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Title of Discussion: *The Land Buy-Back Program on the Pine Ridge Reservation*

Hello. Thank you. (Ms. Mesteth introduces herself in her native language.) I said good day to you all and I said my name is Denise Mesteth in my language because the language is another thing we are trying to revitalize on the reservation besides land. Today I would like to share with you some of our efforts on the reservation, and how we have worked with not only the tribal membership but also the government [including] the Department of the Interior, the Bureau of Indian Affairs, and the Office of the Special Trustee. Some of the things that brought about this effort -- to be one of the first on the list was the push from our [Tribal] Council. "Hurry up, let's make this quick happen" because we need our people to be able to increase their income. It is temporary, but the tribe also needed land for economic development. So the move was pushed and we had to sit down and negotiate with the Department of the Interior. We had many long days, but the Department of the Interior, including John McClanahan and some of his individual staff members were there that were a part of putting the overall cooperative agreement together. We were really stuck on the 15% indirect cost because our reservation has recently won the Ramah case,¹ and the Department of the Interior said all Section 638 contracts and grants awarded to the Oglala Sioux Tribe specifically were to use the indirect cost rate of 40%. I believe [the indirect cost rate] has changed now and it is up there a little bit higher. But the Department of the

¹ Ken L. Salazar, Secretary of the Interior, et al., Petitioners v. Ramah Navajo Chapter, et al. **Holding:** The federal government must pay in full each tribe's contract support costs incurred by a tribal contractor under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450, even if Congress has failed to appropriate sufficient funds to cover all of the contract support costs owed to all tribal contractors collectively.

Plain English Summary: Every contract is a deal between two parties, and both are supposed to perform their part of the deal. That means that, if the job covered by the contract is done as it should be, then that party is entitled to be paid what has been promised. This case involved Indian tribes that sued the government because it did not pay all of the costs it had promised to cover when the two sides made their deal for the tribe to provide education and other government-like functions for their members. The Court ruled that a promise is a promise, even if the government doesn't have immediately available enough money to pay all of the contractors it had promised to pay for their services. Congress has to locate the money to cover such a promise, the Court said.

Judgment: Affirmed, 5-4, in an opinion by Justice Sotomayor on June 18, 2012. The Chief Justice filed a dissenting opinion, in which Justices Ginsburg, Breyer, and Alito joined.

Interior refused to budge on the 15% [in spite of the finding in the Ramah case]. And that same year, the court case was won, but that was something we could not get over as fast as the Department of the interior got over it. In fact our tribal council was very adamant about us pushing that. However we were not able to get consent. In fact it made me feel like I wasn't doing a good job for my tribe but I wasn't the only one sitting around the table. I wasn't the only one that had that telephone turned on to the speakerphone when we got our conference calls. There was a big effort and unfortunately we were not able to get any more than 15% [in indirect costs]. I don't know, can you help me convince [John McClanahan] today? He is in the room. I'm teasing, John. I really do like John, he is a gentleman and we appreciate him visiting with us on all the levels we had to address these issues.

Another problem was with the offers, how would they first be offered. You know I'm sure there were many stories that were sent to John about what happened in the past. I was recalling one time when I was offered four dollars for my interest in Rosebud. And it was two interests that I had over there but they wanted to give me four dollars. First time I received the offer I thought this is an insult and I threw it in the trash. I was still the Land Director then too. I did not respond to them and I thought I'll just keep it. They sent it again. It probably cost more than four dollars to send one packet and they sent it again. I again threw it in the trash. I did not want to respond. When I thought about who do I want to inherit those two interests that cost four dollars, I don't know. Maybe I'll let it go back to the reservation. And so we came up and I said we should be offering a minimum of \$30, maybe looking at offering \$30 for at least the amount of interest if they sell. And they said, eventually they came up to \$75. And I thought that's great. I'm selling now. When that offer comes back I'm going to sell it because it's worth \$75 to me but it was not worth four dollars to me. There are just some people who may feel like that. I know I did.

