



August 11, 2010

The Honorable Dr. Richard Meserve  
The Honorable Phil Sharp  
Chairmen  
Transportation and Storage Subcommittee  
Blue Ribbon Commission on America's Nuclear Future

Re: Comments and Recommendations to the Blue Ribbon Commission  
On America's Nuclear Future

Dear Chairmen Meserve and Sharp:

The Prairie Island Indian Community ("Community" or "Tribe") would like to offer the following comments and recommendations to the Transportation and Storage Subcommittee of the Blue Ribbon Commission on America's Nuclear Future ("Commission"). The Commission has an important task to complete over the next 18 months and we sincerely hope that our comments will be addressed.

### **Community Background**

The Prairie Island Indian Community is a federally-recognized Indian tribe organized under the Indian Reorganization Act of 1934. The tribe is governed under the terms and conditions of the Prairie Island Indian Community's Constitution and By-Laws adopted by tribal members on May 23, 1936, and approved by the Secretary of the Interior on June 20, 1936, as amended. The Constitution and By-laws provide that the Community Council (sometimes referred to as the "Tribal Council") shall be the governing body for the Community. The five-member Tribal Council consists of a President, Vice-President, Secretary, Treasurer, and Assistant Secretary/Treasurer.

Our homeland is located on Prairie Island, which is formed at the confluence of the Vermillion and Mississippi Rivers in southeastern Minnesota (approximately 35 miles southeast of the Twin Cities of Minneapolis and St. Paul, Minnesota). The Mdewakanton, "those who were born of the waters," have lived on Prairie Island for countless generations. The size of the Prairie Island Indian Community land base (including both trust and fee lands) has grown through several federal acts and direct

purchases by the Tribal Council, and now totals over 3,000 acres (including both land and water). See Figure 1.

