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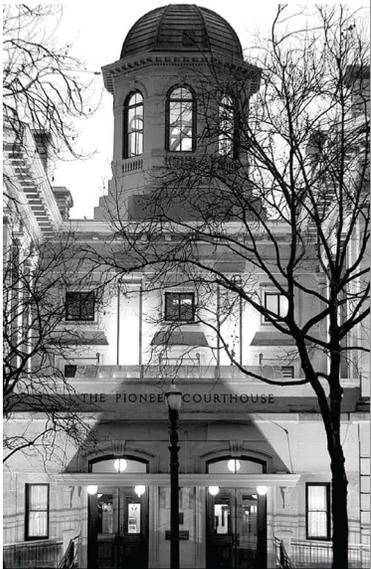
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**BUREAU OF INDIAN AFFAIRS
INDIAN TRADE AND COMMERCE CONSULTATION**

**TAKEN ON
AUGUST 23, 2017
COMMENCING AT 9:03 A.M.**

PAGES 1 - 110, INCLUSIVE

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APPEARANCES

Dr. Gavin Clarkson, Esquire

Deputy Assistant Secretary

for Policy and Economic Development

Office of the Assistant Secretary - Indian Affairs

Kathy Cline

Deputy Regional Director - Native Services

Bureau of Indian Affairs

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2 **INDIAN TRADE AND COMMERCE CONSULTATION**
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6
7 **P-R-O-C-E-E-D-I-N-G-S**

8 **TELECONFERENCE OPERATOR:** Welcome, and
9 thank you for standing by. At this time I'll put us
10 in listen license only mode. During the question
11 and answer session of today's call, you may press
12 star followed by one to ask a question. At this
13 time I turn the call over to Kathy Cline. You may
14 begin.

15 **MS. KATHY CLINE:** Thank you, Operator.
16 Good morning, everyone. I would like to welcome
17 everyone to the Department of the Interior's
18 consultation session on updating the Bureau of
19 Indian Affairs licensed Indian Trader regulations. I
20 am Kathy Cline, the Deputy Regional Director for
21 Native Services, and I am standing in for our Acting
22 Regional Director Len Polacca. This is one of five
23 consultation sessions the Bureau will conduct across
24 the country.

25 Before we begin today's session, I'd like

1 to invite Jolene John up to provide us with a
2 prayer.

3 **MS. JOLENE JOHN:** Good morning. Jolene
4 John. I do actually work as a tribal operations
5 officer, but I also am a tribal member of the
6 Nunakauyarmiut Tribe here in Alaska. And I take
7 great honor in providing the invocation this morning
8 during this tribal consultation session. I will
9 begin in my native language and then share in
10 English.

11 **(Speaking in Yup'ik.)**

12 **MS. JOLENE JOHN:** Lord, we thank you for
13 gathering us today during this tribal consultation
14 process. We gather in honor of those that passed
15 before us and thinking of our tribal communities and
16 tribal governing bodies that you may give them the
17 knowledge and education and the right things to say,
18 especially thinking of their ancestors that went
19 before them and those young people and future tribal
20 leaders that are to come ahead of them. Please
21 think of only the good that can come from this for
22 the future of tribal governance across the nation.
23 Amen.

24 **MS. KATHY CLINE:** Thank you, Jolene, for
25 that wonderful blessing. I also want to thank each

1 of you for taking the time to join us today for this
2 historic event. It has been over 40 years since
3 these regulations were last updated and much has
4 changed in how we do business in Indian Country.

5 I would like to introduce Dr. Gavin
6 Clarkson, the Deputy Assistant Secretary for Indian
7 Affairs for Policy and Economic Development. Dr.
8 Gavin Clarkson will lead today's session. He is an
9 accomplished individual who will be providing more
10 information on what the department hopes to achieve
11 through these consultation sessions. Dr. Clarkson
12 is DOI's newly appointed Deputy Assistant Secretary
13 for Policy and Economic Development. A citizen of
14 the Choctaw Nation, Dr. Clarkson has brought to his
15 new position an extensive background in law, finance
16 and economic development.

17 The department's intent is to update the
18 BIA trader licensing regulations to make them
19 relevant to tribal government in the 21st Century.
20 The fact that they were last addressed in 1965 means
21 they are useful for tribal economies that existed 52
22 years ago, not those in 2017.

23 Dr. Clarkson brings new perspective and
24 focus as a strong believer in promoting tribal self-
25 determination through increasing tribe's access to

1 economic opportunity. He is bringing fresh ideas
2 and methods to how Indian Affairs works with tribes
3 on their business and energy development needs.

4 In announcing his appointment last month,
5 Interior Secretary Ryan Zinke noted that the
6 Financial Times had named Dr. Clarkson the nation's
7 leading scholar in tribal finance. He holds both a
8 bachelor degree and MBA from Rice University. He
9 earned his doctorate in technology and operations
10 management from the Harvard Business School. He
11 also holds a law degree from the Harvard Law School.
12 He has consulted and served as advisor to tribal
13 organizations and federal agencies on tribal finance
14 and economic development issues.

15 Dr. Clarkson is a great supporter of
16 Native students. He is a lifetime member of the
17 American Indian Science and Engineering Society
18 where he served as chairman of the AISES Foundation
19 from 2005 to 2009. He has also been a member of the
20 Indian Law Section of the Federal Bar Association,
21 the Licensing Executive Society, the Native American
22 Finance Officers Association and the State Bar of
23 Texas.

24 Dr. Clarkson is a resource for Indian
25 Country and has the credentials to back it up.

1 Therefore, please join me in welcoming Dr. Gavin
2 Clarkson, Indian Affairs' new Deputy Assistant
3 Secretary for Policy and Economic Development.

4 **DR. GAVIN CLARKSON:** Thank you very much,
5 or in Choctaw I would say (speaking in Choctaw). As
6 she said, my name is Gavin Clarkson. I'm a proud
7 member of the Choctaw Nation of Oklahoma.

8 And I really appreciate the opportunity to
9 come and talk with you all today. And perhaps more
10 so than any of the other consultations, this is the
11 chance for me to learn. I have a little bit of
12 familiarity with the Alaska Native experience, but
13 I'm hoping that in this consultation process I'll be
14 able to learn more and particularly how updated
15 regulations might be of benefit to the Alaska Native
16 communities.

17 But I want to start off with some themes
18 that Secretary Zinke asked me to convey. As you may
19 have heard and as you know, he's a strong advocate
20 for tribal sovereignty. It's something that he
21 talks about all the time and whenever he addresses
22 Indian Country, but he's a huge proponent also of
23 self-governance and self-determination, allowing
24 tribes to be in charge. And above all else, he
25 wants to emphasize respect. Obviously we, as the

1 federal government, have not necessarily done a
2 great job of being respectful over the last couple
3 hundred years.

4 And as Secretary Zinke said since he
5 became Interior Secretary and since I became part of
6 the administration 12 weeks ago, it's our fault.
7 And we recognize it's our fault. And so one of the
8 things we are trying to do is to try and fix as much
9 as we can to be respectful of tribal sovereignty,
10 tribal self-determination. And to that end, we are
11 trying to promote economic freedom and tribal
12 empowerment. And one of our main areas of emphasis
13 is reducing the regulatory burden.

14 But many of you have specifically heard
15 Secretary Zinke say sovereignty has to mean
16 something. We all have a sense of sovereignty.
17 Those of us who have been working in Indian Country
18 for years, we instinctively have a sense of what it
19 is. But from the federal government's perspective,
20 what does it mean to say sovereignty has to mean
21 something? Well, we have 567 separate federally
22 recognized tribes and Alaska Native villages, and
23 each one has a different story, a different history,
24 a different experience with interaction with the
25 federal government, and no two tribes are

1 necessarily the same.

2 And so the challenge is, how do we come up
3 with the notion of sovereignty that protects
4 everybody. The way we look at that is, if you think
5 about it, every single tribe regardless of their
6 history, regardless of their experience, has a sense
7 of sovereignty. And that sovereignty has a
8 boundary, and that boundary deserves a vigorous and
9 robust defense. And that's part of what we view our
10 role as the federal government is being the defender
11 of that sovereignty side by side with the tribes.

12 So within that zone of sovereignty,
13 however, there is a range of capabilities. There
14 are some tribes that because of hostility or damage
15 or all the bad things that we, the federal
16 government, has done, we put them in a position or
17 they remain in a position, either through need or
18 through desire, for us to be providing services. We
19 refer to those as our direct service tribes. And
20 there are -- on the other end of the spectrum are
21 the tribes that perhaps just wish we didn't exist
22 other than to defend their zone of sovereignty.
23 These are the -- we refer to these as the fully
24 empowered tribes.

25 Some of them are in our self-governance

1 program -- a great number of them are in our self-
2 governance program, but not all of them are. Some
3 of them just -- they exist and they take care of
4 everything and they really need us for very little.
5 We provide very little value, as Secretary Zinke
6 says. And clearly there is a benefit for some
7 tribes to move along that path, to move from the
8 direct service zone to the fully empowered zone to
9 where, instead of sending them bureaucrats, we send
10 them money to help support their government.

11 But this administration is not trying to
12 force any tribe in any direction. There were
13 discussions that maybe that we were trying to
14 resurrect the notion of termination, and I'm here to
15 tell you that that's absolutely incorrect.
16 Termination is not the policy of this
17 administration. We are vigorous and robust
18 defenders of tribal sovereignty. And we recognize
19 that you can't undo two centuries of damage in a
20 couple generations. So there are going to be some
21 tribes that are still going to need us to provide
22 certain services even a couple generations from now.
23 So my grandchildren will probably be working with
24 some direct service tribes.

25 That being said, there are some tribes at

1 the fully empowered end of the zone that are finding
2 it difficult to interact with the federal government
3 because we are so often the problem. Ronald Reagan
4 famously once said that the worst thing you can hear
5 as a small business person is, hi, I'm from the
6 federal government, and I'm here to help.

7 I think from this administration what you
8 are more likely to hear is, hi, I'm from the federal
9 government, and I'm here to get out of your way. And
10 that may be a little bit different than what most
11 people from the federal government have been telling
12 Indian Country, but if you look at it, there's good
13 reason for us to get out of the way.

14 Southern Ute tribe was up briefing the
15 president at the energy roundtable. And they
16 described the scenario where off reservation -- they
17 are a very successful oil and gas tribe. Off
18 reservation it takes them about four months to get a
19 drilling operation up and running through the
20 permitting process. On reservation it takes them 31
21 months. Why? It's because of us. We are the
22 problem. We put so many impediments in the way to
23 on reservation economic development that in many
24 cases it's nearly impossible.

25 In fact, Southern Ute operates an offshore

1 oil drilling platform in the Gulf of Mexico. Why
2 would a landlocked tribe in southern Colorado be
3 operating in the deep waters off the Gulf of Mexico?
4 As it turns out, it's easier to drill 10,000 feet
5 below the surface of the earth underneath the ocean
6 floor than it is to drill in their own backyard.

7 And it's not just oil and gas development
8 where we are the problem. It's in simple, everyday
9 things. They gave another example where they are
10 providing electrification, which is a big issue up
11 here in Alaska. Trying to provide electrification
12 to elder housing, and they have to dig a utility
13 pole to run a new electrical wire. It's a hole.
14 It's six feet deep. You put a tree in it. You fill
15 it with concrete. You hang a wire on it. It ain't
16 that hard. And yet every time they do that, we have
17 to do a NEPA analysis of a utility pole hole.

18 And I had another Pueblo governor tell me
19 that they have to get NEPA approval every time they
20 update the stucco on tribal housing.

21 So there is a whole bunch of just crazy
22 insane things that we do that make things so much
23 more difficult, and tribes are really asking us,
24 please, just get out of the way.

25 So for the tribes that have the

1 capability, for the tribes that are fully empowered
2 in that zone, and even the tribes that are along
3 that spectrum, there are times where we add no value
4 at best and at worst we detract from value. So
5 that's what we are trying to explore.

6 But from a priority standpoint, priority
7 number one for this administration is economic
8 development. So the question is how can we best help
9 tribes develop self-sustaining economies that
10 promote jobs, wealth, prosperity and independence
11 for all. The challenge we have -- certainly in the
12 lower 48, and I'd be interested to hear if there are
13 similar experiences here in Alaska -- is a problem
14 of what the economists refer to as leakage.

15 When money flows into an economy, in a
16 healthy self-sustaining economy, probably like the
17 one here in Anchorage, the money will cycle five or
18 six times before it leaves that economy. In most of
19 Indian Country, money gets paid into the economy and
20 it immediately leaves. It cycles out after only one
21 cycle. In fact, the story I was discussing with the
22 president of the Navajo Nation, the single largest
23 Walmart on planet earth, not in terms of per square
24 footage, but in terms of dollar per square foot
25 sales, is in Gallup, New Mexico. Why Gallup?

1 Because all the Navajos get paid. At the end of the
2 month, they all drive to Gallup the first of the
3 month to go shopping.

4 Second largest Walmart on planet earth in
5 terms of dollar per square foot sales is the Crow
6 Mart in Billings, Montana.

7 You have these situations where tribal
8 economies, because they have not been able to invest
9 in the necessary infrastructure to create a self-
10 sustaining economy, unfortunately don't get the
11 benefits of a growing economy. But where the tribes
12 have been able to turn that around, sometimes with
13 gaming, sometimes with energy, sometimes with
14 economic development, it's clear that when Indian
15 Country prospers, so, too, do the surrounding
16 communities and the surrounding states.

17 So this is not a fight between the tribes
18 and the states. This is basically trying to have a
19 rising tide, float all boats. From my time I've
20 been spent here in Alaska, you certainly know about
21 large rising tides. But obviously also something
22 important here to Alaska is energy development. And
23 we view energy development as critical to this
24 effort of overall economic development.

25 No. 2, however, is tribal empowerment.

1 How can we better empower tribal leaders? How can -
2 - as the Secretary puts it, how can we help create a
3 situation where tribes get to decide what is right
4 rather than us deciding what is right? How best can
5 we return economic sovereignty to the tribes?

6 Part of that, we think -- and obviously,
7 we are always open to suggestion -- is human capital
8 development. What is the best way to invest in
9 Native people? And we are not just talking about
10 sending a bunch of Native kids to college, although
11 as a former college professor -- I guess I'm
12 technically on leave from the university, so I'm
13 still a college professor, but I'm obviously very
14 eager for as many Native kids that can to go off and
15 get higher education.

16 But far too often the elites in this
17 country have denigrated and made fun of the people
18 who work with their hands. And any self-sustaining
19 economy needs people who build things and fix things
20 and make things and grow things or harvest things or
21 go out and hunt for things or go out and fish for
22 things there are -- there is a need for people who
23 work with their hands. There is a need for the
24 skilled trades.

25 And I use this example with my students

1 that my father was an orphan Indian kid in
2 Chickasha, Oklahoma who was so broke -- and he would
3 tell you he was broke rather than poor. He would
4 say that poor is a state of mind. Broke is merely a
5 temporary interruption in cash flow.

6 But he was so broke that during the
7 Depression he was digging through other Indians'
8 garbage cans for food. And I've actually met tribal
9 elders who remember chasing Garbage Can Charlie off
10 their front porch.

11 But at age 16 he decided two things: One
12 is that poverty sucks, and number two, he was mad at
13 the Japanese for bombing Pearl Harbor. So he joined
14 the Navy and never looked back. By 1948 he became
15 the first American Indian to fly a jet. By 1962 he
16 was the senior nuclear targeting strategist for all
17 of NATO. He had a computer about twice the size of
18 this room with 16 kilobytes, and he used it to do
19 strategic war planning to blow up the Soviet Union.
20 And he was literally the person who was -- retasked
21 the missiles off of China and aimed them at Cuba
22 during the Cuban missile crisis.

23 So I am proof positive that Indian poverty
24 is not a life sentence. But I also remind my
25 students that I am only one generation removed from

1 dumpster diving. And so fancy degrees and fancy
2 elites, they have their purpose, but so, too, do the
3 people who work for a living with their hands
4 building and harvesting and creating and fixing.
5 And so we need to recognize the skill trades are
6 just as important to both America's economy and
7 certainly tribal economies.

8 And that's a challenge for economic
9 leakage. Very often many tribes don't have
10 necessarily people who are skilled in the necessary
11 trades, so they will go off reservation or outside
12 their community when they need a plumber or an
13 electrician or things like that. We obviously want
14 as many Native kids to go off and get higher
15 education as possible, particularly where those
16 degrees will be able to help them contribute back to
17 their home communities. But once again, the states
18 are always going to be better off if Indian
19 Country's workforce is highly skilled and highly
20 trained and highly educated.

21 We view that human capital development is
22 the best long-term strategy for promoting tribal
23 economic growth and tribal self-governance
24 simultaneously.

25 That takes us to the reason we're here

1 today. Right before the end of the year, there was a
2 call for comments on a proposed rule-making.

3 And I want to introduce Ashley of my
4 office and Liz Appel are the two people that were
5 coordinating this effort, and they are phenomenal.
6 So they are the people that are not only helping me
7 make sure this process works through properly, but
8 they are also the ones that will be assembling and
9 helping me process all the comments.

10 So they actually do a phenomenal job going
11 through and collecting all the information that
12 Indian Country told us in this first round of
13 comments, which I guess closed in April, correct?

14 **MS. ASHLEY FRY:** Yes.

15 **DR. GAVIN CLARKSON:** What Indian Country
16 told us was that these statutes are old. The
17 statutes themselves are perhaps very strong, and
18 they have a very clear description of the
19 legislative intent of the founding fathers. But
20 it's also very clear that the regulations are old
21 and are in need of an update.

22 But if you go back and look at the
23 statutes themselves, the original statute, I
24 believe, 1790 and the updated statute was 1834. It
25 was very clear at that time, and Indian Country and

1 particularly the NCAI and several other
2 organizations and tribes pointed out that the
3 founding fathers viewed tribal economies as being
4 completely separate and exclusive of the states,
5 that the only entities regulating commerce on the
6 reservation were either the tribes themselves or the
7 federal government, to the exclusion of the states.

8 And that's what the founding fathers
9 thought, and that's what Congress spoke about. And
10 I'm a Republican. I'm allowed to look to the
11 original legislative intent of the statute. So when
12 the founding fathers speak, we try and listen.

13 Unfortunately, we also are cognizant of an
14 activist judiciary, and unfortunately certain
15 federal common law decisions breached that
16 exclusivity. If you go back to what Chief Justice
17 Marshall said in Worcester v. Georgia, he described
18 the Cherokee Nation as having distinct boundaries in
19 which the laws of Georgia can have no force. And
20 that's a fairly easy system to understand.

21 Unfortunately, federal common law
22 decisions came in and breached that exclusivity.
23 And once that breach was open, federal and state
24 regulations and regulators came in and made the
25 situation worse. And we got a lot of information

1 from Indian Country about the problems associated
2 with outside intrusion into tribal economies from a
3 regulatory and taxation standpoint.

4 So Indian Country gave us several
5 suggestions, and we listened to those suggestions.
6 And Ashley has done a great job of compiling them
7 and detailing and categorizing them and so on. But
8 there were three primary suggestions that we were
9 given that we have listened to very intently.

10 First is Indian Country is asking us to
11 give tribes the exclusive ability to tax and
12 regulate trade and commerce that occurs on trust or
13 restricted fee lands. The other thing they have
14 asked for is for these regulations to facilitate an
15 ability of tribes to opt out of federal regulatory
16 oversight of some or even all of their Indian lands,
17 basically asking the federal government to step away
18 because the tribes feel like they are capable of
19 doing so and taking charge and being responsible for
20 all the decisions that happen on those territories.

21 And finally, it's to replace an uncertain
22 taxation system with a geographic jurisdiction based
23 system, just like the states have. It's very clear
24 -- I taught at New Mexico State, which is just a few
25 miles outside of El Paso, Texas. And so when I

1 would drive to the El Paso airport, the moment I
2 entered Texas, Texas law applied. If I stopped at a
3 convenience store, I owed a Texas sales tax, not a
4 New Mexico sales tax. But when I returned back from
5 the airport back to Las Cruces and I crossed the
6 border in New Mexico, stopped at a convenience
7 store, I owe a New Mexico tax.

8 It was very simple. And it didn't matter
9 what the color of my skin or what my nationality was
10 or anything. I could be black, white, red, or green
11 from Mars. It didn't matter. So Indian Country
12 suggested that if green martians land on a tribal
13 territory and go to a tribal convenience store,
14 those martians should be paying a tribal tax to the
15 exclusion of all else.

16 So the question we have, then, is, well,
17 we have heard these suggestions from Indian Country,
18 and we are listening again and we're getting more
19 data in this consultation process. But the question
20 is, what would the sovereignty zone look like under
21 Indian Country's proposed regulations. And I say
22 proposed regulations because we actually got
23 regulations from four separate tribes. It was
24 Citizen Potawatomi, the Lummi, Otoe-Missouria and
25 Lac Vieux Desert all turned in actual draft

1 regulations. And they weren't all identical. There
2 was a high degree of similarity. And all four of
3 them called for those primary suggestions that we
4 went through on the last slide.

5 So the question is, what would that
6 sovereignty zone look like if we were to take some
7 semblance of those regulations and put those forward
8 and enact those as regulations. Well, the
9 sovereignty zone would stay the same. There would
10 be no termination. Tribes would be able to be
11 anywhere on the spectrum that they want to be, and
12 they could certainly move along the spectrum within
13 that zone, but everything inside is inside tribal
14 control.

15 If there are state tax officials or state
16 regulators that want to go in and try and interfere
17 with tribal economies, they are excluded at that
18 border of tribal sovereignty. And where we as a
19 federal government aren't wanted with our oppressive
20 regulatory regime, we, too, are excluded from
21 interfering on tribal lands.

22 And so it leaves a situation where Indian
23 Country is in charge of Indian Country. Now,
24 there's obviously going to be certain laws that are
25 going to apply, but in general, certainly from a

1 taxation or regulatory standpoint, it's the tribes
2 in charge. And again, these are the suggestions
3 that are coming from Indian Country that we are
4 listening to.

5 And I know some folks in the room were
6 contributors in the last round, and we encourage
7 everybody to participate in this round of
8 consultation. But the challenge we have is we have
9 to make an economic case for this because in all the
10 consultations, I've never had anybody say, oh, no,
11 gee, we need the oppressive federal government to
12 continue to micromanage all aspects of tribal life.
13 Nobody from Indian Country is saying that. However,
14 there are still some from the outside that might be
15 concerned about what we are doing or what we are
16 contemplating.

17 And we discussed this in our Dear Tribal
18 Leader letter. I encourage you, if you didn't get a
19 copy or you misplaced your copy, we can certainly
20 get you a copy. And it's also up on our website.
21 There is a Harvard project on an American Indian
22 economic development study that identifies a lot of
23 these issues, as well, and they go through and they
24 do an economic analysis of a few projects.

25 But we need to make the economic case not

1 only that Indian Country will be better off, but
2 also that the surrounding states will be better off.
3 And we think we can make that case. It's fairly
4 standard macroeconomics that every state would be
5 better off if the tribal communities within those
6 states, instead of being cesspools of poverty, all
7 of a sudden morph into mountains of prosperity
8 because if you have a growing, vibrant, domestic
9 emerging economy, eventually the economic output of
10 that economy will leak out into the surrounding
11 states.

12 And in addition, we have been told that
13 there are literally billions of dollars of projects
14 that are sitting on the sidelines that are not
15 happening now but could happen now in a different
16 regulatory environment.

17 And so while we can sit here and say what
18 ought to be and what we can -- we take issue with
19 various different legal positions, the only way that
20 this initiative will make an impact is if we can
21 make the economic case that everybody is better off.

22 It's sort of an interesting way to view my
23 position. I describe -- when people ask me, you
24 have a duty to the tribes, but you work for the
25 federal government, the way I describe it is I am

1 like a fiduciary trust officer of a publicly traded
2 bank. I work for the CEO, the president. I
3 represent the shareholders and I work to maximize
4 the values of the shareholders, that being the
5 people of the United States. But I have a fiduciary
6 obligation to the 567 Indian tribes.

7 In this case, I don't see that there is
8 any misalignment between the goals of the people of
9 the United States and fulfilling that duty to Indian
10 Country because if we can make Indian Country
11 economically better off and make the nation as a
12 whole better off economically, then we have
13 fulfilled that mission. And so we think that the
14 macroeconomic case can be made, but we need Indian
15 Country's help. I can't be more clear about this.
16 We will not be successful in making a significant
17 regulatory change if we don't get the necessary data
18 to make the case that not only the tribes are better
19 off, but also the states are better off.

20 And the way that we think is a good way to
21 make that case is to talk about the new money that's
22 sitting on the sidelines right now. I just -- an
23 example -- I got some data from northern New Mexico
24 that there is a billion-dollar project that the
25 company approached the tribe and said, hey, we've

1 got a billion-dollar project, we'll invest all the
2 capital expenditure, we'll create all these jobs,
3 generate all this revenue, but you, the tribe, you
4 need to take a tax holiday. And the tribe said no.
5 Why don't you go ask the state. This oil and gas
6 has been on our territory long before this state has
7 ever existed. Go ask the state to take a tax
8 holiday. Well, the state of New Mexico was having
9 financial difficulties, so they said no. So guess
10 what? Nothing happened. No money was spent,
11 nothing was built, no revenue was generated and no
12 jobs created.

13 If you change the economic system and go
14 to the way what Indian Country has suggested, just
15 in that one contract in northern New Mexico there
16 would be likely a billion dollars of stimulus, plus
17 the follow-on revenue and job creation.

18 So we envision there are multiple billions
19 of dollars of projects sitting on the sidelines that
20 if we reduce the uncertainty, particularly the
21 uncertainty associated with dual taxation, if we
22 make it such that Indian Country is a more business
23 friendly environment because we reduce the
24 interference from the state and federal governments,
25 we anticipate that would be a massive opportunity

1 for economic stimulus.

