there? I can guarantee you we don't get there
5 just because the federal government says this is
6 what we should do. The only way we get there is
7 through a collaborative, consultative process with
8 Indian Country. We must get Indian Country's help
9 in this process, and here's why.

10 We have to make an economic case. I mean,
11 everybody in this room can sit here and say it's the
12 right thing to do. The founding fathers had the
13 right -- actually, Ronald Reagan said the same thing
14 in 1983. You know, we have -- you know, these are -
15 - these are the right things to do but not everybody
16 is convinced of that. And if we just go on the moral
17 case or the ethical case or make legal arguments, we
18 will fail. The only way we are going to succeed in
19 this collaborative process is we can demonstrate two
20 things.

21 The first one is easy. Demonstrate that
22 this is economically beneficial for Indian Country.
23 That one we can all figure out. The challenge is,
24 but it turns out to be true, is that if we create
25 prosperous tribal economies, it will be beneficial

1 for the surrounding states. And that's the economic
2 case that we're going to need to make, is that if we
3 go through and implement Indian Country's vision for
4 revised trade and commerce regulations, then the
5 surrounding states will be economically benefited.

6 We exist in a political environment and
7 what we need to do is make sure that we -- you know,
8 we can identify potential opposition and point out
9 to them, that economically, they're going to be
10 better off. There are states with budget problems
11 and so on, but if you think about it, there are --
12 there are tribes out there that have projects
13 sitting on the sidelines that if we were to change
14 the regulatory environment and change the taxation
15 environment so those projects become economically
16 viable, that's going to be a multi-billion dollar
17 stimulus into the tribal economies that will
18 eventually, through the normal, natural process leak
19 out into the surrounding state economies. We
20 literally could be talking about billions of dollars
21 flowing into states through the tribes. That's a
22 big deal. So what we need to do is be able to show
23 that the states are better off as well.

24 So as you know, my boss is a Navy SEAL.
25 And you know, as a military strategist, almost

1 everybody who had gone through some sort of military
2 training will eventually read Sun Tzu and the Art of
3 War. But our war is not against the states.
4 Because we are -- again, in my role, I represent --
5 I work for the President. I was appointed by the
6 President. I represent the people of the United
7 States. I have an -- it's like I'm the fiduciary
8 trust officer of a publicly-traded bank. I have to
9 maximize the value of the shareholders, which is the
10 people of the United States, but I have a fiduciary
11 obligation to the tribes.

12 In this case, what fulfills my fiduciary
13 obligation to Indian Country is also in the economic
14 best interest of the people of the United States.
15 Because if we can grow these tribal economies
16 collectively together with new regulations, and then
17 you all put in the hard work of actually doing the
18 business, that's going to create tremendous economic
19 growth, and that benefits everybody.

20 So, you know, the Sun Tzu says that to
21 fight and conquer in all your battles is not supreme
22 excellence. Supreme excellence consists in breaking
23 the enemy's resistance without fighting. We don't
24 want to pick a fight. What we want to do is we want
25 to demonstrate that this is in everybody's economic

1 best interest. And so I think the Sun Tzu quote
2 that's the most relevant perhaps, "The General who
3 wins a battle makes many calculations in his temple
4 before the battle is fought, thus do many
5 calculations lead to victory."

6 This is going to be won not because it's
7 morally right or not because it's the right thing do
8 to, but because it makes the most economic sense to
9 everybody involved. And that's where we need Indian
10 Country's help the most. Because we need to be able
11 to get information about projects that are not
12 happening but that would happen in a new regulatory
13 environment. You know, what sort of industries
14 would you be able to invest in. What sort of -- you
15 know, we're going to need data on the amount of
16 capital investment that people would spend.

17 So, for example, in the previous
18 consultation, the Navajo chairman was talking about
19 the Walmart approach to open up a Walmart in Chinle.
20 But because of the double-taxation environment, it
21 just wasn't profitable. I mean, Walmart is always
22 low prices every day. And so, you know, they're
23 operating on large volumes but small margins.

24 And if all of a sudden everything was
25 double taxes, you know, people would get -- their

1 business model didn't work. So guess what? There's
2 not a Walmart in Chinle. So that's an example of a
3 project that didn't happen but could have happened
4 in a new regulatory environment where the only
5 taxation would have been a Navajo Nation tax.

6 And so what we need is, you know,
7 information about -- you know, that's probably, you
8 know, several tens of millions of dollars of
9 construction and buying, you know, construction
10 materials from off reservation and so on. So it's a
11 big capital investment. We also need information
12 about the annual revenues and the jobs created. So,
13 you know, we sent out our -- hopefully all of you
14 all got a copy of the Dear Tribal Leader letter. If
15 you didn't, we will make sure to get it to you. But
16 in that, we asked a very specific set of questions.

17 And also, there's a -- there's a Harvard -
18 - Harvard project on American Indian economic
19 development study, a preliminary paper by Jonathan
20 Taylor and Kelly Croman that goes over and analyzes
21 -- and a lot of their data is from here in the
22 Pacific Northwest. But they go through and they
23 demonstrate some -- some of the challenges here.
24 But we need that kind of data.

25 We need to know from your communities and

1 the communities of your fellow tribes here in the
2 Pacific Northwest, we need to know about the
3 projects that are not happening but that would
4 happen if we changed the regulatory environment. We
5 need to know about how much money would be spent in
6 the one-time expenditure of the capital investment
7 up front. We need to know about the annual revenue
8 that those projects would be generating and about
9 the jobs that would be created. Because that will
10 then help us build the economic case. We're going
11 to take all of this data, put in a macroeconomic
12 modeling, and we will be able to demonstrate that
13 the states are better off in addition to the tribes
14 be -- in addition to the tribes being better off.

15 Now, some of you have also done economic
16 impact studies where you have gone in and showed --
17 everybody -- those of you who gave me operations,
18 you showed how much dollars were spent in your
19 communities, then turn around and benefit the
20 surrounding communities. We need that data as well
21 because that's already established and everything.
22 You know, that's -- that's a 20-year -- you know,
23 sometimes 30-year history of the impact of elevating
24 tribal economies, benefiting the surrounding
25 communities.

1 And lastly, my boss has said that we want
2 to not only meet our treaty obligations, but exceed
3 our treaty obligations. And so that means that they
4 are -- are individual treaties that you all have
5 identified where we have failed to fulfill our
6 treaty obligations, particularly in respect to
7 protecting your economic interests. We need to know
8 about it because we take those treaty obligations
9 seriously, at least in this administration.

10 And so, again, you know, the Dear Tribal
11 Leader letter lays these out. And capital
12 expenditures, annual revenues and jobs, and we don't
13 need confidential business information. We're not
14 looking to disclose publicly anybody's private
15 business secrets. What we -- we need just enough --
16 the main thing we need are these summary numbers and
17 we also need industry sector. So, you know, if you
18 have a particular project where you -- you know, if
19 you want to send us the whole business plan and say,
20 well, we did this feasibility study and it didn't
21 work because of the dual taxation or state
22 regulation or a federal regulation, that's useful.

23 So send us as much as you're comfortable
24 with. If, however, you are uncomfortable with
25 certain portions, just redact it. You know, just

1 keep -- you know, keep whatever confidential
2 information you need confidential. Because we are
3 going to disclose this data because we're going to
4 provide it to the Harvard project for them to do
5 their analysis. We are going to provide it to the
6 Federal Reserve for them to do an analysis. We're
7 going to provide it to a whole host of economists so
8 that we're going to have multiple sets of economists
9 looking at this -- because it's very straightforward
10 macroeconomic analysis. Every single dollar that
11 flows in -- into the Indian reservation that then
12 grows and multiplies and leaks out into the
13 surrounding economy is better for that surrounding
14 Indian economy.

15 But we can say that. But once we can
16 actually prove it with data where we -- because if
17 somebody said, well, gee, you know, people don't
18 invest in Indian Country because of this or that or
19 the other. Well, if you can show us that there are
20 projects that didn't happen because of the existing
21 regulatory environment, that's very powerful.
22 Because that's -- you know, there are some people
23 who -- who are -- I have some economist friends who
24 -- who don't know that that's the case. But we
25 collectively, through our consultation process can

1 collateratively prove that that's the case.

2 And that's the only way we'll be able to
3 succeed and move forward because we can't make the
4 economic case. I'm fairly certain this
5 administration won't move forward. I hope they
6 would just because, you know, it is true, but, you
7 know, that's something -- you know, that's something
8 that we -- we can -- we can -- we don't need to get
9 there because I believe the data is there. I've
10 already talked with many of you all and appreciate
11 the data the tribes have already started providing,
12 but the more data we can get, the better.

13 And Ashley's in charge -- she -- she's the
14 central nexus for collecting all the data. And so,
15 you know, we're going to put all this together. And
16 again, we do have a court reporter here today, so
17 we're capturing everything here today, you know, and
18 these transcripts will also be available from all
19 the consultation sessions.

20 So if you have stories you want to share
21 today, that would be awesome, but we also -- you
22 know, we encourage you to send in, you know, send in
23 written information so that we can synthesize it.
24 We've got economists on staff that are ready -- that
25 are sitting ready, chomping at the bit, ready to

1 jump into the economic data. We did not -- we
2 intentionally did not give a full template to fill
3 out. There's also the paperwork reduction things
4 that we have to follow. Let us do the heavy
5 lifting. If you'll just send us the raw data, we'll
6 go through the process. If you have any questions,
7 we'll follow up with you.

8 But at that point, that's pretty much all
9 I wanted to cover in terms of the introduction.
10 What we're really interested in, what we desperately
11 need is to hear from you all. So at that point, let
12 me turn the floor over to you all if you all have
13 any questions.

14 **MR. HARJU:** Again, thank you for coming
15 out to the great Northwest and being here. I -- you
16 know, in listening to BIA consultations, federal
17 government consultations, you know, over the years
18 there was different themes that would come out of
19 Washington D.C. that you're going to knock down the
20 silo, we're all going to work together. There's
21 this trust responsibility, you know, and it just
22 sort of recycles its way around sometimes, and
23 sometimes I think the tribes are frustrated because
24 there's a lot of talk and not a lot of action
25 sometimes. So I -- my comments to the BIA would be

1 is that you do have a trust responsibility for the
2 tribes. And please help us with other federal
3 agencies that say, well, BIA has a trust obligation
4 but the Bureau of Land Management doesn't do that or
5 the national -- you know, these different things.

6 It's the United States government that has
7 a trust responsibility to the tribes in this
8 country. And so one of the things that the BIA can
9 help as a leader is to help educate your other
10 federal agencies. I mean, there's nothing more
11 frustrating than dealing with the treasury
12 department or the IRS and they act like we are
13 zombies or we are from another planet sometimes, you
14 know. The tribes aren't sovereigns, you know, and
15 then they -- they rule the world. So helping in
16 those areas.

17 And then the other thing I always like to
18 tell the federal agencies is the one thing you could
19 do to help tribes is -- is in your trust
20 responsibility to funding is when there is federal
21 money that the tribes use for different economic
22 development, you know, for public works or for
23 whatever process, let the tribes make those
24 decisions and give the money to the tribes. Don't
25 funnel them through the different agencies. Don't

1 funnel them through the states, because the states
2 30 or 40 percent of -- and then, you know, the money
3 -- some money gets to the Ute Tribe eventually, you
4 know, but give it directly to them. Trust the
5 sovereign governments of each nation, you know, of
6 my tribe, Snoqualmie, the Ute, all these -- even the
7 Chickasaw probably. No. No.