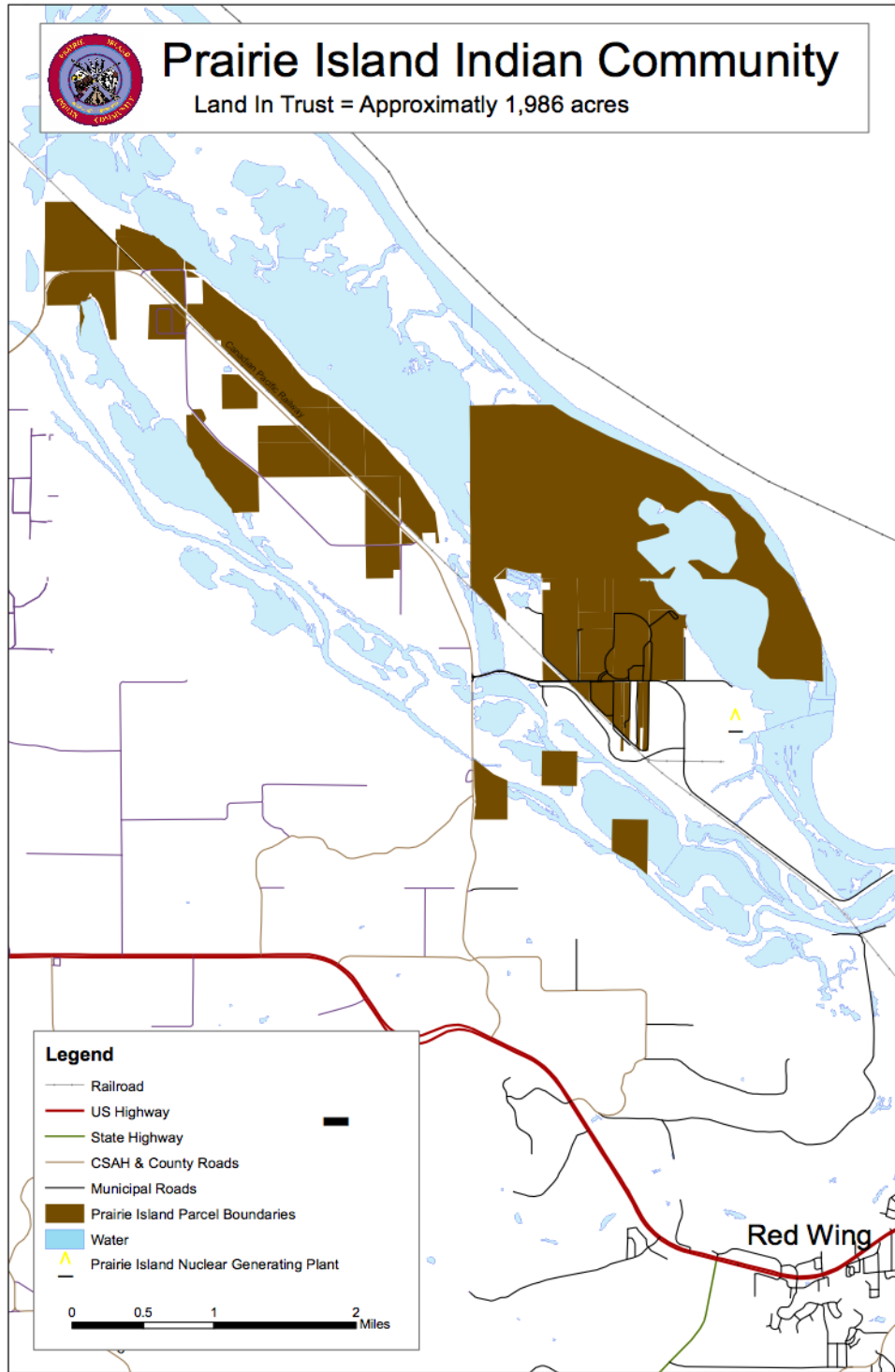
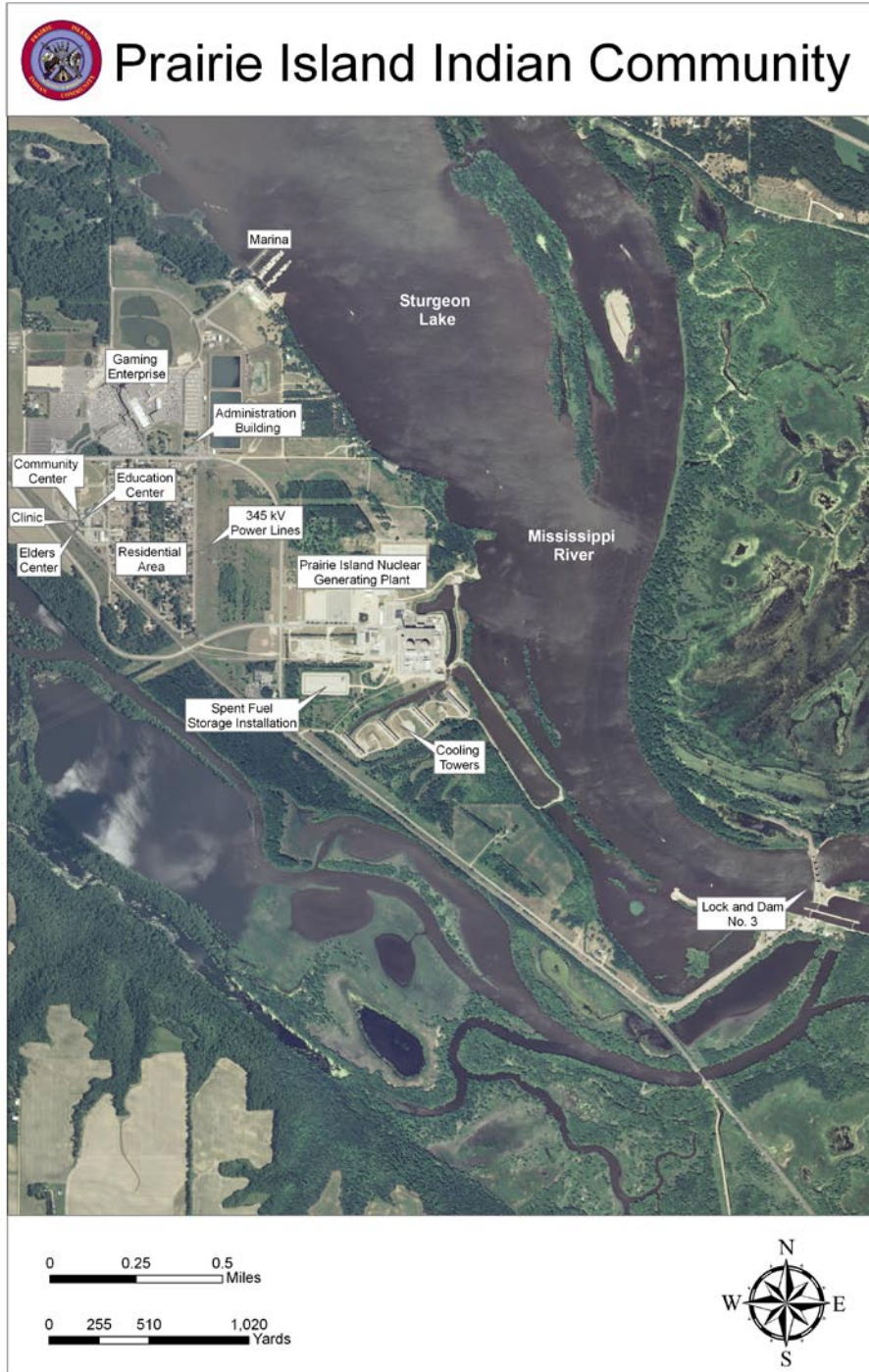


