

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
NEGOTIATED RULEMAKING COMMITTEE

NEGOTIATED RULEMAKING, SESSION II, AUGUST 28, 2013

The above-entitled negotiated rulemaking was taken at the Grand Hyatt, Imperial Ballroom, 1750 Welton Street, Denver, Colorado, before Geneva Hansen and Denise A. Freeman, Registered Professional Reporter and Notary Public within Colorado.

1 APPEARANCES:

2 Facilitators:

3 Steve Nichols
Susan Podziba

4 Committee Members:

5 Jason Adams
Rodger Boyd
Annette Bryan

6 Mark Butterfield
Gary Cooper

7 Pete Delgado
Jason Dollarhide

8 Earl Evans
Deidre Flood

9 Karin Lee Foster
Carol Gore

10 Lafe Allen Haugen
Sandra Henriquez

11 Richard Hill
Leon Jacobs

12 Teri Nutter
Sam Okakok

13 Diana Phair
Michael Reed

14 S. Jack Sawyers
Marty Shuravloff

15 Russell Sossamon
Michael Thom

16 Cathern Tufts
Sharon Vogel

17 Aneva Yazzie

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1 P R O C E E D I N G S

2 MR. NICHOLS: Good morning, everyone.

3 Welcome back to day two of the Indian Housing Block
4 Grant Formula Negotiated Rulemaking Committee. We are
5 going to talk about a few things to start the day here.
6 We will begin working on the charter and protocols once
7 again.

8 First, I would just like to acknowledge the
9 work that was done yesterday. As a facilitator -- as
10 you know, facilitators are impartial regarding the
11 content of the discussions and meetings, but we are very
12 interested in the process and the discussion that takes
13 place and the dialogue and the quality of that
14 discussion.

15 I thought that the dialogue -- the dialogue
16 consists of presenting ideas and also listening and
17 responding to those ideas. I thought it was absolutely
18 outstanding. I am very impressed. And I think the
19 group should be very pleased with the work that was done
20 and your level of commitment to the process and having
21 it work effectively.

22 For me, it was a tremendous learning
23 experience yesterday, and I think that it's probably
24 safe to say it was a learning experience for everyone,
25 because the degree of listening and responding and

1 communicating in a good back-and-forth manner was
2 outstanding. So that would be my observation from
3 yesterday. I appreciate that effort.

4 Does anyone have any observations from
5 yesterday that they would like to share before we begin
6 with the plan for today?

7 MR. HAUGEN: Observations from the Committee
8 meeting or the baseball game last night?

9 MR. NICHOLS: The baseball game, who won?
10 The Giants won, didn't they?

11 MR. HAUGEN: Yeah.

12 MR. NICHOLS: Then we don't want any
13 observations on that.

14 So anything else before we start? Let's
15 begin by talking about our plan for the day. Yesterday
16 we developed in Committee the final version of the
17 charter. The first thing we would like to do today is
18 review the final version that you all have in front of
19 you that was developed overnight by our outstanding team
20 of support people.

21 And the reason that we need to do that first
22 today is because we are going to be referring to the
23 charter as we go through the protocols. So it would be
24 useful to have a final agreement and consensus on this
25 version of the charter that we have to refer to. And

1 then after we do that, we will begin our discussion of
2 the protocols of the Committee and work our way through
3 developing that for this Committee.

4 And then as we continue through the rest of
5 today, we have -- assuming that we are able to complete
6 the work on protocols, we have on the agenda some time
7 to select the Committee chairs, which will be a decision
8 of the Committee.

9 The reason that we have that later in the
10 agenda is because the process and the protocol for
11 selecting Committee chairs is a component of the
12 protocol itself. So we will be discussing that in the
13 protocol and then select the co-chairs -- the chairs and
14 co-chairs of the Committee.

15 And then we will talk about the logistics
16 for the next meeting and plan for how that meeting will
17 unfold, taking public comments, and close the meeting.

18 Any questions about the plan for the day?

19 MR. ADAMS: Steve, can we open with a
20 prayer, please?

21 MR. NICHOLS: Yes. I'm sorry. Please
22 proceed.

23 (Prayer.)

24 MR. NICHOLS: Okay. So we are now prepared
25 to begin to review the final version of the charter from

1 yesterday, and I would ask that everyone please review
2 the copy that's in front of you, if you have not done so
3 already.

4 Our goal here is to make sure we capture it
5 correctly and address any discrepancies or concerns that
6 we may have missed, anything that's stated that's agreed
7 to by the Committee so we are certain, when we -- after
8 this review, that the charter is one the Committee
9 unanimously approves.

10 MR. ADAMS: Steve, I have one question.
11 When I got in here this morning and saw this document
12 here, it says, Approved by the Committee. We approved
13 it part by part because we knew we'd be taking official
14 action at some point in time officially about the
15 document.

16 MR. NICHOLS: To approve the whole document?

17 MR. ADAMS: Yeah, as the official charter.

18 MR. NICHOLS: That's what I am asking for at
19 this point is official adoption by the Committee of the
20 document that you have in front of you.

21 MR. ADAMS: This has yesterday's date, so --

22 MR. NICHOLS: So the appropriate thing to do
23 would be to change that to today's date?

24 MR. ADAMS: If it gets approved, yes.

25 MR. NICHOLS: Right. Good point. Thank

1 you.

2 How many people need more time? Please
3 raise your hand if you need more time. Any discussion
4 or comments prior to adoption by the Committee? Yes,
5 Ms. Foster.

6 MS. FOSTER: Karin Foster, Yakama Nation
7 Housing Authority. The only thing that I noticed is, in
8 Sections I and VI, we refer to the Federal Register
9 notice, and I think that it would be best if those were
10 consistent. And I am wondering if it might be best to
11 cite to the published ones, which is the citation in
12 Part VI.

13 MR. NICHOLS: They use different language?
14 They are referring to the same notice but with different
15 terms? Is that what's happening there?

16 MS. FOSTER: In Part VI and Part I.

17 MR. NICHOLS: Right. Just to clarify, they
18 are both referring to the same notice, but they use
19 different language?

20 MS. FOSTER: I think that would make sense.
21 I think it would be less confusing if they had the same
22 citation.

23 MR. NICHOLS: So the citation -- so the
24 proposal is that the citation in Section I be the same
25 as the one in Section VI?

1 MS. FOSTER: Thank you. Yes.

2 MR. NICHOLS: I have the Federal Register
3 notice. It is July 30, is the correct date. And it is
4 No. 146 and it is Volume 78 published July 30, 2013.

5 So the proposal is that we use that same
6 terminology in Section VI. Any discussion? Does
7 everyone -- do we have concurrence on that agreement?
8 Change the language in that manner? Which is, I would
9 say, not really a change that affects the content of the
10 charter.

11 Could I ask for a thumbs up on that, please.
12 I see no disagreement around the table.

13 So thank you for pointing that out, Karin.
14 I want to make sure I understood correctly. It sounded
15 like you said there was an "and" or something else or
16 was that it?

17 MS. FOSTER: That was it. Thank you.

18 MR. NICHOLS: Thank you, Ms. Foster.

19 Any other discussion on the charter as now
20 amended?

21 I would ask the Committee for endorsement of
22 the charter and adoption of the charter as the charter
23 of this Committee. Could I please see a show of thumbs
24 up on that or thumbs down. Thank you. The charter is
25 now -- I see all thumbs up, so the charter is now

1 officially adopted by the Committee.

2 So keep that charter handy because we will
3 be referring to it as we go through the protocol and
4 work to develop protocols now for the Committee. And to
5 begin that process, I am going to turn it over to my
6 colleague Susan Podziba. Thank you.

7 MS. PODZIBA: Thank you, Steve. We are
8 going to begin the discussion of the protocols, and I
9 would like to ask you to get the combined 2003, 2010
10 protocols document, which is at tab 5. Before we begin
11 the discussions, I would like you to do a couple of
12 things to the document to make it more usable for us.
13 So I will give you a minute to have it in front of you.

14 The first thing you may notice is that the
15 sections aren't numbered. So, for example,
16 Participation, Meetings, Decisionmaking. Somehow the
17 numbers just fell out of the format.

18 So I ask you all to number them so that we
19 can more easily refer to them. So Participation is I;
20 Meetings, II; Decisionmaking, on page 5, is III; Work
21 Groups/Standing Committees, IV; Agreement, V.
22 Safeguards for the Committee Members is VI. Schedule is
23 VII. Facilitators, VIII. And Co-Chairs and Regional
24 and HUD Representatives is IX.

25 The second thing is, if you turn to page 2,

1 Section No. I, Participation, you see (a) through (b) in
2 red and blue. And 2010 actually has a (b) that fell
3 off. So if you turn to your tab 4, the second document
4 is the 2010 organizational protocols. And you will see
5 there on page 1, under Participation, there is (b)
6 Effect of failure to be present for a vote.

7 So I would ask Christine to add that to the
8 document we will be working with. If you would like to
9 write that in on yours, you may want to do that just so
10 we all have everything that we are working on at the
11 same time.

12 So that is "Failure to be present for a
13 vote. The absence of a Committee member during a lawful
14 session of the meeting shall not invalidate the vote."
15 So that would become (e) at the bottom of page 2 on the
16 composite document.

17 And then the third issue is on page 5 under
18 Decisionmaking. You will see a note that was meant to
19 be helpful, but the page numbers on the document
20 changed. So where it says, "Note," it should read now,
21 Please see page 8 or Section 6(b)."

22 So, Christine, "Please see page 8 or
23 Section 6(b)." Things moved around as we worked with
24 the document. Now I think we will all be on the same
25 pages at the same time.

1 So we will begin our review of the
2 organizational protocols. As Steve said, now that we
3 have the approved charter, there may be -- there are
4 references in some -- in this document, the protocols
5 document, that reference the charter. And we will now
6 make whatever adjustments that we need to, given that we
7 have a new charter, a 2013 charter.

8 If it's the will of the Committee -- yes,
9 Mr. Reed.

10 MR. REED: Mike Reed, Cocopah. Is the
11 charter also on the Internet, the final charter? It
12 will be?

13 MS. FIALA: Yes.

14 MS. PODZIBA: So if it's the will of the
15 Committee, we will use the same process that we used
16 yesterday with the charter in reviewing the protocols,
17 which is that we will have up on the screens and look at
18 the 2003 and 2010 versions of the section and take
19 proposals from the Committee and have discussions and
20 amendments, et cetera.

21 Is that acceptable to everyone to proceed in
22 that way? Okay.

23 So then I think the first thing we need to
24 do is the title. What you see up there is "Native
25 American Housing Assistance & Self-Determination

1 Negotiated Rulemaking Committee on Formula Allocation."

2 Is there a proposal from a Committee member for a
3 revision to that title?

4 About changing the title, the charter has a
5 different title for the Committee, so that's why I
6 raised the issue, if you want that to be consistent.

7 MS. BRYAN: This is Annette Bryan. Good
8 morning. I would move that we make the title the same
9 as the charter.

10 MS. PODZIBA: So that would be "Native
11 American Housing Assistance & Self-Determination Formula
12 Negotiated Rulemaking Committee"? Okay. Any comments
13 on the proposal? Okay. Is there any objection to
14 accepting that proposal? Okay. Then we have our title.

15 Let's move to the Preamble. We have got the
16 two different versions, the 2003 and 2010, and you have
17 got the charter in front of you as well. So I will open
18 the floor to discussion on the Preamble. Yes, Ms.
19 Yazzie?

20 MS. YAZZIE: I would propose the Committee
21 to adopt the 2003 version with some edits to be
22 consistent with what was done on the charter. Perhaps
23 change the reference to public laws to "as amended" in
24 the language.

25 MS. PODZIBA: So it would read the "Native

1 American Housing Assistance & Self-Determination Formula
2 Negotiated Rulemaking Committee has been established
3 pursuant to Public Law 104-330, as amended," and the
4 rest stays the same?

5 Is there further discussion of Ms. Yazzie's
6 proposal for the Preamble? Is that correct? All right.

7 Can I see thumbs up, thumbs down on the
8 proposal for the Preamble, the 2003 version, as amended.
9 Do you need a minute? Yes, Ms. Gore.

10 MS. GORE: I will just ask for one
11 clarification. I was on this Committee. That was a
12 long time ago. I am not sure what the language means
13 after the strikeout. It says, "and is further detailed
14 in a Committee Charter approved allocation formula."

15 I don't know what that means. Does anyone
16 know what that refers to? I think where it's confusing
17 is, it says, "Committee Charter," and that's in caps.

18 MS. PODZIBA: So "further detailed in an
19 approved allocation formula"? Is that more appropriate?

20 MS. GORE: I think that would make more
21 sense because I don't know what a Committee charter is.

22 MS. PODZIBA: I think that's referring to
23 the charter --

24 MS. GORE: That refers back to the charter
25 from yesterday? Is that from today? I may say that it

1 is 7:00 a.m. our time, so --

2 MR. NICHOLS: If I could just make an
3 observation. It appears to me there should be a comma
4 right here. "In a Committee Charter, comma, approved
5 allocation formula, comma, and related sections." So
6 it's listing them. It's not saying that it's a charter
7 approved formula.

8 MS. GORE: Maybe this will explain it: In
9 the 2003 charter -- in the 2003 protocols, the language,
10 at least that we printed off the website, is different
11 from what's on the screen. So what it says in the
12 printout from the website is, "and is further detailed
13 in a Committee Charter approved by HUD."

14 That's what the 2003 language --

15 MS. PODZIBA: It's missing a line. So let's
16 get that in and then we can fix that.

17 MR. EVANS: Earl Evans. In fact, I would
18 like to respectfully recommend that the action just
19 simply -- it appears that the charter strikes the
20 remainder of the sentence.

21 MS. PODZIBA: Do you want to see what it
22 actually was? Sorry for the confusion. Okay. "Further
23 detailed in a Committee Charter approved by HUD. The
24 Committee is charged with review of the Indian Housing
25 Block Grant, IHBG, Allocation Formula established,"

1 et cetera.

2 Ms. Foster, first, let me go back to you.
3 Do you accept the original amendment regarding the
4 public laws mentioned?

5 MS. FOSTER: I had just noticed the same on
6 readability, so I am not sure any more changes need to
7 be made. That makes at least a full sentence.

8 MR. EVANS: Earl Evans. I also retract my
9 prior proposal.

10 MS. PODZIBA: How does this look? Is there
11 further discussion? Yes?

12 MS. HENRIQUEZ: So I am still confused. For
13 further clarification for me, the Committee charter
14 that's referred to is the document we just approved? Is
15 that everyone's understanding? Yes? Okay.

16 So I guess I would amend where it says,
17 "further detailed in a Committee Charter," and I would
18 put a period there and delete "approved by HUD."

19 As a Committee member -- as a part of the
20 Committee, I think that's a little redundant. And we
21 all together approved the charter now that we -- HUD has
22 some special something on the charter.

23 MS. PODZIBA: The proposal is to put a
24 period after "Charter" and delete "approved by HUD."

25 Ms. Foster, is that an acceptable amendment

1 to you? This was your proposal.

2 MS. FOSTER: Was it?

3 MS. PODZIBA: I'm sorry. It was Ms. Yazzie.
4 I'm sorry. It's also 7:00 where I am from.

5 MS. YAZEE: Yes, I would agree with that.

6 And I actually caught that "by HUD" thing because, as a
7 Committee, we approved it. And it's just mechanical for
8 HUD to sign, so I am fine with that.

9 MS. PODZIBA: Thank you. Is there any
10 further discussion of Ms. Yazzie's proposal? Could I
11 have thumbs up -- yes, Ms. Foster?

12 MS. FOSTER: Since you ask, I think "a
13 Committee Charter" is a little bit vague. And I guess I
14 would like to say, "approved," put in the date that it
15 was approved so that we know what Committee charter we
16 are talking about.

17 MS. PODZIBA: So it would be "approved
18 on" --

19 MS. FOSTER: August 28, 2013.

20 MS. PODZIBA: Ms. Yazzie, acceptable? We
21 will let Christine get that.

22 Any other comments or further discussion of
23 the Preamble? Can I have thumbs up or thumbs down on
24 the Preamble of the protocols. I see no dissent and no
25 objection, so we will move on.

1 So Section I, Participation. So the a's,
2 the b's, the c's and the d's all refer to the same. So
3 let's start with Attendance at Meetings. Attendance at
4 Meetings, we have got the 2003 version, 2010 version.
5 There are some differences.

6 The first one says, "HUD may remove the
7 member from the Committee and designate a replacement."
8 The second one says, "the Committee may ask HUD to
9 remove the member." And the 2003 also has a sentence,
10 "A Committee Member may be accompanied by such other
11 individuals as the member believes appropriate."

12 Open the floor for discussion or proposals?
13 Yes, Mr. Evans.

14 MR. EVANS: Earl Evans. I would like to
15 recommend that we adopt the 2010 language in blue on
16 subsection (a).

17 MS. PODZIBA: Is there further discussion?
18 It's the blue 2010. Can I see thumbs up, thumbs down on
19 (a). Okay. Great.

20 Moving on to (b), Designated Alternates.
21 There are some slight differences, which is --

22 MR. ADAMS: Point of clarification, did that
23 also include (e)?

24 MS. PODZIBA: We only did (a).

25 Your proposal is only on (a); is that

1 correct?

2 MR. EVANS: That is correct.

3 MS. PODZIBA: So now we are looking at (b).
4 It's a lot of text, so I thought we would just take it
5 a, b, c, d, each separately. That might be easier. So
6 we are looking at (b), Designated Alternates. As Steve
7 points out, the 2003 refers to "Designated
8 Alternatives," so we will need to fix that as Designated
9 Alternates.

10 Is there a discussion? Yes, Mr. Sawyers.

11 MR. SAWYERS: I move that we adopt the 2010
12 (b).

13 MS. PODZIBA: The proposal is for the 2010
14 version. Is there further discussion on alternates?
15 Yes?

16 MS. GORE: Just to have clarification, the
17 language in the last sentence suggests that the written
18 notice would be an original signature. I don't know how
19 many people really rely on regular mail anymore.

20 But, to me, it does mean you are delivering
21 that in person at the meeting, but you are asking for
22 advance notice. So I just want to clarify -- not
23 necessarily change -- the language, but make sure that
24 we can deliver by PDF or e-mail or some other electronic
25 transmittal that would represent the original signature.

1 So I just want to clarify that to make sure we are all
2 on the same line on the Committee.

3 MS. PODZIBA: Is that acceptable, that
4 original signature, for our purposes, would include
5 electronic signatures, PDF files, et cetera? Is there
6 any additional discussion on the section for alternates?
7 Yes?

8 MR. BUTTERFIELD: This says, "inform the
9 Committee Co-chairs." And, in actuality, in the last
10 practice that was not the case. It was delivered to
11 HUD.

12 And having been an alternate that was asked
13 to leave the table, I did not appreciate that. So I
14 think that it should be clarified clearly that, whoever
15 the co-chair is, you have to be able to get in touch
16 with them by sending this thing in writing because my
17 regular delegate was almost impossible to reach.

18 MS. PODZIBA: Is that a proposal? Would you
19 like to say, "submit to the Co-chairs"?

20 MR. BUTTERFIELD: No. But I think that it
21 needs to be clear the Committee co-chair must be
22 available or there must be a designated place to send it
23 in care of.

24 MS. PODZIBA: I was thinking that we have
25 got a section on responsibilities for co-chairs. Should

1 we note this and put something in there?

2 MR. BUTTERFIELD: Yes.

3 MS. PODZIBA: Do you want to do that now or
4 hold onto that until we get to that section?

5 MR. BUTTERFIELD: Well, as an alternate
6 without a packet, it's very difficult for me to thumb to
7 that section. So I don't want to do it now because I
8 haven't had a chance to read it.

9 MS. PODZIBA: Yes?

10 MR. JACOBS: I would suggest that we say,
11 "the co-chair" rather than "co-chairs" because, if the
12 alternate can make a contact with one of the chairs, the
13 other chair should be able to inform the other ones of
14 -- I think it's extra work. So just take the "s" off.

15 MS. PODZIBA: The proposal is to inform one
16 of the co-chairs. Is that acceptable?

17 MR. ADAMS: I just have a comment. I'm
18 reading the document -- the final protocol, March 31,
19 2010 -- and it doesn't make reference to co-chairs in
20 it. So I am not sure what that language means. It just
21 says, "a Committee member unable to attend any session
22 shall inform the Committee in writing with an original
23 signature."

24 MS. PODZIBA: "Shall inform the Committee."
25 Mr. Sawyers, since this was your proposal, do you have

1 the 2010 version in front of you? Because it is
2 different.

3 MR. SAWYERS: It doesn't say, "co-chairs" up
4 here, but I accept that as "co-chair" even better. So
5 let's take off chair, that "s." I hate to take off the
6 "s" because my name is Sawyers and there's a whole bunch
7 of Sawyer around. You have to earn your "s," so I
8 really hate to take the "s" off. This time we have an
9 opportunity.

10 MS. PODZIBA: Let's stay with the co-chair.
11 Is there any further discussion of the proposal? Yes?

12 MS. HENRIQUEZ: I don't know the particular
13 protocol with each tribe and how all of you -- what you
14 need to do internally with your tribes to indicate who
15 you represent.

16 My question would be -- so if someone is
17 selected as an alternate, is it that person's alternate
18 who is always the alternate for the Committee member?
19 Or can the tribe select different people or does the
20 Committee member select his or her alternate? Because
21 that would help me understand to get ready for the next
22 suggestion.

23 MS. PODZIBA: Mr. Sawyers?

24 MR. SAWYERS: You are right. Some Committee
25 members choose theirs. Some tribes choose theirs. So

1 absolutely you are right.

2 MS. HENRIQUEZ: If my Committee member
3 chooses his or her own alternate, does that selected
4 alternate then also need to get approval from the tribe
5 or just from the Committee member?

6 MR. SAWYERS: Certainly from the tribe,
7 but -- I don't know about the Committee members. You
8 have to -- but I know that it happens both ways.

9 MS. HENRIQUEZ: The reason I ask the
10 question, I was trying to understand the situation from
11 before about coming to a meeting without the
12 documentation from the tribe that the person is the
13 designated alternate.

14 I was wondering if we should -- if it's
15 worth tweaking this language so that, up top there, it's
16 "a designated Committee member as well as a designated
17 alternate." So there's never confusion unless it's by
18 exception. If something should change, that third
19 person may show up instead of the Committee member or
20 the designated alternate.

21 MS. PODZIBA: Mr. Evans?

22 MR. EVANS: Earl Evans. If I may
23 respectfully respond to that. I think that, when the
24 Federal Register notice went out requesting nominations
25 for the Committee, if I remember correctly, as part of

1 those nominations, those persons who were nominated had
2 to include a document empowering them to negotiate on
3 behalf of their tribal government, their delegation, who
4 they were representing.

5 And as I mentioned yesterday, I am not an
6 attorney but I have played one on TV, so that would seem
7 to lead me to conclude then that, by virtue of us having
8 the authority to negotiate on behalf of whomever
9 nominated us to this Committee, they delegated that
10 power to negotiate on their behalf.

11 And I would see the protocols and what goes
12 on here and the ability to select our delegates as an
13 extension of that authority to make decisions on behalf
14 of our respective constituency.

15 So I guess to sum up, I believe that power
16 is within the membership to determine or the Committee
17 to determine who their alternate would be without having
18 to go back to whom they represent in order to get
19 approval of their selected alternate designation.

20 MS. PODZIBA: And Ms. Foster?

21 MS. FOSTER: I agree with Earl, and I think
22 he said it very well. And I would note that we came
23 across this issue in 2010, and that was the reason why
24 ultimately we decided to state the member has the
25 discretion to decide.

1 Because everyone has their own processes
2 back home. And that way -- you assume the Committee
3 member would exercise that discretion within the
4 requirements of his tribe or authority, et cetera.

5 MS. PODZIBA: Mr. Butterfield?

6 MR. BUTTERFIELD: I would agree with Earl
7 also. It is very important in these -- in this process
8 that not just the tribe is regionally represented, but
9 it's important to us that an alternate can be designated
10 by the delegee or person who sits on the chair. And, as
11 well, circumstances change.

12 But, for example, my tribe has already
13 picked an alternate who is on another negotiating
14 Committee and isn't here, but that allows the person who
15 is a Committee member to pick someone so that their
16 representation on these votes and so forth will still
17 continue by their ability to designate someone that they
18 trust to carry on the work that represents not just
19 their own tribe but their region.

20 MS. PODZIBA: Ms. Henriquez, does that
21 answer your questions?

22 MS. HENRIQUEZ: Yes. Thank you.

23 MS. PODZIBA: Is there further discussion on
24 the proposed amendment to the proposal currently on the
25 table that was offered by Mr. Sawyers?

1 Can I have a thumbs up or thumbs down on
2 that proposal. Okay. Looks like everyone is in.

3 Moving on to (c), the Constituents'
4 Interests. And now I will try to make sure that 2010 is
5 accurately represented in this document, and it is.

6 Any comments or can I have a proposal on
7 (c), Constituents' Interests? They are slightly
8 different. Yes?

9 MR. OKAKOK: I would move that we adopt
10 2003.

11 MS. PODZIBA: The red one.

12 MR. OKAKOK: Yes.

13 MS. PODZIBA: The proposal is, "Committee
14 Members or their Alternates are expected to represent
15 the concerns and interests of their constituents."

16 Is there a discussion of that proposal?
17 Ms. Gore? I'm sorry. Ms. Vogel?

18 MS. VOGEL: What is the definition of
19 "constituents"? I don't know if I could find the
20 definition, so was there an agreed-upon definition?

21 MS. PODZIBA: Can somebody answer the
22 question? How do others define "constituents"? Yes?

23 MR. SOSSAMON: Who our own constituents are
24 is determined by us because some represent their tribes,
25 some represent their tribes and tribes for their region,

1 but that's up to the commitment that the member makes to
2 their constituents. So we do define who our
3 constituents are.

4 MS. PODZIBA: So it is those persons that
5 the member represents?

6 MR. SOSSAMON: Mm-hmm.

7 MS. PODZIBA: Does that help, Ms. Vogel, to
8 answer it for you? Mr. Boyd?

9 MR. BOYD: Rodger Boyd. When we organized
10 ourselves and put this Committee together, we tried to
11 do it so that it's as equal as possible with regard to
12 the number of representatives that represent small,
13 medium, and large tribes.