2 Indian Country is a domestic emerging
3 economy, but unfortunately it currently has way too
4 many shackles. If we can unleash the power, the
5 potential of Indian Country's domestic emerging
6 economy, there is no telling what good we can do in
7 terms of jobs, infrastructure, and just improving
8 the economic prospects of a fairly marginalized
9 section of our society.

10 The other thing that we would like to get
11 from tribal leaders -- so again, the things we want
12 to know -- and we don't necessarily need
13 confidential information. A lot of people have been
14 asking about that. We basically need information.
15 We will happily take as much information as you are
16 comfortable sharing, but just know that we are going
17 to be taking this data and we're going to be putting
18 it into a macroeconomic model, but we're also going
19 to be sharing this data with fellow economists from
20 the Harvard project, from the Federal Reserve, some
21 folks at Texas A&M that are looking at the energy
22 sector, and then we have some economists over at DOE
23 that are also going to be helping in the energy
24 sector.

25 So they are going to be taking the same

1 data that we are going to -- so we are going to have
2 multiple sets of economists independently reviewing
3 and analyzing the data. So every piece of
4 information we get will be publicly disclosable, so
5 people should be careful and make sure they redact
6 out or withhold any confidential information. But
7 we don't need detailed information about project by
8 project.

9 What we need is general industry sector,
10 capital expenditure for that project, annual
11 revenues expected from that project, and jobs
12 created by that project. And that's sufficient for
13 our analysis. You could even call it project A and
14 project B. One is in the energy sector, one is in
15 the retail sector. That's sufficient for our
16 purposes.

17 The other information we need -- and we
18 got some of these yesterday at the consultation in
19 Portland, where tribes have gone through and tribal
20 communities have gone through and put together
21 economic impact statements where they have been able
22 to demonstrate where a dollar that gets invested in
23 the tribal economy automatically benefits the
24 surrounding community. A lot of is it associated
25 with gaming, but not exclusively. So if any of you

1 all have got these kind of studies prepared, those
2 are very beneficial for our analysis because they
3 basically help validate our model that money
4 invested in tribal communities in Indian Country
5 helps the broader community.

6 And finally, my boss is very keen on
7 making sure that we not only meet our treaty
8 obligations but exceed our treaty obligations. And
9 to that end, if there are tribes or communities that
10 have specific treaties with the federal government
11 where we have failed, where we have not lived up to
12 our obligations, please highlight those for us.
13 Please let us know where we have failed to support
14 tribal economies where we have a treaty obligation
15 to do so.

16 So once again, this is a situation where
17 we need help from Indian Country. We cannot do this
18 by ourselves. And again, we are looking for this to
19 be a collaborative consultative process. We are not
20 trying to say, we are the federal government, we
21 know better. In fact, from my perspective, it's how
22 consultations should be, that the regulations, if we
23 do come up with a regulation and we put them
24 forward, they are going to be based on the
25 suggestions we got from Indian Country about what

1 these regulations should look like.

2 So we are taking this consultation process
3 very seriously. We are trying to get as much tribal
4 involvement, and we look forward to your thoughts
5 and your comments. And particularly here for this
6 consultation, I know that there are some unique
7 characteristics of the Alaska Native experience, so
8 anything that you all can do to help educate us or
9 any suggestions you have about how our regulations
10 might be of benefit to Alaska Native communities, we
11 definitely want to hear from you.

12 That's basically all we have in terms of
13 prepared remarks. So I know those of you who are on
14 the phone, there is a process for you all to ask
15 questions, but if we can go ahead and start. We are
16 recording this with a court reporter, so when you
17 ask a question, if you could, please, just identify
18 yourself with your name and which community you
19 represent, and if you are with a law firm, identify
20 the law firm. That way we can make sure that
21 everybody's comments are recorded.

22 We have the room until noon, so there
23 should be plenty of time for everybody and anybody
24 to ask questions. If I can answer those questions
25 now, I will. We may not be able to answer all the

1 questions. Some of them we may not know the answers
2 yet, but we will do our best. But again, this is an
3 opportunity for Indian Country and the federal
4 government to work collaboratively towards a
5 mechanism that potentially has tremendous potential
6 to benefit tribal economies throughout all of Indian
7 Country.

8 So I look forward to your comments and
9 questions.

10 **TELECONFERENCE OPERATOR:** Are you ready
11 for taking questions on the phone line?

12 **DR. GAVIN CLARKSON:** We can go ahead and
13 start with the phone lines, yes.

14 **TELECONFERENCE OPERATOR:** Thank you. And
15 on the phone line, if you would like to ask a
16 question, you may press star followed by one and
17 record your name clearly. Again, that is star
18 followed by one to ask a question. One moment,
19 please, for our first question.

20 At this time I'm showing no questions on
21 the phone line.

22 **DR. GAVIN CLARKSON:** Okay. Well, let's
23 start around the room then, and as -- people may
24 have questions while they are on the line. So does
25 anybody have anything they want to lead off with?

1 **MS. JOLENE JOHN:** Is it okay if I comment?
2 Jolene John with the BIA. However, having worked in
3 other agencies, I am aware, as far as economic
4 development in the tribal communities, especially in
5 rural Alaska where there is a lot of wetlands, there
6 are many issues that do prevent tribes from making
7 projects happen because of the environment that they
8 are on. And that limitation, when it involves not
9 being able to interrupt wetlands if it's not been
10 previously disturbed really is a barrier for many
11 tribes, even if it's not the tribal government in
12 Alaska because we have the Alaska Native Claims
13 Settlement Act and ANILCA. The village corporations
14 then also face challenges in trying to develop
15 something on their lands which then would have
16 created jobs and improve the economy. So if we can
17 think of that in addition to all the other
18 challenges that you have, how can those be softened
19 or some way to make it easier for tribes to relax
20 the regulations that involve environmental barriers.

21 **DR. GAVIN CLARKSON:** First of all, thank
22 you for your comment. And by the way, anybody --
23 anybody in the room is free to comment, so --
24 because -- even those folks who are federal
25 employees nonetheless have an experience back to

1 their home communities, and we want to welcome all
2 comments.

3 That was actually -- that was the second
4 point that Indian Country had suggested to us was
5 that there is a whole process of regulatory reform,
6 but in many cases tribes think that they would do a
7 better job of being stewards of the land and
8 stewards of the forests and stewards of the natural
9 resources, a better job than the federal government
10 because their agenda is local. Their agenda is
11 driven by the people who live in that community who
12 are affected by the environmental conditions in that
13 community every day.

14 And so the thought would be -- there is
15 actually not a statute -- at least we haven't found
16 one yet -- that requires that tribal lands be
17 treated as public lands. We just all of a sudden
18 just started doing that. And unfortunately that
19 then -- the moment we start treating it as public
20 lands, all of a sudden that starts kicking in a
21 whole bunch of additional regulations.

22 What we are looking at and what Indian
23 Country has suggested, is there a way for tribes to
24 simply opt out of -- allow a tribal community to
25 make the wetlands determination, allow a tribal

1 community to do the forest management, because
2 that's -- that's been their community for long
3 before the United States existed in many cases. Why
4 shouldn't that tribe or why shouldn't that community
5 be the ones deciding what's right within that
6 community as regards to the environment because at
7 least, from my perspective and Secretary Zinke's
8 perspective, tribes have been phenomenal stewards
9 of natural resources for generations.

10 And again, their agenda is driven by local
11 conditions and keeping Grandma happy. As we all
12 know, when Grandma ain't happy, ain't nobody happy.
13 So we need to make sure that we try and return
14 control of these communities and these territories
15 to the tribes who had managed them for seven
16 generations previously.

17 So that's -- that's an area where we are
18 looking, and we are certainly open to suggestion. I
19 know there are some tribes that have gone to
20 Congress and tried to do opt-outs where they say we
21 are capable of doing this. Let us, in effect, be
22 released from all these regulations. But if there
23 is a way for all of Indian Country to choose when
24 and where the federal oversight is necessary, there
25 are some tribes that think that's very beneficial.

1 **MS. HEATHER DAWN THOMPSON:** My name is
2 Heather Dawn Thompson. I'm with the law firm
3 Greenberg Traurig. I'm primarily here for tribes
4 from the Lower 48, but I feel compelled to discuss
5 some Alaska specific issues since we don't have a
6 large Alaska tribal contingency here.

7 I have previously represented the
8 Association of Village Council Presidents. I'm not
9 currently representing them, to be 100 percent
10 clear, but I am relatively familiar with a lot of
11 the economic development struggles for tribal
12 governments in Alaska. So for the record, I'd like
13 to put some of those down on the record.

14 **DR. GAVIN CLARKSON:** Absolutely. We would
15 love to hear it.

16 **MS. HEATHER DAWN THOMPSON:** And perhaps
17 then I'll discuss some of the Lower 48 issues.

18 One of my concerns with ensuring how these
19 regulations are written is respecting the complexity
20 and difficulties that ANCSA has caused to tribal
21 governments in Alaska. And I think that it's very
22 important to acknowledge that the lack of attendance
23 today is not for lack of interest in economic
24 development, but I believe, in my personal opinion,
25 is the direct result of the gutting of the economic

1 powers of the tribal governments in Alaska and,
2 therefore, not recognizing the importance of this
3 statute to what might happen for the tribal
4 government.

5 As you know, ANCSA took away the natural
6 resources from the tribal governments and put them
7 in State registered corporations. And this has
8 caused the tribes themselves to not have the
9 economic prowess and the financial resources to
10 really focus on economic development and has
11 displaced that with these State corporations.

12 So the Indian lands issue is very complex
13 in Alaska, of course. So in writing these
14 regulations, I think it's very important to ensure
15 that regulatory exclusivity is not solely on trust
16 lands, but that it includes tribal government-owned
17 projects regardless of where they might be located,
18 since we are largely landless from that definition
19 in Alaska and, frankly, in many other places in the
20 lower 48; includes E-commerce, which is becoming
21 more important to Alaska and to other landless
22 reservations or tribal communities.

23 And here I'm going out on a limb, but I
24 think that a conversation needs to be had about
25 tribal tax and regulatory authority over ANCSA lands

1 because those lands technically historically are
2 tribal lands. And while they are being managed by
3 what is legally a State corporation, they are treaty
4 lands. They are -- they are lands that are the
5 responsibility of the federal trust.

6 So I think a lot of thought needs to be
7 put into a creative -- an accurate definition of
8 Indian lands.

9 **DR. GAVIN THOMPSON:** And Ms. Thompson,
10 that's definitely something -- that's one of the
11 reasons we wanted to hold the consultation
12 specifically in Alaska because almost all the
13 comments came from Lower 48 tribes, and we recognize
14 that there are some unique situations here in Alaska
15 that the -- certainly the existing regulations
16 probably don't cover. And so how would you -- I
17 mean, how can we best get the input of the
18 constituents in Alaska to be able to figure out how
19 best to promote tribal economic development and
20 Alaska Native economic development?

21 **MS. HEATHER DAWN THOMPSON:** We might have
22 to meet when the village presidents meet because --
23 as I stated before, because of the gutting of the
24 economic structure of tribal governments, they might
25 not -- it is likely that they do not recognize the

1 applicability of this to them as governments, rather
2 than as to ANCSA corporations, which this would be
3 inapplicable to because they are not tribal
4 governments.

5 But again, I think some serious
6 conversations need to be had about empowering tribal
7 governments' jurisdiction -- understanding they are
8 not going to have ownership because that's a federal
9 statute, but jurisdiction over those ANCSA lands and
10 resources, and particularly any projects in which an
11 ANCSA corporation would partner with a tribal
12 government and perhaps give them ownership over that
13 economic development project on ANCSA land. It
14 would be very difficult to argue that that's not
15 Indian Country. That's an Indian-owned entity
16 operating in traditional Indian land that is
17 currently in a structure for the benefit of Indian
18 people.

19 **DR. GAVIN CLARKSON:** And to that end, you
20 say it would be hard to argue that wouldn't be
21 Indian land. Where do you think the push-back would
22 come from?

23 **MS. HEATHER DAWN THOMPSON:** Obviously, the
24 very real difficulty is that there is a federal
25 statute that has taken these lands from the tribal

1 governments and put them in a State corporation for
2 management and ownership for the benefit of Indian
3 stakeholders.

4 **DR. GAVIN CLARKSON:** Right. I guess do
5 you think the State would be opposing that?

6 **MS. HEATHER DAWN THOMPSON:** I think both
7 the State and the ANCSA corporations would oppose
8 it.

9 **DR. GAVIN CLARKSON:** Okay. So do you
10 think that that -- that we need to have separate
11 conversations just about a version of these
12 regulations just for Alaska? Do you think it's --
13 given your experience in both -- you mentioned you
14 were going to be talking about Lower 48 in a
15 separate set of comments.

16 **MS. HEATHER DAWN THOMPSON:** My initial
17 thought is that the more we incorporate Alaska
18 tribes as the same as Lower 48 tribes, the better
19 because, as you know, under the Constitution and
20 under most implementing statutes, there is not
21 supposed to be a differentiation between tribal
22 governments and the benefits that they receive, and
23 yet the federal government has historically treated
24 Alaska villages differently.

25 They have not, you know, given them trust

1 land. That's just very recent, that conversation.
2 They have gutted the law enforcement powers and not
3 let them compete in the court system. So I don't
4 think it's beneficial to carve it out. I think that
5 the two primary issues here are equally -- at least
6 one of the two is equally applicable in the Lower
7 48, and that is making sure that the tribal
8 government has jurisdiction, commerce jurisdiction,
9 tax and regulatory jurisdiction, over, at a minimum,
10 things that they own, regardless of where that land
11 base is, which is key for all landless tribes,
12 whether that be in Alaska or the Lower 48. So I
13 don't think there needs to be a differentiation
14 there.

15 And then on the second issue, which is the
16 definition of Indian land, you are going to have a
17 rolling definition. Right? You are going to say
18 fee lands. You are going to say trust lands. You
19 are going to say Oklahoma Indian lands, da, da, da,
20 da, da. And in there should be included something
21 specific for Alaska that is more expansive than
22 simply trust lands because the federal government
23 has failed Alaska tribes in providing them an
24 opportunity to acquire trust lands historically.

25 So if you are limiting the definition of

1 Indian lands in that capacity, you are by design
2 excluding Alaska and treating them differently than
3 every other tribe, which is prohibited under the
4 Constitution and under federal statutes.

5 **DR. GAVIN CLARKSON:** And that's certainly
6 not our intent. The suggestions coming from Indian
7 Country thus far, including a tribe in Oklahoma --
8 actually two tribes from Oklahoma, they identified
9 Indian lands defining it as trust lands and
10 restricted fee lands, in part because that's coming
11 from existing definition that has already survived
12 judicial challenge.

13 So again, we are not foreclosed to any
14 definition, per se. Again, that's why it's
15 important for us to come out here and listen. But
16 we also need to recognize that this is not going to
17 be an easy process and we want to -- we want to --
18 we want this to succeed with whatever we can do for
19 Indian Country, and we certainly do not want to
20 leave any communities behind.

21 We recognize that obviously a very large
22 and significant Alaska Native population has been
23 left out of much of these opportunities simply
24 because of the nature of the underlying land issues.
25 So we are cognizant of that.

1 So I think the best thing to do, if there
2 are opportunities to provide comments on behalf of
3 Alaska Native communities, now is the time. And if
4 there are ways to -- and I would encourage everybody
5 to take a look at the proposed regulations that were
6 already submitted in the last round because they are
7 all available on-line. Go take a look and see what
8 those in Indian Country who took the time to put
9 together regulations have put forward.

10 And if people have an alternate suggestion
11 about how to define that, we are -- we have not
12 identified, these are regulations, we are moving
13 forward. We are saying we want to listen and we
14 want to hear from Indian Country. So when we do go
15 forward -- if we can make the economic case because,
16 again, can't make the economic case, we're not going
17 to be able to go forward. When we are fairly
18 confident we can make the economic case, if we get
19 the data from Indian Country, then we want to go
20 forward with a set of regulations that benefits not
21 only Indian Country as a whole, but also individual
22 communities with unique experiences, but at the same
23 point the question then comes backs to, will Alaska
24 as a whole be better off if Alaska Native
25 communities have more control over their local

1 territories.

2 **MS. HEATHER DAWN THOMPSON:** Right. Two
3 thoughts there. One is that may I recommend that
4 the Bureau of Indian Affairs consider a working
5 group phone call on the Alaska lands definition,
6 because, A, it's such a rural population, it's
7 difficult for them to make a consultation. I think
8 we just discussed the fact that a lot of tribal
9 leaders might not immediately identify it as
10 important as it really is to them. And I think that
11 oftentimes in -- I mean, it would still be formal in
12 the sense that you would announce it and it would be
13 on the record, et cetera, but more interactive
14 working conversations sometimes are more productive
15 than formal submission of written comments, which
16 can be difficult for tribes of limited means.

17 **DR. GAVIN CLARKSON:** Do we have a
18 mechanism to do that where we can set up follow-on
19 consultations just via a phone call with specific
20 communities?

21 **MS. ASHLEY FRY:** I think as long as we are
22 doing it in the process of the rule-making
23 framework, then I believe that we can still do that.

24 **DR. GAVIN CLARKSON:** That's one of the
25 things -- that's why Ashley and Elizabeth Appel are

1 so vital to this process because part of what they
2 are doing is making sure that whatever process we
3 follow is by the book, compliant with every
4 requirement of federal rule making. So we want to
5 make sure if we do come forward with regulations,
6 that people may have some disagreements or they may
7 have some differing opinions, but hopefully nobody
8 will be able to say that our process was not proper.

9 **MS. HEATHER DAWN THOMPSON:** Right. Totally
10 understood. Because there will be people much more
11 expert than I that could help design a definition
12 that can pass legal scrutiny and, frankly, is
13 economically viable and helpful.

14 So for example, if my initial idea of the
15 ANCSA lands is too much or doesn't work within the
16 federal statutory framework, there are other
17 definitions perhaps, like villages, which are
18 clearly tribal in nature that continue to struggle.

19 For example, I lived part time in Sitka.
20 And as you know, the Sitka tribe and Sitka city are
21 on top of one another, but the tribe of Sitka has no
22 trust land. And so because of the limitations the
23 federal government has put on their jurisdiction,
24 which I have argued are inappropriate in Alaska,
25 they are unable to move forward with a variety of

1 economic development projects that I have seen
2 personally fail over the last two years.

3 And so acknowledging their ability to tax
4 and regulate tribally owned economic development
5 projects within their villages which have now been
6 subsumed by city structures alone would be
7 revolutionary.

8 And then one or two last final topics for
9 consideration: One is to reiterate your statement
10 that tribal lands are not public lands. This
11 continues to be a significant issue in Alaska in
12 making sure that that is, in fact, clarified.
13 Perhaps providing -- you mentioned an opt out for
14 federal regulatory oversight. There is a waiver
15 process in the Executive Order on tribal
16 consultation that's rarely utilized because people
17 are not that familiar with it, but perhaps including
18 something along those lines as well for federal
19 regulations over traditional tribal lands.

20 And then I would be remiss if I didn't
21 mention subsistence commerce, traditional
22 subsistence living. That's an issue in which I do
23 not have expertise, but clearly is of utmost
24 importance to the Alaska villages here and continues
25 to be a difficult issue in how it is categorized

1 between commerce and noncommerce and just making
2 sure that a more substantial conversation is had on
3 that issue.

4 **DR. GAVIN CLARKSON:** And to that end, some
5 of the tribes were very clear to also not only talk
6 about things that are viewed as nontraditional forms
7 of commerce, but also the tribes want us to focus
8 between commerce between tribal communities and make
9 sure that that -- from tribe A to tribe B or village
10 A to village B would be subject to just those
11 communities and nobody else.

12 So that was something that Indian Country
13 also suggested was to have a focus on both
14 intertribal trade and even international trade
15 because obviously there are some of the Jay treaty
16 tribes have a treaty right to bring goods across the
17 U.S./Canadian border, for example. And some of them
18 have suggested that maybe perhaps -- that they are
19 not able to fully exercise those treaty rights
20 because they are not being fully protected. So
21 those are things that we want to factor in.

22 But again, going back to the earlier
23 question of how -- will Alaska be better off if the
24 Alaska Native villages have more economic autonomy,
25 because certainly we think we know how to make that

1 case in the Lower 48. I'm sitting here basically
2 completely ignorant of what the relative impact is
3 of Alaska Native communities on the overall Alaska
4 economy, and that's something that we need help --
5 we need a better understanding. So that's part of
6 why we are asking for comments.

7 So our Dear Tribal Leader letter, as far
8 as I know, not only went out to all the Lower 48
9 tribal chairmen, but also went to all the village
10 leaders, as well. So we are specifically not trying
11 to exclude any community, and we want to make sure
12 whatever we come up with works for --

13 Hi, there.

14 **MR. CYRIL ANDREWS:** I'm Cyril Andrews.
15 I'm a realty officer. I heard there is questions
16 regarding --

17 **MS. KATHY CLINE:** They are doing just
18 land, so they are just coming in.

19 **MS. HEATHER DAWN THOMPSON:** So for the
20 record, one example -- and this is obviously not
21 macroeconomic data, but one example is just this
22 week we had -- in Sitka we had a business, an indoor
23 vegetable gardening growing business -- because
24 vegetables are so expensive in Alaska -- come to
25 Sitka and was interested in putting a business in

1 Sitka and wanted to work with the Sitka tribe, but
2 because the Sitka tribe is -- because there is
3 confusion about tribal jurisdiction over taxation
4 and commerce, even if they own the company
5 themselves or are doing business with the company
6 and because of the arguably lack of land base under
7 this very restricted definition of trust land, this
8 company decided it was too difficult to do business
9 with the Sitka tribe, and the next day instead went
10 and is probably signing a deal with the City of
11 Sitka. And that is a direct -- I mean, this
12 happened -- what are we, Wednesday? This happened
13 Monday.

14 **DR. GAVIN CLARKSON:** That is the exact
15 kind of story that we need to hear because that is -
16 - that -- what you are just describing of it being
17 too difficult or too uncertain to do a business with
18 a tribe in tribal territory is something that we
19 hear over and over and over again, but those kind of
20 -- I would -- if there is any way for you to
21 encourage the Sitka tribal leadership to share that
22 story with us and tell us how much money would have
23 been invested in the tribal community, how many jobs
24 would have been created.

25 And food sovereignty is obviously

1 something that we are strong advocates of, as well.
2 So there's all the ancillary challenges that missing
3 out on an opportunity like that would present.

4 So I would encourage you if you -- if you
5 have connections with the Sitka tribal leadership,
6 please ask them to share that experience because I'm
7 certain that that challenge is not unique just to
8 the Sitka tribe, but you probably can repeat that
9 story a couple hundred times with all the different
10 communities here in Alaska, if not more. So those
11 are the things that -- those would be examples of
12 how do you make the economic case.

13 **MS. HEATHER DAWN THOMPSON:** Right. Along
14 those lines, as far as getting feedback, I know it's
15 unusual for the Department of Interior because your
16 relationship is with the tribal governments, but the
17 entities that own this information really aren't the
18 government. So they are the business partners. So
19 half the time I represent tribes, but half the time
20 I represent the business partners. So usually these
21 decisions are made by the business partners, and
22 they are often made before the tribe even knows it
23 when they have just done the evaluation and
24 feasibility study and realize the uncertainty in the
25 lack of land and the taxation issues, and so they

1 just don't even move forward. So I know it's
2 difficult, but one recommendation is to perhaps have
3 NASCA reach out to the business partners or the
4 financiers, the banks. That's really where all of
5 this information is. I have business partner
6 clients pull out of deals twice a month.

7 **DR. GAVIN CLARKSON:** The call for
8 information is not -- we will take comments from
9 anybody and everybody. We did have several non- --
10 we had -- not all the comments came from tribal
11 leaders. Some came from intertribal organizations
12 like the Native American Finance Officers
13 Association. We even had some comments from the
14 National Federation of Independent Business.

15 So we have listened to comments from
16 everywhere. So we are not trying to limit our
17 comments. If there are people that want to do
18 business with Indian Country, whether they are your
19 clients or other people's clients, that are willing
20 to share these feasibility studies, that's a perfect
21 example of this feasibility study we would have
22 created, we would have spent this much to build this
23 project, we would have generated this much revenue
24 in this tribal community, we would have employed
25 this many people, whether tribal or nontribal, and

1 it didn't happen. And the reason it didn't happen
2 is because of the uncertainty of the jurisdiction,
3 of the uncertainty of the taxation, uncertainty of
4 wetlands determinations, any of these things.

5 One of the things that came out in the
6 initial set of comments was -- I think a couple
7 tribes mentioned that -- they characterize it as the
8 most expensive question in Indian Country is, "it
9 depends." And that is a question that lawyers love
10 because lawyers get paid to answer "it depends." And
11 there are tribes who have spent tens of millions of
12 dollars litigating over "it depends." And that's a
13 transaction cost that just makes it so much more
14 expensive to do business in Indian Country.

15 So if we go back to what Indian Country
16 has asked for -- navigate the slide here. So if we
17 go back to what Indian Country has asked for, they
18 have asked us to replace an uncertain system with a
19 geographic jurisdiction based system. And it's not
20 just in the area of taxation and it's not just in
21 the area of regulation, but just in general --

22 As a finance professor, one of the things
23 that we always teach our students is that the
24 capital markets hate uncertainty. And they will
25 either choose not to invest or they will impose a

1 premium if they do invest, and that will just make
2 the money more expensive. And that additional
3 expense is borne by the tribal communities
4 themselves and the individual tribal members.

5 So if we can -- looking at Indian Country
6 suggestions, if we can reduce the uncertainty
7 associated with investing in Indian Country, whether
8 here in Alaska or the Lower 48, that's a good thing
9 for everybody. I'm assuming -- that would be an
10 example where if there are businesses that just --
11 they just don't happen, whether they happen -- they
12 don't happen at all because it would have made sense
13 to do it with a tribal community, Alaska loses out
14 if those projects don't happen. And that would be
15 an example where Alaska is better off if there is
16 greater certainty associated with doing business
17 with communities in Alaska, just as the same case
18 could be made with tribes in the Lower 48.