FIGURE 1

Immediately adjacent to our homeland is the Prairie Island Nuclear Generating Plant (“PINGP”) and its above ground independent spent fuel storage installation (“ISFSI”).  
See Figure 2.



**FIGURE 2**

The PINGP and its ISFSI are owned and operated by Northern States Power Minnesota (“NSPM”), a subsidiary of Xcel Energy, and licensed by the U.S. Nuclear Regulatory Commission (“NRC”). The PINGP has been on-line since the early 1970s and will operate until at least 2034 if the NRC approves the pending License Renewal Application.

PINGP’s ISFSI is located on the west bank of the Mississippi River, just over 600 yards to the east of the nearest Community residences, and just over 600 yards to the west of the Mississippi River. The Mississippi River in this area is quite popular for recreational boating and heavily used by barges. *See* Figure 2. If the PINGP is decommissioned in 2034, the spent fuel is estimated to require a total of 98 casks.

Although the PINGP and its ISFSI are located right next to our Community (and we are the *de facto* host community), we receive comparatively little financial benefit from these facilities. For example, while the City of Red Wing and Goodhue County have received tens of millions of dollars annually from the PINGP and ISFSI via taxes, it was not until 2003 when an agreement was entered and approved providing the Community with compensation for the ISFSI. The ISFSI and its 98 casks (and associated risk) are right next to our homes, our clinic, our elder center, our education facilities, our recreational areas, our government center, and our businesses. Our Community members bear the greatest risk for the operation of the PINGP and ISFSI, yet our Community receives a disproportionately lower benefit.

During the initial on-site dry cask licensing process in the early 1990s, we expressed our concerns regarding the long-term storage of spent fuel in dry casks and the possibility that the waste would never leave Prairie Island. We understood then that the ISFSI was to be an interim or temporary solution until the national repository, Yucca Mountain, could begin accepting waste. The probability that the waste will leave during the lifetime of those Tribal members and leaders who fought against interim or temporary storage is close to zero.

### **Blue Ribbon Commission**

We would like to point out to the Commission that these spent fuel storage installations are not located in remote parts of the country. Many are located near population centers, near rivers, lakes, or oceans. Most communities have the same concerns that we do: that the waste from the reactors will be on site for the next 100 to 300 years. The Commission must address the concerns of our Tribe and similarly situated communities who are left to deal with the unfortunate reality that the timeframe for temporary waste storage has changed from 10 to 20 years to 100 to 300 years.

The Commission has 18 months to complete its tasks. This is a very ambitious schedule given that scientists, engineers, and politicians have been grappling with this issue since

the mid-1940s, and that the Yucca Mountain facility was exhaustively studied for nearly 25 years at the expense of \$10 billion. While the federal government should honor its promises and legally binding obligations to remove nuclear waste as soon as possible, we question whether 18 months is a sufficient time period in which to develop a set of recommendations, particularly if Yucca Mountain is excluded as an alternative. The Commission instead ought to re-engage the effort to develop Yucca Mountain as quickly as possible.

