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TRIBAL CONSULTATION
DRAFT 25 CFR 162 (LEASES AND PERMITS)

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Bureau of Indian Affairs Meeting

Thursday, March 17, 2011

1:20 p.m.

At Las Vegas Hilton Hotel & Casino
Pavillion 6, Ballroom D
3900 Paradise Road
Las Vegas, Nevada

Reported by: Cameo L. Kayser, RPR, CCR 569

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United States Department of the Interior

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DEPARTMENT OF ENERGY POLICY

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1 acknowledging that the United States government has
2 a special and unique relationship with Indian
3 Nations of the United States, and that is based on
4 treaties, statutes, court decisions, executive
5 orders. And this consultation is an expression of
6 our relationship with you.

7 The executive order 13175 sets out a very
8 clear directive to all the federal agencies to
9 consult with Indian tribes on matters that relate to
10 the policies and decisions that may affect them, and
11 the President Obama administration issued a
12 presidential memorandum last year that provided
13 clearer directions for agencies to come up with a
14 plan to implement that executive order.

15 And so this part of our work at the
16 Department of Interior we take very seriously. It
17 is part of our greater work, the greater
18 consultation and strengthening our Nation to Nation
19 relationship with the United States folks that are
20 out there, and trying to make sure that our
21 relationship with the tribes of the United States
22 are honored and our responsibilities -- our trust
23 responsibilities are at the forefront of what we do
24 with Indian tribes.

25 We have a lot of different priorities

1 that are going on with this administration.
2 Strengthening the Nation to Nation relationship is
3 just one of them. We also take seriously increasing
4 and improving safety in the community.

5 But this particular section that we're
6 asking you for your comments on relates more
7 directly to our push to restore tribal homeland.
8 And many of you have already heard and know very
9 well that the Department of Interior,
10 Assistant Secretary's office, has made restored
11 tribal homelands a priority of this administration,
12 and in the past two years has restored 91,000 acres
13 into trust, from fee to trust, and that's -- in two
14 years we've done 600 percent better than the last
15 administration's entire eight years.

16 This leasing -- these leasing regs we
17 know impacts any land that's in trust, and we want
18 to make sure that we're doing this in a way that is
19 helpful, and we want to also make sure that anything
20 that we are considering has a full and open
21 commitment from us to take your comments into
22 consideration, and that's why we're coming to you
23 before we go to a draft regulation.

24 We're not -- this is a draft, but we
25 haven't published it yet. We want to know how your

1 tribes would see this fit into the way that you do
2 business.

3 We know that there's a lot of changes
4 that you might see from what you were accustomed to
5 before. We've laid out separate subparts from the
6 residential, and Bryan is going to go through a
7 PowerPoint to explain more clearly and in more
8 greater detail of what we are trying to do with
9 these leasing regs. But we are trying to separate
10 out the business leasing regs from the residential
11 leasing regs. And then also added are some brand
12 new language, a whole subpart on the wind and solar
13 permitting.

14 So with that, I think that all of you are
15 very eager to begin the discussion. We want to go
16 through basically how the regulations are
17 structured, but we ask that the tribal leaders are
18 given the first chance to speak, and then those of
19 you that represent tribes on their behalf as counsel
20 or as program managers, that you wait until all the
21 tribal leaders have spoken, and then we will open up
22 the floor to those of you that are here representing
23 your tribes in other capacities.

24 With that, I'd like to just get right
25 into the detail of what we have. It's a summarized

1 detail. We have a PowerPoint here. I'm going to
2 step aside, and then we are going to come back up
3 here and we will hear from you.

4 **OVERVIEW OF DRAFT**

5 MR. NEWLAND: Can everybody hear me okay?

6 I appreciate everybody being here today.
7 I know a lot of people in this room are going to
8 have sore thumbs by the time this is over checking
9 all the basketball scores. If it looks like
10 something exciting is going on, make sure you shout
11 it out because I've got to make sure I win the
12 Assistant Secretary's pool.

13 I'd first like to begin by thanking Jodi
14 and the rest of our team up here. And I want to
15 acknowledge by name some of the folks who put in a
16 lot of work on these regulations. It really goes
17 back about 18 months, almost, that we've been
18 working on these. Many long, long meetings, and I
19 know our staff in the field helped with that.

20 But Liz Appel here from our regulations
21 office has kind of shepherded that effort.
22 Burton Warrington, fellow counselor, has also helped
23 out. We have Vanessa Ray-Hodge from the Office of
24 the Solicitor here to, you know, listen as to some
25 legal concerns.

1 I also want to ask our Bureau Staff in
2 the room to raise your hands so that folks can know
3 where you are and -- so I know that -- thank you.

4 I know that we've had a lot of input from
5 the various field offices or officers because
6 there's really neat things that go on from region to
7 region.

8 And I also see that we have other federal
9 agencies represented here as well. If you could
10 kind of raise your hands.

11 I see Department of Energy over here, and
12 I think USDA. So I want to thank you guys for
13 attending as well.

14 I'm going to run through this really
15 briefly because the most important reason we're here
16 today is to hear your comments and questions. I
17 would -- I want to stress this mantra to everybody
18 in the room that this is just a draft. And you're
19 going to hear -- you're going to hear us say that
20 over and over. Nothing is set in stone, and we're
21 certainly -- you know, we're well aware that these
22 are probably not perfect, not even close, and that
23 your input will help us -- help us make it better
24 for folks on the ground in Indian countries.

25 When we started out this process, one of

1 the things that we wanted to do, we had a couple
2 objectives in mind, one of them being how do we redo
3 these regs to make them fit a modern economy, modern
4 economic development, modern housing development.
5 Many of you know, these regulations are 50 years
6 old, and, you know, economic development just moves
7 so fast today that, you know, the regs didn't fit.
8 So that's one of the things we set out to do.

9 Another thing we set out to do is how can
10 we literally lessen, you know, the -- reduce the
11 time delays that go along with Bureau approval. I
12 know that, as an example, my parents waited six
13 years to get their lease approved so they could
14 mortgage our home, paid exorbitant interest rates
15 during that time.

16 And, you know, there are even -- there
17 are many worse stories across Indian Country. We
18 have that in mind, and how do we get the Bureau out
19 of this, you know, other people's day-to-day lives,
20 and just let people get on with, you know, their
21 lives in housing and economic development.

22 So we kind of -- we took the existing
23 regulations and broke them down into new subparts,
24 as you see here. We then moved forward with
25 agricultural leases. Those are on the table that

1 we're looking at, kind of have them in the store
2 back in D.C., and we wanted to -- we're on limited
3 time here with the Obama administration; so we
4 wanted to move forward with what we can. And you
5 know, agricultural leasing is very complex. We are
6 aware of that, and we want to address it, but we
7 want to get what we can with the time that we have.

8 So this kind of goes through the -- how
9 we develop. As I said, we've spent a lot of our
10 time back at the department putting these things
11 together and bouncing ideas back and forth.

12 You know, one of the -- one of the neat
13 things that we are trying to do here is, you know,
14 meeting the President's call for renewal energy
15 development. And we know that the nonagricultural
16 leasing regulations that are currently in part 162
17 just don't fit, and folks were having to do a lot of
18 environmental scoping, were at the outset, you know,
19 when they're just doing assessments, leasing lands
20 for assessment.

21 So we crafted this part of WSR subpart
22 that has what we call "Wind and Solar Resource
23 Permitting" that is separate from the actual, you
24 know, wind farm lease where you lease thousands of
25 acres to put up a wind farm and have permits for the

1 real precise land use issue that go along with
2 assessments and putting up met towers and things
3 like that so that, you know, people aren't having to
4 spend all this money, all this time on environmental
5 scoping for projects without even knowing if the
6 resource is there to do it.

7 This is kind of our anticipated timeline.
8 We are working really hard to meet it. But we know
9 that input from you guys will affect this, and
10 certainly if there is more work that needs to be
11 done, we can do that. The important thing is that
12 we get these regs right because it took 50 years to
13 get to this point, and we don't want to lock in bad
14 regs for another 50 years. But we would like to
15 have it promulgated early next year so that we can
16 get moving with economic development in Indian
17 Country.

18 So the "General Projections" in
19 subpart A, just really quickly, I think you guys
20 have this stuff in your packets. You can follow
21 along. You notice right off the bat one of the big
22 changes we are making, with the exception of WSR
23 permits, the Bureau is getting out of permit
24 approval. A permit is not an interest in land.
25 It's just permission to use land. And we say why --

1 why should we have to approve that? That's up to
2 the landowners and individual Indian landowners and
3 tribal landowners. So we're getting out the permit
4 process.

5 The general provisions kind of set out
6 what we would consider permits, and that's going to
7 be important, you know, how that is implemented, and
8 there's going to be a lot of staff training that
9 goes along with that. But that is one of the big
10 changes we made right off the bat.

11 And we talked about things like, you
12 know, how we address trespass issues. We have -- I
13 think we have kind of rough cut trespass regs that
14 are in the hopper as well that we would like to get
15 to. And we have provisions in there about how the
16 Bureau is going to uphold their trust responsibility
17 in the event of emergency, floods, fires, and things
18 like that.

19 Residential leasing, as I mentioned at
20 the outset with the anecdote about my parents, you
21 know, it shouldn't take folks years to get a lease
22 approved from the Bureau. One of the things that we
23 did, then, was institute timelines for residential
24 leasing so that when a lease comes into the agency
25 office or the regional office, there is a set period

1 of time that the staff, you have to acknowledge that
2 you receive it.

3 You know, we have, I believe it's 30 days
4 in the residential context, and then, you know, we
5 have to respond within that 30 days. If it's for
6 some reason complex or, you know, there are unique
7 issues, you know, the Bureau can request an
8 additional 30 days. But then at that point, you
9 know, we are getting into the -- at the end of that
10 30 days, we'll get into where the lease applicant
11 can appeal the delay of the Bureau. So we are
12 really trying to cut this down into a short,
13 bureaucratically short time period for residential
14 leasing.

15 Fair market value, valuation, you know,
16 we know that a lot of folks lease lands to relatives
17 or friends that -- and, you know, for nominal rent
18 out in Indian Country, and, you know, we said why
19 should we tie those instances up with appraisals
20 and, you know, costly valuation of land; so that's
21 another thing we try to address in the residential
22 context.

23 Here is the timeline for the original
24 lease approvals. The original lease approvals
25 are -- you know, we have the 30 days to respond. If

1 it is complex, you can ask for an additional
2 30 days. But the amendment subleases and mortgages,
3 I think, is a big change that we are going for, and
4 I'm really going to be interested to hear your
5 feedback on this.

6 But in that context, where we have
7 already approved a lease, if there is a sublease and
8 the Bureau doesn't act within a set period of time,
9 we will deem that lease to be approved, in effect.

10 So Bureau inaction won't result in --
11 we're hoping won't result in undue delay on the
12 ground for whatever reason if something happens at
13 the field office that holds these up that, you know,
14 if we're not holding up residential development in
15 Indian Country, that these are going to be deemed
16 approved and they're going to go forward.

17 Compliance and enforcement violations, I
18 think, you know, we know that the regulations, you
19 know, they're going to be of limited value if we
20 don't have a way to enforce, and we're putting in
21 there that, you know, we are going to promptly
22 investigate violations and -- and take action to
23 enforce when those violations occur.