14 So our position basically is that, if you
15 are one of those representatives -- be it a small,
16 medium, or large tribe -- your constituency really is
17 within that region, one of the six HUD regions. Those
18 are your constituents.

19 And that includes your own tribe, but it
20 also includes the other small tribes or medium-sized
21 tribes or large tribes within your region. That was our
22 view on it to try to make this not only an even
23 representation within the size of the tribes, but the
24 number of representatives on this Committee would be
25 equal as well.

1 MS. PODZIBA: Yes, Ms. Foster.

2 MS. FOSTER: Karin Foster, Yakama Nation
3 Housing Authority.

4 Well, I am looking at the description of the
5 final membership of the Negotiated Rulemaking Committee,
6 and it does note that the membership is to reflect a
7 balanced representation of tribal members.

8 I think that that's what we do is reflect
9 that by virtue of the fact that we are situated the way
10 we are. I mean, the Yakama Housing Authority generally
11 represents a medium-sized and a large tribe within the
12 west region from the west centers.

13 And so, by virtue of the fact that that's
14 who we are, we would ordinarily have interests that are
15 in common with those who see it in the same way.

16 But I don't think that this is intended to
17 mean that each of us has an obligation to go back to try
18 and figure out each and every other tribal authority or
19 tribe that might be similar and literally represent them
20 here. I would have a hard time doing that.

21 So the purpose certainly is to reflect a
22 variety so that the rule reflects the views of a
23 variety, but I would think that, in terms of
24 constituents, it would be the people who sent me.

25 MS. PODZIBA: Any other comments on

1 constituents? Yes?

2 MS. VOGEL: I would offer an amendment that
3 after "constituents" that we add "of their designated
4 regions," just as you are expected to represent that. I
5 think it just clarifies.

6 And then also in response to the young
7 lady's question yesterday about who do we represent, I
8 think that that's fair for our regions to know that, as
9 Mr. Boyd points out, that that was kind of the
10 expectation of HUD. So it would be nice to just clarify
11 that.

12 MS. PODZIBA: Mr. Okakok, is that an
13 acceptable amendment to your proposal?

14 MR. OKAKOK: I can see the reasoning behind
15 that, and I can also see some of the broader issues.
16 And my tribe at Barrow is within the Alaska region. And
17 if we were to go with the definition that Mr. Boyd
18 brought up, then this Committee would be representing
19 approximately 5 million of the Native Americans, so I
20 think that's a broad definition.

21 We have a lot of people, but I think that --
22 with that, I think it's good to take that definition.

23 MS. PODZIBA: Mr. Reed?

24 MR. REED: Mike Reed, Cocopah.

25 Before the meeting started -- I guess, two

1 or three weeks ago -- received a letter requesting that
2 the group members discuss or talk about this event.

3 And the response to that was pretty
4 negative, I thought, in that a lot of people said that
5 shouldn't happen. I have always been very concerned
6 with that wording because I have often thought that it
7 was my responsibility to send out letters before the
8 meeting to all tribes because I consider myself a small
9 tribe or, at least, a small tribe and I wanted to
10 properly represent them. And I have always been
11 confused as to whether or not that would be appropriate.

12 And so I think it's very important that we
13 address the issue and also talk about whether or not we
14 are, in fact, agents of those other tribes, representing
15 them legally as part of this group, because that issue
16 could be also discussed. That's very confusing to me.

17 MS. PODZIBA: Ms. Yazzie and then Mr. Evans.

18 MS. YAZZIE: I would like to make an
19 amendment. Based on the discussion we had, I would like
20 to add after "designated regions," "for small, large --
21 for small, medium, and large tribes, respectively."

22 That way each of us represents and would
23 have input from large tribes, medium-sized tribes, and
24 small tribe categories.

25 And, for example, I'm part of the Southwest

1 Housing Association, but I am the largest tribe in that
2 association. And so there are some -- so when Navajo
3 was elected, it's representing large tribes. Maybe
4 across the nation. I don't know.

5 So I just want to add that, just to say --
6 just to add further clarity for the category of
7 representation, respectively, for each of the Committee
8 members.

9 MS. PODZIBA: I have got Mr. Evans and then
10 Mr. Sawyers and then Ms. Foster.

11 MR. EVANS: Earl Evans, Haliwa-Saponi.

12 I can understand the desire to clarify.
13 However, I would like to respectfully offer that I
14 believe we are boxing ourselves in to add the language.
15 I think we are better off to leave the language as it
16 was originally accepted because, in considering what
17 Mr. Sossamon stated earlier, some of us may not
18 represent a specific region.

19 We may only represent an Indian tribe, a
20 housing authority, or two or three tribes, or two or
21 three housing authorities. And I think, if we just
22 simply leave it at the "interests of their
23 constituents," then it leaves it pretty broad in saying
24 that generally we represent the interests of all Indian
25 tribes and whomever else are involved as participants

1 and have a vested interest in this program. So that
2 would be my suggestion.

3 MS. PODZIBA: Mr. Sawyers?

4 MR. SAWYERS: When we were selected, we were
5 selected by region. Once we are here, certainly we
6 represent our tribe. We represent our region. We
7 represent small tribes. But there's 250-some tribes
8 that have housing. We represent all of those folks.

9 And when you say -- again, I guess my
10 loyalty somewhat is to small tribes, but I am here to
11 represent everyone. And if we can't protect people,
12 small tribe or large tribe or so on, we are not
13 accomplishing what we really want to accomplish, and
14 that's a better program for all of us.

15 So basically you can write that down any way
16 you want to. But I don't represent from Region 5. It's
17 Regions 3 and 5. And I guess my heart is there, but I
18 don't represent them only. If we have a little problem,
19 we solve it and work together. So I hate to say I
20 represent a small tribe.

21 MS. PODZIBA: I have Ms. Foster, then
22 Ms. Yazzie, and then Mr. Haugen.

23 MS. FOSTER: I am an attorney, so I may have
24 a particular view of this that's a little more
25 conservative than others, but I would not say that I am

1 here to represent all tribes in the region -- the Yakama
2 Nation or the Yakama Nation Housing Authority -- in
3 terms of my representation.

4 That doesn't mean that I am here to reflect
5 the -- to reflect the concerns and interests of housing
6 authorities the same size as we are, I suppose, with the
7 characteristics that the Yakama Nation Housing Authority
8 has in the region.

9 But the comment from this side of the table
10 about actually defining what our legal responsibilities
11 are and we are actually acting as agents of other
12 tribes, I am not acting as an agent of any of the tribal
13 governments within this region, the northwest region or
14 throughout the United States, and that's really
15 important to state on record.

16 I am not here as a legal representative of
17 the Yakama Nation, per se. I am here because I was
18 recommended by the Yakama Nation Housing Authority.

19 So I am not comfortable with saying that I
20 represent all tribes throughout the U.S., and I don't
21 think that they would be comfortable with that either.
22 I personally -- I have another proposal or proposed
23 amendment. I don't know how you would like to hear
24 that.

25 MS. PODZIBA: What I would like to do --

1 because we get too many proposals, I would like to get
2 the last two comments from the people that I recognized.
3 Then go back to Mr. Okakok to see if he accepts this
4 amendment. Get a vote on that amendment. If it's good,
5 then we are done.

6 If not, Mr. Evans make a proposal to go back
7 to the original language. Take a vote on that. And if
8 that doesn't work, then we will ask for additional
9 proposals from the floor.

10 MS. FOSTER: That's great. And let me say,
11 I understand the spirit of what other people are saying
12 and I agree with the spirit of it, that we are here with
13 a large responsibility to reflect the interests of
14 tribes and housing authorities throughout the nation.

15 And I take seriously the opportunity to
16 discuss issues within our region and to come back with
17 those issues to this table. It's just that the word
18 "represent" is not something that I could use in that
19 context.

20 MS. PODZIBA: Ms. Yazzie?

21 MS. YAZZIE: Thank you, Susan. And I do
22 appreciate the discussion. And I would offer that
23 amendment, if the other amendment was going to be
24 considered. But listening to Mr. Earl Evans, I would
25 agree with Mr. Evans just to keep it as originally

1 proposed. So I would retract my amendment.

2 MS. PODZIBA: Mr. Haugen?

3 MR. HAUGEN: I agree with Earl. When you
4 look at the basis of why we are here, it's the houses of
5 the Native Americans. Native Americans. We can't
6 forget that. In my opinion, we are here to represent
7 Native Americans. Not anybody else. Maybe not anybody
8 in particular.

9 But I agree that we should just leave it the
10 way it is. We can spend all day arguing about this one
11 issue or making an amendment. But the bottom line is
12 that it's spelled out. Let's do it today. My friend
13 once told me, It's days like these that make me wonder
14 how Custer ever lost.

15 MS. PODZIBA: I would like a vote on the
16 proposal that's on the screen. "Committee Members or
17 their Alternates are expected to represent the concerns
18 and interests of their constituents of their designated
19 regions." Can I have a thumbs up or thumbs down on that
20 proposal. Many objections.

21 So, Christine, could you remove the "of
22 their designated regions." I believe this is Mr. Evans'
23 proposal. Let's have a vote on that proposal. Can I
24 see thumbs up or thumbs down on the proposal of
25 Mr. Evans. I see one objection. So only one objection.

1 Ms. Vogel, could you explain your objection
2 and perhaps propose -- make a proposal for something
3 that would reflect the concerns raised by the Committee
4 members.

5 MS. VOGEL: Thank you. I objected to it
6 because it cannot be minor constituents then. I was
7 asked what I consider to be my constituents, which was
8 who I represented. And I told them that I was foolish
9 if I thought I represented Cheyenne River only; that
10 what I brought to the table was the Cheyenne River
11 experience.

12 But I have an obligation and a
13 responsibility to represent my region, and that I look
14 to them for guidance as we go through this process.

15 So if we cannot define "constituents" and
16 "relative" and -- we were all raised with tribal
17 thinking as to, Who do we take care of? Who are we
18 responsible for? When you have a position of
19 leadership, who do you take care of?

20 You take care of those that are in need,
21 those that don't have a voice. But if we cannot define
22 "constituents," then I move to strike it.

23 MS. PODZIBA: So your proposal is to strike
24 it. Do you have a comment on that?

25 MR. COOPER: Gary Cooper. From what I have

1 heard -- and I think Mr. Sossamon was the first one that
2 might have brought it up, and it's kind of what I heard
3 from Ms. Foster and Mr. Evans -- is, we all define
4 exactly who our constituents are.

5 I think it's up to each one of us to define
6 who our constituents are, and that's the whole purpose
7 of us being here. And I don't know -- from what I see
8 back in the '03 and '10 ones, that's probably the reason
9 why "constituents" was in there like it is.

10 Because it's pretty much up to us, depending
11 on who sent us here, who we represent, whatever the case
12 is -- our whole purpose for being here -- and I just
13 want to make that comment.

14 MS. PODZIBA: Mr. Boyd?

15 MR. BOYD: Thank you. Rodger Boyd. I would
16 like to read a quote from the Negotiated Rulemaking Act
17 that might help. This is under the section of
18 Established Committee.

19 "The Agency determined that a Negotiated
20 Rulemaking Committee can adequately represent the
21 interests that will be significantly affected by the
22 proposed rule."

23 So that leaves it pretty broad. I think it
24 defines that it's not only your respective tribes but
25 the tribes in your region. You are representing them,

1 whether they be small, medium, or large.

2 Our intent in getting all of you to this
3 table was to try to be fair to the 566 federally
4 recognized tribes throughout the country. So our
5 responsibility is pretty heavy on our shoulders.

6 So we were trying to get as best as
7 possible, and so perhaps we may want different language.
8 And I think it sounds to me that people are looking at
9 this more in a political way when they say,
10 "constituents."

11 So perhaps we can neutralize it. I am not
12 sure if all of you are in politics in your respective
13 communities, but that may be the sense of using that
14 term.

15 We have always felt that, when you come to
16 this table, you are indicated by region and you are not
17 excluded to look at this as a national perspective, but
18 we thought by region.

19 I think you probably have a responsibility
20 to go back and meet -- whether they be regional housing
21 authorities, groups, tribes, whatever the interest may
22 be -- I think it's on your shoulders.

23 It's a responsibility to represent the
24 interests of -- narrowing it down would be helpful, I
25 think, by representing the interests of your community,

1 the community being the specific HUD region. I think
2 it's useful.

3 MS. PODZIBA: I am going to take a vote on
4 Ms. Vogel's proposal, which is to delete this
5 "Constituents' Interests" section, and let's see what
6 happens with that. And if that doesn't work, we will
7 come back to Mr. Boyd to your proposal. Okay.

8 Could I have a show of thumbs up or thumbs
9 down on the proposal to delete letter (c) from the
10 protocols.

11 We have got objections. Mr. Boyd, can you
12 tell me where that reference is in the Negotiated
13 Rulemaking Act.

14 MR. BOYD: Yes. It's Section 565,
15 Established Committee, A, A1.

16 MS. PODZIBA: I have got, "If after
17 considering comments and applications," that section?

18 MR. BOYD: Yes.

19 MS. PODZIBA: I'll let you make your
20 proposal, and then I have got Ms. Foster, Mr. Sossamon,
21 and Mr. Evans.

22 MR. BOYD: Thank you. One thing that might
23 be going on as well, just as a reference, if you go
24 back -- if you look at the book, the orange book that
25 was handed out the other day, 16. You have a Committee,

1 formation of the Committee.

2 And there is a reference. It reads, "The
3 Secretary shall" and then there's (i) -- the offering
4 procedures under the subchapter described in clause (i)
5 -- "the unique government-to-government relationship
6 between Indian tribes and the United States shall ensure
7 that the membership of the Committee includes
8 representatives of the federal government, of
9 geographically diverse small, medium, and large tribes,"
10 which is the statutory language that we follow.

11 MS. PODZIBA: Is there a proposal? Is there
12 a change to the text to signify what you are referring
13 to?

14 MR. BOYD: I will have my favorite
15 coffeemaker behind me propose something.

16 MS. PODZIBA: Yes, Mr. Sossamon?

17 MR. SOSSAMON: I am going to propose that,
18 after it says, "concerns and interests of," after the
19 word "of," insert "a geographically diverse
20 cross-section of small, medium, and large Indian
21 tribes." And then delete "their constituents."

22 MS. PODZIBA: Does that come from the
23 Federal Register notice?

24 MR. SOSSAMON: Yes. That's language out of
25 the notice, Federal Register notice.

1 MS. PODZIBA: Mr. Boyd?

2 MR. BOYD: We can accept that.

3 MS. PODZIBA: Ms. Foster, you were up next.

4 MS. FOSTER: That's fine with me.

5 MS. PODZIBA: Mr. Evans?

6 MR. EVANS: Earl Evans, Haliwa-Saponi. I
7 would like to defer to Ms. Vogel to ask if this would be
8 acceptable.

9 MS. VOGEL: Yes.

10 MS. PODZIBA: Yes?

11 MR. OKAKOK: I would like to make a friendly
12 amendment to change the title from "Constituents'
13 Interests" to just "Interests." It would be more in the
14 spirit of the definition that's been added.

15 MS. PODZIBA: Would you accept that
16 amendment?

17 MR. SOSSAMON: Yes.

18 MS. PODZIBA: So it would just be
19 "Interests." Ms. Gore?

20 MS. GORE: Thank you. I just want to make
21 sure that I clearly understand that.

22 As Rodger refers to the Negotiated
23 Rulemaking Act, that really refers to HUD's
24 responsibility and not the Committee's responsibility.
25 So when I read this phrase that's in the protocols, I

1 Negotiated Rulemaking Act that Rodger just mentioned
2 earlier. So I wanted to ask if Mr. Sossamon is okay
3 with it. He represents a similar thinking equal to
4 Ms. Vogel or Ms. Foster, if that language would work if
5 we said it that way.

6 MS. PODZIBA: Mr. Sossamon? Do you want to
7 see it up there? Should we get that language up there?

8 MR. SOSSAMON: Yeah, put it up there.

9 MS. PODZIBA: Take out "concerns"?

10 MR. EVANS: Earl Evans, Haliwa-Saponi. No,
11 ma'am. It would be "concerns and interests." And say
12 "concerns and interests of those affected by the
13 proposed rule -- that would be affected by the proposed
14 rule."

15 MS. PODZIBA: Is that accurate?

16 MR. EVANS: And that proposal would, if
17 Mr. Sossamon is amenable to it, would involve deleting
18 and putting a period there after "proposed rule," and
19 then deleting everything else. So my question is, would
20 that make this doable for everyone based on that change?

21 MS. PODZIBA: Ms. Foster?

22 MS. FOSTER: The proposed change would be
23 fine with me, but I have another proposed change. And
24 that would be to strike the words "are expected to"
25 because we are selected because we already represent

1 those concerns and interests as per HUD as a member of
2 the Committee.

3 MS. PODZIBA: Mr. Sossamon, can I go back to
4 you? There are two amendments proposed to your
5 proposal. The first is by Mr. Evans. And I am
6 wondering if that's acceptable to you. And then the
7 second is by Ms. Foster, which is to strike "are
8 expected."

9 MR. SOSSAMON: I would accept and support
10 it.

11 MS. PODZIBA: Ms. Gore?

12 MS. GORE: I have a proposal which would
13 address my concerns, and that is to add the word
14 "collectively" in front of "represent." So it would
15 read, "Committee Members or their Alternates
16 collectively represent the concerns and interests,"
17 et cetera, et cetera.

18 That removes my concern about having
19 individual -- some accountability individually, and it
20 puts it right back to the Negotiated Rulemaking Act,
21 which is HUD selecting a diverse cross-section. Thank
22 you.

23 MS. PODZIBA: Ms. Vogel?

24 MS. VOGEL: It's interesting that we bring
25 up individual accountability. If we are talking about

1 interests and now we are talking about accountability,
2 then maybe we better address the section "Individual
3 Accountability." Thank you.

4 MS. PODZIBA: I am going to ask for a vote
5 on this proposal. "Committee Members or their
6 Alternates collectively represent the concerns and
7 interests that will be affected by the proposed rule."

8 Can I have a thumbs up or thumbs down on
9 that. Okay. Ms. Vogel still has an objection. Can you
10 explain your objection and perhaps offer a proposal or
11 perhaps bring back -- there was one that I think was
12 almost acceptable. Perhaps you can remind us of what
13 that one was.

14 MS. VOGEL: I propose that we put my
15 proposal back up there as it was presented. It
16 addressed what Mr. Boyd reminded us of.

17 MS. PODZIBA: So go back before the
18 amendments -- it was amended by people, and is your
19 proposal to bring back the original proposal?

20 MS. VOGEL: My proposal is to bring back a
21 proposal we didn't vote on, which was to remove "are
22 expected to collectively" -- take that out -- that will
23 leave "be affected by the proposed rule." And then it
24 named the geographic area.

25 MS. PODZIBA: All right.

1 MS. VOGEL: In addition to that -- and,
2 Earl, where you had "represent interests that will be
3 affected," are you referencing Native American families
4 when you are talking about that? Can we be specific as
5 to who we are saying is going to be affected by the
6 proposed rule?

7 Who are we referencing being affected by
8 this proposed rule? Are we not specifically saying
9 Native American families?

10 MR. EVANS: Earl Evans, Haliwa-Saponi. In
11 response to Ms. Vogel's question, basically what I was
12 trying to do was find a little common ground, because I
13 understand your concerns about the geographic
14 representation, but I also understand and agree, to a
15 large degree, with what Mr. Sossamon and Ms. Foster said
16 as well.

17 So I am basically looking for a little
18 ground there. And the language that I pulled was from
19 what Mr. Boyd referenced in the Negotiated Rulemaking
20 Act. It's on page 5, under A1, in the section where it
21 says, under Establishment, "Determination to establish
22 Committee applications submitted under Section 564, the
23 agency determines that a Negotiated Rulemaking Committee
24 can adequately represent the interests that will be
25 significantly affected by a proposed rule," et cetera,

1 et cetera.

2 So that's where I pulled the language from,
3 suggesting that we use the interests that would be
4 affected by the proposed rule, because I thought it
5 would cover your concerns about making sure the
6 geographic areas are included, but at the same time also
7 addressing the other concerns that were expressed around
8 the table. I hope that answers your question.

9 MS. PODZIBA: Ms. Vogel, is this the
10 proposal you would like to vote on?

11 MS. VOGEL: Was Earl's amendment accepted to
12 vote on now?

13 MS. PODZIBA: Yes.

14 MR. SOSSAMON: I want to add that, as part
15 of the criteria to be considered to be selected for this
16 Committee, each member was required to have
17 authorization to represent a tribal government, which
18 may include the housing entity of the tribe with the
19 interests the nominee will represent. And that the
20 tribe must provide -- we must provide such evidence of
21 that representation.

22 So in my particular case, it was my tribal
23 government that nominated me. We listed the Choctaw
24 Nation's interests, as well as a supplemental document
25 that was included with that, which was an endorsement

1 from the tribes of our regional organizations.

2 So, to me, that was my definition of the
3 interests I represent. Therefore, that goes back to my
4 earlier statement. I kind of define who my constituents
5 are or who I represent based on those documents that we
6 were required to submit in our nomination.

7 So this language, I think, is consistent
8 with that, and that's why I accepted that language. And
9 individually or collectively, I believe that's what I am
10 here to represent anyway, so I had no problem with the
11 word "collectively."

12 So, to me, it's clear who I am here to
13 represent. And basically any concerns brought up, if
14 it's not brought up by someone else, then I will be
15 willing to bring it forward, not only for my region but
16 any interested party that has a valid concern.

17 I think that's what we want to hear is
18 everyone's concerns. And negotiation in good faith
19 means, if we are made aware of it as a member, we should
20 bring it forward for the Committee to consider.

21 MS. PODZIBA: I have Mr. Evans.

22 MR. EVANS: Earl Evans, Haliwa-Saponi. I
23 also think it's important to remember that, as
24 established in these protocols, we are going to talk
25 about what the Committee's role is in terms of this

1 process more so than what our role is as individual
2 representatives.

3 Collectively, this is who we represent.
4 It's those interests that are affected by the proposed
5 rule. We don't, as a Committee, simply represent
6 geographic tribes. We don't simply represent our
7 regions, collectively. We represent the interests of
8 those affected by the proposed rule. And that's what
9 this section is intended to infer.

10 For example, HUD doesn't represent small,
11 medium, or large tribes. So then we leave them out if
12 we specify our regions or our tribes or what-have-you.
13 So I think we should keep that perspective that we look
14 at it from, I guess, the crow's-eye view who the
15 Committee represents, not necessarily who the membership
16 represents.

17 MS. PODZIBA: I have been asked to remind
18 everyone to say their name before they give their
19 comment.

20 We are going to take one more comment, and
21 then I'm going to go to a vote on the proposal so we can
22 see where we are. Yes?

23 MR. OKAKOK: Sam Okakok, Native Village of
24 Barrow. I think, in light of all this as well as who we
25 are representing, we should change the title of the

1 amendment to "Tribal." They are the ones we are looking
2 after.

3 MS. PODZIBA: Mr. Sossamon, will you accept
4 that? Okay. So "Tribal Interests." One more comment
5 before we go to a vote. Mr. Reed?

6 MR. REED: Michael Reed, Cocopah. I would
7 like also to propose to the Committee, and I think
8 Ms. Foster talked about eliminating "are expected," and
9 I don't know what happened to that.

10 MS. PODZIBA: So the friendly amendment is
11 to what? Call it --

12 MR. REED: A friendly amendment would be to
13 call it "Committee Interests" and change the "Committee
14 Members or their Alternates" to "Committee" or "The
15 Committee is to represent the concerns and interests."
16 That goes back to what Ms. Foster said about what is
17 expected. The rest of that is fine.

18 MS. PODZIBA: Mr. Sossamon? So it goes --
19 instead of "Tribal," it goes to "Committee Interests."
20 And then it says, "The Committee is to represent." Is
21 that correct? "The Committee is to represent the
22 interests and concerns," et cetera. Mr. Haugen?

23 MR. HAUGEN: I know we have been reviewing
24 this now for 39 minutes, but can we move on, Committee,
25 and maybe at a break we can get those individuals who

1 are happy with -- we have got a whole bunch of other
2 stuff we need to cover, and maybe we can come back to
3 this?

4 MS. PODZIBA: What I'd like to do is get to
5 a vote, and then perhaps --

6 MR. HAUGEN: Or we could request another
7 date, which I won't be a part of, but can we move on,
8 please?

9 MS. PODZIBA: Subject to funding
10 availability.

11 MR. HAUGEN: Subject to funding
12 availability. I am just saying that we've spent a long
13 enough time on this. And if Dave and Sharon and you
14 guys want to caucus with us during a break, let's do it.
15 But we need to move on. We've got some work to do.

16 MS. PODZIBA: So, Mr. Sossamon, is the
17 amendment acceptable to you?

18 MR. SOSSAMON: Yes.

19 MS. PODZIBA: Can I have an up-and-down vote
20 on this? Do we have it? Is it clear to everybody? So
21 take out the period after "proposed rule."

22 "Committee Interests. The Committee is to
23 represent the concerns and interests that will be
24 affected by the proposed rule of a geographically
25 diverse section of small, medium, and large tribes."

1 MS. VOGEL: Just a point of order. When we
2 had "Tribal Interests" in there, we didn't get to choose
3 whether or not we wanted that or not. I guess I am
4 getting confused.

5 I am going to apologize up front right now.
6 This is the first time I am here. If you recall, this
7 discussion started because I asked for a definition of
8 "constituents." It was not intended in any way to drag
9 this out.

10 I had asked for that definition. We entered
11 into what I thought was good discussion. And I don't
12 have the past history of this. So if you go through
13 things rather quickly, then I will learn that.

14 But if we don't refer to and use the word
15 "tribal" -- earlier everyone was talking about tribal
16 government. So if we are tribal representatives, then
17 we are tribal interests here.

18 So I guess I don't understand when we get to
19 vote on the proposal and then you lose that. When we
20 were in consensus, you lose it. When we were in
21 agreement, you lose it. So I am just requesting a point
22 of order.

23 MS. PODZIBA: Let me explain what I think is
24 the process and then tell me if I am correct. Someone
25 makes a proposal. People offer amendments, and I

1 presume that they are offering amendments in order to
2 make the proposal acceptable to them.