This Subcommittee asked whether “there are technical or regulatory uncertainties related to the ability to store existing and future spent fuel and high-level waste safely and securely for an extended period of time (100 years or more) and then transport it without difficulty to another location?” In the case of the Prairie Island site, it should be noted that the NRC never evaluated the long-term implications of on-site storage. In 1993, the NRC prepared an Environmental Assessment (EA), not an Environmental Impact Statement (EIS), for the Prairie Island ISFSI license application. A few things from the EA should be noted:

- the license period for the site-specific PINGP ISFSI is for 20 years;
- the TN-40 (Transnuclear) casks were designed to provide storage for **25** years, not **100** to **300** years;
- the long-term health consequences were not evaluated;
- the long-term environmental consequences were not evaluated;
- the long-term security consequences of storing 98 dry casks on-site were never evaluated; and
- the societal impacts of long-term storage was never evaluated.

These storage facilities were sold to the public as a short-term solution, not a long-term solution. That both the Blue Ribbon Commission and now the NRC are thinking of on-site storage in terms of 100 to 300 years, or 1 to 3 centuries, is outrageous. A storage duration that exceeds a person’s lifetime is not short term. The full consequences (environmental, health, security, economic) of long-term, on-site waste storage must be fully examined by the Commission.

When the Prairie Island ISFSI was presented to our Tribe and the public, it was presented as a necessary short-term solution to keep the two plants operational and over 2,000 permanent and contract workers employed. The storage sites were billed as a needed “temporary” measure until the repository at Yucca Mountain was operational (when the “temporary” sites were first approved, the target date for removal of the spent nuclear fuel to Yucca Mountain was 1998). Minnesota law requires approval from the Public Utilities Commission (PUC) and the State Legislature before a utility can use on-site dry cask storage. The legislative hearings for the Prairie Island ISFSI were highly contentious and divisive. It is highly doubtful that NSPM would have received state

approval at that time if legislators believed that the waste would be on-site for 100 to 300 years.

To say that we are angry that we are now stuck with a nuclear waste dump as a neighbor is an understatement. The year 1998 has come and gone, and what was a 10 to 20 year “temporary” solution is now a 100 to 300 year nightmare for our Community.

### **Other Issues for the Blue Ribbon Commission**

Chairman Scowcroft was absolutely correct when he stated, at the opening of the Commission’s March 25<sup>th</sup> meeting, “this is one of the most important problems facing the United States and a critically difficult problem to solve.” The issue of what to do with the Nation’s nuclear waste has been debated for decades, seemingly resolved, and now it seems that the solution is being deferred for an additional 100 to 300 years.

While the Commission deliberates and potential solutions are evaluated, our Community and many other communities continue to be negatively impacted because the nuclear waste is still sitting just yards away from where it was produced over the past 40 years, and where it will potentially be stranded for the next 100 to 300 years. Prairie Island is our only homeland, the land promised to us by the United States government. We cannot relocate to another place, somewhere away from a nuclear waste dump. No one asked us whether we want this waste abandoned next to our homeland for the next 300 years.

As our Community and others similarly situated will be impacted by the Commission’s recommendations, we believe that the Commission has an obligation to review the current NRC regulations for on-site spent storage and address the following questions:

- Do current NRC regulations for dry cask storage consider long-term (50, 100, 200, 300 years) storage?
- Have the health, safety, and environmental consequences of long-term storage been considered?
- How long can these casks be used? Were these dry casks designed for long-term storage (i.e., greater than 100 years)?
- Since it will potentially take decades to implement any new storage or waste management plan that will be recommended by the Commission, will the DOE or the NRC be evaluating the long-term use of dry casks?
- What assurances can the NRC or the DOE give host communities that long-term (50 to 300 years) use of dry casks will not present problems?
- How will problems with dry casks, such as unloading and re-loading casks that develop problems be addressed, particularly at decommissioned sites where there are no longer spent fuel storage pools?

- Will host communities such as the Prairie Island Indian Community be provided with adequate funding to address the unique public safety, emergency preparedness, and emergency response risks and demands associated with the dry cask storage facilities?

### **Nuclear Waste Fund**

The Department of Energy (DOE) has a statutory and contractual obligation to remove spent fuel from commercial nuclear power plants to a national repository. Indeed, the Nation's ratepayers have paid more than \$31 billion into the Nuclear Waste Fund (NWF) and invested 25 years and \$10 billion for the development of a safe and secure national storage facility at Yucca Mountain.