There are other instances out there. We had spoken with elders about the different perspectives out there. I have talked to my aunt and my mother and my brother who is much older than I am. There was discussion about how this Buy Back Program -- how they should treat us and one thing we did agree was that we should handle it with the most respect because the people that have these interests are our people. And they are Native and some of them hold it emotionally with them. And they will never sell. They might gift off to their granddaughters, or grandchildren. That was taken into consideration. We need to know that these people that we serve are our people. And during those conversations going back to the discussion -- we talked about how to prioritize some of these exchange and consolidations, what do we want to buy first and what do we want to focus on first. So we identified economic development on our reservation. We said our reservation is over 2,000,000 acres and then we have towns on every almost every corner. So it is quite rural. If I was going to travel from one end of the

reservation to the other, it would take me two hours. That's just travel on the road. Maybe it would be a little faster if I was in a plane.

But today we have to consider what kind of economic development we want out there. Do we want economic development alongside the roads, or do we want it within the communities? Those are some of the things we selected -- the three-mile radius around communities so if we purchase interest in communities with the three-mile radius we would promote economic development in that community. Some of our communities are deeded ground with the exception of tribal ground for housing. We were not as fortunate to hold onto our lands back then. Today we look at the Cobell buyback program and we could probably identify areas like that and create or promote economic development. We identified the sites as priority interest.

Another priority interest was land around the boundary of the National Park -- a National Park that our tribe is taking back today -- well, trying to take back with the cooperation of the National Park Service. And what it would do would be to give us the first-ever tribal National Park in the United States. It will help us to grow economically, promote our culture, and promote our own story. In keeping in line with everybody else telling our story especially in the North, we need to promote our own story and make sure it is told the way we want it told -- because in the schools it is not told as well as it should be. And you know, we see, we heard witness to that when they said there was a massacre over there in Connecticut and it was terrible. All those young children and a few teachers and it was a terrible massacre. It was done by young man who had mental problems. The news reported it was the worst in the history of the United States. But we all knew, we all said: no it wasn't because we know the one at Wounded Knee was the worst one. The one at Little Bighorn -- that was comparable. There were many wars way back then that are not a big knowledge because why? I have no idea why. But we need to tell our own story. A lot of the people wanted to make sure that the South unit happened to tell our story, have a cultural center to promote for the northern reservation and in turn have economic development. Also they would like to purchase that interest along the boundaries of the identified South unit, it would be the South unit, a part of the national parks, it was under an agreement and they would. In fact, they are helping us to create more of a tribal National Park -- the federal side that is trying to help us. There is a move on a reservation not to sell land now for the park. And today after consulting with Cris Stainbrook and a couple of the Office of the Special Trustee gentleman -- Jim James -- after visiting with them I want to go back and take a look at what is going on and how to do a better job about reaching out on our reservation.

Today we have an outreach program that is focused on providing information to our tribal members so that these tribal members are able to make a clear and informative decision about selling their land --

or keeping their land. It is giving them options to consolidate. They also may choose a little bit of each. This is an opportunity for our tribe to be in the driver's seat when these transactions happen. So, in keeping with that, we go back to the Cobell buyback program and how we have worked together with the Department of the Interior and many of the different people that help us put the plan together. There was a give-and-take, not only the 15% that was a give, we gave up on that because we needed to make it happen. We were the highest fractionated interest tribe and we needed to be a part of that. We needed to inform our tribal membership of the do's and don'ts and all their options out there and make sure they understood what was happening.

I would like to say once these lands get purchased and the check comes in the mail, and the check is sent to the Individual Indian Money account and card is loaded, we do not have economic development on our reservation for them to buy anything there. We have a few stores. We do not have a car dealership. We do not have a housing area. Maybe they can buy house. Maybe that is a possibility if they have enough money. There are a number of different things that are not readily available on the reservation like most of the other reservations. It is not economic development or a shot in the arm of economic development on our reservation. I'm talking *reservation* ... we have 52 communities, nine districts, and nine centers for districts. And not one of them can probably really get a shot in the arm from all that. Border towns: Rapid City, two hours north -- they will get the shot in the arm. But so you know, looking at the whole thing, if we create economic development because of the land that becomes available, we have to create as fast as we sell in order to keep some of the money on the reservation. That is such a big issue with me. Because ... well just because it's a lot of money coming to our reservation people that is going right off the reservation. And that's one thing I do not like besides the 15%.

