



EO-1260

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SURFACE TRANSPORTATION BOARD
395 E Street SW
Washington, DC 20423
Section of Environmental Analysis

July 13, 2009

Faith Spotted Eagle
Cultural Committee
Yankton Sioux Tribe
Marty, South Dakota

Re: Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad (DM&E)
Corporation Construction into the Powder River Basin

Dear Faith:

I am writing in response to your June 17, 2009 letter in which you raised some issues of concern that came to light during recent field visits performed by you and other tribal participants in the Wyoming (WY) and South Dakota (SD) portions of the DM&E project area. Among your concerns was that the field visits were rushed, the transportation and safety needs of tribal elders were not being adequately met, the limited presence of tribal participants was putting the field efforts in jeopardy, and that a tribal identification survey was needed as many tribal features appear to have been missed by archaeological based survey crews.

1) Regarding the need to conduct a tribal survey:

First, let me affirm that the purpose of the recent field effort, completed over the month of June, was to provide the Surface Transportation Board (STB) with additional input from tribes regarding the potential National Register eligibility of 68 stone circle sites that had previously been identified by archaeologists but for which additional information from tribes was needed. This effort was never intended to give an opportunity for tribes to complete a survey of the project area, but rather to provide STB with needed information about the eligibility of the 68 sites for which the National Register eligibility was in question and for that reason remained "unevaluated" pending further tribal input.

As you know, the STB has nearly completed the cultural resources inventories of the entire DM&E project area which includes Minnesota in addition to the states of WY and SD. The results of these surveys have been documented in over 20 survey reports, the majority of which have already been distributed to all the consulting parties and federally recognized tribes participating in this project for a 30-day review period pursuant to the requirements outlined in the Section 106 Programmatic Agreement (PA). STB decided to extend this 30-day review, for more recently completed reports, in instances where tribes felt that visits to areas or sites of

interest were needed. However, almost no comments regarding any of the sites or any of the survey reports from WY and SD were received from any tribes; and no tribes, other than the Northern Cheyenne Tribe, requested site visits to any of the 68 stone circle sites as part of the report review process.

The relative lack of response from Federally recognized tribes regarding sites, particularly the 68 stone circle sites, left the STB in a position where additional information from tribes was deemed needed even though the requirements outlined in the PA said we could move on to the next step in the process. Sorting out the eligibility issues has been and continues to be the purpose of the ongoing field efforts.

I understand that newly identified features have been found as part of the site evaluation effort. Any newly identified features have been plotted using a hand-held GPS unit and new site maps will be completed and site forms updated as appropriate. We will continue to ensure that any newly identified features not included in the original site records for the 68 sites will be added to the site inventory along with any notations deemed appropriate by participating tribes.

2) Regarding the limited participation of tribes:

The STB is a small agency with a limited staffing and funding to complete Section 106 consultation activities. As a general rule, we rely on applicants such as DM&E, to provide funding for any needed activities that are required to complete the Section 106 process. Since DM&E is funding this effort, the STB must be prudent and fair in its requests for payment of specific activities and make certain that what we do is fulfilling our obligations under the PA.

As you know, we received an overwhelming response from tribes interested in participating in the June field visits and needed to carefully consider what costs should appropriately be funded. To be fair, we agreed to allow tribes to provide one person per tribe and one other but only in instances where the primary representative needed physical assistance because of health or safety issues.

You noted in your letter that additional people were needed to properly assess the sites. As I explained to you in our recent email correspondence, we do not object to other tribal persons participating in the visits, but we would not require DM&E to pay for any additional participants.

3) Regarding the transportation needs of elders:

In our initial correspondence to tribes regarding access issues to the 68 sites, we noted that some of the sites were in locations that would be physically demanding and would be difficult to hike to. We recommended that any elders that would be participating in the effort should thus carefully consider his/her involvement in this project based on the field conditions and sheer physicality needed to hike to some of the sites.

We had considered using ATVs, as you recommended in your letter, to transport elders to the sites. However, DM&E expressed concerns about the safety of these vehicles as they are notoriously unstable and not suited to transport physically fragile individuals. I would thus caution you and others interested in participating in any future field visits to carefully consider

the physical demands of getting to the sites before agreeing to participate. We will ensure in the future that we do a better job of advising you of the physical demands of getting to specific sites well enough in advance of any future visits so that you can plan accordingly.

4) Regarding the rushed nature of the site visits:

I apologize if you feel that the site visits have been rushed. I was not aware of this until receiving your letter. I also do not believe that the persons assisting us with this project were previously aware of this concern. Both Randy Withrow and Chris Schoen, who have been organizing this effort for the STB, have been working diligently with DM&E and HDR staff to sort out the often complicated logistics of planning site access, providing transportation to and from the sites, working out the daily challenges of locating specific sites and adjusting to changing weather conditions. To add to this, the sites have generally been an hour or two from the hotels and in areas with no restrooms. Due to these and other challenges, it has not generally been a good idea to spend more than an hour or two per site. If you have specific sites that are of interest to you and that you need to spend more time at, we will try to accommodate you. However, you will have to let either Randy or Chris know that you need more time while you are out at a specific site. I am certain they will do all that they can to accommodate any reasonable request, keeping the above considerations in mind.

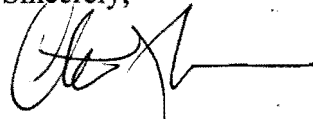
Future Opportunities/Ethnographic Study

I understand from recent communications that you have had with Randy that you are also concerned about that lack of documentation provided in the site forms regarding the spatial and visual interconnections between sites, the relationship between the sites and nearby land forms, and associated plant communities. I am hopeful that these issues will be investigated by tribes as part of future mitigation efforts and/or the ethnographic study that has yet to be completed. During the mitigation phase there will likely be additional opportunities for tribes to view sites of interest, including the 68 sites, and have time to explore these and other questions.

I am personally grateful to you for the time and energy that you have put into this effort and the project as a whole. I look forward to a continued positive and cooperative working relationship with the Yankton Sioux Tribe and other participating Federal tribes whose help with this project has been invaluable.

Please feel to call (202-245-0293) or e-mail (gliddenc@stb.dot.gov) me at your convenience if you have any questions or concerns regarding any of the above.

Sincerely,



Catherine Glidden

CC: Kip Collins, Yankton Sioux Tribe (THPO)
Herb Jones, DM&E
Randy Withrow, LBG