3 That, if I call for a vote, it would be a
4 very quick thing and we would have to go back to it
5 anyway because otherwise they wouldn't offer the
6 amendment. So then I go back to the person who made the
7 original proposal and ask if that amendment is
8 acceptable to them, given that is their proposal.

9 And so then we go back, if someone else
10 offers another amendment, and I presume that people are
11 offering amendments because the proposal, without those
12 amendments, would not be acceptable.

13 And I am trying to get to a vote on this. I
14 think that there were two proposals, which you were the
15 sole objector for, which is why we continued -- why the
16 Committee continued to try to respond to the concerns
17 you were raising with additional proposals.

18 And while I know there were some points in
19 the middle where it was acceptable to you, other
20 Committee members continued to offer amendments, which I
21 assumed was because the proposal on the table wasn't
22 going to be acceptable. I went to a vote.

23 What I would like to do now is, subject to
24 Mr. Haugen's suggestion that we move on, is ask for a
25 vote on the proposal that's on the table. And if it's

1 not acceptable with the acceptance of the Committee,
2 move on and we'll come back to this one. So is that all
3 right with everyone? Yes?

4 MR. SOSSAMON: After this discussion, are
5 you satisfied with the original language that simply
6 refers to "constituents"?

7 MS. VOGEL: No. So the only objection I
8 have is that I feel that we should decide if we want
9 "Tribal Interests" or "Committee Interest," but this is
10 really a good example for me.

11 I will not try -- my intent is never to
12 block the vote just on one word. So if you want to take
13 your vote and if I can, just for the record, say that I
14 preferred "Tribal Interests," then you can have your
15 consensus. So I don't intend to block the vote. That
16 was never my intention.

17 MS. PODZIBA: Shall we entertain a proposal
18 to offer an amendment to go back to "Tribal" rather than
19 "Committee"? Is that your proposal?

20 MS. VOGEL: I agree with "Tribal Interests."
21 That represents who we are. We say we are representing
22 tribes. I thought it was very appropriate.

23 MS. PODZIBA: I will just ask people --
24 there are a lot of hands up. I had a suggestion that we
25 go to a vote and see if we can complete our discussion

1 of this or to move on. I think that would be my
2 recommendation, but it's your decision. Yes?

3 MR. REED: I will withdraw my "Committee
4 Interests" and like her suggestion that it be "Tribal."

5 MS. PODZIBA: So it goes back to "Tribal."
6 And I would like a thumbs up or thumbs down on the
7 proposal.

8 "Tribal Interests. The Committee is to
9 represent the concerns and interests that will be
10 affected by the proposed rule of a geographically
11 diverse cross-section of small, medium, and large
12 tribes."

13 Could I have thumbs up, thumbs down on that.
14 I have an objection. Is that an objection, Ms. Foster?

15 Is that all right with everyone if we move
16 to the next item and we'll come back to this with a
17 little fresh eyes after we have a break or at some
18 point? I take that suggestion to move on. Perhaps
19 during the break people can consult with each other.

20 Let's go to "Public Participation," which is
21 (d). Again, it is correct as written for 2003 and 2010.

22 MR. JACOBS: I recommend that we take the
23 blue (d).

24 MS. PODZIBA: Any further discussion? Yes,
25 Ms. Gore.

1 MS. GORE: Thank you. I just want to offer
2 a comment. The possibility that we consider a change-up
3 for this particular negotiation. And that is that
4 oftentimes we have people who are in the audience who
5 can state specifically to the issues, that having their
6 input might add value to the Committee members.

7 That we perhaps consider -- there is another
8 section in the protocols that deals with times and that
9 sort of thing. And I just want to park the conversation
10 that we would provide -- or at least have a conversation
11 about what that might be to the Committee during this
12 session.

13 So I just want to park that conversation and
14 not necessarily offer an amendment to this particular
15 section.

16 MS. PODZIBA: Would that be under "Open
17 Meetings"?

18 MS. GORE: That's correct. Thank you.

19 MS. PODZIBA: Is there any additional
20 discussion on the proposal to accept "Public
21 Participation" as the proposal that's up on the screen?
22 Could I have thumbs up, thumbs down. Any dissent?
23 Thank you. Okay.

24 As we know, we are building momentum now,
25 right? That is (e) that was in the 2010 version. It

1 was not in the 2003. And it relates to the effect of
2 failure to be present for a vote. Could I have some
3 discussion about this letter (e). Yes?

4 MR. ADAMS: I propose that we accept the
5 2010 protocol. This is Jason Adams.

6 MS. PODZIBA: Any further discussion?
7 Thumbs up, thumbs down on acceptance of (e) for the 2013
8 protocols. Mr. Haugen, yes? Everyone okay there?

9 All right. So we have completed
10 Participation except for letter (c), which we'll come
11 back to.

12 Let's start on Section II, Meetings. And
13 again we have got a lot of sections. So let's just
14 start with (a), Quorum. I'll open the floor for
15 discussion of quorum. Mr. Adams?

16 MR. ADAMS: My proposal is, we accept the
17 2010 protocol on quorum.

18 MS. PODZIBA: Any further discussion?
19 Thumbs up, thumbs down on (a), 2010 version. Question,
20 Ms. Henriquez?

21 MS. HENRIQUEZ: I would like to propose that
22 we have a quorum, and then the quorum has to be
23 maintained and present in order for the Committee to
24 take action, and then at least one representative has to
25 be present.

1 MS. PODZIBA: "A quorum of the full
2 Committee shall consist" -- take "s" out on "consist";
3 first line -- "shall consist of two-thirds of the
4 members of the Committee who are present during a call
5 of the roll taken on opening day at the start of a
6 negotiated rulemaking Committee."

7 And your revision to the second sentence?
8 "Once a quorum is initially established, the Committee
9 may take action during the remainder of that meeting,
10 including action on succeeding days."

11 MS. HENRIQUEZ: As I read that language,
12 once a quorum is established for a session -- for
13 example, we opened the session yesterday with at least
14 two-thirds of a quorum having been met.

15 Then if today, for example, we were left
16 with 12 people, that that would be considered -- that
17 those will be considered a quorum since we started the
18 session yesterday with a quorum. And I think that
19 that's not a helpful perspective for all of us to be at
20 the table and represented in an official action when
21 votes were taken.

22 So I would like that there be a quorum
23 that's established -- I would like to strike, "Once a
24 quorum is initially established," and replace that with,
25 "The Committee may take action during a meeting as long

1 as a quorum is present."

2 MS. PODZIBA: "As long as a quorum is
3 present."

4 MS. HENRIQUEZ: Strike "including action on
5 succeeding days" and strike "as long as" and substitute
6 "and the Committee is lawfully in session pursuant to
7 these protocols." And then strike the last clause. Add
8 a period after "Protocols."

9 MS. PODZIBA: And then you had an additional
10 point about HUD being present?

11 MS. HENRIQUEZ: Should we put in -- I did
12 want to say that, but I can live with that. We have an
13 obligation to be here.

14 MS. PODZIBA: Do you accept that provision?

15 MR. ADAMS: I guess the only comment I would
16 have in response to the addition is, at the beginning of
17 the section, it says, "A quorum of the full Committee
18 shall consist of two-thirds of the members of the
19 Committee who are present during a call of the roll
20 taken on opening day."

21 That establishment of a quorum is at the
22 beginning of two-thirds. I am just wondering, when you
23 say -- or you added "as long as a quorum is present,"
24 you should define quorum again because quorum could mean
25 something different in that instance.

1 I accept your amendment if quorum is defined
2 again as being two-thirds of the members present.

3 MS. HENRIQUEZ: I believe that clarification
4 is helpful. Thank you.

5 So should we say, "the Committee may take
6 action during the remainder of that meeting, as long as
7 a quorum which consists of two-thirds of the members"?
8 It should be defined as Mr. Adams suggested. Maybe
9 there's some words missing. I just don't know.

10 MS. PODZIBA: So the first line is
11 "two-thirds of the members present." So if there were
12 only 12 people present on the first day, the quorum
13 would be 8, if I read that correctly.

14 "A quorum shall consist of two-thirds of the
15 members of the Committee who are present during a call
16 of the roll taken."

17 MS. HENRIQUEZ: I think that has to be
18 changed. I think it's anticipated that we would have --
19 the two-thirds would be some number, but not two-thirds
20 of 12 but two-thirds of 24.

21 MS. PODZIBA: Yes, Ms. Gore?

22 MS. GORE: May I offer an amendment that
23 would address that by simply putting a period after the
24 second word "Committee" in that first sentence and
25 striking everything that follows. I think that would

1 clarify it.

2 MS. PODZIBA: Strike everything past --

3 MS. GORE: No. The remainder of the
4 sentence.

5 MS. PODZIBA: Thank you. Yes?

6 MR. DOLLARHIDE: I like the way that it was
7 originally. The reasoning behind that, in my opinion --
8 and not to say that this would ever happen -- but the
9 pessimist that I am, two-thirds of the folks could hold
10 this meeting up if they decided to go outside and stand
11 around, and the rest of the meeting could not be
12 conducted because we've got folks standing outside.

13 I just -- I think that, once we have that
14 quorum established, it's up to the members acting in
15 good faith to -- and the responsibility to make it back
16 to the table, especially if there's important stuff.
17 Which I think, when we started our paperwork, that we
18 would be here when these meetings started and we would
19 be participating in those meetings.

20 So it's my opinion that that -- I just don't
21 see that as a good way to go.

22 MS. PODZIBA: Yes, Mr. Sawyers.

23 MR. SAWYERS: By the way, that's happened
24 before.

25 MS. PODZIBA: Ms. Foster, did you have your

1 hand raised?

2 MS. FOSTER: We'll be interested in hearing
3 that story sometime, Jack, if it's actually happened
4 before.

5 I like the idea of dropping everything after
6 the word "Committee." I think we should be able to have
7 two-thirds of the members here to take action. I think
8 that makes sense. So I would be in support of the
9 proposal to drop everything after "Committee."

10 I think the purpose of adding additional
11 language before was to make sure that there was
12 incentive for people to get back because they know that
13 the Committee would just act, but I think two-thirds is
14 a good number anytime.

15 MS. PODZIBA: Ms. Henriquez?

16 MS. HENRIQUEZ: Now I feel a little silly.
17 I am going to withdraw my amendment. I do think that,
18 if Committee members understand the importance of
19 upcoming votes and procedures during the conversations
20 during a session, then it's incumbent upon all of us to
21 be in the room present to do that work. I can withdraw
22 it?

23 MS. PODZIBA: You can withdraw it and it
24 would go up to a vote on the original proposal.

25 MS. HENRIQUEZ: Okay. I am going to

1 withdraw it.

2 MR. ADAMS: I will accept that. We built
3 these protocols on past history. And Jack is correct.
4 There was a fear at one time that, once that did happen,
5 that a third plus one of the Committee could hold us all
6 hostage and walk out and not let the Committee continue
7 to work.

8 So if we are willing to take that step --
9 just a word of caution, that's what can happen. But
10 that's why we put this in, so that the work can
11 continue. So with that, my proposal is the original
12 2010 language.

13 MS. PODZIBA: Can I have a show of thumbs up
14 and thumbs down on the proposal on the table.

15 We have an objection from Ms. Foster. It's
16 time for a break. If this is a quick change-out, go
17 ahead.

18 MS. FOSTER: I just want to make a comment.
19 "While in session," I guess, means that everybody has
20 notice sufficiently in the meeting to come back together
21 again. I guess that means that, when the Committee
22 breaks up, there's a time when we're all to come back
23 together. Is that a reasonable assumption?

24 MR. ADAMS: I'll just make reference to
25 later on, there will be limitations for interruptions,

1 and that defines a break and how that happens.

2 MS. FOSTER: Then that's fine with me. I
3 withdraw my objection.

4 MS. PODZIBA: Thank you. Then it passes.

5 Before we take a break, I know there's some
6 announcement or something. So hang on for just a
7 second.

8 MR. NICHOLS: Before we break, there are
9 some people on our support staff who would like to make
10 a special presentation. Sara? We want to wish Jack a
11 very happy birthday.

12 MR. SAWYERS: Thank you very much.

13 (Break was taken from 10:33 to 10:53.)

14 MR. NICHOLS: I think we have a quorum in
15 the room. Let's get started, and we will pick up where
16 we left off. I hope you all had an opportunity to have
17 a piece of birthday cake and enjoy that. And with that
18 reinforcement, let's begin.

19 We left off with the Structure. We'll
20 continue on from that point. Mr. Adams?

21 MR. ADAMS: I thought we were on Quorum.

22 MR. NICHOLS: We finished the Quorum. The
23 Quorum is identified as approved. There was a closing
24 comment but not a change required. Is my understanding
25 correct? All right. So let's address the issue of the

1 structure.

2 I will invite comments, proposals.

3 Ms. Yazzie?

4 MS. YAZZIE: I would like to propose
5 adopting -- I think they're exactly alike -- 2010, the
6 blue version.

7 MR. NICHOLS: They are the same, yes. So
8 you are proposing the blue version, 2010? Any
9 discussion, amendment? Mr. Adams?

10 MR. ADAMS: Jason Adams. Similar to what we
11 talked about yesterday, when the Act is cited, I would
12 just suggest that we add "as amended."

13 MR. NICHOLS: So add "as amended" here?

14 MR. ADAMS: Yes.

15 MR. NICHOLS: Very good. So noted. Any
16 other discussion? Is that agreeable to you, Ms. Yazzie?

17 MS. YAZZIE: I think that's fine. And I
18 think we need to add "and as adapted."

19 MR. NICHOLS: "And as adapted." Is that
20 agreeable, Mr. Adams?

21 MR. ADAMS: Yes.

22 MR. JACOBS: Should we add some language
23 referring back to the protocols as well, "according to
24 the Protocols"?

25 MR. NICHOLS: To the protocols or to the

1 charter? You are referring to the charter that we
2 adopted?

3 So the question is, should we include
4 language referring back to the charter or the protocols
5 or a different section of the protocols?

6 MR. JACOBS: The protocols as well.

7 MR. NICHOLS: Is that a question to the
8 group then that you are asking or do you have a proposal
9 for the text?

10 MR. JACOBS: Could we add some language
11 after "Committee Charter and Protocols"?

12 MR. NICHOLS: So you are saying, "Committee
13 Charter and Protocols"?

14 MR. JACOBS: Yes.

15 MR. NICHOLS: Mr. Adams, any objection to
16 that?

17 MR. ADAMS: That's fine.

18 MR. NICHOLS: Ms. Yazzie, no problem with
19 that? Any further discussion? Amendments, suggestions?
20 Yes, ma'am, Ms. Bryan.

21 MS. BRYAN: Annette Bryan, Puyallup. I just
22 have a question before we vote on it. I was
23 wondering -- looking for the language where it said,
24 "government to government."

25 And the attorneys around the table will know

1 that meaning. And does this -- the way the words are,
2 "the unique relationship between the Government of the
3 United States and the governments of Indian tribes,"
4 does that have the same meaning as government to
5 government? Thank you.

6 MR. NICHOLS: Ms. Foster?

7 MS. FOSTER: Karin Foster, Yakama Nation
8 Housing Authority. I think that people may have ideas
9 about what constitutes government to government
10 negotiations. And where I come from, government to
11 government would actually be the tribal counsel. So I
12 guess I would feel comfortable with this language.

13 MR. NICHOLS: Either a response or comments,
14 questions? Prepared to call a vote? Could I see thumbs
15 up, thumbs down, please. Okay. It appears to be
16 accepted.

17 And I would ask, when we do that, if there's
18 any objection, please speak up. Because someone
19 mentioned yesterday, We will tell you if we have a
20 disagreement. So if you would do that, that would help.
21 That's accepted. Let's move on to Open Meetings.

22 Please review that, and I will ask for
23 comments or proposals. Ms. Gore?

24 MS. GORE: Thank you. I propose the 2003
25 Open Meetings version, which is in blue.

1 MR. NICHOLS: I'm sorry. I didn't
2 understand you.

3 MS. GORE: I propose that we consider the
4 2010 version, which is in blue. Sorry.

5 MR. NICHOLS: So your proposal is to adopt
6 this version?

7 MS. GORE: Sorry. Red is my favorite color.

8 MR. NICHOLS: A proposal has been made to
9 adopt the 2010 version. Any discussion or amendment?
10 Mr. Haugen? Oh, you are voting. So let's call the
11 vote. Any objection to that? Thumbs up? I don't hear
12 any objection. We will accept the 2010 version as
13 adopted. Thank you.

14 Next item is Minutes. Please review that,
15 and if you have a discussion item or a proposal, I would
16 like that now. Mr. Jacobs?

17 MR. JACOBS: Should we use the language "if
18 funds are available"?

19 MR. NICHOLS: So I will accept that as a
20 rhetorical question.

21 MS. HENRIQUEZ: If Mr. Jacobs is willing to
22 accept my silence.

23 MR. JACOBS: It's accepted.

24 MR. NICHOLS: And he does accept that, so
25 it's good. We have our rhetoric straight.

1 So do we have a proposal on the minutes?

2 Mr. Evans?

3 MR. EVANS: Earl Evans, Haliwa-Saponi. I
4 recommend that we adopt the 2010 language in blue.

5 MR. NICHOLS: To adopt the 2010 language in
6 blue. It starts here and ends there. Any discussion,
7 amendments to that? Let's call a vote. Please indicate
8 thumbs up or thumbs down. Do I hear any objection? We
9 will accept Minutes in blue, 2010, accepted by the
10 Committee.

11 Next item is Agenda. The difference in the
12 red and the blue is that the 2003 refers to the agenda
13 will be developed by the PFO and regional
14 representatives. The blue says the agenda will be
15 developed by the PFO and tribal co-chairs.

16 Do we have any discussion or proposal on the
17 agenda? Ms. Bryan?

18 MS. BRYAN: Annette Bryan, Puyallup. I
19 propose that we accept the agenda for the 2010.

20 MR. NICHOLS: Thank you for that.

21 Ms. Henriquez, you had your hand up also?

22 MS. HENRIQUEZ: It's just a typographical.
23 The second line, "shall be distributed to all members
24 such that receipt by the Member," capital M.

25 MR. NICHOLS: Thank you. Is that agreeable?

1 asks the parties to provide an estimate of time needed
2 for the caucus. Would that respond to your desire for
3 specifics? And I am really trying to avoid any language
4 that specifically limits the caucuses because the
5 caucuses will be immensely important to Committee
6 members in talking about constituents. So I am hesitant
7 to name a time.

8 But I do think being respectful in providing
9 a time needed is really important to the Committee, and
10 I ask for your acceptance of that.

11 MR. HAUGEN: Carol, I think that we should
12 put a time limit of like 60 minutes or up to so we are
13 not caucusing all day long. Not to exceed 60? So we
14 could get back to business. I just think that it's
15 going to be contentious at times. There may be some
16 reasons we could caucus all day if we wanted to. We
17 haven't got that much time.

18 MR. NICHOLS: Thank you. Mr. Haugen asked
19 that question. Ms. Gore, I will ask for your response
20 and then allow Mr. Evans his turn and Mr. Adams.

21 MS. GORE: I'm hesitant to include a time.
22 And I do absolutely respect your comment. So I guess
23 what I would ask is, if there is a time limit
24 proposed -- you suggested 60 minutes -- if the caucus
25 time could be extended by the Committee by providing and

1 explaining to the Committee that you needed to meet.

2 I do think the caucus times are critical to
3 this conversation. So I am not anticipating a full-day
4 caucus. That certainly is not what I am suggesting
5 here. But the flexibility to really have those very
6 substantive considerations that we need to have.

7 So if you want to propose language that
8 includes my suggestion, I will consider that. Thank
9 you.

10 MR. NICHOLS: Do you have language you would
11 like to propose, Mr. Haugen? Or we'll hear from
12 Mr. Evans. Mr. Evans?

13 MR. EVANS: Earl Evans, Haliwa-Saponi. I
14 agree with everything that's been said. My only concern
15 about the reason I requested the time is that there be
16 some limitation on time. Since we need the two-thirds
17 majority to have a quorum of the Committee, then the
18 Committee is not convening the entire time.

19 Would it help if we did the sentence
20 something to this effect, "A caucus shall be limited to
21 not more than 60 minutes unless otherwise deemed
22 appropriate by the Committee"?

23 MR. NICHOLS: Would you please add that,
24 Christine? "The caucus shall be limited to no more than
25 60 minutes unless otherwise confirmed by the Committee,"

1 at the end of the red. Where would you like it to go,
2 Mr. Evans?

3 EARL EVANS: Earl Evans, Haliwa-Saponi. It
4 can be the last sentence. I am okay with that.

5 MR. NICHOLS: While Christine is typing that
6 in, we still have a couple people in the queue. We have
7 Mr. Adams in the queue.

8 MR. ADAMS: I guess my comment is -- just,
9 again, looking ahead down the road as we begin our
10 deliberations here -- as this reads in 2003, "Any
11 Committee member can call a Caucus at any time, which
12 may be a nonpublic meeting."

13 That means that, if I wanted to have a
14 caucus, I could call it and there would be no objection
15 to it. That we would then go in to caucus. I would say
16 like even a half hour. There's no penalty if I go three
17 hours.

18 I would caution us in taking this step
19 because, if I say 15 minutes and I am not back in 15
20 minutes, the way the quorum language now reads is, we
21 can conduct our business in 16 minutes.

22 Because you said you needed 15, at 16 we
23 would go back into session with or without you. So I am
24 just raising that caution. I think it's a good idea to
25 have the limitations that were built into the 2010

1 process.

2 MR. NICHOLS: Would you change the language
3 that's currently proposed?

4 MR. ADAMS: Well, short of adding language
5 to this, my preference would have been the 2010
6 language. So I don't want to put another proposal out
7 there. I just wanted to speak to the caution.

8 MR. NICHOLS: So you are clarifying the
9 concern, not making a different proposal? Thank you.
10 Was there another comment? Mr. Reed?

11 MR. REED: Michael Reed, Cocopah.
12 Conceivably, with these words, we could come back and
13 then caucus, could we not? After 60 minutes could we
14 reconvene and so announce and ask for a caucus so we
15 would have another 60 minutes?

16 And I like the idea of having a lot of
17 flexibility there because I remember the last time there
18 was a lot of discussion on this subject.

19 MR. NICHOLS: Is there any other amendment
20 or discussion before a call for a vote? Ms. Foster?

21 MS. FOSTER: I have a question about the
22 language. I thought Earl said, "unless otherwise deemed
23 appropriate by the Committee." Was that the original
24 language?

25 MR. NICHOLS: "Deemed appropriate"?

1 Mr. Evans has agreed to that. "Deemed appropriate by
2 the Committee." And Mr. Haugen?

3 MR. HAUGEN: Just in that last sentence of
4 the 2003 where it says, "Internal procedures," is that
5 correct? "Internal procedures will be determining by
6 each respective caucus." Or is that a spelling error?
7 It should be "determined," right?

8 MR. NICHOLS: This sentence that says,
9 "Internal procedures will be determined by each
10 respective caucus"?

11 MR. HAUGEN: It says, "determining."

12 MR. NICHOLS: I understand. "Determined."
13 It's a grammatical problem there, correct?

14 MR. HAUGEN: Thank you.

15 MR. NICHOLS: Thanks for pointing that out.

16 MR. HAUGEN: That's what I do.

17 MR. NICHOLS: So are we ready to call a vote
18 on this one? Then let's call the vote. Could I please
19 have an acknowledgment of thumbs up or thumbs down, as
20 worded on the screen. Any objection? No objection.
21 Then we will move on to the next item. That's been
22 accepted under Caucus.

23 The next item is Time Limitations for
24 Interruptions. This one does not have a 2003 version.
25 This was added in 2010. Mr. Adams?

1 MR. ADAMS: I would propose to accept the
2 language as proposed.

3 MR. NICHOLS: The proposal has been made to
4 accept the language as written. Discussion or amendment
5 on that? Mr. Cooper?

6 MR. COOPER: Gary Cooper. The only thing I
7 would say is, it says "Chair" instead of "Co-chair" or
8 "Co-chairs," I think.

9 MR. NICHOLS: So amend that to say "Chair"
10 or "Co-chairs"? And Mr. Adams has concurred to
11 "Co-chairs." We probably should do that in each place
12 that "Chair" appears, correct?

13 Any other comment or discussion, amendment?
14 Let's call a vote then on this language. The proposal
15 is made to accept it as it's written on the screen. Is
16 there any objection to that? I see thumbs up. No
17 objection?

18 Then let's move on to the next item, Time
19 Limitations on Debate. Do we have any proposal or
20 amendment to the way it's written on the screen at this
21 point? Ms. Yazzie?

22 MS. YAZZIE: Aneva Yazzie, Navajo Nation. I
23 think the reference -- I like the language, but I think
24 the reference is now Article 8 instead of 7, if I
25 numbered it right. That's the only change.

1 MR. NICHOLS: That would become Article 8
2 under the protocols? Very good. Okay. So the
3 suggestion is to change that to Article 8 in the
4 proposal, which would correspond to the new version of
5 the protocols format. Mr. Haugen?

6 MR. HAUGEN: How would you enforce it?

7 MR. NICHOLS: The time limitations on
8 debate, how would it be enforced? As with most things
9 in the charter and protocols, my view is that it would
10 be enforced by the Committee itself.

11 MR. HAUGEN: In other words, you would just
12 refer to the Committee and just roll with it.

13 MR. NICHOLS: The Committee decides the
14 ground rules and procedures under which it operates.
15 And that would -- to me, it would make sense that that
16 would be one of the things that the Committee would
17 decide. If there's a different perspective on that,
18 please share it.

19 Ms. Gore?

20 MS. GORE: Just for the sake of discussion
21 for the Committee, two hours is not very long. I don't
22 know how we are going to define "debate." So my
23 previous experience on the topic, there is often
24 technical assistance that's provided by some of the
25 formula folks, that sort of thing, to check while they

1 are providing data or information.

2 I don't know how -- again, I am just not
3 sure how this is going to be defined. And based on the
4 last day and a half, it doesn't seem like a long time
5 for some of the issues that we have to debate. I am not
6 necessarily suggesting a change, but if we agree to
7 this, we should understand what we are agreeing to.
8 Thank you.

