U.S. DEPARTMENT OF THE INTERIOR

FEDERAL CONSULTATION WITH TRIBES REGARDING

INFRASTRUCTURE DECISION-MAKING

TRANSCRIPT OF HEARING PROCEEDINGS

Wednesday, November 2, 2016

PURSUANT TO PUBLIC NOTICE, this matter came
on for hearing on the 2nd day of November, 2016, at the
hour of 8:30 a.m., at the Grand Ballroom of the
DoubleTree Hotel, Billings, Montana, before the
Departments of the Interior, Justice, and Army, with
Director Tracy Toulou of the Office of Tribal Justice
presiding.

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PROCEEDINGS

(Hearing proceedings commenced at
8:30 a.m., November 2, 2016.)

MR. TOULOU: So welcome, everyone. My name
is Tracy Toulou. I'm with the Office of Tribal Justice
of the Department of Justice.

Before we get started today, Mr. Steve Vance
of the Cheyenne River Sioux has agreed to do the
blessing and get us started in the right way today.
Would you all stand.

MR. VANCE: Good day to everybody. I have to
prepare myself for this, so -- I didn't expect this. I
got up, started thinking, running around, hauling my
bags outside, getting checked out, exerting myself
mentally and physically and emotionally.

When I'm asked to do something spiritually, I
have to prepare myself. When we do this in the
morning, the Native people have a protocol in
addressing their day and addressing life. So many of
us have already said a prayer. But for this meeting, I
was asked to say some words just to explain what I will
be saying.

I'll be addressing everything above in the
daytime and everything above in the nighttime and then
the elements, the north, the east, the south, and west,
and the earth of life. Because the essence is all of that that created this planet that we live on and what we take from this planet: Clothing, food, our health, and happiness.

You know, the main goal in life is to be happy. And I'm happy to be here. I see a lot of my colleagues in the field of work that we do, close personal friends. I'm still getting to know quite a few of the people up here.

But I want to remind everybody of something first before we do this. When we went to Seattle, the tribes of the Northwest opened the door -- or basically asked for permission for them to open the door for us to be there and to help them. And when we went to the Southwest, the Pueblo and the Navajo, by protocol, the other person got up and opened the door for the other tribes. But they uttered the words that are also in prayer.

During that meeting, there was an outburst of the issue that's going on with water. So I had to go back out -- I was the next speaker after that happened. And I got up, and I reminded them, "Remember why we started this meeting. We started this meeting with prayer." And the people on that line are protected out there. Every day, they are dealing with risk of harm
and arrest, whatever. So I just ask everybody to remember why we're here.

These are long-awaited issues. And so it's tough to stand up here and try to say good things about something that's pretty heavy for a lot of us to deal with at a higher level of consultation.

When I first heard the word "consultation" -- to elders, what does that mean? Sometimes, a simple language is easier than all these big, long words.

But anyway, I ask all of you to find in your heart, however you pray, to also support the words I'll be saying here.

And from here, if I could ask or request for the recording to stop.

(Prayer said.)

MR. TOULOU: So welcome, everyone, here to Billings. I'm going to go ahead and get started here in a second and have everybody introduce themselves. And then I'll run quickly through kind of how we think this is going to come together and then move on with you-all.

So again, I'm Tracy Toulou. I'm the director of the Office of Tribal Justice here at the Department of Justice. I started my career as a lawyer here in Billings. So it's really nice to be back home and
see -- there's a few familiar faces, anyway.

And to my left is...

MS. DARCY: Good morning, everyone. My name's Jo-Ellen Darcy. I'm the assistant secretary of the Army Civil Works, and it's great to be here in Billings. It wasn't my home, but for 16 years of my life, I worked for the senior senator of Montana, Max Baucus. So I was able to spend a lot of time in Montana. And I'm originally from Massachusetts, so this is a second home to me.

It's great to be here in Billings. I also wanted to recognize some of the folks who are with me today from the Army Corps of Engineers.

Colonel Henderson, to my left here, is our Omaha district commander. Many of you probably met him during his tenure here. He's got one of the biggest districts geographically, so he's been coming to Billings and other places around this district.

Also in the audience with me is Lisa Morales, who's our senior tribal liaison in the Army Corps of Engineers headquartered in Washington.

Joe McMahan, he's also our regulatory chief in our Omaha district. And then Joel Ames is our tribal liaison in the Omaha district.

We also have Cathy Warren, who's a
consultation specialist in our Omaha district. We've
got a lot of Omaha district and Corps of Engineers here
today as part of this consultation.

    Also, where is Lindsey? Lindsey is a
detailee in my office in Washington, who is a
regulatory specialist from our Jacksonville district.

    So I think this is your first time in
Montana? So she's happy to be here as well.

    And also on the dais is Chip Smith. And he's
been the tribal liaison with our office for a number of
years and has a great deal of experience and advises me
on tribal and regulatory issues. So, again, we're all
happy to be here and anxious to hear from you as well.

MR. TOULOU: So let's go ahead and continue
introductions to the left.

MR. WALSH: I'm John Walsh, State Director
for USDA Rural Development.

MR. BUELOW: Good morning, everyone. My name
is Tedd Buelow, and I'm the Native American coordinator
for USDA Rural Development. That means I work with
tribes and our staff all over the country to build
healthier bridges.

MR. TOULOU: Move to the right. I think you
all know Mike.

MR. BLACK: Good morning, everyone. I'm Mike
Black, senior adviser to the director for Bureau of Indian Affairs as of about 8:00 this morning. So it's great to be back home in Billings today. But let me introduce a couple people for you.

Is Mr. Bruce Hart around?

He is the new director for the Bureau of Indian Affairs. So he's going to join us today.

And we also have Darryl LaCounte, our regional director for the Rocky Mountain region.

It's good to be with you here today. I really look forward to hearing from everybody and how you can help us shape these consultations and things moving forward. So thank you.

MR. MARTIN: Good morning, everyone. My name is Kenneth Martin, and I'm the deputy secretary for tribal affairs at the Department of Transportation.

MR. HARRIS: Good morning. My name is Bob Harris. I am representing the Department of Energy. I'm a senior vice president and Upper Great Plains regional manager for the Western Area Power Administration. It's a pleasure to be here this morning. I'm anxious to listen and learn.

MS. DE ROBERTIS: My name is Ceci De Robertis. I'm with the Federal Permitting Improvement Steering Council. If you haven't heard of us, that's
because we're new. We were created in December
of 2015. And we're really excited to be here and
listen so that we can move forward with tribes in a
meaningful way.

MS. HAUSER:  Morning, everyone. I'm Valerie
Hauser. I'm with the Advisory Council on Historic
Preservation. I'm the director of the Office of Native
American Affairs in Washington -- we're located in
Washington, D.C. And I want to thank everyone for
coming this morning, for sharing your thoughts and
concerns with us. And we look forward to working with
you.

And I want to thank Steve for his words this
morning.

MS. CONNELL:  I'm Jamie Connell. I'm the
state director for the Bureau of Land Management here
out of Billings. I represent the Montana/Dakotas
organization. But I'd also like to welcome you on
behalf of our director. He, of course, apologizes
because he couldn't be here today.

So there's also a few of us -- I'd just ask
you to raise your hand -- that are here from the Bureau
of Land Management. So you can see there's a few of
them in the back.

MR. TOULOU:  Okay. As I mentioned, most of
you have been to a consultation before. But this is an opportunity for you to talk to us and tell us about an issue I think we're all concerned about. And that's our infrastructure and how it impacts Indian country and beyond, tribal people generally, I think.

This is a unique consultation, at least for me. Usually, you know, we're doing one for the Department of Justice. We might do a joint one with the Bureau of Indian Affairs. But this is, you know -- I think at least ten agencies are involved in this consultation.

There are eight different opportunities around the country to address this issue, and that's because it's a very serious issue. Because we've seen what's happening in North Dakota. Now, this consultation isn't specifically about North Dakota. I think we'd be shocked if some of you did not have comments on what's going on out there.

But this is specifically about -- the Corps, from our perspective, is about how we do infrastructure around Indian country. And we've broken out the framing paper that was on the table back there. And it's been out on media, and we shared it in the invocation.

It's about two things. The first is about
talking about how we do consultation and permitting now. It's not limited to consultation but how that process around infrastructure works currently, what works well and what doesn't work well.

And there's a lot of different agencies here. We all do things a little bit differently. And I suspect some of it you like better than others, parts of what we do. And this is an opportunity for us, as a federal government, to hear from you and think about how we do things and how we might do it better.

And the other thing is we understand that the universe has been defined by regulation, by the Executive Order 13175 on consultation, and a number of other factors. But that may not be broad enough.

And so we really wanted to open the door in this consultation to talk about other things that you think are important, which might include additional regulations or getting rid of regulations, maybe writing statutes.

We open this up to legislation, which, for me, is a pretty broad thing to be discussing in a consultation. And I think it goes to how important we think all of this is and how willing we are to make sure we get it as right as we can in working with you.

So that's what this is about today or what we
suggest it's about. It may be broader. I mean, part of what I've found in consultation that's so effective is there are a lot of smart people in the room that aren't necessarily with the federal government at each one of these consultations. And so I always learn a lot from you all when you're talking to us.

And so, you know, these are the ideas that we thought were worth discussing. But undoubtedly, you'll have ideas worth discussing, and we welcome that and look forward to hearing what you think.

Just a few housekeeping items. The first one of these we went to, which was in Phoenix -- and we went four and a half hours straight without a break. I'm not going to do that to you this morning. So about an hour and a half in, we'll get a break. So don't sweat that.

The room is a fairly standard western model with the lines of chairs. So I apologize for that. There probably are better ways of sitting and talking together, but we didn't know how many people we were going to get. And so we are kind of stuck with the seating method.

I have a list here in front of me of tribal leaders who are going to address the group. This is government-to-government consultation. So we really
want to hear from the tribal leaders in the room. If you are not on this list and want to speak, they are continuing the list at the table outside that door where you signed in. Please sign up so I can recognize you and we can make sure we run through this and let the tribal leaders have an opportunity to speak.

So with that, I think we'll go ahead and jump into the consultation and start hearing from you. And the first person on the list is Donovan Archambault from Fort Belknap Tribal Council.

You should know we're doing a transcript here today. So if we're not furiously scribbling notes, it's not because we are not hearing you. It's because we're trying to listen to you and we know there will be a transcript. So thank you.

MR. ARCHAMBAULT: Thank you. I guess I wanted to thank all you people for being here. And once again, it looks like we have more chiefs than Indians. I think consultation has a lot of -- a whole different definition to the government than to us. And the director has his own definition. But I think we have to pull those ideas of consultation and make one definition that fits us.

And maybe the tribes have to do that themselves. Because the government, they do everything
one size fits all. But we're all different. We're
different in our customs, our religion, even our
thoughts about how things should be done.

But we get a type of register with 30 days to
comment on an issue that no one has sat down with us to
get our input into. And I believe Standing Rock is a
good example of the Corps of Engineers or Department of
the Army or whoever get the permits to do that never
consults with the tribes -- at least that's what I
read.

And the burial sites, also sites that were
being destroyed, those things should have been taken
care of. But, again, lack of consultation prevented
that.

In 1989 and '90, we had the BIA
reorganization task force. Big deal. Every area got
three representatives. I was a representative from
Billings. And very little, if any, of the
recommendations that we made in consultation with the
Bureau have ever been implemented.

One of the things that we discussed and
agreed to was the layers of government that we have.
And I think the tribal members from the Fort Belknap
can attest to that.

We had an issue on enrollment. Called the
superintendent down to the tribal chambers and discussed it with them. He says, "Well, the CFR says this, but I'll call the area director and I'll get direction from him."

Well, we can do that. So maybe our consultation should be with maybe the solicitor in Washington, D.C., and skip all of these bureaucratic steps. And that was one of the recommendations that we made back in the late '80s and early '90s in the BIA reorganization task force. But that hasn't come about.

And so I think we need to -- in our consultations, we need to prioritize some of the things that really affect us as tribes. And I'll take education, for example. The Bureau of Indian Affairs has education for 200 years. And what they did was send a lot of us guys to boarding schools, Standing Rock, all boarding schools. I graduated from there, Standing Rock, in 1957.

I left home when I was ten years old. And I did a lot of globalling around and trying to be a cowboy and was a damn good drunk, one of the best in the Dakotas and Montana. But the most brutal time of my whole life, in all of those times, was at boarding school in Pierre.

So we got together in the late '80s. We took
education to tribes. And right now, every reservation
has a college. We're graduating 30 -- at our college,
30 students a year. Previous to that, there was a few
of us that did go to school on the GI bill and BIA
scholarships. But they were kind of the exception.
Most of the kids didn't go on to college.

So they can't tell us that we can't do
things, because I think that's the shining example that
we have on our side of the table that we can do. We
went to school. We're educated. And anybody in any of
those offices in the government forget we're subjects
to their trusteeship.

And that is another question I have about
trustee and where we're at as people. I think that we
need to look at that trusteeship, because land buyback
is exactly trusteeship.

I read in the paper this morning that the
land buyback program is running out of money because
they didn't figure that there was that many -- that
much service that had to be done. I don't know if it's
poor management or poor planning or what it is. But
they're out of money, and they still have about 20,
30 percent of the program to complete.

And so I think if we had some consultation on
that -- and I went to every consultation they had, and
none of our -- I don't know how many of you guys went
to those land buyback consultations. But none of that
was ever put into the process.

I remember my arguments with John McClanahan
[phonetic] who headed that up. I was in Rapid City,
Seattle, Hell Creek, wherever they had those hearings.
Same thing. Consultation. "Let's do this together."
But it never happened. But it can be done. We get
education. We have colleges now. Previous 200 years,
we used other schools. But we have our own now.

And, you know, for us here at Fort Belknap,
we have two visible natural resources. That's our land
and water and our people. And I think we've done
pretty well by our people. We're graduating our kids
now from college.

But our land, we're getting funded to take
care of our land out there about, I was told, 25 cents
an acre to manage the land that the Bureau -- maybe the
Bureau will speak to that.

The BLM gets 15, $20 an acre to take care of
wild horses and burrows and whatever else is out there.
BOR gets $5 an acre or something. It's all broken
down, and I got this from a person that was working in
the area here. And he gave me those figures.

So why -- you know, this is supposed to be
for us. Why are we getting 25 cents and BLM is getting $15 to manage burrows? Maybe it's better to be a wild horse. A horse's ass or blanket ass. Take your choice. I think I'd rather be a horse with how they are being funded.

But, I mean, that's an example of how we're being excluded in this whole process. You talk about government-to-government sovereignty. I really don't know what those words mean.

And I went to Harvard University for my master's program and from Rosebud Reservation. But those words don't mean anything out here. They look good in a book, look good in the dictionary. But practical application of those terms do not apply out here.

So I think we need to sit down and really look at what we have, where we want to go. Our land is all we have left. And if we're only getting 25 cents an acre to manage it, no wonder we're having problems.

I think if we took a serious look at these crises that we have with land and water, maximize the use of all the programs that are funded, and get away from that territorial kind of thing -- let's blend all this stuff together.

Because there's a lot of money that's being
funded: Social programs, water compacts, land
problems. But they're all kind of scoped out for a
specific kind of thing. "You can't do that. That's my
program."

Over here, this program, "Oh, can't do that.
That's mine."

I think we have to sit down and start at the
root of the problem, not the reservation. That's where
our resources are. Some have gold. Some have oil,
things like that. We need to take those things and
capitalize on them. I think our land is our last
stronghold. And those people that stand on it, they're
fighting that.

I read this morning in the newspaper the
governor of North Dakota is wondering why the federal
government does not help him fund fighting the Indians.
They are our trustee. They should be sitting on our
side. We're the United States Army. I'm a veteran of
the Army. Don't mean nothing over there.

Indian veterans constitute probably -- in our
state of Montana, probably two-thirds of the veterans
that are in the state. But that doesn't mean nothing.
I wear my hat 'cause once in a while, I can drive up to
McDonald's and get a free hamburger. But at least
they're thanking me.
So I have a lot more things I'd like to say, but I know there are some other people that need to be up here. But I want you to think about that. When we have a consultation, let's start at the bottom, and let's work up, go through all the funding, all the agencies, eliminate, take that resource, that money, and put it where it belongs.

And all these budgets, two-thirds of that budget goes to administration. The rest of it trickles down. That 25 cents an acre trickles down to the tribes. Maybe that's what Ronald Reagan meant in his trickle-down theory. Or was it Bush? One of them.

But anyway, I want to thank you for letting me voice my opinion. And thank you, guys, for coming.

MR. TOULOU: Thank you for your comments, and thank you for your service.