19 And we will make sure you have plenty of
20 time to talk about your Lower 48 concerns. And we
21 do have some new people that came in, and so we are
22 in the middle of going through a consultation
23 process. And I'm sorry the -- most of the slides are
24 reasonably self-explanatory.

25 But the main thing that we are looking for

1 out of this process -- and again, we got a lot of
2 feedback in the first round of consultation from
3 Lower 48 tribes. We specifically wanted to come to
4 Alaska because we know that there are -- there are
5 some things that are exactly the same and some
6 things that are completely different. And we want
7 to make sure that, as we move forward, we are
8 cognizant and respectful of those differences, but
9 assistive in whatever we can do to help foster
10 tribal economic and Native community economic
11 development up here in Alaska, as well.

12 And so things that we are looking for --
13 although Alaska -- I don't know if it goes to the
14 village leadership, but hopefully everybody in
15 Alaska received the Dear Tribal Leader letter where
16 we are asking basically for economic information
17 about projects that aren't happening but could
18 happen under new regulations or under a different
19 regulatory regime where there is a -- we are trying
20 to find out how much is in -- has not been spent in
21 terms of capital expenditures, how much annual
22 revenues are being lost because these projects
23 aren't happening and how many jobs aren't being
24 created because the existing regulatory environment
25 is not business friendly and fostering economic

1 development in Alaska communities just as it is a
2 problem in the Lower 48 communities. So if you do -
3 -

4 Operator, are there any questions from the
5 phone lines yet?

6 **TELECONFERENCE OPERATOR:** At this time I'm
7 showing no questions on the phone lines. So again,
8 just press star one to ask a question.

9 **DR. GAVIN CLARKSON:** I know Ms. Thompson
10 has some additional Lower 48 questions, but if there
11 is anybody who has any additional comments -- yes,
12 ma'am.

13 **MS. JOLENE JOHN:** I think in Alaska since
14 the Indian Reorganization Act had Constitutions that
15 were passed in the late '30s, '40s, '50s and so on
16 and so forth, some of those tribes did have Section
17 17 tribal corporate charters passed at the same
18 time. However, if you speak with the local
19 governing council, most of them will say that they
20 are not utilizing them.

21 And so because over the decades they have
22 just not been -- they have not developed anything
23 because -- from the tribal corporate charters, and
24 we don't really see a whole lot of activity in
25 Alaska. What can this agency do to help highlight

1 the successful ones in the Lower 48 as examples and
2 collect those successful stories and present them
3 here for our Alaska tribes to see.

4 **DR. GAVIN CLARKSON:** Well, that is
5 definitely something that we are actively looking at
6 right now is Section 17 corporations. It's
7 something that I have -- I had a lot of experience
8 with Section 17 corporations prior to joining the
9 federal government, and so it's something where --
10 actually, I was unaware that Alaska Native villages
11 could have Section 17 corporations. So that's --
12 actually that's something we should definitely check
13 into with our daily call is to make sure that the
14 Alaska Region is also sending us copies of the
15 charters that are already out there.

16 **MS. JOLENE JOHN:** We have worked with the
17 tribal governance office.

18 **DR. GAVIN CLARKSON:** Okay. Great. So we
19 will be able to take a look at those because we want
20 to be able to -- where tribes can make use of a
21 Section 17 entity for economic advancement, we want
22 to make sure that everybody has got the tools
23 necessary to do so.

24 This particular regulatory reform isn't
25 specifically focused on Section 17 because that's a

1 separate statute. This is focused on what's called
2 the Indian Trader Act. It's a different statute.
3 But we certainly are -- as part of our -- since
4 economic development is our number one priority,
5 Section 17 clearly falls squarely within that.

6 But so are there any -- does anybody have
7 any other stories of deals that didn't happen
8 because of the uncertainty or because of the
9 challenges associated with doing business in Alaska
10 communities?

11 **MR. GIVEY KOCHANOWSKI:** This is Givey
12 Kochanowski. I'm with the Department of Energy,
13 Office of Indian Energy. I think the discussion
14 point today about including a proper definition of
15 lands is really on point. You currently have a
16 grant in your office for feasibility work, and it's
17 prime for a project in Alaska, except it's not on
18 trust land.

19 So I think harmonizing the definitions of
20 land really I think is the operative part for
21 Alaska. Lower 48 is largely the same issue as you
22 have been hearing.

23 I think the Sitka example has merit in the
24 sense that in the more urbanized areas of the state
25 you have tribes that are overlaid with municipal

1 governments, but most of the state here really is
2 driven by corporations. And having the village and
3 the Native -- the regional and the village
4 corporations at the table would be important. They
5 both have a trained group, each of those. I think
6 that would be a worthwhile place for your office to
7 look and get feedback because with all the resources
8 and whether it's people -- many of these tribes are
9 very small. There's not a lot of people and
10 resources there. There is not a lot of land
11 resources. Maybe you have a tribal hall or a
12 community center, maybe a couple other buildings
13 that the tribe itself owns. The real economic
14 drivers up here are the corporations.

15 And I think to find a way for Interior or
16 BIA in particular to work with the corporations
17 would really improve the situation up here.

18 We are fortunate in our office that our
19 statute does give equal weight to corporations and
20 tribes, so we're able to move projects forward, but
21 the earlier comments about barriers to progress are,
22 I think, well said here.

23 We had a round table last December where
24 we invited corporations, tribes, industry together
25 and, although it was somewhat shaded by the then

1 leadership of our office, the overall issues came to
2 the surface.

3 We have a lot of restrictions when it
4 comes to development, especially on the natural
5 resource side. Dangerous Species Act comes up all
6 the time. 404 wetlands is a big issue, as Jolene
7 mentioned. And simply moving a project forward to a
8 point where somebody would want to finance it just
9 doesn't happen up here because of the economies of
10 scale and the regulatory barriers.

11 We're constantly trying to get projects
12 going in our office, but it's a backslide because as
13 soon as you go forward a step, you run into a whole
14 hurdle of NEPA, and NEPA slows everything down. Even
15 for a simple little grant to look at something to
16 maybe go forward, we have got a whole bunch of --
17 one dollar from a federal dollar triggers the NEPA
18 Act.

19 We have a whole lot of opportunity up
20 here. But I think the important parts of this
21 discussion are really looking at land definitions up
22 here and making sure they are inclusive of Alaska,
23 all the structures in Alaska, and also making sure
24 that we deal with the excessive regulatory
25 structure.

1 **DR. GAVIN CLARKSON:** And you were pointing
2 out that the moment a single federal dollar is
3 spent, it can trigger a NEPA analysis. A person can
4 blow their nose, and that federal -- the Kleenex
5 that was procured through the GSA, that triggers a
6 NEPA analysis, potentially.

7 We have heard so many stories of so many
8 just absolutely -- there is -- we were just hearing
9 yesterday with the -- what was it, the Cowlitz
10 tribe? They were -- I'm sure I don't need to
11 explain for folks up here the challenge of
12 telecommunications. But if you look at the Lower 48
13 where you see all these cell phone maps, and they
14 talk about all their high speed data, and then you
15 have little white spaces where there is gaps. I bet
16 everybody in this room can guess where those gaps
17 are. They are Indian reservations.

18 And so the Cowlitz tribe, they built their
19 gaming facility, but they discovered that they had
20 little or no cell coverage. And so everybody would
21 be at the gaming facility but not able to talk on
22 their cell phones, which would make it less
23 competitive with other ones.

24 So they contracted with Verizon to bring
25 in a portable self-contained cell phone tower. It's

1 actually called a COW, cell phone on wheels. It was
2 the Cowlitz tribe. They were bringing in a COW to
3 do the cell phone tower. And yet self-contained. It
4 doesn't actually touch anything. It's a trailer
5 sitting in their parking lot. But the FCC requires
6 a NEPA analysis.

7 And it's interesting. I don't know -- I
8 don't know if food trucks are a big deal up here,
9 but you see far more food trucks on reservations
10 than you do food stands. Because the moment you
11 start digging an inch under the ground, it triggers
12 a NEPA analysis. Do you have your permit for -- we
13 have way too few taco stands and way too many taco
14 trucks. I'm obviously a big fan of taco Tuesday,
15 but we have way too much regulatory burden.

16 We, the federal government, are in the way
17 far too often of regular folks trying to do regular
18 stuff. If they did it off reservation, it would be
19 easy. The moment you move it onto tribal
20 communities and tribal lands, again, it octuples in
21 its level of difficulty. And that's a problem.
22 That's a bad thing. That's not a good thing. That's
23 us, the federal government, failing repeatedly in
24 our fiduciary responsibility to the tribal
25 communities.

1 And so reducing that regulatory burden and
2 returning control back to tribal communities is
3 something that -- we're focused in on a whole range
4 of areas. And it's certainly possible -- and again,
5 that suggestion came from Indian Country that we try
6 and get way from the notion of treating tribal lands
7 as public lands. That was a suggestion that came
8 from the tribe.

9 The other thing I want to emphasize is
10 that we are listening, and so we do -- every single
11 comment we have analyzed. We have taken data out.
12 We are building our models. So the more that you
13 can send us, the better. And I don't know if there
14 is -- you know, for the folks here who work for
15 Interior, if there are suggestions you have about
16 how we can do more outreach to Alaska Native
17 communities, that's -- we are not -- we specifically
18 made a trip up here because Alaska is important.
19 And also we want to say when we are talking about --
20 energy is important, and energy development is
21 critical to this initiative, and we really
22 appreciate the work of my colleague, Dr. Bradford
23 over the Department of Energy, Office of Indian
24 Energy Policy and Programs. Did I get that right?

25 **MR. GIVEY KOCHANOWSKI:** That's it.

1 And Department of Energy has been a big
2 supporter of this initiative because, obviously, the
3 energy projects are the ones that bring billions of
4 dollars in infrastructure investments and road
5 improvements and all these other things that help
6 benefit the tribal communities, both here and in the
7 Lower 48.

8 But that's not all that this will benefit.
9 This will benefit tribal electronic commerce. This
10 will benefit tribal retail. Those familiar with the
11 situation with the tribes in Washington, they came
12 out to visit us during this process with the -- they
13 spent millions of dollars litigating the Great Wolf
14 Lodge case. And similarly, I mean, we, as the
15 federal government, are amici on behalf of the
16 Tulalip tribe's fight regarding their retail
17 establishments.

18 So while we emphasize energy, and you will
19 see that energy is driving the bus in this process,
20 we're fully cognizant that we need to make sure that
21 we have regulations that cover the whole panoply of
22 tribal commerce possibilities.

23 So we are not excluding anything. You
24 will just hear us talking about energy the most
25 simply because those are the shovel-ready projects

1 with dollars to spend to help improve tribal
2 electrical grids and road systems and all the things
3 that the rest of the country takes for granted, but
4 Indian Country is desperate for.

5 **MR. GIVEY KOCHANOWSKI:** What is your time
6 line for this?

7 **DR. GAVIN CLARKSON:** It really is
8 dependent on how quickly we get data from Indian
9 Country. We have an accelerated timeline. We would
10 like to be able to get this out sooner rather than
11 later, but we have to make the economic case. Like
12 everybody in this room is probably convinced that we
13 need to do things to benefit tribal economies, but
14 we need to be able to make the case that in
15 benefiting tribal economies, we are not hurting the
16 state economies. We don't believe we are.

17 I do, in fact, represent the people of the
18 United States. I can't do bad things to them, but
19 in this case I don't think we are doing that. In
20 this case I think everything we do that benefits
21 Native communities is going to benefit the
22 communities surrounding those Native communities.

23 And we have plenty of examples of that in
24 the Indian gaming context. If you look at -- and a
25 lot of the tribes are producing these economic

1 impact studies. They are producing them based on 20
2 and 30 years of gaming dollars flowing into the
3 tribal communities and benefiting all the
4 surrounding communities in terms of property values,
5 in terms of economic activity. I mean, the person
6 who is the happiest is the Home Depot manager right
7 next to the reservation when the tribe does new
8 construction because all the insulation and
9 everything is getting bought from that Home Depot.

10 So there is definite -- there is solid
11 economic data that surrounding communities benefit
12 when tribal communities are prosperous.

13 But in terms of time frame, you know, if
14 we can make it -- the sooner we can make the
15 economic case, the sooner we can go forward. That's
16 why it's very clear that we absolutely need Indian
17 Country's help to do this. This is not something
18 we, as the federal government, can just go do
19 because we have some people that didn't necessarily
20 take macroeconomics out there that might not
21 instantly see the benefit of prosperous Native
22 communities the way that we do.

23 So anything and everything we can do to
24 get more people to get us data sooner, get us
25 comments sooner, get us feedback sooner, even

1 proposed regulations.

2 And nothing would please me more than have
3 good definitions coming from Alaska Native
4 communities describing how, yes, restricted fee and
5 yes, trust land, but also these are the categories
6 we might factor into our definition of Indian lands.
7 And that may be different than the way we've done it
8 before. And we'll obviously have to work with our
9 solicitors to make sure that all works, but we are
10 not trying to exclude anybody. We are trying to
11 have this be inclusive rather than exclusive.

12 That being said, there are going to be
13 some things that may be a bridge too far at this
14 time. And those are things where -- there are some
15 tribes that wish we could do a little bit more, and
16 personally I fully agree with them.

17 But pragmatically we clearly need to
18 update the regulations and we need to do it in a way
19 that has the maximum ability to survive any
20 challenge because I'm sure there's somebody out
21 there that's going to challenge them. Somebody who
22 failed macroeconomics might file a case. I don't
23 know.

24 But it's -- again, it's pretty obvious if
25 the tribes are more prosperous and the Native

1 communities are more prosperous, in almost every
2 single case surrounding communities are better off.

3 And again, I really do appreciate the work
4 that your office is doing in support. We have a
5 weekly conference call as we go through this, and
6 Dr. Bradford is a regular participant, so if you
7 could convey our thanks to him for his
8 participation.

9 **MR. GIVEY KOCHANOWSKI:** There is a lot of
10 opportunities. We're coming into conference season
11 right now where all the big statewide conferences
12 happen over the next probably four months. There is
13 a lot of other outreach opportunities where you
14 could be reaching out to Alaskans to get their
15 perspectives. There is a real small business
16 conference that happens in February, and that group
17 might be of interest to tap into of what they have
18 been seeing.

19 **DR. GAVIN CLARKSON:** Our hope is we'd like
20 to get the regulations out this year. We would like
21 to be able to do it this year, if that's possible.
22 Okay.

23 More questions? And I know -- and Ms.
24 Thompson, we will get back to you.

25 **MS. HEATHER DAWN THOMPSON:** That's all

1 right. I've taken up a lot of time. I will happily
2 wait my next turn. Thank you.

3 **DR. GAVIN CLARKSON:** Operator, are there
4 any questions from the phones?

5 **TELECONFERENCE OPERATOR:** At this time I'm
6 showing no questions on the phone line.

7 **DR. GAVIN CLARKSON:** Thank you. All
8 right.

9 **MS. KATHY CLINE:** So Kathy Cline here.
10 You talk about all the regulatory barriers. And so
11 for Alaska, we have like the State, the federal
12 government, the cities, the tribal lands, all have
13 different regulations which are -- they are all
14 different. And so are you trying to make it more
15 common throughout the state and easier to do
16 business?

17 **DR. GAVIN CLARKSON:** This initiative --
18 this initiative came out of a statute that was
19 passed long before the Alaska Native system was in
20 place. So the founding fathers weren't necessarily
21 thinking all the way to Alaska. So -- and the
22 regulations, I guess, were last updated in 1965.
23 And so some of this is -- ANCSA happened after these
24 regulations were in place. So in some sense there
25 was no thought in the initial regulations to the

1 situation in Alaska that I'm aware of, or at least
2 that we have seen. There may have been. I'm not
3 precluding that possibility, but --

4 So what we are envisioning is -- what
5 Indian Country has been suggesting to us is
6 returning economic sovereignty to the Native
7 communities and allowing Native communities to be
8 the regulators, allowing Native communities to be
9 the taxation authorities to the exclusion of
10 everybody else. Obviously, everybody pays federal
11 income taxes, but -- and there will be federal laws
12 that would apply to everybody, but the -- basically
13 to as much as possible return autonomy and local
14 control back to Native communities.

15 And you know, there will be some
16 communities that, because of unique situations here
17 in Alaska, that might be a challenge. And we don't
18 want to -- we don't want to ignore those challenges.
19 We have to -- we have the challenge of coming up
20 with regulations that would potentially cover Alaska
21 Native villages, pueblos in the Southwest, tribes in
22 New England and Maine, rancherias in California,
23 large land-based tribes like the Great Plains
24 tribes, the Navajo Nation.

25 So it's a challenge to come up with

1 regulations that can address all those needs. And
2 some of that is -- might be in terms of definitions
3 about where these rules would apply. But part of it
4 is also we need feedback. We need suggestions. We
5 need -- People here probably have thought more about
6 how this might work in Alaska because you have local
7 examples. So -- and again, where there are examples
8 of businesses that didn't happen, to us that's the
9 best economic data. And maybe it's not coming from
10 the tribes. Maybe it's coming from the business
11 partners where they did a feasibility study and said
12 it's not going to work because of the existing
13 uncertainty or existing regime.

14 That's the kind of data we really, really
15 want because that's showing what the opportunity
16 cost is of doing nothing. So we don't do anything,
17 none of those projects will ever happen or the vast
18 majority of them won't happen. And then not only
19 does Indian Country lose out, the State of Alaska
20 loses out, as well as all the other states and
21 tribal communities.

22 **MS. KATHY CLINE:** So the corporations like
23 you were saying, Givey, they have a lot of control,
24 and having them at the table would definitely be
25 beneficial.

1 **MR. GIVEN KOCHANOWSKI:** This topic might
2 be of interest for the day before the AFN convention
3 where they have the tribal leaders gathering. So
4 throw it out there, and we'll have a pretty good
5 perspective there and senior people there that could
6 weigh in on it.

7 **DR. GAVIN CLARKSON:** We have asked for
8 feedback by August 30th for this particular round,
9 but there will certainly be additional
10 consultations. So this is not the end of
11 consultations. This is just the end of this
12 particular phase where we are really focused on
13 economic data gathering.

14 So I know I've got -- we have planned
15 scheduled consultations going forward at -- like,
16 Native American Finance Officers Association wants
17 us to have a consultation there. So we are holding
18 additional rounds of consultations. And so we don't
19 -- there will be those opportunities to present
20 themselves this fall, and they would like for us to
21 come talk about this process. I'm sure we would be
22 happy to return back to Alaska.

23 Yes, ma'am.

24 **MS. JOLENE JOHN:** One thing I'd like to
25 just give input on for Alaska is you have this

1 diagram of the direct service are not fully
2 empowered. One critical component in Alaska are the
3 compact consortiums that provide the services by the
4 regions. And the -- I guess the unfortunate thing
5 for our Alaska tribes is that many that really
6 depend on those consortiums, that reality is that
7 you may need to involve those regional nonprofit
8 organizations, the regional housing authorities, the
9 regional health corporations in your conversations
10 or discussions because they do rely on their
11 expertise and services. And although they are not
12 the tribes, they represent the tribes, and their
13 tribal shares do flow through those entities, and
14 they -- they are a large component in making things
15 happen in the Alaska Native villages.

16 **DR. GAVIN CLARKSON:** And to that end,
17 because I'm somewhat familiar with those structures,
18 my understanding is that the tribal -- the housing
19 consortiums work primarily with Housing and Urban
20 Development, and the health consortiums work
21 primarily with the Indian Health Service. Are there
22 any consortia that are focused on economic
23 development?

24 **MS. JOLENE JOHN:** There are economic
25 development staff within the regional nonprofits,

1 such as the AVCP, Inc. that she was talking about
2 earlier, the Tanana Chiefs Conference, those
3 regional organizations.

4 **DR. GAVIN CLARKSON:** Okay. Those would be
5 definitely -- those would be folks that we would
6 definitely be interested in hearing from.

7 **MS. JOLENE JOHN:** You also have the likes
8 of the community development quota groups that are
9 primarily along the coast of Alaska who are to help
10 with the fisheries development than your ANCSA
11 village corporations.

12 **DR. GAVIN CLARKSON:** And again, coming up
13 with one document or one drawing to try and reflect
14 as much as we can -- I mean, I think we went through
15 about eight different variations of the definition
16 of the people on this side of the spectrum. We are
17 trying to be inclusive and we are also trying to be
18 respectful. So if you have suggestions about how we
19 might explain this in a way that is also cognizant
20 of the unique situation here in Alaska, we want to
21 make sure we are as inclusive as possible. Okay?

22 Before we return back to Ms. Thompson for
23 some Lower 48 stuff, does anybody else have anything
24 they want to toss in at this point? Operator, any
25 questions at this point?

1 **TELECONFERENCE OPERATOR:** At this time I'm
2 showing no questions on the phone line.

3 **DR. GAVIN CLARKSON:** All right. Thank you.
4 Ms. Thompson?

5 **MS. HEATHER DAWN THOMPSON:** And I
6 apologize to all the Alaska folks. I just happened
7 to be in Sitka, so I came up even though I represent
8 mostly Lower 48. So thank you for letting me be
9 here today. It's obviously less expensive for my
10 clients for me to just come up here, so I appreciate
11 it.

12 I'm here for this part speaking on behalf
13 of some of the large land-based tribes, specifically
14 the Fort Belknap Tribe of Montana, the United Tribes
15 of North Dakota, which is all five tribes in North
16 Dakota, the Rosebud Sioux Tribe in South Dakota, and
17 the Fort Sill Apache Tribe in Oklahoma.

18 **DR. GAVIN CLARKSON:** And New Mexico.

19 **MS. HEATHER DAWN THOMPSON:** And New Mexico
20 now. Thank you. And the Apache Alliance, which is
21 in New Mexico, Arizona and Oklahoma. So they share
22 a lot of the same issues together, but very
23 different in some aspects from Alaska. As you know,
24 for example, the Standing Rock Sioux Tribe, the
25 Cheyenne River Sioux Tribe, Rosebud Sioux Tribe are

1 essentially the size of Connecticut and Delaware.
2 So they have extremely large land bases. We
3 recognize that it is probably unlikely regarding the
4 definition of lands, but we do want to go on the
5 record and say that we do not agree that it should
6 be limited to trust lands. It should be land based,
7 jurisdiction based. When you cross our boundaries,
8 you are in our territory, period.

9 **DR. GAVIN CLARKSON:** Just on that point,
10 because we have had a number of conversations on
11 that particular point. We are -- I think we have
12 language that we are -- that we have been tossing
13 around to make sure -- if a tribe believes, pursuant
14 to a treaty or pursuant to established law, that it
15 has the ability to regulate within the boundaries of
16 reservation on nonIndian fee land within that
17 reservation, we are not trying to in any way upset
18 that situation.

19 So if there is a tribe that's already
20 fought that battle to gain that jurisdiction beyond
21 just trust or restricted fee land, we are not doing
22 anything. We'll make sure that anything we put
23 forward is very clear that we're not doing anything
24 to impede that, you know, that we are -- so we are
25 cognizant of that concern, and so we want to make

1 sure that we are not interfering with the tribes
2 that have fought that hard struggle to get that
3 capability.

4 **MS. HEATHER DAWN THOMPSON:** Appreciate
5 that. And I recognize that this is a legal boundary
6 that I'm pushing here, but I'm going to push on it,
7 as you expect from me.

8 **DR. GAVIN CLARKSON:** You are well known as
9 a jealous advocate of the tribal interests that you
10 represent.

11 **MS. HEATHER DAWN THOMPSON:** So putting an
12 asterisk in there, this is a partial fix, right,
13 because, as you know, in the Lower 48 what has
14 happened on our reservation is it looks like a
15 checkerboard.

16 So if it is clarified that we have tax and
17 regulatory jurisdiction over commerce, which we
18 think is constitutionally accurate along with the
19 federal government, but it is limited to trust
20 lands, then what we are going to have is we are
21 going to have this (indiscernible). They are just
22 going to play checkers, right? And they're going to
23 move around into the non-trust lands within our
24 reservation boundaries. So it's only a partial fix.

25 It is helpful -- and I don't by any means

1 want to stop the process as it is, but we need to go
2 on record that it is a partial fix. So it's not
3 going to be a whole panacea if we are still left
4 with personally-owned fee land on our reservations
5 outside of our regulatory and tax jurisdiction
6 because we are going to have businesses playing fast
7 and loose with what piece of land they locate
8 themselves on.

9 **DR. GAVIN CLARKSON:** Just only to push
10 back perhaps slightly that that assures that the
11 tribal business climate will be less friendly than
12 the nonIndian fee land tribal business climate. It
13 could be the tribes -- tribes -- once tribes are in
14 charge and they don't have the federal government
15 micromanaging every single aspect of what they do --
16 there are plenty of states that have taken the
17 initiative to make their laws and make their
18 jurisdictions very business friendly with the intent
19 of attracting business.

20 So it's -- it's instead -- I would
21 encourage you not just to look at the existing
22 businesses that are there now, but perhaps also look
23 at the businesses you could attract by having the
24 tribal legal infrastructure, regulatory
25 infrastructure be pro business, as opposed to the --

1 certainly the existing climate is rather hostile to
2 business. So if we are able to do these kind of
3 regulations where we put tribes in charge, tribes
4 can then make the decisions they need to make to
5 make a pro business climate to attract businesses.

6 **MS. HEATHER DAWN THOMPSON:** That is
7 absolutely fair, but I want to give you two examples
8 where we have a current problem in our region, which
9 is probably not going to be able to be addressed if
10 we are not talking about our jurisdictional
11 boundaries. One is within the alcohol framework. On
12 the Pine Ridge Indian Reservation, it's been their
13 sovereign decision to have a dry reservation. But
14 it's inapplicable to fee land, so you have got these
15 little bars that are counter to the nation's
16 decision that are on nonNative lands that are still
17 operating. And this would not affect them.

18 Another example, which actually I don't
19 think has been raised in most of the consultations,
20 is game. And game as commerce is a growing industry
21 in the Great Plains, and I think that needs to make
22 sure that that is included.