8 You know, they have governments. They
9 deal with these ideas of budgeting, you know, it's -
10 - it's -- deal directly with the tribes in -- in
11 those areas. And so I was always like to say that,
12 you know, you mentioned double taxation, I'm
13 grateful to see that the federal government is going
14 to meet this in Tulalip. You know, the Tulalip tribe
15 is suing the state over the double taxation issue
16 and the whole Quil Ceda Village and that area.

17 Unfortunately, this is another one of
18 those areas where the federal government should have
19 taken the lead and drafted some regulations and
20 helped all the tribes. So now one tribe has to go
21 to a federal court and eventually we'll get a, I'm
22 sure, favorable opinion, and then they'll say, oh,
23 that's what the law is now. Well, yeah. So -- but
24 we shouldn't have to go to federal -- have a federal
25 judge tell everyone what the law is and what's

1 double taxation and how it hurts the tribes.

2 So, again, like many things in Washington,
3 I guess, we're the leader in fuel, cigarettes and
4 all those cases that have gone up to the Supreme
5 Court that it's a burden on the tribes to have to go
6 to court to enforce rights that everyone should
7 agree on, I think. And so in economic development,
8 I think that the BIA can help tribes. And like I
9 said, sometimes it's help with other agencies.

10 You talked a lot about the fights that the
11 tribes and the states have had over the years, and
12 that's historic. A thing that's emerging now is the
13 tribes are fighting not just the states but the
14 counties and the cities, and the weed board, and the
15 animal control board. You know, there's all of these
16 agencies that think that they control the trust land
17 or control what the tribes can do. We could use
18 help from the Bureau of Indian Affairs to help, you
19 know, the solicitor's office and help the tribes
20 with these endeavors. When the tribes are providing
21 economic development for the communities and jobs
22 and everything that's going on, let the tribal
23 governments handle those.

24 So, I mean, that's -- that's just sort of
25 my two cents out of this that -- that you do have an

1 important role at the BIA. And I think tribal
2 leaders also have a role of making sure you're --
3 you have adequate funding so the important services
4 -- I can tell you how the Portland regional office,
5 their environmental officer got transferred to
6 headquarters and we were going to open up our
7 casino, and Verizon -- there was -- where we were
8 at, nobody was going to be able to talk on their
9 cell phone because there wasn't adequate cell phone
10 coverage out there, and everybody knew it.
11 Everybody knew it.

12 So we asked Verizon and they came up with
13 a plan that they were going to put in -- what they
14 call a COW, which is a cell tower on wheels, I found
15 out. My joke was we had to go to the BIA to put a
16 COW on the reservation. We had to go through a NEPA
17 process to put a COW on the reservation. But we
18 actually had to. So it -- we -- fortunately, we had
19 an enlightened regional director and some people in
20 D.C. that understood that this was just a temporary
21 -- and we got the paperwork because Verizon couldn't
22 put it on federal trust property because they have a
23 NEPA checklist that they have to do. And it's --
24 and we did get -- we do have a COW on the
25 reservation and it's NEPA approved so that we can

1 talk on our cell phones. So there -- a lot of those
2 things that just an ordinary person would say, well,
3 this just makes common sense that, you know, you
4 shouldn't have to do this, this, and this for that.
5 But the -- but that's the problem we have.

6 And so I would also urge when you go to
7 congress -- I know you guys can't lobby congress,
8 but in your budget requests, some of these federal
9 agencies do need environmental officers. They need
10 land surveyors. They need things to carry out the
11 functions that the congress has given to the BIA.
12 And it hinders the tribes if we can't even put a
13 telephone line in or put a -- you know, we have to
14 do all this environmental work if we have to wait
15 for the Corps of Engineers or the BIA and
16 everything, you hinder economic development and hurt
17 the tribes. So, again, I understand the paperwork
18 in DC and what some of these good-natured
19 regulations are, but some of those are -- hinder
20 tribes and hinder the U.S., hinder everyone. And
21 any help you can give will be appreciated. Thank you
22 for listening.

23 **DR. CLARKSON:** Well, and let me -- let me
24 thank you for your comments. And the stories that
25 you're telling, we need to hear about the COW. We

1 need you to tell us about the COW, because that's a
2 perfect example when -- you know, one of the things
3 that we have for these regulations -- I know you had
4 to step out of the room for just a little bit -- we
5 want to make sure we can give the tribes the ability
6 -- I mean, did you need us to NEPA-approve that COW?
7 No, you didn't. You're perfectly capable of doing
8 it yourself. You probably have your own land use
9 people and your own environmental people. The only
10 reason -- in some cases the only reason why we had
11 to do that is because somebody decided somewhere way
12 back when, that we were just going to start treating
13 tribal lands as public lands. There's actually not
14 a statute that we've been able to identify that
15 requires that tribal lands be treated as public
16 lands.

17 So part of what we're -- you know, again,
18 what Indian Country is suggesting is that if we go
19 back to, you know, what the intent of the founding
20 fathers were, that the only tribe, the only entity
21 that needs to decide whether that, you know, a cell
22 tower on wheels is appropriate at your reservation
23 is you. Not we -- why do I need to tell you that
24 you can put a cell tower on wheels on your
25 reservation? No. And like you said, it makes

1 common sense.

2 So part of what we're trying to do in this
3 initiative, and in listening to Indian Country,
4 you're not the only tribal leader to say there's a
5 whole bunch of stupid stuff that we impose on Indian
6 Country for really no good reason at all. But the
7 only way -- you know, what we need to do is be able
8 to demonstrate how much easier it would be for you
9 to engage in that economic -- so it's -- you know,
10 in some sense you'd say, well, gee, does it get
11 better at the bureaucracy. People have been
12 claiming -- asking us to get better with the
13 bureaucracy for longer than you and I have been
14 alive. And -- you know, it hadn't worked so far.

15 So maybe what we need to do is just
16 eliminate the bureaucratic burden and allow you and
17 your tribal council and your leadership to decide
18 what's right. And I -- I realize that's potentially
19 a different paradigm because for so long it's
20 always, well, gee, you know, we -- again, I've only
21 been a Fed for 11 weeks. So, you know, again -- and
22 by the way, I apologize for the last 11 weeks, it
23 has been my fault. But, you know, as Secretary
24 Zinke said, since he became Secretary of Interior,
25 it became all his fault.

1 And so, you know, we recognize that we are
2 sitting in this role but we're also, you know,
3 circumspect about how bad we've been at various
4 different things and we, you know, we can either get
5 better at it and we should get better where we're
6 going to stay in the game. But how about we just,
7 you know, take a different approach and allow you
8 all to be in charge.

9 **MR. HARJU:** Well, I can tell you that
10 we're dealing with Verizon and then we're going to
11 try to put a permanent cell tower in and it's not
12 going to be on trust property, because Verizon just
13 -- they're going to put it on -- across the freeway
14 on fee property somewhere. It's easier for them to
15 permit it and get it built.

16 **DR. CLARKSON:** And -- and --

17 **MR. HARJU:** It seems ridiculous but --

18 **DR. CLARKSON:** It -- no. It doesn't seem
19 -- let me disagree with you, and I rarely try to
20 disagree with tribal leaders as a Fed -- it doesn't
21 seem ridiculous, it is ridiculous. It is absolutely
22 insane, but you hear it over and over and over again
23 how it's so much easier to do stuff off reservation
24 than on reservation. So you can see how -- four
25 months off reservation, 31 months on reservation.

1 Why shouldn't -- I mean, if you look at the map of
2 all of -- you know, all these cell phone companies
3 and they're all advertising, oh, look at all our
4 high-speed data coverage. And you see the little
5 white spots in their map -- you're laughing because
6 you know where those white spots -- where -- where
7 are those white spots?

8 **MR. ROSS:** On Reservation land.

9 **DR. CLARKSON:** They're on Reservation.
10 So, you know, it's -- it's because we, the federal
11 government, have made it so hard. So, you know,
12 yes, we're looking at dual taxation system, the
13 state regulation system, and it's not just us as the
14 federal government. There's sometimes where state
15 regulation has -- you know, there are solar farms
16 and wind -- and tribal wind farms that are being
17 held up because of state processes.

18 So where -- you know, where we can, we
19 want to use this as a mechanism. Because, again, we
20 can only go as far as congress has authorized us to
21 go. We believe that congress spoke and spoke fairly
22 loudly in terms of the original legislative intent
23 about the exclusion of state interference in tribal
24 economic development, tribal economic activity. And
25 I have asked and have yet to have it answered about

1 where is the statutory requirement that we treat
2 tribal lands as public lands. I -- nobody has given
3 me that -- it may be there. I'm not saying it's not
4 there, but nobody -- nobody has given it to me yet.

5 The only other thing I have to say is that
6 the BIA doesn't report to me, per se. As Deputy
7 Assistant Secretary for Policy and Economic
8 Development, I supervise the Office of Indian Energy
9 and Economic Development, which Jerry is part of as
10 the Indian Loan Guarantee Program. And people call
11 it the BIA Loan Guarantee Program, but we actually
12 pulled it out of the BIA years ago. So it's
13 actually the Office of Indian Energy and Economic
14 Development Indian Loan Guarantee Program. I also
15 supervise the Office of Self-Governance and that's
16 another thing that, you know, if we go to this view,
17 you know, I don't know how many of you all are self-
18 governance tribes, you know. But, again, I would
19 encourage you, as many as possible to consider
20 looking at self-governance because the amount of
21 money is the same. You know, if we're sending you
22 bureaucrats or we're sending you money, you know,
23 it's a chance for you all to be in charge. Yes,
24 sir?

25 **MR. SPEAKS:** We have 24 self-governance

1 tribes out of 45 in the Northwest.

2 **DR. CLARKSON:** Okay. I think that makes
3 you the leader in terms of percentage. And so we,
4 you know, encourage -- you know, encourage -- again,
5 we're not forcing anybody to do that. If -- there
6 are some tribes that, you know, my grandkids will be
7 involved with direct service tribes because the
8 amount of damage that we -- that we caused as the
9 federal government. But those tribes that are
10 capable and ready, you know, I would encourage all
11 of you to look at our self-governance program
12 because it really does -- and you don't have to do
13 self-governance for everything. You can do self-
14 governance and piecemeal it with this and that, you
15 know, and various different pieces as you build your
16 sovereign infrastructure and your tribal empowerment
17 increases.

18 So I would encourage you to look at that.
19 We're not forcing anybody to go there. If there's a
20 tribe that says, no, we're going to be here for a
21 while because we've got some issues to deal with,
22 you know, that's fine and we will respect -- you
23 know, again, it's where do the tribes want to be.
24 So -- but, again, if we go back to, you know, what
25 you're talking about, you know, the main things that

1 we're trying to do is get us out of the way so that
2 you don't need our permission to get cell phone
3 coverage, because that is insane. So -- so -- but
4 the important thing is that we need you to tell us
5 those stories.

6 **MR. HARJU:** So I don't -- I'm all in favor
7 of the tribes doing things, but I'm also in favor of
8 the Interior Department being adequately funded to
9 provide the services that we need -- that the tribes
10 need and that the country needs to -- to get along
11 and to work. You know, like I said, if we can't get
12 land -- a certified land surveyor to do something,
13 we have to wait a year for that to happen, you know,
14 that's -- you know, it used to be the BIA provided
15 those services. They all got cut so there's got to
16 be other ways of handling things in the 21st
17 Century.