(Appause.)

MR. TOULOU: So our next speaker is Mr. Steve Vance.

MR. VANCE: I just want to make a comment on something that was just said about veterans. I'm also a veteran. And I think it was in Albuquerque that they asked the veterans -- or Seattle, they asked the veterans to stand up. But I didn't stand up because that's in the past.
There are people present right now as Native, and others who are overseas right now. Those are the ones I recognize before I stand up.

But just in him saying that, it triggered something that was written by some federal official of tribes contributing to the protection of this country through many, many wars, you know, the different world wars, Korea, Vietnam, Desert Storm, Afghanistan, Iraq. You know, now there's other terrorist organizations.

And this federal agency said we should help the Natives protect their interest when the Native were helping the United States protect their interest. Just something for thought.

A little update on the Missouri River issue. We have been involved -- us as a tribe have been involved over two and a half years. And because of interpretations, we were trying to push litigation during the crossing of the Garrison. And the attorneys felt it was too far away to show harm.

So they said we'll wait until they get by the Cannon Ball area. And by then, Standing Rock had filed, so we filed interest. But it's still the same river. That river runs all the way down to the Gulf of Mexico. So it is a water issue. It is now titled the [Native speaking], but it means seven fires.
Because there's been probably close to 300 tribes up in that area. There's been people from other countries there, you know, campers running up to anywhere from 3,000. So it's grown more than just a local issue. It is now not just an international issue but a global issue.

But Sally Jewell has -- I think they all know who Sally Jewell is. Sally Jewell is the secretary of Interior who talks about climate change and reduction of flaring with oil and gas industry.

But as I said, you know, the tribes have been pulling together on these issues of concern. And it's not a tribal problem. It's a federal agency problem. This is why we're here. So, like I said, that's just an update as to where that is now.

I'm going to direct my comments this way.

Some of you have seen me before. Seattle, I was up in Seattle. And I was in Albuquerque, Billings. Most likely I'll be in Minnesota. I don't know about Maine. I get to where I can. And for sure I will be at the Rapid City one. And I said this: I'm going to keep coming because I am going in my seventh year as a tribal historic preservation officer.

And I was just a simple carpenter back in the day, after I got out of the military. And when I got
back on the reservation, I couldn't find a job. I
looked and put in everywhere. I was refurbishing
million-dollar homes in Salt Lake City. And in 1976, I
was customizing in Santa Ana, California. Twenty-one
years old, had a good job.

Went back to the reservation. I couldn't
even -- I was ranching, branding, fixing fence,
anything to make money. And one day, I was asked to be
a police officer by the chief of police. And I
thought, "Geez, three years, I haven't had a job. I'll
take it." And he threw keys, a badge, and gun at me.
Four bucks an hour.

Well, in taking on that job, it's to protect
and serve. And it reminded me of, you know, back in
the military. So I took it on. But during that time,
I became a state-certified police officer. And how I
learned that was I studied. I learned and read.

In 1995, the tribe mandated the instruction
of language, culture, and history in our schools to
where we were losing our language. So I hung up the
badge and gun and went into the classroom and sat down
on the floor with the kids. And I'm teaching, talking
like this amongst them all day. Thirteen classes at
14,000 a year.

From there, I became a state-certified
teacher by reading, studying. For some reason, a piece of paper changes your rate. My salary went up with a certificate. Doing all the work with a state teacher's certificate, my salary changed.

But a few years back, I was asked again to put in for tribal preservation officer. So here I am. But I still look at the words "protect and serve."

And now it's preserve and protect. So it's still there. But my goal is for the people, all these people here. I don't look at it as an individual tribal issue. I look at it as all the tribes who congregate in this area, their culture and history.

But I read -- and I'm still reading. I have mountains of paper. And I could bring all of that in here to show you where there are things, previously written, that still cause a conflict and sometimes a loophole and sometimes, very little, a positive outcome.

I was reading a document here on the Indian trust by Department of Interior. You know, you'll hear people talk about treaty. That was kind of recent, I think. Like, 1805 the first one was written. Another one, another one, another one. This treaty outdid that one and so on.

And here we are with resolutions from tribes
previously asked. But those are documents kind of
guided into, I guess, isn't a man's word good anymore?
You got to put it in writing. I remember a handshake,
nod of the head, and that was it. And here we are,
mountains of paper. And we still don't come to an
agreement or equality.

The National Historic Preservation Act, as I
said, was built on a foundation and with good
intentions at that time. And since then, many things
have been added. It's like a skyscraper or something,
a big building. And as things get more piled onto it,
the foundation becomes weaker. I hope we don't do that
here. I hope we don't pile another bunch of executive
orders or things on top of what's existing. I
recommend that we go way back.

A lot of the issues that I had with
extractive issues -- and I will tell you right up, my
biggest battle is extractive history. We have rural
projects going on with housing and stuff. And we know
that needs to be done and infrastructure, water, sewer,
you know, stuff like that.

But when we're digging mountains as to what
was proposed in the Black Hills with bare-element
resources which -- if I was to say, how many of you
want to give up your phones? Not too many people want
to give that up. There's a lot of stuff on that little machine. You're not packing around this big, old computer. Things are getting smaller. It comes with newer technology, and some of that is very relevant.

And there was a proposal to dig an open-pit mine on the south -- just to the southeast of Bear Lodge. Now, us as Native people, we understand when we say Bear Lodge. To you, you'll know it when I say Devil's Tower. It's sad, but we have an important, sacred site named after Satan or the devil. But when I hear Bear Lodge, my heart skips.

So this is quite a consultation. What you say or what we hear or what we interpret together isn't the same.

But in that, I started looking at reclamation. So I said, well -- I asked during -- element resources in the company, it was on Forest Service property. But I said, "What about the reclamation?"

And they said, "There will be none. We're going to leave this open pit there when we're done."

So it goes clear back to 1872 Mining Act. I have to read that. There's not a problem of, you know, what is here presently but, say, what's happening on the Missouri River. This is going way back to how
tribes are involved, how tribes are interpreted. Because we have, for a long time, said no to certain things such as that as to how that process was going to be conducted.

The other one is, you know, with the executive orders. You know, all the other things that fall into place. But, you know, I have to read and read and read. And I'm still reading as to my interpretation and understanding of why we use that application.

You know, and I think that the new ones on the panel in Seattle -- there was five. And in Albuquerque, there was 10. Today, there's 12 plus others out there. So I thank you for opening your ears to what we are doing here.

But a couple things I want to get understood right off here. In Seattle, they said this is not consultation. And in Albuquerque, they said this is consultation. So something you want to -- as to what you call this meeting, because I'm really going to be confused at the next meeting, whatever it's called.

Well, like I said, I think there's a lot of stuff. And I have a list of stuff here that I've created myself. Our tribe, at the chairman's level, will do their written submittal for comments.
But I'm the person in the trenches every day, as are many of these tribal people. They are the ones that have to deal with all the different issues of consultation. And we tried to simplify it to get that to the chairman to deal with -- our governing bodies to deal with these without having to go through the frustration we go through. So we try to simplify things when we present to our tribal council. They have to do everyday things.

We have winter coming on. And if any of you know the Northern Plains, it gets cold, and there's times we're over a week without electricity. So there are pressing issues going on right now at home, and they needed to be dealing with that.

I'm the one who has this frustration of having to consult and come back and give them something. They make a decision, and it's confusing. But hopefully, I can bring them a better message as to what these meetings come out to be.

My first complaint about all of this -- now, the Missouri River was kind of -- I'm thinking what brought this for DOJ, DOI to call this meeting was because of what happened up there. So if I'm wrong, you might want to say that, because I see there's other agencies. Now we have BLM. We have federal regulatory
down to Albuquerque.

I keep saying, "Where is EPA? Where is EPA?"
I've been saying this for seven years. "Where is EPA?"
These have to do with water, the effects to land, air.
And water is a major issue to our culture.

Before we even take a root from the earth, we
ask permission and put something back. We have, as
Native people, forever been instilled with the
responsibility to care for Mother Earth and all the
other resources that this earth gives us for life.

But that has been taken away. And one of
them is the Environmental Protection Agency. Instead
of asking for quarterly -- because there are some
things that are four years, they will do a study. And
other things, it's eight years, they'll do a study.

Well, mining of uranium, they basically leave
it up to the company to monitor water quality on sites.
The EPA is not there. It's called self-monitoring. So
I think, you know, you might want to -- like I said,
three agencies called this meeting. And more have come
on board. That's good. Because I deal with each one
of you separately.

But it has come to a point of what the
concerns and issues are. A simple communication. Some
of you have watched the movie long enough ago of, "What
we have here is a failure to communicate."

And I think some of it is maybe a simpler interpretation of what you say is sacred, what I say is [Native speaking]. It's a different interpretation. What you say is prayer, and what I uttered up here about all of this creation as being relative in the word [Native speaking] is a misinterpretation.

So I think there's a language barrier. But, again, we're educated. We learned to read English. So are we interpreting it different than you when we talk about the effects?

So basically, what -- as I said, what brought this about was the Missouri River issue of water. But being in D.C., when we first went up there, I asked the educated people, "What is the consequence? We're not consulted." They said, "There is none."

You know, the Corps is going to get picked on at all these meetings. But for the Corps, what they will probably, most likely, do is tell the Corps go back, start over, and do consultation.

And you know how much people have expended? Money is a resource. No country can operate without virtuality, the government, and the monetary system. But the tribes have spent, I would say, more than hundreds of thousands, probably millions now, on this
issue.

There was a comment one time, "How come you're not feeding Grandma at home and you're putting all this money in this issue?" This is the future that we're worried about. But there's no consequence. So I think that's the first thing that needs to be looked at in any of this is that there needs to be a consequence to the agency that does not consult the bureau properly.

We didn't, and we held things up.

If there's no consequence, let's say monetary or financially, for the agency -- because we're expending time and money ourselves. I'm trying to hit as many of these meetings as I can because I've been saying this -- six and a half years ago, I said this -- "Where is the EPA? How come we're still dealing with 1872 money now? How come you don't recognize the 1868 treaty, but you'll pull up this old act to limit the amount of aid that the agency is going to use in making billions of dollars?"

So I'm saying that if there is no consequence, monetary or financially, that the agency be suspended from the project. And somebody -- as I said, Federal Energy Regulatory Commission come in. The pipeline -- the issue is that the Corps and tribes...
feel that whatever comes of it, they -- and I think
from the get-go, the Corps didn't really want this
project. We kind of seen where this was going. It was
just like, "Well, we're stuck with it."

Well, I asked BLM to become involved early on
with the EPA, with the commission, with the Department
of Energy. We have other agencies that can come in and
take the lead.

Because when we met -- like I said, when we
met in Seattle, there was a general. When we met in
Albuquerque, there was a colonel. And here today, I
see Henderson, who was actually in a meeting in
Nebraska. And we had asked then, you know, "Where are
the other agencies?"

Because they said BIA was involved. You
know, Fish and Wildlife is involved. And according to
what I read, if I interpret it wrong, two or more
agencies, BLM will step in and take the lead. So we
asked them -- like I said, if the agency fails, then
there should be a consequence. Even pulling them
aside, because there will be a record.

So when you say, "Okay. This agency is
taking the lead," well, they didn't do it appropriately
or properly for, you know, four other times, so -- to
give you a history of the agency's involvement with
what we have issues and concerns with as tribes.

And if you read the National Historic Preservation Act, it says in there that you are mandated, as an agency, to follow these federal guidelines.

And I don't want to bring all that stuff up. I have a big folder here with all kinds of things. I could bring you boxes of paper.

So my first thing, like I said, is to start over. Start over with a better foundation, because we have an understanding of what the historic preservation is today with the issues of climate. Those things weren't talked about in the 1800s or early 1900s. We thought the world was going to last forever. Now we're looking at Mars. Is there life on Mars?

So consequences, suspension from the project and replace with the lead agency, such as Department of Energy, Bureau of Land Management, Federal Regulatory Commission, EPA, et cetera.

Section 106 versus U.S. Army Corps of Engineers, you can see, I totally disagree with. If I was to transport illegal weapons or drugs across this country, there's a federal law that's going to -- no matter what state I go in -- that federal law kicks in.

Section 106 is a federal law and should be
done coast to coast. But yet we have others doing
other things differently, which should get them out of
there. I think we should go with the one rule. So I
do totally disagree with this consultation process.

Nationwide PAs do not address regional
concerns. I disagree with the words "nationwide PA."
I have written a specific letter. I have -- really
actually haven't done anything involved with Corps of
Engineers since the litigation came up. But I think
the individual PAs per region are issues of concern for
the tribe.

And environmental impact statements versus
environmental assessment. Now, we understand there are
findings of no significant impact and categorical
conclusions for certain projects because it is simple, routine. Going alongside the freeway is a routine
thing.

You know, but my question to federal highways
is you're making more freeway and all of a sudden, you
come across some flowers and teddy bear and -- what is
that? How could you treat that now? You just tear it
down? Throw that teddy bear in the trash?

Something happened there. There's nobody
buried there, but something happened there. And people
go there. These are new things now. We didn't see
these -- I never seen these when I grew up. But now
you see them often along the road.

But that maintenance, the mowing is a routine
thing. Now you have another, you know, effect possibly
as to what to do.

But some people used to get out of doing a
full EIS. Any agency or company opposed to [Native
speaking] should be really looked at and studied. Is
this a loophole? Because if they're doing it to get
out of doing the EIS, they should be mandated to do the
EIS. It's a little more work. But people use it,
again, as a loophole.

Like I said, a lot of these are court-issue
stuff right now. Our Resource Protection Act is a --
has to do with -- one of them that I've been hearing
about is trafficking. And Martin Calister [phonetic],
who does a damage investigation course, said it is the
third largest illegal moneymaking activity in the
world. And I was like, "The third largest?"

Well, he explained that weapons -- of course,
everyone wants a nuclear weapon. After that, it's
drugs. Weapons, drugs.

Now, I see a lot of people still today
taking -- trying to find gold. But then there's the
bigger people who are looking for the City of Gold, you
know, with the Egyptians or with the Mayans.

    Well, our stuff is just as important. You
know, sad thing to say, but as an example, what would
Crazy Horse's skull go for out on the black market? So
then I realized that it is or could be the third
largest illegal moneymaking activity in the world. So
our preservation was in place to protect that.

    And one of the things with the Corps was we
had 132 bison skulls wash up, and the Corps passed it
to the state. So there's stuff in the PA that says
that stuff on the surface and below is tribal
resources. We're still trying to get closer to that.

    But one of the other things is there are
thousands of artifacts that were stolen illegally, and
people were convicted. Those things are still held by
the court. All of these state consultation. I'm not
just saying that. How do we fix it with one or two
bullets on the paper?

    Bulletin 38 versus Brief 36, TCP and
landscape. "TCP" is the term used for traditional
cultural properties, which is, again, a different
interpretation about sites. To us, it's the same.

    A lot of the things we deal with here,
especially in the Northern Plains, is landscapes,
larger areas. I have a picture on my phone where we
went to the project with the proposed expansion of the Kendrick, uranium. And we went up, and we found this split stone. But when you stand to the east side of that stone looking to the west, right in perfect alignment is Bear Lodge. I said, "Where do you want me to draw my line?"

Because when I greet the sun in the morning and you're saying that, "Well, this site right here, it don't involve that," it does. The pyramid, how her alignment is involved with bigger things. So our involvement with TCPs, landscapes, sacred sites has association to setting and rising of the sun and constellations and the moon.

We know the seasons away from the calendar. We know there's 13 risings of the moon, not 12 months. But these things are, like I said, interpretations, different interpretations. Sacred sites, places, objects.

I think, now that we're talking about issues, sacred sites also involve land, air, and water. I had to learn all these acronyms. My interview for being a THPO consisted of 13 different acronyms. What is this? What is that? I said, "Obviously, I don't know all of them. But if I get placed in that position to do it, I'll learn them." And I did.
But I have to throw my own out. Natural law. Everybody talked about federal law, tribal law, Congressional law. And an elder person said, you know, "We feel there's an advantage. We didn't bring our attorneys."

And I said, "This elder person probably run circles around all of us on traditional law." But we deal with natural law, the law of nature. And that is land, air, and water. A lot of these regulations were written without thinking that. And we come in there thinking that.

We come in here thinking the land is sacred, and you say "No, it's a resource."

You know, one of the things I heard a long time ago from an elder is two people look at a tree. And one person looks at that tree and says, you know, "That is a living thing. If you look at it, it has a heart. It has roots. It has branches."

Another person looks at that tree and says, "I wonder how many toothpicks I can get out of that."