As was discussed on March 25<sup>th</sup> Commission meeting, utilities have had to turn to the courts to recover costs associated with developing, licensing, and maintaining on-site spent fuel storage facilities. According to remarks made at the March 25<sup>th</sup> Commission meeting, a full breach of contract could cost the government as much as \$30 billion dollars. A partial breach of contract would be \$500 million per year, for an indefinite period.

The Commission should consider the taxpayer and ratepayer costs for stranding waste for 100 to 300 years. First, ratepayers have paid into the NWF to develop the repository (\$31 billion paid in this far) and have seen nothing for the money they have paid into the fund. Secondly, ratepayers are also assessed fees to cover the costs of on-site interim storage. Third, ratepayers are responsible for decommissioning costs (Decommissioning Fund). Finally, the taxpayers (which also include the ratepayers) will be responsible for the Government's breach of contract liability (the Judgment Fund).

What is the true cost of storing waste on-site for 50 to 300 years? We recommend that the full cost of on-site storage for 50 to 300 years be evaluated by the General Accounting Office (GAO) or the NRC, as appropriate, for increments of 50, 100 and 300 years.

The Nation's ratepayers are supporting the Commission. Accordingly, we do not believe that it would be a prudent use of ratepayer resources for Commission members to travel to Sweden or Finland, as was suggested at the March 26<sup>th</sup> meeting. The Commission can get the technical information via the DOE, the NRC, the Nuclear Energy Institute (NEI), or the Electric Power Research Institute (EPRI). Instead, the Commission should visit communities across the Nation that are impacted by nuclear waste facilities (commercial reactors and spent fuel sites, decommissioned plants, and Department of Defense and Department of Energy installations) and ask the residents whether they would like to live next to one of these facilities.

We would like to invite the Commission to convene a meeting on our reservation and visit the adjacent nuclear waste storage facility right next door to our homes, clinic, elder center, education building, government offices and businesses.

### **Trust Responsibility of the Federal Government**

All federal agencies have a trust responsibility to federally-recognized Indian tribes. Since the Commission is established under the authority of the Department of Energy, the Commission also has Trust Responsibility to federally-recognized Indian Tribes. Trust Responsibility of the federal government includes the responsibility to protect and preserve the Tribe's lands and cultural resources, and the health and well-being of its members.

At the historic White House Tribal Nations Conference on November 5, 2009, President Obama reaffirmed the Federal Government's commitment to meaningful consultation with Indian tribes and to develop a detailed plan of action to implement Executive Order 13175, "Consultation and Coordination with Tribal Governments." Executive Order 13175 recognizes that "the United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions." The Executive Order requires agencies to consult with federally-recognized tribes early in the process and prior to developing any rule or regulation that may impact tribal land, people, or resources.

The DOE released its Indian Policy in 1992; in 2000 the DOE revised its Indian Policy at the request of tribal leaders. The seven guiding principles of the policy are:

- The Department recognizes its trust responsibility.
- The DOE commits to a **government-to-government** relationship.
- The Department will consult with tribes to assure rights and concerns are considered prior to taking actions, making decisions, or implementing programs.
- The Department will consult with tribes about potential impacts of proposed DOE actions on cultural resources or religious concerns that will avoid unnecessary interference with traditional religious practices.
- The DOE will initiate a coordinated effort for technical assistance, economic self-determination opportunities and training.
- The Secretary of Energy will conduct periodic tribal summits.
- The Department will work with other federal and state agencies to clarify roles, responsibilities, and relationships as they relate to tribal matters.



Moreover, the Indian Policy requests that all departmental elements ensure Tribal participation and interaction regarding pertinent decisions that may affect the environmental and cultural resources of Tribes. We are not the only Indian tribe impacted by nuclear waste. There are several tribes impacted by the clean-up of DOE facilities (i.e., Hanford, Idaho, West Valley). The waste from these sites was supposed to have gone to Yucca Mountain. It is our firm belief that the Commission must consider how its actions, recommendations, and decisions affect Indian tribes, tribal lands, and tribal resources.

### **Nuclear Waste Policy Act**

In 1982, Congress passed the Nuclear Waste Policy Act (NWPA), which established a timetable and procedure for establishing a permanent geologic repository for high-level radioactive waste and spent nuclear fuel. Amendments to the NWPA in 1987 designated Yucca Mountain as the permanent repository. In 2002, the Secretary of Energy recommended Yucca Mountain and the President approved the recommendation. Although the State of Nevada exercised its state veto in April 2002, the veto was overridden by both the House and the Senate in July 2002. In each instance, the DOE's actions were in accordance with the NWPA. The NWPA has not been rescinded and, in fact, still the law of the land.

