



EO-946

CG

SURFACE TRANSPORTATION BOARD

Section of Environmental Analysis

395 E Street, SW

Washington, DC 20423-0001

June 3, 2008

Mr. Russell Eagle Bear, THPO
Rosebud Sioux Tribe
P.O. Box 809
Rosebud, South Dakota 57570

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

Dear Mr. Eagle Bear:

Thank you for your April 25, 2008 letter regarding the Dakota, Minnesota & Eastern Railroad Corporation's Construction into the Powder River Basin Expansion Project (project). In your letter, you express concerns regarding our extension of the Section 106 Programmatic Agreement (PA) and about establishing appropriate consultations between the Surface Transportation Board (STB) and your tribal government. I address these issues below.

As you know, the original Section 106 PA for this project was executed on May 15, 2003 (for a five-year term), after years of consultations between the STB's Section of Environmental Analysis (SEA), and participating tribal governments. As early as 1998, I was personally involved in many meetings with 32 participating tribes including the Rosebud Sioux Tribe and four tribal organizations. (I have enclosed a summary of our earlier tribal consultations.)

The terms of the PA were developed with significant input from tribal members. Moreover, SEA also crafted a memorandum of agreement that considered tribal interests not covered in the PA. In addition to tribal input, the PA was drafted in consultation with many cooperating agencies, all of whom adopted the PA to satisfy their own Section 106 reviews. As the lead Federal agency for this project, STB must thus carefully weigh the concerns of the original PA signatories, especially those cooperating agencies that adopted the PA for their 106 compliance.

As the date the PA was to expire approached, the STB and other signatories to the PA determined that extending the PA was the most effective way to ensure that the Section 106 process continue to be carried out as originally intended. Although the Section 106 regulations only require that the original signatories sign the PA extension for it to remain in effect, all of the tribes currently participating in consultations for this project, including the Rosebud Sioux Tribe, were also invited to sign. This invitation remains open.

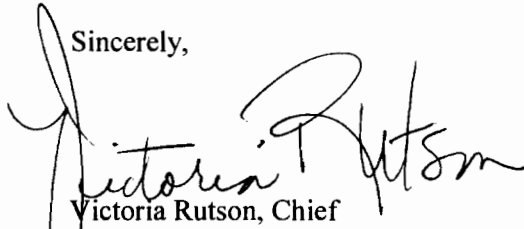
The PA Extension was fully executed by the Advisory Council on Historic Preservation (ACHP) on May 8, 2008; however, your tribe may still provide its signature to the ACHP for inclusion in the document (copy attached). I would be happy to establish a meeting with your tribal government to discuss the advantages of signing the PA Extension. I would also like to affirm my agency's interest in

meeting with you and your Chairman to begin appropriate tribal consultation as outlined in your letter. Catherine Glidden, SEA's environmental manager for this project, will be contacting you by telephone to inquire how STB can best facilitate a meeting between your tribal leadership and the STB.

Meanwhile, if you have any questions about our agency or the project, please do not hesitate to contact me at 202-245-0295 (Rutsosnv@stb.dot.gov) or Catherine Glidden at 202-245-0293 (Gliddenc@stb.dot.gov).

We look forward to meeting with you soon and establishing appropriate consultations with your tribe.

Sincerely,



Victoria Rutson, Chief
Section of Environmental Analysis

Enclosures: Summary of Tribal Consultations
Programmatic Agreement Signature Page

Cc: Rodney Bordeaux, Chairman Rosebud Sioux Tribe
Herb Jones, DM&E
David Bibler, Louis Berger Group
Michael Madson, HDR Engineering, Inc.