This is where we're at today. We have nations coming together, saying, "There's something wrong here." But how we operate in resources, we're not look -- we're still looking for that City of Gold. How much can I get? Me. Me. I. I. Not us. Not we.
And it's hard because you have agencies throwing money into these companies with powerful, educated, legal people who, most of them, are governed by politics. I think there should be something done immediately as to what's going on with this.

Because the last meeting, in Albuquerque, it got loud and it got -- you know, got -- people were angry because people were getting -- the chairman had to get up and leave. Those are all things he had to deal with every day.

So I think something on that needs to be immediately dealt with. And for what we're doing here -- you all have somebody else complaining a different tune for you. So is our tribal council.

Many of -- half of our tribal council is leaving, and a new half is coming in. We have 18 people on our council. Half of them are leaving. Half will be coming in. So I have to turn this over to a new group, saying that this is where we're at for the past seven years while I was involved with tribal issues concerning resources.

Our chairman will still be the chairman for two more years. But you all have a big question in front of you too. Clinton? Trump? With that comes executive orders. I didn't get to that part yet.
But, again, I think whatever comes here needs to have some finding to it, some teeth to it, something solid to where Clinton don't come in and change it to something else with a stroke of a pen. Or Trump won't come in and change it with a stroke of a pen.

This is my concern with executive order, because it's changed from president to president to president to president. I think executive order, in dealing with these types of things, should be Congressional acts. They are long-term.

Again, I want to thank the council and preservation. We have Valerie sitting here. They have probably heard what the tribes have said. I mean, this is labeled a listening session. But they heard the tribes. They didn't just listen; they heard.

And I have hundreds of documents where they have turned around and said this is what it's like. So my thank you to ACHP is they did support the tribes. But again, the chairman said, "Okay. We heard. We're moving on."

Corps of Engineers heard ACHP. "Okay. We heard you. We're moving on." How much does the advice of your own federal agency mean to you?

So from there, in the Northwest, I sat down with the tribes and said, You need to speak with the
Northwest region advisory council. Because what I'm saying doesn't mean anything. Do you know anything that I have said six and a half years ago about these same issues? No. You had somebody else. A regional office or a tribal liaison or a cultural resource manager sitting at the table talking to me, who somehow never got that message up to you. Because I've been saying it for six and a half years.

So I advised the Northwest tribes to form their own advisory council that will give that advice that is regional. And I said the same thing to the Southwest. And we've been saying it here for quite a long time. Because in this area -- there are a lot of tribes in this area that are involved, land-based tribes.

We're not just sitting on a little 2-acre plot. A lot of history there. Well, how can I fix that when there's stuff over here that's broken? How do I fix that? How do I get human remains back off private property when there's a federal law that governs that and then there's a state law that says different?

So thank you to ACHP. Thank you, Val. Traditional laws and protocol versus archeologists. Now, I've got a lot of friends who are
intelligent. I have a lot of relatives who are intelligent. But when I go into a meeting, I am thinking about who I am as a person. Because the things I'm talking about could be 8,000 years old. And the person that was standing there 200 years ago, 500 years ago, a thousand years ago, what life did they have? What will their association be if that was established?

They went into those sites with a connection with nature. As I said earlier, I kind of like to center myself to address all the elements and be respectful as to what my position is in this time.

My position here is to take what was -- one of the words I said in the classroom -- with 20 kids looking at me in the classroom, I said, "I am not your teacher. I didn't invent language, history, and culture. But I was taught it, and I learned it. And I will repeat, and someday you will repeat to your children."

I am in the middle with culture. I need to pass this on to the next generation. And hopefully they will have a better life than this generation. All of us should be there. Our ancestors said there are seven generations.

My challenge to a lot of people: Who are
your future? Your own children.

So when we go into these sites, we bring an
essence of spirituality, a connection. And how I think
on our job -- I said, you, as a kid, probably went to
church, sat there with your parents, all the local
community people. And you believed in the person who
was created out of nothing. And from there, a woman
was created. This is our understanding. A person who
could walk on water. A person who can rise from the
dead.

Some of you probably don't know who I'm
talking about. But when you come in there as an
archeologist, you think of evolution. You think of a
scientific connection to that -- what we're talking
about. And there is things that say there is a
knowledge tribes have differently than archeologists.

But the secretary of Interior's standards
said you have to meet a certain type of qualifications
in order to be a principal investigator on a project
and sign off on it. And they do not understand our
stuff.

It's a new one now. You didn't hear this one
before. That's why I'm saying that.

Tribal people on the ground. Boots on the
ground, people out there monitoring construction have a
connection to what's going on out there. But there's things out there that say, "Well, you're not an archeologist. We have to get a report from the archeologist." So there's a discrepancy.

Now -- tribal resolutions addressing the no-action alternative. When a tribe enacts a resolution, what replaces the treaty? I don't know if you read the treaty. At this point there's others, like I said, starting in 1805. But read 1851 treaty. 1968, there was an agreement to keep peace, not to harm each other, to protect each other. The very essence of it.

But from there, treaties went into acts. And from acts, it went to resolutions. So when a tribe is submitting a resolution, that is equal to a treaty. And a tribe writes in there, no-action alternative. No -- what does that mean?

I can probably ask several tribes in here how many said no to a project that went that way. Very little to none.

What does it mean when a tribe, by resolution, addresses no? The regulatory commission is one of my biggest issues in the board of consultation. Because the tribe submitted a resolution of no expansion, no renewal, or no new permitting of uranium
There are several things -- you know, we have this, you know, national federal regulation. And, you know, we try to talk about government to government. You have to remember tribes are nations also, independently.

I know what we have done here in the Northern Plains area is we have tried to come to meetings. And there are several agencies in here that can show that, where tribes have come together as a team.

Instead of saying, Okay. There are 33 tribes, and we have to consult with each one of them individually, we will come together, and we'll have one meeting. But you have to remember that each tribe independently has to be recognized as a nation equal to what is recognized by the United Nations.

I don't know if you read -- there's an acronym for that too. United Nations Declaration of Rights of Indigenous People.

When they came to this country, they told the United States, they said, "Give the Black Hills back to the Indians." Read that case up. We know what was in there by tribes. And they said, "Yes, we knew it was illegally taken. Here. Here is a bunch of money."

And the tribe said, "No." That's still
there. But that's nation to nation. So when you're saying government to government, I can sit there and talk all I want all day. Government to government, you need to be in front of our tribal elected officials to meet government-to-government consultation.

All of this comes down to, like I said, sacred sites and traditional culture properties. Again, in order for it to be -- what do you call it? -- on the national registry, it has to be certain criteria: A, B, C, D. There needs to be something in there -- either agencies need to recognize our interpretation, what A, B, C is.

And for a little history on what that is -- and if I'm wrong -- I mean, we got a lot of people doing this longer than I have -- correct me. But A is an event. B is a person. C is, like, architecture or structure. And D is kind of what we fall under all the time, something that says, "Well, there's some history. There's some information here, history."

Now, when you go out to a site -- I guarantee if you go out anywhere in the very secluded areas of the Black Hills, you will find a sacred site.

Now, obviously, it's an event. Well, okay. We're here in Montana. How many of you have been to the Medicine Wheel, as we call it? If you go there,
obviously there was an event there. And there was
people there.

The alignments of this is so intricate.
People don't understand it. And people still say, as I
hear on the History Channel, "Aliens built the Medicine
Wheel." I don't believe the alien theory. But like I
said, people were there.

Our healers are very significant people to
us. I know a person who healed three people of cancer.
If you step away from Western medicine and accept the
traditional medicine and healing, you will -- and they
did. They're still alive. Doctors want to know that,
but that's confidential information. Select people.
Those people are important. But none of -- nobody up
there knows who this person is. But people of the
tribes know who this person is.

So obviously, the event, the people.
Architect. If you've been to the Medicine Wheel, can
you explain it? These people here can. And, of
course, it tells the history.

So then I say, No, it's not. It doesn't meet
A. It doesn't meet B. It doesn't meet C. Maybe D.
That's what we do with it. There needs to be something
in there more favorable to the tribes.

The national burial code not a state-by-state
burial. We know what NAGPRA does. NAGPRA reaches from
the East Coast to the West Coast, line between here and
Canada. But when we, as tribes, meet with the Canadian
tribes, we speak the same language. We say the same
prayers. We sing the same songs. And we understand
each other.

But that line separates them from their
resources, their sacred sites, and separates us from
our sites up there. But NAGPRA reaches all the way
across. So when you go to Iowa, you're going to deal
with a different state burial law, which is fairly good
and they are updating it.

But when you get into South Dakota, the
burial law changes.

This is on private property. I don't care
what kind of property it is. If you had a relative on
there, your child, your parents were on that, you
probably want to be able to go there or at least put
them somewhere where you can see them. But these state
laws hinder us from our buried relatives.

Like I said, all these things come to
consultation. It's not just, fine, sit down and talk
about -- it can't be done.

I already talked about Congressional order
changes. There should be more Congressional acts that
are binding to the next President. Anything you can do before Clinton or Trump get in, it would be binding to them. But right now, we don't know, you don't know where we're headed.

I already said 1872 Mining Act.

Tribal management. Now, this is going back to some of the consequences. Suspend the agency that's not consulting appropriately and put in another agency related to that. That has to do with pipelines and the Department of Energy.

If not -- suspend them. If not, comanagement. I'm sure the tribes and the municipalities that live along that river can tell a lot of these federal agencies what that means. And I know the general who spoke up in Seattle. The tribes up there actually said they manage one of the dams themselves.

When we brought up all these issues up there, the general who was there at the meeting -- I forget his name, but I probably won't see him again.

But anyway, I said a lot of these regional issues we can fix here right now. He got curious what the colonel was going to say down in Albuquerque. He never mentioned anything about fixing things down there.
So anyway, when you come to these issues --
and I'm talking about tribal management, you know, or
properties.

I really don't like that word, "property."
We need to change that word. Because as soon as you
say "property," people get aggressive. They look at
ownership.

The tribe will tell you right off, "We do not
own the land. It owns us." And if you're not putting
dirt or vault or casket, you go lay in a tree or
scaffold or ditch.

National Park Services produced a climate
change response strategy. 'Cause there was a
recommendation to come down to each agency, develop a
consultation process. And some have, and some haven't.

There was four agencies, I think, came in.
When the declaration of rights and people came out,
ACHP looked into the Preservation Act, and four tribes
or agencies came in and signed reporting that. Like I
said, I have a whole bunch of that stuff.

But like I said, what have other agencies
done to address climate change? Their actions. We
know when you go east of the Missouri River -- I have a
lot of hunters come from Wisconsin because of
agricultural spring, herbicide and pesticide. The
water is polluted. They said the fish glow. So they
come over to the plains to hunt deer because that's
deer they can consume.

But now we're having issues with water.
1800s, there was still mercury in the Cheyenne River.
The Cheyenne River runs from almost up here -- all
these waters run down into the tailwaters of the
Cheyenne River, which runs on the southern part of the
Black Hills, across the Badlands, back over to the
southern border of our reservation. And fish have
This is today.

Our environmental protection went down there,
and they still found contaminants in the Cheyenne
River. So climate change is an issue, and I think all
agencies need to sit down and look at that.

And as I said, regulatory. I don't agree
with them taking on any project, because they are
funded by the companies that mine uranium. It's a
conflict of interest, I think.

Nuclear Regulatory Commission should be under
the Department of Energy, and they will follow the
federal law in consultation. Because they have failed,
to the largest that I have seen -- like I said, I've
only been in here for a little while.
EPA on aquifer exemptions. There's an aquifer exemption in which uranium mining, oil drilling -- you can drill into the aquifers, use that new water, add a bunch of chemicals to it, and start doing your fracking, start cutting into the cut, the harder surfaces.

And when you're done with the project and you have what they call, in mining, the slurry material, you can reinject it back in there because it's not a drinkable source of water. Well, this water on top is gone.

For generations, people have been ranchers. They will drill, pull water up. You'll see the old windmill pumps. Everybody used underground water because they weren't closer to surface water. Now our surface water is becoming contaminated.

And I said agricultural stream -- you know, herbicide, pesticides. So the surface water is getting kind of limited and questionable. So we may end up having to tap into what's below. But that may be gone. I think that there should be more stringent things on EPA for aquifer exemption.

Regional agencies versus treaty territory. Again, well, we got several BLM people here. But do their comments go as far as what we talk about when
we're discussing treaty or aboriginal?

    I have a map that was etched in stone from
the Great Lakes past the Big Horn Mountains. Our
people back then knew how big this area was.

    So how many different agencies do we have to
consult with -- do we have to consult with to address
that area? We have to take into consideration, when
we're talking aboriginal territories, where and who are
these agencies. Because the message ain't getting
around.

    What one state -- what we're doing in one
state and in the next state beside it, the messages
aren't being shared.

    Last thing, funding. There are so many
branches to what funding is. But the dollars that we
function under, operate with, hasn't increased. The
states have lost more property to -- that area, you
know, wow. So just talking about South Dakota. You
know, the seven tribes, the state has relinquished
acres of land that they won't have to manage. But the
dollars don't come with it. They still keep the same
amount of money they have to operate.

    And then every time the tribe comes in, the
tribes split their portion. The states aren't picking
up 160 more states. So there's no issue of their
funding. That's the biggest thing, I think, that
hinders a lot of the tribes here.

You know, I've been saying this, and I'm
going to keep saying it -- probably tired of hearing
me, but I'm going to keep saying it. My job. One of
the elders.

[Native speaking].

Here we are looking forward. Look back.

There's a bunch of grandkids looking at us. What are
you doing to them?

[Native speaking].

Those of you who heard, thank you. And thank
you for listening to me today.

MR. TOULOU: So thank you, Mr. Vance. I said
we'd do a break about 10:00. So we're going to take a
five-minute break.

(Recess taken 10:21 to 10:39 a.m.,
November 2, 2016)

MR. TOULOU: Okay. Thank you all. So we're
going to jump right in to our next speaker, and that's
Jody LaMere.

MS. LAMERE: Okay. Good morning, ladies and
gentlemen. I just kind of wrote down some of the
concerns from the Chippewa Cree Tribe. I'll just go
through the list rather than elaborate.
Our number one concern is tribal consultation with tribal leadership on tribal lands on potential activity affecting the tribe. That is one of our issues, concerns.

The second concern is 106 consultations needed to involve their THPO on historical property with federal undertaking.

Number three is timing. Before projects are even considered, consultation should happen. Tribes should be consulted before a decision is made, and tribes should have a say. Also, full and early participation and purpose and need, infrastructure permitting discussion.

Number four, tribal governments must be provided, in a manner similar to state government, funding for participation in federal permitting processes.

And then number five, our cultural significance is different than the non-Native people. And then some of our successes and solutions that we came up with is a solution for effective consultation that the Chippewa Cree Tribe has utilized FCC's TCNS process for telecommunications projects or Section 106 reviews, which can be a model for other federal agencies. And we encourage their review and to speak
to Chairman Tom Wheeler of the FCC.

Number two, the Chippewa Cree Tribe's tribal historic preservation officer, Mr. Alvin Windy Boy, is the vice chair of the national THPO, working on cultural and religious issues for over a decade. So I encourage you to make contact with Mr. Windy Boy. He's had his boots on the ground running for probably over 30 years. And he's a good asset for our tribe.

In closing, I guess I'd just like to reserve our right to have our written concerns and solutions by the deadline of November 30th. And thank you.

MR. TOULOU: Just one second. And, you know, at the end, I was going to say, because I know you're rushing through, I appreciate the fact that you're giving us more time. But, everybody, written comments are very much appreciated. It's not that we're not listening. And we've a transcript that's going on. But it's great to get written comments also.

I have one question. And not part of the format. You were talking about the FCC, how they ran their process. Was that a good process, or was it bad? Because one of the things we're looking at is, you know, who does a good job --

MS. LAMERE: I believe it's a good process because there's a lot of data that's maintained and
reports that go back and forth with the program that Alvin's running. And I apologize he's not here today. He's out on other endeavors. Otherwise, I would have had him take the mic.

MR. TOLOU: Okay. That's helpful. Thank you.

So up next on the list is Michael Black Wolf, who's a registered preservation officer for Fort Belknap. I know he was talking about speaking with Mr. Donovan. But please come up.

MR. BLACK WOLF: Good morning. I'm Michael Black Wolf, tribal Crow preservation officer, Fort Belknap Indian community, home of the Gros Ventre Assiniboine tribes, and we're located here in north central Montana.

A lot of the points I wanted to bring up were already brought up previously, so I'll make mine also, out of respect for others that want to speak, rather short.

I was looking at the letter that was sent out to us. And, you know, there's essentially two questions you folks are asking. You know, how do we promote a more meaningful government-to-government engagement within the existing framework?