23 And so a lot of reservations have -- I
24 don't want to say it's better or worse. They have
25 different regulations with regard to game and with

1 regard to game as commerce. And if you are going to
2 -- if you -- you know, the game don't look at the
3 boundaries. And it's difficult enough when you are
4 talking about a large reservation boundaries, but
5 when you are talking about a checkerboard, you are
6 going to have somebody set up a business right here
7 on a nonNative piece of land and take a totally
8 different, probably more, set of game than is
9 allowable under the tribal regulations.

10 So I know I'm sort of having an empty
11 conversation, but this is a formal record, and I
12 think it's very important that the Great Plains
13 position on this be very clear that the majority of
14 them believe that it is jurisdiction based and not
15 exterior boundary based.

16 **DR. GAVIN CLARKSON:** And on the record let
17 me make it very clear that the administration hears
18 those concerns, and we want to do as much as we are
19 going to be able to do, but we don't want to leave
20 anybody's concerns behind. But as -- as you saw
21 with the challenge of the Tribal Law and Order Act,
22 sometimes these changes -- you have to make an
23 advance, regroup, and then make a secondary advance
24 over time as tribal capability gets bigger and
25 bigger.

1 So you know, it's -- hopefully what we
2 come up with as regulations improves the situation.
3 I certainly don't want to promise that we will make
4 the situation perfect. We have got 250, 300 years,
5 in some cases 400 years of damage that we, the
6 federal government, and our predecessors have caused
7 that we're not going to be able to fix with one set
8 of regulations. That being said, we want to do the
9 best job we possibly can.

10 And I think I speak for everybody in the
11 office that that's our objective is to do the best -
12 - to put forth the best effort we possibly can to
13 address as much of the problem as we can in this
14 round, recognizing that there will be -- you
15 mentioned the Alaska situation. There may be some
16 things we can't fix because the other thing we have
17 to be cognizant of -- and this is very clear -- is
18 that we can -- since we are a regulatory authority,
19 we can only go as far as Congress has authorized us
20 to go.

21 So we have to look to the scope of the
22 statute and say, if Congress said you can act in
23 this zone, if we fully expand what we are proposing
24 to do regulatory within that zone and we stay within
25 the limit of that zone, that's fine. If we go

1 beyond our statutory authority, then we have a
2 problem.

3 And so we also have to be cognizant of the
4 fact that we are -- we are -- there is certainly
5 always -- Congress can always do what it wants to
6 do, and that's certainly an opportunity, and we
7 certainly would support any initiative the Great
8 Plains Tribes or large land-based tribes wants to
9 make to alleviate the problems that you are
10 identifying.

11 You know, the -- but we can only go as far
12 as the statute allows us to go and -- but we do want
13 to do as much as we can.

14 **MS. HEATHER DAWN THOMPSON:** Right. Along
15 those lines, as far as the question of how far the
16 statute allows you to go, obviously the constitution
17 is very broad and we argue that this is simply a
18 codification of the Constitution, constitutional
19 statute. But I think it's really important as -- as
20 you stated, case law has limited this conversation.
21 The Constitution has never limited this
22 conversation. And frankly, I would argue that most
23 statutes have never limited this conversation. And
24 the Indian Commerce Statute specifically says trade
25 with Indians. It doesn't say trade with Indian

1 tribes, and it doesn't say trade on Indian land. So
2 that provides a greater deal of flexibility than the
3 case law has limited and evolved.

4 And so as we are defining statutes of
5 Indian lands, I think it's really important to keep
6 this statute in front of us, right, and make sure
7 that we are not being unduly limited by case law
8 that is largely inapplicable to this constitutional
9 definition.

10 **DR. GAVIN CLARKSON:** And I would encourage
11 you -- I would actually implore you to make sure
12 that your tribes -- the tribes that you represent,
13 that their positions on the scope of the statute are
14 voluminously documented in the record, that
15 discussion -- again, we can only do that which
16 Congress allows us to do. And there is -- and the
17 scope of our legislative authority is something that
18 our solicitor's office is working on and looking at,
19 but by no means are they the only people to opine as
20 to the scope of our authority.

21 So if you think that Congress that is
22 spoken very broadly -- and you start with the
23 Constitution. The Constitution empowers Congress to
24 make -- if you can make a very strong argument that
25 that statutory grant of authority is -- is

1 exceedingly broad, the more you can make that --
2 robustly make that argument on the record -- you
3 know, again, we are going to ultimately be leaving
4 it up to our solicitor's office to determine what
5 the scope of our authority is and moving forward
6 with our other partners in the DOJ and so on.

7 But we certainly recognize that's part of
8 the value of the consultative process with Indian
9 Country is we know that there is a whole bunch of
10 folks that have done a lot of thinking about this
11 process, and we want to be able to capture that
12 thinking in this consultation record so that we can,
13 again, you know, do the best job we possibly can in
14 returning as much economic sovereignty to Indian
15 Country as possible.

16 So I would, again, encourage you, in
17 addition to the economic data that we have been
18 asking for, we also -- if there is an examination of
19 the scope of the statute that you all have prepared,
20 that would be great to take a look at.

21 And finally, I know particularly for the
22 clients that you represent, many of them are very,
23 very cognizant of the nuances of their treaty
24 language. So in particular for some of the tribes
25 that you mentioned, but for anybody with tribal

1 clients with treaty obligations that we, the federal
2 government, where they think we are falling down on
3 our obligation to protect their economies, please
4 cite that chapter and verse. Point out this
5 particular paragraph, this particular section, and
6 if you have context to the treaty itself.

7 So that's -- that's in our call for what
8 we are asking for in terms of the Dear Tribal Leader
9 letter. We -- again, my boss, Secretary Zinke, has
10 said very clearly that we not only want to meet our
11 treaty obligations but exceed our treaty
12 obligations. And in this context, if the tribes you
13 are working with or any of the other tribes that you
14 are aware of have specific treaty provisions
15 relevant to this process, please highlight that for
16 us because I think that would be very beneficial to
17 this process.

18 **MS. HEATHER DAWN THOMPSON:** That's a
19 really good point we do have in our draft, and we
20 will beef it up, but I think it is really important
21 to focus on the language that in the statute in
22 particular that it's about to the Indians, said
23 "Indians." It doesn't say Indian land or trust land
24 or along those lines.

25 So I think that is a very expansive scope

1 in this statute that is, I think, beneficial to
2 Alaska, as well, in particular, because when you are
3 talking about, A, either landless tribes, you know,
4 this scope inures to the individual Indian, an
5 individual enrolled Indian providing jurisdiction
6 over their business, wherever it might be located.

7 And I think that applies equally to our
8 large land-based tribes where we have now nonNative
9 land sprinkled within. At a minimum, if we can't
10 assert full jurisdiction over those nonnative-owned
11 lands, we can certainly assert jurisdiction over
12 commerce with Indian. So if there is an Indian
13 business on there, if there is an Indian purchaser
14 on there -- I mean, I can think a little bit harder
15 on that, but there is a lot of scope and flexibility
16 there.

17 **DR. GAVIN CLARKSON:** And to that end, in
18 terms of that statutory authority, obviously it's a
19 much older statute and the ANCSA statutes were
20 passed much later, but I do believe that one of your
21 classmates from law school works in the NARF office
22 here in Anchorage. And so I don't know that NARF
23 submitted comments, any Alaska-specific comments,
24 but we are open to anybody and everybody's
25 suggestions and thoughts and analyses.

1 And so if you wanted to reach out to the
2 NARF office here in Anchorage and ask them to weigh
3 in, again, we would -- we would like to have had
4 them here. I don't know if technically they would
5 have been -- they probably would have been able to
6 attend here, but even if they weren't, we certainly
7 would like their input, as well as NARF generally,
8 because I know that both NCAI, National Center for
9 American Indian Enterprise Development, and Native
10 American Finance Officers Association and the
11 Intertribal Tax Alliance all submitted comments.

12 So we are definitely interested not only
13 in individual tribal leaders and individual tribes'
14 comments and thoughts, but basically every
15 stakeholder for economic development in Indian
16 Country, including nonIndian businesses that would
17 like to invest. So we are interested in hearing
18 from everybody. And again, if we go back -- I hate
19 to sound like a broken record, but I'm going to
20 sound like a broken record. We need the information
21 about economics -- projects that are not happening,
22 things that aren't happening but could happen if we
23 came up with a better regulatory and taxation
24 environment.

25 Ms. Thompson, I know I interrupted you.

1 Did you have some more on the Lower 48 side of
2 things?

3 **MS. HEATHER DAWN THOMPSON:** A few more
4 things. One, another bifurcation and I admit, I
5 haven't fully thought this through to figure out how
6 it works in this statutory scheme, but I think it
7 does apply. Another confusion in the tax and
8 regulatory scheme that causes economic difficulties
9 in investments is not a full understanding that
10 tribal-government-owned corporations, tribal
11 commerce -- so not ANCSA corporations which are, in
12 fact, State corporations, but corporations which are
13 wholly and fully owned by the tribal government are
14 tribal governmental entities.

15 And where this comes into play, oddly
16 enough, is mostly within federal programs. And so,
17 for example, with the USDA -- is there a USDA office
18 in this building?

19 **MR. GIVEY KOCHANOWSKI:** Not in this
20 building.

21 **MS. HEATHER DAWN THOMPSON:** Not in this
22 building? Like the USDA can't wrap its head around
23 that, so they will treat a tribal corporate project
24 like a fire station as a corporation and not qualify
25 it for governmental programs. So that clearly, I

1 think, falls within this trader commerce
2 conversation and in the definitions in clarifying
3 the dual status is acceptable under federal law so
4 that they can apply for both and be recognized by
5 both.

6 And I'll give you a concrete example of
7 when this was a problem. There is one tribe in the
8 Great Plains that wanted to open a fire station.
9 There is no housing fire stations. What are they
10 called? No home -- there is only wildland fire
11 there. There is no fire companies that will put out
12 a house fire. So if your house catches on fire, it
13 just burns to the ground. And the primary reason is
14 that those fire stations in communities are usually
15 supported by property tax, and there is no property
16 tax, so there is no money to pay for a fire station.

17 And so their business model was, okay,
18 we're going to open a wildland fire company, and we
19 are going to fight fires everywhere. We're going to
20 be deployed to California, et cetera, and we are
21 going to make a "profit," but it's a governmental
22 income, governmental revenue. And we're going to
23 take our profit, and we are going to have a housing
24 fire department that can --

25 **DR. GAVIN CLARKSON:** Residential fire

1 department.

2 **MS. HEATHER DAWN THOMPSON:** Residential.

3 Thank you. We are going to have a residential fire
4 department. The USDA was, like, well, I don't know
5 if you are a business or a government. If you are
6 making money, then you are not a government anymore,
7 so we can't give you this particular grant or this
8 thing. But you have to be self-supporting, right?

9 And so they can't wrap their head around a
10 governmental corporation that is self-supporting and
11 creating governmental revenue. So USDA was taking
12 too long to do this because it's too confusing when
13 a tribal entity is involved.

14 So they went to the private marketplace to
15 get an investor. The investor is, like, this is a
16 great idea. It's going to make plenty of money.
17 You can pay me off and you can have your residential
18 fire department. I'm going to charge you 20 percent
19 because you can't get money anywhere else, and I'm
20 going to take up to 50 percent of your profits for
21 the next ten years. And that is totally normal.

22 And that was a good deal. That was a good
23 deal. You know what I'm talking about. You know
24 that that was a good deal because nobody else is
25 going to finance it because it's in the middle of

1 nowhere. There is no tax base to pay it off. The
2 tax and regulatory jurisdiction is too confusing for
3 the other capital markets to come in.

4 So you're wholly -- if you can't get a
5 governmental loan, which the USDA wouldn't do
6 because it's too confusing, you can't get anything
7 on a capital market because it's too confusing, so
8 you are dependent on individual angel investors in
9 these poor communities. And they can charge you
10 whatever they want.

11 So this was for residential fire, wildland
12 fire. So this isn't some crazy economic development
13 scheme. This isn't even liquor or tobacco or
14 gaming. This is mom and pop governmental business.
15 20 percent. 20 percent.

16 **DR. GAVIN CLARKSON:** Did that project
17 happen?

18 **MS. HEATHER DAWN THOMPSON:** It didn't
19 happen because the tribe made the decision that they
20 couldn't afford that 20 percent.

21 **DR. GAVIN CLARKSON:** And that's an example
22 of a -- that is the kind of examples that we want to
23 hear because as tragic and as bad as they are, it
24 would create a better regulatory environment, and
25 those people's houses don't have to burn down

1 anymore.

2 **MS. HEATHER DAWN THOMPSON:** Which is
3 literally what happens right now.

4 **DR. GAVIN CLARKSON:** How long ago was
5 this?

6 **MS. HEATHER DAWN THOMPSON:** Last year.

7 **DR. GAVIN CLARKSON:** Well, this is a
8 different administration.

9 **MS. HEATHER DAWN THOMPSON:** But clarifying
10 -- so I'm digressing a little bit, but the point
11 being, in addition to other things in the
12 definitions, we need to clarify tribal-corporate-
13 owned entities, it's okay to receive both
14 governmental and corporate and status from federal
15 entities.

16 **DR. GAVIN CLARKSON:** And that is certainly
17 something that my office is trying to do is to
18 eliminate the anticapitalist bias against tribes. I
19 have written about and complained about the fact
20 that all too often, given the tribes didn't have a
21 tax base, they had to come up with creative
22 alternative ways to be able to generate revenue to
23 fund necessary public service programs.

24 **MS. HEATHER DAWN THOMPSON:** Such as fire
25 protection.

1 **DR. GAVIN CLARKSON:** Like fire protection.
2 That's a perfect example. And yet the
3 anticapitalist bias of the federal government
4 towards Indian Country often stands in the way. And
5 that's not unique to Interior or USDA or any of
6 that. That's -- that even extends beyond
7 government. So that's certainly something that we
8 are trying to combat is an anticapitalist bias
9 against tribes and tribal communities.

10 **MS. HEATHER DAWN THOMPSON:** Defining that
11 profit is governmental revenue, perhaps, because
12 there is no shareholders. There is no individual
13 profiting. You have got to pay your investor,
14 clearly, but that profit is governmental revenue.

15 **DR. GAVIN CLARKSON:** Every state lottery
16 makes money, and nobody seems to have a problem with
17 that. Well, almost every state lottery.

18 **MS. HEATHER DAWN THOMPSON:** Those were the
19 two primary points that I didn't think had been
20 raised previously that they wanted to make sure I
21 made. The rest we will put in writing.

22 **MS. KATHY CLINE:** I just had a question on
23 that. You said that the lender wanted 20 percent on
24 that loan and then 50 percent of their profit?

25 **MS. HEATHER DAWN THOMPSON:** Uh-huh.

1 **MS. KATHY CLINE:** My gosh.

2 **MS. HEATHER DAWN THOMPSON:** I think it was
3 originally ten years, and we helped them negotiate
4 it down to, like, five. And then it -- and then it
5 -- they wanted -- they wanted co-ownership, and we
6 were, like, you can't do that. You might have been
7 able to, but you said that you can't. USDA would
8 never give you a grant and all this stuff. So I
9 mean, the difficulty is, like I said, they can kind
10 of ask for whatever they want. They really can. And
11 in representing the tribes, you try and get them the
12 best deal, but if there is nobody else that's going
13 to give them a dime, 20 percent is better than zero.

14 **DR. GAVIN CLARKSON:** That's an example
15 where the capital markets, when they detect
16 uncertainty, they impose significant premium on that
17 uncertainty. And again, that extra expense in terms
18 of access in capital markets is borne by Indian
19 Country itself.

20 So I really want to thank you for those
21 examples. It's very, very helpful in this process,
22 and I look forward to the comments that you all will
23 be submitting in writing.

24 How are we doing on time here? I have no
25 idea what time it is because -- we have got about an

1 hour left, so --

2 Just checking to verify, do we have any
3 questions from the phone lines?

4 **TELECONFERENCE OPERATOR:** Once again, on
5 the phone line, if you have a question, just press
6 star followed by one. One moment, please.

7 **MS. JENNIFER MILLER:** I think I have a
8 question. Jennifer Miller, and I'm a realty
9 specialist here at the Bureau of Indian Affairs. How
10 do you see this sort of dovetailing with the land in
11 the trust context or partnering with that, because
12 here in Alaska that is one thing that we are talking
13 to tribes a lot with the new land in the trust is
14 this is a way for you to establish a taxing
15 authority or to be able to make some of those
16 revenues for the tribe.

17 But if you are talking about clarifying
18 ownership and, you know, land jurisdiction, do you
19 see this working where tribes would not have to put
20 land in a trust? Because one of the reasons they
21 often think about not going forward is the time cost
22 and the monetary cost of the trust process with
23 title insurance and NEPA and CERCLA and all that.

24 So do you see potentially it having the
25 effect of giving them an opportunity to establish

1 jurisdiction without putting land in trust? Because
2 tribes up here all own fee land. There is no
3 restricted land ownership for tribes. There is for
4 individual Indians, but not for the tribes. So just
5 --

6 **DR. GAVIN CLARKSON:** It's a very good
7 question. So let me -- obviously this is one part
8 of an overall regulatory reform process that's going
9 on throughout the administration, but I think it's
10 also relevant to Ms. Thompson's point. You know,
11 the -- we are in the process of trying to streamline
12 and simplify and make more straightforward and more
13 transparent the trust acquisition process. There
14 are, unfortunately too many tribes for whom it has
15 taken way too long, so we are trying to help tribes
16 move that process along faster.

17 But at the same point, the point you were
18 talking about with checkerboarding the reservations,
19 I -- as an investment banker, I have done tax exempt
20 bonds to help tribes solve the checkerboard problem
21 by helping the tribes purchase the land back through
22 various financing mechanisms.

23 **MS. HEATHER DAWN THOMPSON:** It's crazy.
24 Could you imagine if the country of France had to
25 own every piece of land within its borders in order

1 to have jurisdiction over it?

2 **DR. GAVIN CLARKSON:** That's how I acquired
3 -- my Ojibwe name is Zhooniyaa Ke Nini. What it
4 means is man who makes money out of thin air because
5 what I did was I helped a tribe use a 40-year tax
6 exempt bond to repurchase about 23,000 acres of
7 ancestral homeland. They weren't a wealthy tribe.
8 They were a fairly economically disadvantaged tribe.
9 But it took them from less than -- I think it went
10 from about 23 percent tribal ownership to 97 percent
11 tribal ownership, and it literally just filled in
12 the checkerboard. And all of a sudden, the
13 jurisdictional issues went away.

14 And so if we were to go back to the world
15 where we were implementing this, go back to -- what
16 does the world look like under this. If we go back
17 to this world where all of a sudden inside this zone
18 of sovereignty tribes are in charge of the economics
19 and tribes are in charge of collecting the revenue
20 from the economic activity, that thing gives the
21 tribes greater economic wherewithal.

22 We haven't talked much about the budget,
23 but the issue of budget always comes up. And we did
24 submit a balanced budget, and so people looked at
25 that balanced budget and thought it was overly

1 harsh. Without commenting on it, I think we can all
2 agree that the federal government has caused far
3 more damage to Indian Country than anyone in
4 Congress is willing to appropriate enough money to
5 fix.

6 So fixing the problems that we, the
7 federal government, have caused is -- it's not going
8 to come from Congressional appropriations. It's
9 going to have to come from growing tribal economies.

10 Another reason why I use the example with
11 the tribes where I did the ancestral homeland
12 repurchase is because basically what I was having to
13 describe -- where I got the name of man who makes
14 money out of thin air is describing to the elders
15 that we were using other people's money to
16 repurchase land that other people had stolen.

17 Because you are right; France doesn't have
18 to buy back its own internal territory, but that's
19 the situation Indian Country is confronted with. So
20 what if we envision a world where Indian Country is
21 actually generating enough revenue internally and
22 then generating enough fees and taxation authority
23 over that so that the federal government's
24 allocation of revenue to the tribes is more of a
25 supplement to the tribes' larger governmental

1 operations rather than being the main contributor to
2 tribal governmental operations.

3 The states all, you know, because they
4 have an intact tax base, that's how they generate
5 their revenue to do their stuff. That's how local
6 counties do it and cities and so on.

7 And it's interesting, obviously the
8 founding fathers had this thought of jurisdictional
9 autonomy of tribes, but so did Ronald Reagan. You
10 go back to Ronald -- obviously, Richard Nixon was a
11 big proponent of tribal self-determination, but if
12 you look at what President Reagan did in 1983, he
13 made a major statement on Indian policy in January
14 of 1983 where he went in and identified that one of
15 the biggest challenges for Indian Country was the
16 lack of a tax base. And so then he commissioned a
17 presidential commission that studied these issues
18 for a year. And they issued a presidential
19 commission report in 1984 that was very radical at
20 the time, but now it looks fairly -- some of those
21 suggestions are fairly mainstream, and some of them
22 have been implemented already.

23 But one of the suggestions in the
24 presidential commission report was eliminating dual
25 taxation and giving tribes the authority to tax the

1 economic activity within their own jurisdiction,
2 with the goal then being tribes can provide the
3 services within those jurisdictions, not just to
4 tribal members, but to everybody who is within that
5 jurisdiction.

6 And there are some tribes that do that
7 now. I mean, there are some tribes where -- when
8 you talk about the example you are using for fire,
9 there are some times when a fire call comes in off
10 reservation, the closest responder is the tribe's
11 fire department, and they go fight the fire because
12 it's their neighbors and if the -- it's the families
13 their kids go to school with. And so it's the right
14 thing to do. They are firefighters and they fight
15 fires. And we obviously have tribal hotshot crews
16 that go fight wildfires all over the country.

17 So Indian Country certainly has
18 demonstrated the capacity to be a very good neighbor
19 and to provide services to everybody. I mean, if
20 you look at the -- the Salt River -- Ashley, it was
21 Salt River in Albuquerque that was talking about
22 they have about 875,000 nonIndians passing through
23 their territory every single day.

24 **MS. ASHLEY FRY:** I wasn't in Albuquerque.

25 **DR. GAVIN CLARKSON:** That's right. That

1 was Liz in Albuquerque. I think they mentioned they
2 have 875,000 nonIndians passing through because they
3 are in an urban setting. And when there is a need
4 for a first responder, very often the tribal first
5 responders are the ones on the scene, and they are
6 the ones that accept the call. And that community
7 is not paying them any tax money to be able to do
8 this. They are just doing it because it's the right
9 thing to do. So in some sense if we can envision a
10 situation where tribes and tribal communities and
11 Alaska Native communities are generating enough
12 economic wherewithal, just imagine what we could do.

13 **MS. HEATHER DAWN THOMPSON:** I just wanted
14 to point out the statute again to talk about her
15 question.

16 **DR. GAVIN CLARKSON:** Okay.

17 **MS. HEATHER DAWN THOMPSON:** I don't know
18 Alaska law that well, but I know that this statute
19 says trade with Indians. It doesn't say if you are
20 located on an Indian reservation. It doesn't say if
21 you are located on trust or fee land. So whether
22 that business is in the city, if they are trading
23 with Indians this gives the authority to regulate.
24 It's with the individual Indian. And of course,
25 that has now been expanded to include the Indian

1 reservation tribe, the trust land. But I think we
2 can't lose sight of that.

3 In Alaska, those businesses, wherever they
4 are located, if they are owned by an Indian, if they
5 are owned by a tribe, if they are doing business
6 with an Indian, they fall under this statute.

7 **DR. GAVIN CLARKSON:** Potentially. The
8 question is, we don't want to increase the rate of
9 uncertainty. We want to decrease the rate of
10 uncertainty. So -- as the well-trained lawyer you
11 are, I know that you understand the importance of
12 coming up with administerable definitions. So
13 that's the challenge.

14 And that's why we want to hear from Indian
15 Country in terms of what they think good
16 administerable definitions are going to be that
17 would reduce the uncertainty of doing business in
18 Indian Country, and therefore increase the ability
19 of capital to flow from the outside into Indian
20 Country to invest in projects that build
21 infrastructure, generate revenue, and create jobs.

22 So there are -- we are limited by the
23 tools that we have at our disposal, and that is, we
24 have to work within the confines of the statute and
25 we have to be able to define where such regulations

1 would apply. So we are open to suggestions as to
2 what definitions to include or to exclude where this
3 might apply. But my hope is that the suggestions
4 that we get from Indian Country will be targeted
5 towards reducing uncertainty.

6 And again, we also need the economic data
7 because we have to be -- when we create this new
8 environment regulatorily, it has to be in a way that
9 it obviously will be beneficial for Indian Country,
10 but we need to also show that it's also being a good
11 neighbor and good steward in promoting the economic
12 prospects of the surrounding communities.

13 As you know my boss is a Navy Seal, and
14 everybody who -- almost everybody who goes to the
15 military and also in business school -- actually,
16 the first book I read in my Ph.D. program at
17 business school was Sun Tzu and the Art of War.

18 And -- I think I've got it here. Sun Tzu said
19 that winning all of your battles is not -- I can
20 quote it directly: To fight and conquer in all your
21 battles is not supreme excellence. Supreme
22 excellence consists in breaking the enemy's
23 existence without fighting.

24 We don't want to pick a fight because we
25 firmly believe that what we are doing is in the best

1 interest of every single citizen of the United
2 States. But it's not going to be won based on the
3 force of moral argument or persuasion. It's going
4 to be won based on data.

5 So there is another Sun Tzu quote that I
6 think is equally applicable: The general who wins a
7 battle makes many calculations to his temple before
8 the battle is fought; thus do many calculations lead
9 to victory.

10 So this is going to be -- we will be
11 successful because we have the economic data to make
12 the economic case that this is in everybody's best
13 interest, that improving the economic prospects of
14 Indian Country makes everybody better off, that
15 reducing the uncertainty of doing business in Indian
16 Country increases the flow of capital, making
17 capital expenditures, generating revenue and
18 creating jobs.

19 So in the end, that's what we come down to
20 is we have got to make the economic case. We have
21 got to reduce the uncertainty. And so I really look
22 forward to the comments from Alaska communities as
23 well as Lower 48 communities.