24 Business leasing regulations, this is
25 another part that, you know -- we know jobs that --

1 we know jobs that are needed in Indian Country, and
2 everybody knows from this conference that small
3 business owners and even large corporate development
4 on Indian land, we need to have -- we needed to have
5 special regulations that govern those contracts, and
6 we didn't want to get those tied up into regulations
7 that didn't really fit, like under the current 162.

8 So again, we have -- a lot of it is
9 redundant, borrowed from the residential context,
10 but we are going to be a little more stringent on
11 the valuation and the commercial context. But also,
12 you know, recognizing that there will be instances
13 in which nominal rent -- there will be reasons for
14 nominal rent, and we want to be allowed to have some
15 flexibility for those types of instances.

16 And again, we are instituting timelines.
17 Commercial development can be a little more complex,
18 and we wanted to leave some flexibility for our
19 staff to carry up any trust responsibility, but
20 we're going to have 60 days to do the initial review
21 of the lease. You have to hear back from the Bureau
22 within those 60 days.

23 If for whatever reason we need more time,
24 we would ask for it and take another 60 days to
25 review the lease. That would give four months for

1 the Bureau to really, you know, kind of look at some
2 of these leases and, you know -- some of them may be
3 even more complex, but we think that we've captured,
4 you know, most of the -- we've allowed for enough
5 time to allow the Bureau staff to analyze most of
6 the types of business leases that we will see.

7 I'm sorry, I wanted to go back and
8 mention the amendments, subleases, and mortgages for
9 commercial leasing that we're taking that deemed
10 approved process that I mentioned with the
11 residential leasing regulations and we're also going
12 to apply that in a commercial context as well. I
13 think there's a longer timeline, if I remember
14 right. I think it is 60 days instead of 30.

15 Here we go, for subleases, it will be
16 deemed approved at 45 days after notice. We had
17 violation and enforcement provisions here.

18 This is the WSR permit that I was
19 mentioning earlier. You know, this permit is going
20 to be required for -- for tribes or developers
21 coming in for wind and solar projects want to see
22 the resource assessment. We know that is a much
23 smaller footprint than actually putting up with
24 solar farm on Indian lands.

25 This is -- it is kind of a hybrid between

1 a permit and a lease. But we're going to have, I
2 guess, more approval authority in this instance
3 versus the other types of permits. But really want
4 to make sure that we're carrying out our trust
5 responsibility in that regard.

6 WSR permits will have a three-year term,
7 a one-time renewal of three years. We will have due
8 diligence requirement and compatible uses of, you
9 know, met tower on agricultural land, wouldn't
10 disturb an agricultural lease or residential lease
11 or something of that nature.

12 Here we have our compensation provisions
13 for WSR permits. You will notice there at the
14 bottom that no appraisal is required for this
15 instance. WSR permits will have approval within
16 20 days of receiving the application, and we have to
17 make a determination in that window.

18 There will be no assigns or subpermits or
19 mortgages because these are intended to be really
20 short-term and allow for the resource assessment.

21 Here's the wind and solar resource
22 leasing provisions, maximum term of 25 years for the
23 initial and a one-time renewal for 25 years. Again,
24 the valuation, fair market value instances in which
25 there wouldn't be, we can approve less than fair

1 market value rent before generation and transmission
2 starts, but the Bureau determines if it's in the
3 best interest of the Indian landowner.

4 And again, here's our time period
5 provisions, same as in the business and residential
6 leasing subparts, where there will be a need to
7 prove if there is too much Bureau inaction. And
8 again, very similar to the commercial or business
9 leasing regulations context.

10 And this is -- we're going to accept
11 written comments and questions on these draft
12 regulations until the consultation period ends on
13 April 18th.

14 I want to highlight or just note one
15 other thing, that we're going to conduct three
16 consultation sessions. The next one is in
17 Minneapolis on March 31st, and then there's -- the
18 third one is in Albuquerque, New Mexico, on April, I
19 believe it's the 5th, the Wednesday of the Federal
20 Bar Association Indian Law Conference.

21 And at that point, we're going to take
22 the comments, make any revisions required. And you
23 saw the timetable up at the front of the
24 presentation. Try to propose these, get a formal
25 proposal. At that point we intend to conduct

1 additional tribal consultation sessions during the
2 formal rule making process.

3 We know that there are other regions in
4 the country that have very unique things going on in
5 the ground that we want to make sure that we get out
6 in the Indian Country and hear that and make
7 revisions during the formal rule making process as
8 well.

9 We're -- again, we're really trying to be
10 ambitious here and get these things promulgated by
11 early 2012 so that we can get on with development in
12 Indian Country.

13 I think I will let Jodi come back up and
14 take your comments and questions. I think really,
15 you know, we're going to at this point shut up and
16 hear what you guys have to say and, you know, go
17 back to the drawing board and, you know, make these
18 things better.

19 Thank you.

20 MS. GILLETTE: Okay. We will open up the
21 floor, and we can have folks run the mikes.

22 If you could, for the record, please say
23 your name and your tribe before you speak so that we
24 can make sure that it's in the transcript.

25 / / /

COMMENTS

1
2 MR. SHOW: Good afternoon. My name is
3 T.J. Show. I'm a member of the Blackfeet Tribal
4 Business Council. I'm also the executive secretary.

5 I guess first of all, I would like to
6 thank the Bureau. I'd like to thank the Bureau for
7 putting the lands from fee back to trust. I know at
8 the Blackfeet Tribe, we have over 42,000 acres that
9 is ready to be put back into trust, and we are ready
10 to do that process of applying and getting that
11 done, even in terms of dealing with our state
12 governor and whatnot.

13 But I guess, getting to the point that I
14 have to make here is I feel it prudent that I bring
15 up the issue of the surveys and whatnot that are
16 proposed to be implemented in this new plan. The
17 problem I have with the CFed survey is we are being
18 told that it's going to cost between 3- and \$5,000
19 to do a CFed survey. And I'm just going to say that
20 I don't think that fits very well in terms of the
21 Blackfeet Tribe.

22 Like I say, we have about a million and a
23 half acres. That's our reservation, and so we're a
24 large land base tribe. And with the CFed survey
25 costing that much instead of an aliquot survey, it

1 just puts more of a burden on our whole people.

2 I guess case in point, the tribe last
3 year received over a hundred FEMA trailers, and
4 because the housing is so short on a lot of
5 reservations, Blackfeet Tribe is no different than
6 any in that respect. So we brung [sic] in a hundred
7 that was given to us from the FEMA operation, and I
8 guess at that point homesite leases have become a
9 hot commodity.

10 If we brung in that many homes and if we
11 all had to pay for -- all the people had to pay for
12 CFed surveys between 3- and \$5,000, that just
13 wouldn't compute. That would actually kind of kill
14 a lot of people in getting a homesite lease. So I
15 just think that in that term, it's a detriment to
16 our people; so that's why I'm speaking up today.

17 I guess another issue is the bonding and
18 insurance and whatnot, and I'm going to speak from
19 my own personal experience, you know, in terms of
20 bonding. I know the tribe probably has the right to
21 waive that bonding requirement, and it depends on,
22 you know, a business. I understand needing the bond
23 in terms of businesses and things like that.

24 But also I'll speak in terms of how hard
25 that may be, and before I became a tribal

1 councilman, I had another life and I was a logger.
2 And in the regulations I needed to come up with a
3 bond. And so like anything else, I started looking
4 for a bond, and I worked my whole life to develop
5 credit and things like that and to build my credit
6 score up, and going to a bonding agency today is
7 like sure, we can do this, you know, and they looked
8 at the credit, everything looked good.

9 And then a couple of days later they come
10 back and say, No, we can't. We do not bond -- we
11 don't offer bonding on tribal reservations. And so
12 that kind of shut the door for me. So in return,
13 speaking for myself, I had to come up with the cash
14 money up front in terms of a bond. So I was paying
15 for that same assessment twice.

16 And these are some of the instances that
17 come up, and I just feel prudent that I bring up
18 everything that I can at this juncture.

19 Thank you.

20 MS. GILLETTE: Thank you. Thank you.

21 I just wanted to make sure that everyone
22 here knew that we want the most honest answers that
23 you can give us, and really this is our opportunity
24 to learn from you what is going to be helpful in
25 understanding. So I appreciate your honesty.

1 MR. BURNETT: Hi. My name is
2 David Burnett. I'm the chairman of the
3 Chehalis Tribe in Washington State.

4 As some in the room may know, one of the
5 economic development projects that my tribe
6 undertook was to build a conference center, indoor
7 water park. We have a partner, which is the
8 Great Wolf Resorts out of Madison, Wisconsin. We
9 undertook to develop a -- nearly a \$200 million
10 project. We are a pretty small tribe, and that was
11 a pretty big undertaking for us.

12 What we found shortly after we opened up
13 our water park is that we found ourselves engaged in
14 a taxation conflict with the local county. And this
15 was following working with the State Department of
16 Revenue through the development process, working
17 very hard to address all of the taxation issues that
18 we could foresee that might come up, and having the
19 issued rulings about each of the various types of
20 taxes. And so the matter with the county was a bit
21 of a surprise to us.

22 So in the context of economic
23 development, then, these leasing regulations are
24 very important, and I know that there's various
25 types of things that kind of attract your attention

1 that are important, you know, NEPA being one. We
2 think that this -- that getting these leasing
3 regulations into effect are very critical, not just
4 for my tribe, but I think for all tribes who may
5 find themselves in a situation similar to ours.

6 So I want to thank you for taking the
7 time to have these consultation sessions. We have
8 been following this issue since probably 2003, 2004,
9 and I know that back in some of those consultation
10 sessions there was some challenges because you
11 didn't involve tribes as the regulations were being
12 developed. And so I just want to acknowledge, you
13 know, that this process was including tribes, and we
14 have the opportunity to provide input, and I know
15 others did as well.

16 So thank you for hearing those comments
17 earlier and taking this approach that you have
18 taken.

19 But very specifically, I want to offer
20 our strong support in favor of the language that
21 addresses permanent improvements on leased land, and
22 that's the situation that we find ourselves in. And
23 that language that's in the regulations would state
24 that those permanent improvements are not subject to
25 taxation by a state, county, or other local

1 government. And that's the language that we would
2 be very in favor of. In fact, we might see it go
3 just a little bit further to state with that regard
4 to the ownership of those permanent improvements.
5 This kind of language would benefit all tribes
6 throughout the nation.

7 It's -- there's an old saying that's out
8 there, "the times, they are a changing." I think
9 50 years ago when these leasing regulations were put
10 into place, there was some notion that we needed to
11 do this to protect tribes so that these corporations
12 couldn't come into Indian Country and take advantage
13 of tribes and essentially operate business that way.

14 But as time has gone on, tribes have
15 become much more sophisticated. We have become
16 better business people. And many of these business
17 relationships are complex, and for a tribe such as
18 mine to undertake a \$200 million project, we had to
19 have access to capital, and we found a partner who
20 was willing to work with us.

21 And so kind of in that context, I would
22 ask the question who's the token. Because we feel
23 like we're taking advantage of this corporation, and
24 we're providing jobs, and we're providing revenue to
25 our tribe. We're providing essential services to

1 our tribal members, and we are doing this without
2 having to use all of our own capital.

3 And so the type of regulations that are
4 here, they need to allow tribes the maximum
5 flexibility to explore all of the various types of
6 business arrangements so that we can become less
7 dependent on federal dollars. We can become more in
8 control of our own destiny and truly express our
9 self-determination as we generate our own resources
10 and as we look at coming up with these partnerships
11 and being able to develop business.

