



## Revised Tongue River Conference Call Notes

**Catherine Glidden** to: brhodd1, clairsgreen, esevone1, cultres,  
hubertt, jmswhitted, jb.weston, ostbbrd,  
gravattlana, ostnrranrd, rickthomas\_06,  
Cc: Evelyn Kitay, Vicki Rutson

11/22/2011 01:01 PM

From: Catherine Glidden/STB  
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Cc: Evelyn Kitay/STB@STB, Vicki Rutson/STB@STB

Hello All,

Here are revised notes from our 11/17/11 Conference Call on Tongue River. This revision includes the comments provided by NRDC. So far today I have not had any other comments.

Thanks,  
-Cathy

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STB Notes.docx

Notes from 11/17/11 Teleconference with Tongue River Section 106 Programmatic Agreement  
Consulting Parties

Vicki Rutson, STB OEA Director

Cathy Glidden, STB OEA

Evelyn Kitay, STB GC

Ken Blodgett, STB OEA

Christine Whitacre, NPS

David Coburn, attorney for TRRC

Shannon Johnson, ACOE

Doug Melton, BLM

Lisa Axline, MT DNRC

Steve Brady, N. Cheyenne Tribe

Honor Keeler, Association on American Indian Affairs

Rose Moore, NPRC

Beth Kaeding, NPRC

Mark Fix, NPRC

Lisa Baete, USDA

Terry Clouthier, Standing Rock Sioux

Dianne Desrosiers, Sisseton Wahpeton-Oyate

Jim Whitted, Sisseton Wahpeton-Oyate

Lana Gravatt, Yankton Sioux

Conrad Fisher, Northern Cheyenne

Russell Eagle Bear, Rosebud Sioux

Vicki Rutson provided an update on new developments related to the Tongue River Railroad Company (TRRC) and how those developments pertain to the Section 106 process. Following the June 21-23, 2011 tribal meeting in Rapid City, TRRC was sold. The new owners informed the Office of Environmental Analysis (OEA) in September that it would be moving forward with construction of Tongue I, but Tongue II and III construction was not reasonable in the foreseeable future. In addition, STB is waiting on a 9<sup>th</sup> Circuit Court decision addressing litigation in Tongue II and III. A petition to reopen STB's Tongue III decision, filed by NPRC, is pending. In early November, TRRC provided OEA a map with endpoints of what it intends to construct now. OEA would like to proceed with Section 106 consultation and draft a programmatic agreement to address the Tongue I construction only, and seeks input at this time from consulting parties on this idea.

Christine Whitacre asked for an explanation of what 9<sup>th</sup> Circuit Court is deciding. Evelyn Kitay explained that it is a NEPA challenge.

Jim Whitted commented that there had not been appropriate tribal consultation/involvement in the process.

Russell Eagle Bear asked about Phase 1 survey.

Mark Fix raised questions about the spur to Otter Creek whether it had been properly considered in Tongue I and viability of coal for mining in general (at Montco Mine).

Honor Keeler said that she had seen no materials – her email is [honor.keeler@gmail.com](mailto:honor.keeler@gmail.com).

Beth Kaeding also questioned the environmental review of the Otter Creek spur.

David Coburn stated that the Tongue I EIS included the Otter Creek spur and that maps in the EIS show the spurs.

Vicki Rutson stated that now is the time to move forward with consultation, not to find reasons not to move forward.

Steve Brady stated that a full ethnographic study needs to be done.

Dianne Desrosiers asked that she be sent a link to environmental documents.

Beth Kaeding stated that Northern Plains strongly supports the development of a PA that actively involves affected Native American tribes and substantively addresses issues of concern – and resolves them.

Vicki Rutson asked whether everyone agrees on moving forward with developing a programmatic agreement to address just construction of Tongue I only.

Dianne Desrosiers does not object, but needs more information.