24 We do have two more consultations coming
25 up. We've got one more in Salamanca, New York next

1 Monday and at the Oneida Reservation in Green Bay on
2 Tuesday. So just because you are here -- everybody
3 is welcome to come to those, as well. And there is
4 no -- you can come to all the ones you want to. So
5 you are not limiting yourself to just one or more.
6 But if your colleagues are thinking about whether
7 it's worth it to attend, please encourage them to do
8 so, and please encourage them to send us
9 information. We need all the help we can get.

10 I want to make sure that everybody has had
11 a chance to -- everybody has had a chance to weigh
12 in. I know there are some people that came in late.
13 If you have got some thoughts -- I saw some nods of
14 approval. If you -- now is the chance with the
15 court reporter if you want to have something on the
16 record.

17 **MR. GIVEY KOCHANOWSKI:** I think it's
18 important to make sure there is support and
19 flexibility for the 8(a) program. That is a huge
20 economic driver for Alaska and also the Lower 48
21 tribes that take advantage of the program. But I
22 think you would be remiss if rule making did not
23 have a positive place for that. That has certainly
24 made a lot of corporations up here sustainable and
25 delivered back to them.

1 In the absence of having (indiscernible)
2 land, tribal members that also are enrolled in their
3 corporation have seen huge benefits from that. I
4 think equally important is looking at the front side
5 with federal contracts and federal support.

6 I don't know if it would be something
7 that's within the scope of this or just you perhaps
8 as a take-away to work with the General Services
9 Administration, but it's very clear that tribes can
10 use the General Services Administration, but it's a
11 little grayer area when it comes to the instruments
12 of the tribe or the corporations. And that is an
13 area where I think there could be some significant
14 economic benefit on the front end of the projects,
15 whether it's the tribe being able or the corporation
16 or ANC -- ANC has had limited use of GSA right now.
17 Being able to give the federal pricing for projects
18 to stuff more within range.

19 I think the last point -- and this may
20 just be a homework item for you, is Kathy raised a
21 point about land up here. I think it's really
22 important to look at the impact especially of ANILCA
23 on Alaska. It created a ton of economically
24 isolated islands surrounded by federal lands. And
25 there is tremendous challenge right now with

1 accessing tribal lands or Native corporation lands
2 across federal land up here.

3 There is an example that I'm working right
4 now in our office, the Noatak National Preserve
5 where the Park Service is being absolutely
6 uncooperative with getting a fuel supply route to
7 the village. It would be a small business for
8 somebody maybe to eventually haul the fuel. But
9 there is an existing easement there. There is a lot
10 of -- the village predates the park by many years.

11 But I think, as we go forward, whether
12 it's through this process to try to address the
13 economic islands in Alaska or perhaps your role as
14 assistant secretary -- Joe Balash is up for
15 confirmation -- he's an Alaskan -- for land and
16 mineral management. That would be a really good
17 touch point. I think you really need to look at our
18 challenges up here and find ways that -- we need to
19 look at the people with the resources and the
20 opportunity. Right now there's usually a federal
21 buffer in between in almost every community -- the
22 biggest challenges tend to come from Park Service
23 and Fish & Wildlife for projects.

24 **DR. GAVIN CLARKSON:** Those are sister
25 organizations within the Department of Interior, so

1 whereas I can't go make something happen, I can
2 certainly go complain loudly. So if you have those
3 kind of situations where other aspects of Interior
4 are standing in the way of tribal progress and
5 Alaska Native community progress, those I do want to
6 hear about because I do have the opportunity to go
7 talk to the people who are in charge of Fish &
8 Wildlife and in charge of Park Service and say, hey,
9 guys, hey, you all, this is probably not in
10 everybody's best interest.

11 **MR. GIVEY KOCHANOWSKI:** I understand
12 that's not rule making, but just in terms of --

13 **DR. GAVIN CLARKSON:** It's outside the
14 scope of this process, but I'm certainly happy --
15 anybody who has got issues where other branches of
16 Interior are making it difficult for Native
17 communities, I want to hear about it because I can
18 at least -- I can at least highlight those as areas
19 where either people need to make different decisions
20 -- and there are some people who are getting used to
21 the fact that it's a different administration.

22 And not everybody is -- sometimes you
23 know, the -- when administrations change, the
24 interests that were out of favor before, now all of
25 a sudden tribal interests are now being viewed

1 differently than perhaps they were before.

2 We don't have an anticapitalist bias
3 against tribal economies. We do not -- we end -- it
4 was not unintentional that we announced that we
5 ended the war on coal at the Crow Reservation in
6 Montana. We recognize that for many tribal
7 communities, natural resources are the resources
8 that they have lived off of for tens of thousands of
9 years, and they are the best stewards of those
10 resources, and we should respect their expertise and
11 their capacity to manage their own affairs and their
12 own resources. And that's perhaps a different
13 perspective than was the case of the previous
14 administration.

15 So if there are opportunities like that
16 where there is a chance to go in and make a
17 difference that would benefit a Native community, I
18 want to hear about, and I'll do my best to raise it
19 to the right people. I've done that already in
20 other contexts beyond -- outside of Indian Affairs,
21 and happy to do it again.

22 **MS. JOLENE JOHN:** May I suggest also
23 perhaps having a minute to talk with a Shirley Kelly
24 from the Economic Development Administration here in
25 Alaska. She's the only Alaska representative and

1 the only person in the office. She herself is a
2 tribal member, an Alaska Native from a village who
3 subsists, who commercial fishes and works a lot with
4 the tribes in economic development projects. Perhaps
5 she can identify some challenges that may be
6 considered in these regulations.

7 **DR. GAVIN CLARKSON:** Absolutely. Again,
8 anybody who has examples where the existing
9 regulatory environment is causing problems or
10 impeding economic progress in Native communities,
11 those are the stories we want to hear because we
12 want to put them out there. When we put together --
13 just to describe process, the regulations will be
14 fairly straightforward if we were to put something
15 together. The bulk of what we get published in the
16 Federal Register will be a preamble going through
17 and justifying and describing the situations that
18 we're trying to ameliorate.

19 So those stories of where the existing
20 system is bad are critical for us to include. So
21 absolutely, I would love to talk to anybody that you
22 think has information that can help us in this
23 process.

24 Does anybody else have any additional
25 comments?

1 Well, with that, I want to thank everybody
2 for attending and encourage you to share what you
3 have heard about today because there still is --
4 even though not everybody was able to make it in
5 person, there's still plenty of opportunity to
6 contribute electronically or to have conversations
7 going forward.

8 And again, this is not the end of the
9 consultation process. This is just merely the end
10 of this particular phase. And there will be more
11 opportunities for consultations going forward. And
12 so we look forward to seeing many of you again in
13 this process. And I know my staff is working very
14 hard to make sure we try and incorporate as many
15 voices from Indian Country as we possibly can in
16 this process because at least this administration
17 takes consultation very, very seriously. So we
18 appreciate your time.

19 **(Proceedings adjourned at 11:18 a.m.)**

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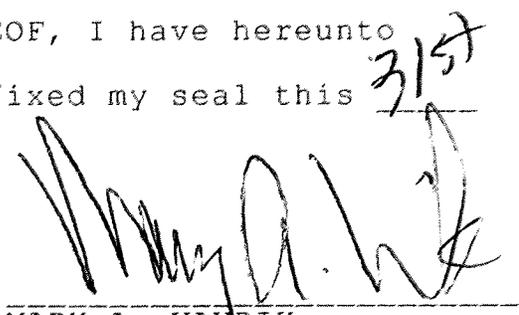
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REPORTER'S CERTIFICATE

I, MARY A. VAVRIK, RMR, Notary Public in
and for the State of Alaska do hereby certify:

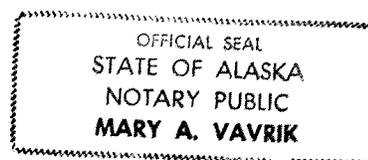
That the foregoing proceedings were taken
before me at the time and place herein set forth;
that the proceedings were reported stenographically
by me and later transcribed under my direction by
computer transcription; that the foregoing is a true
record of the proceedings taken at that time; and
that I am not a party to nor have I any interest in
the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto
subscribed my hand and affixed my seal this 31st
day of August 2017.



MARY A. VAVRIK,
Registered Merit Reporter
Notary Public for Alaska

My Commission Expires: November 5, 2020



<p><u>1</u> 10,000 12:4 100 35:9 11:18 109:19 12 8:6 16 16:11 16:18 17 54:17 55:6 55:8 55:11 55:21 55:25 56:5 1790 18:24 1834 18:24 1948 16:14 1962 16:15 1965 5:20 67:22 1983 97:12 97:14 1984 97:19 <hr/> <u>2</u> 2 14:25 20 64:1 88:18 89:15 89:15 89:20 91:23 92:13 2005 6:19 2009 6:19 2017 3:4 5:22 21st 5:19 23 3:4 95:10 23,000 95:6 250 79:4 <hr/> <u>3</u></p>	<p>30 64:2 300 79:4 30s 54:15 30th 70:8 31 11:20 <hr/> <u>4</u> 40 5:2 400 79:5 404 58:6 40s 54:15 40-year 95:5 48 13:12 35:4 35:17 36:20 37:13 39:14 39:18 40:7 40:12 47:1 47:8 52:8 52:18 52:20 53:3 54:2 54:10 55:1 56:21 59:12 62:7 72:23 73:8 75:13 86:1 102:23 103:20 <hr/> <u>5</u> 50 88:20 91:24 50s 54:15 52 5:21 567 8:21 25:6</p>	<p><hr/> <u>8</u> 8(a) 103:19 875,000 98:22 99:2 <hr/> <u>9</u> 9:03 3:5 97 95:10 <hr/> <u>A</u> A&M 27:21 a.m 3:5 109:19 ability 20:11 20:15 45:3 65:19 74:15 100:18 able 7:14 14:8 14:12 17:16 22:10 28:21 30:25 32:9 37:18 42:17 44:8 46:19 55:19 55:20 57:20 59:21 63:10 63:14 66:21 77:2 77:9 78:19 79:7 82:11 85:5 90:22 92:7 93:15 99:7 100:25 104:15</p>	<p>104:17 109:4 absence 104:1 absolutely 10:15 35:14 59:8 64:16 77:7 105:5 108:7 108:21 accelerated 63:9 accept 99:6 acceptable 87:3 access 5:25 92:18 accessing 105:1 accomplished 5:9 accurate 37:7 75:18 achieve 5:10 acknowledge 35:22 acknowledging 45:3 acquire 40:24 acquired 95:2 acquisition 94:13 acres 95:6 across 3:23 4:22 46:16 105:2 act 32:13</p>
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54:14	addressed	107:11	35:5 35:6
56:2 58:5	5:20 77:9	107:20	35:12 35:21
58:18 78:21	addresses	affect 77:17	36:1
79:22	7:21	affected	36:13 36:19
Acting 3:21	adjourned	33:12	36:21 37:12
actively 55:5	109:19	afford 89:20	37:14 37:18
activist	administerabl	AFN 70:2	37:20 39:12
19:14	e 100:12	against 90:18	39:17 39:24
activity	100:16	91:9 107:3	40:12 40:21
54:24	administratio	age 16:11	40:23
64:5	n 8:6 10:11	agencies 6:13	41:2
95:20 98:1	10:17	32:3	41:22
actual 21:25	11:7 13:7	agency 54:25	42:3
actually	78:17	agenda	42:23 42:24
4:4 16:8	90:8 94:9	33:10 33:10	43:5
18:10 21:22	104:9	34:10	44:24 45:11
33:3	104:10	ago 5:22	45:24 46:23
33:15	106:21	8:6 90:4	46:24
41:8	107:14	ahead 4:20	47:3 47:3
55:10 55:12	107:24	30:15 31:12	47:24 49:10
60:1 60:4	109:16	aimed 16:21	52:8
77:18 81:11	administratio	ain't 12:15	52:13 52:15
96:21	ns 106:23	34:12 34:12	52:17
101:15	admit 86:4	air 95:4	53:4
add 13:3	advance 78:23	96:14	53:11 53:13
addition	78:23	airport	53:15
24:12 32:17	advancement	21:1 21:5	54:1
82:17 90:11	55:21	AISES 6:18	54:13 54:25
additional	advantage	Alaska 4:6	55:3
33:21	103:21	7:12 7:15	55:10 55:14
52:2	advisor 6:12	8:22	56:9
54:10 54:11	advocate 7:19	12:11 13:13	56:17 56:21
70:9	75:9	14:20 14:22	58:22 58:23
70:18	advocates	30:7	61:16 61:18
108:24	49:1	30:10	65:3
address	affairs 3:1	32:5	67:11 67:19
69:1	3:19 5:7	32:12 32:12	67:21
79:13	6:2 7:2		68:1
105:12	43:4 93:9		68:17 68:20
			69:6
			69:19 70:22
			70:25
			71:2 71:5

71:15	68:7 68:8	analyzed	answer 3:11
72:9	allows	61:11	30:24 30:25
72:20	80:12 80:16	analyzing	51:10
73:6	81:16	28:3	answers 31:1
73:23 79:15	alone 45:6	ANC 104:16	anticapitalis
84:2	already 41:11	104:16	t 90:18
93:12 99:11	42:6	ancestors	91:3 91:8
99:18 100:3	55:15 74:19	4:18	107:2
102:22	97:22	ancestral	anticipate
103:20	107:19	95:7 96:11	26:25
104:23	alternate	Anchorage	anybody 23:10
105:13	42:10	13:17 84:22	30:23 31:25
106:5	alternative	85:2	32:22 32:23
107:25	90:22	ancillary	50:9
107:25	am 3:20	49:2	54:11
108:2	3:21 4:5	ANCSA 35:20	56:6
Alaskan	16:23 16:25	36:5	65:10 72:23
105:15	24:25	36:25	82:25 84:24
Alaskans	32:3 35:10	38:2 38:9	106:15
66:14	ameliorate	38:11 38:13	108:8
Alaska-	108:18	39:7	108:21
specific	Amen 4:23	44:15 67:23	108:24
84:23	American 6:17	72:10 84:19	anybody's
Albuquerque	6:21	86:11	78:20
98:21 98:24	16:15 23:21	Andrews 47:14	anymore
99:1	50:12 70:16	47:14	88:6 90:1
alcohol 77:11	85:9 85:10	angel 89:8	anyone 96:3
alleviate	America's	ANILCA	anything
80:9	17:6	32:13	21:10
Alliance	amici 62:15	104:22	30:8
73:20 85:11	analyses	announce	31:25 54:22
allocation	84:25	43:12	60:4
96:24	analysis	announced	62:23 64:23
allow 33:24	12:17 23:24	107:4	69:16 72:23
33:25	28:13	announcing	74:22 74:22
allowable	29:2 59:3	6:4	74:23 89:6
78:9	59:6 60:6	annual	anywhere
allowed 19:10	60:12	28:10 53:21	22:11 88:19
allowing 7:23			Apache

73:17 73:20	104:13	52:7	autonomy
apologize	areas 8:12	52:16 56:9	46:24 68:13
73:6	56:24	Association	97:9
Appel 18:4	61:4 106:18	6:20 6:22	available
43:25	aren't	35:8	42:7
applicability	22:19 49:17	50:13 70:16	AVCP 72:1
38:1	53:17 53:23	85:10	aware 32:3
applicable	53:23 85:22	assuming 52:9	68:1 83:14
40:6 102:6	arguably 48:6	assures 76:10	away 20:17
applied 21:2	argue 38:14	asterisk	36:5 95:13
applies 84:7	38:20 80:17	75:12	<hr/>
apply 22:25	80:22	attend 85:6	B
68:12	argued 44:24	103:7	bachelor 6:8
69:3 86:7	argument	attendance	background
87:4	81:24	35:22	5:15
101:1 101:3	82:2 102:3	attending	backs 42:23
appointed	Arizona 73:21	109:2	backslide
5:12	Art 101:17	attract 76:23	58:12
appointment	Ashley 18:3	77:5	backyard 12:6
6:4	18:14	attracting	bad 9:15
appreciate	20:6	76:19	60:22 63:18
7:8 61:22	43:21 43:25	August 3:4	89:23
66:3	98:20 98:24	70:8	108:20
73:10	aspect 76:15	authorities	balanced
75:4 109:18	aspects 23:12	68:9 71:8	95:24 95:25
approached	73:23 106:3	authority	Balash 105:14
25:25	assembling	36:25 79:18	bank 25:2
appropriate	18:8	80:1	banker 94:19
96:4	assert	81:17 81:20	banks 50:4
appropriation	84:10 84:11	81:25	Bar 6:20 6:22
s 96:8	assistant 5:6	82:5	barrier 32:10
approval	5:12 7:2	84:18 93:15	barriers
12:19	105:14	96:22 97:25	32:20 57:21
103:14	assistive	99:23	58:10 67:10
April 18:13	53:9	authorized	
area 34:17	associated	79:19	bars 77:15
51:20 51:21	20:1	automatically	base 40:11
104:11	26:21 28:24	28:23	

48:6 89:1	84:20	102:12	billion-
90:21	101:25	106:10	dollar
97:4 97:16	believer 5:24	107:9	25:24 26:1
based 20:22	believes	107:18	billions
29:24 51:19	74:13	bet 59:15	24:13 26:18
64:1 74:6	Belknap 73:14	better 15:1	62:3
74:7	beneficial	17:18	bit 7:11
78:14 78:15	29:2	24:1 24:2	11:10 65:15
102:2 102:4	34:25	24:5	84:14 90:10
bases 74:2	40:4	24:21 25:11	black 21:10
basically	69:25 83:16	25:12 25:18	blessing 4:25
14:18 20:17	84:1 101:9	29:21	blow 16:19
27:14	benefit	33:7 33:9	59:4
29:3	7:15 10:6	39:18 42:24	boats 14:19
30:12	30:10	46:23	bodies 4:16
47:1	31:6	47:5	bombing 16:13
53:16 68:12	38:17	52:15 61:13	bond 95:6
85:14 96:12	39:2 62:6	66:2	bonds 94:20
battle	62:8 62:9	77:24 85:23	book 44:3
74:20 102:7	62:10 63:13	89:24 92:13	101:16
102:8	63:21 64:11	102:14	border 21:6
battles	64:21	bettors 25:19	22:18 46:17
101:19	104:14	beyond	borders 94:25
101:21	107:17	74:20	borne 52:3
Bay 103:1	benefiting	80:1 91:6	92:18
became 8:5	63:15 64:3	107:20	boss 29:6
8:5 16:14	benefits	BIA 5:18 32:2	83:9 101:13
becoming	14:11 28:23	57:16	bought 64:9
36:20	39:22 42:20	bias 90:18	boundaries
beef 83:20	63:20 104:3	91:3 91:8	19:18
begin 3:14	best 13:4	107:2	74:7
3:25 4:9	13:8 15:4	bifurcation	74:15 75:24
behalf 42:2	15:8	86:4	77:11
62:15 73:12	17:22	bigger	78:3 78:4
behind	31:2	78:24 78:25	boundary
41:20 78:20	37:17 37:19	biggest 97:15	9:8 9:8
believe 18:24	42:1 69:9	105:22	75:5 78:15
35:24 43:23	79:9	Billings 14:6	
63:16 78:14	79:11 79:12	billion 26:16	
	82:13 92:12		
	101:25		

Bradford 61:22 66:6	86:20 86:22	88:5	100:19
branches 106:15	buildings 57:12	89:14 99:22	102:16
breach 19:23	built 26:11	100:5	102:17
breached 19:15 19:22	59:18	100:17	capture 82:11
breaking 101:22	bulk 108:15	101:15	care 10:3
bridge 65:13	bunch 12:21	101:17	careful 28:5
briefing 11:14	15:10 33:21	102:15	carve 40:4
bring 46:16	58:16 82:9	businesses 52:10	case 23:9
59:24 62:3	burden 8:13	69:8 76:6	23:25
bringing 6:1 60:2	60:15 61:1	76:22 76:23	24:3
brings 5:23	Bureau 3:1	77:5	24:21
broad 80:17	3:18 3:23	85:16 100:3	25:7
82:1	43:4 93:9	buy 96:18	25:14 25:18
broader 29:5	bureaucrats 10:9	<hr/> C <hr/>	25:21 42:15
broadly 81:22	burn 89:25	calculations 102:7 102:8	42:16 42:18
broke 16:2	burns 87:13	California 68:22 87:20	47:1
16:3 16:4	bus 62:19	cans 16:8	49:12 52:17
16:6	business 5:4 6:3	capabilities 9:13	62:14 63:11
broken 85:19 85:20	6:10 11:5	capability 13:1 75:3	63:14 63:19
brought 5:14	26:22 47:22	78:24	63:20 64:15
budget 95:22 95:23	47:23 47:25	capable 20:18	65:22
95:24 95:25	48:5 48:8	34:21	66:2
buffer 105:21	48:17 49:18	capacity 41:1	80:20
build 15:19	49:20 49:21	98:18	81:3 81:7
50:22	50:3 50:5	107:11	102:12
100:20	50:14 50:18	capital 15:7	102:20
building 17:4	51:14 52:16	17:21	107:13
61:12 86:18	53:25	26:2	cases 11:24
	56:9	28:10 51:24	33:6 34:3
	66:15 67:16	53:21	79:5
	69:10 76:11	89:3 89:7	cash 16:5
	76:12 76:18	92:15 92:18	catches 87:12
	76:19 76:25		categories 65:5
	77:2 77:5		categorized 45:25
	78:6 84:6		categorizing 20:7
	84:13 87:17		caused

35:20	certainty	characterize	7:5 7:7
36:8 79:6	52:16	51:7	choose
96:2 96:7	cesspools	charge 7:24	34:23 51:25
causes 86:8	24:6	20:19 22:23	cite 83:4
causing 108:9	cetera	23:2	cities
cell 59:13	43:13 87:20	76:14	67:12 97:6
59:20 59:22	chairman 6:18	77:3	citizen
59:25	chairmen 47:9	88:18	5:13
60:1 60:3	challenge 9:2	89:9	21:24 102:1
center	13:11	95:18 95:19	city 44:20
57:12 85:8	17:8 23:8	106:7 106:8	45:6
centuries	41:12	Charlie 16:9	48:10 99:22
10:19	49:7	charters	Claims 32:12
Century 5:19	59:11 65:20	54:17 54:23	clarified
CEO 25:2	65:21 68:17	55:15	45:12 75:16
CERCLA 93:23	68:19 68:25	chasing 16:9	clarify 90:12
certain 10:22	78:21	check 55:12	clarifying
19:14 22:24	100:13	checkerboard	87:2 90:9
49:7	104:25	75:15	93:17
certainly	challenges	78:5	Clarkson
13:11 14:20	32:14 32:18	94:20 95:12	5:6 5:8
17:7	49:2 56:9	checkerboardi	5:11 5:14
22:12 22:25	68:18 97:15	ng 94:18	5:23 6:6
23:19 34:18	105:18	checkers	6:15 6:24
37:15	105:22	75:22	7:2 7:4 7:6
41:5	108:5	checking 93:2	18:15 31:12
41:19 46:25	chance 7:11	Cherokee	31:22 32:21
56:3 61:4	103:11	19:18	35:14 38:19
70:9 77:1	103:11	Cheyenne	39:4 39:9
79:3 80:4	103:14	73:25	41:5
80:6 80:7	107:16	Chickasha	43:17 43:24
82:7	change	16:2	46:4
84:11	25:17 26:13	Chief 19:16	48:14
85:6	106:23	Chiefs 72:2	50:7 54:9
90:16	changed 5:4	China 16:21	55:4
91:7	changes 78:22	Choctaw	55:18
98:17	chapter 83:4	5:14 7:5	59:1 63:7
103:23	characteristi		66:19
106:2	cs 30:7		67:3 67:7
106:14			67:17

70:7	83:1	Colorado 12:2	84:23 85:11
71:16	climate 76:11	combat 91:8	85:14 92:22
72:4	76:12	comes 42:23	102:22
72:12	77:1 77:5	58:4 58:5	108:25
73:3	Cline 3:13	86:15 95:23	commerce
73:18	3:15 3:20	98:9 104:11	3:2 19:5
74:9 75:8	4:24	comfortable	20:12
76:9	47:17	27:16	40:8
78:16 81:10	67:9 67:9	coming 23:3	45:21
84:17 87:25	69:22 91:22	41:6	46:1 46:7
89:16 89:21	92:1	41:10 47:18	46:8 48:4
90:4 90:7	closed 18:13	65:3	62:9
90:16	closest 98:10	66:10 68:19	62:22 75:17
91:1	coal 107:5	69:9	77:20
91:15 92:14	coast 72:9	69:10 72:12	78:1
94:6 95:2	codification	100:12	80:24 84:12
98:25 99:16	80:18	102:24	86:11 87:1
100:7	cognizant	COMMENCING	commercial
105:24	19:13 41:25	3:5	108:3
106:13	53:8	comment	commission
108:7	62:20 72:19	32:1	97:17 97:19
classmates	74:25 79:17	32:22 32:23	97:24
84:21	80:3 82:23	61:11	commissioned
clear 14:14	collaborative	commenting	97:16
18:18 18:20	29:19	96:1	common
18:25 20:23	collaborative	comments 18:2	19:15 19:21
25:15 35:10	ly 31:4	18:9	67:15
46:5	colleague	18:13	communities
64:16 74:23	61:22	30:5	4:15 7:16
78:13 78:17	colleagues	30:21	14:16 17:17
79:17 104:9	103:6	31:8 33:2	24:5
clearly	collect 55:2	37:13 39:15	28:20
10:6	collecting	42:2	29:4 29:9
31:17 44:18	18:11 95:19	43:15	30:10
45:23	college 15:10	47:6 50:8	32:4 33:1
56:5	15:11 15:13	50:10 50:13	34:14 36:22
65:17 83:10	color 21:9	50:15 50:17	41:20
86:25 91:14		51:6	42:3
clients		54:11 57:21	42:22 42:25
50:6		64:25 84:23	43:20 46:8
50:19 50:19			
73:10 82:22			