12 Whether it's a water park, whether it's a
13 wind and solar, I think there are some awesome
14 opportunities out there for tribes to look at and
15 generate great economic development. And so the
16 leasing regulations shouldn't be a barrier to -- to
17 that. So that's the -- kind of the sum of what I
18 wanted to say and offer our support.

19 Also Bryan, as you're betting in that
20 pool, I wouldn't bet against Kansas. Your boss
21 might not like it.

22 MR. LAFFOON: Herman T.J. Laffoon,
23 Colorado Indian Tribes, tribal council, commercial
24 messenger.

25 Good afternoon, Jodi and Bryan. Good to

1 see you again.

2 We seem to have some issues with economic
3 development being sold with solar. You know, the
4 tribes on a national level were having the same
5 issues on the transmission. For it to be online to
6 create a base enterprise for the tribes, we just
7 don't have the capacity to get on transmission
8 lines. It is very costly to do this for tribes.
9 Rebuilding new transmission lines is the issue with
10 BLM people, with other groups, the Sierra groups
11 that are in charge with having this and looking at
12 how to -- ways to stop projects.

13 The other issue is sensitive sites on the
14 reservation, that's our reservation standing today.
15 We have those issues on the solar that they look at
16 trying to put solar in. But we seem to have a good
17 working relationship with BLM. They were coming to
18 us, inquiring, asking is it good or bad before we
19 start the project.

20 Other tribes don't have that
21 responsibility and they don't come to them. It's
22 done. It's a done deal. It's different ways. I
23 went to a meeting in Palm Springs, and these issues
24 were brought to the California tribes, how these
25 come about solely with the tribes and set to these

1 areas. So those are some of the issues that are
2 hitting Indian Country.

3 We have about 698,000 plus acres of
4 reservation, 85,000 in cultivation right now. We
5 have a lot of -- about 8,000 acres in allotted land,
6 heirship land on the reservation and tribal land.
7 We do have parcels of land that are owned by the
8 tribe, and a lot of deeds.

9 And those are issues that we bring to
10 this table, and we handle that through my office on
11 the leasing permits with tribal members, the
12 allottee, and then the tribe itself. That has gone
13 away.

14 We have a new office, TAAMS OST, that is
15 in place now. We have issues with them. When it
16 comes lease time at the end of the year, beginning
17 of the year, those people don't seem to get paid.
18 That is the problem we're having. In the past they
19 would go to the partner, and they would issue them a
20 check beginning of the year or during Christmastime.
21 That's not happening anymore.

22 So those are issues that we bring to the
23 table. How do we cure the problem? It's a whole
24 different issue in our area, Bureau of Indian
25 Affairs. Those leases go back to the BIA for

1 signature, for sign-off, some of them take six
2 months, some take a year. And those are the issues
3 that we addressed.

4 So what concerns of how we have is
5 working today, those would like to -- how can we
6 correct this problem for the tribal memberships.

7 Our other issues that arise today seem to
8 be less concerns of other people, but we look at
9 those issues, you knows. We have concerns. But
10 this is one we always look at today that seems to be
11 a bad way to go with this new office.

12 So I ask you in a good way, how can we
13 correct this with the TAAMS and OST?

14 Thank you.

15 MR. FINLEY: Hello. Michael Finley,
16 Colville Tribe. I'm just now looking through this.
17 I'm thumbing through it. I haven't looked at it in
18 its entirety just yet, but on page 77 of 172, I take
19 issue with No. 4 at the top where it says, "The
20 lessee must comply with all applicable federal,
21 tribal, state and local laws, ordinances, rules,
22 regulations," et cetera, and I think in the spirit
23 of my colleague here, David, it's the very issue
24 that we have with outside municipalities trying to
25 enforce their laws within our jurisdictions. And I

1 can foresee problems coming -- or surfacing because
2 of that language there.

3 For instance, if our tribe wants to hold
4 a powwow, and the local city ordinance said there's
5 a noise ordinance, past 10 p.m. you have to stop. I
6 think they could use that to hang their hat on.

7 I think that perhaps what might be good
8 is to just cut out all that language and put in "all
9 other legal requirements." But I think that should
10 suffice, but just food for thought.

11 Thank you.

12 MS. GILLETTE: Thank you.

13 MR. BURKE: Good afternoon. My name is
14 Wayne Burke, the chairman of the Pyramid Lake Paiute
15 Tribe.

16 And I was reading on page 107, "What will
17 the BIA do about a violation of a business lease."

18 And currently about five years ago, our
19 past administration and council approved a business
20 lease with a nonIndian business on the reservation.
21 And it was a ten-year lease with an option to extend
22 for an additional ten years, and our tribal
23 constitution says that leases cannot go past five
24 years. It was approved to the BIA and it was also
25 endorsed by our tribal council.

1 So basically, the partnership turned out
2 to be a real bad deal, and we had the business lease
3 reviewed by the BIA. It went through the system,
4 and then it went through the state system, and now
5 it's right back to Tribal Court.

6 And I was reading what do you guys do
7 about the violations of the business lease, and all
8 I would ask the BIA is say what you mean and mean
9 what you say. We may order the leasing to stop
10 work. I don't know how -- how much, you know, if
11 you guys would have the ability to enforce that or
12 regulate that, or how would that, you know, be
13 affected.

14 MR. NEWLAND: Thank you for your
15 comments.

16 And I just would like to draw your
17 attention to the general provisions on page 20 and
18 21 where it says under section 007, "What laws apply
19 to the leases," sub 3 says, "In addition to
20 regulations, leases under this part are subject to
21 tribal law."

22 So I just want you to know that -- that
23 tribal law is incorporated into these regulations.

24 MR. MARSTON: Good afternoon.
25 Les Marston, tribal attorney for the Chemehuevi

1 Indian Tribe, and to my left is the vice chair of
2 the tribe, Shirley Smith. And so my comments are on
3 behalf of the vice chair.

4 First of all, what I'd like to see is an
5 overall statement at the beginning of the
6 regulations to say that these regulations are
7 comprehensive and intended to preempt the field.
8 And the reason for that is because of possessory
9 interest taxes, and when it comes to solar energy,
10 sales tax.

11 Under the Agua Caliente and Fort Mojave
12 decisions out in California, the 9th Circuit, as I'm
13 sure you know, has held that -- upheld the ability
14 of counties to levee a tax, not just on the
15 improvements, but on the land. They are taxing the
16 leasehold interest that the lessee possesses.

17 And in Segundo versus Rancho Mirage, the
18 argument was made when the City of Rancho Mirage
19 tried to enforce a rent control ordinance against
20 the lessee of an Indian allotment.

21 And while the Ninth Circuit almost got
22 there, they agreed -- they kind of didn't come out
23 forcefully and say the statute and the regulations
24 preempted. So can you put that provision in the
25 regulations? It's really going to help tribes,

1 particularly, the gentleman from Washington.
2 Because if they preempt -- they preempt, that means
3 no state laws have any applicability with respect to
4 the leases.

5 It's important in the energy field
6 because -- for example, right now we are in
7 negotiations with the Chemehuevi Indian Reservation
8 to do a hundred megawatt solar power plant project.
9 The cost of that -- but I think that will be about a
10 billion dollars. The tribe can't go out and find
11 those kind of projects on their own directly. So
12 they have to rely on, for lack of a better word,
13 "energy companies" to come in and finance that.

14 Well, as you know, in order to get the
15 tax credits, and particularly out in California the
16 tax rebates, they have to own and operate the
17 system. So normally if the tribe was building a
18 power plant project, we go out and we buy the goods.
19 We have it delivered to the reservation.

20 But the power company has to do that in
21 order to get the tax credits. So the State is able
22 to come in and levee the tax. So this is in the
23 area of possessory interest tax. Here is the State,
24 local government, they are coming in and taxing
25 their project on the reservation of the tribe as

1 developed. And they are diverting those revenues
2 away from the reservation, down in Chemehuevi,
3 because of the kind of geographic isolation of the
4 reservation.

5 The tribe receives almost no services
6 from the County or the State. And the tribe has its
7 own sales tax. But the tribe has to levee its sales
8 tax on top of the state sales tax. These
9 companies -- and the solar people can tell you -- we
10 are in competition with the Bureau of Land
11 Management.

12 I mean, you want to know why there's no
13 energy projects done on Indian reservations, because
14 they go to BLM land, and BLM is negotiating, you
15 know, pretty low rate -- what I call low rate prices
16 for energy development. And BLM land is located, in
17 many cases, with better access to the grid.

18 So I would like to see an overall
19 statement in the regulations that these are
20 comprehensive regulations presented also in the
21 field.

22 I'm glad you brought up the trust
23 responsibility. I was thinking of the United States
24 versus Mason. I think the Court, the United States
25 Supreme Court, said it was a solemn obligation of

1 the highest responsibility of trust married --
2 measured by the most exacting fiduciary standards.

3 I see nothing in these regulations to
4 address water leasing. It's about time that the
5 Department of Interior weighed in on that issue.
6 Chemehuevi -- and I know the people down at
7 Creek Valley will join in with me on this.

8 They have a perfected decree under
9 California versus Arizona BLM, 11,344 acre-feet of
10 water out of Colorado River every year. What are
11 they going to do with it? Are they going to plant,
12 you know, alfalfa in the high desert basins? Plus,
13 you have to have the infrastructure to be able to do
14 that. They don't. So they leave their water in the
15 river, and Metropolitan Water District takes it and
16 takes it for free and doesn't pay them a dime.

17 So I would like to see something in the
18 regulations. If you can't actually put together a
19 set of regulations for off-reservation water
20 leasing, just putting together a set of provisions
21 in the regulations that say that if a lease is
22 approved, the lessee has a right to the use of water
23 on the reservation in accordance with the terms of a
24 lease.

25 That would be the first recognition in

1 any federal law that Indians can lease their water,
2 and that would be huge. It would be a first step in
3 the right direction. Solemn obligations of the
4 highest responsibility and trust measured by the
5 most exact fiduciary standards.

6 I would like to see some type of
7 provision in the regulations that would allow for
8 the tribes to be able to get a waiver of the Part 2
9 appeal process. The Chemehuevis have approximately
10 800 leases on the reservation. The vast majority
11 are to nonIndians. They have five mobile home
12 parks.

13 As you know, under the Apache case, only
14 the Secretary of the Interior can cancel a lease.
15 Well, if the secretary cancels the lease, it is
16 subject to appeal under 25 CFR Part 2. So
17 superintendent issues a notice of cancellation.
18 They appeal it to the regional director. Who knows
19 how long the regional director will sit on it before
20 he makes a decision or she makes a decision. And
21 then it goes to the IBIA.

22 So now we've just taken it and we've
23 thrown it into the dark hole. Because the average
24 turnaround time from the IBIA now is 22 months. And
25 I've got an appeal pending from the IBIA that's been

1 pending for almost three years. And I just get
2 tired of bringing ABA actions in Federal Court for
3 agency action unreasonably delayed.

4 So what I would like to see is
5 regulations that say that tribes can come to the
6 Department of Interior and they can show that they
7 have a tribal court set up, that they have an
8 eviction or unlawful detainer ordinance that -- and
9 as long as they can apply evidence to the department
10 that they've got a tribal court, the tribal court
11 judge is fair and impartial, the tribal court has
12 jurisdiction over the lessee, and the lessee is
13 afforded due process, and the tribe can issue a
14 notice of cancellation, that the decision is not
15 subject to the 25 CFR Part 2 process, and the tribe
16 can go -- and the Chemehuevis have an unlawful
17 detainer order and issue a three-day notice to quit.