Christine Whitacre asked if there is an assumption that Tongue II and III will be built. STB responded that Tongue II and III cannot move forward without the approval of Forrest Mars (Tongue River Holdings), that Tongue II and III are subject to the 9<sup>th</sup> Circuit Court decision (yet to be made), and that TRRC says it's not reasonably foreseeable to move forward with constructing Tongue II and III at this time.

Mark Fix reiterated that the Montco Mine cannot be developed.

Dianne Desrossiers asked for clarification of this statement.

Mark Fix stated that coal at Montco Mine is alluvial coal and cannot be mined. He indicated that another EIS needs to be prepared.

Dianne Desrosiers indicated that there are a number of issues that should be investigated in further environmental review (such as a TCP study) so the true impacts of the project can be seen.

Conrad Fisher pointed out that Otter Creek mines did not become a reality until recently. The Tongue I EIS is old. He doesn't know if an adequate ethnographic study or appropriate consultation was conducted. He feels that there is a strong argument for reconsidering the EIS for Tongue I due to lack of documentation and the time that has passed.

Lana Gravatt stated the need to revisit / redo / reopen the EIS for Tongue I.

Terry Clouthier referenced the Section 106 regulations which give tribes the right to be consulted, and questions how STB can proceed without reopening the EIS.

STB explained that Tongue I is administratively complete. Based on the EIS, one of the mitigation measures requires that we complete an agreement document in fulfillment of the Section 106 requirements.

Terry stated that a survey was required per good faith efforts.

Cathy Glidden stated that STB intends to address tribal concerns and make a good faith effort to identify historic properties pursuant to the Section 106 regulations.

Terry is concerned that 1980's studies will contradict what we will find on the ground now.

Cathy Glidden explained that it is because it is not always known what will be found (i.e. such as instances where predictive models are used) that there is therefore a programmatic agreement in place and that identification is done before any construction is completed and that the programmatic agreement contains other provisions such as an inadvertent discovery stipulation. She also noted the guidance that has recently been issued by the ACHP regarding the identification of historic properties and that the staff at OEA is aware of this guidance.

Dianne Desrosiers indicated that tribes don't agree with predictive models, and that literature search is only helpful if studies have been done there previously.

Cathy Glidden said that much work still needed to be done on the ground for identification, and details would be in the programmatic agreement and that is why we want/need tribal input regarding the details of the agreement document.

Ken Blodgett reviewed the proposed target dates for the programmatic agreement consultation process.

Dianne Desrosiers objected to timelines without having time to review materials, citing the small offices that tribes have.

Ken Blodgett indicated that timelines were just targets and were flexible, and that perhaps the first step should be to agree to schedule a tribal consultation meeting in January.

David Coburn indicated that the Tongue River Railroad Company was prepared to pay for 2 tribal members to attend the meeting in January.

Dianne Desrosiers was happy for that and was amenable to holding the meeting in Rapid City in January.

Conrad Fisher encouraged tribal representatives to look at schedules and pick a good date. He suggested that 2 days might be appropriate for a meeting. He also indicated that the N. Cheyenne would like to host a meeting at some point in the future when the weather would allow for a site visit.

Steve Brady raised the issue that the exact boundaries of the N. Cheyenne Reservation are in question and that part of what the N. Cheyenne claim could be east of the Tongue River.

Lana Gravatt stated that N. Cheyenne jurisdiction goes half way into Tongue River as it is.

Dianne Desrosiers questioned whether STB would send lawyers to January meeting.

Vicki Rutson indicated that just Cathy Glidden, who is not an attorney, would represent the STB at the meeting.

Cathy Glidden discussed the timing of the January meeting. The group indicated that early January is not the best time. Rather, mid to late January would likely be better. No firm dates were fixed but Cathy said that she would offer up some dates in an email. She also said she would email the appropriate STB Tongue River links to everyone.

Vicki Rutson thanked everyone and said that notes would be forthcoming.

Meeting adjourned.