18 **DR. CLARKSON:** You know, and -- and we
19 agree. The issue is, you know, that, you know, we
20 were asked to put together a balanced budget and we
21 put together what a balanced budget looks like.
22 And, you know, some people don't think it's very
23 pretty. And -- but, I mean, I -- I have run this
24 answer, you know, up through the channels and they
25 agree. There is so much damage that this federal

1 government has caused to Indian Country that no
2 congress, Democrat or Republican, will never
3 appropriate enough money to fix all the things that
4 we, the federal government, blew up, and broke, and
5 destroyed, and damaged, and diseased, and do
6 whatever. Congress will never appropriate the full
7 amount of what Indian Country has suffered over the
8 last 200 years. It just ain't going to happen.

9 So then the question is, what could
10 happen? And what could happen is, yes, we need to do
11 our job and do it better and be efficient with the
12 monies that Congress has allocated to us and do a
13 good job of -- of deploying those resource in Indian
14 Country. There's no doubt that we need to get
15 better at what we do and there's a whole separate
16 process of BIA reorganization consultations that are
17 going on about how do we get better at the things
18 that we are doing.

19 But, I mean, they -- there are mechanisms
20 where, you know -- what if instead of us having a --
21 you know, instead of us providing the surveyor, what
22 if we just gave you the money so you could hire the
23 surveyor or you could band together with several
24 tribes, you know, and collectively you have a
25 surveyor that works among an intertribal coalition

1 so you could do that stuff yourself. And you hire
2 somebody that might be better than anybody we'd send
3 you. So, you know, it's -- it's a different
4 paradigm and, again, it's outside the scope of this
5 with the exception that you think about it.

6 Again, we're never going to give you
7 enough money to fix all the damage we caused. It
8 just -- it just -- congress will never appropriate
9 that much money to fix everything that we messed up
10 as the federal government. But what if all of a
11 sudden, instead of us being the bulk of the money
12 coming in, what if your county is so scorchingly
13 successful and so robust that like every other
14 government you generate your own revenues to fund
15 all your own stuff. And what we do is we fulfill
16 our treaty responsibility with supplements -- you
17 know, we still give you the same amount of money,
18 but instead of us being the bulk of the money you
19 get from the outside, you know, imagine a world
20 where we're 10 to 20 percent of what you get from
21 the outside because the rest you're generating
22 internally because your own economies are on par, if
23 not better, than surrounding economies.

24 So -- and that -- that's what governments
25 do. I mean, you're talking about -- you -- I think

1 you were mentioning -- you're pointing out to the
2 state and the local -- or the county governments
3 that they're mere -- they are merely
4 instrumentalities of the state whereas you all are
5 sovereign. Sovereigns raise taxes by taxing
6 economic activity, but because of the existing
7 situation, you've been denied that.

8 And so, you know, what -- what we're
9 hearing from Indian Country is that Indian Country
10 would like to try something different and say, you
11 know, how about let us tax and regulate the economic
12 activity in our own communities. We'll generate the
13 revenue because we're the ones best prepared and
14 best interested in taking care of our youth, and
15 taking care of our elders, and taking care of the
16 needs.

17 I had breakfast with a -- with an attorney
18 for a tribe this morning. And he said, you know,
19 their -- you know, their big thing is if we can get
20 the federal government out of the way, we can meet
21 100 percent of the unmet need of our community with
22 the economic activity that would happen. How about
23 that? You know, all of a sudden we're in a
24 situation where tribes are not only empowered, but,
25 you know, their economies are so robust that, you

1 know, they're able to generate the revenue that
2 meets all the needs. Now, are we there yet? No,
3 we're not. But -- can we get there? That's what
4 we're trying to figure out. Yes, sir?

5 **MR. SPEAKS:** Just let me state, you know,
6 right now there's not sufficient funds for tribes,
7 federal funds. We may be able to carry out the
8 function and responsibilities and meet the needs of
9 the tribes. But what the tribes do now, many of
10 them, they supplement those programs from their own
11 federal -- from their own income. And that's
12 happening right now with many, many of our tribes.
13 So they're already needing it in this area, but they
14 just need the options and opportunities to really be
15 able to advance in economic business development and
16 be able to accomplish -- to meet their own needs.

17 **DR. CLARKSON:** And that, I think, is what
18 we are collectively trying to reach is a situation
19 where tribes are in charge. And where tribes are
20 generating -- and their tribal economies are under
21 tribal control and tribal regulation, tribal tax
22 authority so the tribes are checking revenue. At
23 least that's the -- those are the suggestions that
24 we're getting from Indian Country. And, you know,
25 so in that environment, you know, in this zone it's

1 the tribes deciding what's right and it's the tribes
2 in charge and the tribes are deploying the revenues
3 and the tribes are deploy -- generating the
4 governmental revenues to meet the needs of the
5 community.

6 Now, we have still have the -- we have
7 treaty obligations. We have a trust responsibility
8 and this is not an attempt to advocate or get away
9 from any of that. That's just recognizing that, you
10 know, that congress is appropriating X-amount of
11 money. We get X-amount of money, and I'm fairly
12 certain, sight unseen, that that will not be enough
13 to fix all the damage the federal government has
14 cost. But we have never, ever -- at least not since
15 1834, given tribes complete control and autonomy and
16 authority to tax and regulate their own economies.
17 So maybe -- you know, maybe the founding fathers had
18 it right.

19 And again, this is something where, you
20 know -- oh, the other nice thing -- I don't know if
21 you -- you mentioned you're general counsel so in
22 terms of the legal structures, there are four tribes
23 that submitted proposed regulations. Any tribes --
24 again, I mean in our Dear Tribal Leader letter we
25 call for, you know, this specific set of

1 information, but if you all have proposed
2 regulations that you think we should consider, you
3 know, we're certainly open to looking at regulations
4 in this process as well. So Lummi, Otoe-Missouria,
5 Black Butte is there and there was one other --
6 Citizen Power Logging, all sent in proposed
7 regulations.

8 So if we move forward with draft
9 regulations or proposed regulations, we're going to
10 start with Indian Country as a base. And so we're
11 going to start with what Indian Country suggests we
12 should do. And so now is the time, if you have
13 proposed regulations that you think we ought to look
14 at -- and actually, the suggestion from the Ute
15 Nation, you know, they were the ones in this
16 consultation process who highlighted the fact that,
17 you know, there is no statutory requirement that we
18 treat tribal lands as public lands.

19 So even in this consultation process face-
20 to-face, we're continuing to getting new ideas. So
21 if you have suggestions about how these regulations
22 can be drafted so as to benefit Indian Country, to
23 make tribal economies more prosperous, that's what -
24 - we absolutely want to hear that. And we want to
25 be able to document that for the world to see that,

1 in fact, you know, it can be better if we just get
2 government out of the way.

3 But, again, I really do appreciate your
4 comments and -- and we are -- and we are recording
5 everything so, you know -- you know, everybody will
6 get a chance to hear what you said. Okay? Anybody
7 -- we want to make sure everybody -- do the folks
8 from Snoqualmie -- are you -- do you all have any --
9 anything you want to add?

10 **MR. ROSS:** Yeah. I would --

11 **DR. CLARKSON:** Yeah. If you could just
12 grab the mic. Go ahead and grab the mic.

13 **MR. ROSS:** Yeah. I appreciate your words
14 and I appreciate your words, too, Phil. That was
15 very interesting to hear about the COW. I just
16 stopped by your beautiful casino on the way down,
17 you know, made my donations to the college fund and
18 -- but the only thing I saw -- I mean, it really
19 opened my eyes to see that. It's good to hear
20 examples and stories. And the only thing I saw that
21 you probably should have done is gone through USDA
22 and certified that COW before you put it on your
23 reservation.

24 **MR. HARJU:** Yeah, we didn't do -- like I
25 said, we had to do a NEPA -- Verizon has a checklist

1 that the FCC and the federal government gives them
2 before they can site even a temporary one. And one
3 of them is you have to have a BIA check off for
4 trust land.

5 **DR. CLARKSON:** Even if it's on wheels?

6 **MR. HARJU:** Yeah.

7 **DR. CLARKSON:** That's -- that's crazy.
8 It's not a permanent structure. You didn't dig a
9 hole and they still -- and had to have NEPA for a
10 truck.

11 **MR. HARJU:** They have a generator there
12 that -- it doesn't even hook to electricity, you
13 know. I mean -- it's up and running though. I
14 thank -- we have to thank Stan Speaks and his staff
15 for expediting some stuff in D.C. for us or it would
16 still be sitting in someone's desk back there.

17 **MR. ROSS:** Thank you. I really like to
18 hear those things. Thanks, Stan, for helping out.
19 But, no, I think it's -- I think it's really great,
20 our tribe, you know, sent me down here because we
21 want to be involved in this consultation because we
22 do appreciate modernizing these regulations because
23 it has been far too long. And we want to be self-
24 governance. We want to be independent, self-
25 regulated. And we want to be successful, but we

1 can't be successful if the -- if the barriers to
2 entry to have a business on our reservation are far
3 too long, far too complex.

4 It -- it puts us at a competitive
5 disadvantage to our non-native counterparts. I mean
6 while there's some good reasons, but if only certain
7 businesses that are experienced or have done -- have
8 taken the leap, right, and done business with tribes
9 that understand the regulations are going to take
10 that risk. Because every business venture is a
11 risk. Right. And they're going to take that risk,
12 but if it was easier and less complex and easier to
13 understand, I think more businesses would be, you
14 know, readily available to -- to do business on
15 reservations. But currently, it is -- it's too
16 complex. It's too hard to understand for the average
17 business owner.

18 And we would love to see -- we would love
19 to see, you know, compacts that give the control
20 back to tribes, like under the HEARTH Act. And we'd
21 love to reduce those barriers and entries so that
22 average businesses can just -- you know, can really
23 reach out to us and do business on our reservation,
24 and in turn, promote and promulgate success on the
25 reservation and off the reservation.

1 And we know that because of these -- in
2 our tribe, we know that, specifically, we've
3 quantitated those numbers just recently with
4 Jonathan Taylor and his group. And I'll pass those
5 out. We just finished our economic impact study and
6 it really helped us better understand what our
7 impact financially was in the community, and to
8 actually have those numbers so that when we're
9 arguing with city and county and state officials,
10 you know, it's not just speculation. It's hard
11 evidence and hard numbers so if I can just pass them
12 out. Is that --

13 **DR. CLARKSON:** Yeah. That'd be great.
14 That'd be great. Make sure Ashley gets one because
15 she's -- she's the most -- from our office, she's
16 the most important person in the room. Stan would
17 be the second most important. Do you have a PDF you
18 can send us or is it just the print version?

19 **MR. ROSS:** No. I'll send you a PDF and we
20 have to -- we have to further drill down our
21 official comment to submit. So we'll submit that
22 and the PDF.

23 **DR. CLARKSON:** Okay. That would be
24 awesome. Thank you so much.

25 **MR. ROSS:** So -- but some of the -- some

1 of the highlights that were very interesting for us
2 to see was how much of our -- how much of the jobs
3 and the money and the taxes paid are going off
4 reservation. Right. All of our clientele are
5 coming from off the reservation and pulling that
6 majority of them from metropolitan -- Seattle
7 metropolitan area, right. And that's bringing them
8 into this pseudo-urban, suburban area of Snoqualmie.
9 95 percent of our jobs are -- are held by non-
10 natives. Right. Five percent are only held by
11 Natives. I know that's probably shocking to some of
12 you. Our tribe is fairly small, but there's a lot
13 of tribes in Washington state and there's a lot of
14 Native Americans in Washington state that could be,
15 you know, holding these jobs, but they don't.

