

Tongue River Railroad Environmental Impact Statement

Docket No. FD 30186

National Historic Preservation Act, Section 106 Teleconference

March 10, 2014

DRAFT Meeting Summary

Invitees: Please see meeting agenda for list of invited parties.

Attendees:

800.2(a) Surface Transportation Board, Office of Environmental Analysis, Lead Agency Official

Ken Blodgett	Office of Environmental Analysis
Catherine Nadals	Office of Environmental Analysis

Other Federal Agencies

Shannon Johnson	Army Corps of Engineers
Matt McCullor	Army Corps of Engineers
Doug Melton	Bureau of Land Management
Erica Jones	USDA Agriculture Research Service- Stoneville, MS

800.2(b) Advisory Council on Historic Preservation

Najah Duvall-Gabriel	Advisory Council on Historic Preservation
Charlene Dwin-Vaughn	Advisory Council on Historic Preservation

800.2(c) Consulting Parties

800.2(c) (2) (ii) Indian Tribes, Off Tribal lands

Dianne Desrosiers	Sisseton Wahpeton Oyate
Michael Blackwolf	Fort Belknap
Steve Brady	Northern Cheyenne
Conrad Fisher	Northern Cheyenne
Terry Clouthier	Standing Rock Sioux
Andrew Willey	Cheyenne Arapaho

800.2(c) (3) Representatives of Local Governments

Lisa Axline	Department of Natural Resources and Conservation (DNRC)
Jean Riley	Department of Transportation (DOT)

800.2 (c) (4) Applicants for Federal Assistance, Permits, Licenses, or Other Approvals

David Coburn	Steptoe & Johnson, Attorney for Applicant
Doug Dorsey	Hanson Professional Services, Consultant to Applicant

Jamie Hamm	Transystems, Consultant to the Applicant
Derin Warren	BNSF Railway
Barbara Ranf	BNSF Railway
Brooke Kuhl	BNSF Railway

800.2(c) (5) Additional Consulting Parties

Amy Cole	National Trust for Historic Preservation
Betsy Merritt	National Trust for Historic Preservation

800.4(a) (3) Other Parties Likely to Have Knowledge or Concerns with Historic Properties

Chere Jiusto	Montana Preservation Alliance
Svein Newman	Northern Plains Resource Council
Maggie Zaback	Northern Plains Resource Council
Alexis Bonogofsky	National Wildlife Federation
Clint McRae	Rocker Six Cattle Company

ICF International, Third-Party Contractor to the Surface Transportation Board

Colleen Davis	ICF International
Elizabeth Diller	ICF International
Richard Starzak	ICF International
Alan Summerville	ICF International

Cathy Nadals welcomed participants to the teleconference and reviewed the agenda: discussion topics for today's teleconference would include a summary of the 106 consulting party meeting held in Billings in February, additional fieldwork tentatively scheduled from May, and completion of a Programmatic Agreement.

Rick Starzak thanked everyone who attended the 106 consulting party meeting held in Billings or participated by phone. Sixty-five people attended on Thursday, February 13, 2014 and 55 attended on Friday, February 14, 2014. Topics covered during this meeting included a review of project status, summary of the Section 106 consultation to date, review of the records search effort, explanation of the field methods, and summary of the results of the archaeological and built resources survey. Results of the tribal resources survey were made available to the tribes in the form of maps and a table for discussion during the tribal caucus on Thursday afternoon. James Walksalong discussed the field effort. A court reporter transcribed the meeting and participants took notes on flip charts.

Mr. Starzak asked teleconference participants if there were any comments about the meeting.

Ms. Nadals indicated that planning for additional cultural resources survey work was underway. Mr. Starzak explained that Ms. Nadals had sent an email regarding this effort. Based on weather, the best time to survey appears to be May. The project team is currently reviewing maps and contacting landowners regarding access to lands. Tribal representatives have been asked to communicate availability for field survey participation.

Conrad Fisher thanked the Surface Transportation Board (Board) for acknowledging the need for additional survey work. Mr. Fisher recommended reviewing the tentative survey dates. He indicated that May can be rainy and suggested providing tribal representatives with a range of dates. He suggested that the field survey be conducted during June.