46:11	compact 71:3	conditions	101:20
47:3	companies	33:12 34:11	consider 43:4
49:10	87:11	conduct 3:23	consideration
52:3	company 25:25	conference	45:9
52:17	48:4 48:5	66:5	considered
54:1 54:2	48:8 87:18	66:10 66:16	108:6
56:10 60:20	compelled	72:2	consists
60:25	35:4	conferences	101:22
61:2	compete 40:3	66:11	consortia
61:17	competitive	confident	71:22
62:6	59:23	42:18	consortiums
63:21 63:22	compiling	confidential	71:3 71:6
63:22	20:6	27:13 28:6	71:19 71:20
64:3 64:4	complain	confines	constantly
64:11 64:12	106:2	100:24	58:11
64:22	complained	confirmation	constituents
65:4 66:1	90:19	105:15	37:18
66:2 68:7	completely	confronted	constitution
68:7 68:8	19:4 47:2	96:19	39:19
68:14 68:16	53:6	confusing	41:4
69:21 87:14	complex 36:12	88:12	80:16 80:18
89:9 91:9	complexity	89:2 89:6	80:21 81:23
99:10 99:11	35:19	89:7	81:23
101:12	compliant	confusion	constitutiona
102:22	44:3	48:3 86:7	1 80:18
102:23	component	Congress 19:9	81:8
106:17	71:2 71:14	34:20 79:19	constitutiona
107:7	computer	79:22	lly 75:18
108:10	16:17	80:5	Constitutions
community	concern 74:25	81:16 81:21	54:14
17:12 28:24	concerned	81:23 96:4	construction
29:5	23:15	Congressional	64:8
30:18 33:11	concerns	96:8	consultation
33:13 33:24	35:18 52:20	Connecticut	3:2 3:18
34:1 34:2	78:18 78:20	74:1	3:23 4:8
34:4 34:6	concrete	connections	4:13 5:11
47:11 48:23	12:15 87:6	49:5	7:13 21:19
50:24 52:13		conquer	
53:10 57:12			
72:8 99:6			
105:21			
106:5			
107:17			

23:8	contracts	copy 23:19	6:25 7:22
28:18	104:5	23:19 23:20	8:17
30:2 30:6	contribute	corporate	11:12 13:19
37:11	17:16 109:6	54:17 54:23	14:15 15:17
43:7	contributor	86:23 90:14	18:12 18:15
45:16 52:22	97:1	corporation	18:25
53:2	contributors	37:3	20:1 20:4
70:17 82:12	23:6	38:11	20:10 21:11
109:9	control 22:14	39:1	21:17 22:23
109:17	34:14 42:25	86:24 88:10	22:23
consultations	61:2	104:3	23:3
7:10	68:14 69:23	104:15	23:13
23:10 29:22	convenience	105:1	24:1
43:19 70:10	21:3 21:6	corporations	25:10 25:10
70:11 70:15	21:13	32:13	26:14 26:22
70:18 77:19	convention	36:7	27:2 29:4
102:24	70:2	36:11	29:17 29:25
109:11	conversation	38:2 39:7	31:3 31:7
consultative	36:24	55:6 55:8	33:4
29:19 82:8	40:1 46:2	55:11	33:23 34:23
consulted	78:11 80:20	57:2 57:4	38:15
6:12	80:22 80:23	57:14 57:16	41:7
contemplating	87:2	57:19 57:24	41:19
23:16	conversations	69:22	42:8
context 63:24	38:6	71:9	42:14 42:19
83:6	39:11 43:14	72:11 86:10	42:21 46:12
83:12 93:11	71:9	86:11 86:12	50:18
contexts	74:10 109:6	86:12	51:8
107:20	convey 7:18	103:24	51:14 51:15
contingency	66:7	104:12	51:17
35:6	convinced	correct 18:13	52:5 52:7
continue	63:12	cost 51:13	61:5 63:3
23:12 44:18	coordinating	69:16 93:21	63:4 63:9
continues	18:5	93:22	68:5
45:11 45:24	co-	council	69:19
contract	ownership	35:8 54:19	82:9
26:15	92:5	counter 77:15	82:15 85:16
contracted	copies 55:14	counties 97:6	91:4
59:24		country	92:19 94:24
		3:24 5:4	96:3
			96:19 96:20
			97:15 98:16
			98:17

100:15	creating 17:4	Dakota	90:24 91:10
100:18	88:11	73:15 73:16	91:18 91:25
100:20	102:18	73:16	92:2
101:4 101:9	creation	damage 9:14	94:23 99:13
102:14	26:17	10:19	99:17
102:16	creative 37:7	79:5 96:3	day 33:13
109:15	90:21	Dangerous	48:9 70:2
Country's	credentials	58:5	98:23
17:19 21:21	6:25	data 21:19	deal 48:10
25:15	crews 98:15	25:17 25:23	58:24
27:5 64:17	crisis 16:22	27:17 27:19	60:8 81:2
couple 8:2	critical	28:1 28:3	88:22 88:23
10:20 10:22	14:23 61:21	42:19 47:21	88:24 92:12
49:9 51:6	71:2 108:20	59:14 61:11	deals 50:6
57:12	cross 74:7	63:8	56:7
course	crossed 21:5	64:11 64:24	Dear 23:17
36:13 99:24	Crow 14:5	69:9	47:7
court 30:16	107:5	69:14 70:13	53:15 83:8
40:3 103:15	Cruces 21:5	82:17 101:6	decades 54:21
cover 37:16	Cuba 16:21	102:4	December
62:21 68:20	Cuban 16:22	102:11	57:23
coverage	current 77:8	Dawn 35:1	decide 15:3
59:20	currently	35:2	decided 16:11
COW 60:1 60:2	27:3 35:9	35:16 37:21	48:8
Cowlitz	38:17 56:15	38:23	deciding 15:4
59:9	cycle 13:17	39:6	34:5
59:18 60:2	13:21	39:16	decision
crazy 12:21	cycles 13:20	43:2 44:9	77:13 77:16
89:12 94:23	Cyril 47:14	47:19 49:13	89:19
create 14:9	47:14	66:25	decisions
15:2 26:2	<hr/>	73:5	19:15 19:22
89:24	da 40:19	73:19	20:20 49:21
100:21	40:19 40:19	75:4	77:4 106:19
101:7	40:20 40:20	75:11	decrease
created 26:12	<hr/>	77:6	100:9
28:12 32:16	daily 55:13	80:14 83:18	deep 12:3
48:24 50:22		86:3	12:14
53:24		86:21	defend 9:22
104:23		88:2	
		89:18	
		90:2 90:6	
		90:9	

defender 9:10	6:11 22:2	describe	5:16 6:3
defenders	degrees	24:23 24:25	6:14 7:3
10:18	17:1 17:16	96:13	11:23
defense 9:9	Delaware 74:1	108:13	12:7 13:8
define	delivered	described	14:14 14:22
42:11	103:25	11:16 19:17	14:23 14:24
100:25	demonstrate	describing	15:8
defining 41:9	28:22	48:16	17:21 23:22
81:4 91:10	demonstrated	65:4	32:4
definite	98:18	96:14	35:11 35:24
64:10	denigrated	108:17	36:10 37:19
definitely	15:17	description	37:20 38:13
30:11 37:10	department	18:18	45:1 45:4
55:5	3:17 5:10	Desert 21:25	53:11
55:12 69:24	49:15 56:12	deserves 9:8	54:1 56:4
72:5 72:6	61:23	design 41:1	58:4
85:12	62:1	44:11	61:20 71:20
definition	87:24	desire 9:18	71:23 71:25
36:18	88:1 88:4	desperate	72:8
37:7	88:18 98:11	63:4	72:10
40:16 40:17	105:25	detailed 28:7	85:9
40:25 41:11	department's	detailing	85:15 89:12
41:14	5:17	20:7	107:24
43:5	depend 71:6	detect 92:15	108:4
44:11	dependent	determination	diagram 71:1
48:7	63:8 89:8	5:25 33:25	difference
56:14	depends	determination	107:17
65:6	51:9	s 51:4	differences
72:15	51:10 51:12	determine	53:8
74:4 81:9	deployed	82:4	different
definitions	87:20	detract 13:4	8:23 8:23
44:17 56:19	Depot 64:6	develop	8:24
58:21	64:9	13:9 32:14	11:10 24:15
65:3 69:2	Depression	developed	24:19
87:2	16:7	54:22	49:9 53:6
90:12	Deputy 3:20	development	53:18
100:12	5:6 5:12	5:7 5:13	56:2 65:7
100:16	7:2		67:13 67:14
101:2			72:15 73:23
degree 6:8			77:25
			78:8 90:8
			106:19

106:21	101:20	DOE 27:22	55:4
107:12	Director 3:20	DOI's 5:12	55:18
differentiati	3:22	DOJ 82:6	59:1
on 39:21	disadvantaged	dollar	61:22
40:13	95:8	13:24	63:7 66:6
differently	disagreements	14:5	66:19
39:24	44:6	28:22 58:17	67:3 67:7
41:2 107:1	disclosable	58:17 59:2	67:17
differing	28:4	dollars 24:13	70:7
44:7	discovered	26:16 26:19	71:16
difficult	59:19	51:12	72:4
11:2	discuss	62:4	72:12
12:23 38:14	35:4 35:17	62:13	73:3
43:7	discussed	63:1 64:2	73:18
43:16 45:25	23:17 43:8	domestic 24:8	74:9 75:8
48:8	discussing	27:2 27:5	76:9
48:17	13:21	done 8:1 9:16	89:16 89:21
50:2 78:3	discussion	20:6	90:4 90:7
106:16	56:13 58:21	49:23	90:16
difficulties	81:15	65:7	91:1
26:9	discussions	82:10 94:19	91:15 92:14
35:20 86:8	10:13 71:10	107:19	94:6 95:2
difficulty	displaced	dovetailing	98:25 99:16
38:24 60:21	36:11	93:10	100:7
92:9	disposal	Dr 5:5 5:7	105:24
dig 12:12	100:23	5:11 5:14	106:13
digging	distinct	5:23 6:6	108:7
16:7 60:11	19:18	6:15 6:24	draft 21:25
digressing	disturbed	7:1 7:4	83:19
90:10	32:10	18:15 31:12	drawing 72:13
dime 92:13	diving 17:1	31:22 32:21	drill 12:4
direct 9:19	doctorate 6:9	35:14	12:6
10:8	document	37:9	drilling
10:24 35:25	72:13	38:19	11:19 12:1
48:11 71:1	documented	39:4 39:9	drive 14:2
direction	81:14	41:5	21:1
10:12		43:17 43:24	driven
directly		46:4	33:11 34:10
		48:14	57:2
		50:7 54:9	

driver 103:20	17:23	107:24	14:24
drivers 57:14	23:9	108:4	18:5 79:12
driving 62:19	23:22 23:24	108:10	eight 72:15
dry 77:13	23:25	economically	either 9:17
dual 26:21	24:9	25:11 25:12	19:6
87:3 97:24	24:21 26:13	44:13	51:25
dumpster 17:1	27:1 27:8	95:8 104:23	84:3 106:19
during 3:10	28:21	economics	EI 20:25 21:1
4:8 4:13	32:3	85:21 95:18	elder 12:12
16:6	35:11 35:23	economies	elders 16:9
16:22 62:12	35:25	5:21 13:9	96:14
duty 24:24	36:9	14:8 17:7	electrical
25:9	36:10 37:19	19:3 20:2	12:13 63:2
	37:20 37:24	22:17 29:14	electrician
	38:13 42:15	31:6 58:9	17:13
	42:16 42:18	63:13 63:15	electrificati
	45:1 45:4	63:16	on 12:11
	46:24 49:12	83:3 96:9	electronic
E	53:10 53:10	107:3	62:9
eager 15:14	53:16 53:25	economists	electronically
earlier 46:22	55:21	13:14 27:19	y 109:6
57:21 72:2	56:4	27:22 28:2	eliminate
earned 6:9	57:13 63:11	economy 13:15	90:18
earth 12:5	63:25	13:16 13:18	eliminating
13:23 14:4	64:5	13:19 14:10	97:24
easement	64:11 64:15	14:11 15:19	elites
105:9	68:6 69:9	17:6 24:9	15:16 17:2
easier 12:4	70:13 71:22	24:10	Elizabeth
32:19 67:15	71:24 82:14	27:3 27:6	43:25
easy 19:20	82:17 85:15	28:23 32:16	else 7:24
41:17 60:19	86:8	47:4	21:15 46:11
E-commerce	89:12 95:20	educate 30:8	68:10 72:23
36:20	95:21	educated	88:19 88:24
economic	98:1	17:20	92:12
5:7 5:13	99:12 101:6	education	108:24
5:16 6:1	101:11	4:17	emerging 24:9
6:14 7:3	102:11	15:15 17:15	27:2 27:5
8:11	102:12	effect	
11:23	102:13	34:21 93:25	
13:7	102:20	effort	
14:14 14:24	103:20		
15:5 17:8	104:14		
	105:13		

emphasis 8:12	61:24	equal 57:19	103:10
emphasize	62:1 62:3	equally	103:11
7:25 61:9	62:18 62:19	40:5 40:6	106:22
62:18	62:24	84:7	109:1 109:4
employed	enforcement	102:6 104:4	everybody's
50:24	40:2	especially	30:21 84:24
employees	Engineering	4:18 32:4	102:12
32:25	6:17	58:4 104:22	106:10
empower 15:1	England 68:22	essentially	everyday 12:8
empowered	English 4:10	74:1	everyone 3:16
9:24 10:8	enrolled 84:5	establish	3:17
11:1 13:1	104:2	93:14 93:25	everything
71:2	ensure 36:14	established	10:4
empowering	ensuring	74:14	22:13 58:14
38:6	35:18	establishment	63:20
empowerment	entered 21:2	s 62:17	64:9 64:23
8:12 14:25	Enterprise	et 43:13	everywhere
empowers	85:9	87:20	50:16 87:19
81:23	entities 19:5	evaluation	evolved 81:3
empty 78:10	49:17 71:13	49:23	exact 48:14
enact 22:8	86:14 90:13	event 5:2	exactly 53:5
encourage	90:15	eventually	examination
23:6	entity	24:9 105:8	82:18
23:18	38:15 55:21	everybody 9:4	example
42:4	88:13	23:7	12:9
48:21	environment	24:21 30:23	15:25 25:23
49:4	24:16 26:23	42:4 50:9	44:14 44:19
76:21 81:10	32:7 34:6	52:9	46:17 47:20
82:16 103:7	53:24 85:24	53:14 55:22	47:21 50:21
103:8 109:2	89:24 101:8	59:16 59:20	52:10 52:15
enemy's	108:9	63:12 68:10	56:23 73:24
101:22	environmental	68:10 68:12	77:18 86:17
energy 6:3	32:20 33:12	79:10 85:18	87:6
11:15 14:13	envision	98:4	89:21
14:22 14:23	26:18 96:20	98:19	91:2
27:21 27:23	99:9	101:14	92:14 96:10
28:14 56:12	envisioning	101:14	98:8 105:3
56:13 61:20	68:4	102:14	examples
61:20 61:23		103:2	49:11

55:1	46:19	32:25 39:13	29:11 29:13
63:23	exist 9:21	49:6 55:7	40:23 65:22
69:7 69:7	10:3	experiences	failing 60:23
77:7	existed	13:13 42:22	fair 77:7
89:22 92:21	5:21 26:7	expert 44:11	fairly
108:8	34:3	expertise	19:20
exceed 29:8	existence	45:23 71:11	24:3 27:8
83:11	101:23	107:10	42:17
exceedingly	existing	explain 59:11	95:8
82:1	37:15 41:11	72:19	97:20 97:21
excellence	53:24 69:12	explore 13:5	108:14
101:21	69:13 76:21	extends 91:6	fall 70:20
101:22	77:1	extensive	100:6
except 56:17	105:9 108:8	5:15	falling 83:2
excessive	108:19	exterior	falls 56:5
58:24	expand 79:23	78:15	87:1
exclude 47:11	expanded	extra 92:17	familiar
65:10 101:2	99:25	extremely	35:10 45:17
excluded	expansive	74:2	62:10 71:17
22:17 22:20	40:21 83:25	<hr/>	familiarity
excluding	expect 75:7	F	7:12
41:2 62:23	expected	<hr/>	families
exclusion	28:11	face 32:14	98:12
19:7	expenditure	facilitate	famously 11:4
21:15 68:9	26:2 28:10	20:14	fan 60:14
exclusive	expenditures	facility	fancy 17:1
19:4	53:21	59:19 59:21	17:1
20:11 65:11	102:17	fact 5:20	fast 76:6
exclusively	expense	11:25 13:21	faster 94:16
28:25	52:3 92:17	29:21	father 16:1
exclusivity	expensive	43:8	fathers 18:19
19:16 19:22	47:24	45:12 63:17	19:3 19:8
36:15	51:8	80:4	19:12 67:20
Executive	51:14	86:12 90:19	97:8
6:21 45:15	52:2 73:9	106:21	fault 8:6 8:7
exempt	experience	factor	favor 106:24
94:19 95:6	7:12 8:24	46:21 65:6	
exercise	9:6 30:7	fail 45:2	
		failed	

FCC 60:5	90:14	101:24	98:11 98:11
feasibility	91:3 96:2	fighting	firefighters
49:24 50:20	96:7	101:23	98:14
50:21 56:16	96:23 104:5	figure	fires 87:19
69:11	104:5	37:18 86:5	98:15
February	104:17	file 65:22	firm 30:19
66:16	104:24	fill 12:14	30:20 35:2
federal	105:2	filled 95:11	firmly 101:25
6:13 6:20	105:20	final 45:8	first 14:2
8:1 8:19	108:16	finally 20:21	16:15 18:12
8:25 9:10	federally	29:6 82:21	20:10 31:19
9:15 11:2	8:21	finance	32:21
11:6 11:8	Federation	5:15 6:7	53:2 99:4
11:11	50:14	6:13 6:22	99:4 101:16
19:7	fee 20:13	50:12 51:22	fish 15:21
19:15 19:21	40:18 41:10	58:8	105:23
19:23 20:15	65:4	70:16 85:10	106:7
20:17 22:19	74:16 74:21	88:25	fisheries
23:11 24:25	76:4	financial 6:6	72:10
26:24 27:20	76:12 77:14	26:9 36:9	fishes 108:3
29:10 29:20	94:2 99:21	financiers	five 3:22
31:3	feedback	50:4	13:17 73:15
32:24	49:14	financing	92:4
33:9	53:2 57:7	94:22	fix 8:8 15:19
34:24	64:25	finding 11:1	75:12 75:24
37:5 38:8	69:4 70:8	fine 79:25	76:2 79:7
38:24 39:23	feel 20:18	fire 86:24	79:16 96:5
40:22	35:4	87:8 87:9	fixing 17:4
41:4 44:4	fees 96:22	87:10 87:11	96:6
44:16 44:23	feet 12:4	87:12 87:12	flexibility
45:14 45:18	12:14	87:14 87:16	81:2
55:9	fellow 27:19	87:18 87:24	84:15
58:17	fiduciary	87:25	103:19
59:2 59:4	25:1 25:5	88:3	float 14:19
60:16 60:23	60:24	88:18 89:11	floor 12:6
62:15 64:18	fight 14:17	89:12 90:24	flow 16:5
67:11 68:10	62:16 87:19	91:1 98:8	71:13
68:11 75:19	98:11 98:14	98:9	100:19
76:14	98:16		
79:6 83:1	101:20		
86:16 87:3			

102:16	Fort 73:14	97:8	fun 15:17
flowing 64:2	73:17	frame 64:13	fund 90:23
flows 13:15	forth 54:16	framework	future 4:19
fly 16:15	79:12	43:23 44:16	4:22
focus 5:24	fortunate	77:11	<hr/>
36:10	57:18	France	<hr/> G <hr/>
46:7	forward	94:24 96:17	gain 74:20
46:13 83:21	22:7	frankly 36:19	Gallup
focused 55:25	29:24	44:12 80:22	13:25 13:25
56:1 61:3	30:4 31:8	free 32:23	14:2
70:12 71:22	42:9	freedom 8:11	game 77:20
folks 23:5	42:13 42:15	fresh 6:1	77:20 77:25
27:21 32:24	42:17 42:20	friendly	78:1 78:2
59:11 60:17	44:5	26:23 53:25	78:8
61:14	44:25	76:11 76:18	gaming
72:5 73:6	50:1 53:7	front 16:10	14:13 28:25
82:10	57:20	81:6	59:19 59:21
follow-on	58:7	104:4	63:24
26:17 43:18	58:13 58:16	104:14	64:2 89:14
food 16:8	64:15 70:15	FRY 18:14	gaps 59:15
48:25	74:23	43:21 98:24	59:16
60:8 60:9	82:5	fuel 105:6	garbage
60:10	92:22 93:21	105:8	16:8 16:9
foot 13:24	102:22	fulfilled	gardening
14:5	105:11	25:13	47:23
footage 13:24	109:7	fulfilling	gas 11:17
force 10:12	109:11	25:9	12:7 26:5
19:19 102:3	109:12	full 84:10	gather 4:14
foreclosed	foster 53:9	86:9	gathering
41:13	fostering	fully 9:23	4:13 70:3
forest 34:1	53:25	10:8 11:1	70:13
forests 33:8	fought	13:1	Gavin 5:5 5:8
formal	74:20	46:19 46:20	7:1 7:4 7:6
43:11 43:15	75:2 102:8	62:20 65:16	18:15 31:12
78:11	Foundation	71:1	31:22 32:21
former 15:11	6:18	79:23	35:14
forms 46:6	founding	86:5 86:13	37:9
	18:19		38:19
	19:3 19:8		39:4 39:9
	19:12 67:20		

41:5	97:4 100:21	gone 28:19	88:10 88:11
43:17 43:24	generated	28:20 34:19	89:5
46:4	26:11 50:23	goods 46:16	89:14 90:14
48:14	generating	gosh 92:1	91:11 91:14
50:7 54:9	96:21 96:22	governance	96:25 97:2
55:4	99:11	4:22 10:2	government-
55:18	102:17	55:17	owned 36:16
59:1 63:7	generation	governing	governments
66:19	16:25	4:16 54:19	26:24 35:12
67:3 67:7	generations	government	35:21
67:17	10:20 10:22	5:19 8:1	36:1 36:6
70:7	34:9 34:16	8:25 9:10	37:24
71:16	geographic	9:16	38:1 38:4
72:4	20:22 51:19	10:10	38:7 39:1
72:12	Georgia 19:17	11:2 11:6	39:22 49:16
73:3	19:19	11:9	57:1
73:18	gets 13:19	11:11	government's
74:9 75:8	28:22 78:24	19:7	8:19 96:23
76:9	getting 21:18	20:17 22:19	governor
78:16 81:10	49:14	23:11 24:25	12:18
84:17 87:25	64:9	29:10 29:20	grandchildren
89:16 89:21	105:6	31:4	10:23
90:4 90:7	106:20	32:11	Grandma 34:11
90:16	given 20:9	33:9 36:4	34:12
91:1	39:13 39:25	38:12 39:23	grant 56:16
91:15 92:14	70:1 90:20	40:8	58:15 81:25
94:6 95:2	gives 95:20	40:22 44:23	88:7 92:8
98:25 99:16	99:23	49:18	granted 63:3
100:7	Givey 56:11	55:9	grayer 104:11
105:24	56:11 61:25	60:16 60:23	great 4:7
106:13	63:5 66:9	62:15 64:18	6:15 8:2
108:7	69:23 86:19	67:12 75:19	10:1 20:6
gee 23:11	103:17	76:14	55:18 62:13
general 22:25	106:11	79:6 83:2	68:23 77:21
28:9	giving	86:13	78:12
51:21 102:6	93:25 97:25	88:5 88:6	80:7
104:8	goal 98:2	91:3 91:7	82:20
104:10	goals 25:8	96:2 96:7	87:8 88:16
generally		governmental	greater 52:16
85:7		86:14 86:25	
generate 26:3		87:21 87:22	
90:22			

103:9	6:11	human 15:7	15:13 19:10
108:22	hole 12:13	17:21	19:10 31:20
helped 92:3	12:17	hundred 8:3	35:2 35:3
95:5	holiday	49:9	35:8
helpful 44:13	26:4 26:8	hunt 15:21	36:23
75:25 92:21	home 17:17	hurdle 58:14	47:1
helping	33:1 64:6	hurting 63:15	47:14 47:15
18:6 18:9	64:9 87:10	_____	49:6 52:9
27:23 94:21	homeland 95:7	I	52:23
helps 29:5	96:11	_____	54:6
herself 108:1	homework	I'd 3:25	56:12 59:10
he's 7:19	104:20	13:12 35:12	60:14 65:20
7:22 105:15	honor 4:7	70:24	67:5 68:1
hey 25:25	4:14	idea 44:14	68:2
106:8 106:9	hope 66:19	88:16 92:25	70:21 71:17
hi 11:5	101:3	ideas 6:1	73:1
11:8 47:13	hopefully	identical	73:12
high 22:2	44:7	22:1	75:6 75:6
59:14	53:14 79:1	identified	78:10 85:19
higher	hopes 5:10	41:8	88:18 88:19
15:15 17:14	hoping 7:13	42:12 97:14	88:23 90:10
highlight	hostile 77:1	identifies	93:8
29:12 54:25	hostility	23:22	105:3
83:15	9:14	identify	106:14
106:18	hotshot 98:15	30:17 30:19	imagine 94:24
highly	hour 93:1	43:9 108:5	99:12
17:19 17:19	house 87:12	identifying	immediately
17:20	87:12	80:10	13:20 43:9
historic 5:2	houses 89:25	ignorant 47:2	impact
historically	housing 12:12	ignore 68:18	24:20 28:21
37:1	12:20	I'll 3:9 7:13	47:2 64:1
39:23 40:24	71:8	35:17	104:22
history	71:18 71:19	87:6 107:18	impede 74:24
8:23 9:6	87:9 87:23	I'm 7:6	impediments
hold 37:11	huge 7:22	7:13	11:22
holding 70:17	103:19	10:14	impeding
holds 6:7	104:3	11:5 11:6	108:10
		11:8 11:9	implemented
		15:11 15:12	97:22
			implementing