We have 80 to 90% unemployment on the reservation -- 80 to 90%. And families support one another in many different ways, not just financially but many other ways. I am a working mother, wife, daughter, and all those things cost money. And so your money spreads out. It doesn't matter how much you get you always loan money to a niece, nephew, mother, sister. You might not get it back and I don't have expectations of getting it back because they don't have jobs. I expect some kind of work. We all do that. It's called the bartering system. We have been doing that a lot of the reservation. I will fix your car, you will loan me 20 bucks. We have not got to the point of bartering for food but it may be a possibility someday. So the bigger picture is where they are going to send the money back and we have no place for them to buy the goods and services that they are going to buy or they are going to need; that our tribal members are going to want. Maybe it is a car all the way down to clothes. All the way down to food and maybe a washer and dryer -- those things are not readily available -- those kinds of businesses are not available on the reservation.

I believe that a lot of the young people are going to sell their land because they have no connection like the older people do ... like our elders do. Like I do. I don't know if you caught the connection. I am not a Rosebud Indian -- I am in Oglala Indian. I might have a different point of view if it was Oglala land but it is not -- it was not. I think a lot of the younger people will sell their land. I think we should be prepared.

When I started working for the Oglala Sioux tribe, I worked under a program that helped promote GIS, geographic information systems. It was the creation of maps. And these creations of maps help the tribe in stepping into the era of putting lands into a vision. Putting land status into a vision in helping them identify lands for the communities; in fact the communities probably already did that but we did that later on. But they identified land that was readily available because they identified it as tribal land. They were able to do a lot of land describing further problems, or issues or development -- whatever they wanted to do. When I referred to "they," I am referring to the Oglala Sioux tribe. Some of these issues -- some of the land we are talking about created issues in the past. And sometimes the maps clarified them. As time went on and I sat there and I applied my GIS capabilities to policies and regulations on land so if there is a 3 mile radius prohibiting land exchanges within the community I would apply that to the map and show them you cannot exchange lands within this radius. Those kinds of things connected people seeing and that is what it's all about. Visual, it's about a visual concept. More people know where their land is [because the information is contained in the packets]. "This is the land I want to keep because this is where my grandparents grew up and next to the highway that I know." Or, "over here, no these are not the ones I want to keep." They come to the office and say we want to do a land exchange, consolidate our interest for an interest in this piece of parcel that the tribe has an interest in and creating a bigger parcel making my interest more in the one tract of land therefore having controlling interest.

Also, those are some of the things that maps have brought out for our tribe. They really helped us to clarify, communicate with our people more on a one-to-one basis. And before all this happened we were dependent on our elders to know exactly where our land was. "Our land is over there, next to that remember this big tree it's the start of our land." When you look at the map it is not really the big tree; it is the second big tree or the third big tree or wherever it was or is it's in that general area. But now that information can get passed down and understood by all. So maps is really clarified things I'm glad that during the buyback program includes maps in the offer packages. Those maps tell you where your interest is.

I think that with the buyback program that the more we are out there and the more opportunities we have to meet one-on-one with our tribal membership, the more we are able to answer individual

questions. And you know we have about 40,000 people out there on the reservation and that's a lot of people. Having shows on our radio station, having events all can go to, or even going to the communities and asking them for time and space to rent and have these informational meeting so people can come and find out more information about their land or whether or not they want to sell. So, those are all the different things that the outreach program is doing on our reservation.

I know it looks like there are a lot of questions. Yes. First question:

HERSHEY: as a law professor I can call on... Ian Record has a question.

IAN RECORD: this is a question for Denise and John. I wonder with the lot of allotments and with so many landowners owning interests in a single parcel, is priority given ... is it a federal policy or is this what the tribe is thinking about, trying to give priority to those parcels as close enough to gaining a controlling interest? Because if you don't have the controlling interest, you cannot make a decision what to do with the land. Or, is it just sort of first-come first serve?