18 If I'm a nonIndian and I live in the City
19 of San Francisco and I breach my lease, my landlord
20 can serve me with a three-day notice. And in three
21 days, they can go right into court and sue. Indians
22 ought to be able to be afforded the same protection
23 by the trustee. The highest responsibility of the
24 trust.

25 I would like to see a definition added

1 that defines -- that specifies that the leasing
2 regulations will not apply to long-term tribal land
3 assignments that are approved by the Secretary under
4 25 USC Section 81.

5 Close your eyes and imagine for a moment
6 an absolutely gorgeous, beautiful valley, the most
7 luscious, beautiful valley you ever saw with these
8 sheer 400 and 500 foot walls on the both sides, and
9 that was the Chemehuevi Valley. The Chemehuevi paid
10 a high price.

11 In 1948, Congress passed legislation to
12 condemn as much of the land as the Secretary of the
13 Interior wanted to acquire of their reservation.
14 All of the Indians resided in the Valley. So in a
15 matter of a year, the entire tribe was dispossessed
16 of their land and scattered to Phoenix, to L.A., and
17 to everywhere else.

18 The tribe finally reorganized in the late
19 '70s, in the mid '70s. And now they are trying to
20 attract -- they have a 32,000 acre reservation,
21 which isn't as big as the Blackfeet's, but for
22 California, it's a pretty good size reservation.
23 It's got 36 miles of shoreline. They're trying to
24 attract people back to the reservation. Okay?

25 And, you know, and a good example,

1 Herb Pandiscio, former chairman of the tribe. He
2 owns a house in Burbank he bought in the 1950s, paid
3 \$10,000 for it. Even in today's market prices, that
4 house is worth about \$400,000. Okay? Why would he
5 sell that house and take that money and build and
6 invest that \$400,000 in building a new residential
7 home on the reservation, knowing that in 50 years,
8 his grandchildren is going to stand in front of the
9 tribal council, who may not renew the lease. And
10 his kids may not get it. Okay?

11 The Chemehuevi has developed a land
12 tenure system on the reservation that allows for
13 long-term land assignments. And you guys know about
14 this. We sued over it once. We got our action
15 dismissed because we failed to exhaust
16 administrative remedies. We exhausted the
17 administrative remedies. There is no reason why
18 those long-term land assignments cannot be approved
19 under Section 81.

20 And so I would like to see regulations
21 that would allow tribes to be able to do that so
22 that Chemehuevians or anybody else can attract
23 people -- people that -- you know, there are Indian
24 people out there that have money. My wife's a
25 Chemehuevian. She's a marriage and family

1 therapist. I'm a lawyer. We got money. We would
2 like to invest back into the reservation, but same
3 thing, you know. We invest back in the reservation,
4 make a \$500,000 investment, build a riverfront home,
5 you know, my thought is my grandson is standing in
6 front of the political opposition at the time. In
7 50 years he's run out on the residential lease, you
8 know. He goes to the then chairman's grandson, not
9 my grandson.

10 So there ought to be flexibility to allow
11 the tribes to be able to do long-term land
12 assignments to allow tribal members to reinvest into
13 the reservation.

14 The other thing on the energy section,
15 and this --

16 UNIDENTIFIED SPEAKER: Excuse me, weren't
17 tribal leaders supposed to get first priority?

18 MR. MARSTON: I'm speaking on behalf of
19 the vice chair.

20 UNIDENTIFIED SPEAKER: I would like to
21 say something.

22 MR. NEWLAND: I appreciate that. We are
23 accepting written comments also until April 18th.
24 It sounds like you've got some really comprehensive
25 suggestions, and I would invite you to submit that.

1 Your comments will be reviewed. I know I'll be
2 reviewing them.

3 MR. MARSTON: Okay.

4 MR. NEWLAND: But we want to make sure --
5 you know, we've got limited time here. We want to
6 make sure that everybody gets a chance to speak. I
7 certainly do appreciate --

8 MR. MARSTON: I will submit.

9 MR. NEWLAND: All right, thank you.

10 MR. WELSH: No offense to the gentleman.
11 He brought some very interesting points.

12 My name is Dennis Welsh with the Colorado
13 River Indian Tribes. I'm here with my fellow
14 council members, T.J. Laffoon, Cynthia Homer,
15 Sylvia Homer, and Eric Shepard, our attorney
16 general.

17 I guess the basis of my comment is pretty
18 simple. I think what everyone has said here is -- I
19 think the regulations, as long as they're clear and
20 there is no ambiguity as far as what the BIA's role
21 is, I think it's fine. But as far as restricting or
22 limiting our sovereignty on regulations on our own
23 land, I think we should avoid that at all cost.

24 Like the gentleman over here, when it
25 comes to bonding, I'm a bonder myself. And when I

1 first got started, I had trouble getting bonding
2 myself. None of the local insurance companies did
3 bonds on tribal land. And we tried and tried and
4 tried and couldn't get bonding. But as far as
5 bonding and houses, a lot people on the reservation,
6 they don't have that kind of money. They can barely
7 afford to build a house much less to put bonds on
8 it.

9 As far as the maximum flexibility on our
10 business partners, we do joint ventures. One of the
11 most attractive things of bringing outside business
12 interests into our reservation is the flexibility of
13 our environmental laws as well as the flexibility of
14 leasing lands as far as, for us, the lack of BIA
15 interference.

16 So I think as far as solar, wind, and
17 energy projects, I think the way things are right
18 now, I like them. Because right now for us, we got
19 our own regulations. We do what we want to do. If
20 we want to lease land out, we lease it the way we
21 want to lease it. As far as all of the projects we
22 do, the BIA is there, and basically they process
23 documents for us. They do that as far as title
24 service, and that's it. It's a beautiful
25 relationship. We get along with the superintendent

1 very well, and she does support our interest.

2 But as far as the way things are right
3 now, I'm pretty happy with it myself. I think it
4 allows maximum flexibility for tribal members to
5 develop businesses. But as far as partnering
6 outside interest and people bringing people to our
7 reservation saying that we can do these things, we
8 can do anything because it's our land.

9 So to come here today and say, Well, you
10 know, I don't think you should be asking us this and
11 that, I mean, really, at the end of the day, I'm
12 happy the way things are. All we want for us, we
13 just want things to move faster. That's the most
14 important part of it all is the bureaucracy. Things
15 take forever to hear back from you guys.

16 As far as water leasing that the
17 gentleman was talking about earlier, I think we
18 should be able to do it. And we are going to do it.
19 Whether it's tribe to tribe or whatever it may be,
20 it's our land. It's our water. We should be able
21 to do it. So as far as the comments -- as long as
22 things stay the same, I'm pretty happy with it.
23 Because I think it has worked well for a long time.

24 We have casinos now. We've built dams on
25 our reservations. We've built canal systems, and

1 it's working. As long as the BIA doesn't interfere,
2 as well as our jurisdiction. Someone was talking
3 about taxations, local, state and other
4 municipalities. We don't even talk about that where
5 we're from. It's CRIT land and it's CRIT laws.

6 And we've evicted people and --
7 Chemehuevians, our neighbors up the street -- we've
8 actually went over there and threw people off our
9 land, that actually were put in place by the BIA for
10 years and years and years with dirt cheap leases.
11 And when those leases expired, the first thing we
12 did was go over there and told them, Hey, it's time
13 to leave. Your 25 years is up and you got to go, or
14 you got to follow our laws, and they didn't want to,
15 so we had to evict them.

16 But as far as the way things are, I like
17 them the way they are. I'm 36 years old, and I'm
18 starting my second term on council, and I look
19 forward to a long career with the tribe as far as
20 doing business there. And I look forward to my
21 children, my sons and my daughters and my fellow
22 tribal members doing business there, as well, the
23 way things are. I like them just the way they are.
24 And that's complete sovereignty and respect for our
25 jurisdiction.

1 Thank you.

2 MS. GILLETTE: Thank you. Are there any
3 other tribal leaders in the room that would like to
4 comment?

5 MR. MICKLIN: Will Micklin, First Vice
6 President, Central Council, Tlingit and Haida Indian
7 Tribes of Alaska. And just a couple of items I will
8 try to go through quickly.

9 I'm a little -- I don't have any specific
10 comments, but I need to review it further, but some
11 concern about the consent provisions for leasehold
12 mortgage and assignment and sublease. That's in
13 162.580, 572, and 576. And just that it's not
14 constraining the ability of the lessee to raise
15 capital through debt instruments for the project,
16 particularly for the debt that we start on leases.
17 That's always sort of an issue with the specific
18 language of a lease agreement.

19 On the taxation issue, again, my emphasis
20 is on the entities having jurisdiction, which
21 appears on 144, 162.555 (a), and that refers back to
22 page 121, 162.515 (c), where it addresses the not
23 subject to the state tax, and I agree with the
24 comments that that ought to include nontribal
25 improvements.

1 And I would also like language in there
2 that would confirm that the lessee is subject to
3 tribal taxation. And that's been subject to a
4 number of cases and Marion and going forward from
5 there and probably less successful than Marion
6 back in the '80s.

7 I think -- I'm not sure but -- whether it
8 is necessary, but just that it be clear that the
9 leasing regulations do not apply to tribal
10 delegations of land to its federally chartered
11 Section 17 corporation, that that delegation is
12 clear and unaffected by the leasing rights.

13 I wholly support the tribal waiver of
14 bonds or the bonding requirements when appropriate.
15 And in particular, I have some specific concerns on
16 the effective date for pending approvals, and that's
17 on page 152, 162.565 (b), and that's the obligation
18 of the parties be made effective -- part -- allowed
19 to be made effective on some past or future date.

20 My concern is really on the interplay
21 between the WSR permit and the WSR lease. Now, the
22 permit is the term 3 plus 3, and the lease is the 25
23 plus 25. My concern comes about in 162.537 (e)
24 where there is a one-year limit to the commencement
25 of terms after approval of the lease.

1 Generally, with these leases when they
2 are necessary, generally, they are necessary when
3 secretarial approval of the lease document is
4 important for the lender. And those put in their
5 capital risk on the improvements on the tribal land;
6 that we all recognize that it goes through a
7 permitting and approval process.

8 It's not just the lease. It goes through
9 an intense environmental process. The EIS, or NEPA
10 trigger, can take up to 2 to 24 to 36 months.

11 And the outcome of the environmental
12 process is always going to be an unknown. We were
13 going through one where the preferred alternative is
14 to eliminate all the turbines on the tribal land and
15 lease the ones on the BLM lands.

16 Obviously, we would not want to be bound
17 by terms of the lease made effective on the
18 execution date if, in fact, during the second year
19 of that lease, we have no -- no stake in the lease.

20 So I think it might be better if it were
21 structured such that there was an option period in
22 front of the lease term and that option period could
23 be used, for one, for resource assessments to
24 approve the resource, whatever it is, and secondly,
25 that there would be an execution date of the lease,

1 but binding on the parties at some point forward,
2 probably like three years plus two years extension,
3 and then the lease term would commence, which would
4 be the 25 plus 25.

5 And that would allow for in the instance
6 that during the option period, that you did -- the
7 project did not receive appropriate approvals in the
8 best interest of the tribe, that that agreement
9 could then be terminated. Or if they are received,
10 conversely you would go forward for the full term
11 without the option period detracting from the full
12 term of the lease, or the tribe could expect to
13 receive its operating payments.