9 MR. NICHOLS: Thank you, Ms. Gore. So the
10 concern has been expressed about the two-hour limit.
11 Ms. Bryan?

12 MS. BRYAN: Annette Bryan, Puyallup. Is it
13 helpful if we state some type of language that this body
14 may extend the discussion if necessary? That's not the
15 right words, but some words to that effect. Because I
16 see Carol's point.

17 MR. NICHOLS: Mr. Evans?

18 MR. EVANS: Earl Evans, Haliwa-Saponi. I
19 have a question as well, related to the statement by
20 Ms. Gore, and I want to offer this for consideration to
21 see if this would make a difference.

22 What if we limited this two hours to debate
23 on any proposal? So we understand -- so that way it's
24 understood that doesn't apply when we are receiving
25 information or presentations so that we can understand

1 what issue is being presented to us. It's only in
2 regards to the actual proposal, this two hours.

3 MR. NICHOLS: Let me just make sure,
4 Ms. Bryan. Did you have specific language or were you
5 just offering an idea?

6 MR. ADAMS: I was going to offer a
7 suggestion.

8 MR. NICHOLS: Go ahead.

9 MR. ADAMS: Later on under Decisionmaking
10 there's a Reconsideration section.

11 MR. NICHOLS: So under Reconsideration?

12 MS. BRYAN: So we can debate for two hours
13 on a one-sentence proposal and then have a new proposal
14 to be reconsidered and talk about it for two more hours
15 and so on and so forth?

16 MR. NICHOLS: Mr. Adams suggested that we
17 add a proposal to it; is that correct?

18 MR. EVANS: Earl Evans, Haliwa-Saponi. I
19 would suggest that instead of saying, "Debate on any
20 matter is limited to two hours," what if we say, "Debate
21 on any proposal is limited."

22 MR. NICHOLS: We can put that on the screen.

23 MR. EVANS: The question was, would that
24 respond to Ms. Gore's concern.

25 MR. NICHOLS: Ms. Gore is nodding.

1 Ms. Gore, are you comfortable with that?

2 MS. GORE: I think it's a step in the right
3 direction, subject to other input from the Committee. I
4 have just expressed a concern that I think others will
5 also share. Thank you.

6 MR. NICHOLS: Mr. Adams?

7 MR. ADAMS: Again, some points based on this
8 issue. Jason Adams. We had this section in here for
9 the issues that were addressed in 2010, which we had
10 very specific definitions as to what they were as to
11 matters or -- they were defined. Each one had their own
12 parameters for each item.

13 Now I understand what your concern is. If
14 that morphs or changes to something else, what is the
15 time limit?

16 Again, I would hope that would be broad
17 enough in our current description of the issue that we
18 would say, Any time limit based on the discussion on
19 that specific issue within that two-hour time limit.
20 There will be several proposals and language changes.
21 All of that will be under the heading of that issue.

22 Do I make myself clear? Again, that's what
23 we have done in the past. And, again, the 2010 process
24 was very specific to what we had when we started 80-some
25 issues that we were going to address, and so we'll put

1 this time limit in place.

2 MS. PODZIBA: Ms. Bryan, are you okay with
3 where we are now in answer to your question?

4 MS. BRYAN: Yes. I needed further
5 clarification.

6 MR. NICHOLS: Thank you. I saw a couple
7 more hands. Mr. Dollarhide, then Mr. Okakok.

8 MR. DOLLARHIDE: My concern with the
9 proposal is what Ms. Bryan expressed. We could go all
10 day on one sentence with one word, be it taken out or
11 inserted, and then that time starts all over again,
12 knowing very well that our time is very limited while we
13 are here.

14 As Mr. Evans was saying, it was under
15 Reconsideration. I think it's -- a lot of times a lot
16 of business isn't completed around the table, as a lot
17 of folks know. It's completed in caucuses and out in
18 the hallway.

19 And I don't really see it changing from that
20 position because we are always going out to debate, but
21 eventually we're going to have to have -- more than
22 likely we're going to have to have a one-on-one
23 conversation with somebody to try to work out
24 differences or in caucus work out those differences
25 also.

1 So I am really skeptical and really hesitant
2 in dealing with the proposal as it's there right now.

3 MR. NICHOLS: Mr. Evans?

4 MR. EVANS: Earl Evans, Haliwa-Saponi. And
5 what I will just ask for how we should word it then so
6 that we get to where everyone believes we should go.

7 MR. DOLLARHIDE: I think that the way that
8 it was originally written is sufficient because we are
9 covered under the Reconsideration on (c). And like I
10 said, a lot of times most of our business is probably
11 going to be done outside this table and then brought
12 back.

13 MR. NICHOLS: Ms. Bryan, is that acceptable
14 to you, the way it was originally written, after this
15 discussion?

16 MS. BRYAN: I just had a question. I didn't
17 have a change.

18 Ms. Gore? Ms. Gore, is that acceptable to
19 you, to leave it the way it was originally written,
20 except for this?

21 MS. GORE: Yes, sir, it is. Thank you.

22 MR. NICHOLS: Mr. Evans?

23 MR. EVANS: Earl Evans, Haliwa-Saponi. With
24 that being said, then I will withdraw my proposal for
25 the change and submit a different proposal to adopt the

1 statement as it was originally written with the change
2 of the article correction.

3 MR. NICHOLS: Thank you. Mr. Okakok?

4 MR. OKAKOK: My concern would be this two
5 hours included the caucus.

6 MR. NICHOLS: So would there be a language
7 change here?

8 MR. OKAKOK: I think one where Ms. Bryan was
9 talking about the debate on the matter. I do agree with
10 some of her assumptions that -- including some language
11 that the Committee may agree on.

12 I don't think every matter can take two
13 hours. It may take a 15-minute caucus or whatever. So
14 I would suggest including language right after "two
15 hours" to include, "However, debate on the matter is
16 limited to two hours but may be set by Committee."

17 MR. NICHOLS: "But may be set a different
18 time limit by the Committee"?

19 MR. OKAKOK: Correct.

20 MR. NICHOLS: The proposal is made to add
21 that language here, please, Christine. The language
22 would be, "Debate on any matter is limited to two hours,
23 but may be set at a different time limit by the
24 Committee."

25 "May be," two different words. Is that

1 correct?

2 MR. OKAKOK: Yes.

3 MR. NICHOLS: I have Ms. Foster next and
4 then Mr. Adams. Ms. Foster?

5 MS. FOSTER: Karin Foster, Yakama Nation
6 Housing Authority. My proposed language is going to be
7 similar to that. Something like "or as deemed
8 appropriate by the Committee," to follow our convention.

9 I am also in favor of the proposal language
10 because it's more specific. I am not sure exactly what
11 is a "matter." Is it one word or is it one subject area
12 or is it one proposal? I am not sure what that means
13 exactly.

14 MR. NICHOLS: Would you propose a different
15 word there?

16 MS. FOSTER: As I said earlier on when we
17 were dealing with that issue, I would have spoken in
18 favor of the proposal because it is more specific and
19 also because, as this Committee is working at least
20 today, we are amending and modifying the proposals kind
21 of as we go along.

22 And so in that process, I can see a proposal
23 being talked about that length of time and actually
24 making some progress. If we were operating such that we
25 were just setting them up and knocking them down and

1 setting up another one, it would be different.

2 I guess I would ask those who would propose
3 that "matter" be the word, what does that mean?

4 MR. NICHOLS: Fair question for those who
5 supported the word "matter." Would anyone care to speak
6 to that? Mr. Adams?

7 MR. ADAMS: Again, just looking back on the
8 issue in the last couple of negotiations that we have
9 had, the way the process is played out is that we have
10 begun looking at the statute and then saw the changes or
11 proposed changes in those sections of the statute and
12 the related regulations, and then we started wrapping
13 them, including them under those subjects as far as
14 being the matter at hand.

15 Then from that we have work groups that go
16 out and tackle those issues and do all the work on the
17 proposed language for the regulation on that issue or
18 that proposal, however you want to say it.

19 That is what comes to the floor for debate
20 is that issue as it's headed. Essentially what comes to
21 the floor of the Committee is the language that's being
22 proposed in the regulations. And so that is what's
23 debated on the floor. That is what is in the two-hour
24 time limit.

25 And I would again make mention, this is

1 built on that history. And Reconsideration is later on
2 under Decisionmaking for that reason. That if there is
3 an extended time needed, we have language that will
4 cover that later on under Reconsideration.

5 So, again, I am just trying to shed some
6 light on how this has played out in the past and why
7 these are the way they are.

8 MR. NICHOLS: Ms. Gore?

9 MS. GORE: I think that's a fair question.
10 From my experience -- and I agree with Jason -- the
11 agenda really determines what matters will be considered
12 and asked for the Committee to approve.

13 I think it's also up to the co-chairs to
14 determine whether or not we are discussing an ongoing
15 matter or a proposal is a new matter rather than an
16 amendment to that matter. So I think there are enough
17 guiding principles and protocols and charters to really
18 help us with this.

19 I think further definition might limit and
20 we might find ourselves wondering if they are subject to
21 the same time limit. So I prefer the broader language,
22 as I have listened to the conversation today, but I
23 think it's a good question.

24 MR. NICHOLS: Ms. Foster?

25 MS. FOSTER: I think I generally agree that

1 there could be many proposals in one general subject
2 area that could take much longer than two hours. I
3 wouldn't want to be limited to just talk about one
4 general huge area for only two hours and only be able to
5 entertain a handful of ideas. As long as that's
6 understood, I would be all right with that.

7 On the issue of reconsideration, in my
8 experience on the last Committee, from what I recall,
9 being able to get something reconsidered is quite the
10 hurdle. If you have a proposal that you are going to
11 try to pursue, you're better off to try to get the
12 Committee to agree to give a little bit more time to it.

13 So I do like an addition at the end of that
14 two hours to allow the Committee to do that rather than
15 push everything off into a reconsideration. It's harder
16 to meet.

17 MR. NICHOLS: Ms. Yazzie?

18 MS. YAZZIE? Since I made the original
19 proposal, I would like to stay with the convention that
20 we had earlier, as Karin has identified, to read,
21 "Debate on any matter is limited to two hours unless
22 otherwise deemed appropriate by the Committee." I think
23 that will suffice in terms of just being consistent with
24 language and understanding.

25 MR. NICHOLS: Mr. Jacobs, is that agreeable

1 to you? I think that was your suggestion, wasn't it?
2 "Unless otherwise deemed appropriate by the Committee."
3 Was that your suggestion?

4 MR. OKAKOK: That's mine. I agree. I think
5 her words are fine.

6 MR. NICHOLS: Thank you. So "unless
7 otherwise deemed appropriate by the Committee." So are
8 there any further amendments that are being proposed?
9 Any concerns or observations to express about
10 understanding what the words mean? Mr. Evans?

11 MR. EVANS: Earl Evans, Haliwa-Saponi. I
12 have a question for the group to see if this would be
13 acceptable. Would it be amenable if we strike the first
14 sentence and instead say, "As a point of order, any
15 Committee member may call for a vote to limit debate on
16 a proposal currently being discussed. Time limitation
17 and its duration is approved by consensus of the
18 Committee."

19 MR. NICHOLS: So we should add that?
20 Christine, that's the language. Go ahead and add that.
21 It's a proposal, right? Is that correct?

22 And while she is doing that, you had your
23 hand up.

24 MR. SOSSAMON: Yeah. It's my understanding
25 that this language was constructed the way that it was

1 because of what we experienced in previous negotiated
2 rulemaking Committees. The subject matter we tended to
3 try to work as a whole Committee on the specifics of it
4 and that tended to take up the time, the limited time,
5 that we had together.

6 Because we had a number of issues that
7 needed to be looked at, to prevent just a handful from
8 dominating the entire time period that we have, that's
9 why these limitations were put in here. So that
10 disagreements or negotiations could take place in work
11 groups and perhaps be brought back to this whole
12 Committee after the differences had been worked out to,
13 hopefully, achieve approval.

14 So I think you need to keep that in mind,
15 that we are not trying to limit discussion of any
16 particular matter. We are just trying to limit the
17 debate when this Committee convenes as a whole Committee
18 to make decisions. So, hopefully, that's helpful in us
19 deciding on this language.

20 MR. NICHOLS: We actually have two proposals
21 on the screen. The proposal originally put forth was,
22 "Debate on any matter is limited to two hours unless
23 otherwise deemed appropriate by the Committee." Then
24 the remaining language.

25 Then there's a second proposal. "As a point

1 of order, any Committee member may call for a vote to
2 limit debate on a proposal currently being discussed.
3 Time limitation and its duration is approved by
4 consensus of the Committee."

5 Should we at this point take a vote on the
6 first one we had and then the second one? Mr. Sawyers?

7 MR. SAWYERS: Don't you think we should vote
8 on the last one? We go back the other way because they
9 were all amendments. Vote on the first vote up or down
10 and then vote on the next amendment. Because I think
11 that the proposal was to make those changes. So I think
12 that you have to vote on the amendments first. If they
13 stand, then we go from there. I think you work
14 backwards, not forwards.

15 MR. NICHOLS: Thank you. Okay. Is that
16 agreeable? Mr. Okakok, is that agreeable? That was
17 your amendment, correct? This one? So we vote on your
18 amendment first?

19 MR. OKAKOK: Well, when I look at the title
20 of it, Time Limitations on Debate, if we call for a vote
21 right away, it probably would pass. We probably want
22 more discussion on that. So that sentence is what I am
23 having some problems with.

24 MR. NICHOLS: So that one is not agreeable
25 to you. Mr. Evans?

1 MR. EVANS: I was going to yield to
2 Mr. Adams because I saw his hand.

3 MR. ADAMS: I understand we are trying to
4 understand the process before we go into it. It's good
5 to have these discussions and understand some of the
6 history that this is built on.

7 But I would just again point out that there
8 is a reconsideration portion later on that points us
9 back to how we can reconsider issues and even set time
10 limits on the reconsideration. So a lot of this is
11 addressed later on. So I just want to re-point that
12 out.

13 MR. NICHOLS: Mr. Evans, then Mr. Okakok.

14 MR. EVANS: Earl Evans, Haliwa-Saponi. I
15 don't have a preference either way. I was just trying
16 to address the mention of the need for more time on some
17 issues.

18 And what I proposed would actually be a
19 substitute and not a limit because I was proposing to
20 delete the first sentence, "Debate on any matters
21 limited to two hours unless otherwise deemed
22 appropriate," and then put the ending.

23 If the gentleman is now amenable to that
24 version, then I will retract it if everyone feels that
25 the other language is the best.

1 allow a discussion of a general subject area over a time
2 period larger than two hours.

3 MR. NICHOLS: So you would support the
4 language as it is right now?

5 MS. FOSTER: I can, with the understanding
6 that that doesn't necessarily mean that one vague
7 subject area is going to be limited to two hours. I
8 just don't think that's realistic.

9 MR. SOSSAMON: Again, I would suggest that
10 this two-hour limitation be looked at not only in the
11 context of a reconsideration clause that we will
12 address, but also the work group language.

13 Because, again, I understand not wanting to
14 limit debate, but if we are trying to do all the work as
15 a whole Committee, I will guarantee you there will be
16 more matters that we don't get to and even get before
17 this Committee to debate because of the time that we
18 have, which is subject to the availability of funding.

19 It's just not going to allow us to get every
20 issue worked out in the Committee as a whole, and that's
21 what the intent of this language is. This is to
22 maximize the time that this Committee as a whole has to
23 make decisions as the Committee as a whole.

24 There's nothing that limits the debate
25 within work groups. I mean, those last for hours. But

1 that's where the negotiations take place. Then it's
2 presented back to this Committee for decision-making on
3 what comes out of the work groups.

4 And it's just a matter of managing our time.
5 This is just a parameter to help manage the time that
6 the Committee meets as a whole to make decisions as a
7 whole. So I would really encourage everyone to look at
8 it in that context and not just what we see right here
9 compared to what we have experienced over the last day
10 and a half.

11 MR. NICHOLS: So is the language on the
12 screen right now acceptable to you, given that caution
13 or encouragement?

14 MR. SOSSAMON: If your question is to me, is
15 that appropriate, then I would -- it has a two-hour
16 limit and basically -- yeah, unless otherwise deemed
17 appropriate by the Committee to please refer back to the
18 reconsideration clause. If it's consistent with that,
19 so I have no problem with that language.

20 MR. NICHOLS: Then I was going to call the
21 vote, but I have one more hand up. Ms. Foster?

22 MS. FOSTER: But it would necessarily
23 require a reconsideration vote if the Committee could
24 extend the time while the debate was occurring, as I
25 would understand it. Otherwise it would say, "except

1 upon reconsideration."

2 But I appreciate the comments Mr. Sossamon
3 has made, and the working group is a wonderful
4 convention that we have. It allows everyone to
5 contribute. I don't know that you can only be on one
6 working Committee at a time, so there are some issues
7 that come to the table. But I think this is fine.

8 MR. NICHOLS: Mr. Sossamon?

9 MR. SOSSAMON: Well, "deemed appropriate by
10 the Committee" and "will be determined by" is how we
11 agree on decision-making. So whatever we agree on is
12 what will be subject to that.

13 MR. NICHOLS: Mr. Butterfield, did you have
14 your hand up?

15 MR. BUTTERFIELD: The "deemed appropriate on
16 the Committee," I understand Ms. Foster's reluctance and
17 concern about the rigidity of reconsideration.

18 And the point is that in the past, if you
19 are close to reaching consensus or it seems to be
20 distilling and you are thinking there's a two-hour mark,
21 that allows the Committee the flexibility to extend that
22 time necessary to resolve that, to further the consensus
23 of the Committee.

24 There's no point in having an absolutely
25 rigid two-hour time limit so that you can't complete the

1 business on that matter and go on and don't have to go
2 to reconsideration. So that's my understanding.

3 And I am hoping that everyone would be
4 flexible enough that, if we are just about to reach
5 agreement, that you would extend time a little bit to
6 make sure that that does happen.

7 MR. NICHOLS: Mr. Okakok?

8 MR. OKAKOK: We can take a final vote on
9 this. Also if we do not have this amendment on there,
10 we would have to go back to two hours. If it were left
11 unamended, then we could go back to it. So I think the
12 amendment on there causes us to go back to previous
13 matters.

14 MR. NICHOLS: Thank you for that. I will
15 call a vote on this one. Do we have a consensus on the
16 words as written on the screen? Any objection? Very
17 good. This one is accepted as written.

18 And the next item on the agenda is Time
19 Limitation for Non-Committee Members. This one is not
20 in 2003. It was in 2010. So if you would take a look
21 at that and offer any proposal or discussion. Yes, sir?

22 MR. ADAMS: I would propose that we accept
23 this language as presented with the discussion behind it
24 that, again, a lot of discussion is going to happen in
25 work groups, a lot of debate. Non-Committee members

1 will have all the opportunity to participate in working
2 groups and have input and say on how these decisions are
3 made.

4 Once we get to the full debate and approval
5 for the full Committee, that is why we put these
6 limitations in here for non-Committee participation.

7 So, again, with the understanding that we
8 have working groups and a lot of work is done at that
9 level by everyone -- whoever wants to come have input in
10 the work group -- that's why we put this in here. With
11 that being considered, I hope we can vote on approval.
12 Thank you.

13 MR. NICHOLS: So thank you, Mr. Adams. The
14 proposal is put forth to approve the language that's
15 written. Mr. Jacobs?

16 MR. JACOBS: Leon Jacobs. I would support
17 Jason's recommendation with one correction or change.
18 It's going to five minutes instead of four. It's really
19 difficult to try to put a time limit on all of this when
20 you are dealing with four minutes versus five and so
21 forth.

22 MR. NICHOLS: So, Christine, would you
23 please show that as "five." Mr. Adams, is that
24 agreeable to you as it is? Okay. Any further
25 discussion on this one?

1 Then I will call the vote. Please indicate
2 approval or acceptance of this item. Thumbs up? Any
3 objection? Thank you. That one is accepted with that
4 amendment.

5 The next item, which is -- we will start on
6 it. Lunch is at 12:00 noon. I just wanted to check my
7 agenda. So the next item is the topic of Decisionmaking
8 and Consensus. We have a 2003 and a 2010 version. The
9 2010 version in blue refers to Section 6, which has some
10 further clarification about consensus. And you may want
11 to look at it at the same time we look at Consensus.

12 So the reference in Section 6 suggests that,
13 "If a Committee member opposes a proposal, he or she
14 shall state the reason for that opposition or propose an
15 alternative to the proposal that meets that Committee
16 member's concerns, for further consideration of the
17 Committee."

18 So that would be in conjunction with the
19 consensus decision-making provision. I want to point
20 out that -- what this refers to here, 6(b). And with
21 that, I will offer discussion. Ms. Yazzie?

22 MS. YAZZIE: Aneva Yazzie. I propose the
23 Committee adopt the 2010 version in blue.

24 MR. NICHOLS: So the proposal is made to
25 accept the 2010 version for consensus decision-making.

1 And you had your hand up.

2 MS. FOSTER: I did have my hand up. Karin
3 Foster. I support the proposal.

4 MR. NICHOLS: Ms. Vogel I, saw your hand up.

5 MS. VOGEL: I do have a proposal. It's a
6 new proposal.

7 "All decisions of the Committee shall be
8 made by general consensus, subject to Article 6(b) of
9 these protocols. General consensus means first
10 attempting to reach unanimous consensus, but if
11 unsuccessful, then any two or more members of the
12 Committee that vote in favor of the proposal may ask for
13 and elect for a vote to determine the decision. The
14 requirement for passage must be approval of at least
15 two-thirds of the total Committee members present at the
16 Committee meeting."

17 MR. NICHOLS: Thank you. I would suggest
18 that we put that on the screen. We need to get a
19 written copy for Christine. Mr. Reed?

20 MR. REED: Yes. Michael Reed, Cocopah.
21 Yesterday I asked about this Section 562, and it's under
22 Definitions. And I would like to add some clarification
23 as to item 2(a)(d). I'm not too sure what that means.

24 MR. NICHOLS: Where is that referred to?

25 MR. REED: USC Section 562.

1 MR. NICHOLS: That's from the Negotiated
2 Rulemaking Act. And you would like to ask for
3 clarification from --

4 MR. REED: I would like clarification. And
5 also are there any examples that can be provided also?

6 MR. NICHOLS: Thank you. I would ask our
7 HUD representative if they could provide that
8 clarification for us, and that may take us to lunch.

9 So perhaps we should agree that we will
10 break for lunch when that's done and come back and
11 continue the discussion. Is that okay with the
12 Committee since it's 11:57?

13 MS. HENRIQUEZ: I am going to yield to Jad
14 Atallah.

15 MR. NICHOLS: Thank you.

16 MR. ATALLAH: Jad Atallah with HUD. If you
17 look at Section 562 and you look at the definition of
18 "consensus," what it says is, "Consensus means unanimous
19 concurrence among the interests represented by a
20 Negotiated Rulemaking Committee established by the
21 subchapter, unless such Committee agrees to define such
22 terms, meaning a general but not unanimous concurrence
23 or agrees upon another specified definition."

24 Our legal interpretation of this particular
25 provision -- strictly our legal interpretation and not

1 any policy decision -- is that basically the Neg Reg Act
2 defines "consensus" as a starting point as the members
3 consent.

4 The Committee can agree to define what
5 "consensus" is in a manner that's different than
6 unanimous consent and can be something less than
7 unanimous consent, but you need unanimous consent to
8 define it as something less than unanimous consent.

9 So the standard from the statute is
10 unanimous consensus -- it's a tongue-twister, I know --
11 but you have to have unanimous consent to define it as
12 something less than that.

13 MR. NICHOLS: Was there a second part of
14 your question, Mr. Reed?

15 MR. REED: Michael Reed, Cocopah. Has that
16 been used in the past by the Rulemaking Committee?

17 MR. ATALLAH: Jad Atallah. It has not, as
18 far as I know at least, in the NAHASDA context. We have
19 not in the past adopted -- the Committee in the past has
20 not adopted a definition of "consensus" that's less than
21 unanimous consent.

22 The statute doesn't prevent you from
23 adopting something that's less than that, but past
24 practice, in the NAHASDA context at least, has been
25 always to follow a unanimous consent standard.

1 MS. PODZIBA: If it would be helpful, I have
2 been involved in negotiated rulemaking where the
3 definition of "consensus" was less than unanimous. If
4 you would like me to speak to that, I can.

5 It's not HUD. It was for the Department of
6 Labor Occupational Safety and Health Administration.

7 MR. REED: How is that useful? Can you give
8 some specifics of that?

9 MS. PODZIBA: Yes. So this was a negotiated
10 rulemaking to develop worker safety standards for the
11 use of frames in construction. And it was negotiated
12 rulemaking that included unions and employers and safety
13 experts.

14 We had about 25 members. And they were
15 concerned that they wouldn't be able to meet the goal of
16 unanimity. This is what they did. They said, Consensus
17 is defined as all but two nonfederal negotiators.

18 And that was because the federal agency
19 promulgating the rule wasn't to be part of the
20 consensus. It cannot be forced to promulgate a rule
21 that it does not agree with because maybe it doesn't
22 meet their requirements.

23 That was the controversy because people were
24 concerned that that made the federal representatives
25 more powerful than anybody else at the table. They had

1 that discussion and decided to go with it. They then
2 defined it to say, if there were dissenters, that the
3 dissenters would have an opportunity to put a letter in
4 the preamble explaining their dissent.

5 But since it was a definition of consensus,
6 dissenters would not be able to provide negative
7 comments on the proposed rule. That was the ground
8 rules.

9 When the rule was promulgated, the Committee
10 members were not able to control other members of the
11 organization. So there were negative comments put in,
12 and that became very problematic. They then went to a
13 public hearing because we now had violation of the
14 ground rules and what did that mean in terms of good
15 faith. So it became very messy, is what I would say.

16 But we did use that for that instance. And
17 there was only one issue that they had to use that.
18 There was only one issue for which there were two
19 dissenters. Everything else was unanimous.

20 MR. BUTTERFIELD: I think this is a very
21 important issue and it deserves a lot of discussion, but
22 it is 12:00 and I have to check out of my room. So I
23 would suggest, respectfully, that we have lunch at this
24 point in time so that other people can also check out.