I think that therein lies the issues -- at
least from my perspective as a tribal historic
preservation officer, is that the existing framework --
it seems like the cards are stacked against us as THPOs
when we come to or we go to consultations on behalf of
our tribal governments. A lot of us THPOs, if not all,
are tasked with the representative to go to these
various consultations and to speak on behalf of our
tribes.

But a lot of us, also, we maintain and we
ascertain that a true government to government is you
folks, the head of your guys's respective agencies,
coming to us and visiting with our tribal leadership,
visiting with our council representatives and with our
chairman and our vice chairman or president or vice
president, however each tribe designates their leaders.
So that, to me, is one of the things that I would like
to see changed.

Something else that I would like to see
changed is -- or I believe that we need to do is we do
need to change the existing laws, because executive
orders, you know, 13175, the other ones, those are
just -- they're not federal law specifically mandating
you guys to do these things.

And I get a lot of letters and responses from
various agencies that like to state that although these
executive orders and various things that exist out there -- we're not forced to sit at this table with you. We're not forced to consult with you. We're not forced to compensate tribes for our efforts.

And one of the things that I like to bring up is that a lot of the agencies that we work with, you guys willingly go and hire archaeological firms, archeologists, to go and do some archeology work for you. And included in those archeology reports are a critical component.

And you have a vast majority of non-Native American archeologists. And I mean no disrespect to them. But they're the ones you're relying on for cultural, quote, unquote, expertise. And for the vast majority of these folks, they're not Natives.

When we have -- all of us -- when I'm talking about "us," I'm making reference to tribal historic preservation offices -- we have our expertise on our people, our histories, our locations, our stories. And if you folks, as federal agencies, reluctantly -- or you don't even want to bring us to a site, to a place to do our own site visits, investigations, or if we do, you tell us, "Well, you come, but it's on your own dime."

But yet at the same time, other side of that
coin, you guys hire archeologists, and you pay them. I guarantee you, all of you guys, you would not get an archeologist to come do your guys's work if they had to do it for free. And yet you expect us to show up and do our bit, our consultation.

And then we have monitors, trained, certified monitors, each of us THPOs, that I work with, that I work closely with. We all have our own certified monitors, cultural resource monitors that are knowledgeable and know these things and know how to do these surveys. And yet you folks are unwilling to compensate us for our time to come and do that part of it.

And so more often than not, you folks say, "Yes, we want you here. We want you to come, and we want you to participate. But we don't have the money to help you." And you guys also always go back and reference the Historic Preservation Fund, which is administered through National Park Service.

And I can pretty much vouch for per person, when talking about THPOs, is that -- as my colleague, Mr. Steve Vance, said -- that pie gets smaller and smaller and smaller every year. And what that really does is that basically covers, for most of us, our salary and a little bit of travel money. And I know
that that's what's quoted when they tell us that, "Well, you guys are already getting paid to do this."

But when you look at what we do in comparison to state historic preservation offices, who oftentimes have staff of 10, 12 people, you expect us, one person, one salary, to do the work of 10, 12 people.

So I think that you absolutely have to change the existing laws. Because I like to say that when it comes to us -- and we deal with things like Executive Order 13175, National Historic Preservation Act. Each time we try to get up and really get our teeth into something, you guys, as federal agencies, you pull our dentures out, and we're sitting there gumming the issues.

If we were to change and actually have federal law that mandated instead of saying, "You may do this, you might do that," however the wording is in it and saying, "You shall or you will do this," then that would make our jobs a lot easier as THPOs.

And again, I could go on a little bit more -- or I could go on a lot more. But out of respect for others that need to speak, that's all I wanted to say at this time. Thank you.

MR. TOULOU: Thank you very much. I'm going to jump in the schedule a little bit. We have an
elected tribal leader. Terry Tatsey, vice chair of Blackfeet Tribal Council.

MR. TATSEY: I prefer to be a moving target and not have my back to the audience here. But as a student of life, I have a question. I was trying to figure out what this really meant when I came to this meeting. And thanks to John Walsh for the invite and extending that invitation to me.

But as a student of life and student of process, student of structure, student of anything, I asked the question, When we're gathering as a group to come out here and framing this consultation process, how did you work, as interagencies, interdepartments, to develop that format?

MR. TOULOU: So you're talking about the framing paper?

MR. TATSEY: Just for yourselves to come do this.

MR. TOULOU: So this is an ongoing process, and it's clear, as we get more information, what we're receiving and how the works change. I think one of the earlier speakers talked about the increase in people.

But the White House called together a group of all the federal agencies that have infrastructure that goes on that might impact tribes, plus some
others, like the Department of Justice might be involved in the legal aspect. And we put together a framing paper we thought would start the conversation, and that's just the start of the conversation.

MR. TATSEY: Okay. Thank you for that clarification.

Now, as a teacher at the Blackfeet Community College for 23 years -- and in the past, helped build a college there. And as a teacher, I got a test question. And I was going to pick on Tedd down there because I know him from the tribal college, so we're close, but also Jamie and anybody in between. The word "[Native speaking]," does anybody know what that means?

MR. BUELOW: I do not.

MR. TATSEY: Tedd? Jamie?

MS. CONNELL: No, sir, I don't.

MR. TATSEY: Anybody in between?

(No response.)

MR. TATSEY: Okay. That's fine. I'll explain a little bit about the [Native speaking]. It's basically referencing us as a people, the importance of our home. And a lot of the discussion that has been shared so far has been about physical landscape. But if you look at the full definition of the [Native speaking] and you relate it to our lodges, the paint
lodges that we have as [Native speaking] people, the
top of our lodge represents what we call the [Native
speaking]. And that's every constellation that's out
there. It's the story of Milky Way. It's the story of
Pleaides. It's the story of the Big Dipper. It's the
story of Orion's Belt or the hand.

So as you were framing your consultation
process, did you consult with NASA? Because that's
part of our home. That's part of our stories.

As you were -- the middle parts of our lodges
are the helpers that we get, our spiritual helpers, our
guiders. And a lot of that can be an animal. It can
be a plant. It could be anything within that sphere,
if you talk about lithospheres or stratospheres in the
Western science world. But that sphere for us or that
area of the tepee represents something that is
important to all of us as [Native speaking] people
called [Native speaking].

And so [Native speaking], there is things
that we're dealing with today, from the Federal
Communications Commission, called airwaves. And there
was a consultation with tribes and others for the
airspace for the historical lands and also their
reservation boundary homelands. Was that consultation
part of your framing for your meetings, as you had this
thought process coming out?

The third part of our lodges is the bottom.
And they call that [Native speaking]. And what that is
referencing is everything that's on the surface or
underground. And so as you were framing your meetings
to come out and talk to tribes, did you consider the
USGS? Did you consider everybody else that deals
with -- from federal agencies to departments that deals
with all those layers of everything underneath the
earth?

Because for us, the tribal people, when we
talk about [Native speaking], it's referencing
everything that I just mentioned. And for your
consultation process, it's something you might want to
consider. Because when you consult with tribes, from
their worldview, not everything is encompassed that you
guys have a responsibility to address with tribes.

And Steve mentioned earlier, you know, that
we have a system, a process of respect and
responsibility. And that was before we ever took
anything, we had to give and keep balance with our
surroundings in our environment.

So we gave through prayer. We gave through
offerings. We gave through whatever means we could to
give back for anything that we took for our benefits
and for our survival. And so that was something that I
wanted to share with you.

 Because when you're framing your next
meetings, as you move forward, think about that
perspective and that worldview of one particular tribe
and how that relates to other tribes and their origin
and creation stories and their values of home.

The specific project that I'm going to talk
about is the -- it's a high-profile case right now
being addressed by Secretary Jewell, Secretary Vilsack.
And that's the Badger-Two Medicine oil and gas activity
that's happening. It was in the early '80s, without
consultation, the consequences of not consulting tribes
is -- this is the evidence of it.

But in the early '80s, the federal government
did not consult with the Blackfeet tribe on an area
that they entertained leases for oil and gas. And for
over a number of years to present day, we've been
fighting as a tribe to remove oil and gas exploration
and development up in the Badger-Two Medicine.

And we -- I think there was probably 60 or 70
leaseholders in the early part of this activity or this
effort in the '80s. And we have it down to about 16
companies, 16 leaseholders today.

And we have been in a long-term battle over
this. And because of lack of consultation, lack of understanding of our -- what we believe and in the -- my direct involvement in this began in, basically, 1968.

It's part of our funding process to take our families up into that area. Because that was our last refuge for ceremony, when we had been pushed basically to that point of our summer area. And our people used that area at Glacier National Park, which is now Glacier National Park, to go in and practice ceremony, practice themselves and who they were and what was important to them.

And so since that has been away since the 1870s up to now and even prior to, it's part of our family tradition to take our children up there and to introduce them to that system, to tell our traditional knowledge of the area, and to practice it.

And so I just came from there from last week. I took my eight-year-old granddaughter up there as my responsibility to my family and to that place of keeping that practice alive. But we've been very successful. We've had a lot of support in fighting the oil and gas development in Badger-Two Medicine.

And I was advised to go back to Washington, D.C. to -- they're showcasing a video that was done on
that area. And Secretary Vilsack has been invited, and Secretary Jewell will be there. And some of the Congressional people will be there also, senators. And so they're going to show this video. And what we're hoping to do is that this will put closure to just a very important landscape, small landscape, that's important to us as people.

But the way this really changed is in the early part of 2000, the Army Corps of Engineers actually provided the Blackfeet Community College, myself being the lead on it, to do -- to conduct research in that area and find out which part of that landscape was the most important or the most holy to us as people.

And I laugh because there's not one point or one place that's more important than the other. And so what we had to do, through the National Historic Preservation Act and their process, is to make that area a traditional -- to get it designated as a traditional cultural district.

And so the Army Corps of Engineers provided the college with that funding to conduct the research. And so we -- myself and my family history was told. That other family and their histories was told. And so basically, through that movement, we've got it
designated as a traditional cultural district for us people.

And the reason I bring that up is because whether it be a pipeline, whether it be a road, whether it be a transmission line, how many federal agencies or departments do consultations with tribes, provide resources for them to go out and do a one-year study on these areas before any actions are taken?

It's very important -- we let them know that this research, this process might take up to five years because a lot of times it's getting those elders to talk, to share their stories. It's a process. It's a trust. It's these steps you've got to take in our internal communities, that we got to deal with.

So I share that with you. As you look at framing your next meetings, think about these things, about our views, our relationship to place, and processes that were implemented that have not worked well for federal government, tribes, or any other entity that has some type of a, I guess, stake in the game.

The thing that we deal with now on the Blackfeet Reservation -- we're taking care of some of the big picture things. But we've started this Indian initiative. And the Indian initiative is to get
involvement from tribes in the United States and Canada.

We focused on confederated tribes first to do the initiative, to reintroduce bison back into the landscape. And when we took that initiative, the first ones that were supportive was the National Park Service. Even the Province of Alberta Parks and Recreation, their superintendent was on board after we set the parameters of it.

And so we had a treaty signing a couple years ago, on September 23rd, and that was to recognize the importance of that animal to the landscape as a wild animal. And how are we going to work with the state? How are we going to work with individuals? How are we going to work with federal agencies to ensure that this becomes a reality for this particular animal, this effort? So that's something we're continuing to work on. And that will be addressed back in D.C. on November 16th.

Then we bring it home to what we call "reservations." And that's one word that really bothers me. Because it defines exterior boundaries that we have to live within. And we set policies. We set guidelines. We set regulations to do activities and functions that are very -- some really are
challenging when we try to provide the very basic
services that our people need, such as water, such as
roads for access to the properties.

And sometimes we, as tribal governments -- my
foremen on the job have more restrictions, requirements
on us to do these activities than the federal
government does for their actions. So it's tough to be
in these positions, because we have many jurisdictions
to deal with, from individuals to counties to state.

And so one of the reasons I'm not going back
to D.C. for the 16th and 17th activities is because I'm
meeting with the Montana School of Law. And I'm going
to have some of the graduate students do some research
on how did easements get through our reservation
boundaries for -- with the state or for the railway or
for -- how did the town of Browning even become the
town of Browning? Who gave you that property?

How did we get these airports that were under
federal regulation when all of a sudden, when that
responsibility was passed on, why wasn't that property
forwarded on to the tribe to basically re-own? But it
was given to the county.

So these are things we'll be researching, and
I'll have students take the lead because we don't have
time to do it.
But I want to read this to you, some of the challenges we face. But from our historical perspective, from the activity that we worked with that we're seeing a little bit of fruition, success, be it a long-term investment and some of the challenges of lack of proper concentration and for those coming out to visit us and some of the things that we're dealing with at the local level today. So I just wanted to share that with you.

As you go back to your tables, to your peers, put some thought into who else should be at this table. Should we have NASA here? Should we have the Federal Communications Commission here and all of those players that have a potential impact from lack of consultation with tribes on our reservations? So thank you.

MR. TOULOU: Thank you. So next is Anderson Richard, a private archeologist from Northern Cheyenne.

MR. RICHARD: It's Andrew Richard.

MR. TOULOU: Okay.

MR. RICHARD: That's all right.

MR. TOULOU: I'm sorry.

MR. RICHARD: It's okay.

First of all, there's numerous problems with the consultation process. Four hours in a day for all of you people to come here and expect that you're
actually going to get anything out of it is -- your
expectations are not very high.

I'm a field archeologist for the Northern
Cheyenne. So I've worked CRM, cultural resource
management, which is how you guys determine eligibility
on these sites, how we work with SHIPOS and whatnot.

The problem with how we do 106 in this
country is based on archeology. But archeologists are
anthropologists in the beginning. So you're not taking
into consideration the cultural aspects and the
spiritual aspects of any of these tribes.

How many of you guys have been to college,
have been to consultation classes in the university?
How many of you? I'm asking you a question. Are you
going to raise -- any of you going to raise your hand?
Not a single one of you.

How can you decide these things? You don't
even have the knowledge, a basic knowledge of what
you're trying to do. Your intent is fine. It's a
great intent. But where is this going to go? You have
all these tribal leaders in here that have degrees.
You have Emerson Bull Chief, Dr. Emerson Bull Chief,
who is a THPO. Do you ever listen to what he actually
has to say to you?

I mean, ACHP has its own issues. Okay. So
there's times I go, "What are you even there for?"
Your policy -- you're supposed to talk to the president
and advise the president and advise the Congress. They
don't even listen to you. What are you there for?
So everything that we do is based on science.
But why is it based on science? Because this country
is white. That's why. It's based on racism. It's not
based on culture.

As an archeologist, I spend a lot of time in
the field. I spend a lot of time with my guys that I
train that are certified cultural resource specialists.
I know they're certified because I certified them.

But there's a huge disconnect between the
U.S. Government and the SHIPOS. The U.S. Government
says, "Oh, we're going to go to consultation, and we're
going to do this, this, and this." But in the end, the
SHIPOS decide what is eligible and what is not.

In North Dakota right now, if you have -- say
that this is the North Dakota SHIPOS. And this is --
this is the site. And you have an archeologist say,
"This is a site."

And they go, "Okay. That's a site."

But then you have the same thing going on
where the cultural resource specialist says, "Well,
this is a TCP. It's not just a site." You have --
that North Dakota SHIPO -- I don't know if you guys are
paying attention to the news at all -- but in Standing
Rock, these issues -- half the issues would go away if
the SHIPO would do their job.

Ethically, they're challenged because of
race. Look at the North Dakota SHIPO guidelines for
eligibility. The only ones that determine eligibility
are the SHIPO and the archeologists. It doesn't say
THPOs. It doesn't say Native input.

Last year I went to a TCC meeting, tribal
consultation meeting, in North Dakota. It's the first
one I've ever been to up here on the Northern Plains.
It's the first time that I was absolutely ashamed of my
profession as an archeologist. I'm not ashamed of my
work, because I know I'm good at what I do. I'm
arrogant enough to say that, and -- but I'm also
educated enough to say that.

You guys, how is this going to affect the
future? You're coming in as an administration that's
getting ready to leave. So are we ever going to see
you guys again? Do you have goals set? Are we going
to see you guys again?

MR. TOULOU: Just to respond, a number of us
are career. I'm career, and a lot of people at the
table. And just, you know, I'm taking in everything
you're in here saying. But there will be a report in this. It's quite extensive. And there will be actions that are delineated in that report.

    MR. RICHARD: Is there a timeline? Like, are you going to make these actions in 20 years? Five years? Ten years?

    MR. TOLOU: There -- the report will be --

    MR. RICHARD: And I don't mean to interrupt you --

    MR. TOLOU: Because, you know, I understand what you're saying.