16 And that fact alone means that we're
17 paying out that money to thousands of families that
18 are non-native. Right. And we're paying out
19 millions and millions of dollars to non-native
20 vendors. And we're importing everything, right, on
21 the reservation. And it's really helped us show to
22 our council counterparts or whatever it is, our
23 official counterparts at the state and county and
24 city levels, that we are here to help sustain this
25 community that we live in.

1 We give a lot of our contributions. Our
2 tribal contributions go to Snoqualmie Valley area,
3 assisting families and 501(c)(3), and we put a
4 preference on local, right. So those local places
5 have preference to receive those charitable
6 donations. And it's -- it is good. I hope each one
7 of your tribes can do one and hopefully you can have
8 those numbers and, you know, you can pass it out.
9 It's on fancy paper and it's -- you know, it's done
10 by a Harvard alumni and, you know, so you're non-
11 native counterparts might, you know, actually
12 believe it.

13 So -- but -- but having -- having that
14 certainty to self-regulate ourselves in our own
15 tribe will give better timelines for the businesses
16 that want to come on. If they have to wait 31
17 months, if all goes well to receive licensing or
18 permitting to do business on the reservation, it's -
19 - it's a lot less likely and it's a lot less
20 profitable for them to wait that long.

21 So if we could -- if we could issue that
22 in conjunction with the federal government at the --
23 at the sovereign tribal level, and not have to jump
24 through the hoops and get approval from the federal
25 government, it would make -- it would shorten that

1 timeline, therefore, decreasing that barrier
2 eventually and increasing the success of any
3 business that wants to come on the reservation. So
4 it would put us at a closer -- it would put -- it
5 would level the playing field a little bit more when
6 we're trying to compete with other businesses off
7 reservation. And I think if we could just do that
8 it would help tremendously.

9 So we from Snoqualmie want to thank you
10 for all -- for starting this consultation process
11 and starting the revisions, because they are long
12 overdue, and we can't wait to give our comment and
13 our suggestions and hopefully contribute to that
14 change. And we all know it's going to take a while,
15 but it's good to take the first step so thank you.

16 **DR. CLARKSON:** I really appreciate your
17 comments and I really appreciate exactly this. You
18 know, and hopefully -- I mean, I don't know if you
19 all have a similar sort of impact study. You know,
20 we -- we would love to get as much of this kind of
21 information from Indian Country as possible because
22 -- now, just as follow-up question to you, how
23 responsive have you found your local community when
24 you present this kind of information?

25 **MR. ROSS:** Not as responsive as we had

1 hoped. We just kind of -- we just got it finished
2 and we released it first to some of the councils in
3 the adjacent cities to our reservation. And some of
4 them were interested and some of them were not so
5 interested, but it's -- you know, it's -- it's an
6 educational process. It's going to take time to
7 educate our council counterparts on the city and
8 state levels. But if we don't have the materials to
9 educate them with, then it doesn't -- it doesn't
10 help so.

11 But we -- the other thing I just want to
12 mention was we would like to -- we want to stand
13 with NCAI and the tribes requesting to move forward
14 on these regulation revisions. And we don't want --
15 we want this process -- kind of like what Phil was
16 saying -- we want this process with this department
17 to go well. It's not universal across all
18 departments, which is -- you know, which is hard and
19 it's irritating. But, specifically, land and trust
20 process being revised, that will be hopefully --
21 hopefully, it will generate more sovereignty and
22 hopefully it'll go like it is with these regulation
23 revisions. Because if it goes the other way, it'll
24 be -- it will be detrimental to the tribes, and
25 economically and culturally it will hurt sovereignty

1 as a whole. So that was the last part I had to -- I
2 had to throw in so thank you.

3 **DR. CLARKSON:** Thank you for that. And --
4 and it is true, we are in the process of examining,
5 you know, how we can -- you know, you talk about
6 getting better at what we do, you know, being more
7 efficient, you know, providing more certainty.
8 Because one of the -- the land trust process and
9 everything, one of the most expensive questions in
10 Indian Country, which the lawyers love, is "it
11 depends." And the advanced answer is "it depends
12 sometimes." And tribal leaders, you know, when they
13 hear that, they just got to grab the checkbook
14 because they know that some lawyer is going to get
15 spent -- you know, get a whole bunch of money spent
16 on answering the "it depends" question.

17 **MR. HARJU:** It's still on appeal.

18 **DR. CLARKSON:** Yeah. So -- exactly. And
19 so you go back to that -- I meant to respond to the
20 point you were making earlier and that is, you know,
21 why should it be that tribes have to go spend tens
22 of millions of dollars on litigation. Well, they
23 shouldn't, but the reason they do is because we have
24 an uncertain taxation system, an uncertain
25 regulation system. And part of the goal of any

1 regulatory reform would be to reduce that
2 uncertainty.

3 As a finance professor, one of the things
4 we always tell our students is that, you know, the
5 capital market hate uncertainty. And they penalize
6 investments because of uncertainty or they demand a
7 premium if there's uncertainty. And so if we can
8 reduce the uncertainty in Indian Country, you know,
9 as much as I -- you know, I have a feeling my Indian
10 law friends will forgive me that I've reduced the
11 amount of work that they can bill for dealing with
12 the "it depends" question. Because hopefully, they
13 will then spend all their legal hours on doing
14 business development for actual business rather than
15 on dealing with uncertainty and litigating uncertain
16 legal environments.

17 So, you know, going back to that point, I
18 think everything that we're trying to do, at least
19 that I've been involved in since I got here -- and
20 again, I've been here -- you know, I'm in week 11, I
21 think -- or maybe week 12, I've lost -- slowly --
22 however many weeks it's been since June 12th. But
23 we want to reduce the uncertainty for businesses in
24 Indian Country, both for the tribes themselves and
25 for those off-reservation business partners that the

1 tribes want to invite on to -- on to Indian Lands.
2 We want to reduce the uncertainty and reduce the
3 transaction costs and reduce any liquidity premiums
4 or adjustment premiums associated with uncertainty
5 so that economies and business in Indian Country
6 can, for the first time in a long time, maybe in the
7 last 150 years, be unshackled and be able to thrive
8 and prosper.

9 And so that's our objective is tribal
10 empowerment, tribal self-determination, and full
11 tribal economic sovereignty. Yes, sir?

12 **MR. SPEAKS:** In relationship to that, when
13 you consider markets for tribes, a lot of times the
14 reservations are really -- they don't have the best
15 market situations for any type of business. And
16 they look to property off the reservation, adjacent
17 to and sometimes it extends out. And we keep
18 getting these remarks from somewheres in the Central
19 Office.

20 **(Telephone interruption.)**

21 **MR. SPEAKS:** What I'm getting at, though,
22 is -- is many times tribes, they don't have trust
23 lands or reservation property in a good market area.
24 They'd like to be off -- get off the Res in a good
25 market area, and there's such restrictions. And I

1 understand there's going to be more now on the fee
2 trust, right?

3 **DR. CLARKSON:** I would suggest waiting to
4 see what the final product looks like. You know, I
5 don't want presage everything because everything is
6 still being -- in the process of being developed.

7 **(Telephone interruption -- off-the-record**
8 **exchange.)**

9 **DR. CLARKSON:** So in terms -- in terms of
10 land and trust regulations, obviously, those are
11 very sensitive and very -- you know, there's a lot
12 of worry and angst about those. I have had a chance
13 to opine and comment. I believe that the things
14 that I put in there, you know, assuming they make it
15 to the final regulations are definitely to the
16 benefit if business development. You know, there
17 are -- there were some things that I viewed, you
18 know, in terms of the previous versions of sort of
19 an anti-capitalist bias. I've tried to eliminate
20 that anti-capitalist bias, you know, at least in my
21 comments. But, again, you know, I don't want to
22 presage what the final output looks like, but I
23 would say that, you know, there's always some
24 uncertainty about the unknown.

25 But know that this administrative is

1 focused on -- on -- number one priority is economic
2 development for a reason. And so I would -- I would
3 encourage you to wait -- you know, wait and see what
4 those regulations look like and measure them against
5 how they advance these priorities of economic
6 development, and tribal empowerment, and human
7 capital development.

8 Because I -- you know, my hope is that
9 you'll be -- you'll be pleasantly surprised. So --
10 and Ashley, if I start talking too much about other
11 regulations, you're supposed to throw something at
12 me.

13 **MS. FRY:** I think you're okay.

14 **DR. CLARKSON:** Okay. Thank you. You
15 always want to check with the -- I mean, our
16 regulatory affairs' folks are awesome and they have
17 been tremendously beneficial in guiding me through
18 this process. And I want to -- on the record with
19 the court reporter, say thank you to the regulatory
20 affairs folks. So -- yes.

21 **MR. SMALL:** I'd like to -- I'm from the
22 UTE Tribe --

23 **DR. CLARKSON:** Just pull the microphone a
24 little closer to you.

25 **MR. SMALL:** We're an energy tribe. We --

1 we lease about 400,000 acres of our land. We have
2 about 7,000 wells, 45,000 barrels a day. Oil and
3 gas development on our reservation is -- is what
4 builds our economy for our people, pays for our
5 services, our law enforcement. Like you were
6 talking about, the government only gives so many
7 dollars, but we're the ones putting up the money to
8 -- to run the police department, to bring, you know,
9 our own investigators to do all of that.

10 But the regulations that the government
11 imposes on oil and gas and the restrictions --
12 they'd rather go on state lands than to come to the
13 reservation because it takes, like -- like the
14 gentleman was saying, like, 31 months before they
15 can -- sometimes longer than that before they can
16 get on the reservation to drill.

17 So they'll go on state land before they'll
18 come on tribal land. And the regulations that hold
19 us up with Fish and Wildlife. We've gone in and
20 we've done our own studies on some of these
21 endangered species because Fish and Wildlife just
22 takes too long. So we end up doing this and putting
23 our own capital out there.

24 The government needs to loosen but also
25 grow with us. That's what I believe. They need to

1 move along with us and not stay stagnant like they
2 have in these regulations that continue. Every year
3 there's a new regulation on energy or something like
4 that. It just makes it hard. But we've continued
5 to grow and prosper.

6 One of the things I wanted to mention is
7 we have a pretty good tax -- taxing -- we worked out
8 this agreement with the state where we entered into
9 the -- it's to limit the impact to our economy from
10 dual taxation of oil and gas and keep producing
11 strong, and that's what we've been able to do. Our
12 agreement is called the Uintah Basin Revitalization
13 Fund. The fund supports government economic
14 development in our region and on our reservation.

15 So they meet, I think, like three times a
16 year, but with the money, the county -- both
17 counties get so much of the funding to put into
18 different facilities within their -- within the
19 counties, but also the tribal members get to use
20 those. But we get -- we get the bigger majority
21 back so that we're able to buy houses and do
22 different things with on our reservation. So it's
23 worked out great for the past -- I think it's been
24 in place for about 20 years, maybe longer. You
25 know, that could serve as a model for some tribes to

1 work with your counties and your state. That's what
2 we've been able to do.

3 **DR. CLARKSON:** So that's -- that's an
4 agreement between you and the state --

5 **MR. SMALL:** Yes.

6 **DR. CLARKSON:** -- that basically allows
7 some of the money that's collected to come back to
8 the reservation.