14 And I'm a little concerned about the
15 references to land covered by the permit or the
16 lease, generally that's called a lease of premise.
17 And my concern is that on page 123, 162.521 (a) (3),
18 where "the WSR lease is limited to land covered by
19 the WSR permit or a portion thereof," and this
20 contemplates that the option, that it would
21 permanently lead to a lease.

22 Generally, two concerns, one is if you
23 are just doing a permit, I'm not going to permit
24 everything. They're going to permit a couple of
25 places where the resources could be properly tested,

1 data collected, and then analyzed by the appropriate
2 expert to determine if there is a bankable resource
3 for a renewable energy project.

4 So that is a very limited area, and the
5 compensation based on the land area, I'm not -- I'm
6 a little troubled by that because generally the
7 compensation is either you give me all the data you
8 collect, which is valuable to me, and you can take
9 the money and keep the data. But in terms of land
10 area, you know, it's just a footprint.

11 But when you apply the lease, the lease
12 premise for the lease, and you say you can't go
13 greater than that, my concern is that you -- what
14 you actually do for -- for instance for a wind
15 lease, is you test it in a small area. You then go
16 to lease approval for a larger area because you are
17 going through this environmental process, which may
18 move around the turbines, which is a common
19 mitigation measure; so you're changing your array,
20 you're changing the lease area, the lease premise.

21 And that -- and once that the array is in
22 final form, in final location, then the prevalent
23 methodology is to shrink that lease premise to the
24 smallest area possible, which is the turbine
25 foundations and offset -- a setback. And that is

1 generally much smaller than the lease was
2 contemplated in the beginning.

3 You have to contemplate that because you
4 want to begin the approval process and the funding
5 process for project funding, and you can't do that
6 unless you have an approved lease, an executed
7 lease. So I think that -- I think that restriction
8 would need to be lifted, and, you know, again, the
9 compensation on acreage of land, I think I referred
10 to that.

11 And I think finally there is -- and a
12 go-dark provision, and really, what I'm talking
13 about is cancellation. It appears most sensitive
14 to -- and this regulation contemplates the base or
15 minimum payment plus, or participant for a payment.

16 And sometimes there are instances where a
17 lessee is okay with a minimum, but they don't
18 produce, and therefore you have no participation,
19 but they're still complying with the lease term.
20 There should be in effect, a go-dark provision so
21 that if they're not operating in full capacity, that
22 provides the best revenue for the tribe that there
23 ought to be a cancellation provision.

24 And again, as was mentioned, there ought
25 to be an administrative cancellation rather than

1 going through the IBIA.

2 That's it. Thank you.

3 MS. GILLETTE: Thank you, Will. I'd hate
4 to see your specific comments. If you will provide
5 those in writing, if you have any other
6 additional -- I know that you are pretty good about
7 submitting written stuff too. We really appreciate
8 that.

9 We will move on. If there are any other
10 tribal leaders here in the room that maybe have just
11 joined us. I also wanted to acknowledge a couple of
12 our agency partners and our administrative folks
13 that have joined us in the room.

14 Kimberly Teehee, from the White House,
15 Domestic Policy Council and Native American Affairs
16 Advisor has joined us. And then also Pilar Thomas
17 from the Department of Energy has also come into the
18 room. So I wanted to thank you for joining us.

19 We will move on to tribal
20 representatives.

21 MR. ALLAN: Good afternoon. My name is
22 Robert Allan. I'm the -- that's R-o-b-e-r-t
23 A-l-l-a-n. I'm the principal attorney of the
24 Division of Natural Resources of the Navajo Nation.

25 As a general matter, just reading through

1 your proposal amendments, generally I think that's a
2 great improvement over the current leasing
3 practices. What caught my eye in particular are the
4 wind and solar project amendments. I think that,
5 first of all, you know, a three-year permit
6 development period seems a little bit long.

7 What we have done on the Navajo Nation,
8 we already had our first wind project, all of the
9 indentures executed and approved. We're moving to a
10 second project, and probably our first solar project
11 and the last two projects within the next year.

12 But I think that it's important not to
13 have a developer speculator hang around too long.
14 What we have seen is we have a middleman that comes
15 in, and they will charge their sales or commission
16 fee, finder's fee, and they'll find somebody to
17 build the project, and promptly with 1.1 to 1.6
18 million dollars in fees, which the tribe could get
19 instead of this third party who won't end up
20 operating or building the project in the first
21 instance.

22 But looking at your regulations, what
23 caught my eye for the moment, 162.502 (a) provides
24 "except as in Section 162.011, anyone seeking to
25 conduct activities associated with the evaluation of

1 wind and/or solar resources on trust or restricted
2 land must obtain a WSR permit."

3 I think that there's a section you need
4 to add. At the Navajo Nation, our tribal treasury
5 is short of money with which to participate as an
6 equity partner in developing these projects, and
7 we're looking at 500 to 1,000 megawatts, we're
8 looking at 1 to 4 billion dollars of investment just
9 to build the structure and operate it.

10 And what we've had to do in order to get
11 financing, both from Wall Street and through other
12 means, is we have to have a lease. And what we've
13 done in one instance is we have an enterprise within
14 our tribe. We structured the lease agreement. We
15 helped negotiate financing agreements and company
16 operating agreements, the operating company. And
17 what we'd like to do, what we try to do instead of
18 being a passive landowner, landlord, rent collector,
19 we try to get even more revenues by participation as
20 an equity owner in the operating company.

21 So we try to leverage the value of our
22 natural resources in order to gain that equity
23 position. With 162 (a) and this exception for a
24 tribal entity, that makes it difficult for us to be
25 able to finance through current real estate finance

1 mechanisms on and off the reservation and
2 nationally.

3 So we would ask that there would be
4 another subsection added that would allow for tribes
5 to gain equity position through issuance of leases
6 to one of their enterprises or a business entity
7 rather than just the tribe leasing to a possible
8 developer or project company and just receive
9 passive income.

10 The other thing that's important to know
11 is that you need to have a lease in order for the
12 operating company to bid on power purchase
13 agreements. There's a national queue. Of course,
14 energy is highly regulated; so there are several
15 business organizations who are qualified to bid with
16 public utility companies.

17 And if you don't have that lease, you're
18 not qualified to bid on a PPA. PPA anchors most
19 financing arrangements to build the facility, the
20 project, and run it. So that's why that's important
21 to amend that section, I think.

22 And the other thing that caught my eye
23 was Section 162.528 (f), environmental and
24 archeological reports. Most of the wind solar
25 energy, and other power generation facilities more

1 likely than not will require an EIS. And all we
2 have been able to do is we can get the financing off
3 the ground. We can negotiate our equity position in
4 the operating company and we can actually go to Wall
5 Street to sell, to sell bonds or stock, et cetera,
6 in order to build a power plant.

7 But the problem is once all of that is in
8 place and then to get the final permits, including
9 the air permits, final approval of the lease,
10 there's that determination from BIA that EIS is
11 required or federal EPA.

12 So I think that knowing that in advance
13 for most power projects, it would be nice if we
14 could address that in the requirements in advance
15 instead of being surprised by an additional 1.5 to
16 6 million dollars to get that EIS done. Which adds
17 to the price tag of capitalization of the project
18 that most of the parties don't have and will have to
19 look for, and, of course, when it comes to the
20 government in the past and they have helped us.

21 And the last thing is when there is EIS
22 needed, the Federal Fish and Wildlife Department has
23 to be involved with the biological opinion, and we
24 all don't want to be surprised by that, the extra
25 delay, the extra expense.

1 And those are my comments for the moment.
2 Thank you.

3 MS. GILLETTE: Thank you.

4 MR. REID: Hi. My name is Josh Reid.
5 I'm an attorney for the Moapa Band of Paiutes, and I
6 just have a couple of brief comments.

7 Moapa Band of Paiutes has several
8 thousand acres solar that are currently in
9 development, and they have two leases that are
10 before -- before the BIA for review, and the need
11 for process has already started. And so a concern,
12 Section 162.004, which says that these new rules
13 will apply to an existing lease, you know, these --
14 if our need for process isn't done, and these
15 developers don't exercise their options before you
16 put these regulations into place, we're not quite
17 sure where we would be.

18 We're under option agreements now, and
19 whether that would take us back to the permit
20 process, which would be difficult since we think we
21 have a binding obligation right now. So that's a
22 question of concern, what happens to leases that are
23 already here.

24 Second, we want to ask about the 25-year
25 limitation on solar leases. The market for solar

1 wind energy in general is very competitive. To
2 develop a project on a reservation, as well as
3 anywhere else, you need a power purchase agreement
4 with an off taker. It's common that these power
5 purchase agreements are 25 to 30 years in length; so
6 these regulations give no time to actually construct
7 the solar wind facility, whatever you are doing, and
8 so the Moapa Band of Paiutes would suggest a 35-year
9 term that would give time for construction and also
10 the commission.

11 And we will submit the rest of our
12 comments in writing.

13 MS. GILLETTE: Thank you.

14 MS. ROSIER: Good afternoon. My name is
15 Theresa Rosier, and I'm the Deputy General Counsel
16 for the Salt River Pima-Maricopa Indian Community.
17 I'm here with Ruben Guerrero, our Office of
18 Congressional Legislative Affairs, Acting Director,
19 and Quannah Dallas, from our Economic Development
20 Department at Salt River.

21 We do a lot of continualized commercial
22 leasing. We're right next to Costco. As many of
23 you know, we have the first spring training facility
24 for the Diamondbacks and Rockies in Indian Country
25 in the United States. So we are very familiar with

1 the commercial leasing through our self-government
2 contract. We've been doing it for a number of
3 years.

4 And overall, I think there's a lot of
5 provisions in here that we can support that we can
6 add a lot of clarity, and then there are some
7 provisions that we have questions and concerns
8 about. And I'm just going to talk about a few of
9 them today. We will be submitting comments at a
10 greater length.

11 But first, on the deeds consent, I know
12 it's throughout the document in residential
13 commercial provisions, but in looking at the
14 commercial provisions, we have significant concerns
15 about that, not necessarily in BIA having a 30-day
16 time period, but if you put that same restriction on
17 the landowner, we have allotments where you have a
18 thousand landowners. So to give somebody 30 days to
19 review a lease amendment, to give those thousand
20 landowners 30 days, it's not feasible.

21 And also the developers we deal with, the
22 landowners have their best leverage before there is
23 even a lease. So once there is a lease, they start
24 whittling away at those landowners. And we have
25 developers who have put two or three lease

1 amendments in place that are trying to whittle away
2 at the rent and drastically reduce the rent and they
3 claim economic hardship.

4 And so you'd have a point where you could
5 be completely renegotiating the fundamental terms of
6 the lease, but allowing a lease consent provision
7 for landowner consent, I think you will run into
8 some problems with your trust responsibility to the
9 landowners because I think really with the lease
10 amendments, that's where we see developers being
11 more aggressive. They've got the lease, and now
12 they are going to work the landowners as best they
13 can, to say I'm going to leave unless you do these
14 six things, and landowners want to see the money
15 coming in even if it reduces rental income. So we
16 have concerns there.

17 Next in the document, throughout the
18 document you refer to an inherent federal function.
19 And our concern is the self-governed program. We do
20 have some authority from the Secretary of the
21 Interior, and except for inherent federal functions,
22 and that definition needs to be clarified, because I
23 can guarantee you our definition of inherent federal
24 function is going to be different than, you know,
25 any -- the BIA, central office, field office,

1 regional office, we will all have different ideas
2 about what inherent federal function is. We need to
3 be clear about that so we don't end up spending
4 hours debating that issue.