    MR. RICHARD: And I don't mean to interrupt you. But you guys have, like, a couple hundred of years of experience in the government, a government that's suppressed these tribes for how long? You guys couldn't even tell me, because you're not educated enough to tell me that.

    It bothers me when someone says, "Oh, I've been doing this a long time, so that makes me good at it." Just because you've been doing something a long time doesn't make you good at it. It could make you repetitively horrible at what your job is.

    So Michael Black Wolf was talking about funding the THPOs, how the pie gets smaller and smaller. What that does is reduce the effectiveness of
THPOs across the country and eventually will make them irrelevant without funding.

But you guys get funding every year. You guys, all your funding gets increased every year.

No, it doesn't? No? Do you get a raise every year?

MR. BLACK: No.

MR. RICHARD: Do you get a raise every few years? Did you start as a GS-4, and now you're a GS-12 or whatever?

MR. BLACK: Many of us, we've worked our way through the system, yes.

MR. RICHARD: So that's an increase in funding.

MR. BLACK: I would assume similar to what you're talking --

MR. RICHARD: But I don't get paid what you guys get paid.

MR. BLACK: No. You've worked your way up.

MR. RICHARD: It wasn't given to me; that's for sure. But a lot of you are politically appointed as well. So I don't want to get into all that.

There's so much here that you guys can't change in 50 of these meetings. And until you start going through the guidelines of 106 step by step with
every single tribe and getting their opinions and asking them their opinion, nothing's going to change. This is a consultation. We're talking about consultations and how the process is to be fixed. But do you even know where to start? It doesn't seem like you guys know where to start.

I mean, you got this thing happening in North Dakota. Nobody's doing anything about it, it seems like. Not on the federal level. The Corps of Engineers -- who is here from the Corps of Engineers besides the guy in the uniform there?

(Several raise their hands.)

MR. RICHARD: So the Corps of Engineers, the process which you guys use for determining how important these sites are are determined by you. And you don't ask anybody. In --

Go ahead.

COL. HENDERSON: I was just going to say you've challenged us to make sure that we got the facts right and what we know. Before you talk about what the Corps of Engineers is or isn't doing in North Dakota, I would ask you to make sure you have your facts straight --

MR. RICHARD: Well, I'm not --

COL. HENDERSON: -- because we've done a lot.
And we have invited THPOs and tribal-appointed archeologists, and we've met several times and conducted several site visits.

    MR. RICHARD: And I understand that.

    COL. HENDERSON: So before you start calling everybody racist and we're not doing anything, I would just ask you to make sure you have your facts correct.

    MR. RICHARD: Well, like I said before, have you taken any classes in cultural anthropology?

    COL. HENDERSON: No. But I've a great team on the district level --

    MR. RICHARD: And I'm sure they are. And I think that's great. Okay. And you are trying to make the attempt to change things in a positive way. I can see that. A lot of us can here. But the attempt should have been made before this process ever started with that. And you guys know that. You guys have admitted as much.

    Department of Interior has admitted as much, too, because they agree with that. But you guys made mistakes. But who pays for those mistakes? When you got these guys like Vance, Steve Vance, Michael Black Wolf, and my boss, Teanna Limpy, you don't get punished for anything.

    If someone takes a tractor and runs through a
site and that site is right -- this is the one site that didn't get put into the database in North Dakota.

Okay. This TCP, this area here, that's a bunch of cairns didn't get put into there. Then it disappears and is gone forever. And you just affected someone's cultural identity. You can't do anything about it when it's gone. What are you going to do about it now?

We go to these meetings all the time, and we hear this (indicating). And things are checked. Boxes are checked. "Oh, we went to this meeting. We're good. We talked to them. We're good." You guys don't get it. Some of you do. Some of the changes you're making are positive.

But if you don't work together with the SHIPOs and the THPOs and look at that whole initializing consultation and actually look at it for what it is, as legal -- you know, legally and the steps that need to be followed -- there's times when I have projects that come across my desk.

BLM drops a project on me and says, "Hey. The CRM is already done on this. Can you guys send two guys out to look at it?" Why would we want to send two guys out to look at it if you determined what's going on? That's a little late.

Every one of these agencies do the same
thing. They send you reports. They all say the same thing. They all say the same thing. The first part starts out with Clovis. That whole section, you could take that and cut and paste it from one report to another, and it says the same damn thing.

You don't look at it from a cultural aspect. You look at it from a scientific aspect. And until you start looking at it from a cultural aspect, none of it's going to mean anything, not a single part of it. Most of what we do has already been predetermined before we even get to the table. Would you agree?

MR. TOULOU: So, you know, I understand what you're saying. I understand why you're angry, and I understand a lot of things have not gone right. I don't think any of us would be up here, particularly those of us who have made our career working in Indian country because we understand those issues.

Things happen. And, you know, we're representatives of the federal government, and we've got to take ownership. I'm not suggesting that we shouldn't. I'm not suggesting that you shouldn't be unhappy with what's going on. And I'm happy and I think we're all happy to listen to that, because every time we're here, we learn something new. And we could do better.
But what we would like -- and you're free to talk in any way you like, as anybody in this audience. You know, based on those bad things that have happened and your understanding of how they have worked out because of your training and the fact that you've dealt with this day in and day out for what seems to be quite a while -- is how we can do better in the future. And that's what we're trying to do here is not recreate those mistakes we've made in the past. Because we know we've made a few.

MR. RICHARD: And that's part of my point is in the future, is this really going to go anywhere? You want it to, but is it really going to go anywhere?

MR. TOULOU: We're going to do our damnedest to make it that way. You know, I can't guarantee the future, but I think that's --

MR. RICHARD: Can you be held accountable for that statement, that you say, "Yes, we're going to do something about it"?

MR. TOULOU: Well, I just said I could. And I think people who know me, and some people here do --

MR. RICHARD: Well, I don't know any of you.

MR. TOULOU: Then time will tell.

MR. RICHARD: It will tell.

MR. TOULOU: It will.
MR. RICHARD: Because we've worked with FCC, the Corps of Engineers, the BLM and go to meetings, and nothing happens. So if you're going to make something happen, then do so. And look at yourself in the mirror in the morning and say, "Yes, I'm actually making a difference." Every single one of you.

MR. TOULOU: Okay. I accept the challenge.

MR. RICHARD: Good.

MR. TOULOU: We'll see what happens, and we'll talk about it probably in a year or two, I'm sure.

MR. RICHARD: I hope it's not that long from now.

MR. TOULOU: No. I mean, we'll continue to talk. I mean, I don't think any of us who are sitting here -- I know Mike and I have been doing this for a long time, other people too -- expect to go away, and we don't expect these conversations to end. So, again, I understand what you're saying, and I appreciate the fact that you're outraged about some of it. You should be. But, again, what we'd like to see is how to make it better.

MR. RICHARD: And the last thing people want to hear is this is an evolving process, it's an ongoing process. That means that it's ongoing and it never has
an end to it and it never has -- by not having an end
to it, it doesn't have, "Hey, let's deal with this
challenge and then solve the problem and then move onto
the next one." It's not like that.

If it's an ever-evolving process, it's like a
jumble of crap that goes down the road, and that's what
we deal with every day.

You know, ancestral lands for the Northern
Cheyenne, do you know what they consist of?

MR. TOULOU: I'm sure you know better than I
do.

MR. RICHARD: Well, I would hope so. So
basically the Canadian border all the way down to
northern Texas and from the Rockies to basically the
Mississippi -- so every federal project that happens
within that area, we have to deal with. You guys deal
with one project at a time, most of the time.

MR. TOULOU: You know, and that's
something -- not to interject too much, because I
really want to listen. But that's something we've
heard, and I think that's a legitimate issue to raise,
that there are a lot of areas well beyond a reservation
boundary where tribes have had historic interest and
continue to have interests. And that needs to be
something we take into consideration.
Another thing I've heard -- I heard this in Phoenix -- is, you know, we expect tribes to comment on every one of these projects. And tribes have limited resources, and yet we expect them to be at the table at all of them. And I think that's completely legitimate, and I don't know that we'll be able to fix all of those. But until we identify problems --

MR. RICHARD: Great.

MR. TOULOU: -- and we can do some --

MR. RICHARD: Well, then good. Part of the problem is this, okay, and I'm sure you heard this before: If you have 30 consultation meetings in a month, how many are you going to go to as a THPO? So you're going here, and it's like a separation. When you separate people out, then not everybody's voice is heard.

So if you're dealing with all these overlapping consultations, which ones are you going to deal with? And then eventually, something is going to happen on a project that you didn't go to, and you're going to feel responsible for those things. You have to consolidate these meetings and have a schedule.

MR. TOULOU: And I think that's fair. And, you know, that's an excellent point. You know, part of the reason we have consultations is we don't
necessarily get this stuff, you know, internally.
You're right. We're out there. We're out there on the
ground with you.

But I don't know how to fix that. I'm hoping
you have ideas and people in the audience have ideas on
how we can think about fixing it. So you're right. I
hear what you're saying.

MR. RICHARD: And, you know, the thing is,
I'm hired by the Cheyenne as a tribal archeologist.
But I'm not Cheyenne. So their values and how they
deal with things -- I'm there to deal with things that
they can't deal with, like human rain, like getting
really pissed off at you and yelling at you. That's my
job. Okay.

I advocate for the tribe, but I also advocate
not only for the Cheyenne but for every other tribe out
there. It's not something that I just do and you go to
work from 7:00 to 5:00, where you live in conditions
that you normally wouldn't, in order to go to work
there. It's not something like that. It's kind of
like you have to be really dedicated to this.

And if you guys aren't as dedicated as the
rest of us here, then we're not going to solve
anything. You guys need to be as dedicated to this
subject as we are. You need to be invested in this.
Otherwise, it doesn't mean anything.

Somebody is going to replace you. But nobody is going to replace them. You guys need to understand that.

And you need to go, "Hey, this archaeological report, where is the report from the tribe? Where is their perspective on this?" You've heard this numerous times. Where is the tribal perspective in any of the reports that you guys -- whatever, you guys get these CRM companies to -- you hire them. Where is the cultural perspective? There isn't one. 'Cause you guys aren't asking. And that's one of the main problems with this process is that you don't ask.

When I go to an archaeological site and I do an excavation and there's someone there with me to monitor -- and I don't know what I'm working on necessarily all the time. Say I find something completely new. There's archeologists that will go, "Wow, I found this cool thing that's completely new," and they go run off to go record it.

But there's actually archeologists that will go, "Hey, what is this?" to the guy standing next to you. You guys -- if you don't see a cultural perspective, you're never going to get this. Never. You'll sit in your offices in Washington and go --
you'll do paperwork all day and not be able to truly understand.

You need to come to the field if you want to understand this. You need to come out to these projects. Put a pair of boots on, and come to the field. That's what you need to do. You need to go pick a project that's like Dabble [phonetic], where you have monitors that want to go out but can't. Just go to the field and see what happens. Watch the process from the very beginning.

Go to Fort Carson in Colorado to watch the CRM guys record a site and say, "There's tons of damage to the site by a tank." And on the other side, the report comes out, and the report says no damage. Because it's been filtered through so many different aspects of the government and the process that -- and it's internalized. It happens all the time.

You got bulldozers running over stuff in Wyoming all the time, you know, basically going through sites that they didn't even have a permit to go through. What's done about that? "Oh, here's a $4,000 fine." You're, like, a $20 million company. What's $4,000 mean? Are they held accountable? No. Is their permit pulled? No.

You guys need to give these guys some teeth.
The ACHP needs teeth. And you guys need to follow the
damn rules and follow the law. The law is there for a
reason, not for you to circumvent. And you need to sit
in the middle, between people, and not be on the side
of one or the other. You need to help those that need
the help and do your job.

All right. I'm done.

MR. TOULOU: Thank you. And I mean that.

So next is Emerson Bull Chief, the THPO from
Crow Tribe.

MR. BULL CHIEF: Like Andy said, it's Doctor.

No, just kidding.

I wanted to start off by -- I know there's so
much I could sit here and talk to you about, and I have
talked to some of you about a lot of the things I'm
going to discuss.

When we really think about what consultation
means, it's a regard for an opinion of who you're
consulting with. And a lot of times, that means
respect. Respect for -- you're going to have respect
for me, and I'm going to have respect for you.

And when you really think about that, when
you're asking for our opinion on consultation, you're
taking us to a site to look at, and we give you our
opinion about that site, according to our oral
traditions, our history. A lot of times, I always get a feeling of disregard, that it's just superstition, that you don't respect that part of it, that you don't respect my opinion, which you ask for in consultation.

So I think that to be able to fully understand this concept that -- somebody brought up science. Science is something that Native Americans practiced for thousands of years. I mean, look at corn. It's I don't know how many years of genetic engineering that was done to develop corn.

And we have this knowledge of the land. We have this knowledge that the environment that we develop our culture on gave us, and we practice that knowledge of the land. And we want that respect for you to believe us and trust us, what we tell you when you consult with us. That's one issue of consultation that I feel like is lacking.

A lot of times, we're not dealing directly with the federal agencies. I mean, I see some of the federal agency folks here that I work with in the field like Buck and Marcia. And we're out there with them on the ground, and they listen to us. We built friendships. We're friends. A lot of the people that are in the higher-up positions, we'll see you once in
the meeting, and that's it.

    I've had the opportunity to have -- to build
a relationship with Valerie and with ACHP. I've been
out to their offices and had lunch with them and just
talked. And that's where we build this trust with each
other. I mean, not that I don't want to not meet with
Buck anymore. Buck is a great guy. I love Buck.

    But, you know, there's a couple times with
Colonel Henderson that we've sat and talked for a
little bit, but never did we just go and have lunch and
just talk. You know, that never happens, not with the
people up in the higher-ups.

    So that's one thing that I would like to see
changed is trust building that's between the THPOs, the
people that are actually doing the regulatory work of
the National Historic Preservation Act within the
reservations, and the higher-ups. And we'll continue
the relationships with the field people, because that
part will never end.

    Another thing that I feel like needs to
change is this whole idea that -- every federal agency
is different. Every tribe is different as well. But
tribes have been given this mandate -- or not given;
we've required the mandate of being National Historic
Preservation offices or, you know, the offices.
But all the federal agencies, they all practice consultation, and they all have their own different interpretations. If we can find a way to uniform those regulatory processes of 106 consultation and have that input from the tribes into that and come up with an agreement, I think it will be more powerful. I think it will be -- will make everybody happy, for one. I mean, the tribes will definitely be happy if we...

I'm sorry to keep beating up on the Army Corps. But for instance, we have the nationwide permit system that I feel like a lot of times excludes the consultation with the tribes.

This Appendix C excludes the consultation with the tribes. I go through it. I mean, I'm sitting here, reading through. I don't know. Have you guys read this document? A lot of it is decision-making by Army Corps of Engineers, the -- what do they call it, the master engineer. Is that --

MS. HAUSER: District engineer.

MR. BULL CHIEF: District engineer. He makes a decision on site and then shares it with the SHIPO. There's consultation later on. But that initial decision-making process should include the tribes, and that's lacking. And that's the whole situation.
Like, combining Appendix C and nationwide permits, that's why this whole thing in North Dakota got out of hand. And it is out of hand. Have you guys been out there? It's mind-blowing. I never went out there to protest because I'm in a regulatory office for my tribe, so it's not my place to go protest. But we got invited to a meeting last week, on the 27th, when all hell broke loose.

And we were sitting there, just discussing being able to work together as tribes, and then all of a sudden, we start getting reports that they're going to dismantle the north camp. And all of us, we said, "Well, let's go check on our folks that are out there. Let's go see what's going on."

And to see that a majority of the tribal leaders that were there -- actually, most of the tribal folks were just standing in a circle, singing and praying. There was a few people that were kind of looking at the military folks and walking around. But the majority was just praying.

And there was no weapons. I looked around. I seen it with my own eyes. They didn't have weapons. And to see this militarized force standing there, waiting to bust heads with their batons, it was emotional. It was hard. So my heart has been there
since then.

And I think that a lot of that could have been avoided. I mean, this is now. Everything that's happened up to this point is in the past. Me, as a tribal historic preservation officer, is always looking to the future. How can I work with you? How can you work with me? I'm always willing to offer that respect to you.

And I'm open to any suggestions. I'm open to meeting once a month. I mean, whatever I can do to help develop this process where all federal agencies are in line with each other and all the tribes are in line with that process, I'm willing to hang my hat on that.

So, anyway, I don't want to take too much time. I know we're getting close to lunchtime. And I think there's probably a few more people that want to talk from the Crow Tribe's standpoint. I think he'll talk later a little bit about some written comments that are going to be written from the tribe. But anyway, thank you.