Ms. Nadals invited other comments or questions regarding upcoming field survey.

Clint McRae stated that the landowner group that he is affiliated with will meet on March 19, 2014, to discuss access for surveys. They plan to draft a letter to explain whether they will allow access for cultural studies, which would only be allowed with participation from Tribal Historic Preservation (THPO) offices.

Alexis Bonogofsky asked about the status of ethnobotany studies, which were mentioned at the Billings meeting. Ms. Nadals replied that it is being considered for inclusion as a part of the Programmatic Agreement (PA). If undertaken, an ethnobotany study would be performed for a licensed alternative.

Cathy Nadals introduced the topic of the PA. She explained that a draft PA dated 2011 was created in the context of the former Tongue River 1, 2, and 3 projects. Ms. Nadals said that after the Billings meeting formally adjourned, a group of attendees including herself, Mr. Starzak, Mr. Fisher, Ben Rhodd, Terry Clouthier, Curley Youpee, Steve Vance, Chris Jenkins, and David Coburn stayed behind to discuss the PA. Using the 2011 PA as a basis, the group began to lightly edit the document. She will share this version, including new bullet points reflecting ideas shared during consultation.

Charlene Vaughn recommended that the Board explain why the use of a PA is appropriate. Ms. Vaughn suggested including discussion of why the PA will work and why provisions of the PA are germane. Mr. Fisher asked if now is too soon in the process to develop a PA. Mr. Fisher expressed concern that development and execution of a PA would end the Section 106 process. He agreed with Ms. Vaughn that it would be helpful for the Board to explain the need for a PA.

Ms. Nadals responded that under 36 CFR 800.4 (b) 2, phased identification and evaluation requires the use of an agreement document, such as a PA. Ms. Vaughn agreed that a PA is appropriate when additional identification or evaluation is needed. Ms. Vaughn added that if the Board is developing a PA under Section 800.14 and intending additional provisions to apply, a focused conversation around where the Board is going with the PA and why is needed. She suggested mitigation, phased identification and evaluation, analysis of alternatives, public participation strategy, use of NEPA process for public participation, confidentiality concerns, and natural or cultural landscapes as topics to address in a PA.

Ms. Nadals suggested that the Board develop a summary of issues that arose during the Billings meetings that could be incorporated in a PA, such as an ethnographic study. Mr. Fisher agreed that revisiting the topics discussed at the Billings meeting was needed. Ms. Nadals stated that preparation of the Billings meeting transcripts and flip charts notes are in process. Ms. Nadals offered to share these documents with the group.

Mr. McRae asked whether development of an ethnobotany study would be part of the Programmatic Agreement. Mr. Starzak responded that an ethnobotany study was included in 2011 PA.

Ms. Vaughn suggested that the National Park Service could be helpful in framing issues relating to natural and cultural landscapes.

Chere Jiusto suggested that PAs other than the previous Tongue River PA might offer creative mitigations. Ms. Vaughn thought other infrastructure projects on the west coast or energy projects in the northern plains could be models for indirect and cumulative analyses but preferred using the previous Tongue River Railroad PA as a model and build in responses that are unique to the Tongue River Railroad project. The old PA was rejected on procedural issues rather than substantive ones. Mr. Starzak stated that one of the consulting parties had provided a copy of the Vantage pipeline PA. Mr. Clouthier responded that he does not like the Vantage PA. Ms. Nadals expressed a preference for building on the existing PA and creating an outline with basic elements and recommendations.

Steve Brady asked whether, given the proximity of the Wolf Mountains Battlefield National Monument, the National Park Service had been notified. Mr. Starzak indicated that Christine Whitaker is on the consulting party distribution list. Ms. Vaughn asked if the National Trust for Historic Preservation is participating in Section 106 consultation. Betsy Merritt and Amy Cole both participated in the teleconference and do so monthly.

Mr. Fisher suggested that Ms. Nadals or Mr. Starzak contact tribal representatives to begin scheduling fieldwork participation.

Ms. Nadals thanked people for participating in the teleconference.