25 MR. NICHOLS: Thank you. That was our

1 intent when I suggested that we hear the answer to the
2 question and then break for lunch. So let's break for
3 lunch and come back at the appointed time on the agenda.

4 Thank you.

5 (Break was taken from 12:03 to 1:32.)

6 MS. PODZIBA: Okay. So we've got about 90
7 minutes left of time in the amendment to go over the
8 protocol. And I've just been giving some thought to how
9 we might accomplish getting through them. We'll do our
10 best.

11 We ended with two proposals on each
12 consensus. I don't see Ms. Yazzie yet. She put up the
13 original proposal. Can someone stand in for her? Yes,
14 Mr. Adams?

15 MR. ADAMS: I guess just for clarification,
16 I understood that Ms. Yazzie had presented her proposal
17 and then, when Sharon spoke, she called hers a proposal.
18 Is yours an amendment to her proposal or is it a
19 different proposal?

20 MS. VOGEL: It is a separate proposal.

21 MS. PODZIBA: Okay. Thank you. So if it's
22 okay with the Committee, I'm inclined to call for a vote
23 on the proposal. Does that work for everyone?

24 (No response.) So could I see thumbs up or
25 thumbs down on

1 The proposal that is highlighted in the
2 consensus, "All decisions shall be made by consensus,"
3 which means unanimous agreement.

4 Can I see thumbs up and thumbs down on that?

5 (Members complying.) Okay. There are two
6 dissenters on that one. Okay. Ms. Yazzie, we just
7 voted on your proposal and there were two dissents --
8 two objections on that.

9 Shall we then move to Ms. Vogel's proposal,
10 uh, general consensus? Can we have a vote on that
11 proposal? Thumbs up -- yes?

12 MS. VOGEL: Can I give my minutes to Mr.
13 Heisterkamp, please?

14 MR. HEISTERKAMP: We were in the middle of
15 discussing where this proposal had come from when we
16 broke for lunch. I have some background information
17 that may be helpful as the Committee considers this.

18 MS. PODZIBA: Okay. Could you state your
19 name?

20 MR. HEISTERKAMP: David Heisterkamp
21 representing Cheyenne River Housing and Utah Paiute.

22 As the memo that was distributed earlier by
23 Sharon states, that this language didn't come from
24 nowhere. There is an active tribal Negotiated
25 Rulemaking Committee that was established in June of

1 last year that's currently operating under exactly this
2 language.

3 And it's the operating protocol and meeting
4 guidelines for the Indian Oil Valuation Negotiated
5 Rulemaking Committee. Obviously, oil evaluation is a
6 big deal now with what's happening in North Dakota.

7 We have spoken to a tribal Committee member
8 who says that they have never had to invoke the second
9 half and go to the super majority provision.

10 But in her words, she feels they have been
11 able to reach consensus better because people know the
12 second step is there.

13 In her experience, and granted, it's one
14 tribal Committee member, she feels it has brought people
15 to the table and made consensus more of a priority for
16 them because nobody wants to test that second provision.
17 And in that sense just having it there has been
18 extremely effective.

19 So we want to be sure the Committee
20 understood that there is a current tribal negotiation
21 rulemaking Committee. In fact, they'll meet back here
22 in Denver the same day as you are here in September.

23 They will be out at the Federal Center
24 having a meeting, that's operating under this protocol.

25 So while HUD and NAHASDA have not used

1 things like this protocol, other tribal Committees can
2 and are operating under such protocol provisions.

3 MS. PODZIBA: Could I just ask a question?

4 Is that precisely the ground rule, because I
5 saw them and they seem to be like two pages long on the
6 consensus question. Section 4 --

7 MR. HEISTERKAMP: We have the
8 decision-making part of the protocol here.

9 MS. PODZIBA: Okay.

10 MR. HEISTERKAMP: And so, that's where the
11 language came from. But you're right, their protocols
12 seem to be much wordier than the ones that we're
13 examining. But I think the actual decision-making part
14 of the provision is the same.

15 MS. PODZIBA: Okay. With that said, can I
16 have a vote on this proposal?

17 MS. BRYAN: Do you want discussion first?

18 MS. PODZIBA: We can go to discussion. My
19 sense is that we've got such limited time that if we had
20 some sense of where the proposal is going, maybe we can
21 just take a vote.

22 MS. BRYAN: This is Annette Bryan. You've
23 been taking discussion and amendments on every other
24 proposal up to now, so I am not sure what prefaced you
25 not to entertain a discussion on this very important

1 decision that this Committee needs to make.

2 MS. PODZIBA: I will entertain a discussion.
3 I am just trying to move things forward.

4 MS. BRYAN: This is Annette Bryan with
5 Puyallup. And I heard in your discussion about what
6 you're familiar with in terms of this type of language
7 about two nonfederal negotiators.

8 So I would ask for a friendly amendment to
9 this proposal that the two federal negotiators at the
10 table are not part of the objectors.

11 And the reason I bring this up is my
12 understanding of why we need consensus is that the
13 federal folks at the table don't support it, they'll
14 have a hard time moving it forward. So I would like to
15 add this language to this if it's amenable to Sharon.

16 MS. VOGEL: Yes, it is.

17 MS. PODZIBA: So where would you put that
18 language, and can you give us that exact language?

19 MS. BRYAN: "If unsuccessful, then any two
20 or more members of the Committee, except the two federal
21 Committee members."

22 And if there's lawyers around the table, I
23 am going to rely on you and your expertise because I am
24 not a lawyer.

25 MS. PODZIBA: "At least two-thirds,

1 including the two federal negotiators"?

2 MS. BRYAN: Yeah, at the end it needs to say
3 -- at the very end it needs to say "including the two
4 federal negotiators." That's what we are calling them.

5 MR. ADAMS: Excuse me. I've got a question
6 and then a comment. So can I ask the question first in
7 regards to this?

8 MS. PODZIBA: Yes.

9 MR. ADAMS: The first question I have on
10 this issue is that, Dave or Sharon, do you guys have any
11 knowledge that this is contained in what you are
12 proposing from where you got this -- the oil
13 negotiations that's going on? Do they have this clause
14 in there, or is it a nonfederal negotiation?

15 MR. HEISTERKAMP: It's a federal
16 negotiation. We can look to see. I don't know if
17 they've included -- it is a federal negotiation. It is
18 established under the Negotiated Rulemaking Committee
19 Act.

20 I don't know off the top of my head if
21 they've sectioned out that the federal negotiators have
22 to be included in the two-thirds majority or not.

23 MR. ADAMS: And then my comment is such
24 that, I think it's important that we entertain this
25 issue, because again, going back to my past history with

1 this, I am just trying to remember a time when we had an
2 issue that was before the Committee that we didn't have
3 consensus on and the ones that weren't dissenting to the
4 consensus weren't HUD.

5 And I don't mean any disrespect by that, but
6 I think the intent of this idea here is that we have HUD
7 in that decision.

8 So it's either all or nothing, I guess, is
9 the way we do this, or we just stay with the consensus.

10 Correct me if I am wrong, anybody that's
11 been here before, but I don't recall a situation where
12 the tribes have not agreed where HUD was the lone
13 dissenter -- or the Committee, excuse me, yeah.

14 So I just offer that as an issue and a point
15 of view as to, we either take this in its entirety
16 without the exception of the federal Committee members
17 or not.

18 MS. PODZIBA: Ms. Vogel, do you accept that
19 amendment to your proposal?

20 MS. VOGEL: To get it voted on? I do accept
21 it, and I am sure there will be other proposals.

22 MS. PODZIBA: Okay. And so, Mr. Adams,
23 you're just commenting that you are not supportive of
24 that amendment.

25 MR. ADAMS: Yeah, I am just saying that the

1 whole idea, in my opinion, behind this proposal is that
2 it would include all of us, the federal Committee
3 members included. If they are excluded, I don't know if
4 it does any good.

5 MS. PODZIBA: Ms. Gore?

6 MS. GORE: I want to agree with Jason. If
7 this is truly government-to-government, giving one
8 government veto power while allowing no power for the
9 other government, it does not seem right to me in this
10 situation. Thank you.

11 MS. PODZIBA: Further discussion of this
12 proposal? Mr. Haugen.

13 MR. HAUGEN: We are looking at 2003 and 2010
14 language. Let me tell you something. Over half of us
15 at this table were at 2010. We spent five days on the
16 charter and protocol, five full days. And let me tell
17 you, we worked hard at it.

18 I understand what Gabe was telling you
19 earlier, you know, there's a difference between 2010 and
20 '03, because '03 was formula.

21 But the bottom line is, is that we are not
22 going to paint HUD into a corner. That's the bottom
23 line. And I don't care which language we put forth
24 today, it's not going to happen.

25 So I'd ask that the newbies that are present

1 and anyone else who appears to try to paint HUD into the
2 corner or leave them out of this, it's not going to
3 happen.

4 We've got a lot of work to do, and we need
5 to move on. We spent over an hour on one word this
6 morning. That's not negotiating. We need to move
7 forward with this process.

8 I can hear the frustration and I am
9 frustrated too. So I would just ask that the new
10 Committee members who are here and even the ones that
11 were there before, as Jason noted, take into
12 consideration the hard work that we put in, in 2010, and
13 even the ones, respectfully, in 2003.

14 Let's take that into consideration and all
15 come together because HUD is not going to agree to
16 anything that they can't agree to. And so I just want
17 to say that.

18 I am on my way out. My flight leaves at 2
19 o'clock and so I just want to wish the rest of the
20 Committee members well. Jason, keep me apprised because
21 we'll probably be on this at the next meeting. Thank
22 you.

23 MS. PODZIBA: Ms. Flood?

24 MS. FLOOD: This is Deidre Flood from the
25 Washoe Housing Authority. I just want to support what

1 Lafe Haugen said.

2 I am a new Committee member. I have great
3 respect for the veterans on this Committee. I am
4 learning from them.

5 I feel like I have opinions on them, but I'm
6 just a little hesitant to voice all that until I get a
7 general feeling of more of what we're doing here.

8 And I really respect Lafe and Jason and
9 Carol and all of the other Committee members are telling
10 us the work that they did to get this point and I
11 respect that. And I, too, don't want to reinvent the
12 wheel either.

13 So I concur with what they are all saying
14 about how they worked hard to get to this point and
15 hopefully we can move forward on that hard work. Thank
16 you.

17 MS. PODZIBA: Mr. Sawyers?

18 MR. SAWYERS: In 2003, we were talking about
19 money. I felt like there has to be something more than
20 we have put together so far for us to effect any
21 changes.

22 And I feel like the problem is, is one
23 person can derail any kind of proposal we have. And I
24 really believe that we need to look deep into that.

25 I think that we should try for consensus.

1 There's no question. Having failed that, I think there
2 has to be an alternative.

3 And I think that Sharon has an alternative.
4 Maybe there's others and better ones, I don't know.

5 But I know this, if we don't do something
6 different than we did in 2003, then we are going to all
7 go home and think, I wish we would have, in our
8 protocols, changed this so we could effect some kind of
9 change, if the change is necessary.

10 So when I voted against the first one, and I
11 know we worked hard on that, but I really do believe
12 we've had 17 years' experience and I really do believe
13 that there has to be some kind of change in the
14 protocols in order to accomplish what we really want to
15 do. Thank you.

16 MS. PODZIBA: Ms. Gore?

17 MS. GORE: Yes, I would like to respond to
18 Jack's comments and maybe share my personal experience
19 from 2003.

20 I know about one issue that was held from
21 consensus by a single vote and it happened to a proposal
22 that I made related to formula area that was related to
23 Alaska.

24 In that case the Committee allowed us to
25 reconsider that to allow us to answer additional

1 questions that Committee members had.

2 We did successfully reach consensus on that
3 issue because we went through the process.

4 I want to speak in favor of consensus to say
5 it's the right tension. It is the right tension for
6 this people. We are not all from the same place. We
7 have many differences, but we are here to negotiate for
8 the whole.

9 And in the absence of consensus, I don't
10 think we will have the right tension to really hear each
11 other out, to make sure that we are patient enough to
12 hear all of the different requirements or challenges
13 that others are having. And with all due respect to
14 Lafe, who I consider an excellent Committee member and
15 someone I respect greatly, this is a very important
16 issue and worthy of the conversation, but I cannot see
17 us working in anything other than consensus.

18 And that's based on experience and I think
19 the decisions, the outcomes were good. Thank you.

20 MS. PODZIBA: Is there further discussion?

21 (No response.) I would like to then move to
22 a vote on the proposal on the table, which is the one in
23 gray. Could I see a show of thumbs up, thumbs down?

24 (Members complying.) Okay. There's quite a
25 lot of objections, so that does not pass. Is there

1 anyone suggesting another proposal? Yes.

2 MS. VOGEL: I submit the same language with
3 the exception of two-thirds that we can go to
4 three-fourths.

5 MS. PODZIBA: Is there further discussion to
6 be had of this proposal?

7 (No response.)

8 MS. VOGEL: Then also you can remove the
9 reference to two federal Committee members.

10 MS. PODZIBA: Okay. Is there any further
11 discussion?

12 (No response.) Can I see a show of thumbs up
13 and thumbs down for the proposal as revised?

14 (Members complying.) There's still quite a
15 lot of dissent on that one. The floor is open. Yes.

16 MS. VOGEL: Could we hear from one of the
17 dissenters to propose another alternative?

18 MS. PODZIBA: Is anyone prepared to provide
19 an alternative proposal of any of the dissenters? Mr.
20 Jacobs?

21 MR. JACOBS: Leon Jacobs. I would recommend
22 that we go back to (a) on the blue and start again.

23 I think, as Ms. Flood mentioned, there was a
24 lot of hard work, a lot of time spent to come up with
25 this.

1 And as Ms. Gore says, I think this is so
2 important that anything other than a unanimous agreement
3 on this Committee is not acceptable. So I would
4 recommend that we come back to this proposal.

5 MS. PODZIBA: Mr. Sawyers?

6 MR. SAWYERS: Everybody says, with all due
7 respect, but I won't say that. We have already voted
8 that down. So if we are going to vote again, you are
9 going to have to change it because we voted to eliminate
10 that.

11 And so, there's a couple things that we can
12 do. One is, we can bypass this and go to the next issue
13 because this is going to be a lengthy one, perhaps, or
14 we can spend some more time with it.

15 We voted both of those proposals down. So
16 now we have to do something different. We have to
17 change at least one word.

18 MS. PODZIBA: Yes.

19 MR. SHURAVLOFF: I'm Marty Shuravloff,
20 Kodiak Island Housing. Going back to the negotiated
21 rulemaking, it says in here, if we cannot reach
22 consensus on going to something other than full
23 consensus, we are sticking with consensus.

24 With that being said, I think we are at an
25 impasse here. And with that, I think we have to stick

1 with the consensus that is written in the negotiated
2 rulemaking.

3 MS. PODZIBA: Discussion of that? Ms.
4 Yazzie?

5 MS. YAZZIE: Thank you for that. As a
6 Navajo, I would agree and support Marty's proposal.

7 MS. PODZIBA: Which? To stay with this
8 proposal. Yes?

9 MR. SAWYERS: With all due respect, I
10 disagree. I don't think we are at an impasse. I think
11 there's some things that we need to look at and study
12 on, on this issue. So I don't think we are ready to
13 make that decision yet.

14 I would favor maybe going on and coming back
15 to this. But I don't think we are at an impasse yet.

16 MS. PODZIBA: It is the will of the
17 Committee to move on from this issue and we'll do the
18 rest of the protocols and come back to this issue; is
19 that okay? Mr. Evans?

20 MR. EVANS: Earl Evans, Haliwa-Saponi Tribe.
21 Question of clarification. Am I correct in assuming
22 that when Marty spoke earlier that he was putting the
23 one that is highlighted back on the board for
24 consideration?

25 Because if that's the case, then I would ask

1 to be reminded what Article 6(b) says based on the
2 amendments that we have done.

3 I agree with what Jack said as well about
4 moving on, if we don't get consensus this time, so we
5 can try to finish the rest of the protocols.

6 But I think we would need to dispose of
7 Marty's proposal first prior to moving on. If I
8 understand correctly, it his proposal to vote again
9 concerning the consensus.

10 MS. PODZIBA: Could I ask a question of the
11 Committee? Mr. Sawyers said that you can't vote on the
12 same proposal twice. Is that a point of order? Is that
13 the way it works for all of you?

14 MR. EVANS: I think we have been doing it so
15 far, haven't we?

16 MS. PODZIBA: I think we have been doing
17 that. That's why I am a little confused. Okay. And I
18 think this was Mr. Jacobs' proposal, if it's allowed to
19 stand as another proposal. Yes?

20 MR. SHURAVLOFF: I think we have to stick
21 with this one until we resolve what we are going to do
22 here because the rest of the protocols follow what goes
23 on after this issue.

24 So I think we have got to resolve how we
25 handle the rest of the protocols from this point on.

1 MS. PODZIBA: Ms. Vogel?

2 MS. VOGEL. I have done some research just
3 trying to understand just for myself as to what is the
4 consensus decision-making process.

5 Things that I liked about some of the
6 articles that were written was, one, that it's a
7 flexible process building new tools for decisions. So I
8 think that we are looking for those new tools.

9 And unanimous consensus has limitations.
10 But one of the things that I came across was, how do you
11 deal with consensus blocking?

12 I am new, but I recall Mr. Dushnal
13 (phonetic) coming back to the office very, very
14 frustrated. And at the time we didn't call it consensus
15 blocking, but he was very frustrated that that's what
16 was happening.

17 And the hard work and good faith that was
18 talked about earlier, a lot of effort went into reaching
19 consensus only to come to a vote and have one person
20 block all of that.

21 And so, it is not our responsibility to
22 develop new ways of looking at things? Negotiated
23 rulemaking has been around for a number of years, has it
24 not, not just with HUD, but throughout the federal
25 government.

1 And they are finding new ways of doing
2 business and still having the true consensus
3 decision-making process.

4 The private sector, that you referenced if
5 you worked with unions, have been doing this. And they
6 are able to reach that consensus in ways that don't
7 require unanimous consensus.

8 So, one, I think that we need to protect the
9 hard work -- the good faith work to make sure that it
10 isn't just derailed, as someone said, by one vote.

11 So do we then come back and say, all right,
12 we will try consensus, but to ensure that the hard work
13 and good faith of the majority of the Committee members
14 not be ignored. There will be a provision to avoid
15 consensus blocks by any one Committee member.

16 Therefore, there will be a limit to the
17 number of blocks. Is that a new way of looking at it?

18 I don't know what your experience is with
19 consensus blocking, or if you want to share what that
20 means to you as a facilitator.

21 MS. PODZIBA: I don't know if people care to
22 hear very much about how it's been for me. If some
23 people want me to talk about it, I am certainly willing
24 to do that, but I don't want to speak in ways that may
25 be perceived as trying to persuade.

1 MS. VOGEL: I apologize for asking you. I
2 was looking for your expertise, but I understand your
3 position.

4 MS. PODZIBA: Mr. Evans?

5 MR. EVANS: I think that the proposal that
6 was made by Marty, I think there needs to be correction.
7 I think it should subject to Article 6(a) and not 6(b).

8 And if I am correct, I wanted to ask if he's
9 amenable to that friendly amendment of his proposal.

10 MS. PODZIBA: In which case rather than
11 referring to Committee member diligence, it refers to
12 good faith. I think that was a Committee question
13 posed.

14 MR. EVANS: I'm sorry. Okay, whoever.

15 MS. PODZIBA: So that would be a change, I
16 guess. We'll make it 6(a)?

17 MR. JACOBS: Yes.

18 MS. PODZIBA: Okay. That's the proposal on
19 the table then. Is there further discussion of this
20 proposal?

21 (No response.) Yes?

22 MS. VOGEL: I just want to know -- what I
23 just said about consensus blocking, I do want to put
24 that on as a proposal. You have been taking them
25 before. I don't know, do I add it onto this or do I

1 wait?

2 MS. PODZIBA: I have a hunch that that may
3 not be accepted as an amendment to this proposal.

4 Mr. Jacobs, would you like to entertain an
5 amendment about the consensus blocking or should we move
6 on this vote?

7 MR. JACOBS: If Sharon would like to offer
8 some language, I would be amenable.

9 MS. VOGEL: I will be leaving it as such.
10 "Consensus means unanimous agreement as shown by an
11 absence," that last sentence. And then add "To ensure
12 that the hard work and good faith of the majority of the
13 Committee members is not ignored. There will be a
14 provision to avoid consensus blocks by one Committee
15 member. Therefore, there will be a limit to the number
16 of blocks."

17 MS. PODZIBA: Okay, is that the proposal?
18 That's the proposed amendment?

19 MS. VOGEL: Yes. And I can see that I left
20 out, There will be a limit of four blocks per Committee
21 member or per proposal. I'm not quite sure, Committee
22 member. That should start the discussion.

23 MS. PODZIBA: Mr. Jacobs, is that amendment
24 acceptable to you?

25 MR. JACOBS: I think there needs to be some

1 clarification. "Therefore, there will be a limit of
2 four blocks."

3 Where are we talking about? On blocks of
4 matters or proposals or whatever? That needs to be
5 clarified.

6 MS. VOGEL: Matter, because I think we
7 referenced that in earlier language.

8 MS. PODZIBA: Four blocks per matter per
9 Committee members? Mr. Evans?

10 MR. EVANS: I have a question.

11 Hypothetically speaking, let's say that
12 someone puts a proposal on the floor that -- I don't
13 know. HUD is going to give each Committee member
14 \$50,000 at every Committee meeting.

15 I can see there is such a healthy attitude
16 about accepting the possibility of that proposal.

17 But just hypothetically speaking, the way I
18 read this, if both HUD Committee members, for example,
19 vote to oppose this proposal no matter how we rework it
20 because they know that they cannot agree with the
21 proposal, but we keep tweaking it and putting it back
22 up, then the way I read this, that forces them to have
23 an automatic yes vote entered on their behalf to a
24 proposal that's still not a workable solution.

25 And it doesn't matter what their position is

1 about reconsideration if the rest said, no, we want it,
2 and we keep putting it back up and putting it back up,
3 and they are only limited to being able to vote no four
4 times. And then after that, it is forcing an automatic
5 yes vote, the way I read that.

6 Am I correct? Does anyone see it that way?

7 MS. PODZIBA: Mr. Reed?

8 MR. REED: I am too sure that that's what
9 that says. It kind of leaves it up in the air, as far
10 as I am concerned.

11 MS. PODZIBA: Ms. Foster?

12 MS. FOSTER: Karin Foster, Yakama Nation
13 Housing Authority. If blocks means no votes, then I
14 couldn't agree to anything like that.

15 I think that there have been certainly
16 situations where we have had a no and then a
17 clarification and then a change that has allowed us to
18 get to consensus.

19 I wouldn't limit myself to being able to
20 vote no only four times through the rulemaking or even
21 ten nos. I would commit myself to trying to reach a
22 consensus with all at the table, but not that provision.

23 MS. PODZIBA: Mr. Adams?

24 MR. ADAMS: I just wanted to say something
25 here in regards to this issue.

1 It seems like over the years being involved
2 in this process, you know, probably some of the most
3 frustrating times that we have at this table is when
4 somebody does bring up, after a lot of work and time put
5 into an issue, says no, and could be a lone vote or two.

6 And so with that being said, having that
7 experience in the past, I liked the idea initially of
8 trying to come up with something different.

9 The issue in where we have gone now with
10 this amendment that is being proposed, I would just
11 again -- you know, the issue that was cited was our good
12 friend, Wayne Dugenol.

13 And I was on the Committee in 2003 when we
14 had no provision such as this in the protocols and so
15 somebody could just say no and walk away from the table.

16 And so in answer to that in 2010, later on
17 in the protocols we have good faith. And that is where
18 the statement is that we've got to come to this table in
19 good faith.

20 And it says, if you say no, you have to
21 offer an alternative. And it already addresses that
22 issue very specifically that you can't just say no, that
23 you've got to offer some alternative measure. And so I
24 would offer that.

25 Everything that we are trying to accomplish

1 in this is accomplished later on under good faith.

2 Thank you.

3 MS. PODZIBA: I just want to keep to the
4 housekeeping. We have an amendment. Is that an
5 accepted amendment? Mr. Jacobs?

6 MR. JACOBS: Based on the information I am
7 hearing from other Committee members, I don't think it's
8 acceptable to any amendment. I'm sorry.

9 MS. PODZIBA: Thank you. Should we take a
10 vote on the proposal as it stands then with that
11 amendment not part of it?

12 I would like to call for a vote. Could I
13 see thumbs up and thumbs down on this proposal?

14 It's actually the original proposal but with
15 6(a), which refers to good faith instead of 6(b), which
16 was diligence of the members.

17 (Members complying.) We've still got quite a
18 bit of objection.

19 Yes?

20 MR. JACOBS: I recommend we move on.

21 MS. PODZIBA: Okay. Yes.

22 MS. VOGEL: I would like to put a proposal
23 forth and that is, since we didn't vote on my proposed
24 amendment, and I respect that Mr. Jacobs did not accept
25 it, I am asking that that be put back as my proposal.

1 Thank you.

2 MS. PODZIBA: So to include the whole thing?

3 MS. VOGEL: Yes.

4 MS. PODZIBA: Okay. Could I have a vote on
5 the proposal that is now put forward by Ms. Vogel? Can
6 I see thumbs up and thumbs down on this proposal?

7 (Members complying.) Okay. There is quite a
8 lot of dissent at this point. Okay. I am inclined to
9 accept Mr. Jacobs' suggestion of moving on. Is that
10 acceptable to the rest of the Committee?

11 (Members complying.) I had a thumbs up on
12 that one. All right.

13 Okay. Let's move on then. We will be sure
14 to be back.

15 MR. SHURAVLOFF: I'd ask that we not move
16 on. I'd ask that we continue on this issue until we
17 finish it. I guess I am still going to ask that we do
18 an amendment now.

19 MS. PODZIBA: Ms. Gore?

20 MS. GORE: I think just to add to Marty's
21 comments, the challenge is that the protocols continue
22 to refer back to consensus as decision-making.

23 So unless we resolve this, we are going to
24 be stumbling over the rest of the protocols. So we
25 really need to resolve this as a Committee. Either

1 agree that we have an impasse and what does that mean,
2 or not. Thank you.