MR. TOULOU: Thank you.

COL. HENDERSON: I accept your invitation for lunch.

MR. BULL CHIEF: You buying?
MR. TOULOU: Can we get John Eagle, the THPO.

MR. EAGLE: You know, one of the challenges to having the English name John is that when you walk in a crowd and someone says, "John," about 20 people turn around. But I have to correct your pronunciation on my last name, because I'm proud of my last name. And my last name is Eagle.

MR. TOULOU: I'm sorry.

MR. EAGLE: And I'm a descendant of the [Native speaking], one That Walked Dressed As Eagle. That's where my last name comes from. So I, too, feel awkward that I'm having to turn my back on our people here and my relatives. So I'm going to take this opportunity to say that even how the room is set up can affect meaningful consultation.

[Native speaking]

The reason why I introduce myself to you like that is my relative here put this into my head at a consultation meeting. In North Dakota, which really should be a model on how consultations occur -- and that's North Dakota DOT and the tribal consultation committees that occur in North Dakota -- where we're coming into a room where any question that we ask, that experts are sitting in the room with us that can answer it right then and there.
But I want to show you something. Because he put that into my head. This is my tribal ID. I know you can't read it, and that's not important. But what is important is that it says Standing Rock Sioux Tribe. We didn't name ourselves that. The United States Government named us that. And on here is my enrollment number, and the first three numbers in my enrollment number is the POW camp that I come from, which is POW Camp 302, founded in the late 1800s.

But as tribal people, we have to quit allowing United States Government and mainstream society to define who we are, which is why I introduced myself to you in my language. Because that's the original language of this land.

And we still have that cultural knowledge and in our stories and winter accounts to say that for us, the Oceti Sakowin, which United States Government knows as the Great Sioux Nation, our ancestral homelands extend as far west as Wyoming and Montana and as far north as Canadian bush country and as far east as the Great Lakes and as far south as Kansas.

It took me nine hours to get here, and not once did I leave my ancestral homelands. But that's the problem that we, as tribal people, have impressing the federal agencies and proponents and getting in
consultation. And I mean no disrespect to our relatives that are here, because we acknowledge and appreciate that within those ancestral homelands, there are many tribal nations that thrive in that land. But that's what mainstream society doesn't understand.

The other thing is that I think that we have this opportunity to redefine consultation. Because in my opinion, I came here to support my relatives in Montana because they came to stand with us in Standing Rock. And I came here because I said government-to-government consultation -- I wanted to shake hands with the president because I never shook hands with the president before.

And in my mind, as a sovereign nation, government to government should be between our leaders. So my chairman and that councilman that spoke here is at a level of Congress as the president. So the problem that we often get to within consultations is we're sitting with people that aren't the decision-makers.

And the problem with that is we pour our hearts out; right? We pour our hearts out to these people that really care, that are real sincere. But there is no possible way for them to take that forward to the decision-makers. There really is no proper way
for them to speak to our needs. Because without us being at the table, you should never talk about us without us.

The other thing, too, is in terms of government-to-government consultation, we're interpreting this as a first step. So in our minds, this isn't the government-to-government consultation. Because if you're not within my homelands, you're not on Standing Rock, speaking in front of my entire council -- and that's what government-to-government consultation really should be.

Because then it allows us, as tribal nations, to share truly who we really are. And what you're going to find if you accept that invite -- so, Colonel, I want to go with you when you go with Emerson to go eat.

What you're going to find when you accept that invite from us is a beautiful, vibrant culture that's still alive today. Oftentimes, we're looked upon as if we're something from the past. But we're still here. And you can pinch me if you want. I am real. I'm not a projection.

But therein lies the problem in consultation. Because unfortunately, our narrative lies in the hands of the state SHIPOs and archeologists. And if you
really think about anthropology and archeology -- and I learned this from the Plains Anthropological Society -- is Native American language and our oral histories and our spiritual knowledge should be the database to American anthropology and American archeology.

The colonel -- when we did that walk-through, we were walking with Congressman Kramer. Congressman Kramer asked kind of a no-brainer question of me. He said, "Should SHIPOS be encouraged to work more closely with tribes?" Yes.

And he said, "Should PSC -- the Public Service Commission in North Dakota -- be encouraged to work more closely with tribes?" Yes.

And then the colonel and I start talking about that law, 106B, which allows us to attach religious and cultural significance to a site within our ancestral homelands. But unfortunately, that law reads, "Federal agencies may consult with tribes."

What I'm here to ask for is that legislative change be to, "Federal agencies shall consult with tribes."

Because you have to remember, if you look at national news and national media, we know that unfortunately, ISIS, when they moved into Mesopotamia and these ancient places in the world, went in and started destroying sacred places, started destroying
the ancient sites.

    What went through my mind when I started seeing those new reports is that once those places are gone, they're gone forever. And that's part of our collective history. But unfortunately, it's happening right here in this country each and every day. But once those places are gone, they're gone forever.

    See, within our spiritual view, that land has an energy to it. That land has a spirit to it. That water that you have sitting in front of you, that has a spirit to it. [Native speaking] in my language, which may translate to [Native speaking]. We translate as spirit, but it's much more than that. It's a spiritual essence of everything in creation. So when man changes the land, it's changed forever. And that's why we fight so hard to protect these sacred places.

    Because my wife -- I should have brought it today just as an example. But my wife beaded me this beautiful medallion that I wear with pride because she put all of her love and her spirit into this for me. And on it is a ledger horse and some things of religious and cultural significance to me.

    And if I was to show it to you and ask you, "Can you tell me the religious and cultural significance this has for me?" I literally would be
setting you up because there's no possible way for you
to do that unless we have a conversation with each
other.

And that's what's happening at these sites.
And we get locked out of these sites because they're on
private land. And you got to remember, it took me nine
hours to get here when I left the exterior boundaries
of Standing Rock, but I never left my ancestral
homelands.

And the importance of consultation for us is
to be able to assert ourselves. I really think that.
And this is going to be a long shot. You know, I
didn't come here to ask for what I hope you're going to
give me. I came here to ask for what I really want.
And I want signatory authority within my ancestral
homelands, if not for the THPOs, at least for the
tribes.

And those MOAs go out, where there's required
signatures. Those projects, infrastructure projects
going through ancestral homelands, the tribes should be
afforded that respect of signatory authority. Because
keep in mind, my job as a THPO isn't to stop projects.
My job is to look at historic properties, assess
adverse effect on those properties, and then to
mitigate those adverse effects if there are any.
But if you don't give us that chance to do that, I can't explain to you the pain that it feels to us. And those actions that are occurring in North Dakota, I'm glad to hear my brother speak to those. Because I served in the United States Army. In fact, I was joking around with Colonel Henderson at the end of last week because that was the first time I ever shook hands with a colonel because you used to have to salute them.

But I never thought I'd see a day that that brotherhood that I proudly served with would ever be used against my people. And that's what we witnessed October 27th. And it was a sad day. There were a lot of veterans down there on the lines that couldn't do anything to protect our people.

And many of us cried afterwards. But we had to create that place for each other because we never want to put fear in the hearts of our women and our children. So as men, we gathered, and we prayed, and we talked about it, and we cried. That's how painful that was to watch.

History is going to repeat itself if we don't do something about this. And you have to look back at the history the United States Government has had with our people, and we get to this point where there's
conflict. We can diffuse that. We can change it. We can create such positive, strong, and strength-based relationships with each other.

But when you come into our traditional homelands, all those things that you were curious about that you're not ever going to find on Google, that Kevin Costner, I don't care how many movies he makes, he's never going to be able to properly address, all those things that are in your history books, it's alive in each and every one of us out here, because those things have been passed down from generation to generation.

So I can go to a site that's 5,000 years old and look at it. And based upon how I live my life today, I can tell you what's there. And every single one of these THPOs sitting out here, to include the people that they represent, have that ability. Because it's in our oral histories. It's in our sacred knowledge.

Keep in mind that there's an unfortunate unbalance here where -- and I'm not picking on you, Colonel, but I'm going to pick on the Corps. That Appendix C that Emerson brought up, you need to look at that.

And you need to take a look at that because
how we're interpreting it is that it allows the Army
Corpsmen nearest to circumvent their requirements,
under not only NHPA, to take full environmental impact
statements on those projects, but also on their
compliance of Section 106.

Also keep in mind the application of
Nationwide 12 Permits which was applied to the Dakota
Access pipeline, you know, 1,100 miles of pipe. It
narrowed their review to just the water crossings. And
it also, again, circumvented, unfortunately, Section
106 and the NHPA process.

It also created adversarial relationships
where there was no requirement for them to consult with
tribes. And when the Corps of Engineers -- again, I'm
not picking on the colonel here. But when the Corps of
Engineers issued that statement and all the historical
properties affected, not once were we ever on the
ground with them.

Not once -- in fact, it wasn't until that was
issued that my office actually got the 2015 emergent
cultural resources survey. So I never even got a
chance to look at the survey and say, "There's
something wrong here."

We can change that. We can fix that. And I
believe this colonel to be a good person. I see the
compassion in his face. I see the pain in his face and the point that he's in because these decision-makers, responsibilities.

Every single one of us in this room are where we wanted to be. So now we have to have that courage to lead. And sometimes that's going to be painful. Because in order to have the courage to lead, sometimes we have to turn around and look at the people that we're leading, that infrastructure, and say, "Something needs to change here."

So we want consultation at the front, prior to any decisions being made. We want to be sitting with the decision-makers; not the middle people. We want you to value our opinions. But unfortunately, we don't feel like that's happening.

We also want government-to-government -- and there's a very clear distinction between government-to-government consultation and Section 106 consultation. A lot of times, they kind of get mixed up with each other. We want government-to-government consultation to occur with each and every individual tribe on our homeland so we can show you the beauty of who we really are.

And as a THPO, when I first came into the office and I went into a consultation, I saw the
tension in there by the federal agencies as soon as the
THPOs walked in. I said, "That's what needs to
change." Because if you get to know me, you're going
to hug me. I guarantee it. Right?
(Laughter.)

MS. HAUSER: I do.

MR. EAGLE: And I know it has something to do
with being cute and chubby.
(Laughter.)

MR. EAGLE: But it also has something to do
with honesty, with integrity, with courage, with
fortitude, with humility, with prayer. It has to do
with all of that. So what I said to you in my language
when I start talking was I addressed each and every one
of you as my relatives. And I said, "Today I greet
each and every one of you with a heartfelt handshake."
And the reason why the beauty and wisdom of
my ancestors in addressing each other like this so,
that as good relatives, we're going to listen to each
other. And if we can approach each other like that --
keep in mind, you have siblings. You have family. I
guarantee you, at some point in your life, you fought
with your siblings, fought with your family.

But because you were family, you always had
that to fall back on. And that's what we're going to
create. We can approach other with this in meaningful
consultation where our opinions are truly looked at.

Now, be careful, because I'm a horseman. And
like a lot of them too. So because I'm a horseman, you
can't lie to me, because I read body language. Horses
are almost hundred percent nonverbal communicators, and
I never heard them go (indicating). Ninety-three of
our communication is nonverbal. So when we get into
consultation, your body language says a lot to us. So
that's just a caution to you.

So I appreciate this today. I actually meant
to just come here and support my relative, so I
apologize for taking any time from them. [Native
speaking].

MR. TOULOU: Thank you very much. You know,
we've got a couple more people signed up. I'm going to
take five minutes here and give everybody a break and
also see if there's anybody else we need on the list.
So let's take five minutes. If you're not on the list,
talk briefly at the table back there if you want to be
on.

I've got Teanna Limpy from Northern Cheyenne
and Devin Oldman. There may be other people. 11:56.

(Recess taken 11:56 a.m. to 12:07
p.m., November 2, 2016)
MR. TOULOU: Next speaker is Teanna.

MS. LIMPY: My name is Teanna Limpy, Northern Cheyenne THPO. My family know me as [Native speaking]. I was just thinking about how my predecessors as THPOs had a difficult time with federal agencies. 'Cause my mom used to work for our THPO program. And when I was in high school, I would go over there, and I'd, you know, see them arguing. And I thought, "Maybe when I graduate college, I'll go back, and it will change."

And this one year that I've been the THPO, I've seen a lot of change. But a lot of things are still the same. And I was thinking about how our government and our THPO, how they're always tied, seems like their hands are always tied.

And they look to federal agencies to assist them in protecting what's ours. And I know that we always push for involvement and participation. And that's something that I'm asking you guys to consider is involve tribes from the beginning.

Let us go participate in field surveys so we can identify a lot of things before there's frustration and anger and nothing gets done. And, you know, just decrease the tensions and animosity that can occur from things like that happening.

And I was just thinking about how agencies
and their applicant team, they answer to the agencies. And when, you know, intentional things that are done, especially like what's going on with THPO, you know, we have these federal agencies that have power telling them, "You can't be doing these things."

Maybe we should write a law that says that if you do something wrong, hold them accountable for something. If they're held accountable, they'll step back and realize they have to work with tribes. And I think that's one step that can be taken moving forward here. And that's just my little bit. Because my main concern right now is, you know, what's going to happen next with the Dakota Access pipeline.

The Cheyenne people, I'm here now, in this place, in Billings. But at Standing Rock, we have Cheyenne Sioux there, our ancestral homelands. What's going to happen in the next coming days? If our site is destroyed, what -- you can't be held accountable? They haven't already.

So, you know, that's what I encourage: Involvement, participation, and being held accountable for actions and helping us work within the statute or framework that exists now. So thank you.

(Applause.)

MR. TOULOU: Next is Devin Oldman, the tribal
historic preservation officer of Northern Arapaho. And I think he's going to be joined by Ryan Spoonhunter.

MR. OLDMAN: I'd like to say good afternoon to all my colleagues in the room. I see a lot of tribes, federal agencies, familiar people. Thank you for allowing me to be here and voice our tribe's concerns.

One of the problems that we have today with, I guess you would say, the federal agencies and the states, mine would be their definition of meaningful consultation. Now, what that means to me is, like Emerson was saying, everybody's opinion is heard and is taken into account with the absolute most seriousness.

There has to come a time where us as tribes, we have to shift the burden of consultation to federal agencies. Because right now, it's on the tribes. Most of the time we have to pay for our own travel. We have to pay for our own cultural resource specialist to go out and do site visits. So funding is an issue there.

One of the things we'd like to see would be an extension on the 30-day comment period. Because sometimes when we get a letter, it goes to our tribal chambers. And from there, we get it. And it's already 15 days into the process. So that's one of the things we'd like to see. Or if there's a grace period for
tribes to comment, even maybe 60, 90 days to take their comments into consideration.

One of the things we'd also like to see is maybe stricter penalties for violations for federal agencies that aren't in compliance with the NHPA, that aren't following through proper consultation measures. Because too many times, what happens -- and we're in Wyoming, right? So what happens most of the time is we get to the consultation, and the federal agency, the lead federal agency, and the proponent have already had under-the-table communications.

So when we get there, it's like the decision has already been made. And this is basically the situation that plays out. "Okay, we have project A. We have company B. They're going to be doing this, and this is how it's going to happen, and this is what we have."

When we get there, it's like a decision has been made. It's been predetermined before we get there. And that's what needs to change. We need to be included in the very beginning, as soon as the application is submitted. And we need to be consulted on that, and the proponent needs to be there with the decision-makers.

Because right now, we're not in a negotiation
position. We don't really get to negotiate, tribes don't. Any fair business ventures, stakeholders, you know, they get together, and they negotiate. And, you know, not everybody walks away from the table happy. You know, but they get what they want out of it.

And that's where tribes need to be is in that stakeholder position, because right now we're not treated as such. Some states are a lot better. Some federal agencies are a lot better. But most federal agencies aren't. And that's basically what needs to change.

And one of the things that we'd like to see would be, I guess -- I don't know how open every tribe is in here or federal agencies to this -- but a broad policy on what consultation is and how to carry it out, instead of implementing individual policies, so when we go to federal agencies, we're not confused as to what those guidelines are. Because most of the time, they're not clarified.

And that also falls into if that's not possible, we need better clarification as to what your policies are rather than getting, you know, an RMP. You know, because currently, you know, you read one of those, and it's this big, you know. And I have a stack of mail on my desk this big I have to go back and reply
to and read through. So, I mean, that goes back to shifting the burden to the federal agencies. And that's kind of basically all I have. You know, all we want, you know, is our sacred sites and our sacred objects left alone. And if they've been taken, we want them back in the ground or back to the proper people to handle them. And also we want a cleaner environment for our children and their children and their children to live in.

And I'm a third generation. And our tribe was based on the Wind River Indian Reservation. And there's some areas on our reservation that you can't really drink the water because it's contaminated with uranium. You know, that's the problem. That's unprecedented.