9 **MR. SMALL:** We get about 60-70 percent of
10 it back and then the counties get the other portion
11 of that. But we all -- we all -- there's a committee
12 set up between the tribe -- there's tribal members
13 and county officials that sit on this committee that
14 approve the projects for the tribe and for within
15 the counties. So it's worked out great. We've been
16 able to bring in -- we've been able to provide
17 housing for our people. I want to say we've been
18 able to buy more than 200 homes or more and
19 remodeled different buildings within our -- old BIA
20 buildings within our reservation.

21 We just built a new justice center that,
22 again, government told us they would build us a new
23 justice center when they closed our old one. And it
24 sat for about 20 years, nothing happened. So we
25 ended up having to dig in our pockets and spent

1 almost \$40 million to build this new justice center.
2 And we're still working with government to get the
3 Bureau in there, and our justice center, and our
4 court system.

5 **DR. CLARKSON:** So just cycling back
6 because you all are in a -- in somewhat of a unique
7 situation that you do -- you are able to capture
8 some of the tax revenues --

9 **MR. SMALL:** Yes.

10 **DR. CLARKSON:** -- that other tribes don't
11 get to capture. How many of these things that
12 you're able to do now would have been impossible
13 without the ability to be able to capture some of
14 the tax revenue?

15 **MR. SMALL:** Some of it wouldn't have -- a
16 lot of it wouldn't have happened.

17 **DR. CLARKSON:** Okay. So --

18 **MR. SMALL:** Especially with the housing
19 and the remodeling.

20 **DR. CLARKSON:** Yeah. So I appreciate that
21 Jeremy just passed this around, but if we can get
22 information about that because that's sort of a
23 slightly different way of looking at it is you've
24 actually been able to do some stuff with the tax
25 revenue that you have been able to make use of. So

1 there's service taxes pulled out of the ground at
2 Ute Nation. You're able to capture some portion of
3 that. If you can give us a sense of what you are --
4 or what you've been able to accomplish with that
5 revenue, that would then, show, you know, that, you
6 know, that tribes will, in fact, invest in their own
7 communities if they're given access to the tax
8 revenues from the economic activity that happens
9 within their territory.

10 So it's a slightly different variation
11 because you actually do have access to some of them,
12 but that would, nonetheless, be very useful for
13 information for us to have. And so any of that that
14 you're comfortable sharing, we would love to know
15 how you are helping to meet the needs, you know, and
16 fulfill the unmet needs of your community with these
17 tax revenues. Because if we can figure out how to
18 get more of that to more of Indian Country -- again,
19 it's a massive amount of need that we, the federal
20 government, realistically, will never fully fulfill.

21 The only way we can do it is by empowering
22 tribes such as the Ute Nation, you know, to be able
23 to capture more of that economics, invest in your
24 own infrastructure, your roads, your schools and
25 your sewers, your justice centers and housing, and

1 all that other kind of stuff. But at the same point
2 -- as you pointed out, it may be easier, you know,
3 for the tribal member that wants to open up a
4 hardware store to do it without a NEPA analysis.

5 Now, there -- I don't know how many of you
6 all have, you know, have people that are -- that do
7 food service businesses, but there's almost always
8 on reservation way more taco trucks than there are
9 taco stands. Because the moment you have a taco
10 stand, and you dig into the ground, you don't need a
11 NEPA analysis for a taco truck. That's why I'm
12 surprised about the COW. Because, theoretically, you
13 know, if your -- you know, maybe it was because you
14 had the generator on or something, maybe that was
15 what prompted the NEPA, but I would think the COW
16 wouldn't need --

17 **MR. HARJU:** It actually ended up being a
18 category exemption, but just to get the paperwork
19 through takes --

20 **DR. CLARKSON:** Oh, gosh. Yeah. So,
21 again, insane.

22 **MR. SMALL:** You know, we also have a
23 shovel ready -- it's a gas-powered power plant. We
24 reached out to the government on trying to borrow
25 revenue from the energy. They just don't have that

1 kind of funding to give to something like that. But
2 if we could have outside investors, well, then it
3 makes it hard because it's on reservation.

4 **DR. CLARKSON:** Right. And so, there
5 again, we would love to know the economics of that
6 gas-fired power plant because it -- you know, my
7 sense is if you all were in charge of that territory
8 and regulatory and taxation authority, that will
9 reduce the uncertainty of the UTE Nation of
10 investing in a project. And my sense is is that
11 project would become economically viable if it's not
12 viable now. So that -- if you want to tell -- if
13 you could tell us about that power plant and, you
14 know, and tell us, again, you know, basically, this
15 is an energy sector project.

16 You know, it would be X-number of tens of
17 millions or maybe \$100 million in capital
18 investment. How much revenue it would be generating
19 and what sort of jobs it would create. That's the
20 exact kind of information that we need to make the
21 case, you know. And again, we believe the case is
22 solid but, you know, us believing it's solid and
23 being able to collectively prove it with data that
24 Indian Country provides, you know, that -- that
25 makes the argument that much more powerful. And

1 that's why -- again, we don't want to pick a fight.

2 Because we firmly believe that the state of Utah
3 will be better off if the Ute Nation is prosperous.

4 **MR. SMALL:** Exactly.

5 **MR. CLARKSON:** And so, if we -- you know,
6 if we -- and that's what we need to be able to
7 demonstrate, you know, to folks in Utah and the
8 congressional delegation of Utah is that we are
9 actually looking out for every single citizen in the
10 state of Utah by trying to have more economic
11 activity on the Ute Nation, under control of the Ute
12 Nation that then benefits the whole Utah economy
13 collectively. I think we've been pretty consistent
14 with that. You know, there's -- there's been, you
15 know, people that are not exactly sure what we're
16 trying to do, but I think we make it consistent
17 every time we've gone out that we are not trying to
18 harm anybody. That we are trying -- we're trying to
19 benefit the state of Oregon, we're trying to benefit
20 the state of Washington, benefit the state of Utah,
21 benefit every single state that has an Indian tribe.
22 We want that state to be better off, but the
23 mechanism we want for the economic improvement is by
24 dramatically improving the economic prospects of the
25 tribes within those states. Helping tribes become

1 mountains of prosperity, robust sophisticated,
2 economic engines.

3 Because as you said, you know, most of the
4 people you're employing right now are coming from
5 off reservation. Example, I remember when I was
6 first out of graduate school, I had the distinct
7 pleasure of meeting Chief Phillip Martin,
8 Mississippi Choctaw, who was one of the very first
9 really aggressive tribal economic developers. And
10 he did it without gaming. But he -- at one point,
11 the Mississippi Choctaw were the single largest
12 employer in the entire state of Mississippi.

13 And, you know, the only entity that
14 employed more people in Mississippi than Mississippi
15 Choctaw was the government of Mississippi itself.
16 So, I mean, like you said -- you said 95 percent of
17 your employees, you know, are non-Indian coming off
18 reservation. You know, I mean, that is -- that is a
19 direct benefit directly in to the coffers of every
20 local and county and state government, you know.

21 So I mean, obviously, it's going to take
22 us a longer time to deal with the human capital
23 challenge. So in the beginning, absolutely the
24 surrounding states are going to be dramatic
25 beneficiaries of increased economic activity. But

1 we need to be able to demonstrate that so -- but I
2 really appreciate you all giving me this information
3 and we'll certainly factor this in along with
4 everything else we're doing. And I would also
5 encourage you -- I know, you know, there was some
6 tribal leaders that called in and said they couldn't
7 make it today, but as you're talking with the other
8 tribes in your surrounding communities, please let
9 them know what you heard today. And let them know,
10 you know, that this is something that is -- this is
11 not the federal government trying to come in and
12 impose anything. This is this administration trying
13 to work with Indian Country to collectively come up
14 with a solution based on Indian Country's inputs for
15 the benefit of Indian Country.

16 Now, I know you have -- yes, sir?

17 **MR. PATTERSON:** The Vice Chair asked me to
18 speak a little bit about one of the, I think,
19 glaring examples that occurred out at the Ute Tribe
20 in the course of their development with their Ute
21 energy company. And I think this is -- it's a good
22 representative example of really the shortfalls in
23 the process, in the regulatory process.

24 So the tribe had the foresight after years
25 of just being a passive lessor in the energy

1 development of their lands to create their own
2 energy company and be an active participant in the
3 develop of their own energy resources. The goal, of
4 course, was economic sovereignty, basically, to take
5 charge of the development and the course of
6 development of their own resources. So they formed
7 Ute Energy as a Delaware LLC, to develop these oil
8 and gas resources that they have on the reservation.
9 They started the company, basically, with no assets,
10 just contributed land that the tribe held, and were
11 able to, over time, build the company into a company
12 valued at over a billion dollars.

13 They partnered with a Texas-based hedge
14 fund, Quantum Resources, who helped to finance a lot
15 of the development, but at every step of the way in
16 the course of building up this company, there were
17 obstacles that were placed in front of the tribe.

18 The first came in the form of the tech
19 bond application. They applied for tech bonds,
20 secured initial allocation as part of the first
21 tranche that was released, I want to say that was
22 close to \$100 million. But then the award was with
23 withdrawn simply because the tribe only had 51
24 percent ownership in the company. And the Treasury
25 took the position that the company had to be 100

1 percent tribally owned. So unfortunately, the tribe
2 wasn't able to use the tech bond financing as a
3 source of funding for growth of the company.

4 Because the company was so successful,
5 they eventually moved towards doing IPO, and were
6 going to take the company public. So a lot of work
7 was put into this. To our knowledge, it would have
8 been the first time a major Indian company of any
9 sort had gone public. And so there was, you know, a
10 lot of fanfare around this; the tribal chairman was
11 invited to ring the bell at the New York Stock
12 Exchange. There was a lot of planning and work that
13 went into this. Eventually, though, when we took to
14 it to the marketplace, the stock market, basically -
15 - these are large financing companies, like Credit
16 Suisse, were going to discount the value of the
17 company by \$100 million simply because the assets
18 were located in Indian Country. And so that,
19 basically, rendered the IPO unfeasible. It couldn't
20 be advanced because of the discount that the
21 marketplace had placed on the value of the company.

22 So why would they do that? Well, the
23 reason that they did that is investors need
24 certainty. They don't have that certainty under the
25 current regulatory climate, and so they discount

1 assets that, basically, render projects like this
2 uneconomic. At the end of the day then, you know,
3 because the company couldn't go public because of
4 these drains that would be placed from the financial
5 marketplace on the assets, the partners in the
6 company wanted to exit out and the company was
7 eventually sold. It sold to a Canadian-based
8 company.

9 So now, today, all of the revenue that's
10 being generated from the lands that are part of this
11 company don't go to the Ute Indian Tribe, they don't
12 go to even an American-based company, they're going
13 to Canada. So that's a loss not only for the Ute
14 Tribe, but it's a loss for the country as a whole
15 because now that revenue stream is going out of the
16 country to a different country.

17 So I think that's one of the -- the
18 representative examples that can be looked at as,
19 you know, in terms of these limitations that are
20 placed on economic development in Indian Country.
21 And, you know, I always go back to kind of the
22 initial scholarship on a lot of economic development
23 with Ross Swimmer's blueprint on economic
24 development that was drafted in the 1980s. And, of
25 course, I'm always the last person who wants to give

1 Ross Swimmer credit for anything, but I think here
2 he raises some very good points, and I see a lot of
3 those points that have carried forward into maybe
4 this process.