3 MS. PODZIBA: Mr. Evans?

4 MR. EVANS: I agree and appreciate that we
5 do have some alternative proposals on the floor. But
6 one of the things I'd like to, respectfully, offer for
7 the Committee's consideration, and Ms. Vogel, is that I
8 think that procedurally we make an error to discuss any
9 other type of decision-making other than consensus
10 because we have already voted to reach decision by
11 consensus when we approved provision 6(a) of the
12 safeguards for Committee members provision under good
13 faith.

14 If we talked about these things earlier on
15 and we've already discussed reaching consensus, then
16 that's pretty much the decision, right, in the prior
17 areas of the protocols and the charter.

18 Haven't we already mentioned consensus in
19 those documents?

20 MS. PODZIBA: Yes?

21 MR. SHURAVLOFF: Maybe I can do it in this
22 way and try and do this in the form of a proposal to see
23 if we are even willing to go against the unanimous
24 consent.

25 So my proposal would be that the Negotiated

1 Rulemaking Committee agree to define other terms to mean
2 a general but not unanimous concurrence of the
3 negotiated rulemaking process.

4 MS. PODZIBA: Is that from the negotiated
5 rulemaking now?

6 MR. SHURAVLOFF: It is. If I could just,
7 for clarification, my reason for doing this is, we can
8 sit here and do this all day long.

9 The Negotiated Rulemaking Act says that if
10 we are willing to reach some other agreement through the
11 concurrence of this Committee, that we will find that
12 concurrence.

13 If we are not willing to, and we wrote this
14 down, then we've exhausted what we can do here and we go
15 to unanimous consent. That's kind of my rationale
16 behind doing this.

17 MS. PODZIBA: Yes?

18 MS. FOSTER: First of all, I think if we
19 don't decide on something else, yes, we are talking
20 about unanimous concurrence.

21 What we did in 2010 was we put a kind of a
22 condition on that when we said subject to Article 6(b)
23 and talked about the absence of expressed objection.

24 That is what we added to the unanimous
25 concurrence at the time because we wanted to put

1 everybody on notice that we were engaged in good faith
2 negotiations.

3 In response to this specific proposal, I am
4 not sure what general concurrence is. Is general
5 concurrence a majority vote? Is it two-thirds vote? I
6 mean, I'm not sure we really know what that is.

7 The time limit on debate is what controls
8 situations where people cannot come to agreement and it
9 just comes off at the table.

10 That might be able to lock the time frame
11 for some of these proposals where we want to dispose of
12 them sooner. But I guess I can't understand what
13 general concurrence means other than just a majority
14 vote or a two-thirds or something else. And I am still
15 in favor of the unanimous concurrence.

16 MS. PODZIBA: Pete Delgado?

17 MR. DELGADO: Thank you. Pete Delgado,
18 Tohono O'odham Nation. I think at this point we are at
19 an impasse. And because we're at an impasse, I would
20 agree with Marty. And I defer to legal counsel in
21 discussions that if we cannot reach agreement today on
22 the issue of consensus, then we have to refer back to
23 the statutory regulations. And that statutory framework
24 says that you go with unanimous consent.

25 So we can sit here the rest of the day and

1 debate nine-tenths, five-sixths, whatever you want to
2 do. I can tell you for myself, I am at an impasse. And
3 I don't think any other proposal is going to sway the
4 majority of the Committee members, whether it's Ms.
5 Vogel or other ones, to move.

6 So I would ask that we maybe have a
7 proposal, something similar to what Marty says that the
8 Committee agrees unanimously that we are at an impasse
9 on this situation and therefore, the statutory
10 regulations go in effect and that's what we have to
11 follow.

12 MS. PODZIBA: I need to take that as a vote.
13 Do you accept the amendment to your proposal?

14 MR. SHURAVLOFF: I didn't quite get the
15 amendment. I'm sorry.

16 MS. PODZIBA: Mr. Delgado, could you repeat
17 that?

18 MR. SHURAVLOFF: All I was trying to do here
19 was take the language out of the negotiated rulemaking
20 statute, insert it there, because it says if we don't
21 reach agreement on this, then we are agreeing that we're
22 staying with unanimous consent basically.

23 That's all I'm trying to get to with this as
24 we vote this down and we're stuck with unanimous
25 consent.

1 MS. PODZIBA: What I read in the regulation
2 is, consensus means unanimous concurrence among the
3 interests represented on the Negotiated Rulemaking
4 Committee established under the subchapter unless the
5 Committee agrees to define such term to mean a general
6 but not unanimous concurrence or, B, agrees with a
7 specified decision.

8 So I think we need the first part of the
9 regulation as well. I think that may be where the
10 confusion is. You have taken A from the Negotiated
11 Rulemaking Act?

12 MR. SHURAVLOFF: Correct.

13 MS. PODZIBA: And it modifies No. 2, so I
14 wonder if we should include all of No. 2?

15 MR. SHURAVLOFF: No, it doesn't modify No.
16 2. It redefines No. 2 basically. No. 2 says consensus
17 means unanimous concurrence, unless A is revoked.

18 MS. PODZIBA: Okay. So the proposal is
19 Negotiated Rulemaking Committee agrees to define such
20 term to mean a general or unanimous concurrence.

21 MR. SHURAVLOFF: Correct. If we don't stay
22 with that, then we stick with unanimous consent. That's
23 the way I am reading the statute unless the attorneys
24 have something better.

25 MS. PODZIBA: Ms. Foster?

1 MS. FOSTER: Marty, can you explain what a
2 general concurrence is if it's not unanimous
3 concurrence?

4 MR. SHURAVLOFF: No, I can't. It's in the
5 statute. I took it right out of the statute on that
6 language.

7 MS. FOSTER: Can anybody explain what that
8 means?

9 MS. PODZIBA: Yes?

10 MS. GORE: I can't offer an explanation but
11 maybe a friendly amendment that might help clarify it.
12 And what I would suggest is after "mean" it would say
13 "to mean anything other than unanimous concurrence."

14 MS. PODZIBA: Do we need the word
15 "consensus" in there instead of the term "to define
16 consensus to mean"?

17 MS. GORE: We are using the word
18 "concurrent" because that's what's in that Negotiated
19 Rulemaking Act.

20 And that is under the Act already defined as
21 unanimity. That's why we are using that term to be
22 consistent with what Marty is proposing. And there's a
23 double "to mean" in the sentence, if you want to correct
24 that.

25 MR. NICHOLS: It appears to me that this

1 sentence needs some type of preamble to say the
2 Negotiated Rulemaking Committee agrees to define such
3 term "to mean".

4 We took these out so there's nothing to say
5 what term --

6 MR. SHURAVLOFF: Right. They were going to
7 adopt this language as an alternative to the unanimous
8 consent.

9 MS. PODZIBA: I guess the question is,
10 should it say "a consensus," period, and then have that
11 language?

12 MS. BRYAN: So point of order, is the
13 facilitator helping define what language needs to be put
14 in here?

15 MS. PODZIBA: Just offering a friendly
16 suggestion. Withdrawn.

17 MS. BRYAN: To some people, but not others?
18 It's not okay.

19 MS. PODZIBA: Okay. I take your point. So
20 we have got this proposal. Is there further discussion?

21 MR. SHURAVLOFF: Let me rescind this so I
22 can come up with some different language.

23 MS. PODZIBA: Yes, Mr. Reed?

24 MR. REED: What I heard Pete talk about was,
25 if we cannot come up with any other type of language

1 other than consensus, that it defaults to the original
2 requirement that there be a consensus.

3 And that makes a lot of sense. However, it
4 does not speak to any type of time frame in which we all
5 can consider long enough.

6 Plus, I would also point out that Sharon
7 Vogel is enacting the very item that we are arguing
8 about. So you have one individual that is not willing
9 to go along with the majority.

10 And I believe that consensus is a good way
11 to go because even the last group -- two groups ago, I
12 guess, we talked about money and we came up with some
13 pretty good changes but we need, I think, more changes.

14 And I have a little bit of difficulty with
15 the total consensus. It's not bad faith to argue that
16 that's not what I want.

17 MS. PODZIBA: Yes?

18 MS. VOGEL: Earlier there was reference that
19 because we are at an impasse that we would default back
20 to the statutory language.

21 What about the cases where there isn't a
22 statutory language and we reach the same impasse? Then
23 what do we default back to?

24 MS. PODZIBA: Ms. Foster?

25 MS. FOSTER: Many of the things we talk

1 about and make a decision about won't be specifically
2 defined in statutes. And so either we will reach
3 concurrence on an issue or we won't have concurrence and
4 that way we won't have a recommendation to make to the
5 Secretary about the regulations in that area.

6 But in this one we do have the Act. And it
7 defines consensus as unanimous concurrence among the
8 interests represented on the Negotiated Rulemaking
9 Committee.

10 We modified that a little bit in 2010 by
11 saying, okay, but subject to Article 6(b), it needs to
12 be in good faith. And if somebody expresses an
13 objection, they need to give other options, other
14 methods of wording.

15 So I really like what we did then and I
16 think it's better than the statute. In this case we
17 will go back to the statute and basically not have that
18 good faith requirement. I like the good faith
19 requirement. I think it's helpful.

20 We can certainly in our consensus paragraph
21 -- and maybe I should propose it, that we just state,
22 all decisions of the Committee shall be made by
23 consensus as per 5 U.S.C., Section 562(2).

24 Consensus means unanimous concurrence among
25 the members represented. That's what we've got if we

1 don't agree to something different.

2 MS. PODZIBA: Mr. Evans?

3 MR. EVANS: So if I am understanding what
4 you are saying correctly, then if we don't come to a
5 consensus agreement on how we make decisions, the
6 default is consensus, correct?

7 Then if that is the case, and there is that
8 default there and it's agreed that that's the default,
9 then my question is, why couldn't we then go on through
10 the remainder of the protocols, because we are bound by
11 consensus at this point if we don't come to agreement on
12 alternative language?

13 MS. PODZIBA: Mr. Reed?

14 MR. REED: I guess I looking for the
15 Committee, us, to determine how long we are willing to
16 pursue this issue and establish some kind of guideline
17 there.

18 MS. PODZIBA: Ms. Vogel?

19 MS. VOGEL: I think that we need to put the
20 default language or default statement in there and then
21 we live with it. Because in the future we are going to
22 have to refer back to that, whatever we are defaulting
23 back to.

24 MS. PODZIBA: Mr. Sawyers?

25 MR. SAWYERS: In order to say that we are at

1 an impasse, then we have to say that there's a default
2 and we have to pass unanimously that we are all through
3 negotiating and there is a default.

4 So we are still in the same situation we
5 were in before. There's no time limit on that and while
6 I don't agree with all of the objection, I think that we
7 need to take some time and look at some other ways other
8 than unanimous consent.

9 So my position is pretty flexible. I raised
10 the objection and no one has satisfied that objection.
11 I think we are maybe at a standstill, but I don't think
12 we are at a default situation.

13 MS. PODZIBA: All right. So from a process
14 point of view, there are a couple of questions on the
15 table. One is, how do we determine we are at the point
16 at which there's an impasse and therefore we go to the
17 default?

18 Another suggestion is to put the default in
19 as a place holder in order to go through the rest of the
20 protocols.

21 So I put both of those questions before the
22 Committee to see what the will of the Committee is to
23 do. We can define impasse and then keep discussing and
24 see if we get a solution or we reach an impasse.

25 Or we can put the default in now in order to

1 satisfy the concern about an inability to move forward
2 with the rest of the protocols without having settled
3 the question of the decision rule.

4 So I put forward those options. Ms.
5 Foster?

6 MS. FOSTER: I would like to suggest a third
7 option and that is to just move on because we don't have
8 to have a provision that defines consensus if we are not
9 going to define it any differently than what the
10 Negotiated Rulemaking Act defines already.

11 So I think we just should just move on and
12 we're subject to the Negotiated Rulemaking Act and
13 that's what we need to follow.

14 MS. PODZIBA: Is that acceptable to the
15 people who had concerns about not wanting to move on
16 without completing this section?

17 MR. SHURAVLOFF: If we can all agree to
18 that, yes.

19 MS. PODZIBA: Yes?

20 MS. HENRIQUEZ: It's not that I disagree
21 with that, it just seems illogical to me. If, indeed,
22 we all recognize that the default position is unanimous
23 concurrence and consensus, why wouldn't we put that in?

24 And it defies logic for me because
25 everything we have done yesterday and up until this

1 point has been by consensus.

2 And everything we're going to do from this
3 point, skipping over this decision-making section, will
4 also be by consensus, I think.

5 Is the mechanism maybe to move on? But it
6 feels contrived and illogical to me. I just wanted to
7 offer that comment.

8 MS. PODZIBA: Ms. Foster?

9 MS. FOSTER: I would like to make a
10 proposal.

11 MS. PODZIBA: Okay.

12 MS. FOSTER: All decisions of the Committee
13 shall be made by consensus, period.

14 MS. PODZIBA: Ms. Foster?

15 MS. FOSTER: There's more once we get to
16 that point. Okay? Consensus means unanimous
17 concurrence among the interests represented on the
18 Committee, period.

19 That's the statutory definition. We can
20 cite the statute if anyone would like to do that.
21 Perhaps, actually, for clarification up above on the
22 beginning of the second sentence right before
23 "consensus" please insert -- wait a minute. We've
24 identified the Negotiated Rulemaking Act, haven't we?

25 UNIDENTIFIED MALE: I would just put the USC

1 cite.

2 MS. FOSTER: All right. We'll use the USC
3 cite again. As per 5 U.S.C., Section 562(2)(c).

4 MS. PODZIBA: Discussion of this proposal,
5 Mr. Adams?

6 MR. ADAMS: In the way that this discussion
7 has played out there was a proposal and then there was a
8 counterproposal. And now this proposal is trying to get
9 us moving ahead. I understand that. But this is more
10 restrictive than even the position we started with
11 initially.

12 And the other position I was presented by
13 Ms. Vogel was a little more to the side of giving some
14 play area in order to have a decision made.

15 The consensus initially, the 2010 language,
16 we had a little wiggle room there. This is very
17 concrete.

18 This says that you have to show that you
19 agree. And so I am really concerned that we are not
20 really moving towards common ground. We are moving
21 further away from common ground.

22 So I wouldn't go along with this. My
23 opinion is, if we are going to compromise anywhere, it
24 should be on the initial 2010 language. Because there,
25 if I didn't agree to something, I could just not show a

1 thumbs up and it would pass.

2 I did not have to actively engage and show
3 support. What you have up there now says that you have
4 to actively engage and show support or we don't belong.

5 MS. PODZIBA: Yes?

6 MS. FOSTER: I just think it's important to
7 recognize that if we don't decide on something else,
8 that we actually see what it is that we have by default
9 -- that's what we have by default.

10 I agree. I like 2010 better than this. And
11 I said I prefer having the good cause limitation on it.
12 I prefer requiring people to express their objections,
13 if they have an objection, give an alternate.

14 But if we don't agree on something else,
15 that's what we have. So whether we put it into our
16 charter or protocols or not --

17 MS. PODZIBA: Mr. Evans?

18 MR. EVANS: Would it be possible to get us
19 to where we are trying to go if at the beginning of --
20 well, between consensus and all that we insert "subject
21 to Article 6(a) of these protocols, comma, all decisions
22 of the Committee shall be made by consensus, period."

23 MS. PODZIBA: Ms. Foster, that's a proposed
24 amendment to your proposal.

25 MS. FOSTER: I guess I would qualify the

1 second sentence with it rather than the first.

2 I don't mind the concept. But what you are
3 really doing is you are qualifying the definition of
4 what consensus is, right?

5 I suppose you could add at the end of the
6 sentence, comma, subject to -- or just not make the -- I
7 would entertain the amendment to replace "as per 5
8 U.S.C., Section 562(2)" to read "subject to Article 6(b)
9 of these protocols" and strike the "as per" all the way
10 through the numbers and then put "subject to Article
11 6(b) of these protocols."

12 Does that make sense to the transcriber
13 there?

14 MS. PODZIBA: Is there a question?

15 UNIDENTIFIED FEMALE: Did 6(b) change to
16 6(a)?

17 MS. FOSTER: Sorry, 6(a). 6(a) of these
18 protocols and then delete everything else all through
19 the comma.

20 MS. PODZIBA: Is that okay? Yes, Ms.
21 Vogel?

22 MS. VOGEL: If we fail to reach consensus,
23 then how do we deal with that? I don't think that came
24 out the way I wanted it to say. I'm sorry about that.

25 I am looking back at the report of the

1 Committee where it says, "If the Committee does not
2 reach consensus on a proposed rule, the Committee may
3 transmit to the agency a report specifying any area in
4 which the Committee reached a consensus. The Committee
5 may include in a report any materials that the Committee
6 considers appropriate."

7 Since we are citing things, then why don't
8 we put that in there? That way if we don't reach it, we
9 know what we are going to do, right?

10 MS. PODZIBA: You are looking at No. 5 of
11 the Negotiated Rulemaking Act?

12 MS. VOGEL: Yes, on page 67.

13 MS. PODZIBA: Could you give me the section
14 number?

15 MS. VOGEL: Section 566(f).

16 MS. PODZIBA: 566(f), the report of the
17 Committee. "If a Committee reaches a consensus on a
18 proposed rule, that at the conclusion of the
19 negotiations, the Committee shall transmit to the agency
20 that established the Committee report containing the
21 proposed rule."

22 That section?

23 MS. VOGEL: Yes.

24 MS. PODZIBA: "If the Committee does not
25 reach a consensus on a proposed rule, the Committee may

1 transmit to the agency a report specifying any areas in
2 which the Committee reached a consensus.

3 "The Committee may include in a report any
4 other information, recommendations or materials that the
5 Committee considers appropriate.

6 "Any Committee member may include as an
7 addendum to the report additional information,
8 recommendations or materials."

9 Mr. Adams?

10 MR. ADAMS: I guess I would just add that
11 looking ahead under "agreement" under "product of
12 negotiations," I believe the information you are asking
13 for should be inserted in that section because that is
14 what we come out with.

15 Because at the end of our negotiations,
16 there will be issues that don't reach consensus on that
17 very thing, it happens. It will be the product of our
18 negotiations.

19 MS. PODZIBA: Yes?

20 MS. FOSTER: This is still a discussion of
21 an amendment to my proposal, right?

22 MS. PODZIBA: This is a proposed amendment
23 to your proposal.

24 MS. FOSTER: I would agree with Jason that
25 this needs to be dealt with in Section 5(a), which we

1 haven't quite gotten to in the protocols, and whether we
2 need to pull in different language for that, it would
3 happen at that point.

4 If you compare the two sections, that's
5 where that is intended to fall. So I would not agree
6 with the amendment.

7 MS. PODZIBA: Is there further discussion of
8 the proposal that is currently on the table?

9 (No response.) I would like a vote on that
10 proposal.

11 All decisions of the Committee shall be made
12 by consensus subject to Article 6(a) of these protocols.
13 Consensus means unanimous concurrence among the
14 interests represented on the Committee.

15 Can I see the thumbs up or thumbs down?

16 (Members complying.) Okay. There is still
17 dissent. Yes, Mr. Cooper?

18 MR. COOPER: Gary Cooper. I just have a
19 question for some of the members who have been here
20 before, and I apologize I have not, I'm new.

21 And Karin and Jason or whoever might be able
22 to answer this. As I am looking through here, it looks
23 like in 2003 there was -- under decision-making there
24 was just one item, and that being consensus.

25 And then in 2010, it looks like B and C may

1 have been added. And I am wondering if maybe we
2 shouldn't consider or at least look at considering A, B,
3 and C all in toto, as B and C seems to have maybe a
4 little bit to do with A?

5 And I would just like some input from some
6 of the previous Committee members because it looks like
7 that was added. And I am guessing that there might have
8 been a reason for that, and I would just like to get
9 maybe some input from them. Thank you.

10 MS. PODZIBA: Can somebody who was on the
11 2010 Committee provide that information? Mr. Adams?

12 MR. ADAMS: I guess as an attempt to have
13 some input and follow up to the question at hand, I see
14 this as a continuing, evolving kind of a process for the
15 original negotiated rulemaking and how things were done
16 then.

17 We don't cite those documents here, but we
18 do the 2003 and 2010.

19 Maybe we should go back to those documents
20 and see how they operated. But absent of that, this
21 process has changed and has evolved and adapted because
22 of these very issues that we are trying to address here
23 today.

24 And because we know that ultimate hammer
25 that hangs over us is the statute language. That's

1 there. Whether we like it or not, it's there. That's
2 how we have to deal with this.

3 So in attempts to make people respond, to
4 make people act in good faith, to reconsider issues, all
5 of this has changed and come to where we are today.

6 So I would offer that as an explanation to
7 get people to participate and actively engage in the
8 process and not be an obstructionist. That's kind of
9 where we've been in the past. So I hope that helps.
10 Thank you.

11 MS. PODZIBA: We are at time for our break.
12 So I think we will do that. It's 2:45. We have a
13 15-minute break.

14 So we are going to take a 15-minute break
15 and then when we come back, it will be nomination and
16 selection of Committee chairs.

17 (A break was taken from 2:45 p.m. to 3:05
18 p.m.)

19 (Back on the record.)

20 MR. NICHOLS: I have been informed that Ms.
21 Henriquez has asked for a minute to make a suggestion.

22 MS. HENRIQUEZ: Thank you. I will take a
23 moment before we move toward the end of the section for
24 this day.

25 We spent a lot of time talking about,

1 discussing, listening to each other, I believe in good
2 faith about the definition on how to come to consensus
3 and what that means for this particular Committee.

4 And it's been clear, it is clear that the
5 default position, should we not agree by consensus to
6 change to a different determination of what we define
7 consensus means, that we are now left with the
8 negotiated rulemaking statute.

9 So in the interests of all of us, I would
10 like to make the following proposal. And that is that
11 we do move forward, and if there's more for us to
12 discuss, for example, on voting on the rest of the
13 protocols, that we set aside for the time being
14 decision-making and this motion of consensus and that we
15 take it up for some amount of time when we reconvene in
16 September.

17 And my thought is that we all could use the
18 time between now and then for some collective
19 reflection, maybe some discussion amongst Committee
20 members, I don't know, whatever your pleasure might be,
21 and to try and think of proposals that would get us to
22 consensus.

23 HUD is not taking a position. It is what
24 the Committee decides. And so I would leave that on the
25 table. If that's helpful for us to move forward a

1 little bit more today, so be it. Thank you.

2 MR. NICHOLS: Is that suggestion acceptable
3 to the rest of the Committee?

4 (No response.) As I heard it, it's that we
5 move on through any more of the protocols that we could
6 get through today. Think about it, give more thought to
7 the issue of consensus between now and the next meeting
8 and we'll complete the discussion at the next meeting.

9 Any objection to that?

10 (No response.) Okay. Thank you. We are at
11 a point in the agenda where we are at 3:15. The
12 schedule calls for nomination and selection of tribal
13 chairs.

14 So since we are so close to that point, I
15 would suggest that we move to that right now and discuss
16 that item among the Committee and see if we can reach an
17 agreement on that.

18 Is that acceptable to the Committee?

19 (No response.) Any comments?

20 (No response.) Okay. Then let's open the
21 discussion up for nomination of the selection of tribal
22 co-chairs, Committee co-chairs.

23 And I would invite any comments any of you
24 have as to how you would like to accomplish that task.
25 Any suggestions?

1 the co-chairs up for failure if they don't know what the
2 rule book is.

3 So we need the rules first so that they are
4 set up for success and they know what the Committee's
5 expectations are.

6 Thank you, Jason, for bringing that up.

7 MR. NICHOLS: Ms. Foster, since you opened
8 the topic, would you like to weigh in on that?

9 MS. FOSTER: I agree. I think that sounds
10 fine. Madam Secretary suggested that we move past this
11 whole decision section, if I understood that correctly,
12 No. 3, because all of those provisions kind of work
13 together and just go ahead and move on to No. 4, work
14 groups and standing Committees. I think that would be
15 productive.

16 MR. NICHOLS: Any disagreement with that?

17 (No response.) Then let's press on to work
18 groups, right, 4(a). Decision-making, we'll leave the
19 entire decision-making section for future consideration
20 and move to work groups 4(a). The language is from
21 2010.

22 We have a slight deviation from our normal
23 process here.

24 This is the 2003, which is actually a
25 different section at that time, but they were combined

1 together on one sheet.

2 And then we discovered some words that were
3 omitted or typographical errors. And these were added
4 in green. So these should have been in the document to
5 begin with, but were discovered during the course of the
6 meeting.

7 So when you see words in green, those are
8 words that were actually included in that version of the
9 protocols originally, but were omitted from your copy.

10 Once you have had an opportunity to look
11 through that, we will open it up for proposals or
12 comments. Mr. Jacobs?

13 MR. JACOBS: I recommend that we look at the
14 blue under A, work groups, because we spent a lot of
15 time further defining the small groups and what their
16 mission would be and so forth.

17 MR. NICHOLS: So your recommendation is that
18 we adopt that -- accept that the way it is?

19 MR. JACOBS: That's correct.

20 MR. NICHOLS: Does anyone have any
21 alternative viewpoint or amendment or comments regarding
22 Mr. Jacobs' proposal? Mr. Adams?

23 MR. ADAMS: I notice that under this
24 proposal that it was included in the 2010. There is a
25 word missing right at the end of this, included in the

1 report.

2 MR. NICHOLS: It's missing in your copy?

3 MR. ADAMS: The 2010 document didn't have
4 "in."

5 MR. NICHOLS: So what was on the screen; is
6 that correct?

7 MR. ADAMS: Yeah, that's the correction.

8 MR. NICHOLS: Good. Have you all had a
9 chance to look at this sufficiently?

10 (No response.) The proposal is to accept the
11 2010 language for 4(a). Could we take the vote please?
12 Thumbs up if you agree, thumbs down if you disagree.

13 (Members complying.) I don't see any
14 disagreement. Is there anyone who objects?

15 (No response.) Thank you. Let's move on to
16 the Drafting Committee. Mr. Sawyers?

17 MR. SAWYERS: The way the Drafting Committee
18 worked is nothing similar to what they have outlined
19 last time.

20 I would just say that we have an informal
21 Drafting Committee and a lot of that should be done in
22 the break-out groups.

23 My suggestion is that we could say we will
24 have an informal Drafting Committee and play it by ear
25 because that's the way it's going to happen anyway.