5 Permits, we really welcome the permit
6 provision. We think -- we do a lot of temporary
7 construction permits. We don't -- we run those
8 through the Bureau. It's incredible how much paper
9 we send to the field office for really short-term
10 limited permits.

11 But I do see the provision that they need
12 to be recorded at the Land Title and Records Office.
13 By the time you record it, the use is going to be
14 done. So I don't know that that is really something
15 that you want to do, is have a temporary
16 construction permit recorded at LTRO. It will be
17 recorded for about eight months, and by that time
18 the project is already done and finished.

19 But our big issue is going to be in the
20 residential setting, and I don't know if this is a
21 Salt River specific issue. We've been told that
22 other tribes in the country are -- landowners and
23 other tribes that are seeking to get a homesite
24 lease, they are paying rent to the other allotted
25 landowners; so they are paying rent to their aunts

1 and to their uncles.

2 At Salt River we've not done that. So it
3 is very different for us. We have been working with
4 the legal Bureau, but we have been told that we must
5 pay compensation -- not we, the landowners must pay
6 compensation to their family members, to just the
7 family members, whoever the other landowners are on
8 the lease premises.

9 So with this new mandate, we went from
10 having 40 homesites approved a year to four
11 homesites. So it significantly changed how we do
12 homesite leasing. We aren't doing any. And it's
13 detrimental to the landowners. It's detrimental to
14 the homeowners. It has literally put a halt to
15 getting adequate housing to Indian families.

16 And so we'd ask you to reconsider that
17 provision in the lease. You know, we could talk
18 about the Indian Land Consolidation Act, in our
19 position or the Bureau's position, but at the end of
20 the day, this policy decision is, you know, it's
21 affecting the Indian family and it is detrimental to
22 the Indian family in that they are not able to get
23 adequate housing or home improvements, and in our
24 case, our power company, SRP will not run additional
25 lines without that homesite lease. So you have

1 families with no air conditioning in Phoenix,
2 Arizona. And it's all because they can't -- they
3 don't have the money to pay the other 600 landowners
4 in that allotment.

5 So with that, those are our concerns, and
6 again, we will submit written documentation. Thank
7 you.

8 MR. RACINE: Good afternoon.
9 Ross Racine, Intertribal Agriculture Council.

10 I came here primarily because I was quite
11 concerned about 162 as it applies to agricultural
12 land. And sitting here with a councilman from my
13 home reservation, then I started to go through this
14 with him and came up with a whole series of
15 questions.

16 But on page 38, one, two, three, four,
17 "If the tribe provides a tribal authorization with
18 an explanation of why approval will serve as the
19 tribe's best interest," to me that is demeaning to
20 tribes. That's saying you don't have the authority
21 to determine what's best for your own land, you
22 know. So I really question why you're having a
23 tribe document what they're doing with their own
24 property.

25 Market analysis, again, appraisals. Who

1 is going to pay for an appraisal? Is that the
2 Bureau's responsibility to provide those appraisals?
3 Or is it the lessee, or is it the landowners'
4 responsibility for those appraisals? I think that
5 needs to be somewhat clarified.

6 Also think that, again, the tribes have
7 the authority to recognize authority to determine
8 what appropriate value is placed on the property
9 both tribally owned and evidentially owned on
10 reservations. I mean that's addressed in public
11 law 103 -- 133, I believe it is.

12 And again, in determining value, you
13 reference an appraisal process, and I question when
14 it's not even being followed by the Bureau, are you
15 going to require somebody else to a higher standard
16 than what it is presently carried out today?

17 162.330, if you're granting a residential
18 lease on a piece of irrigated property, then I
19 highly recommend that you remove that land from the
20 irrigation process, because surely you're not going
21 to be irrigating underneath a house or in a
22 household structure, household lease structure,
23 residential lease structure. You are going to
24 require the operation and maintenance assessment for
25 property underneath the house and garage and out

1 buildings? My recommendation is that you look at
2 removing that in the irrigation process.

3 Performance bonds, again, a number of
4 people have addressed that. It's next to impossible
5 to get performance bonds on a reservation.

6 Another clause that causes me some
7 concern, and again, my councilman has reflected on
8 the requirement to have a DOI standard boundary
9 evidence, but what is being applied in agricultural
10 leases for some water improvement projects is when
11 it's part of 169.

12 But my question is and it's unclear as
13 how you have it written here, are you requiring
14 those same surveys for the location of the
15 utilities, water, and waste that is being required
16 in the agricultural leases for irrigation conveyance
17 and water improvement projects?

18 And thank you for the opportunity. That
19 concludes my comments right now.

20 MS. GILLETTE: Thank you.

21 MR. APPENEY: Good afternoon. My name is
22 Arnold Appeney. I'm from Fort Hall, Idaho. I'm a
23 Land Use Director. And some of the problems that we
24 have, I just need one in particular that we have
25 continuing problems with is in the Bureau, what we

1 have is a bid process where nonIndians and whoever
2 is going to lease comes in and makes a bid. It's a
3 sealed bid, and if there is more than one, they
4 usually go through an auction type of bid.

5 But once these bids are awarded, some of
6 them are what they use -- the term that they use is
7 "taken under advisement." I don't know if that is
8 permissible or not, but that's what they do.

9 And some of the leases that are issued
10 out are quite low, and they will say it depends upon
11 whether or not that this person that they're asking
12 for is a personal buddy or whatever you want to call
13 them, some associate, but they allow this person to
14 come in after the fact because they took it under
15 advisement, and they give it to him.

16 Like something that should have went up
17 for \$90 an acre would go up for something like 15.
18 And a tribe having that process really don't have
19 any mechanism to back it out and say, Look, we need
20 this thing here readvertised because nine times out
21 of ten, these are allotted lands which the Bureau is
22 a trustee, and the tribes don't necessarily have any
23 say in this. So all we can do is complain, and
24 we're not too sure who to complain to.

25 I guess the gist of my story is that I

1 think there needs to be some kind of mechanism in
2 place where you can grieve it or you can contest it,
3 because the tribe would be coming in with an
4 individual or the individuals, because a lot of
5 times, these lands that I'm talking about would
6 be -- there would be fractionated interest where you
7 have a lot of landowners in there but they can't --
8 they don't necessarily have a voice because on one
9 side they say that only if you have better than
10 50 percent of the land, you have a voice to say and
11 contest whatever, and it's just all fractionated.

12 Then the Bureau superintendent basically
13 has the say of what should go out and what
14 shouldn't. Okay? And I guess my -- in this matter
15 I'm requesting that some kind of mechanism be put in
16 place to give answers to those kinds of situations.

17 And I think there needs to be a listing
18 of bonding agencies for these people that are
19 complaining about the bonds to be given out in
20 tribes so they know who to go to. The ones that I
21 know of comes out of Iowa, and that's nowhere near
22 Idaho from where I come from.

23 And that's all I have to say. Thank you.

24 MS. GILLETTE: I just have a question,
25 when you asked for a mechanism for someone -- or if

1 you -- I just have a question, a follow-up question
2 to your comment.

3 When you are asking about a follow-up
4 mechanism, do you mean for the individual or the
5 tribe? Or who would it be for, because you are
6 saying that the landowners, there might be numerous
7 landowners, and I just want to get a clarification
8 on that.

9 MR. APPENEY: Well, we as a tribe, I have
10 to ask it for the tribe, but I see it because
11 individual Indians, basically they are the victims.
12 And so I think that the tribes should be able to ask
13 the government step in and say, what's the story on
14 this, however you want to characterize it, under the
15 table deal or whatever, we need to expose it and get
16 a better value for it.

17 MS. GILLETTE: Next comment? Was
18 somebody going to -- were you going to comment next?
19 Okay.

20 Why don't we take a ten-minute break, and
21 we'll come back -- we'll convene back here at
22 3:00 o'clock.

23 (Break taken.)

24 MS. GILLETTE: I would like to ask
25 everybody to come back and take your seats.

1 MR. NEWLAND: People are starting to
2 trickle out. One little business item, if you're
3 interested, we have the sign-in sheet up here if you
4 were not able to sign in. It's really beneficial
5 for us to record who's here participating. All this
6 stuff is going in the consultation record that will
7 help inform -- the sign-in sheet will help inform
8 our review of the comments so we know which tribe
9 you are from and where these issues are cropping up.

10 I wanted to say thank you to the folks
11 who have already made comments. The substantive
12 comments were very helpful.

13 We would also ask that folks have
14 conversations they want to continue, that they step
15 out into the hall and allow us to proceed with this
16 dialog.

17 So at this time is there anybody else in
18 the room that wants to make any comments about the
19 draft 162 leasing regulations?

20 Again, I want to thank everybody for
21 being here. I know that Jodi and myself and Liz and
22 Pilar, when she was -- she was an Interior person,
23 and others. We worked really hard on these, and
24 hear your comments, and we're going to go back to
25 the drawing board.

1 I want to note, just a couple of things
2 for those of you still here. Hearing you loud and
3 clear on the bonding issues, and, you know, the
4 state and local ordinances and the lease terms. And
5 you know, we hear what you had to say. We are going
6 to go back and look at our options and how we maybe
7 can incorporate your comments and your concerns and
8 your recommendations into the draft going forward.

9 At this time I would like to invite up
10 Kim Teehee from the White House staff to make a few
11 remarks.

12 MS. TEEHEE: Hi, everybody.

13 Thank you so much, Bryan and Jodi, for
14 inviting me to attend today's consultation session.

15 I thought it was important to be at RES
16 2011 this year because certainly the President's
17 number one priority right now is addressing the
18 economy and job creation. I certainly believe that
19 a part of our goal in winning the future is to out
20 build and out innovate, and -- and to really try to
21 focus on ways to create new jobs in order for us to
22 go into the future.

23 And so part of our priority this year is
24 focusing on economic development and building
25 intermediary collaboration. So you've got the

1 Department of the Interior, Department of Energy,
2 the USDA, Commerce, FDA, Labor -- I think I saw Jim
3 in here earlier from USDA, in fact -- who are all
4 working together to advance a lot of different areas
5 that impact the role of development, economic
6 development, energy development.

7 And yesterday, the Department of Energy
8 sessions, which I was please to participate in, was
9 another example of this administration's commitment
10 to making sure that your voices are heard and that
11 your input matters, ultimately which turns out to be
12 an initiative or regulation that moves forward as
13 part of this administration's effort to advance
14 economic development in the country.

15 So I just want to say thank you guys for
16 all of your input and important dialog is ongoing.
17 As Bryan indicated earlier, he's going to take your
18 input back and do some reworking, and I'm sure there
19 will be other sessions as well. This input is
20 extremely important, and sometimes people don't
21 realize how important it is to this administration.

22 It really -- it put us to pass the Indian
23 Health Care Improvement Act to Support the Tribal
24 Law and Order Act to even resolve long-standing
25 disputes, also to put the President's support the

1 U.N. declaration on the rights of indigenous people.

2 Your input matters to us. And this is a
3 critical area for us because we want to make sure
4 that all Americans have opportunities in economic
5 development, and so I really appreciate all of your
6 input today. Thank you.

7 MS. GILLETTE: I would like to have one
8 more call for any further comments, any last takers.
9 Like somebody stepping forward? No? Going once.