5 The process for building tribal economy
6 really needs to start and end with eliminating the
7 economic impediments that are placed on tribes.
8 Those include many regulatory burdens, but also the
9 cycle of dependency that's come from all of the
10 regulations that have taken place over the years.
11 You know, in the '80s, when Swimmer was active on a
12 lot of this stuff, Reagan was the President, Ronald
13 Reagan. And there was a big spending bill that was
14 in the works that he that eventually vetoed as the
15 President because all it was going to do was throw
16 money at Indian Country. It wasn't going to create
17 any economic growth or development of new jobs. It
18 was basically more of the same, just kind of
19 handouts. So the President vetoed the bill, it
20 didn't go through. And I think at the time, he had
21 the foresight to see kind of the shortfalls of his
22 coming forward with these programs and funding that
23 doesn't really do anything.

24 And Vice Chair, I think you had mentioned
25 earlier, you know, there's been a long history of

1 programs that are being put forward at the
2 administration level that fail Indian Country. And
3 they fail because there isn't really input, there
4 isn't any type of tribal voice in the process that
5 would provide the views of Indian Country. And, you
6 know, it's critical, I think, that that happened
7 here because without that, it's just going to be
8 eventually the same -- it will fall into the same
9 pattern of, you know, pushing these programs out; no
10 tribal input or voicing in the process, and the
11 programs ultimately fail.

12 So I think having tribal empowerment --
13 I'm encouraged to see tribal empowerment is going to
14 be a cornerstone of this policy because I think
15 that's really key to ensuring that some of these
16 policies succeed. What I would say that is the key
17 here, in terms of the role of the government, should
18 be to facilitate, not to provide. You know, in the
19 past, the history has always been BIA is going to
20 come in and provide for you as tribes and our trust
21 relationship, but that model needs to change.
22 Instead of just providing, the role should be to
23 focus on facilitating growth and economic
24 development.

25 One thing I would suggest is, you know,

1 looking at failed programs that have dealt in this
2 area, like, I'm thinking of the relocation policy
3 that was -- that was active in the 1970s, where,
4 basically, the policy was the inverse of what's
5 being proposed here. Rather than try to create
6 economic growth on the reservation, the idea was to
7 take tribal members, put them in urban environments
8 and hopefully they'll succeed in the urban
9 marketplace to have personal growth and they'll
10 generate revenue that maybe they can send back home.

11 It would be nice to see the reverse of
12 that here, have a relocation program that's the
13 opposite of what was done in the '70s. So encourage
14 tribal members to go back home to build the human
15 capital and human resources on the reservation. And
16 I think if you talk to most people in Indian
17 Country, you know, they'd gladly go back home. They
18 prefer to live in the homelands, but they don't
19 because there's no economic opportunities for them
20 there. So having -- having a program that could,
21 basically, look to grow tribal economies by having
22 people come back, bring back that human capital,
23 that was a key part of Swimmer's thesis as he looked
24 at this years ago. It's never been implemented.
25 There's never really been anything to put in place

1 to try to bring people back to the reservation.

2 I would also say that there's good models
3 that could be looked at in terms of integrating
4 economies between tribal and non-tribal economies.
5 The Ute Tribes' model that's put in place with the
6 revitalization fund is maybe one example of that,
7 where they share in the taxes that's generated from
8 the state. Here in the Northwest, the fisheries, I
9 think, would be an example of integrated economies
10 that work on at least some level, where tribes and
11 states have had worked to create an economy around
12 fishery development. That's integrated economy that
13 works in concert, the tribe and the states are
14 working together, basically, to created a robust
15 economy around the resource fisheries. That might
16 be an example. And Mr. Secretary, your own home
17 state of Oklahoma, of course tribes had have had
18 great success integrating their economies with the
19 state, working to develop those economies side by
20 side with state and county governments. I think
21 there's a lot that can be gained from closer
22 examination of the success stories in Oklahoma as
23 well.

24 But, you know, by and large, there was a
25 lot of states that surround Indian Country. We need

1 to be honest; the states don't want tribal economies
2 to grow. They don't want tribal economies to
3 flourish or succeed, and so there's naturally going
4 to be this resistance and push back because they're
5 not understanding things as they should be as you'd
6 pointed out, you know, in looking at what's the
7 long-term gain here. You know, is just -- they're
8 just focused on the limitations on their state
9 taxing authority today without seeing the gains that
10 we realize if they proceed forward in letting tribal
11 economies grow.

12 Although, I would say that maybe that is
13 changing somewhat. Recently at the Utah Governor's
14 Summit in Salt Lake City on Native American Affairs,
15 and in a central part of the governor's presentation
16 was Utah has all of this great growth. There's
17 economic success. It's one of the fastest growing
18 economies of any state in the country. But at the
19 same time, they're being drug down by the statistics
20 of Indian Country within the state where there's not
21 a lot of growth. There's unemployment. There's,
22 oftentimes, socioeconomic problems, social problems,
23 drug problems, things like that, that's dragging
24 down the overall growth of the state of Utah. And
25 this seemed to be kind of a light bulb that went off

1 in the Governor's head where he had this epiphany
2 that, wait, wait a minute now. Utah could be a lot
3 greater if we didn't have these reservations kind of
4 dragging down our stats.

5 And so I think he's kind of looking at it
6 now more as being integrated that you're going to
7 have to focus at some level on the tribal economy.
8 You can't just grow the state economy while turning
9 a blind eye to what's happening in Indian Country.
10 So maybe that's changing on some level, but, you
11 know, by and large, states like my own home state of
12 South Dakota have always been, I would say, actively
13 engaged in doing everything that they can to depress
14 reservation economies. Because they're looking at
15 the standpoint of, well, people are going to go off
16 reservation. There's no stores on reservation. So
17 like the example you gave of the Walmart earlier,
18 you know, that -- that's something that they want to
19 protect. They want to protect that model.

20 One thing, too, I think in terms of these
21 regulations, in looking at NEPA, the Ute Indian
22 Tribe has been advocating on the hill for years on
23 creating a tribal NEPA. Basically, you know, what
24 happens with these projects is the tribe goes to
25 develop a gas-fired power plant, and you -- you

1 know, you go through the NEPA process and people
2 come from all over the country. We always refer to
3 them as little old ladies in tennis shoes that are
4 out east somewhere, you know, that come and they
5 write comments on these NEPA public comment process.

6 So they come forward, and they'll come in
7 and comment and say, well, the tribe's power plant
8 shouldn't be developed this way. This is going to
9 impact overall air quality issues, you know, the
10 little old lady is sitting back in Massachusetts
11 somewhere. She's never been to the Ute Indian
12 Tribe's reservation. She doesn't even know who the
13 Ute Indian Tribe is. She doesn't live there. She's
14 got no vested interest there. She's, you know, not
15 affected in any way by the development of the plant.
16 But she's given a voice that's equal to a local
17 stakeholder's voice in determining how this project
18 should be developed. And that's just, I think,
19 fundamentally wrong on a number of different levels.

20 So -- so the solution that the Ute Tribe
21 put forward is creating a local NEPA, Indian NEPA,
22 if you will, that only includes local stakeholders.
23 You wouldn't have to necessarily eliminate the
24 tribal interests, but should only be the little old
25 ladies that are sitting out in Fort Duchesne, Utah,

1 or living around there that maybe have an
2 opportunity to comment, not someone from across the
3 country that's never been to the tribe's
4 reservation.

5 **DR. CLARKSON:** You mean like Hollywood?

6 **MR. PATTERSON:** Yeah, exactly. So, you
7 know, that would be something I think -- I don't
8 know if that could be done in the context of these
9 regs, but having a more localized interest that only
10 includes people that are actually affected by the
11 projects on the reservation, I think, would be
12 critical to limit NEPA. And the reason the tribe
13 hasn't been successful in moving that forward,
14 legislative initiative, is because, you know, quite
15 frankly, the Democrats come forward every time and
16 say, we're opposed to this, we want as many
17 environmental restrictions as we can on your lands.
18 But where does tribal sovereignty fit into that
19 equation? Why should the Democrats or any other
20 stakeholder determine what's in the best interest of
21 the Ute Indian Tribe with respect to their projects?

22 The other thing, I think, that would be
23 useful to look at, and this is more of an
24 administrative issue, is what we've seen with the
25 Bureau, over time, is in the wake of the Cobell (ph)

1 litigation, there's been a shift of human capital
2 and human resources from management of historically
3 the, you know, non-monetary trust assets. Things
4 like timber, oil and gas, to management of monetary
5 trust assets. So creation of OST as being an
6 example of that. Now, there's, you know, great
7 effort being put into accounting for how much money
8 is in individual Indian monetary account or tribal
9 accounts. But that's come at the expense of a lack
10 of resources and staff to deal with management of
11 water, oil and gas, non-monetary assets that
12 historically have been a central part of BIA's
13 regulatory function.

14 So in terms of, you know, the value added
15 that you had mention earlier, in some cases, there
16 isn't a lot of value being added by the Bureau to
17 these regulatory functions and economic development.
18 A lot of that, I think, stems from the fact that now
19 instead of having geologists, petroleum engineers,
20 hydrologists, kind of the expertise within the
21 Bureau to deal with the management of non-monetary
22 trust assets, there's instead a whole team of
23 accountants and green-eyed shade people that come
24 forward to manage the monetary accounts and monetary
25 assets. So, you know, that's something, too, I

1 think, that should be looked at in terms of the
2 restructuring of Interior, would be to put more
3 emphasis on helping tribes to develop non-monetary
4 trust assets as opposed to monetary, accounting
5 functions, essentially.

6 So I just wanted to add that too. You
7 know, I think there's a lot of other examples that
8 we could point to, but the Ute Energy example is one
9 that to me really, I think, demonstrates the
10 shortfalls in the process, what could be done and
11 maybe what should be done on a greater level with
12 economic development.

13 **DR. CLARKSON:** Jeremy, I really appreciate
14 that. And again, I'm hoping that you'll include a
15 write-up of that story. I mean, obviously, we've
16 captured it here, but, you know, if you can give us,
17 you know, like, how much did the Ute Nation lose out
18 because, obviously, the IPO, that would have pumped
19 in a bunch of money back to the tribal economy. So
20 if you can give us details on all that because what
21 you're identifying is exactly the problem. That we
22 collectively have allowed an environment to arise
23 where investment and job creation in Indian Country
24 takes place under a climate of uncertainty that
25 makes it too difficult, too expensive, too

1 uncertain, and just sometimes just too hard.

2 And that's -- you know, that's what we
3 want to do. And if we go back to -- if we go back
4 to Secretary Zinke's original themes, you know, what
5 we want to do is we want to focus economic freedom
6 and empowerment and reducing the regulatory burden.
7 And, you know -- and you mentioned there are some
8 partisan differences, you know, on how to do this,
9 but, you know, it's -- you know, I'm not viewing --
10 I mean, I guess -- I work for a Republican president
11 and I'm not ashamed of any of that. I'm proud of
12 that fact. And if you look at what you were talking
13 about, you know, the Presidential Commission report
14 that came out in 1984 was from a Republican
15 administration. And even then, they were calling for
16 the elimination of dual taxation.

17 Now, they're calling for that was also
18 coupled with the notion that, oh, over time tribes
19 become more and more responsible for providing more
20 and more services. Which is inconsistent with the
21 notion of self-determination and self-governance.
22 It's not termination. It's basically saying, you
23 know, why should the tribes look to the federal
24 government to do everything when over time they can
25 become capable of doing more and more as long as we,

1 the federal government, continue to vigorously
2 uphold and defend that zone of sovereignty.