And also, some places, you can light the water out of the faucet, you know, and that's from improper consultation on the reservation. That's our trust land. And I don't want to see that happen anywhere in the U.S. Nobody deserves to live in an environment like that.

My grandmother died from cancer because we lived right in that radiation plume where the watershed was coming through. That's where she grew up, and she died from cancer, and that's what they said it was
from.

So basically that's all I have. I just want to say thank you to everybody who put forth their opinions and concerns. And I'll pass it on to my next councilman.

MR. TOULOU: Thank you.

MR. SPOONHUNTER: Good morning. My name is Ryan Spoonhunter. I represent the Northern Arapahoe Tribe. I am a member of the business council. I was -- showed up here on short notice. I just wanted to make a few comments.

I'm sure somebody here writes the budget for THPOs and all of that. I just want to make a comment. If you guys could maybe write a little more money for these guys. There's a lot of work that needs to be done on your part, I know on the tribe's part.

I wasn't really ready to speak on behalf of -- you know, I just want to applaud everybody for all of their comments and, you know, where they are going with all of this. And my comments were, you know, this is our country, all of us together.

There's state historical. There's federal historical. And nobody bothers those sites in any state. You know, it's got a lot of respect for the state, for the country. We're just asking for that
same respect for our tribal sacred sites, ceremonial sites, things like that.

I just want to make a comment to the pipeline in North Dakota, Colonel. Arlington Cemetery. "I am an oil giant. I'm not going to pay a hundred million dollars to go around it. I want to go through it."

Are you going to let that happen? Probably not.

We're just asking for that same respect for our sites, for our way of life. We're all humans here. I wouldn't go by somebody's property and remove gravesites or anything like that or, you know, something important to the government that took place there. Say it's an old battle site or something and they don't want it bothered. I'm not going to bother it. I have that respect.

And so just to sum it up, I would just like to ask for more funding for THPOs and SHIPOs and, you know, all of this going on. And I just wanted to ask you guys for that respect for all of our peoples across the country here. Because they do a lot of hard work. And, you know, it's just sad to hear all of the things that go on. And I just want you to have more respect for everyone.

That's all I had. And, again, I want to thank everybody for being here and for all of their
concerns for all of our peoples. Our country is
growing. We're running out of space. You know, I know
that's happening. And it's progress. But just try to
look out for one another. Thank you.

MR. TOULOU: Thank you.

Okay. And now Robert Howe from the Crow
Tribe.

MR. HOWE: Hello, everybody. This morning, I
was called out of bed at 9:30. And my boss said, "Get
over there." And here I am. But he felt I had to make
this statement. We have a very able person in Emerson
there, who was leading the charge in the operational
activities as far as NAGPRA and THPO rules. But I'd
like to make a little comment about the policy
positions of the tribe so that we can continue to have
good activities that Emerson has so ably administered.

I started in the Indian business in 1945. I
was born in 1945. But my dad, who was a half-breed --
he's half Irish -- and he says, "Your Indian business
didn't start in 1945. It started back in the 1600s
when the English men came to these shores. Because my
ancestors came on the boats from there." But I'd like
to refer to 1945 as the start of my Indian activities.

I attended Flandreau, South Dakota, Pierre,
South Dakota, schools and high school in Kansas. And I
also worked in the old Indian Health Service, which was based in Silver Spring, Maryland. When they moved to Bethesda, I was part of the people that -- corps that made the move. And being Indian, I had to carry the desks on my back, and somebody had to crack the whip. I kid you.

You know, one of the comments that kind of caught my eye was Mr. Eagle. I'd like to expound on that a little bit. But I need to get approval from my boss, the Crow Tribe chairman, Darrin Old Coyote.

He said something about the signature authority. That's so evident in any government, in any society. You have to be sovereign. I hate to use that word, "sovereign." But we need to decide for ourselves how we want to use those resources. Therein lies part of the problem.

Because when I started in the Indian business, I think we kind of lost sight of what the Indian tribes are. And I'd like to just make a comment on that. Because this is our basis of what we're trying to develop now.

Two years ago, we had the privilege of meeting with Anna Naimark with the Office of Management and Budget. And she was at Crow agency, along with the Department of Interior business officer, the top
person. I forget his name.

    And we had talked about how the tribe would like to move forward from here. And we had indicated to her we always were of the opinion that we had qualified people that could use our own resources to determine our future. And we talked about establishing a model which kind of, oh, was similar to Euro capitalism. Capitalism isn't fully practiced anymore. I think it's a mixed system anymore, that social whatever.

    But we talked about that, using that system on the Crow Indian Reservation. And she was pretty surprised at that. And she thought that we were a part of the United States. And we had told her that, "We don't have a formal economic system in place because we were under yours."

    So when we do our business, we have to go to Billings, Hardin to do our banking. And all our money is stashed away in somebody else's bank. So you can see, just in a nutshell, that doing business -- boy, my legs are shaking. I don't know. It must be Jamie here, on the end here.

    But, what we're attempting to do is to go back to the United States Constitution so that everybody -- that means the states, foreign countries,
United States Government, going back to the commerce clause. Like Mr. Khan said over TV, somebody needed to read the Constitution. Well, I sure went back.

And in there, it says that there's three entities that the United States works with. One of them is foreign countries. The other is the state governments, states. And the third way, our Indian tribes. States have their activities all outlined in the Constitution. So their relationship with foreign countries.

But Indian tribes, I think we kind of lost our way of defining who they are. And it's no wonder that we have a lot of resources -- if we used the Constitution, that we'd be in a position to provide or use our resources to provide and become a part of the region, the national United States Government or not.

You know, when you talk about Indian tribes, most of us talk about poverty. We talk about resources leaving the reservation. They're being secured, extracted from our reservation, taken off the reservation, and they start changing the form of those resources so that they can use products which can be sold out there.

But the value of those resources out there that are produced are never ever put into the accounts
of the tribes. Hence, a GDP, if you will. Because we
do have a people that, for example, can extract oil out
of the ground. We have the people that can look for it
on an exploration level. And then they can start
putting in the wells and pull out the crude oil and
build the pipelines to go to the refineries.

And that's the mentality of the Crow Indians
today is to do everything ourselves. And according to
the World Bank, they call that income that comes in
import substitution. But we come and ask ourselves,
"Wait a minute. These are our resources. If we
produce products from them, we should be exporting and
not, you know, substituting imports."

So we'd like to get to that point as quickly
as we can. So getting back to the United States
Constitution is very important.

The second thing is taxation, the
appropriations clause. We don't have a tax base. Why?
I don't know. We keep asking the federales, or the
federal people. Excuse me. At Indian school, we refer
to you as federales, because they have stogie pens,
stogie shoes, whatever.

But I think we have to go back to the United
States Constitution and redefine what a tribe is. They
should be able to establish an economic framework that
would allow them to use their resources for themselves so that their standard of living is improved and quality of life is improved.

Instead of looking at them as something different and, "How in the heck are we going to help them out by giving them, you know, 638 funds or grants and contracts and piecemeal them to death?" why not generate the kind of income or revenue that should be generated so that they can have income for the households, income for the government, and income for the businesses?

So the framework that needs to be done to reestablish so that there's economic growth on the Indian reservation by itself is relegated to the Crow Indians, who have their own language, their own territory, and their own values.

And if we don't use those, we probably will never get out of this quandary of somebody coming in, getting our resources, taking them out. And they'll never see the economic growth on the part of the Indian tribes.

And I'm going to stop there. Because when we talked to Anna Naimark in 2014, we developed a model that she would like for us to have center -- we're still working on it, and we do want to give that to her
or to the consultation people.

    I've never met you. I've heard about consultations. But according to the people that I work with, we'd rather be our own consultation people and will tell you what we would need rather than sitting down like this. We'd give you the full extent of how we would run the reservation, our resources, which includes land, labor. And we would sure be interested in controlling our own man-made products.

    And we have a lot of entrepreneurs that would like to use our resources and keep the wealth home and to keep the money home, circulated so that there is economic growth. Well, it's not there.

    And I think it's incumbent on you guys, who are close to the United State Constitution, because the President of the United States is held to the idea of upholding the United States Constitution. And by the way, he's my son, the President of the United States. The guy who adopted him was my brother. And his Indian name was Black Eagle. That's my brother's last name, Black Eagle.

    And so -- which brings up another point. He's not going to be in office for too much longer. Are we looking at going beyond January with this group here? And we're always faced with the ideas of both
houses of Congress and the executive committee not seeing eye to eye. So we're always wondering what's going to go on.

So it's rather important that we make our own decisions, that you see us that way, instead of having the Bureau of Indian Affairs or some other federal agency coming up with all these standards and terms of what we should be doing. I think it should be up to us to make all those decisions for ourselves. And then I don't know if you guys are going to be around to see the outcome of today. But we're sure going to try, though. So we'll reserve the written comments.

And I don't know, do we have a deadline for that? By the way, we have a good law enforcement guy over there. But there's only 8 of them, and we need about 40 more of him.

So we'd rather take a stab at what we'd like to do and put it all on paper, our own laws, our own regulations, before somebody else tells us how to write our regulations. And I think that's really very important.

In closing, about five years ago, I attended a meeting in Washington. And one of the powers to be indicated that they were getting a lot of the Indian business and that the Bureau of Indian Affairs --
don't know, Mr. Black. You might know this. But they were talking about the Bureau of Indian Affairs slowly getting out of the picture by the year 2017 at the time. It was a discussion piece. But it was prevalent.

And we all thought, when we came back home, maybe it's because of the latest problem we have with the trust relationship, the fight we had. And so it goes. So we're still in a quandary. We don't know who we are. We don't know how to see. But leave it up to the Indians. Leave it up to the different governments. Let them decide.

You might have to get the FBI to help you get all the paperwork together. But I think that that would be a good place to start. Let the Indian tribes -- instead of solving them, let them have a stab at it.

The Crow Tribe has millions of dollars in somebody else's bank. And those banks are making money on our money, either through loans or investment securities. We would like to have a stab at that. And that would give us the basis to start making decisions for ourselves.

And I don't know why, but when you talk about taxation in Indian country, it gets to be a big old
fight. We merely want to take care of the federal
highways that are on the reservation, the state
highways, the Bureau of Indian Affairs highways, part
of the federal highways. We would like to control that
for our own commerce and trade.

If we don't do that, we're derelict in our
duty. We're not allowing us to freely do our work.
And we also know that the proper type of infrastructure
would do wonders for the standard of living for the
Crow Indians. It would help the poverty levels on the
reservation. If we started controlling our own
resources, we can do that.

One more thing. Crow Indians -- and I think
the other tribes are -- we're landowners. The rest of
the United States, you're busy with labor development.
But on the Indian reservation, we own land as
individuals, as a part of the tribal group. So we're
landowners. Therein lies the natural resources that
are needed to start producing products.

So we have to look at it from that
standpoint. And we can develop our own rules and
regulations, our own laws to protect our own land, our
own rights. Public safety. We can do a good job. We
just want to be on an equal footing with the states,
foreign countries so that when the Federal Government
does its commerce activities, we sure would like to have a stab at our own intrastate commerce so that we can stay within their laws as well as our laws.

We do want to provide to the region. We haven't been given that chance. And I like that young gentleman's idea. Signature authority. Why not? You know, Crows have resources for their enrollment. A lot of us have migrated out of the reservation because the resources are taken out. And no taxes are coming back. Transfer payments are coming in. What a way to run a government.

And I was telling Mr. Black that in 2015, at Haskell, Sally Jewell made the statement that we are now getting out of the philosophy of assimilation and going into self-governance. What does that mean? I don't know.

Are we going to get into that without -- we have funding. We're not asking for federal funds, because they come in disjointed. We have our own money. We have our own capabilities. We have our own resources. We can generate our own revenue.

So we're working on that. So we'd like to reserve -- we still want to talk to Anna Naimark as a point of contact.

MR. TOULOU: So for purposes --
MR. HOWE: We'd like to reserve the paperwork for that. I don't know what the deadline is.

MR. TOULOU: I was going to say, for purposes of this consultation, we'd like to get comments -- and it's in the "Dear Tribal Leader" letter -- on November 30th of this year.

MR. HOWE: Okay. Thank you.

MR. TOULOU: Thanks. Thank you.

So I think this is everybody who was on the list. We're past 12:30. And some of us are going to -- yes.

MR. VOGEL: Matthew Vogel. Usually I don't speak. And I apologize to the elders in the room that I'm speaking before. But I was asked by my chairman to bring this to your attention and specifically to Colonel Henderson.

Happening as we speak, their protectors are crossing the Little Heart River to get to the west bank of the Missouri River. In doing so, crossing that river, we have firsthand accounts. Chairman Frazier has told me that the Morton County Sheriff's Department is giving verbal warnings that if they cross that river onto Corps land, that they will be arrested for trespassing.

So my question to you, from Chairman Frazier,
is, who has jurisdiction on Corps land, Colonel?

COL. HENDERSON: The U.S. marshals. On Corps
of Engineer land, for federal laws, for federal
citations under Title 36, the U.S. marshals have that
jurisdiction. For any state and local laws which are
violated on federal land, the state and local
authorities have that jurisdiction.

MR. VOGEL: So my question is, under those
authorities, this gives the Morton County Sheriff's
Department authority to Mace and shoot our people with
these nonlethal rounds; is that correct?

COL. HENDERSON: So --

MR. VOGEL: Which is happening right now.

COL. HENDERSON: That's a big leap of logic.
I don't know what's happening out there right now. But
I'd be happy to discuss offline. This is a very
specific issue, referenced what's happening today.

MR. VOGEL: Yeah. I mean, we've got reports
that, you know, these nonlethal rounds have caused --
at least our tribal members have been reporting to our
tribal chairman that they have been shot with nonlethal
rounds but yet now they are now coughing up blood from
their lungs. And the chairman takes it very seriously.

And, you know, he wanted me to ask everyone
on the panel why we are still having these things
happen, why no federal agency, which we were always
told was the law of the land -- step in over some of
these Corps land issues.

   COL. HENDERSON: So you're with the Cheyenne
tribe?

   MR. VOGEL: Cheyenne River Sioux Tribe.

   COL. HENDERSON: Cheyenne River Sioux Tribe.

   So I talked with Chairman Frazier about two
hours ago over this, and I have a face-to-face meeting
with him tomorrow. Our concern is just to ensure that
everybody remains safe.

   And we're trying to protect the life, health,
and safety of those who are peacefully protesting, of
the law enforcement folks that are on-site, and the
construction workers who are working in the area. So
that is our chief concern as leaders, as tribal
leaders, and Corps of Engineer leaders.

   Building a legal bridge, an unsafe bridge,
across the water to access land to evoke a
confrontation with law enforcement, it's not peaceful,
it's not prayerful, it's not safe for anybody involved.

   MR. TOULOU: I've been getting texts from the
chairman as this was going on. I didn't respond
because I felt I owed everybody my attention. I know
we have people on the ground. I don't know what the
facts are, but we need to reach out to them and find
out what's going.

But unfortunately, it's not a place that we,
sitting here in Billings, can comment on what's going
on in North Dakota. But I know the colonel and I will
reach out to our people on the ground. And I'm sure
Mr. Black will reach out to Bureau of Indian Affairs
personnel. And we'll try to figure out what's going
on. Nobody wants anybody to get hurt. And I
understand. I understand.

MR. VOGEL: Well, I just want to say, you
know, we've come so far with the Indian Religious
Freedom Act, all the work that's been done, all the
past wrongs that we've been trying to right here with
access to religious acts on Indians or by Indians.

So my question is, since we've been impeded
from going to our original prayer site by the Morton
County Sheriff, we have now taken action to pray at the
west bank of the river, which is a First Amendment
right. And so my question is, how is that not peaceful
or prayerful to pray peacefully on that Corps land,
more importantly, the 1851 treaty land, and then to be
impeded by a county sheriff's department with force --
is my question.

MR. TOULO: Yeah. It all seems reasonable.
I mean, I don't know what's going on on the ground. I mean, it sounds like there's a problem, and we will reach out to our people and try to address it.

MR. VOGEL: Thank you.

MR. TOULOU: Thank you.

MR. VANCE: Steve Vance, Cheyenne River Sioux Tribe again. And I just want to follow up on that. You're saying that the U.S. marshal has jurisdiction. So my understanding, the U.S. marshal has to be present?

MR. TOULOU: I'm sorry?

MR. VANCE: Colonel Henderson said that the U.S. marshal has jurisdiction on Corps land. My understanding of law enforcement is that the U.S. marshal has to be present before anyone else can do anything.