39:20 95:15	inch 60:11	5:6 6:2	51:17
implore 81:11	include 99:25	6:17 6:20	52:5 52:7
importance	101:2	6:24 7:2	54:14
36:2	108:20	7:22 8:17	56:2
45:24	included	11:12 13:19	56:13 59:17
100:11	40:20 77:22	14:14	61:5
important	includes	16:1	61:23
14:22	36:16 36:20	16:15 16:23	63:4 63:8
17:6	including	17:18 18:12	63:24 64:16
35:22 36:14	41:7	18:15 18:25	65:6 68:5
36:21 41:15	45:17 56:14	20:1 20:4	69:19 71:21
43:10	85:16	20:10 20:16	77:12 80:24
57:4	inclusive	21:11 21:17	80:25
58:20 61:18	58:22 65:11	21:21 22:22	81:1 81:5
61:20 78:12	72:17 72:21	22:23	82:8
80:19	income	23:3	82:14 83:23
81:5	68:11 87:22	23:13 23:21	84:4 84:5
83:20	incorporate	24:1 25:6	84:12 84:12
103:18	39:17	25:9	84:13
104:4	109:14	25:10 25:14	85:9
104:22	incorrect	26:14 26:22	85:15
impose	10:15	27:2 27:5	91:4
51:25 92:16	increase	29:4	92:18
impossible	100:8	29:17 29:25	93:9 96:3
11:24	100:18	31:3 31:6	96:19 96:20
improve 32:16	increases	33:4	97:13 97:15
57:17 63:1	102:16	33:22 34:23	98:17 99:20
improvements	increasing	36:12	99:24 99:25
62:5	5:25	37:8	100:4 100:6
improves 79:2	independence	38:15 38:16	100:14
improving	13:10	38:17 38:21	100:18
27:7 102:13	Independent	39:2	100:19
inapplicable	50:14	40:16 40:19	101:4 101:9
38:3	independently	41:1 41:6	102:14
77:14 81:8	28:2	41:9	102:15
inappropriate	Indian 3:1	41:19	107:20
44:24	3:2 3:19	42:8	109:15
Inc 72:1	3:19 5:4	42:14 42:19	Indian-
		42:21	owned 38:15
		43:4	Indians
		46:12 50:18	16:7
		51:8	80:25 83:22
		51:14 51:15	83:23

94:4	input 37:17	85:12 85:17	18:3
99:19 99:23	70:25 85:7	interesting	intrusion
indiscernible	insane 12:22	24:22	20:2
75:21 104:1	inside	60:7 97:7	inures 84:4
individual	22:13 22:13	interests	invest 14:8
5:9 42:21	95:17	75:9 106:24	15:8 26:1
52:4 84:4	instantly	106:25	51:25
84:5	64:21	interfere	52:1
85:13 85:13	instead	22:16	85:17
89:8	10:9 24:6	interference	100:20
91:12	48:9 76:20	26:24	invested
94:4 99:24	instinctively	interfering	28:22
indoor 47:22	8:18	22:21 75:1	29:4 48:23
industry 28:9	instruments	Interior	investing
57:24 77:20	104:11	6:5 8:5	52:7
information	insulation	49:15 57:15	investment
5:10	64:8	61:15	94:19
18:11 19:25	insurance	91:5 105:25	investments
27:13 27:14	93:23	106:3	62:4 86:9
27:15	intact 97:4	106:16	investor
28:4 28:6	intent 5:17	Interior's	88:15 88:15
28:7	18:19 19:11	3:17	91:13
28:17 49:17	41:6 76:18	internal	investors
50:5 50:8	intently 20:9	96:18	89:8
53:16 85:20	interact 11:2	internally	invite 4:1
103:9	interaction	96:21	invited 57:24
108:22	8:24	international	invocation
infrastructur	interactive	46:14	4:7
e 14:9 27:7	43:13	interrupt	involve 32:20
62:4	interest	32:9	71:7
76:24 76:25	35:23 66:17	interrupted	involved
100:21	70:2	85:25	88:13
initial 39:16	102:1	interruption	involvement
44:14	102:13	16:5	30:4
51:6 67:25	106:10	intertribal	involves 32:8
initiative	interested	46:14 50:11	islands
24:20 61:21	13:12 47:25	85:11	104:24
62:2	72:6	introduce 5:5	
67:17 67:18			
76:17 80:7			

105:13	93:8	20:22	kid 16:1
isn't 55:24	jet 16:15	38:7 38:9	kids 15:10
89:12 89:13	job 8:2 18:10	40:8 40:8	15:14 17:14
isolated	20:6	40:9	98:13
104:24	26:17	44:23	kilobytes
issue 12:10	33:7 33:9	48:3 51:2	16:18
24:18 36:12	79:9 82:13	51:19	Kleenex 59:4
40:15 45:11	jobs 13:10	74:7	knowledge
45:22 45:25	26:2	74:20 75:17	4:17
46:3	26:12	76:5	known 75:8
56:21	27:7	78:14	Kochanowski
58:6 95:23	28:11 32:16	84:5	56:11 56:12
issued 97:18	48:23 53:23	84:10 84:11	61:25
issues 6:14	100:21	89:2	63:5 66:9
23:23	102:18	93:18	70:1
32:6 35:5	Joe 105:14	94:1 95:1	86:19
35:17	John 4:1	98:1 98:5	103:17
40:5	4:3 4:4	jurisdictiona	106:11
41:24 49:25	4:12 32:1	1 77:10	
58:1	32:2	95:13 97:8	
73:22 95:13	54:13 55:16	jurisdictions	<hr/> L <hr/>
97:17	70:24 71:24	76:18 98:3	Lac 21:25
106:15	72:7 107:22	Justice 19:16	lack 35:22
item 104:20	join 5:1 7:1	justifying	35:23
I've 14:19	joined 16:13	108:17	48:6
16:8	joining 55:8	<hr/> K <hr/>	49:25 97:16
23:10	Jolene 4:1	Kathy 3:13	land 21:12
67:1	4:3 4:3	3:15 3:20	33:7
70:14	4:12 4:24	4:24	38:13 38:16
101:18	32:1 32:2	47:17	38:21
107:19	54:13 55:16	67:9 67:9	40:1
<hr/> J <hr/>	58:6	69:22 91:22	40:10 40:16
January 97:13	70:24 71:24	92:1 104:20	41:24 44:22
Japanese	72:7 107:22	Ke 95:3	47:18
16:13	judicial	keen 29:6	48:6 48:7
Jay 46:15	41:12	Kelly 107:23	49:25 56:18
jealous 75:9	judiciary	key 40:11	56:20 57:10
Jennifer 93:7	19:14	kicking 33:20	58:21
	jurisdiction		65:5 74:2
			74:6
			74:16 74:21

76:4 76:7	61:6 61:7	30:19 30:20	109:16
76:12 77:14	65:6	35:2 40:2	leave 15:12
78:7 81:1	67:12	74:14 78:21	41:20 78:19
83:23 83:23	74:4 74:6	80:20	leaves
84:9	75:20 75:23	81:3 81:7	13:18 13:20
93:10 93:13	77:16	84:21	22:22
93:18 93:20	81:5	87:3 99:18	leaving 82:3
94:1 94:2	84:11	laws 19:19	legal 24:19
94:3	104:24	22:24 68:11	44:12
94:21 94:25	105:1 105:1	76:17	75:5 76:24
96:16 99:21	language	lawyer 100:10	legally 37:3
100:1 104:2	4:9 74:12	lawyers	legislative
104:21	82:24 83:21	51:9 51:10	18:19 19:11
105:2	large 14:21	lead 5:8	81:17
105:15	35:6	31:25 102:8	Len 3:22
land-based	41:21 68:23	Leader	lender 91:23
68:23 73:13	71:14 73:13	23:18	less 59:22
80:8 84:8	74:2 78:4	47:7	73:9
landless	80:8 84:8	53:15 83:8	76:11 95:9
36:18 36:21	largely 36:18	leaders	let's 31:22
40:11 84:3	56:21 81:8	4:20 15:1	letter
landlocked	larger 96:25	27:11	23:18
12:2	largest 13:22	43:9	47:7
lands 20:13	14:4	47:10 50:11	53:15 83:9
20:16 22:21	Las 21:5	70:3 85:13	letting 73:8
32:15 33:16	last 5:3 5:20	leadership	level 60:21
33:17 33:20	6:4 8:2	48:21	license 3:10
36:12 36:16	22:4 23:6	49:5	licensed 3:19
36:25	42:6 45:2	53:14 58:1	licensing
37:1 37:2	45:8	leading 6:7	5:18 6:21
37:4 37:4	57:23 67:22	leak 24:10	life 16:24
37:8 38:9	90:6 104:19	leakage 13:14	23:12
38:25 40:18	late 54:15	17:9	lifetime 6:16
40:18 40:19	103:12	learn 7:11	likely 11:8
40:22 40:24	later 63:11	7:14	26:16 37:25
41:1 41:9	84:20	least 33:15	limb 36:23
41:9	law 5:15 6:11	34:7 40:5	
41:10	6:11 6:20	68:1 106:18	
43:5	19:15 19:21	106:18	
44:15 45:10	21:2		
45:10 45:19			
56:15 60:20			

limit 50:16 79:25	little 7:11 10:4 10:5	lost 53:22	62:7
limitation 32:8	11:10 58:15	lot 19:25	72:23
limitations 44:22	59:15 59:20	23:22 27:13	73:8
limited 43:16	65:15 77:15	28:24	75:13
74:6	84:14 90:10	32:5	86:1 102:23
75:19 80:20	104:11	35:10	103:20
80:21 80:23	live 33:11	37:6 43:8	Lummi 21:24
81:3 81:7	lived 29:11	53:1	<hr/>
100:22	44:19 107:8	54:24	M
104:16	living 17:3	55:7 57:9	ma'am 54:12
limiting 40:25 103:5	45:22	57:10	70:23
line 31:11	Liz 18:4 99:1	58:3	macroeconomic
31:15 31:21	loan 89:5	58:19	25:14 27:18
31:24	91:24	60:5	47:21
63:6 67:6	local 33:10	63:25	macroeconomic
73:2 93:5	34:10 42:25	66:9	s 24:4
lines 31:13	54:18 68:13	66:13	64:20 65:22
45:18 49:14	69:6 97:5	67:1	mad 16:12
54:5 54:7	locate 76:7	69:23 73:22	main 8:12
80:15 83:24	located 36:17	77:23 82:10	52:25 97:1
93:3	84:6	84:15 93:13	Maine 68:22
liquor 89:13	99:20 99:21	103:24	mainstream
listen 3:10	100:4	105:9 108:3	97:21
19:12 41:15	Lodge 62:14	lottery 91:15	major 97:13
42:13	long 26:6	91:17	majority
listened 20:5	34:2	loudly 106:2	69:18 78:13
20:9 50:15	43:21 67:19	love 35:15	man 95:4
listening	88:12	51:9 108:21	96:13
21:18	90:4 94:15	lower 13:12	manage 107:11
23:4 61:10	long-term	35:4	managed 34:15
literally	17:22	35:17 36:20	37:2
16:20 24:13	loose 76:7	37:13 39:14	management
90:3 95:11	Lord 4:12	39:18	6:10 34:1
litigating	lose 69:19	40:6	39:2 105:16
51:12 62:13	100:2	40:12	manager 64:6
	loses 52:13	47:1 47:8	maps 59:13
	69:20	52:8	marginalized
		52:18 52:20	
		53:3 54:2	
		54:10	
		55:1	
		56:21 59:12	

27:8	8:20 8:20	25:23	mom 89:14
market 89:7	37:17 43:11	26:8	moment 21:1
marketplace	48:11 62:14	26:15 73:18	31:18 33:19
88:14	64:5	73:19 73:21	59:2
markets 51:24	72:14 84:14	micromanage	60:10 60:19
89:3	92:9 98:7	23:12	93:6
92:15 92:18	98:19	micromanaging	Monday
Mars 21:11	means 5:20	76:15	48:13 103:1
Marshall	43:16 75:25	middle	monetary
19:17	81:19 95:4	52:22 88:25	93:22
Mart 14:6	mechanism	miles 20:25	money 10:10
martians	31:5 43:18	military	13:15 13:17
21:12 21:14	mechanisms	101:15	13:19 25:21
massive 26:25	94:22	Miller 93:7	26:10
matter 21:8	meet 29:7	93:8	29:3
21:11	37:22 37:22	millions	48:22
maximize 25:3	83:10	51:11 62:13	52:2
maximum 65:19	member 4:5	mind 16:4	87:16
may 3:11 3:13	6:16 6:19	mineral	88:6
4:16 7:18	7:7 108:2	105:16	88:16 88:19
11:10 30:25	members	minimum	91:16
31:1	52:4 98:4	40:9 84:9	95:4 96:4
31:16 31:23	104:2	minute 107:23	96:14 96:15
43:3 44:6	mention 45:21	misalignment	99:7
44:6 65:7	mentioned	25:8	Montana
65:13	39:13 45:13	misplaced	14:6
68:2 71:7	51:7 58:7	23:19	73:14 107:6
79:15	79:15 82:25	missile 16:22	month 6:4
104:19	99:1	missiles	14:2 14:3
107:22	merely 16:4	16:21	50:6
108:5	109:9	missing 49:2	months
maybe 10:13	merit 56:23	mission 25:13	11:18 11:21
46:18 57:11	met 16:8	mode 3:10	66:12
57:12 58:16	methods 6:2	model 27:18	moral 102:3
69:9	Mexico 12:1	29:3 87:17	morning
69:10 105:8	12:3	models 61:12	3:16 4:3
MBA 6:8	13:25 20:24		4:7
mean 8:15	21:4 21:6		morph 24:7
	21:7		mostly 73:8

nowhere 89:1	office 18:4	73:17 73:21	opinions 44:7
nuances 82:23	55:17 56:13	old 18:16	opportunities
nuclear 16:16	56:16	18:20	41:23
Nunakauyarmiu	57:6	older 84:19	42:2
t 4:6	57:18	Oneida 103:1	66:10 66:13
	58:1	ones 18:8	70:19
	58:12 61:23	34:5 55:1	107:15
	66:4	59:23	109:11
<hr/> O <hr/>	79:11 81:18	62:3 99:5	opportunity
objective	82:4	99:6 103:4	6:1 7:8
79:11	84:21	on-line 42:7	26:25
obligation	85:2	onto 60:19	31:3
25:6	86:17 90:17	open 15:7	40:24
29:14 83:3	105:4 108:1	19:23 34:18	49:3
obligations	officer 4:5	84:24	58:19 69:15
29:8 29:8	25:1 47:15	87:8	80:6
29:12	Officers 6:22	87:18 101:1	93:25
83:1	50:12 70:16	operates	105:20
83:11 83:12	85:10	11:25	106:6 109:5
obvious 65:24	officials	operating	oppose 39:7
obviously	22:15	12:3	opposed 76:25
7:25	offshore	38:16 77:17	opposing 39:5
14:21	11:25	operation	oppressive
15:6	oftentimes	11:19	22:19 23:11
15:13 17:13	43:11	operations	opt 20:15
22:24 38:23	oh 23:10	4:4 6:9	33:24 45:13
41:21 46:15	oil 11:17	97:1 97:2	opt-outs
47:20 48:25	12:1 12:7	operative	34:20
60:14	26:5	56:20	order 45:15
62:2 65:8	Ojibwe 95:3	Operator	78:21 94:25
68:10	okay 31:22	3:8 3:15	organizations
73:9	32:1 39:9	31:10 31:14	6:13 19:2
80:16 84:18	55:18 66:22	54:4 54:6	50:11
94:7 97:7	72:4	67:3 67:5	71:8 72:3
97:10 98:15	72:21 87:17	72:24	105:25
101:9	90:13 99:16	73:1 93:4	original
occurs 20:12	Oklahoma	opine 81:19	18:23 19:11
ocean 12:5	7:7 16:2	opinion 35:24	originally
octuples	40:19		92:3
60:20	41:7 41:8		
oddly 86:15			

orphan 16:1		partnering	50:17 50:25
Otoe-	<hr/> P <hr/>	93:11	52:21
Missouria	paid 13:19	partners	57:8 57:9
21:24	14:1 51:10	49:18 49:20	63:17 64:19
ought 24:18	panacea 76:3	49:21	64:24
ourselves	panoply 62:21	50:3	69:5 70:5
29:18	paragraph	69:11 82:6	72:16 81:19
output 24:9	83:5	Paso 20:25	95:24 96:16
outreach	park 105:5	21:1	103:12
61:16 66:13	105:10	pass 44:12	105:19
outside 17:11	105:22	passed 4:14	106:7
20:2	106:8	54:15 54:17	106:19
20:25 23:14	parking 60:5	67:19 84:20	106:20
76:5 100:19	partial 75:12	passing 98:22	107:19
106:13	75:24 76:2	99:2	people's
107:20	participant	path 10:7	50:19 89:25
overall 14:24	66:6	pay 87:16	96:15
47:3 58:1	participate	88:17	per 13:23
94:8	23:7	89:1 91:13	13:24
overlaid	participation	paying	14:5 41:14
56:25	66:8	21:14 99:7	percent
overly 95:25	particular	pays 68:10	35:9
oversight	55:24 57:16	Pearl 16:13	88:18 88:20
20:16 34:24	70:8	people 4:19	89:15 89:15
45:14	70:12 74:11	11:11	89:20 91:23
owe 21:7	82:24	15:9	91:24 92:13
owed 21:3	83:5 83:5	15:17 15:19	95:10 95:10
owned 45:4	83:22	15:22	perfect 50:20
86:13 90:13	84:2 88:7	17:3	79:4 91:2
100:4 100:5	109:10	17:10	perhaps 7:9
ownership	particularly	18:4 18:6	9:21
38:8	7:14	24:23	18:17 35:16
38:12	17:15	25:5 25:8	38:12 44:17
39:2	19:1	27:13	45:13 45:17
93:18	26:20	28:5	46:18
94:3	30:5	31:23 33:11	50:2
95:10 95:11	38:10 82:21	38:18 42:10	76:10 76:22
owns 57:13	partner 38:11	44:6	91:11 104:7
	50:5	44:10 45:16	105:13
			107:1
			107:12
			107:23

108:4	60:1 60:3	plus 26:16	positions
period 74:8	67:6 73:2	point 33:4	24:19 81:13
permit 60:12	93:3 93:5	42:23 56:14	positive
permitting	phones	56:15	16:23
11:20	59:22 67:4	58:8	103:23
person 11:5	pick 101:24	72:24 72:25	possibilities
16:20	piece 28:3	74:9	62:22
59:3 64:5	76:7 78:7	74:11	possibility
108:1 109:5	94:25	83:4	68:3
personal	Pine 77:12	83:19 90:10	possible
35:24	places 36:19	94:10 94:17	17:15
personally	Plains	94:17 99:14	61:4
45:2 65:16	68:23 77:21	104:19	66:21 68:13
personally-	78:12	104:21	72:21 82:15
owned 76:4	80:8 87:8	105:17	possibly 79:9
perspective	planet	pointed 19:2	79:12 82:13
5:23 8:19	13:23 14:4	pointing 59:1	109:15
29:21	planned 70:14	points 91:19	Potawatomi
34:7 34:8	planning	Polacca 3:22	21:24
70:5 107:13	16:19	pole 12:13	potential
perspectives	platform 12:1	12:17	27:5 31:5
66:15	play 75:22	policy 5:7	potentially
persuasion	86:15	5:13 7:3	31:5 59:6
102:3	playing 76:6	10:16 61:24	68:20 93:24
Ph.D 101:16	please 4:20	97:13	100:7
phase 70:12	7:1 12:24	poor 16:3	poverty 16:12
109:10	29:12 29:13	16:4 89:9	16:23 24:6
phenomenal	30:17 31:19	pop 89:14	power 27:4
18:5 18:10	49:6 65:2	population	powers 36:1
phenomenonal	83:3	41:22 43:6	40:2
34:8	83:15	porch 16:10	pragmatically
phone 30:14	93:6	portable	65:17
31:11 31:13	103:7 103:8	59:25	prayer 4:2
31:15 31:21	plenty	Portland	preamble
43:5	30:23 52:19	28:19	108:16
43:19	63:23 76:16	position 5:15	precluding
54:5 54:7	88:16 109:5	9:16 9:17	68:3
59:13 59:25	plumber 17:12	24:23 78:13	predates

105:10	20:8 22:3	11:20	profits 88:20
predecessors	40:5	18:7 18:9	program
79:6	87:13 91:19	21:19 29:19	10:1 10:2
premium	prime 56:17	30:2	101:16
52:1 92:16	prior 55:8	30:14	103:19
prepared 29:1	priority 13:6	33:5	103:21
30:13 82:19	13:6 56:4	41:17 43:22	programs
present	private 88:14	44:1 44:2	61:24 86:16
49:3 55:2	pro 76:25	44:8	86:25 90:23
70:19	77:5	45:15 52:23	progress
Preserve	probably	53:1	57:21 106:4
105:4	10:23 13:16	62:12 62:19	106:5
president	37:16 48:10	70:21	108:10
11:15 13:22	49:8	76:1 82:8	prohibited
25:2 97:12	63:12 66:12	82:11 83:15	41:3
presidential	69:5 74:3	83:17 92:21	project 23:21
97:17 97:18	77:9 78:8	93:22	25:24
97:24	85:5 106:9	94:8	26:1
presidents	problem	94:11 94:13	27:20
35:8 37:22	11:3	94:16	28:7 28:8
press 3:11	11:22	105:12	28:10 28:11
31:16	12:8	106:14	28:12 28:13
54:8 93:5	13:13	108:13	28:14 38:13
pretty	54:2	108:23	50:23 56:17
65:24 70:4	60:21	109:9	58:7
prevent 32:6	77:8	109:13	86:23 89:16
previous	79:13	109:16	projects
107:13	80:2 87:7	procured 59:5	23:24 24:13
previously	91:16 94:20	producing	26:19
32:10 34:16	problems 20:1	63:25 64:1	32:7
35:7 91:20	80:9 96:6	productive	36:17 38:10
pricing	108:9	43:14	45:1 45:5
104:17	Proceedings	professor	52:14 53:17
primarily	109:19	15:11 15:13	53:22 57:20
35:3	P-R-O-C-E-E-	51:22	58:11
71:19 71:21	D-I-N-G-S	profit	62:3
72:9	3:7	87:21 87:23	62:25 69:17
primary	process	91:11 91:14	85:21
	4:14 7:13	91:24	100:20
		profiting	104:14
		91:13	104:17

105:23 108:4 promise 79:3 promote 8:11 13:10 37:19 promoting 5:24 17:22 101:11 proof 16:23 proper 44:8 56:14 properly 18:7 property 64:4 87:15 87:15 proponent 7:22 97:11 proposed 18:2 21:21 21:22 42:5 65:1 proposing 79:23 prospects 27:8 101:12 102:13 prosperity 13:10 24:7 prosperous 64:12 64:21 65:25 66:1 prosper 14:15 protect 83:3 protected 46:20 protection	90:25 91:1 protects 9:3 proud 7:6 provide 4:1 10:5 10:21 12:11 42:2 71:3 98:2 98:19 provides 81:2 providing 4:7 5:9 9:18 40:23 45:13 84:5 providingelec trification 12:10 provisions 83:14 proress 36:9 public 33:17 33:19 45:10 61:7 90:23 publicly 25:1 28:4 published 108:15 Pueblo 12:18 pueblos 68:21 pull 50:6 purchase 94:21 purchaser 84:13 purpose 17:2 purposes 28:16	pursuant 74:13 74:14 push 75:6 76:9 push-back 38:21 pushing 75:6 puts 15:2 putting 27:17 47:25 75:11 94:1 <hr/> Q qualify 86:24 question 3:10 3:12 13:8 21:16 21:19 22:5 30:17 31:16 31:18 31:19 42:23 46:23 51:8 51:9 54:8 80:15 91:22 93:5 93:8 94:7 99:15 100:8 questions 30:15 30:24 30:24 31:1 31:9 31:11 31:20 31:24 47:15 54:4 54:7 54:10 66:23 67:4 67:6 72:25 73:2 93:3 quickly 63:8 quota 72:8	quote 101:20 102:5 <hr/> R radical 97:19 raise 107:18 raised 77:19 91:20 104:20 rancherias 68:22 range 9:13 61:3 104:18 rarely 45:16 rate 100:8 100:9 rather 15:4 16:3 38:1 63:10 65:11 77:1 97:1 reach 50:3 85:1 reaching 66:14 ready 31:10 Reagan 11:3 97:9 97:12 real 38:24 57:13 66:15 reality 71:6 realize 49:24 really 7:8 10:4 12:23 32:10 36:10 43:10 49:17 50:4
---	--	--	---