3 And so I appreciate you bringing that up.
4 I think it was page 39 of that Presidential report
5 that went into specifically identified dual taxation
6 as a significant problem. And I'd encourage you all
7 to read that report. It was a very radical document
8 at the time. But now, you know, a lot of the ideas
9 are well in the mainstream. And also, if you go
10 back to President Reagan's 1983 statement on -- on
11 Indians and Indian affairs -- I think, I pulled that
12 one up -- basically, he was talking about --
13 President Reagan, when he was talking in 1983, he
14 was talk -- in his January 24, 1983 statement, you
15 know, "Tribes have limited opportunities to invest
16 in their own economies because there's been no
17 established tax base for community investment and
18 development. Many reservations lack a developed
19 physical infrastructure including utilities,
20 transportation and other public services."

21 Those are the things that governments do,
22 and yet because of problems of the current
23 situation, you don't have the tools at your disposal
24 to do that. And so collectively, our hope is that
25 we can figure out, you know, how to get you to the

1 point where you're creating self-sustaining
2 economies. How you're creating robust economies
3 that benefit all the surrounding states.

4 And, Jeremy, I think your point about the
5 states don't want it, I think that's probably --
6 that may be a little harsh. I'm sure there are some
7 people who don't want it because they don't
8 understand it. And I think they all -- if we can
9 make a solid economic case and make -- you know,
10 there are some people who just hate Indians. And,
11 you know, but those people, they -- we will be able
12 to demonstrate that people who hate Indians and try
13 and keep Indian Country economically depressed are
14 robbing the coffers of their own state treasury.
15 You know, if we can say, you know, that the
16 animosity towards tribes and tribal governments has
17 an economic cost to the state, and that the citizens
18 of that state should hold their elected officials
19 accountable for robbing the treasury of the economic
20 prospects, that could happen.

21 Again, that's -- this -- this
22 administration is trying to do what we can do. But
23 if we can make the case that it is in everybody's
24 best interest for Indian Country to become, you
25 know, a series of mountaintops of massive economic

1 prosperity, everybody in this country is going to be
2 better off. That's the position of this
3 administration that the people of the United States
4 are better off if Indian Country is economically
5 better off. You know, then it's going to be a lot
6 harder to defend the anti-tribal position, at least
7 from an economic standpoint.

8 So I really appreciate those comments and
9 we look forward to -- and I know that you've got
10 other tribes that you're work -- that your firm is
11 working with as well, so hopefully, you know, you
12 all are getting the sense of the kind of data that
13 we're looking for, but I really appreciate that
14 information because that's really, really good
15 stuff. I mean, it's bad stuff, but it is very
16 helpful information, and it will be -- it will help
17 us go a long way towards making the economic case.

18 I mean, I really appreciate, also, you
19 know, sharing the story about, you know, what you
20 were able to do with the limited portion of the tax
21 revenues you do collect. Because I was -- I'm
22 assuming that there are more you could do if you had
23 more tax revenue. And that would also be important
24 to tell is if you had access to the full set of tax
25 revenue from economic activity and severance taxes

1 coming out of your territory, how many more houses
2 could you build? How many more mouths could you
3 feed? How many more kids could you send to school
4 and to vocational training, building plumbers and
5 electricians and all those things tribal economies
6 need?

7 All right. Now, I know we've gone around
8 here at the table. Did the woman from Hobbs
9 Strauss, did you have anything that you wanted to
10 add?

11 **MS. DANDURAND:** No.

12 **DR. CLARKSON:** Okay. Is there any -- and
13 again, we got -- we got the room until noon, so we
14 got plenty of time. But -- let's see how we doing
15 on time? So we got about -- we got about 30 more
16 minutes. So I'm happy -- you know, I'll stay here
17 to the end. In fact, we want to make sure everybody
18 has a chance to comment. And also, again, please
19 encourage the other tribal leaders that you're
20 having conversations with to give us as much data as
21 they possibly can. Even if it's not something
22 that's polished, you know. I mean, obviously, you
23 got all the very nice, fancy -- you know, Jonathan
24 did a nice report for you and -- but it's -- it
25 doesn't have to be in that fancy form.

1 You know, if what you have is just simple
2 economic feasibility study and somebody said, well,
3 this would work except, you know, because of the
4 dual taxation or excessive regulation, just send us
5 that stuff in raw form. We will throw the effort at
6 it to make sure it's processed properly. Again, we
7 want to make sure, you know, everything that is
8 disclosed to us is a public document, and we are
9 going to be sharing it intentionally with other
10 groups of economists so that it's not -- they're not
11 just taking our word for it, we're having multiple
12 sets of economists coming to independent conclusions
13 about how beneficial this process could be.

14 If we -- if we take Indian Country's
15 vision, you know, giving tribes the exclusive
16 ability to tax and regulate trade and commerce that
17 occurs on trust or restricted fee lands, helping
18 tribes opt out of the oppressive regulatory
19 environment, and replacing an uncertain taxation
20 system with a jurisdictional-based system, going
21 back to the vision of the founding fathers. And
22 which Ronald Reagan reaffirmed in the '80s, going
23 back to that -- that reduces the transaction costs
24 that allows more money to flow both into the state
25 and the tribal economies. That's what we -- we

1 think that that's the case we can make if we have
2 the data.

3 So again, I cannot -- and let me -- I
4 don't want to end on a negative note, but if we
5 don't get enough data, if we cannot make the
6 economic case -- I don't think -- we're not -- you
7 know, I'm not going to be able to move forward
8 because I won't be able to build enough human
9 capital to do this. So the only way this works is
10 if we make the case that is best for everybody. And
11 I think we can make that case. So that's why -- you
12 know, that's why we structured this process as we
13 have.

14 If you're interested in how the
15 regulations might look, we got some very good
16 suggestions from tribal leaders around the country
17 and we encourage you -- if you all have some
18 thoughts on those or you want to submit your own,
19 you know, we're -- we're still in the process of
20 looking at what the -- what the regulations might
21 be. But, again, for the attorneys in the room, for
22 all your clients, please, please encourage the
23 tribal leaders to give us the data that they're
24 comfortable sharing. Because collectively, it will
25 be a massively positive economic outlook.

1 We're potentially -- just an example, in
2 northern New Mexico and Dakota -- and the two states
3 where this is sort of most economic challenging is
4 North Dakota and New Mexico. North Dakota because,
5 you know, the existing system takes a billion
6 dollars out of just the three affiliated tribes in
7 terms of severance taxes. And three affiliated got
8 about a million dollars -- two million dollars back
9 is what they told us in the last round of comments.
10 You know, we've got to be able to demonstrate to
11 North Dakota that, you know, if we change the
12 existing situation, North Dakota will still be
13 better off. We believe based on the data that we
14 started to get from the information conveyed from
15 the tribes in North Dakota, that will be the case,
16 that even if we change that -- you know, that
17 situation, that there are multiple billions of
18 dollars in projects sitting on the sidelines waiting
19 to go -- waiting to go into force in North Dakota.
20 They'll employ lots of North Dakotans and buy a lot
21 of stuff from hardware stores in Bismarck and so on,
22 that aren't happening right now.

23 The other case is going -- the other
24 challenging case is going to be New Mexico. And we
25 had a very good consultation, we had a lot of tribal

1 leaders from Arizona and New Mexico. But new
2 Mexico's problem is, you know, it's the poorest of
3 the 50 states. And so, you know, that's a
4 challenge, but we firmly believe that northern New
5 Mexico, for example, there's a billion dollars of
6 projects sitting on the sidelines that the moment
7 you fix the dual taxation problem, that's a billion-
8 dollar stimulus to the state of New Mexico.

9 And having, you know -- and I was -- I was
10 a professor at New Mexico State before I became a
11 Fed. The last thing I want to do is harm any of my
12 kids. And so I believe that New Mexico is better
13 off -- because the tribes in New Mexico are
14 economically prosperous, that will benefit -- you
15 know, the tribal members -- all my students, both
16 tribal members and non-tribal members. So I don't
17 want to do anything that would hurt my students in
18 New Mexico or elsewhere. So I firmly believe,
19 personally, that we -- if we can make this case, you
20 know, this will be good for the nation. It'll be
21 good for Indian Country, it'll be good for
22 everybody. So I really appreciate you all taking
23 the time to come out here. I know some of you all
24 drove a long way. Yes, ma'am?

25 **MS. DANDURAND:** I was going to ask what

1 the timeline is for submitting this data or other
2 comments?

3 **DR. CLARKSON:** We -- in our Dear Tribal
4 Leader letter, we asked for the comments to be
5 submitted by August 30th.

6 **MS. FRY:** Yes.

7 **DR. CLARKSON:** But don't wait. You know,
8 we give you extra credit points if you turn stuff in
9 early. And if you have stuff ready now, we've got
10 people ready, sitting in the office waiting for
11 stuff to come in. They can start the analysis
12 process. So you don't have to wait until the 30th.
13 If you want to supplement -- so feel free to send --
14 I mean, so this stuff, we'll go ahead and have our
15 folks start working through the stuff that you all
16 gave us today, but, you know, feel free to
17 supplement. So it's a multiple submission, send us
18 as much stuff as you possibly can and send it to us
19 yesterday. You know, so we certainly -- we'll take
20 everything up through the 30th, you know, and then
21 we'll sit down and process everything and then
22 hopefully, that will give us enough -- because we've
23 got our own socialization process that we have to do
24 in the federal government to be able to go to our
25 next step, which would be putting together proposed

1 rules. But we have to -- when we submit those
2 proposed rules, that goes in the federal register,
3 and we will have to have the preamble to those
4 proposed rules be the solid economic case. Yes,
5 sir?

6 **MR. ROSS:** Just one other thing, I wanted
7 to try to remember is that with the -- with updating
8 these regulations, I wanted -- our tribe wanted to
9 reaffirm that the jurisdiction is at the tribal
10 court level, so they don't have to -- when it comes
11 to a resolution, it goes to our court system first,
12 we don't have to have incidents like Dollar General
13 and other cases like that so --

14 **DR. CLARKSON:** Right. And again, that's
15 something that I would encourage you to make that
16 suggestion. You know, you made it here so it's on
17 the record, but again, you can submit us that
18 written stuff. And, in fact, I believe, Ashley, if
19 we -- all of the proposed regulations that were
20 submitted to us in the comments for the advanced
21 notice of proposed rule making, I think all four
22 sets contemplated tribal court jurisdiction for on-
23 reservation economic disputes. So I believe that's
24 the case, but please feel free to submit that. You
25 know, if you wanted to comment on what regulations

1 should look like. You know, the more we hear that
2 from as many tribes as we can possibly hear it from,
3 you know, the more likely that makes it into the
4 final regulations.

5 And so -- again, we want to create
6 certainty for investment in Indian Country. And so
7 -- but that then in turn, you know, of course, means
8 that the -- tribal -- there are some tribes that
9 have -- you know, have well-functioning tribal
10 courts and we need to make sure that, you know,
11 those are supported and honored and respected
12 because they're fully capable of dispensing fair and
13 impartial justice to all who come on the reservation
14 regardless of their racial or tribal membership
15 status.