MR. TOULOU: You know, I'm going to step in the role of Colonel Henderson's lawyer. I hate to do that, but we don't know what's going on on the ground, honestly. But, right, the marshal service is there. They are going to deputize somebody we'd normally deputize and be on the ground. We just don't know what's going on right now. So we're talking about that.

MR. VANCE: So if you remember earlier, I
talked about my involvement in law enforcement. And I've had to follow those processes in order to, I guess, turn someone over to another authority. The U.S. marshal had to come in, meet with our chairman, and, from there, be present while the other authorities do their duties. So if the Morton County Sheriff's there, if highway patrol is there, or any other law enforcement entity, the U.S. marshal should be present.

MR. TOULOU: Again, I don't know what's going on on the ground. It sounds like there will be some problems. But until we know what's happening...

MR. VANCE: And I can almost assure you that it's going to get worse, I mean, as for the continuance of what's going on. It's not going to lessen. But the Native people will continue to be peaceful. I'm not saying that they're going to escalate anything on their side. But it could happen if you -- I see some frost on top of the mountain here.

So you probably heard about Alcatraz. You probably heard about Custer. South Dakota, you probably heard about. You probably heard about Wounded Knee, '73. There are those other people out there who are standing by. And I would sure hate to see it go to that level. So something needs to happen.

And those of you who were down to Albuquerque
heard it there. You know, "We will deal with it."
Apparently it's continuing. So I think somebody needs to get on the phone or physically show your presence to -- this is the thing we're talking about:
Consultation -- question on the consultation part with the panel here.

How many of you know where Eagle Butte, South Dakota, is? How many of you have been to Eagle Butte, South Dakota? How many of you stood in front of our tribal council? That's government to government.

And with the handful of hands that went up, I doubt -- there was probably thousands of projects that were government to government and it didn't happen. So like I said, the process has a lot of other lower-lying people in the trenches, tribal liaisons, THPOs, sending a message up. But it never gets to that point.

And that's where this issue is right now. The message has gone up. And we're dealing with more harm. This is why the chairman sent us up last minute. He has winter to get ready for. But he also has long issues of poverty, unemployment, health issues. Now he has to look at extensive injuries.

This is why he left Albuquerque. He stepped out of the meeting, made some phone calls. He jumped on a plane the next morning, and he flew right back
because he has to get medical attention to people. He's got to get places, you know. So he's dealing with very pressing issues. And yet this is also just as important.

So you got to think about what all of these reservations deal with constantly. And yet, you know, we have to have this meeting. And I think I said this at the beginning. But is this consultation? Or is this a listening session?

MR. TOULOU: For purposes of the Tribal Leaders Letter, this is consultation. Keep in mind, part of the focus of this consultation is to discuss what makes effective consultation on infrastructure issues. So if you have questions about is this a consultation, that's a legitimate question.

MR. VANCE: Okay. I just want to say, for the tribes here present, that Cheyenne River Sioux Tribe does support your comment, and we didn't submit anything. If there's anything we can do to help with your letters and stuff, let us know.

MR. TOULOU: Okay. Thank you. The sooner we can get done with this, the sooner the rest of us can actually work on the issue of Standing Rock.

Go ahead.

MS. WATERS ALDEN: Good afternoon. My name
is Charlene Waters Alden. I'm with the Northern Cheyenne Tribe. I'm the director of the environmental protection and the natural resources systems of our tribe.

And our tribal leadership could not make it up here. So I did visit with them, and they did tell me to, as incentive, to talk about the consultation process, that we would like to make sure that the 106 process is followed and tribal consultation is for people coming -- whoever gets involved, whatever goes on with the infrastructure, that they come to Northern Cheyenne and that they speak with our leadership from the get-go, from ground zero, so that we would have a say from the very bottom until the finished product, whatever it might be.

It might be a bridge, a pipeline, a road, whatever it is. But they want tribal consultation at the Northern Cheyenne level, and not just on our tribal reservation but in our ancestral homelands. And that goes from, like I said, Canada all the way down to Colorado.

And I have with me a couple of my administrators that are going to say a few things. So I'm going to turn it over to Shanara.

MS. SPANG GION: Good afternoon, everybody.
My name is Shanara Spang Gion.

Good afternoon again. My name is Shanara Spang Gion. I'm the water resources administrator for the Northern Cheyenne Tribe. I come from both Northern Cheyenne, Crow, and German heritage.

And I'm very happy to see everybody here today.

I would just like to touch on a few points.

And the first thing that I feel like some of our local other tribes and fellow tribes are saying is, how do you want to understand us? And to me, when I think of that, it's, how decolonized do you want to be?

How much do you want to think outside of these existing frameworks that we are living in as part of a federal government structure? And how much do you want to include what we have to say that doesn't necessarily align with that colonized structure?

So it's a question for you to ponder. It's not something I expect an answer for right now. But how decolonized do you want to be in your position as an individual, as your position in a federal agency?

Because the letter that we were sent is written very narrowly. It only addresses federally recognized tribes, for instance. And I, as a water person, I did actually meet with Montana Army Corps staff on the nationwide permit reissuance for 2017.
And I did get, actually, a phone call. I've been working for my tribe for ten years, and we got a phone call last week. And that's the first phone call I've ever had from the Army Corps reaching out to us to basically ask us, "What do you want to say to Colonel Henderson as he's coming into this office?" So I want to thank the Montana office for taking that initiative. And in ten years, I've never seen that.

So the particular comments I have towards nationwide permit issuance that I did bring up with the Army Corps staff back on September 30th is at a minimum, look beyond our political boundaries that have been established by this federal system. At a minimum, look at a watershed scale.

And I asked for that to be changed in the Montana Regional Conditions for nationwide permits here in Montana. I asked to have it beyond our political boundary that was established by executive order. And look at watersheds. Because what the Army Corps or a private company, they have planned upstream of us is going to have impacts on us. And what happens downstream of us can also impact our ability to use water or to allow others to use water downstream of us.

An example of that is we were at -- my sister, Marissa Spang, she's a natural resources
administrator. She'll talk to you in a few minutes. But we had a really great experience in California. We went to the World Indigenous Law Conference and met many people from New Zealand, Australia, Columbia, different areas of the world -- and what they're dealing with and how we can protect our natural systems within a legal framework. And we came back with a lot of really, really good ideas.

But one of the things that bothered me when we were down there -- it was two weeks ago -- and I have -- you know, we were talking about cell phones earlier. And the local paper, I have their app on my phone, so I read it almost every day. And through that app, that was the only notification I got that a pipeline was being replaced under the Tongue River.

That was the first I had ever heard of it.

And so if we were to change to this, at a minimum, watershed scale, this pipeline that was being replaced under the Tongue River near Miles City, near the mouth of the Tongue River, where it goes into the Yellowstone, I think we would have had more advance notification of that and had some meaningful input with the Army Corps if you were, in fact, the regulatory authority or whomever is the authority.

So I would ask, again, at a minimum, that we
do look at a watershed scale. And I would like to see
that in the Montana Regional Conditions when reissuing
these nationwide permits.

And I'd just like to quickly touch again on,
I think, what a lot of other folks have already said --
is looking at our traditional territories as well.
Just look beyond our political boundaries of
present-day Montana and present-day Northern Cheyenne
Reservation.

Ask tribes, even non-federally recognized
tribes. Ask all of them, all of the indigenous people
in North America, to map where their traditional
territories are, and use that as your basis for where
and when and who do you notify about infrastructure
projects. Thank you.

MR. TOULOU: Thank you.

MS. SPANG: Good afternoon. I'll make this
fast. My name is Marissa Spang. I'm the Northern
Cheyenne natural resource administrator. I work with a
number of programs that impact wildlife, including our
buffalo herd. So my comments are going to kind of come
in that sort of context. I'll make this as quick as I
can.

I'm glad that questions have been asked about
what's going to be done next. So one of your next
steps I'd recommend to you is that whatever gets
developed out of these consultations or meetings -- to
reiterate, we don't consider this
government-to-government consultation or
nation-to-nation consultation.

That you -- whatever gets developed, that you
have ongoing -- like, you make it an ongoing
institutional memory, a strategy that every one of your
employees is trained up in, especially if they're going
to be meeting with tribal leaders or people like
myself, representatives from our nation, regarding
infrastructure projects or anything.

And so I talk mostly from a perspective of
wildlife, quote, unquote, wildlife. And I just want to
point out that I'm talking in English today, so I'm
articulating, I'm having to articulate our
relationships to land in English, which is not an
appropriate language. It's incredibly limited. And it
is, in my view, impossible to truly translate and
convey our worldview about our relations and
orientations to land.

So with the whole grizzly bear delisting,
that whole fiasco that's still happening, it's ongoing,
I'm having to find myself in rooms like this and having
to repeat myself. Everybody here, I'm sure, has taken
away precious time from where they are on the ground
taking care of our communities and our governments and
our lands.

So we've had to come here today to do all of
that, and we had to make our own way here. So we have
precious resources, and everybody already knows that,
so I'm not going to emphasize it.

And I'm young. So in my short life, if I'm
getting tired of repeating myself, I can't imagine how
our elders feel. So my recommendation to you is that
whatever you develop, that you actually train your
employees about how to engage in this properly and how
to protect themselves properly when dealing with tribal
nations.

And then the other thing, too, is -- it was
touched upon earlier -- is that -- well, I want to
stress that indigenous people -- and this is the UN
Declaration of Rights of Indigenous People. It's free,
prior, and informed consent. I will repeat that.
Free, prior, and informed consent.

So I would use that as the framework to lead
your work in this regard and that you do utilize -- and
so part of that informed consent is for tribes' or for
nations' indigenous people to offer up their own
traditional policies in orientation to land.
And I want to point out that the United States is a very young nation. We're very young. Northern Cheyenne and Crow are much older, and these are ancestral territories. And so we have a young kind of little brother operating on our indigenous territories.

So it's okay you don't bring your knowledge to the table. But it becomes oppressive when you are egocentric in your ways of knowing. And so that's what I see in the work I do, especially with the grizzly bear delisting, is that it's based off of Western orientation, Western ontology, methodologies. All of those are embedded in the knowledge that informed infrastructure projects for delisting of grizzly bears. Those are the things.

And that was the biggest point I was trying to drive home with Fish and Wildlife was that you guys did your consultation and your assessment, but what about our assessments? We've actually had a relationship with the grizzly bear much longer than any other U.S. official.

So basically part of these processes is that indigenous knowledge is at the table and not any less than Western science or ways of knowing when these big decisions are being made.
And then just if you haven't read the
Declarations of Rights of Indigenous People, I would
e encourages you to go pick it up. If you Google it, it
will come up in a second, and you can just sift through
and read through it. And that can inform a lot of your
work dealing with indigenous people. So thank you.

MR. TOULOU: Thank you very much. Okay. So
I think we're done.

I will be up here if folks have additional
comments they want to make not on the record.

MR. SCHOTTLANDER: My name is Dick
Schottlander. I live south of town here. I'm a
retired heavy equipment operator, but I've got a
question and comment, both.

I'd like a show of hands of the people that
came here prepared. But I'm looking at some 12 key
people. But how many came equipped to hand out a
business card with a phone number or an e-mail address?
Show of hands, please. That's a few anyway.

But I don't know if you realize how difficult
it is to get in touch with people like yourself, key
people, knowledgeable people that can help the tribes.
And, again, I'm a retired equipment operator, so I'm
not going to get involved in this. But it's so
critical that they can call a specific number or an
e-mail address and get to the right person with the right answer. It would make a lot of mystery, smoke and mirrors, and everything else, various problems.

I would suggest that in the future, you come equipped to hand out a business card with a phone number or an e-mail address or something of that nature. And that's the only question I had. Thank you for your time.

MR. TOULOU: Thank you. So we're going to wrap it up. I'll be here. I think some others will be at the table. I know some have planes to catch later this afternoon. So I want to thank you all very much. This is really useful. And we've got a lot to think about. More consultations following.

MR. VANCE: Normally you'll do a response or a comment to what was discussed.

MR. TOULOU: Well, it depends --

MR. VANCE: Are you doing that today?

MR. TOULOU: No, not today. I mean, I can tell you there were a lot of good things that were said today. But that's not the process that I necessarily follow. But I will try to let you know what I heard.

I heard -- yeah, people want to be involved early in the process on consultation. I think there was quite a bit of discussion about what consultation
means and whether or not we can come to some sort of understanding within the agencies to be consistent within agencies on about how we do consultation. Because it's confusing, and there aren't standards to be held to.

Something else I heard people talking about is we do need standards to be held to, that there's really no -- nothing happens if an agency doesn't do good consultation.

I heard you in particular talk about a number of old acts that I'm going to pull up, that continue to have relevance to how things are interpreted now, with the 1872 Mining Act.

There was a great deal of discussion about Section 106 and Appendix C and how that should play into that. So that's definitely something we're going to be looking at.

I think that there was a number of people who had discussions about how we look at cultural sides and significant sides and how -- and I'm paraphrasing because I don't have the transcript in front of us. And we will have the transcript in front of us.

But in the Western system, we tend to look at things in a very concrete, scientific -- I use scientific in air quotes -- methodology. And a lot of
the significance of sites for people who have lived in those cites from time immemorial are different and important. And we need to take that into consideration.

My suggestion is we need to talk about accountability, which I think is part of what we need to do both in consultation and elsewise.

I heard a number of comments about resources, just how you get to consultations, the fact that there are a limited number of THPOS out there and there's a lot going on. And the tribes are expected to come up with the coverage for that. And it just doesn't make sense. It really doesn't.

We really need to get tribes -- I think I may have said this. But tribes really need to have notice of what's going on before we really get into whatever it is we're evaluating. But the consultation has to happen, or some communication has to happen. And I think part of that is based on the sense that people who are looking for the permits have access that maybe tribes don't have until after maybe the decision is made.

Again, this is me paraphrasing. Let me know if I'm getting this right.

I heard somebody say the FCC does a good job,
or at least they had on Rocky Boy.

Consultation should be on-site with leadership. That's something I heard a lot and I think probably has been up on the other consultations.

The executive consultation should be codified. But it shouldn't just be an executive order; it should be legislation.

We need to use tribal experts as the archeologists who are doing some of this initial review of sites and not just, you know, people from the outside. Because I think this goes back to the cultural knowledge that we talked about earlier.

The vice chair from Blackfeet talked about a different worldview, I think, a sense of home that people coming from outside don't understand. He also talked about the Badger-Two Medicine area and the fact that it's maybe not within the tribe's reservation -- again, something we heard a lot -- but has special significance. And we need to figure out how to factor that in as opposed to just using reservation boundaries.

There was also a discussion about easements. And I have a note to myself to look into how easements are established. I've seen how some of these are established. But as a lawyer, I thought the easement
thing was interesting. So I'm going to research that.

   I heard that this consultation wasn't long
enough. I would have thought I would be getting on
people's nerves.

   And the SHIPOs have final authority on-site
in status of sites. And that should include THPOs in
that determination. It shouldn't just be all the
SHIPOs.

   I'm lumping some together here. Again, the
national process for THPOs. John Eagle said it should
be "shall consult with the tribes and not may." I think
that was probably a reference to 13175, the fact we
need to put some teeth in it.

   And the tribe should be afforded the respect
to sign off on tribal homelands. Again, involve tribes
from the beginning.

   Again, a number of questions about what
consultation means and how it should play out. The 30
days' notice isn't enough. I'm not sure what that
30-day notice was for. But I note that we normally
give 30 days on one of our consultations. I suspect it
was broader. But by the time it works its way through
tribal leadership, a lot of times the folks on the
ground aren't getting more than a few days' notice for
the consultation.
We don't treat tribes as stakeholders. That was the second afterthought.

Mr. Howe talked a lot about Indian self-determination and economic development, which I think is a key part of what we're doing here.

And then, again, we need to look beyond the tribal boundaries. One of the suggestions was to use water projects, watershed as a scale of what we're looking at. And then it was also a suggestion that we use the UN Declaration of Rights of Indigenous People as a model for some of what we need to do.

I know I didn't get everything. But I hope that -- if there's something real big that I missed, you know, I'm happy to hear about it.

Okay. Thank you.

(Proceedings concluded at 1:14 p.m., November 2, 2016.)
REPORTER'S CERTIFICATE

I, Vonni R. Bray, a Certified Realtime
Reporter, certify that the foregoing transcript,
consisting of 148, is a true and correct record of the
proceedings given at the time and place hereinbefore
mentioned; that the proceedings were reported by me, to
the best of my ability, in machine shorthand and
thereafter reduced to typewriting using
computer-assisted transcription.

IN WITNESS WHEREOF, I have set my hand at
Laurel, Montana this 23rd day of November, 2016.

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