1 MR. NICHOLS: Does that require language in
2 the protocol or are you saying strike this language out?

3 MR. SAWYERS: Mostly strike this language
4 out. I don't see this doing us any good. It didn't
5 happen that way in any of the Drafting Committees we've
6 been in.

7 So I would strike it out and under that just
8 say something like we will create a Drafting Committee
9 as we go along or it's an informal.

10 I don't know how to say it. That's why I
11 have Karin, but something similar to that. Because we
12 have set some things, some goals, and stuff that never
13 happens, so I would just strike it. And Karin is going
14 to tell you what to say.

15 MR. NICHOLS: Okay. So your proposal would
16 be to strike this language and to substitute language
17 which says the Committee will from time to time appoint
18 a Drafting Committee on a more informal basis, roughly.

19 I am not suggesting the language. I'm just
20 saying that's roughly what you are proposing; is that
21 correct?

22 Could I ask for some help to provide the
23 language for that?

24 MR. SAWYERS: Yeah, Karin.

25 MR. NICHOLS: Mr. Evans?

1 MR. EVANS: Could we say something to the
2 effect of Drafting Committee -- or drafting group.

3 The drafting group shall be responsible for
4 assisting work groups and the Committee with preparing
5 proposals, period.

6 MR. NICHOLS: The drafting group shall be
7 responsible for assisting work groups and the Committee
8 in preparing proposals.

9 MR. EVANS: Members of the drafting group
10 shall be appointed by the Committee, period.

11 MR. NICHOLS: Mr. Sawyers?

12 MR. SAWYERS: I think we should strike the
13 last sentence. And something like, from time to time
14 the Committee will ask the Drafting Committee -- finish
15 that, Karin.

16 I think it has to be from time to time that
17 the work groups ask for help. And I haven't even played
18 a lawyer on TV, so you folks can do that better than I
19 can.

20 What we are trying to do is not make it
21 formal. What we are trying to do is use the Drafting
22 Committee as we need them and not give them a standing
23 Committee with certain rules and so on because that's
24 not what they do.

25 That's not what they've done and it doesn't

1 answer what we really want from the Drafting Committee.

2 MR. NICHOLS: Thank you.

3 MS. GORE: I am going to ask my friend Jack
4 for clarification because he suggested that the language
5 as it was crafted for 2010, it didn't work in practice,
6 at least that's what I heard.

7 So my memory is that the Drafting Committee
8 really worked without Committee participation. In fact,
9 HUD worked on its own to draft the final rule.

10 And in 2003, the Committee said, we want
11 full participation on that drafting so we can help to
12 describe what the Committee's work resulted in.

13 And so the purpose of the Drafting Committee
14 and the Committee members' participation was important
15 from my view. That was largely attorneys.

16 It also offered the Committee a way to just
17 generally agree on language, allow it to go to attorneys
18 so that they could refine the language for some
19 regulatory conformance and then bring it back for
20 approval so that we didn't have to fuss over one word or
21 three words or that sort of thing.

22 I want to maybe also add just one more thing
23 that I hope you will agree is related and is not
24 currently addressed in the protocols and that's the
25 preamble Committee which has acted informally and was

1 never formally adopted by the Committee until the very
2 end and that they were forced to go back to the first
3 meeting and try to recall what happened from meeting
4 number one to meeting number five.

5 So I am asking Jack, number one, for
6 clarification for his proposal and secondarily to
7 suggest to the Committee that once we agree on this
8 language, I would like to propose we talk about a
9 preamble Committee initiating immediately instead of at
10 the end. Thank you.

11 MR. NICHOLS: Mr. Dollarhide?

12 MR. DOLLARHIDE: From talking to some of the
13 past Committee members, this Drafting Committee was put
14 in purpose to address precise recommended regulatory
15 language and required preamble language.

16 I would offer a friendly amendment to remove
17 the word "proposals" and insert that language.

18 If we need that Drafting Committee to
19 address proposals, then we can use them for that. But I
20 think the better use for all the attorneys, that
21 probably will make up the majority of that Committee, to
22 use their time better for everybody including all the
23 Committee, would be that regulatory and preamble
24 language.

25 MR. NICHOLS: So we would add to your

1 amendment precise recommended regulatory language and
2 required preamble language; is that correct?

3 MR. DOLLARHIDE: Yes.

4 MR. SAWYERS: I would accept that. What I
5 would like to accomplish with the Drafting Committee or
6 have them accomplish is to work with the Committees
7 before they get out of Committee and put those things
8 together.

9 And I certainly agree with you, Carol, that
10 we have a preamble Committee now because it was
11 troublesome before. So I agree with those suggestions.

12 MR. NICHOLS: Ms. Vogel was next.

13 MS. VOGEL: I have a question. So if the
14 Drafting Committee is mainly composed of attorneys, does
15 that mean as a member I have to bring an attorney and
16 pay that attorney to be on the Drafting Committee so we
17 would have an attorney for every representative here
18 that shares that workload?

19 MR. NICHOLS: Mr. Sawyers, do you have an
20 answer for that?

21 MR. SAWYERS: I would like to answer that.
22 The answer is, any member can be part of that Committee.
23 You don't have to be a lawyer, even play one on TV.

24 MR. NICHOLS: Mr. Butterfield?

25 MR. BUTTERFIELD: I think this starts as if

1 the Drafting Committee exists. It should start, from
2 time to time the Committee may appoint various persons
3 to assist the working group in preparing precise
4 recommended regulatory language, et cetera.

5 But we appoint the people to the Committee,
6 and it does not have to be a lawyer, although I am one.

7 MR. NICHOLS: That will be a proposed
8 amendment here. You said from time to time the
9 Committee will appoint people to be responsible for
10 assisting work groups, or a drafting group to be
11 responsible for assisting work groups? How would you
12 phrase that?

13 MR. BUTTERFIELD: From time to time the
14 Committee may appoint various persons to assist working
15 groups or the Committee in the preparation of regulatory
16 language.

17 MR. NICHOLS: Is that the correct place for
18 it?

19 MR. BUTTERFIELD: I think it should be at
20 the beginning.

21 MR. NICHOLS: Okay. Mr. Sawyers?

22 MR. SAWYERS: Respectfully, I would envision
23 that group not to be appointed by anyone. I think that
24 the participation is voluntary. They don't have to be
25 lawyers, but I think that we found last time that there

1 was plenty of folks who wanted to be on that Committee.

2 And I would rather have it less formal, that
3 this Committee just says, we need a drafting group, and
4 that works best. It has in the past that people
5 volunteer, and it could be from five to 35 in that
6 group.

7 MR. NICHOLS: Is there any approval process
8 for volunteers, or just the Committee will allow it?

9 MR. SAWYERS: Just allow folks who want to
10 be part of that. And then, of course, everyone will
11 want their lawyers involved, plus a lot of other very
12 interested folks.

13 MR. NICHOLS: So this word would be
14 "allowed" rather than "appoint"? Would that accommodate
15 your concern?

16 MR. SAWYERS: Yeah. I am not sure that we
17 want them to be appointed because I think that that's a
18 voluntary -- there's some work there.

19 I am just saying that in my opinion that we
20 just say that needs to work and have folks respond to
21 that. Then we just ask for volunteers rather than
22 appoint.

23 MR. NICHOLS: So from time to time the
24 Committee will ask for volunteers of various persons to
25 assist, or just ask for volunteers to assist is probably

1 good enough, right?

2 MR. SAWYERS: Yes.

3 MR. NICHOLS: Ms. Henriquez? MS. HENRIQUEZ.

4 Thank you. First of all, recollection is a dangerous
5 thing, so I am hoping I am not doing revisionist
6 history.

7 But as I recall our last session in 2010,
8 the Drafting Committee -- the reason the Drafting
9 Committee worked well is because it was a consistent
10 group of people appointed by this body or that steering
11 Committee who other people could come and those meetings
12 were public and other people could participate.

13 But there were people who then for
14 consistency, for continuity, really became the nucleus
15 of a Drafting Committee.

16 So that's my recollection. My other
17 recollection is that there was so much to look at that
18 work groups were established. They were then selecting
19 their own chairs of those work groups.

20 And within each work group, there was a
21 person or two who acted as a scribe. And as the work
22 group went through its business, would codify decisions
23 -- the recommendations, I should say, so that those
24 could be shared with the larger and full steering
25 Committee.

1 And that people could volunteer for those
2 work groups and get those pieces done. I think Jason
3 was a chair of one of those, for example. I think it
4 helped move the process along a little bit more smoothly
5 as opposed to everything being done as a Committee of
6 the whole.

7 In addition, I would say that I would want
8 -- if the proposal language is to go forward, I'd like
9 to make a proposal that amends that language to include
10 that a HUD representative be a member of that Drafting
11 Committee.

12 MR. NICHOLS: So the addition of language at
13 the end that says that the Drafting Committee will
14 include a member of HUD?

15 MS. HENRIQUEZ: Yes.

16 MR. NICHOLS: We have a number of people who
17 have contributed to this phrase right now, so I want to
18 make sure everyone has the opportunity to weigh in on
19 the revisions that have been made.

20 Ms. Foster was next.

21 MS. FOSTER: My comments keep changing
22 depending on the discussion.

23 In my memory of how the drafting group or
24 Drafting Committee -- really drafting group -- I like
25 that language better too -- has worked is that whoever

1 wanted to participate on the drafting group has
2 participated.

3 And it generally is attorneys and generally
4 the same attorneys. They are with it for the long haul
5 and they are here for their clients.

6 But if you have somebody from the public
7 coming in who is not on the Committee who has their
8 attorney with them who has an issue, it's very sensitive
9 to them, then they may want their attorney to
10 participate on the Drafting Committee while they are
11 here during that meeting.

12 And I think that leaving it open to
13 volunteers or however you want to phrase that,
14 interested persons may participate, or however, is a
15 really good idea.

16 I think that generally there's going to be
17 an attorney in those meetings of the work groups. Some
18 are more casual in how they operate rather than to be
19 appointed. And I do have other comments, but I will
20 wait on those.

21 MR. NICHOLS: Mr. Adams?

22 MR. ADAMS: I am hearing the discussion. I
23 am seeing that what was originally proposed is getting
24 longer and longer. Pretty soon it's going to look like
25 what we didn't like up above.

1 I am just wondering what we didn't like
2 about that that couldn't be removed to get us moving
3 forward here because it's almost there.

4 MR. NICHOLS: Ms. Gore next.

5 MS. GORE: I am with Jason. I prefer the
6 2010 language. But we are working on this proposal so I
7 have a friendly amendment to offer that may respond to
8 some of those comments.

9 It would strike three words "ask for
10 volunteers" and replace that with "The Committee will
11 establish a Drafting Committee."

12 It could be drafting group. I have heard
13 two phrases. I don't really care. Thank you.

14 MR. NICHOLS: Will establish a Drafting
15 Committee. Mr. Sawyers has an amendment to your
16 language. Is that acceptable to you?

17 MS. GORE: If I could offer a clarification?
18 My understanding is the same as Karin's that the
19 Committee was not a static Committee necessarily, but it
20 allowed people to participate as they wanted.

21 In particular, if there was an issue that
22 was specific to them, and they wanted to participate in
23 the Drafting Committee for that particular issue, they
24 were allowed to do so.

25 So what I've offered is not to suggest that

1 that would not happen. I am just offering a friendly
2 amendment to really make sure that we are establishing a
3 Drafting Committee or group. But I am in favor of the
4 open participation. Thank you.

5 MR. NICHOLS: Mr. Sawyers, would you change
6 this language to establish a Drafting Committee or
7 group?

8 MR. SAWYERS: Yeah, I think we should
9 establish one, but I think they're also volunteer. You
10 are not going to force someone to be on that Committee.
11 So it has to be voluntary, and we're not paying them for
12 it.

13 And I am sure that HUD by themselves,
14 without saying it, they are going to have a lawyer in
15 every group. And I am sure that all of us are going to
16 have folks in the groups that we feel are important.

17 So I am comfortable with volunteer, but if
18 you say establish, what the heck. But I still think
19 that volunteer is a little better because that's what
20 they would be.

21 MR. NICHOLS: What if it said establish a
22 volunteer Drafting Committee?

23 MR. SAWYERS: That would be great.

24 MR. NICHOLS: Does that work for both of
25 you? Okay, let's do that. Now, I may have lost track

1 of who was next. Mr. Evans?

2 MR. EVANS: I think the drafting group was
3 very helpful last time and it helped the proposals to
4 develop further because a lot of times people around the
5 Committee may have the initial idea or the concept but
6 may not know exactly how that should be worded to not
7 only express the idea they are trying to put forth, but
8 also make it go well with the remainder of the
9 regulations.

10 But if I recall correctly, one of the
11 additional things that we had during that time was we
12 also established later on a lead drafter selected by HUD
13 and a lead tribal drafter selected by the Committee.

14 And what these folks were responsible for
15 doing -- they not only drafted the work on the language
16 for the proposal as it came forth in the preamble, but
17 also -- correct me if I am wrong, but I think they also
18 assisted with developing the final language for the
19 rule.

20 And I think that that made sure that the
21 tribal perspective was adhered to and in the spirit of
22 what was negotiated, and it also ensured that the
23 federal government's role was adhered to.

24 And so I would simply like to add in where
25 it says the recommended regulatory language, I would put

1 and the required preamble language -- after "required
2 preamble language" and prepare a draft final rule.

3 Because I think that that was also a
4 function that they served even after the meetings that
5 concluded by telephone to assist HUD in the drafting of
6 the final rule in terms of the changes that were made.

7 MR. NICHOLS: Thank you. I know that there
8 have been a number of people who have contributed to
9 this language.

10 So before I take the next questions, is
11 there anyone who offered language as part of this
12 proposal or amendment of the contribution to this
13 proposal who disagrees or has a problem with the way
14 it's worded right now? Let me ask that first.

15 (No response.) I don't see any hands up.
16 Mr. Butterfield?

17 MR. BUTTERFIELD: I think it should be
18 consistent in terms of language. So if you are going to
19 use drafting group, use drafting group. Don't go
20 switching back and forth between Committee and group.

21 MR. NICHOLS: So call it either Committee or
22 group?

23 MR. BUTTERFIELD: I understood Jack's basic
24 premise that this was voluntary. But I thought it still
25 came from the Committee. So I wanted to put, instead of

1 "will," it is very mandatory and "may."

2 MR. NICHOLS: May or will?

3 MR. BUTTERFIELD: Then anyone can join. If
4 the Committee wants it, then they can use it.
5 Otherwise, they don't have to.

6 MR. NICHOLS: Is it appropriately referred
7 to as Committee or group, because we call it both,
8 Drafting Committee and drafting group. Mr. Evans?

9 MR. EVANS: I think one of the things that
10 led to at least some confusion from time to time is we
11 kept using the word Committee so much that sometimes we
12 always have to distinguish whether we're talking about
13 the Drafting Committee or whether we're talking about
14 the Negotiated Rulemaking Committee.

15 And so for that sole reason alone, I would
16 recommend calling it a work group, but I am fine with
17 whichever the group prefers.

18 MR. NICHOLS: Any significant disagreement
19 with that?

20 (No response.) Okay, well, let's call it the
21 drafting group; is that correct? Now there were some
22 more hands. Ms. Foster?

23 MS. FOSTER: I agree with the definition of
24 drafting group's work to include preparing the precise
25 recommended regulatory language with emphasis on

1 recommended and the required preamble language. But I
2 am not sure I agree with adding "and prepare a draft
3 final rule".

4 And I am looking up at the 2010 language we
5 have up there. It talks about how the Drafting
6 Committee actually drafts language. It doesn't sound
7 like it comes back to the Committee as a whole.

8 I think if you add the language "prepare a
9 draft final rule," it's as though it's in their hands to
10 be working on the final language. And I think the final
11 language needs to come before this Committee.

12 So I like the help preparing recommended
13 regulatory language, but I don't like the idea that
14 going somehow out of this Committee's hands into the
15 working group -- I'm sorry, the drafting group to
16 prepare the final draft, or the draft final rule.

17 Maybe I am just not understanding exactly
18 what happened with that. But I think that the language
19 that was in the final proposed rules that we were
20 talking about and then after we went through our process
21 of reviewing the comments and made those changes, those
22 were precise language. That was precise language that
23 we adopted. We didn't refer it off to somebody else to
24 capture our ideas in their language.

25 MR. NICHOLS: Who suggested that language?

1 Mr. Evans, reaction to that?

2 MR. EVANS: If we would clarify then, should
3 we add after "prepare the draft final rule," remove that
4 period and add for consideration of adoption of the
5 Committee as its final -- or that the draft occurs with
6 the decisions of the Committee?

7 You may have a better way of wording that
8 than me, but --

9 MS. FOSTER: Maybe I am not sure I
10 understand what prepare a draft final rule means. What
11 do you see that as describing?

12 MR. EVANS: I could be remembering this
13 wrong, but if I recollect correctly, I think what
14 happened was the drafting group prepared the final
15 document to reflect all of the consensus items and so
16 that the Committee could receive the copy to look over,
17 kind of like what we did with the charter.

18 Remember how the charter -- we did the
19 changes up here and then the final came to us for us to
20 confirm that this accurately reflected what we recalled
21 it as being the consensus items we adopted.

22 And then, of course, we did find one or two
23 mistakes. So that's what I remember the group doing
24 last year or the last time was preparing that final
25 version based on what we had in terms of consensus items

1 and got that to the Committee so the Committee could
2 ensure that it did comply with whatever you wanted to
3 call it as being the consensus items.

4 MR. NICHOLS: Ms. Foster?

5 MS. FOSTER: Would you consider instead of
6 prepare language that read and compiled the consensus
7 items into a draft final ruling?

8 MR. EVANS: Yes, ma'am.

9 MR. NICHOLS: Would you please add that,
10 Christine? Ms. Henriquez?

11 MS. HENRIQUEZ: Thank you. I think the
12 language that is now being added gets to my first point.

13 My second point is just the use of a term of
14 art. The drafting group with the approval -- once we'll
15 be drafting a document for the Committee's approval to
16 move forward, but it is not the final rule. It is a
17 draft proposed rule.

18 The final rule is only the one that finally
19 goes through all the clearances and comes out the other
20 end to be proposed and published in the Federal
21 Register. So I would say into a draft proposed rule.

22 MR. NICHOLS: Proposed rule, okay.

23 MS. HENRIQUEZ: I'm sorry, a draft proposed
24 final rule, which makes it clearer that the document
25 that comes out of this Committee is the one that's going

1 forward.

2 MR. NICHOLS: So it would be draft proposed
3 final rule?

4 MS. HENRIQUEZ: Correct. Thank you.

5 MR. NICHOLS: Does anybody have an issue
6 with that, the draft of that language? Mr. Evans or Ms.
7 Foster?

8 (No response.) Okay, sounds good. So Mr.
9 Sawyers?

10 MR. SAWYERS: I think the final rule will
11 be, if you look down a couple paragraphs, we will be
12 talking about the final rule.

13 So I don't disagree with proposed final
14 rule. But we will be looking at the final rule in a
15 couple more paragraphs. So I think that will clarify
16 some of the things we've talked about.

17 MR. NICHOLS: So you have no disagreement
18 with the way it's worded now?

19 MR. SAWYERS: No.

20 MR. NICHOLS: Does anyone have a
21 disagreement who was part of the drafting of the
22 language? Ms. Foster?

23 MS. FOSTER: Well, just for additional
24 clarity, after "proposed final rule," I would say "for
25 adoption -- for consideration by the Committee".

1 final rule. It's a report. So I just wanted to make
2 that distinction because that's why later on we come up
3 with a final report.

4 MR. NICHOLS: Thank you for clarifying that.
5 So at this stage I would like to call for a vote on the
6 language that's up here in the absence of any further
7 discussion or amendments that would be offered.

8 Mr. Sawyers?

9 MR. SAWYERS: Well, following up on Jason's
10 idea, you wouldn't say the proposed final rule. You
11 would say the proposed final report, because that's what
12 they are drafting. A final rule will be taken care of a
13 little later.

14 MR. NICHOLS: So do you have a problem with
15 the language the way it's worded now?

16 MR. SAWYERS: Yeah, just strike "rule" and
17 put "report."

18 MR. NICHOLS: Okay. Does that affect any of
19 the other people who had comments that led to this
20 language? Ms. Foster?

21 MS. FOSTER: I am not yet convinced that
22 report is preferable to rule. Our goals and objectives
23 agreed to in our charter, our goal is to negotiate a
24 proposed rule. So I would think that we do end up with
25 a proposed rule.

1 MR. NICHOLS: So this should be rule?

2 MS. FOSTER: Yes. I am not convinced that
3 report is the word. I mean, I understand going forward
4 into Section 5 there is a discussion of a report, but
5 then it also talks about the report includes both a
6 proposed rule and an accompanying proposed preamble.

7 MR. NICHOLS: So instead of being final
8 report, it will be just rule. So we can't have final
9 report, correct, or final rule?

10 MS. FOSTER: I like the rule language. I'm
11 interested in Earl's view.

12 MR. NICHOLS: Mr. Evans?

13 MR. EVANS: I like the proposed rule as
14 well. There's nothing to say that the draft proposed
15 rule can't be a part of the Committee report.

16 It could be an attachment to the Committee
17 report as opposed to being the Committee report itself.
18 But we want to say the draft Committee report, the
19 proposed final reports, I don't know. It would just get
20 too long if we said the final report that contains the
21 proposed content for the final rule.

22 But essentially what it boils down to is
23 that we're trying to capture is the exact language that
24 we are hoping comes out in the Federal Register from HUD
25 saying this is the final rule being proposed.

1 And if I recall correctly, that's what the
2 drafting group did in the last round was work
3 collaboratively with HUD in preparing that draft final
4 for the Committee to confirm. Yes, this is what we all
5 expected that we would see in the Federal Register
6 because this reflects what we agreed to.

7 MR. NICHOLS: We have a couple more agenda
8 items we need to address before the meeting ends and we
9 are past our time on this agenda item.

10 I am not sure that we are going to be able
11 to finish this. Ms. Foster?

12 MS. FOSTER: I am looking at Section 5 and I
13 am looking at the reference to the final report in 5(b).
14 I don't mean to jump ahead, but you kind of have to look
15 at that in order to form this question.

16 It talks about how the Committee is going to
17 review the comments and any clearance issues it received
18 in response to the proposed rule and then it's going to
19 issue a final report.

20 So I guess it seems to me that what we are
21 describing up here at this stage of the process is that
22 the consensus items go into a draft proposed final rule.
23 And then once the comments come back to the proposed
24 final rule, as it's published, then we prepare a final
25 report, if you look here at 5(b).

1 So I still think that proposed final rule is
2 what we have when we are compiling the consensus items
3 into the proposed rule.

4 And then later on, once we have the comments
5 back and review those, then we have a final report. I
6 don't know if that makes sense, but that's what it says
7 in 5.

8 MR. NICHOLS: This would be the proposed
9 rule. Mr. Sawyers had a concern with that. Mr.
10 Sawyers, are you able to accept the proposed rule here?

11 MR. SAWYERS: I just want to get along with
12 the whole world. Yeah, that's fine.

13 MR. NICHOLS: Thank you. And then Mr.
14 Evans was next.

15 MR. EVANS: Would it be amenable to everyone
16 if we said a draft product of the negotiations, which is
17 over in No. 5 under agreement, the product of
18 negotiations?

19 MR. NICHOLS: Where are you referring?

20 MR. EVANS: Over in the protocols under 5,
21 agreement. It describes what the product of negotiation
22 is.

23 MR. NICHOLS: Okay.

24 MR. EVANS: But if we don't have any dissent
25 on getting the proposed final rule back in there, then

1 we can go with that, either way. What do you think,
2 Karin?

3 MS. FOSTER: I just think that this
4 Committee should want to hold on to the idea that we are
5 working on a proposed rule and not just on some kind of
6 report that somebody takes a look at to see if they
7 think it fits their views.

8 I mean, we are working on a rule here. It's
9 going to be the rule that's the law of the land. So I
10 think I like to hanging on to the proposed rule just for
11 that reason.

12 MR. NICHOLS: So this is the language as it
13 stands now. Did you want to propose a change to it
14 based on that, Mr. Evans?

15 MR. EVANS: If no one else has any feedback,
16 I'd say we run it for a vote and then if that doesn't
17 pass based on what's up there, then we'll make
18 suggestions to change it.

19 MR. NICHOLS: Mr. Sossamon?

20 MR. SOSSAMON: If you look at the Drafting
21 Committee in B, as it is described, you look at under
22 agreement, you look at A, the product of negotiations,
23 it talks about proposed regulations or changes to
24 regulations that's necessary, desirable, or convenient
25 compiled into a report from this Committee. And it

1 distinguishes here, we make proposed regulatory changes.

2 The Secretary of HUD and OMB, after it goes
3 through their clearance, proposes the final rule, okay,
4 which may be inconsistent with what we proposed here and
5 there may be variances as a result of the clearance
6 process.

7 But I think that's where we had a little
8 concern with the language final rule. We propose
9 regulatory changes or additions.

10 But again, HUD and OMB propose the final
11 rule. So I think really to look at what the Drafting
12 Committee's scope and responsibilities are, you have to
13 look at it in the context of the end product that we
14 hope to achieve that affects the final rule that's
15 proposed.

16 And I think this language kind of
17 incorporates pieces of those three areas and by doing
18 so, makes it a little unclear.

19 MS. FOSTER: Do you have recommended
20 language?

21 MR. SOSSAMON: To me, I don't see why the
22 existing language doesn't work, because it appears that
23 we are trying to come back and add back in the existing
24 language and draw language from these other two areas
25 and stuff it into this area instead of dealing with it

1 under the product of negotiation and final report.

2 And we are trying to stick it in here under
3 the Drafting Committee group.

4 MR. NICHOLS: Mr. Adams?

5 MR. ADAMS: Rusty made his point very well
6 and I agree with him to the extent that this is -- what
7 we have in the past is there. But I just wanted to add
8 to the discussion again that along this language that we
9 had existing from 2010 is in concert with the statute.

10 And so the statute says there will be a
11 report from the Committee and it says the proposed rule.
12 So the language up there that says proposed rule is
13 correct because that's all we can do is propose rules.

14 The final step, what Rusty on it said is
15 correct so I won't rehash that. But again, this whole
16 thing was generated in response to the statute which
17 talks about a report and proposed rule.