DENISE MESTETH: we talked a lot about that. If we had a controlling interest, we try to focus in on that, to get all of it. That was one of the talks. I don't know how far it went. We had a map that identified majority interests and then priority tracts. As well as I guess if you want a percentage. Less than 2% is what the Department of the Interior wanted to get rid of. And we said no. Folks want 50% or more.

JOHN MCCLANAHAN: I think the priorities will vary from tribe to tribe. Some tribes may approach it on a tract level. Like Denise indicated, looking at certain portions of the reservation where it is important for the lands to be consolidated. Once we identify a person that has interests in that, we want to purchase those interests. Say they have a couple of fractional interests in one of the priority tracts that the tribe identifies; we will also bring in any other interests that they have ownership interest in and make an offer for those as well. We are trying to send an offer to an individual for as many of the interests that we have a fair market value for so that we minimize the amount of times we have to print and offer package and contact that owner. So we are trying to bring in all the interests that are valued once a tract is identified for a person.

KEVIN KEMPER: how do mineral rights fit into what is purchased?

DENISE MESTETH: the mineral rights are included in the sales. If you don't have the mineral rights they buy the surface. And if you want to retain the mineral rights they are not going to buy the surface.

AUDIENCE MEMBER: do I understand correctly? If somebody wants to sell a fractionated interest in one tract, do they have to sell every tract as part of the purchase? I know this is what happened in Cobell and tribal settlements. The government wants to settle all the claims. If they settle then a lot of tribes are forced to settle damage claims and individuals in Cobell had to settle damage claims. I understand that it is the government's desire to resolve the issues but it seems like it is not really proper to say okay come here to an individual, and he will sell the interest. And if you try to force them to sell the other interests I don't think it is right and I noticed in the form that you have you have to check and you didn't have anything to check to reserve mineral rights.

JOHN MCCLANAHAN: we are not forcing anybody to sell interests they don't want to sell. So when we make an offer we make an offer for as many times as we can, all interests that we have a value for -- and on the sheet the owner can fill out the interests that they want to sell -- that they can pick and choose if they want to -- they don't have to sell it all. With the mineral interests we are not interested in splitting up the estates; it would create another fractionation type scenario. We're not buying separately any subsurface ownership interest when somebody has both surface and subsurface interests. Everything I should have pointed out on my presentation is that for many of the tracts, at least it Pine Ridge, there is no interesting stuff within the mineral estate. The geology does not contain oil or gas or sand and gravel or some other valuable commodity. But in those cases where there's no economically viable mineral rights, we are still offering something, \$7.50 an acre basically so that's another component to the offer amount that I should've pointed out that in addition to the fair market value and the base payment.

AUDIENCE MEMBER: I am from Pine Ridge and I have land there. I don't know if I agree with you, there are all kinds of minerals on the reservation. In a 1983 study that the Bureau of Indian Affairs did, they contracted with one of the other federal agencies to do complete mineral survey. There are all kinds of minerals there. I don't know if I agree with you to say there are hardly any minerals. And secondly, I don't know how you do your appraisals. The Office of the Special Trustee appraises surface rights but not the mineral rights. How do you appraise, mass appraise, the surface, how do you know if there are valuable minerals under some of those tracts? There are a lot of minerals, there are zeolites, one of the world's largest deposits of zeolites that the whole northern part of the reservation is selling for \$.50 a pound. We have oil and gas. There are other minerals on that reservation. So I don't know if I agree with you when you say there are hardly any minerals.

JOHN MCCLANAHAN: we have had the Office of Minerals Evaluation within the Department of the Interior that did a current up-to-date study on the geology of each reservation. So when we are making offers to individuals we have taken a serious look at what is there so that we make sure if there is some

valuable mineral commodity that we do the extra analysis to put a value on that so when we do mass appraisals that effort built into the input from the Office of Minerals Evaluation. I do know there is a zeolite deposit there at Pine Ridge. But the other question you have to ask is "is there a current readily marketable industry or way to get it to market?" And that is not necessarily the case right now. There can be instances like that where there's something there but if there's no way to quickly pull it out of the ground and sell it, that is another factor in the analysis.