16 You know, as somebody who is trained, you
17 know, law students who have gone on to clerk for
18 tribal courts, somebody who has a lot of friends who
19 are tribal court judges, and they all take their job
20 very seriously. And that's another part -- that goes
21 back to Secretary Zinke's themes of respect. You
22 know, not only do we need to respect tribal
23 sovereignty, but we need to respect the instruments
24 of that sovereignty which includes tribal dispute
25 resolution mechanisms. And, you know, we -- we have

1 -- there are some other issues where even we, the
2 federal government, have not been properly
3 respecting the presence of those tribal dispute
4 resolution mechanisms and, you know, we're actively
5 trying to -- I'm working with some tribal leaders
6 right now -- not, you know -- not in the energy
7 sector but in other economic sectors where they want
8 -- you know, the choice of law and choice of
9 provisions in contracts to respect the notion that
10 tribes have laws and dispute resolution for it.

11 So that's something, at least, from this
12 administration we want -- you know, we want to
13 promote self-determination and self-governance. We
14 also want to promote the respect for those
15 institutions. You know, we -- you know, now -- on
16 the flip side of this, as Secretary Zinke will tell
17 you, you know, when tribes exercise a greater degree
18 of sovereignty, that also means that they take the
19 responsibility if the exercise of sovereignty
20 doesn't necessarily turn out exactly the way that
21 everybody envisioned, you know. That sovereignty is
22 the right to make a bad decision and sovereignty,
23 then, is the responsibility to put your big boy
24 pants on and own up to that bad decision and deal
25 with it. That's what governments do. And so -- or

1 big girl pants, depending on which -- I don't want
2 to be gender specific.

3 But the -- you know -- and so part of what
4 we have done in this process in contemplating the
5 notion of tribes opting out where they say, on this
6 portion of land, we're in charge. That means that
7 grandma gets upset, you know, that her favorite tree
8 had to get moved. You can't come sue us. You know,
9 grandma's mad at you because you made a sovereign
10 decision, then you have to deal with grandma. Which
11 is how it's -- that's how it was prior to 1492. So
12 as long as we can get back to -- you know, that
13 sovereignty means that when you take over
14 decisionmaking authority, you take over the
15 responsibility for the consequences good and bad.
16 You know, and so not every tribe -- if we go back to
17 this notion -- we also recognize that not every
18 tribe is going to take advantage of this. This is
19 an opt-out provision. This is not saying, oh, gee,
20 we, the federal government are just leaving you all.
21 Saying no. It's -- we will step away when the tribe
22 asks us to step away and only then. You know, we
23 have a fiduciary responsibility. We have a trust
24 responsibility. We're not terminating anything.

25 However, we recognize that there are

1 plenty of times where we don't add value. And if
2 the tribe feels it is -- and now part of it is with
3 our self-governance program. Again, I applaud the
4 Northwest region for having as many self-governance
5 tribes as you do, and hopefully, we can have more
6 over time. But, you know, because that really is
7 tribes exercising a full panoply of bundle of sticks
8 of sovereignty. And the more tribes that do that,
9 you know, at least from our perspective, the better.
10 Again, we're not forcing anybody. And for the
11 tribes that are going to be -- the tribes that are
12 at this end of the spectrum, we recognize that that
13 journey may take a generation or two or three. My
14 grandchildren may be working with direct service
15 tribes.

16 We recognize that. That we can't solve
17 more than two centuries of damage in one generation.
18 But we want to recognize that, you know, if we put -
19 - if we allow tribes to resume full exercise of
20 sovereignty in certain areas, then they're in
21 charge. That means they're also responsible for the
22 exercise of that authority, which is how it should
23 be. But not every tribe is ready to do that.

24 So again, that's -- at least for that
25 provision, that's why we're creating it -- or we're

1 thinking of it as an opt out. That, basically,
2 tribes can say, all right, over here, we'll just
3 keep the existing system, but over here on this plot
4 of land, we're in charge. Again, that would be up
5 to each tribe to make that decision. Okay?

6 All right. Now, I know everybody's had a
7 chance to talk once, but, you know, if you have any
8 follow-on thoughts or any follow-on questions, we
9 want make sure we hear from everybody.

10 **MR. HARJU:** I have some questions. Do you
11 guys have a HEARTH Act?

12 **MR. ROSS:** No.

13 **MR. HARJU:** Do you have a HEARTH Act?

14 **MR. SPEAKS:** We have about six, seven
15 tribes in the Northwest and we're working on another
16 seven.

17 **MR. HARJU:** We're one.

18 **DR. CLARKSON:** Well, congratulations. And
19 that's -- you know --

20 **MR. HARJU:** That's fun. Try to get that -
21 - so I don't know what the experience around the
22 country is on the HEARTH Act. We needed it for the
23 development of -- to actually get our land into
24 trust because we had do some -- with the Mohican
25 Tribe and whoever owned the land and stuff, we had

1 to do a lease back, and as soon as we got the land,
2 then we did financing and it was -- it's -- lawyers
3 and accountants are probably having a field day over
4 all this stuff, but I mean it's -- I guess one way
5 to get around some of the archaic laws.

6 **DR. CLARKSON:** Well, certainly -- and
7 again, there's some -- there's some heavy lifting
8 that happens as part of that process to get started.
9 But once it's started, you all are in charge. And
10 so, you know, going forward, I add no value to your
11 leasing, and I'm glad to step away and say, you're
12 in charge of your leasing because you know -- you
13 know your territory better than me. Now, where -- I
14 do recognize and I'm hearing from some tribal
15 leaders that it is taking too long to get HEARTH --
16 HEARTH Act regulations approved on behalf -- that is
17 my fault. You know, and I have already started --
18 you know, when tribes have -- when tribes have
19 reached out to me to say why is it taking so long
20 for our HEARTH Act regulations to get approved. I
21 have been posed that question. You know, so even
22 though I don't supervise BIA, for me, HEARTH Act is
23 an -- or an integral part of economic development
24 and long-term land use planning.

25 So, you know, if there are other kinds of

1 situations where those of you who are in the HEARTH
2 Act process are running into obstacles, you know,
3 I'm not the one responsible for that process, but I
4 can certainly go ask who is and ask them, you know,
5 to do a better job of being responsive.

6 **MR. SPEAKS:** Streamline the process
7 procedures. Make it faster.

8 **DR. CLARKSON:** Well, again, I would love
9 to sit and chat with you because you probably have
10 more tribes that have gone through that process than
11 almost any other regional director, so I would love
12 to sit and chat with you about -- you know, about
13 how we can do better. There's -- there's no doubt
14 we can do better.

15 **MR. ROSS:** Just one last question, I was
16 just wondering, what form did you want the data to
17 be in to make it easier to analyze it or whatever?

18 **DR. CLARKSON:** Whatever form is easiest
19 for you to get it to us. So again, we didn't --
20 some tribes will say, well, gee, can you give us a
21 template? I mean, we -- there are -- the Paperwork
22 Reduction Act puts restrictions on us in terms of
23 giving you a form to fill out. So what we decided
24 was give it to us in whatever format you have it,
25 then we will throw the effort at it to get it into a

1 common format. And if we have follow-up questions
2 where we need to fill in some gaps, we'll contact
3 you back again to make sure. So what we're trying
4 to do is make this as easy as possible. Because,
5 you know, again, within this range of capabilities,
6 there are some tribes that have very sophisticated
7 information systems internally and they're data-
8 driven tribes. And there are others tribe that were
9 not, you know. And so, you know, we want -- you
10 know, most of what they have is paper. So again, we
11 want to make it easy for any and all tribes to send
12 us data. We'll go through and do the processing.
13 And if we have follow-up questions, again, we'll
14 contact you to make sure we try and backfill
15 everything.

16 But, again, it's a very good question,
17 it's just what we're choosing to do is say, however,
18 you have it, send it to us, and we'll -- we'll make
19 it work from there.

20 **MR. SPEAKS:** Well, thank you.

21 **DR. CLARKSON:** All right. Thank you very
22 much and again, we'll be -- we've got the room until
23 noon. Again, I want to thank Ashley for being here
24 and for the folks from our staff. And also, to the
25 court reporter, I apologize, again, when I talk too

1 fast. But, again, we look forward to working with
2 you not only in this process, but in every
3 initiative that we have going forward to try and
4 increase tribal empowerment, self-governance, and
5 economic sovereignty. So thank you very much.

6 **MR. SPEAKS:** Dr. Clarkson, I want to thank
7 you for coming and all of the discussions and
8 presentation we've been able to carry on today. And
9 so we'll see a good record on that.

10 **DR. CLARKSON:** All right. Thank you, sir.

11 **(Whereupon, Consultation Session concluded**
12 **at 11:41 a.m.)**

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1 CERTIFICATE

2
3 I, Kimberly R. McLain, do hereby certify
4 that I reported all proceedings adduced in the foregoing
5 matter and that the foregoing transcript pages constitutes
6 a full, true and accurate record of said proceedings to
7 the best of my ability.

8
9 I further certify that I am neither related
10 to counsel or any party to the proceedings nor have any
11 interest in the outcome of the proceedings.

12
13 IN WITNESS HEREOF, I have hereunto set my
14 hand this 1st day of September, 2017.

15
16
17 

18
19 _____
20 Kimberly R. McLain
21
22
23
24
25

<p> <hr/> \$ \$100 70:17 74:22 75:17 \$40 67:1 <hr/> 1 <hr/> 10 46:20 10,000 11:1 100 47:21 74:25 11 7:1 39:21 39:22 60:20 11:41 106:12 12 60:21 12th 60:22 1492 100:11 150 61:7 16 15:5 15:13 1790 17:25 19:12 1834 18:1 49:15 1948 15:9 1962 15:10 1970s 79:3 1980s 76:24 1983 23:14 88:10 88:13 88:14 1984 87:14 <hr/> 2 <hr/> 20 46:20 65:24 66:24 </p>	<p> 200 45:8 66:18 2005 3:24 2009 3:19 3:24 2017 2:6 20-year 28:22 21st 21:17 44:16 22 2:6 24 42:25 88:14 <hr/> 3 <hr/> 30 34:2 91:15 30th 96:5 96:12 96:20 30-year 28:23 31 11:6 40:25 56:16 64:14 39 88:4 <hr/> 4 <hr/> 40 34:2 400,000 64:1 45 43:1 45,000 64:2 <hr/> 5 <hr/> 50 95:3 501 (c) (3) 56:3 51 74:23 567 8:16 <hr/> 6 <hr/> 60-70 66:9 </p>	<p> <hr/> 7 <hr/> 7,000 64:2 70s 79:13 <hr/> 8 <hr/> 80s 77:11 92:22 <hr/> 9 <hr/> 9:30 2:7 95 55:9 72:16 <hr/> A <hr/> a.m 2:7 106:12 ability 20:8 38:5 67:13 92:16 able 9:11 15:21 16:15 24:22 26:10 26:14 28:12 31:2 36:8 38:14 39:7 48:1 48:7 48:15 48:16 50:25 61:7 65:11 65:21 66:2 66:16 66:16 66:18 67:7 67:12 67:13 67:24 67:25 68:2 68:4 68:22 70:23 71:6 73:1 74:11 </p>	<p> 75:2 89:11 90:20 93:7 93:8 94:10 96:24 106:8 abrogate 22:6 absolutely 40:21 50:24 72:23 access 68:7 68:11 90:24 accomplish 48:16 68:4 according 21:15 21:16 account 85:8 accountable 89:19 accountants 85:23 103:3 accounting 85:7 86:4 accounts 85:9 85:24 acres 64:1 across 2:22 6:3 40:13 58:17 84:2 act 3:19 14:9 33:12 53:20 102:11 102:13 102:22 103:16 103:20 103:22 104:2 104:22 </p>
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