There have been over 50 years of debate on this issue. Over \$30 billion dollars have been collected and 25 years and \$10 billion dollars have been spent of studying and evaluating Yucca Mountain. We are no closer to a solution of what to do with the waste than where we were when the first atom was first split.

How can we be assured that whatever recommendations are made, and ultimately approved by Congress, will not be undone or rewritten in the future? As many Commissioners mentioned, technology, science, and the political landscape changes over time. What is acceptable today may be unacceptable in 25 years. For twenty-five years the DOE has been studying and evaluating Yucca Mountain. The site was recommended by the Energy Secretary, approved by the President and the United States Congress in 2002. Now, for no apparent reason, the site is unacceptable. We do not want to risk this happening again.

### **Yucca Mountain**

The Nation's ratepayers have a right to know why Yucca Mountain is no longer an option. We have paid close to \$10 billion dollars for a 25-year project that evaporated overnight. The American ratepayers have a right to know what the scientific and technical justifications are for withdrawing the license application.

In his comments at the March 25<sup>th</sup> Commission meeting, Dr. Richard Meserve referenced previous studies by the National Academy of Sciences that found “that deep geologic disposal is sufficient to isolate these materials for the long term.” If there is no scientific or technical reason for abandoning Yucca Mountain, then the reason must be political. We would hope that the Commissioners would not be so naïve as to think that whatever recommendations they develop will be without political ramifications.

### **Urgency to move forward**

Several Commissioners remarked that there was no urgency to move forward with a solution quickly or that there is no crisis at this. We disagree. Our ancestors have been on Prairie Island for thousands of years. We were here first. We did not ask for a nuclear waste dump for a neighbor, nor were we consulted. We do not wish to live beside this spent fuel storage facility for 100 to 300 years.

### **New Reactors and Extended Operating Periods of Existing Plants**

Most of the Nation’s nuclear power plants have received, or soon will receive, approval from the NRC to operate for an additional 20 years. The fact that there is no repository or other waste facility does not seem to be a barrier to operating the plants and producing spent fuel for an additional 20 years. Stranding spent nuclear fuel indefinitely at over one hundred sites across the Nation does not provide a safe, secure and long-term solution to the waste disposal problem, it merely keeps moves the target date to future generations.

Several nuclear utilities have expressed intention to file license applications for up to 34 new reactors by 2010. Moreover, President Obama has expressed support for new nuclear plants via increases in federal loan guarantees. The waste from the future plants has not been calculated into the storage problem. Before we embrace nuclear power as the solution to our energy needs, we must consider its ramifications. In our view, as the closest neighbor to a nuclear power plant in the entire country, it is completely irresponsible to develop new plants when there is no available national repository for the spent fuel from the first generation of nuclear power plants. We cannot hope that some future generation will find a solution to this decades-old problem.

We, as a Nation, must sincerely evaluate whether it is morally responsible to support an industry that produces such a highly radioactive waste that no one wants.

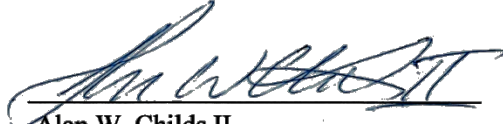
We appreciate this opportunity to provide comments to the Commission on this important issue.

Enclosed with this letter please find the prepared written testimony of Tribal Council President Victoria Winfrey. President Winfrey will deliver her testimony at the Subcommittee meeting scheduled for August 19, 2010.

Respectfully,



Victoria Winfrey  
Tribal Council President



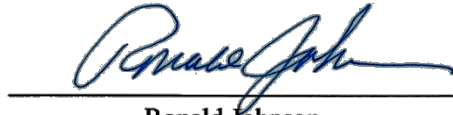
Alan W. Childs II  
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Edward Buck  
Tribal Council Secretary



Johnny Johnson  
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Tribal Council Assistant Secretary/Treasurer

Enclosures: Summary of Testimony of Victoria Winfrey  
Testimony of Victoria Winfrey for Delivery on August 19, 2010