AUDIENCE MEMBER: I taught for eight years on the Navajo nation. It was back a ways. At that time Peabody Coal, speaking of mineral development, was extracting a lot of coal near Gallup. How do you suppose they were transporting it to the Four Corners to generate electricity? They grounded in to a powder and pumped it with millions of gallons of rare water from the reservation aquifer up to the Four Corners to make electricity which was then exported to Phoenix and Las Vegas over the heads of people that were heating with coal and wood and using kerosene lanterns. Not everybody, many people have electricity. But the bottom line is the tribe got a royalty of \$.50 a ton for the coal. My concern is, yes, we want to preserve the rights of individuals to have access and control of the resources and if there are plans the tribes developed to put community development and other kinds of activities from the resources and so forth, that's great. What I am wondering is, I wonder if there is anything overall that shows people that if they sell their property back to the tribe what use is it going to be? So they can see there is a community development interest in this.

HERSHEY: Cris, you want to take a stab at this, do you want to answer?

CRIS STAINBROOK: it is one of the things we work with tribes that fair bit on. How do you value what's there or what could be there. What are the plans for down the road? And that is all about tribal planning, largely. The more information the tribes have, and as they work with their community, describe what they want in the end, then it becomes really incumbent upon the tribe to do sufficient outreach with their own tribal members. We provide everything we can provide in terms of resources. Right now we are working at Ponca and created a series of maps for the Tribal Council and presented them to the tribal landowners at meetings last week. They included all the public information we could put on the GIS system, including where wells are -- injection wells, where polluted grounds are, and allotments. Also, where the Keystone Pipeline will run across the reservation. But outside of the Buyback program this really comes down to a tribal government communicating with its members. And by and large, what we would like to do, and John knows this, we keep making requests for information from the TAAM system, the computer system with all the information on interests and allotments. We are trying to get ahead of the curve as far as we can with the tribes we work with, so they are ready to do the

planning that Denise is talking about but on short order. [The Oglala Sioux] may have a little more lead time.

ROBERT HERSHEY: I am going to interject something. I'm giving myself permission. This -- the idea of tribes as you say, working to get planning accomplished. I noticed in your presentation and according to the terms of the Act there are certain time requirements the tribes in certain types of claims have to be made and individuals have to file these "intent to go ahead and conceive of participation in certain time frames" and we all know tribes have been bombarded over the years with strict timelines in terms of time to comply. And you also said that there are multi-agencies involved. It might be the Bureau of Land Management, the Office of Surface and Minerals, or it may be the Department of the Interior. All of these federal agencies have their own tribal consultation policies. And it is also incumbent on the tribes to do one of two things. Understand each agency's consultation policies and rights that they have to free, prior and informed consent -- open and notorious consent -- or tribes can also think about developing their own consultation policies. And they would basically be saying you have 60,000 consultation policies. I do not want to know all of these. I would like to go ahead as part of the tribal planning process where we would develop our own consultation policy and say that this is how you will consult with us; and this is who you contact; and how you contact with us and what the terms and conditions are of contracting and consultation. I encourage tribes to get involved in that. As part of the Indigenous Peoples Law and Policy program, by February, and in conjunction with the Native Peoples Technical Assistance Office... We are going to have published on the web what are called consultation policies. The website address is: tribalconsultationpolicies.arizona.edu. We collected all of the federal policies and citations to websites that you will be able to go to; we have a memorandum that we talk about what tribal consultation should be. We have given example from all around the world of different native nations' consultation policies and we have created a draft consultation ordinance if you want your tribes to consider them. With respect to the mapping aspect, geographic information systems that you are using... Mapping is a cultural recovery tool. It embeds traditional knowledge, and oral history that can be shared, that is permissive, and is not private and privileged knowledge. It can be done in songs and dances, sculptures, paintings, whatever it might be... This mapping aspect to prepare for this is the way to go ahead and collector elders' knowledge and fix it in a representational capacity that you want to keep according to your own tribal traditions. Whether that will be a GIS location or whether it be in the song, it is a way of preserving those cultural things. Not just for this, but many things the tribe will be dealing with here on out. Back to you, Denise.