54:24 56:15	8:22 87:4	77:25 78:1	20:14 21:21
56:20	recognizing	regarding	21:22 21:23
57:1	36:2 79:14	47:16 62:16	22:1 22:7
57:17 58:21	recommend	74:3	22:8
61:21	43:3	regardless	29:22
63:7 66:3	recommendatio	9:5 9:6	30:1 30:9
69:14 69:14	n 50:2	36:17 40:10	32:20 33:21
70:12	record	regards 34:6	34:22 35:19
71:5	31:17 35:12	regime	36:14 37:15
80:19	35:13 43:13	22:20 53:19	39:12
81:5	47:20	69:13	42:5 42:9
83:19 83:20	74:5 76:2	region	42:12 42:20
92:10 92:20	78:11 78:16	55:14 77:8	44:5
102:21	81:14	regional 3:20	45:19 53:18
104:21	82:2	3:22 57:3	62:21
105:16	82:12 85:19	71:7 71:8	65:1
105:17	85:20	71:9	65:18 66:20
realty	103:16	71:25 72:3	67:13 67:22
47:15 93:8	recorded	regions 71:4	67:24 67:25
reason	30:21	Register	68:20
11:13 17:25	recording	108:16	69:1 77:3
51:1	30:16	registered	77:25
87:13 96:10	red 21:10	36:7	78:9 79:2
reasonably	redact 28:5	regroup 78:23	79:8 100:25
52:24	reduce	regular 60:17	108:6
reasons 37:11	26:20 26:23	60:17 66:6	108:13
93:20	52:6 100:17	regulate	regulatorily
receive 39:22	102:21	20:12	101:8
90:13	reducing 8:13	45:4	regulators
received	61:1	74:15 99:23	19:24 22:16
53:15	101:5	regulating	68:8
recent 40:1	102:15	19:5	regulatory
recognize 8:7	refer 9:19	regulation	8:13 20:3
10:18	9:23 13:14	29:23 51:21	20:15 22:20
17:5	reflect 72:13	regulations	23:1
37:13 37:25	reform 33:5	3:19 5:3	24:16 25:17
41:16 41:21	55:24 94:8	5:18 7:15	33:5
74:3 75:5	regard	18:20 19:24	36:15 36:25
82:7 107:6			40:9
recognized			45:14 53:19
			53:24 55:24
			58:10 58:24

60:15	report	100:1 103:1	rest 63:3
61:1	97:19 97:24	107:5	91:21
67:10 75:17	reporter	reservations	restricted
76:5	30:16	36:22 59:17	20:13 41:10
76:24 79:18	103:15	60:9 76:4	48:7 65:4
79:24 85:23	represent	77:23 94:18	74:21 94:3
86:8 89:2	25:3	Reserve 27:20	restrictions
89:24	30:19 49:19	residential	58:3
94:8 108:9	49:20 63:17	87:25	result 35:25
reiterate	71:12	88:2 88:3	resurrect
45:9	73:7	88:17 89:11	10:14
relationship	75:10 81:12	resource 6:24	retail
49:16	82:22	58:5	28:15 62:10
relative 47:2	representativ	resources	62:16
relatively	e 107:25	33:9 34:9	retasked
35:10	represented	36:6 36:9	16:20
relax 32:19	35:7	38:10	return 15:5
released	representing	57:7	34:13 68:13
34:22	35:9 92:11	57:10 57:11	70:22 72:22
relevant 5:19	Republican	105:19	returned 21:4
83:15 94:10	19:10	107:7 107:7	returning
rely 71:10	repurchase	107:10	61:2 68:6
remain 9:17	95:6	107:12	82:14
remarks 30:13	96:12 96:16	respect	revenue
remember 16:9	requirement	7:25 107:10	26:3
remind 16:24	44:4	respectful	26:11 26:17
remiss	requires	8:2 8:9	50:23 87:22
45:20	33:16 60:5	53:8 72:18	88:11 90:22
103:22	reservation	respecting	91:11 91:14
removed 16:25	11:16 11:18	35:19	95:19 96:21
Reorganizatio	11:20 11:23	responder	96:24
n 54:14	17:11	98:10 99:4	97:5 100:21
repeat 49:8	19:6	responders	102:17
repeatedly	60:18	99:5	revenues
60:23	64:7	responsibilit	28:11 53:22
replace 20:21	74:16 74:17	y 37:5	93:16
51:18	75:14 75:24	60:24	reviewing
	77:12 77:13	responsible	28:2
	78:4	20:19	revolutionary
	98:10 99:20		

45:7	rule 44:4	Science 6:17	seems 91:16
Rice 6:8	103:22	scope 79:21	seen 45:1
Richard 97:10	106:12	81:13 81:17	68:2 104:3
Ridge 77:12	rule-making	81:20	self 5:24
rights 46:19	18:2 43:22	82:5	10:1 14:9
rising	rules 69:3	82:19 83:25	self-
14:19 14:21	run 12:13	84:4	contained
River 73:25	58:13	84:15 104:7	59:25 60:3
98:20 98:21	running 11:19	106:14	self-
road 62:4	rural 32:5	scrutiny	determinati
63:2	43:6	44:12	on 7:23
robust 9:9	Ryan 6:5	se 41:14	8:10 97:11
10:17	<hr/>	Seal 101:13	self-
robustly 82:2	S	season 66:10	explanatory
Rock 73:24	Salamanca	second 14:4	52:24
role 9:10	102:25	33:3 40:15	self-
105:13	sales 13:25	secondary	governance
rolling 40:17	14:5 21:3	78:23	7:23 9:25
Ronald 11:3	21:4	secretary 5:6	17:23
97:9 97:10	Salt 98:20	5:12 6:5	self-
room 16:18	98:21	7:3 7:18	supporting
23:5	saw 78:20	8:4 8:5	88:8 88:10
30:22 31:23	103:13	8:15 10:5	self-
32:23 59:16	scale 58:10	15:2 34:7	sustaining
63:12	scenario	83:9 105:14	13:9
Rosebud 73:16	11:16	section	13:16 15:18
73:25	scene 99:5	6:20 27:9	semblance
round 18:12	scheduled	54:16	22:7
23:6 23:7	70:15	55:6 55:8	send 10:9
42:6 53:2	scheme 86:6	55:11 55:21	61:13 103:8
57:23	86:8 89:13	55:25	sending
70:8 79:14	scholar 6:7	56:5 83:5	10:9
rounds 70:18	school 6:10	sector	15:10 55:14
roundtable	6:11	27:22 27:24	senior
11:15	84:21 98:13	28:9	16:16 70:5
route 105:6	101:15	28:14 28:15	sense 8:16
	101:17	seeing	8:18 9:6
		66:18	43:12 52:12
		109:12	

56:24 67:24 99:9 sentence 16:24 separate 8:21 19:4 21:23 39:10 39:15 56:1 serious 38:5 seriously 30:3 109:17 served 6:12 6:18 service 9:19 10:8 10:24 71:1 71:21 90:23 105:5 105:22 106:8 services 3:21 9:18 10:22 71:3 71:11 98:3 98:19 104:8 104:10 session 3:11 3:18 3:25 4:8 5:8 sessions 3:23 5:11 sets 28:2 setting 99:3 Settlement 32:13	seven 34:15 several 19:1 20:4 50:9 shackles 27:4 shaded 57:25 share 4:9 48:21 49:6 50:20 73:21 109:2 shareholders 25:3 25:4 91:12 shares 71:13 sharing 27:16 27:19 She's 107:25 Shirley 107:23 shopping 14:3 shovel- ready 62:25 showing 31:20 54:7 67:6 69:15 73:2 sidelines 24:14 25:22 26:19 sight 100:2 significant 25:16 41:22 45:11 92:16 104:13 signing 48:10 Sill 73:17 similar 13:13	similarity 22:2 similarly 62:14 simple 12:8 21:8 58:15 simplify 94:12 simply 33:24 40:22 41:23 58:7 62:25 80:17 simultaneousl y 17:24 single 9:5 13:22 59:2 61:10 66:2 76:15 98:23 102:1 Sioux 73:16 73:24 73:25 73:25 sister 105:24 sit 24:17 Sitka 44:19 44:20 44:20 44:21 47:22 47:25 48:1 48:1 48:2 48:9 48:11 48:21 49:5 49:8 56:23 73:7 sitting 24:14 25:22 26:19 47:1 60:5	situation 15:3 19:25 22:22 29:16 57:17 62:11 68:1 72:20 74:18 79:2 79:4 79:15 96:19 99:10 situations 14:7 37:14 68:16 106:3 108:17 six 12:14 13:18 size 16:17 74:1 skill 17:5 skilled 15:24 17:10 17:19 skin 21:9 slide 22:4 51:16 slides 52:23 slightly 76:10 slows 58:14 small 11:5 57:9 66:15 105:7 society 6:17 6:21 27:9 softened 32:18 solely 36:15
---	---	--	---

solicitors 65:9	22:6 22:9 22:18 48:25 68:6 82:14 95:18	square 13:23 13:24 14:5	37:3 39:1 39:5 39:7 56:24 57:1
solicitor's 81:18 82:4	Soviet 16:19	squarely 56:5	63:16 67:11
solid 64:10	spaces 59:15	staff 71:25 109:13	67:15 69:19 86:12 91:15 91:17
solve 94:20	speak 19:12 54:18 79:10	stakeholder 85:15	stated 37:23 80:20
somebody 58:8 65:20 65:21 78:6 105:8	speaking 4:11 7:5 73:12	stakeholders 39:3	statement 45:9 97:13
somewhat 57:25 71:17	specialist 93:9	standard 24:4	statements 28:21
sooner 63:10 64:14 64:15 64:24 64:25 64:25	Species 58:5	standing 3:9 3:21 73:24 106:4	states 14:16 14:18 17:17 19:4 19:7 20:23 24:2 24:6 24:11 25:5 25:9 25:19 34:3 63:18 69:20 76:16 97:3 102:2
sorry 52:23	specific 29:10 35:5 40:21 43:19 83:14	standpoint 13:6 20:3 23:1	stands 60:10 60:13 91:4
sort 24:22 78:10 93:10	specifically 8:14 37:12 47:10 53:3 55:25 61:17 73:13 80:24	star 3:12 31:16 31:17 54:8 93:6	start 7:17 30:15 31:13 31:23 33:19 60:11 81:22
sound 85:19 85:20	spectrum 9:20 13:3 22:11 22:12 72:16	started 33:18	statewide 66:11
South 73:16	speed 59:14	starts 33:20	station 86:24 87:8 87:16
southern 11:14 11:25 12:2	spend 63:1	state 6:22 16:4 19:23 20:24 22:15 22:15 24:4 26:5 26:6 26:7 26:8 26:24 36:7 36:11	stations 87:9 87:14 status 87:3 90:14 statute 18:23 18:24 19:11 33:15 36:3 38:9 38:25
Southwest 68:21	spent 14:20 26:10 50:22 51:11 53:20 59:3 62:13		
sovereign 77:13	spoke 19:9		
sovereignty 7:20 8:9 8:15 8:16 8:20 9:3 9:7 9:7 9:11 9:12 9:22 10:18 15:5 21:20	spoken 81:22		
	sprinkled 84:9		

56:1 56:2	21:7 21:13	studies	suggested
57:19 67:18	stories	29:1	21:12 26:14
79:22 80:12	55:2 56:7	50:20 64:1	33:4
80:16 80:19	59:7 108:11	stuff 60:18	33:23 46:13
80:24	108:19	72:23	46:18
81:6	story 8:23	92:8 97:5	suggesting
81:13 82:19	13:21 48:15	104:18	68:5
83:21	48:22 49:9	subject 46:10	suggestion
84:1	straightforwa	submission	15:7
84:19 99:14	rd 94:12	43:15	34:18 42:10
99:18 100:6	108:14	submit 95:24	61:5 61:7
100:24	strategic	submitted	suggestions
statutes	16:19	42:6	20:5 20:5
18:16 18:17	strategist	84:23 85:11	20:8
18:23 39:20	16:16	submitting	21:17
41:4	strategy	92:23	22:3 23:2
80:23	17:22	subsistence	29:25
81:4 84:19	streamline	45:21 45:22	30:9 41:6
statutory	94:11	subsists	52:6
44:16	strong 5:24	108:3	61:15
80:1	7:19	substantial	69:4
81:25 84:18	18:17	46:2	72:18 84:25
86:6	49:1 81:24	subsumed 45:6	97:21 97:23
stay 22:9	structure	succeed 41:18	101:1 101:3
79:24	37:24 38:17	successful	Sun 101:17
step 20:17	58:25	11:17 25:16	101:18
58:13	structures	55:1 55:2	102:5
steward	45:6	102:11	supplement
101:11	58:23 71:17	sucks 16:12	96:25
stewards 33:7	struggle	sudden 24:7	supply 105:6
33:8 33:8	44:18 75:2	33:17 33:20	support 10:10
34:8 107:9	struggles	95:12 95:17	29:13
stimulus	35:11	106:25	66:4 80:7
26:16 27:1	stucco 12:20	sufficient	103:18
stolen 96:16	students 6:16	28:12 28:15	104:5
stop 76:1	15:25 16:25	suggest	supported
stopped	51:23	107:22	87:15
21:2 21:6	studied 97:17		supporter
store 21:3			6:15 62:2
			supposed

39:21	41:11	62:24	68:9
supreme	sustainable	72:1	85:23 96:22
101:21	103:24	77:10	97:25
101:21	sustaining	78:4 78:5	taxes 68:11
sure 18:7	14:10	84:3	taxing 93:14
28:5 29:7	system	88:23 93:12	teach 51:23
30:20 34:13	19:20 20:22	93:17 94:18	technically
40:7 44:2	20:23 26:13	98:21	15:12
44:5	40:3	talks 7:21	37:1 85:4
45:12	51:18 51:19	Tanana 72:2	technology
46:2 46:9	67:19	tap 66:17	6:9
47:11 52:19	108:20	targeted	telecommunica
53:7	systems 63:2	101:4	tions 59:12
55:13 55:22	_____	targeting	TELECONFERENC
58:22 58:23	T	16:16	E 3:8 31:10
59:10 62:20	table 57:4	taught 20:24	31:14
65:9	57:23 69:24	tax 20:11	54:6 67:5
65:20 70:21	taco 60:13	21:3 21:4	73:1 93:4
72:21 74:13	60:13 60:14	21:7	temple 102:7
74:22	take-away	21:14 22:15	temporary
75:1	104:8	26:4 26:7	16:5
77:22	taking 5:1	36:25	ten 88:21
81:6	20:19 27:17	40:9 45:3	92:3
81:11 91:20	27:25	75:16	tend 105:22
103:10	30:2	76:5	tens 51:11
103:18	31:11 88:11	85:11	107:8
109:14	talk 7:9	86:7	termination
surface	25:21	87:15 87:16	10:14 10:16
12:5 58:2	46:5	89:1 89:2	22:10
surrounded	52:20 59:14	90:21 94:19	terms 13:23
104:24	59:21 67:10	95:5 97:4	13:24
surrounding	70:21	97:16 97:25	14:5 27:7
14:15 14:16	98:8	99:7	30:12 53:21
24:2	99:14 106:7	taxation 20:3	64:4 64:5
24:10 28:24	107:23	20:22	64:13
63:22	108:21	23:1	69:2 83:8
64:4	talked 95:22	26:21	84:18 92:17
64:11	talking	48:3	100:15
66:2 101:12	15:9	49:25	
survive 65:19	39:14 61:19	51:3 51:20	
survived			

106:12	thin 95:4	67:15 94:9	20:12 46:14
territories	96:14	throw 70:4	46:14 80:24
20:20 34:14	Thompson 35:1	thus 41:7	80:25
43:1	35:2	102:8	81:1 99:19
territory	35:16	tide 14:19	traded 25:1
21:13	37:9 37:9	tides 14:21	trader 3:19
26:6	37:21 38:23	timeline 63:9	5:18 56:2
48:18	39:6	title 93:23	87:1
74:8	39:16	tobacco 89:13	trades
96:18 98:23	43:2 44:9	today 4:13	15:24
Texas 6:23	47:19 49:13	5:1 7:9	17:5 17:11
20:25	54:9	18:1	trading 99:22
21:2 21:2	66:24 66:25	35:23 56:14	traditional
21:3 27:21	72:22	73:9 109:3	38:16 45:19
thank 3:9	73:4 73:5	today's	45:21
3:15 4:12	73:19	3:11 3:25	tragic 89:23
4:24 4:25	75:4	5:8	trailer 60:4
7:4 31:14	75:11	ton 104:23	trained 17:20
32:21	77:6	tools 55:22	57:5
67:2 67:7	80:14 83:18	100:23	transaction
73:3 73:8	85:25	top 44:21	51:13
73:20	86:3	topic 70:1	transparent
88:3	86:21	topics 45:8	94:13
92:20 109:1	88:2	toss 72:24	Traurig 35:3
thanks 66:7	89:18	tossing 74:12	treat 86:23
themes 7:17	90:2 90:6	totally	treated 33:17
themselves	90:9	44:9 78:7	39:23
18:17 18:23	90:24 91:10	88:21	treaties
19:6 36:8	91:18 91:25	touch 60:4	29:10
48:5 52:4	92:2	105:17	treating
70:20 76:8	94:23 99:13	towards	33:19
therefore 7:1	99:17	31:4 91:4	41:2 61:6
36:2 100:18	Thompson's	101:5	treaty 29:7
there's 11:12	94:10	tower 59:25	29:8
22:24	thoughts 30:4	60:3	29:14
49:2 57:9	43:3	trade 3:2	37:3
65:20	84:25 85:14		46:15 46:16
105:20	103:13		46:19 74:14
109:5	thousands		
they're 75:22	107:8		
	throughout		
	31:6		

82:23	36:16 36:22	91:9	89:19 93:16
83:1 83:6	36:25	95:10 95:11	95:5 95:7
83:11 83:11	37:2	96:9 97:2	95:8
83:14	37:19 37:24	97:11	100:1 100:5
tree 12:14	38:3 38:6	98:4	104:12
tremendous	38:11 38:25	98:15	104:15
31:5 104:25	39:21	99:4	tribes 6:2
tribal 4:4	40:7 43:8	99:10 104:2	7:24 8:22
4:5 4:8	44:18 45:10	105:1 106:4	8:25 9:11
4:13 4:15	45:15 45:19	106:25	9:14 9:19
4:16 4:19	46:8 47:7	107:3 107:6	9:21 9:24
4:22 5:19	47:9 48:3	108:2	10:7
5:21 5:24	48:18 48:21	tribal-	10:21 10:24
6:7 6:12	48:23	corporate	10:25 12:23
6:13 7:20	49:5	90:12	12:25
8:9 8:10	49:16 50:10	tribal-	13:1 13:2
8:11	50:24 50:25	government-	13:9
10:18 12:20	52:3 52:4	owned 86:10	14:11 14:17
14:7	52:13 53:10	tribally 45:4	15:3 15:5
14:25	53:15 54:17	tribe 4:6 9:5	17:9 19:2
15:1 16:8	54:23 55:17	10:12 11:14	19:6
17:7	57:11 60:19	11:17	20:11 20:15
17:22 17:23	60:20 60:24	12:2	20:18 21:23
19:3 20:2	61:2 61:6	25:25	23:1
21:12 21:13	62:6 62:9	26:3 26:4	24:24
21:14 22:13	62:10 62:22	34:4 41:3	25:6
22:17 22:18	63:1	41:7	25:18 28:19
22:21 23:12	63:13 63:15	44:20 44:21	29:9 32:6
23:17	64:3	46:9 46:9	32:11 32:19
24:5	64:12 67:12	48:1 48:2	33:6
27:11 28:19	69:21	48:9	33:23
28:23	70:3	48:18	34:8
29:4	71:13 71:18	49:8	34:15 34:19
29:14	75:9	49:22 57:13	34:25
30:3 31:6	76:11 76:12	59:10 59:18	35:3 36:8
32:4	76:24	60:2 61:8	37:13 39:18
32:11 33:16	78:9	64:7	39:18 40:11
33:24 33:25	78:21 78:24	73:14 73:16	40:23
35:6	82:25	73:17 73:24	41:8
35:11 35:20	83:8	73:25 73:25	43:16
36:1 36:3	85:13 86:10	74:13 74:19	46:5 46:7
36:6	86:13 86:14	87:7	46:16 49:19
	86:23 88:13		51:7

51:11 52:18	5:25	12:11	26:20 26:21
53:3	62:16 98:10	13:5	49:24
54:16	Tribes	14:18 29:20	51:2 51:3
55:3	22:10 73:14	30:3	51:3
55:20 56:25	80:8	32:14 47:10	51:24
57:8	tried 34:20	50:16 53:19	52:6 56:8
57:20 57:24	trigger 59:3	58:11 60:17	69:13 92:16
62:11 63:25	triggers	65:10 65:10	92:17 100:9
65:15 65:25	58:17	67:14 72:17	100:10
68:21 68:23	59:5 60:11	72:17 74:17	100:17
68:24 69:10	trip 61:18	90:17	101:5
71:5	trucks 60:8	91:8	102:15
71:12 71:12	60:9 60:14	94:11 94:15	102:21
73:13 73:15	trust 20:12	108:18	uncooperative
75:1	25:1	Tuesday 60:14	105:6
76:13 76:13	36:15	103:2	underlying
76:13	37:5	Tulalip 62:16	41:24
77:3 77:3	39:25 40:18	turn 3:13	underneath
80:8 81:1	40:22 40:24	14:12 67:2	12:5
81:12 81:12	41:9	turned 21:25	understand
82:24 83:12	44:22	turns 12:4	19:20
83:13	48:7	twice 16:17	100:11
84:3 84:8	56:18	50:6	106:11
85:13 90:18	65:5 74:6	Tzu 101:17	understanding
90:20	74:21 75:19	101:18	38:7 47:5
91:9	83:23 93:11	102:5	71:18 86:9
92:11 93:13	93:13 93:20		understood
93:19	93:22		44:10
94:2 94:3	94:1	U	undo 10:19
94:4	94:13 99:21	U.S./Canadian	unduly 81:7
94:14 94:15	100:1	46:17	unfortunate
94:20 94:21	try 8:8 19:12	Uh-huh 91:25	71:4
95:18 95:19	22:16 34:13	ultimately	unfortunately
95:21 96:11	61:5	82:3	14:10 19:13
96:24 96:25	72:13 92:11	unable 44:25	19:14 19:21
97:9	105:12	unaware 55:10	27:3
97:25	109:14	uncertain	33:18 94:14
98:2 98:6	trying 8:8	20:21 48:17	unintentional
98:7	8:11	51:18	107:4
99:10	10:11 10:13	uncertainty	
103:21			
104:9 108:4			
tribe's			

Union 16:19	11:25	view 9:9	62:11
unique 30:6	utility 12:12	14:23 17:21	wasn't 98:24
37:14 42:22	12:17	24:22	waters 12:3
49:7	utilized	viewed 19:3	ways 42:4
68:16 72:20	45:16	46:6 106:25	90:22
91:5	utilizing	vigorous	105:18
United 25:5	54:20	9:8 10:17	wealth 13:10
25:9 34:3	utmost 45:23	village 32:13	wealthy 95:7
63:18 73:14		35:8	website 23:20
102:1	<hr/>	37:22	we'd 66:19
university	V	46:9	Wednesday
6:8 15:12	<hr/>	46:10	48:12
unleash 27:4	validate 29:3	47:9	week 47:22
unlikely 74:3	value 10:5	53:14	weekly 66:5
unusual 49:15	13:3 13:4	57:2 57:3	weeks 8:6
update 5:17	82:8	72:11 105:7	weigh 70:6
12:20 18:21	values 25:4	105:10	85:2 103:11
65:18	64:4	108:2	weight 57:19
updated 5:3	variations	villages 8:22	welcome 3:8
7:14	72:15	39:24 44:17	3:16 33:1
18:24 67:22	variety 44:25	45:5	103:3
updating 3:18	various 24:19	45:24 46:24	welcoming 7:1
upset 74:17	94:22	55:10 68:21	we'll 26:1
urban 71:19	vast 69:17	71:15	26:2 65:8
99:3	vegetable	visit 62:12	70:4 74:22
urbanized	47:23	vital 44:1	well-
56:24	vegetables	voices 109:15	trained
USDA 86:17	47:24	voluminously	100:10
86:17 86:22	verify 93:2	81:14	we're 17:25
88:4	Verizon 59:24	<hr/>	21:18 27:17
88:11	verse 83:4	W	27:18 42:16
89:5 91:5	version 39:11	wait 67:2	57:20 58:11
92:7	via 43:19	waiver 45:14	61:3
useful 5:21	viable 44:13	Walmart 13:23	62:20 66:10
usually 49:20	vibrant 24:8	14:4	74:23
87:14	victory 102:9	war 16:19	79:7
105:20	Vieux 21:25	101:17	87:18 87:19
Ute 11:14		107:5	
		Washington	

87:22	62:21	56:16 57:16	91:21 92:23
108:18	76:3 82:9	61:14 61:22	written 35:19
wetlands 32:5	wholly	65:8 66:3	43:15 90:19
32:9	86:13 89:4	69:6	<hr/>
33:25	whom 94:14	69:12 71:19	Y
51:4 58:6	wildfires	71:20	<hr/>
we've 25:25	98:16	100:24	yesterday
65:7 102:25	wildland	104:8	28:18 59:9
whatever	87:10 87:18	worked 32:2	yet 12:16
41:18	89:11	55:16	31:2
44:2	Wildlife	workforce	33:16 39:23
47:12	105:23	17:19	54:5 60:3
53:9	106:8	working	91:2
89:10 92:10	willing 50:19	8:17	York 102:25
wheels 60:1	96:4	10:23	young 4:19
whenever 7:21	winning	43:4	yourself
whereas 106:1	101:19	43:14 81:18	30:18 103:5
wherever 84:6	wins 102:6	83:13 93:19	Yup'ik 4:11
100:3	wire 12:13	105:3	<hr/>
wherewithal	12:15	109:13	Z
95:21 99:12	wish 9:21	works 6:2	zero 92:13
whether 40:12	65:15	18:7	Zhooniyaa
50:18 50:25	withhold 28:6	47:12	95:3
52:7	Wolf 62:13	65:9	Zinke 6:5
52:11	won 102:2	84:21	7:18 8:4
57:8	102:4	86:6 108:3	8:15 10:5
99:21 103:6	wonderful	world 95:14	83:9
104:15	4:25	95:16 95:17	Zinke's 34:7
105:11	Worcester	96:20	zone 9:12
white 21:10	19:17	worse 19:25	9:22 10:8
59:15	work 4:4	77:24	10:8 11:1
whole 12:21	15:18 15:23	worst 11:4	13:2
25:12	17:3	13:4	21:20
33:5	24:24	worth 103:7	22:6 22:9
33:21 42:21	25:2 25:3	worthwhile	22:13 79:23
42:24 54:24	31:4	57:6	79:24 79:25
58:13 58:16	44:15 48:1	wrap 86:22	95:17
58:19 61:3		88:9	
		writing 36:13	