18 MR. NICHOLS: Thank you. Ms. Gore.

19 MS. GORE: I agree with Rusty and Jason. I
20 just wanted to add for the newer Committee members, it's
21 not as complicated as it seemed in this whole
22 conversation.

23 I think we are really just talking about
24 four activities. So for those of you that may be lost,
25 someone will correct me if I am wrong, but we're asking

1 the Drafting Committee to really do four things, draft
2 language, draft the preamble, draft the proposed final
3 rule, and draft the final report.

4 Those are the four activities. And I do
5 believe the crossed out B above for 2010 responds to
6 that and really conforms to what we are allowed to have
7 access to and authority to as a Committee.

8 So I just wanted to add that clarification.
9 I would be completely lost if I hadn't been in the past
10 two committees in this whole conversation. Thank you.

11 MR. NICHOLS: Thanks. I am going to offer a
12 proposal to the Committee to consider these two
13 proposals. And in the absence of any objections, my
14 recommendation would be to first vote on the new
15 proposal.

16 There is a recommendation also that we keep
17 the language the way it is. So that would be this
18 section here, so that would be the second proposal. If
19 the first one is not passed or it cannot be changed
20 adequately, we should consider one of the other people
21 that recommended that we use the existing language.

22 So in the absence of any objection, I would
23 ask for a vote on this language, the new language. If I
24 could see thumbs up and thumbs down.

25 (Members complying.) Is there any objection?

1 (No response.) Does anyone have any
2 objection to the new language?

3 (No response.) So this is accepted by the
4 group?

5 (No response.) There are a lot of people
6 that didn't vote, but I would ask, is there any
7 objection to express any concern, any unresolved issue,
8 or is this acceptable by consensus to the group?

9 Ms. Henriquez?

10 MS. HENRIQUEZ: I would say from HUD's
11 perspective, I guess we could go either way, although I
12 think that the original language is clearer.

13 MR. NICHOLS: The original language is
14 clearer?

15 MR. SAWYERS: Is that a no?

16 MS. HENRIQUEZ: No, it's not a no. But I
17 think the better, clearer language is the original.

18 MR. NICHOLS: Ms. Gore?

19 MS. GORE: Did we have consensus?

20 MR. SAWYERS: We did have consensus.

21 MS. GORE: I'm confused.

22 MR. NICHOLS: We did have consensus. I just
23 wanted to make sure because a lot of people did not
24 indicate a preference. So I just want to make sure we
25 don't have any objection. I didn't hear an objection

1 yet.

2 Is there objections?

3 MR. SAWYERS: I object.

4 MR. NICHOLS: Do you have an alternative?

5 MR. SAWYERS: Yeah, I object on the basis
6 that the original language is clear. That's the reason
7 that I object. The alternative would be to offer the
8 2010 language as it is.

9 MR. NICHOLS: Okay. Thank you for that.
10 Any discussion about that since we don't have a
11 consensus on the item proposed that we just voted on?

12 (No response.) Any further discussion, or
13 should we take a vote on the existing language? And you
14 can remove the strike out please, Christine.

15 Ms. Bryan?

16 MS. BRYAN: I would propose, if we are going
17 with the original language, drafting the sentences where
18 it says, "The Drafting Committee shall elect its own
19 Committee spokesperson. Where they can't reach
20 consensus, it may refer back to work group."

21 My understanding is this Drafting Committee
22 never reached consensus or had a spokesperson. That's
23 just a couple of lawyers sitting behind me who told me
24 how it really works.

25 And also, I would like them to be volunteers

1 and not appointed because they are not necessarily -- we
2 can't appoint them if they work by the hour. They need
3 to volunteer, for the record.

4 MR. NICHOLS: Thank you. Can you please
5 open that up so we can see it? Take the strike out off
6 of it.

7 MR. SAWYERS: I am not too concerned about
8 this particular issue, but we had consensus until you
9 talked us out of it.

10 In other words, we had consensus. And one
11 of the members said, I would rather have this, but she
12 still gave consensus. And all of a sudden we are
13 starting all over again.

14 It was consensus to start with until we
15 prolonged that process and that's going to happen a lot.
16 I am just saying that once you get consensus, it's a
17 dead issue.

18 I didn't mean to blame you for that. If
19 somebody objects, they'll tell you. People will let you
20 know really fast.

21 So I think that if you ask for consensus and
22 nobody says anything, they've agreed, right? And so
23 consequently I think that I have no problem with what we
24 did except for the fact that I felt we had consensus.

25 MR. NICHOLS: I appreciate that. Mr.

1 Sossamon?

2 MR. SOSSAMON: I was trying to make up my
3 mind, Jack, and didn't vote along with others that had
4 not made up their mind of whether we agree with it or
5 not.

6 I think that's what Steve did, rightly so,
7 recognizing there was no indication one way or another,
8 wanted to be clear. Did we object or did we not object?

9 And when directly asked by Steve, I told him
10 I did object. So I am not sure we do have consensus on
11 it.

12 So now if there is a time limit on how
13 quickly we need to respond and vote, then let's
14 establish that and I'll operate within that rule.

15 MR. NICHOLS: We are really running short on
16 time but I will take a couple more comments. We may
17 have to leave off the discussion here and continue it at
18 a later time. Ms. Vogel?

19 MS. VOGEL: I am just again confused. So we
20 can't have multiple calls for consensus until we reach
21 consensus?

22 MR. NICHOLS: Given that this is the process
23 for observing the vote and making a judgment as to
24 whether we've reached consensus is somewhat of an
25 imperfect one made by a human being, namely, me.

1 I wanted to be absolutely sure, given the
2 fact that it appeared to me that many people did not put
3 their thumb up or indicate a vote one way or the other,
4 so the decision that I made in this case was to ask for
5 further clarification to find out if there was any
6 objection.

7 I don't know whether that was right or wrong
8 for me to do that. That was the decision that I made.
9 And as a result of that, one person expressed that they
10 were not in consensus.

11 So that was the process that I went through.
12 I don't normally want to have a vote and revisit it, but
13 in this case I didn't think in my judgment that the vote
14 was complete, so I asked for a completion on it.

15 Ms. Flood?

16 MS. FLOOD: I just want to make a comment.
17 I am totally confused now. I think part of it is -- I
18 think you, as the facilitator, have to give us better
19 direction.

20 And my concern is that we are going back and
21 forth, back and forth. And I am totally lost now.
22 Every time someone changed it, are they amending the
23 original proposal?

24 We need to stick with some kind of language
25 so we know it is being amended one time, two times,

1 three times, four times, five times.

2 I don't think there's any control over how
3 it's being presented back to us.

4 And as a new member of the Committee, I need
5 to have a clear understanding of how we are approaching
6 each one of these proposals by all of these people.

7 I liked the first one. Now I don't even
8 want to look at it anymore because I think the first one
9 covered all of this discussion. And I am happy with the
10 first one. So that's all I want to say.

11 MR. NICHOLS: Thank you. Mr. Adams?

12 MR. ADAMS: I wanted to make a point of
13 order too, because now after hearing Ms. Flood, we're at
14 a situation now where Rusty did make a proposal. It's
15 on the floor.

16 There was some offered amendments to it now.
17 And it's the original, because we didn't vote that down,
18 so it should be on the floor.

19 And so I would like to go back to where we
20 were before we end for the day and offer an amendment
21 again to that -- to the proposal that's on the floor.

22 In light of the discussion that we had quite
23 a while ago on the issue of the Drafting Committee and
24 its name, I would like to offer an amendment that would
25 call it the drafting group because I do share that

1 concern that was expressed earlier about there was
2 confusion over both of these groups being called
3 Committees.

4 So there is only one Committee in my mind,
5 that's the main Committee. The rest of these work
6 groups that work around us and help us are groups and
7 work groups. And so just to clarify that issue, I would
8 offer this to be called the drafting group.

9 MR. NICHOLS: In the original language you
10 are referring to?

11 MR. ADAMS: Yes.

12 MR. NICHOLS: We want to say drafting group,
13 is the proposed amendment. And Mr. Sossamon had a
14 proposed amendment to that also, which we didn't
15 capture. I want to make sure we get that language,
16 please.

17 MR. SOSSAMON: My proposal was the original
18 language in B. And then Ms. Bryan made an amendment to
19 it. And then Jason is making an amendment to it.

20 So what I would like to do is start with the
21 original language, see Ms. Bryan's proposed amendment
22 and accept it or not, and then consider Jason's proposed
23 amendment and accept it or not.

24 MR. NICHOLS: Ms. Bryan, your language,
25 could you repeat it, please?

1 MS. BRYAN: Deleting the last few sentences
2 that speak to electing its own Committee spokesperson
3 and reaching consensus.

4 The drafting group cannot reach consensus.
5 This group is not a decision-making group so it doesn't
6 apply.

7 MR. NICHOLS: Strike those two. Now, Mr.
8 Sossamon, your reaction to that?

9 MR. SOSSAMON: I agree with what you said is
10 that that group doesn't determine consensus. What it is
11 saying is just within that group, if the drafters can't
12 agree on the language, if they can't reach consensus on
13 the language that represents a work group or an outcome
14 or an outcome that this body agrees on, then they refer
15 it back to that work group or back to this body for
16 either the work group or this body to decide that
17 dispute among the drafting group. Okay?

18 MS. BRYAN: I guess if you need it in there
19 for just in case, but my understanding is it never
20 happened.

21 MR. SOSSAMON: Yeah, there's been times in
22 the Drafting Committee when different individuals within
23 the Drafting Committee, one believes the specific words
24 should be used to reflect the intent of the agreed-upon
25 result of the work group or this Committee.

1 And then others on the Drafting Committee
2 believe different words actually more accurately reflect
3 the intent of the Committee.

4 And when you have that within this drafting
5 group, then it actually needs to go back to the work
6 group or this Committee to make the decision which
7 verbiage they believe more accurately reflects the
8 decision of the work group or the Committee, not
9 necessarily one or the other of the drafting group.

10 That's in the event that there is a
11 disagreement. And that's what this language
12 accomplishes.

13 Also, on the drafting group, electing among
14 itself a chair or a spokesperson is, they should decide
15 among themselves who is going to come back either to the
16 work group or to this Committee to explain the draft
17 that they come up with.

18 MS. BRYAN: I will withdraw my friendly
19 amendment. I was just trying to be helpful. We've been
20 spending an awfully lot of time on this. It seemed like
21 it is getting pretty difficult.

22 MR. SOSSAMON: Does that address your
23 concern?

24 MS. BRYAN: Yeah, it's fine.

25 MR. SOSSAMON: Thank you. And again, I

1 accept Jason's friendly amendment.

2 MR. NICHOLS: I am told we are completely
3 out of time so we need to end the discussion on this.

4 If we are ready to take a vote, we can take
5 a vote. If we need more discussion, we will need to
6 suspend it for now.

7 Ms. Foster and Mr. Adams have their hands
8 up, so a quick comment.

9 MS. FOSTER: There's missing language that
10 we had in 2010 that would need to be added back in and
11 it's on the sentence, "As work groups or the full
12 Committee reach agreement on an issue the matter may be
13 referred to the drafting group."

14 MR. NICHOLS: Anything else?

15 MS. FOSTER: Maybe it doesn't need to be
16 said that this would be a volunteer drafting group.
17 That was proposed before.

18 That would be an amendment that I would
19 suggest, but I am not going to prolong this. I am still
20 troubled by this last sentence because I want matters on
21 which the drafting group can reach consensus.

22 I want those referred back to the full
23 Committee as well. So I don't want some suggestion that
24 they're only going to refer back things they can't agree
25 about. So I guess that troubles me a bit about the last

1 sentence.

2 MR. NICHOLS: Well, we don't want to rush
3 through a decision when there are things that trouble
4 people. We really are out of time. Mr. Adams?

5 MR. ADAMS: I would just like to make a
6 comment on why you keep saying, we're out of time. The
7 initial negotiated rulemaking that happened in the
8 history, you know, if you read the record on that, they
9 went until midnight.

10 I'm here for the long haul. I scheduled a
11 flight for tomorrow morning anticipating this very issue
12 that we would spend as much time as we needed to while
13 we are here to get the work done.

14 I don't know if there's issues with having
15 this room available past 5:00 or if those are the kind
16 of things that we're going to come up against. But my
17 concern is that, you know, this very thing that we get
18 cut off when we're in the middle of a very important
19 discussion based on the issue of running out of time.

20 Again, I have all evening here, and I
21 committed myself to that and I hope others have too.

22 MR. NICHOLS: Okay. I apologize for
23 bringing that up. Is there any alternative that we have
24 in terms of time? Can we go longer on this? What's the
25 will of the Committee?

1 MR. DOLLARHIDE: I think that's up to HUD if
2 we can continue because they are the ones that arranged
3 the room and everything. That's just a question for
4 them.

5 MR. NICHOLS: I am going to ask for some
6 guidance on that since I don't have the answer myself.

7 MS. BRYAN: I just think we've spent so much
8 time talking about this and we're almost there. I would
9 hate to lose all of the discussion that we've had for
10 the last hour on this one section.

11 MR. NICHOLS: Mr. Jacobs?

12 MR. JACOBS: I agree with Jason. We need to
13 finish this as much as we can. So I call for the vote.

14 MR. NICHOLS: Okay. I would be happy to
15 call for the vote. Ms. Foster expressed some
16 reservations. I don't know if we've addressed those.

17 MS. FOSTER: I could propose language that
18 might address those if the Committee would entertain.

19 MR. NICHOLS: Please do while we're waiting
20 for a decision on the time frame.

21 MS. FOSTER: It has to do with the last
22 sentence. On the fly I would say, all matters will be
23 referred back to the work group or the full Committee.

24 (Pause.)

25 New sentence, when the drafting group cannot

1 reach consensus on a matter, comma. And strike all the
2 way through resolution and with -- yeah. So that it
3 reads, "All competing draft proposals will be presented
4 to the work group."

5 And so it will be between "proposals" and
6 "presented".

7 I don't know if that gets it.

8 MR. NICHOLS: Is that acceptable?

9 MR. SOSSAMON: Yes, I accept that.

10 MR. NICHOLS: Ms. Tufts?

11 MS. TUFTS: I would change "on a matter" to
12 "cannot reach consensus on language." Because they're
13 not deciding a matter. That's already been decided.
14 It's just the language that they're --

15 MS. FOSTER: I would be happy to see
16 "matter" changed to "language" in both places. All
17 language will be referred back and not "a language,"
18 probably just "language."

19 MR. NICHOLS: Christine, you got that? Any
20 further amendments?

21 (No response.) Are we good, Mr. Sossamon?

22 MR. SOSSAMON: Yes, I agree with the
23 changes.

24 MR. NICHOLS: Go ahead.

25 MS. FOSTER: I think that should be either

1 "all language" or "all matters." That's fine. "All
2 language" is fine.

3 MR. NICHOLS: Let's call for a vote on this.
4 Could I please see a clear indication of thumbs up if
5 you agree with this? I want to make sure that we don't
6 have a problem again.

7 Thumbs up, please, or down.

8 (Members complying.) Thanks very much. This
9 is accepted by the Committee.

10 MR. SAWYERS: I thought I put my thumb down.

11 MR. NICHOLS: I'm sorry, I didn't see you.

12 MR. SAWYERS: The only objection I have is
13 that the consensus thing, let's say the Drafting
14 Committee or group had a consensus on a matter that we
15 hadn't discussed -- it has nothing to do with the
16 drafting.

17 I am just saying, I'm not going to hold this
18 up. It's just something that I think that we say, if
19 they can't reach consensus. I can't see what that has
20 to do with drafting.

21 So that was my comment. And I would like to
22 take out "if they can't reach consensus" but I don't
23 have a lot of heartburn over it, but I did want to
24 discuss it. I wanted to take the time.

25 MR. NICHOLS: So, Ms. Foster, do you suggest

1 we take this out? We can't reach -- the consensus on
2 language. Would you like to discuss it further? Do you
3 have any additional perspective to add to that?

4 MS. FOSTER: Well, I guess insofar as we are
5 defining their decision-making processes involving
6 consensus, I mean, I suppose we could say cannot agree
7 if the word "consensus" is troubling.

8 I think it does end up being by consensus.
9 But "cannot agree" would be fine.

10 MR. NICHOLS: Would that work for you? Does
11 that address your concern?

12 MR. SAWYERS: Yes. The reason I voted
13 against it was to bring a point that it's unnecessary.
14 I will accept it if that's what everybody wants to do.

15 MR. NICHOLS: Okay. Any other comment?

16 (No response.) I call for the vote again.
17 Could I see the thumbs up or down on this change of
18 language?

19 (Members complying.) Thank you very much.

20 (Clapping.) Our next topic for discussion is
21 logistics for the next meeting. And I would like to ask
22 for some help from Ms. Sara Fiala, who will go over the
23 arrangements for the next meeting.

24 Ms. Henriquez?

25 MS. HENRIQUEZ: There was a question as to

1 how long we could have this room. We need to be out by
2 6:00 p.m. And we need to be mindful if there's public
3 comment and there is a retiring of the colors that has
4 to happen by then as well, so just to factor that in.

5 MR. NICHOLS: Sara?

6 MS. FIALA: Good afternoon. I am going to
7 make this short and sweet. I am Sara Fiala. I'm
8 Project Director at FirstPic. We are coordinating all
9 of the sessions, as well as having two tech technical
10 staff from the Customer Service Center who will be
11 helping with technical formula issues.

12 So I just want to go over our website that
13 we have designed to provide information about all of the
14 sessions. On the other screen it gives you the website
15 address.

16 It's pretty basic and pretty simple.
17 There's a screen that just runs through the session
18 information.

19 It does have the September session, which is
20 September 17, 18, and 19. You can either get to the
21 session information by pointing on the monitor. And it
22 sort of gives you all the rundown. The next session
23 will be held here at the Grand Hyatt.

24 The main session will be in the same room.
25 You are able to make your hotel reservation. Do so

1 right away. There is a link on the website. You can
2 make them through the hotel website. You can call the
3 phone number to the hotel or you can make them
4 downstairs. The front desk is ready to accept
5 reservations.

6 There is one minor change. The room block
7 is listed as HUD. FirstPic HUD is shown on the second
8 smaller screen.

9 This just provides some information about
10 the hotel. You can also go to the drop down session.
11 There is also some general information. You can link to
12 that hotel website.

13 There is a contact. You can feel free to
14 give me a call. There is my phone number. You can
15 submit an e-mail. Most people have my address as well.

16 For Committee members, you will see that
17 there is a Committee member log. You should have
18 received an e-mail asking you to register for the
19 website using the e-mail address to which I have been
20 sending Committee-related information.

21 When you create a new user account, you have
22 to use that e-mail address. That is linked to your
23 personal account. That's how we know that it is you
24 logging in and that's how we authenticate your
25 information.

1 Once you log in, there is a new tab that
2 pops up. So here you have all of your travel and
3 logistics information. You have the spreadsheet to get
4 reimbursed. We will also be posting documents of
5 information in your binders. You can download here and
6 it's also on your thumb drive.

7 In addition to the binders, you can come to
8 the website. Once the information is distributed and
9 finalized, we will have another tab that the general
10 public can access.

11 By the early next week, we will have the
12 finalized charter posted just for public downloading.

13 Please bring your binders back with you to
14 the session. We will also be posting technical
15 assistance questions and responses as well.

16 You will see a new tab here that says
17 "documents" which you can access the information as
18 well. You can always find me or call me. September 2
19 is the reservation cutoff date.

20 MS. PODZIBA: I would like to open the floor
21 for public comments. Is there anyone in the audience
22 who would like to address the Committee at this time?

23 MEMBER OF THE PUBLIC: (Reading from
24 document.)

25 Thank you. Good afternoon. My name is

1 Edward (inaudible). Thank you for an opportunity to
2 provide some comments on behalf of the Navajo Housing
3 Authority.

4 I am also proud to provide these comments on
5 this historical day as we all honor and celebrate the
6 50th anniversary of the march that occurred in
7 Washington, D.C. This was a very important March.

8 It's to bring attention to the much needed
9 jobs and the need to recognize freedom that provided
10 civil rights which are the fruits of equality.

11 Do you know that this year, 2013, Navajo
12 Housing Authority is also celebrating honoring the
13 vision of our tribal leaders who established our tribal
14 housing authority in 1963.

15 The establishment of Navajo Housing
16 Authority occurred just three months prior to the March
17 on the National Mall in Washington, D.C.

18 The national drum major for equality was the
19 late Dr. Martin Luther King. In the past couple days we
20 have watched and listened to the Negotiated Rulemaking
21 Committee as they have played an active role in
22 fulfilling their sacred obligations to honor treaties
23 that have been set in place between our past tribal
24 leaders and also the federal government.

25 As tribal nations, Negotiated Rulemaking

1 Committee members are working to redeem a promissory
2 note and we refuse to believe that the bank of
3 (inaudible) is bankrupt. We refuse to believe that
4 there are insufficient funds in the great vaults of the
5 opportunity in this nation. And also we come to cash
6 this check, the check that will give us on demand the
7 riches of (inaudible) justice for American Indians and
8 Alaska neighbors.

9 Now is the time to lift our nation from the
10 quicksands of (inaudible) injustice. I must say to you
11 my Native American brothers and sisters, we must conduct
12 our struggle on the high plain of dignity.

13 We must be disciplined to stand united and
14 assist the tribes and tribal family members. We must
15 remind ourselves that we share the common cause of
16 having insufficient infrastructure and (inaudible)
17 houses. The past two days we have demonstrated that we
18 can come together and share consensus on various topics
19 of housing.

20 We, as a nation, need to continue working on
21 the housing dream that is deeply rooted in American
22 dream.

23 In closing, if we do not create consensus
24 based on solution, then our elected leaders, Congress,
25 will make the housing decision on our behalf.

1 Let us continue to march in preserving our
2 self determination, enhancing our sovereignty while
3 securing equality and affordable housing to grow our
4 local communities and to build our tribal nations.

5 I thank you for your attention.

6 (Clapping.)

7 MS. PODZIBA: Are there any other public
8 comments?

9 (No response.) Thank you, sir. I will then
10 turn to Ms. Henriquez for some closing remarks.

11 MS. HENRIQUEZ: It's been a long two days.
12 I think we got a lot accomplished. I think we have a
13 long way to go. I thank the audience for your patience
14 with all of us.

15 We will try to make sure that we do this in
16 a way that gets the job done, gets it done well, and
17 that we meet your expectations of us as we do that work.

18 I want to thank my fellow Committee members
19 for keeping your eyes on the prize. There is much to be
20 done. We have come a long way.

21 I was just reading the President's remarks
22 that he delivered today in recognition of the 50th
23 anniversary of the March on Washington. A lot of work
24 has been done. The door of opportunity has been opened.
25 It is not wide open.

1 And it's incumbent on all of us to make sure
2 that that door is opened as widely as possible and
3 remains that way for all of us.

4 So we will continue our work next month and
5 in the months to come, subject to availability of funds.
6 But seriously then, we've got a road ahead of us. It's
7 important work that you are all called to do.

8 And I know that we take it all very
9 seriously and in good faith moving forward to really
10 come to a resolution that is both respectful and helpful
11 and hopeful for all of the tribes in the United States.

12 To your staffs who are here, thank you for
13 your wisdom and your guidance. To the HUD staff, I
14 would say also thank you very much for your wisdom and
15 guidance in helping us get to where we have come thus
16 far and for being willing to go further down the road.

17 With that, I would like to say safe travels
18 to all of you. God's blessings on all of you. And I
19 will see you here in September. Thank you very much.

20 (Clapping.)

21 (Mr. Evans made an announcement regarding
22 the hospitality room after the meeting today.)

23 MS. PODZIBA: Mr. Adams?

24 MR. ADAMS: I'd like to make a comment in
25 closing in regards to the issue I addressed earlier in

1 regards to the timing and the session here.

2 The next meeting we are going to have we are
3 here for three days. And so I would ask the Committee
4 to consider working the first two days into the evening
5 for those two meetings.

6 Because we are going to have three days here
7 and then who knows when we are going to be back
8 together? So I would hope we could at least get through
9 the protocols, get this finalized and then get to work
10 on framing the issues that we are going to be tackling.

11 If we could leave that three-day meeting
12 with at least the issues framed, I would call that
13 success. I am hoping that we can get that far.

14 I just wanted to make that comment because
15 again, history tells us that we have, in the past, had
16 Negotiated Rulemaking Committee meetings that have
17 lasted well into the evening with a lot of work to be
18 done.

19 And I think we have a huge opportunity in
20 front of us to get some work done and hopefully we can
21 commit to that. Thank you.

22 MS. PODZIBA: Are there any other
23 announcements from Committee members?

24 (No response.) Mr. Adams, will you lead us
25 in the closing prayer, please.

1 (Mr. Adams recited the closing prayer.)

2 MS. PODZIBA: Colorado Intertribal Veterans
3 will retire the colors.

4 (Retiring of Colors ceremony.)

5 MS. PODZIBA: We are adjourned.

6 (The hearing was concluded at 4:45 p.m.)

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REPORTER'S CERTIFICATE

STATE OF COLORADO)
SS.)
COUNTY OF DENVER)

I, Denise A. Freeman, do hereby certify that
I am a Registered Professional Reporter and Notary
Public within the state of Colorado.

I further certify that this meeting was
taken in shorthand by me at the time and place herein
set forth and was thereafter reduced to typewritten
form, and that the foregoing constitutes a true and
correct transcript.

In witness whereof, I have affixed my
signature this 9th day of September, 2013.

Denise A. Freeman
PATTERSON REPORTING & VIDEO
Denise A. Freeman
Registered Professional Reporter
And Notary Public

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REPORTER'S CERTIFICATE


STATE OF COLORADO)
SS.)
COUNTY OF ADAMS)

I, Geneva T. Hansen, do hereby certify that I am a Professional Shorthand Reporter and Notary Public within the State of Colorado.

I further certify that the foregoing transcript constitutes a true and correct transcript to the best of my ability to hear and understand the audio recording.

I further certify that I am not related to, employed by, nor of counsel for any of the parties or attorneys herein, nor otherwise interested in the result of the within action.

IN WITNESS WHEREOF, I have affixed my signature and seal this 9th day of September, 2013.



GENEVA T. HANSEN