10 I just want to -- you do want to say
11 something? Great, thank you.

12 MR. HARRISON: Well, since you asked, I
13 think I got it from Bryan's comment that we're
14 contemplating --

15 MR. NEWLAND: Can you say your name?

16 MR. HARRISON: Oh, I'm sorry. I'm
17 David Harrison, and I'm from Osage Country.

18 We are contemplating some simultaneous
19 leases, overleasing or underleasing the same
20 property for business or maybe even agricultural or
21 grazing business, and separate uses for wind and
22 solar development, and if that's the case, I was
23 going to suggest that the regulations perhaps ought
24 to make that quite clear so that a business or a
25 farmer or a rancher lessee doesn't feel like he has

1 the right to interfere with a subsequent opportunity
2 to take advantage of wind and solar resources as
3 well.

4 MS. GILLETTE: Thank you.

5 These are all really useful, and like
6 Bryan said, they are not -- they're not just words
7 that you are providing us. There's real practical
8 application that you all have to deal with as you're
9 working to develop Indian Country.

10 And when we talk about restoring tribal
11 homelands, we also want tribes to be positioned as
12 great as possible to make sure that you provide a
13 really healthy and vibrant community for the future.
14 So in providing jobs and being able to develop
15 businesses and having affordable housing and have
16 really great -- it will greatly enhance your ability
17 to govern your nations. And so these are all things
18 that are very important.

19 As I say, we looked at these regulations,
20 and we know that your input is going to guide us.
21 And as we said, these are drafts. They are not
22 proposed yet. And if you know of other tribal
23 leaders that will have a stake in this and they
24 haven't taken the time to look at it, you know, it
25 is open until the 17th. If you could notify myself

1 or Bryan -- I'm not sure if we have an e-mail that
2 folks can -- is it tribal consultation?

3 MS. APPEL: It's consultation@bia.gov.

4 MS. GILLETTE: consultation@bia.gov. If
5 your tribe or if you know people that haven't
6 received or maybe they don't have the disk with
7 the -- the regs are in the Web site. You can direct
8 them there.

9 But if you have -- if they have any
10 questions, you're free to contact me as well. My
11 e-mail address is jodi_gillette@ios.doi.gov. And I
12 can direct you to the right person. We're taking
13 these comments and this process very seriously.

14 UNIDENTIFIED SPEAKER: How do you spell
15 your last name?

16 MS. GILLETTE: G-i-l-l-e-t-t-e, like the
17 razor. Or the company that makes the razors.

18 So with that, I guess is there somebody
19 else that wants to comment, that would be great.

20 MR. APPENEY: I just want to make a
21 comment with regards to the way the leasing process
22 goes, first of all, where we have a constitution
23 that -- that was alluded to earlier about the
24 five-year term, how we can't get away from that, but
25 in the constitution, it says that basically the

1 Secretary of Interior can modify that.

2 I think that would be advantageous
3 because the thing that I hear with my people that
4 work in the Bureau of Indian Affairs is that when
5 they are trying to solicit for farmers to come on
6 the land to lease these farms for an extended period
7 of time where they have to invest monies, and
8 implement it, well, it takes time to pay for those
9 things and that -- but a five-year may have been
10 good for back in 1934 when this boilerplate
11 constitution was made.

12 But today is a different world, and there
13 is a lot of extended cost that is associated with
14 the farming industry. So I think the ten-year term
15 is something to be considered. I don't know if that
16 is something that you folks can allocate with or you
17 guys can change or what you can do with it, but it
18 would be advantageous for the tribes in particular
19 to benefit from that for an extended time in the
20 leasing period.

21 MR. NEWLAND: Thank you for your
22 comments.

23 I just want to add really quickly, when I
24 had mentioned at the outset of the original
25 presentation, that we know that there are some

1 really complex issues with agricultural leases, and
2 the timeline that we are operating under to
3 promulgate, to publish these rules, you know, it
4 wouldn't have allowed for us to also address the
5 agricultural leasing regulations in a way that we
6 wanted to in a comprehensive manner.

7 But we have, you know, those are on the
8 drawing board. We have a number of things on our
9 regulatory agenda. And we want to make sure that we
10 can get to the agricultural leasing as well. So I
11 would look for this administration in the future to
12 come back on consultation on the agricultural
13 leasing regulations.

14 MS. GILLETTE: We have a couple more
15 people that joined us.

16 MS. JOHNS: My name is Mary A. Johns, and
17 I'm from the Cheyenne Sioux Tribe. I just have a
18 question of inquiry regarding leasing. This might
19 not be in the appropriate place, but I think that it
20 needs to be thought of when we talk about leases,
21 and that is, especially in regard to agricultural
22 leases, when the owner of the land understands and
23 knows, has knowledge, that the lease is, if it's the
24 lessor -- the person leasing the land is the
25 lessor -- is overgrazing their lands. And my

1 concern is that the Bureau of Indian Affairs have
2 enough funds to actually go out and be able to
3 monitor what is going on within the reservation.

4 Because, you know, we can have all of
5 these wonderful words, but if we're not implementing
6 it at the very level of the Bureau of Indian Affairs
7 with individuals who can go out and actually check
8 on the land, then, you know, this is all just words
9 on paper.

10 And this is a big problem in the
11 Great Plains area that our lands are just being
12 overgrazed. And as a result of it, because of our
13 agricultural-based economy, our lands are becoming
14 less and less productive, and so we're losing out on
15 the number of cattle that we can actually -- you
16 know, our young people can actually graze on these
17 lands if they ever go into the cattle business.

18 MS. GILLETTE: Thank you. I appreciate
19 that. And just as Bryan said, these regulations are
20 dealing with, not with agricultural, but that's
21 something to consider. And it is important that we
22 regulate this area. And if you find in the
23 regulations there is a process, steps for process on
24 enforcement, and I will make sure that the lessors
25 are living up to the lease.

1 So there's very specific steps in here,
2 and I think this is a lot stronger than, you know,
3 than just doing policies or anything like that, and
4 it's important that folks understand that this is
5 probably the strongest we can be in terms of
6 process, and it puts the onus on us to be timely, to
7 be -- to get things investigated and have folks go
8 out and check on things when they are not going
9 well. So we appreciate that.

10 Are there any more comments? Okay. No
11 one?

12 MR. WILLIE: Good afternoon. My name is
13 Mellor Willie. I'm the executive director of the
14 National American Indian Housing Council.

15 The National American Indian Housing
16 Council has 462 tribes under collective housing
17 interest to Congress and the administration, and
18 we're here today just to hear about the session and
19 some of the comments back from tribal leadership.

20 Our organization is very interested in
21 the residential leasing process. We understand, you
22 know, that some tribes have a lot of excessive
23 burdens with our folks from CRIT, but there is still
24 the reality that exists within tribal land that
25 tribal people are taking anywhere from two months to

1 two years to get a homesite lease through the
2 process, and we hope that this rewrite of these
3 regulations will be able to help to address that,
4 that we have an expedited manner for getting
5 homesite leases.

6 Our organization can do the best we can
7 to increase the financial education of our
8 individual tribal members, to get them into homes
9 and to make financing options available and have all
10 those things that if they cannot meet the underlying
11 need of getting a basic homesite lease for tribal
12 people, it really defeats our efforts.

13 And so our organization is looking at
14 these regulations. We really want to have some of
15 our membership, who is the directors and executive
16 directors and some of the housing people that
17 operate the Housing Authority to be involved in this
18 session; so we sent -- we've actually printed out
19 copies of this and sent them out to all those who
20 are interested and try to get feedback.

21 But we need a little bit more time for
22 our membership to provide some comments and feedback
23 to us so that we can get some better recommendations
24 and send those back to you. And we hopefully will
25 be able to make it by the April 18th deadline.

1 But it's kind of a reality of what we're
2 dealing with with other advocacy and other
3 priorities that we have left in our
4 administration -- in our organization that we're
5 trying to get that as well.

6 But we appreciate you bringing this
7 preliminary draft copy before us because that really
8 shows that you have an interest in hearing our
9 concerns before we actually go forward with the
10 published draft policy, which makes it really hard
11 and difficult to make some of those changes. But we
12 will be involved in the commentary.

13 Are any of the -- to any of the tribes,
14 we would be happy to speak with you, and please
15 encourage your housing folks to work with us as we
16 try to develop some recommendations back to the
17 administration as well.

18 Thank you.

19 MS. GILLETTE: Thank you, Mellor. We
20 look forward to hearing from your organization and
21 all of the different housing entities you work with.

22 Any other comments? March Madness is on.
23 I know everybody is anxious to get home, and I don't
24 want to delay your ability to get to the airport if
25 you are trying to get there tonight or to the

1 important business meetings that you're taking this
2 evening.

3 Oh, we have one more person. I thought
4 if I sort of talked a little bit, we might have one
5 more comment.

6 MR. SWAIN: Mine is more of a general
7 statement. Like the gentleman said, I think it's
8 good that you have --

9 MS. GILLETTE: Sorry, could you say your
10 name?

11 MR. SWAIN: My name is Phil Swain.
12 You're on my ancestral land. You didn't get
13 permission to come here. That needs to be put in
14 the lease, please.

15 Anyway, I'm Southern Paiute from Moapa
16 Indian Reservation. I'm a council member there, and
17 I heard about this meeting; so I thought I would
18 drop by. Having met you before at President Obama's
19 big meeting, I appreciate that.

20 But my problem I have with the
21 regulations is that there's too many. And as the
22 BIA being the trustee over our lands, then that, to
23 me, is who we should deal with exclusively. But in
24 our case, we are negotiating two 100 megawatt solar
25 leases. And for us to go through that process is

1 pretty frustrating because we have to deal with all
2 those other federal agencies.

3 Case in point is Fish and Wildlife. We
4 don't even have any rivers out there where we're
5 putting this thing. It's all dry washes, but they
6 say we have to be there. Corps of Engineers is the
7 same way. You know, somewhere there has to be an
8 allegiant agency that says, We can waive those kind
9 of things. But it's not in here where it says,
10 Yeah, you could waive those things.

11 And then for us to go through an
12 environmental assessment. I said we've been
13 environmentally assessing our own land for the last
14 thousands of years; so we know what's on here. But
15 in order for us to even get the okay from the
16 federal government, we've got to pay some college
17 educated anthropologist or cultural guru that has
18 all of this education but that knows nothing about
19 Indian culture. They come out here and do that
20 assessment, and before we can do anything, we need
21 their okay.

22 I say that's a bunch of B.S., you know.
23 And they come to us to solicit that information from
24 us, and, you know, we should be the stewards of the
25 land. It's our land, you know. And for us to deal

1 with BLM, it's probably a prime example, they ask
2 everything they want. They won't give us anything
3 in return.

4 So we're still negotiating many of these
5 things that are taking place that to me -- I always
6 think the landowner outside of the reservation can
7 go through a minimum process and get the project
8 done a lot quicker than they can on the Indian land.
9 A lot of people say let's go on Indian land because
10 it's easier to do this business.

11 But I'm here to tell them it's not.
12 There's more stringent requirements that you got to
13 go through. EPA being one of them, Fish and
14 Wildlife, BLM, Corps of Engineers. All of these are
15 not in here that says can you waive these things.

16 The BIA the other day wrote us a letter
17 and said, We will not take any responsibility for
18 this and that. I said, How can you do that? You
19 know, you're our trustee. Whether it's right or
20 wrong, you still have that obligation to look after
21 our interest, and you're not.

22 And so -- but you know, that goes on to
23 other things and the reasons why these things are
24 taking place. You know, because I just happen to
25 come from a meeting here the other day, and I said

1 all those people you hired never been west of the
2 Mississippi; so how can you go out there and work
3 with the Indian tribes because you know nothing
4 about their conditions, their living conditions,
5 their land, what we have. We have nothing.