DENISE MESTETH: thank you. You said it all.

COMMENT FROM AN AUDIENCE MEMBER: I had a comment on... I think you value this buyback program because it would encourage your culture and language; I too am very dedicated to preserving our language and our culture. Now, land is very important, land is easier to manage when there are fewer owners so the tribal members can benefit. I want to say also, that when I studied business, a lot of my business teachers instilled in us that land is the basis of all wealth. And I think it's very true. You say you have a National Park? That will bring income. And another example, in preserving the language, I tried to share this idea with a lot of the politicians back home but haven't been successful. We go to our state capitol, our 20 state agencies, we have to speak the English language because my state adopted a law that requires us to use the English language when we go there. And I would like to see them, when they come to my reservation, to my land, to speak my language. This would encourage employment by a lot of my tribal members that still know my language, to be interpreters. And these, the people that come to do business with us will have to hire an interpreter. I am not very good in the English language. A lot of the words I don't know when I speak with professional people, these words that I don't totally understand but if I heard it described my language I would have a better idea. And so that is one example of the value of land. It would preserve my language. Business would be easier for me. I ranch, I raise cattle. And some of the tracts I have to lease, there are a lot of owners. And the Bureau of Indian Affairs have their requirements. I have to get 51% of the signatures and it is difficult to do that. I see the value in the Cobell buyback, it would make business easier for me. Those are a couple of examples about how valuable land is, and it is our identity. Wherever you go in the world I think people are proud of their location where they live and their culture and their language. And I would like to enjoy that too; that's the value I see in land.

DENISE MESTETH: Thank you. It is difficult to utilize your land if it is highly fractionated. I am sure everybody has that experience. We also have to have, in order to travel across somebody else's land; we have to have those signatures. We have to have those signatures for electricity to cross it if we were setting up a homesite. As the Tribal Land Office Director, there are procedures we go through for these individual leases for home sites on tribal lands. These are the things we visit about with them. Even the road conditions -- as you know in South Dakota we have a terrible road conditions even with no snow. And think of it when it's muddy or snowy. These past years we have gotten anywhere from 5 feet to 6 feet worth of snow in drifts. And these people cannot cross the road. We try to get them to understand if you live close to the road we are able to get you out easier in a snowstorm and the cost to live there for electricity is cheaper. Our electrical company charges \$100 a pole. My brother-in-law recently traded some land. He wanted to live out there. He was in the process of getting electrical pole. Electricity was just a little ways from his house. Not more than 10 feet. But he had to pay over \$1000 for one pole and get all the little fees and regulations set. And that's another thing we look at, doing our own electrical company. That's a lot of money. Can you imagine somebody wanting to move a half-mile off the main

highway with no electricity and then we have the cost of setting up rural water. Minichoni is one of the biggest water projects in the nation. And we are fortunate today. We have the two lawyers that work with us and Mr. Gonzales was the big pusher for the Minichoni project. And he is honored on our reservation for all of his work. Jennifer Hughes now represents them whenever they need representation. She's another lawyer that works for tribe. Rural water goes across our reservation along the highways for access; some areas have more access reaching out to areas that are untouched. And so they have got to get those rights of ways completed. Along the highway if you're not next of the highway a cost to put the water out there. It cost money to run 10 feet worth of pipeline. So Lisa Mehta pipeline to use the better off you are. Because it reserves money for the next family behind you that want the same service. It reserves money for the next 10 families are however much money they have appropriate that year to spend. We have to take into consideration others and then so the road, electricity and water, those are the main things. We tell them these things before they decide if they want to live one or 2 miles off the road. Even some of those people have land out there the treasure and want to continue to live on. And these are the circumstances of which they have to think about before they go and move their trailer home to build a home there. And I'd like to say, it's a tough thing to do with our elders. You don't... That's their dream is to go home, where they grew up and to be there again through their later years. Sometimes it is difficult to get these things across to them it takes delicate talking and believe me I have done it many times. I like to say it's always nice and if they are adamant about going they are adamant about going. I can only make sure they know the consequences of moving into the boonies they call it. Any other questions? Thank you.