6 And I said you're going to tell us what
7 to do. I said when you have a consultation, you
8 come to me because I know the answers. You don't.
9 So in order for you to do your job, you have to get
10 the answers from me to give it to you so you can put
11 it in place.

12 Well, before your time, the BIA went
13 around and had 10, 15 different consultation
14 meetings, and all the tribal leaders in each of
15 those regions that they went to expressed certain
16 concerns. But did the BIA listen? No, they didn't.
17 So today those problems still exist.

18 The only one good thing -- I'm not sure
19 if it's a good thing, but I thought it was -- is
20 where we got rid of OST. They were taking our money
21 and Ross Miller was -- I hope he's not in the
22 room -- but -- is he?

23 MR. NEWLAND: He's behind you.

24 MR. SWAIN: That's the story of my life,
25 he's probably behind me. In fact, I'm always in the

1 back. But anyway, I wanted to make those comments
2 because I think it's good to have these. But it has
3 to be -- it has to be developed in such a way
4 that -- like through a commercial lease, you know,
5 other things like this.

6 The Bureau of Indian Affairs doesn't have
7 it really, the expertise or the personnel to help
8 you do these things. If we want to do an
9 environmental assessment or a complete environmental
10 review, we have to pay for it ourselves. And that's
11 the Bureau's job. Now, if you leave it to the
12 Bureau to do it, forget it. They're so far behind
13 with their reviews, it's going to take me five years
14 just to get in front of the doorstep to have someone
15 look at it. So that's out.

16 So when we do any negotiations,
17 especially with the latest one that we have, we have
18 to ask that investor to say, Hey, do you have the
19 money to do this? Because the Bureau doesn't have
20 it, you know. And that's been our experience
21 working with the Bureau on these type of leases.

22 We're just 50 miles out, and right now
23 we're supposed to be the solar capital of the world
24 because we have nothing but sun, sun, sun, and more
25 sun; so that's what we are counting on. But, you

1 know, we're getting to the point right now where the
2 expertise of the Bureau of Indian Affairs is
3 slipping, and that's what we're working with.

4 So if any of the tribes here, and in
5 fact, they probably can all attest to it, that when
6 they do something, they have to do it themselves.
7 And there's horror stories out there where they
8 don't want to give the program back to the Bureau
9 because they don't have the money to do it.

10 Case in point, I will give you my point.
11 It cost us almost 250,000 to run our police
12 department, and you try to turn it back to Bureau,
13 said we don't want it because we can't pay that. So
14 they don't have the money to do it. So we have to
15 continue to provide those miracles on our own on a
16 daily basis. And that's the bottom.

17 But anyway, leases, like I say, is
18 something -- that's something when I get off on
19 these tangents, you have to stop me. I see him
20 looking at me.

21 But anyway, that's my concern with these
22 leasing programs. It needs to be done in a way
23 that -- I always say it this way: I can go down
24 here to North Las Vegas. I can go into their
25 development office, and I can get everything I need,

1 fill out a receipt, and you can get it done in a
2 day. I can apply for a license while I'm doing
3 business.

4 But you can't do that with the
5 government. The government, you have to walk -- and
6 most of us is politics. And by the time you get up
7 here, you have to start over again, and you never
8 get it done. And that's why I always say economic
9 development is the base of our business. Same way
10 with housing, you know. If we get the jobs, then we
11 get the housing.

12 So those are probably some of the things
13 that I see all around, I observed over the years,
14 and right now, you know, we're fighting with -- I
15 won't say we're fighting -- but we're negotiating
16 with the Bureau on some of these leases that are
17 happening. And I see something in here about solar,
18 you know, which I think it's going to be great.

19 So with that, I thank you all for taking
20 your time. Thank you very much.

21 MR. NEWLAND: Thank you, Councilman.

22 I'd like to just point out a couple of
23 things. First, you know, we're aware of the process
24 required under NEPA, and I'd like to add that NEPA
25 itself is a very important law to protect -- to

1 protect all of our natural resources. And certainly
2 we continue to look at ways that we can improve --
3 improve process under NEPA and working with our
4 sister agencies.

5 And, you know, one of the things that you
6 can do is work to improve other processes like
7 leasing. And, you know, the Assistant Secretary
8 Echo Hawk, and Deputy Jodi Gillette have been very
9 aggressive, and one of the directives is let's be as
10 aggressive as we can with these leasing regulations.

11 And you also mentioned about tribes doing
12 it themselves. I would like to point out once again
13 that, you know, the administration is on record as
14 supporting pending legislation known as the Hearth
15 Act, helping -- the HEARTH Act, Helping Empower
16 [sic] and Advance Responsible Tribal Homeownership.
17 H-E-A-R-T-H.

18 And this legislation would essentially
19 allow tribes -- it would restore lease approval
20 authority at the tribal government level for tribes
21 that want to do that. And one of the things that we
22 have in mind with these leasing regulations is
23 creating a baseline so tribes enact their own
24 leasing regulations that get approved by the
25 department, and then they -- they don't have to come

1 back to -- you won't have to come back to us anymore
2 for lease approvals. You do that at the tribal
3 level.

4 We have been working with Mellor and the
5 Housing Council and other organizations and members
6 of Congress to get that passed precisely to do the
7 types of things that you are recommending. So we
8 hear you loud and clear and thank you for your
9 comments.

10 MS. GILLETTE: Thank you for helping us
11 and bringing us your words of welcome to your land.
12 Thank you.

13 Any other comments?

14 UNIDENTIFIED SPEAKER: Could you repeat
15 the conference dates again, and the location?

16 MS. GILLETTE: Do we have a letter out
17 there? Do we have a printed letter already? With
18 the new dates?

19 MR. NEWLAND: You do. It's on your
20 Website.

21 MS. GILLETTE: There's a printed letter
22 we passed out.

23 MR. NEWLAND: March 31 is the next one,
24 in Minneapolis, and then there's a third, April 6th.
25 I keep saying the 5th. April 6th in Albuquerque.

1 MS. GILLETTE: Any written comments will
2 be really helpful; so feel free to submit those.
3 And then there will be further opportunities. We're
4 on a pretty aggressive timeline. So, you know,
5 there's a process to get these final before this
6 administration is over. So we are aggressively
7 wanting to push these, and so your expedited review
8 of what we have on there will be greatly
9 appreciated.

10 We have one more tribal leader that came
11 into the room.

12 MS. CUCH: My name is Irene Cuch. I'm
13 with the Ute Tribe. I'm on the tribal council. I
14 have with me here Phillip Chimburas. He's also with
15 the tribal council.

16 We were just looking over the draft, and
17 I believe this is the first time we've seen it. So
18 what we need to do, I guess, is we need to take this
19 information back to our council and discuss it.

20 So when is the deadline when we have to
21 submit the comments? Do you have a date?

22 MS. GILLETTE: The deadline is April 18th
23 for written comments.

24 MS. CUCH: Okay. So where do we send our
25 comments to?

1 MS. GILLETTE: To the department -- I'm
2 sorry, the consultation -- the Web site -- the
3 e-mail address is consultation@bia.gov.

4 MS. CUCH: Okay. And also we have here
5 one of our tribal attorneys, Leonika Charging. She
6 represents Fredericks Peebles & Morgan; so we will
7 probably be working with them and also our
8 superintendent.

9 And I hate to say this, but he didn't
10 bring this information to our attention, but I guess
11 a letter was sent out in February, but our
12 superintendent should have met with us and warned us
13 about these draft changes.

14 But we will review it, and we'll be
15 sending you our comments. So that's for the record.
16 Thank you.

17 MS. GILLETTE: Thank you.

18 We know that the tribes will get a lot of
19 information, and I know that sometimes it's a
20 challenge to find which regulations that you want to
21 pay attention to, and so we keep sending out
22 messages, and we'll all continue to before the
23 next -- I think that is something that we can do
24 before the next live consultation is we can send out
25 another notice like that, just calling attention to

1 tribal leaders on these particular face-to-face
2 meetings, and then the deadline. So we'll do that
3 again.

4 We did send out a press release, but I
5 know that, you know, like we have been hearing from
6 tribes there's a lot of information out there. So
7 we'll just try to keep trying to make sure you get
8 that information. And we'll do it through our BIA
9 agencies and area offices as well.

10 MR. SWAIN: I want to make one general
11 comment again.

12 When we met with the President and he
13 said that he was going to get his cabinet people to
14 get together and consult with us, I think some of
15 these departments did and others didn't, you know.
16 So some of those agencies haven't really consulted
17 with the tribes like the BIA has.

18 In fact, they had a meeting here in
19 Las Vegas where they said, "We represent the
20 Department of Interior."

21 And I stood up and I said, "Excuse me," I
22 said, "I don't see the department here. If they're
23 here, then the cabinet officials are not here."

24 And all they had was the working staff.
25 They're conveying that message to us. And I said, I

1 don't think that's what the President was saying.
2 He wanted his staff out here to consult with us, and
3 we weren't getting that information. We were only
4 hearing it from the Bureau side.

5 And that was my criticism, that we have
6 all these other cabinet posts or people there. So
7 instead of saying -- instead of saying the Interior
8 consulted, it should have said the Bureau of Indian
9 Affairs consulted.

10 MS. GILLETTE: Thank you. I'll get -- I
11 would like to visit with you off line about that,
12 because I'm not sure which consultation it was.

13 MR. SWAIN: It was here in Las Vegas.

14 MS. GILLETTE: Yeah. We're holding a lot
15 of different ones between the Department of Interior
16 and the Bureau of Indian Affairs, so just --

17 MR. SWAIN: Just the comments, that's
18 all.

19 MS. GILLETTE: Thank you.

20 MR. SWAIN: Okay.

21 MS. GILLETTE: Thank you.

22 **CLOSING**

23 With that, I think we're ready to wrap it
24 up. So if I could just say that we do appreciate
25 your comments. We do appreciate the time that you

1 have spent to discuss this with us and bring it to
2 our attention on various comments and various
3 suggestions. They are very important to what our
4 next steps are.

5 And I also just want to wish you all a
6 safe trip home, and a lot of people are from a long
7 ways away. But the councilman here is only 50 miles
8 away. But we do travel a long ways and I know that
9 a lot of you spend time away from your families to
10 do this important work for your community.

11 For that, I'm really thankful, and I wish
12 you safe travels.

13 Thank you.

14 (Thereupon the taking of the proceedings
15 concluded at 4:15 p.m.)

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REPORTER'S DECLARATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

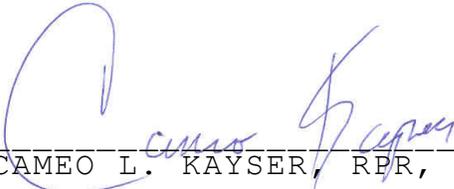
I, CAMEO L. KAYSER, CCR No. 569, declare
as follows:

That I reported the taking of the
proceedings, commencing on Thursday, March 17, 2011,
at 1:20 p.m.

That I thereafter transcribed my said
shorthand notes into typewriting and that the
typewritten transcript of said proceedings is a
complete, true, and accurate transcription of said
shorthand notes taken down at said time.

I further declare that I am not a
relative or employee of any party involved in said
action, nor a person financially interested in the
action.

Dated at Las Vegas, Nevada this 27th day
of March, 2011.


CAMEO L. KAYSER, RPR, CCR No. 569