

**September 9th Conference Call Notes : Tongue River**

Catherine Nadals to: cvaughn, ngabriel, wdancingfeather,
dlanders, swilmoth, msant, sfindlay,
d1melton, dcoburn, Matthew.Jones,
Cc: Alan.Summerville, "Reynolds, Alisa", blodgettk, "Davis, Colleen",
Gosselind, huntt, Richard.Starzak, rutsonv, vhauser

09/16/2013 01:13 PM

Hello All,

Attached are the meeting minutes from our call on September 9th. For those of you unable to participate, we had two main points of discussion during the call: 1) a summary of this summer's archaeological and architectural field work; and, 2) ideas on moving forward with the historic review process. During the call, we also determined the need to share information collected by tribes with the other participating tribes. I will be sending out a separate email to tribes requesting potential dates/times for a call to discuss this in more detail.

Please feel free to contact me if you have any questions regarding the notes or any of the items discussed therein. I can be reached at 202-245-0293 or nadalsc@stb.dot.gov.

- Cathy

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**Tongue River Railroad Environmental Impact Statement
Docket No. FD 30186
Historic Preservation call on September 9, 2013
Meeting Summary**

Invitees: Please see meeting agenda for list of invited parties

**Attendees: (Please note that attendees did not all introduce themselves. This
list therefore only includes individuals who spoke. Over 30 people called in.)**

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

Victoria Rutson	Office of Environmental Analysis
Danielle Gosselin	Office of Environmental Analysis
Catherine Nadals	Office of Environmental Analysis

Other Federal Agencies

Matt McCullor	Army Corps of Engineers
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800.2(c) Consulting Parties who identified themselves

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

Conrad Fisher	Northern Cheyenne
Steve Vance	Cheyenne River Sioux
Tamara St. John	Sisseton Wahpeton Oyate
Jim Whitted	Sisseton Wahpeton Oyate
Darlene Conrad	Northern Arapaho
Andrew Wiley	Cheyenne Arapaho
Terry Clothier	Standing Rock Sioux

800.2(c)(4) Applicants for Federal assistance, permits, licenses, or other approvals

David Coburn	Steptoe and Johnson, Attorney for Applicant
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800.2(c)(5) Additional Consulting Parties

Mark Fix	Property Owner
Carrie La Seur	Baumstark Braaten Law Partners (attorney for several property owners)

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

Colleen Davis	ICF International
Alisa Reynolds	ICF International
Mark Robinson	ICF International
Alan Summerville	ICF International

Cathy Nadals of the Office of Environmental Analysis (OEA) opened the teleconference and explained that the purpose of the call was to discuss the results of the archaeological and architectural survey work conducted along each of the alternatives where the STB had access. A second agenda item was to field ideas from the callers on possible next steps. (Ms. Nadals sent an agenda to invited parties prior to the call.) Ms. Nadals then introduced OEA Director Victoria Rutson, and Danielle Gosselin one of two environmental managers for the Tongue River Railroad Construction Project at OEA (the other is Ken Blodgett).

Ms. Nadals explained that OEA is currently collecting information along each of the alternatives as part of the NEPA process and alternatives analysis. The data collected will help inform the Board in making a decision regarding which, if any, alternative to license. If the Board licenses an alternative, then that alternative will be the Section 106 undertaking. Consequently, the Section 106 process has not officially begun. Nevertheless, OEA believes it important to bring all of the consulting parties in early to ensure that they are involved in assisting the Board in making an appropriate choice regarding which alternative to license. Their involvement will also help the Board lay out the process for moving forward and is appropriate as part of the Section 106 preplanning effort.

Ms. Nadals invited Danielle Gosselin to provide a Tongue River project update. Ms. Gosselin stated that OEA was now estimating that it would issue the Draft EIS in the summer of 2014 rather than late fall or early winter of 2013 as originally estimated. Work on the EIS is continuing, but the applicant has requested that some of the effort and associated costs be spent in 2014 rather than 2013. Ms. Gosselin explained that the nature of the work and the issues raised in scoping comments associated with the EIS are complicated. She continued by providing an update on the status of all the environmental field work efforts. Field work for summer 2013 is almost complete. The last field survey crews are coming out of the field and beginning to write- up their findings. The field survey teams had access to approximately 44% of the total acreage of land in the survey area. Ms. Gosselin continued by informing the group that there have been a few filings and Board decisions since the last call. On August 9, the Tongue River Railroad Company (TRRC) filed a reply to the Rocker Six Cattle Company and the Northern Plains Resource Council's sur-reply. In this reply, TRRC requested that the Board deny the sur-reply, or in the alternative, accept a response regarding traffic projections, and deny the six month discovery response request. On August 27, the Board accepted the sur-reply and TRRC's reply into the record and granted a three month discovery period. Documents related to these decisions and filings are available on the Board's website <http://www.stb.dot.gov/stb/index.html>.

Cathy Nadals invited questions. None were forthcoming.

Cathy Nadals then requested that ICF provide a summary of the results of the archeological and architectural field work. Alisa Reynolds, ICF International (ICF), explained that four teams conducted the archeological field surveys. Each field survey rotation consisted of ten days. Each team consisted of four ICF archeologists and four tribal representatives/archeologists. The last round of field surveys was completed during the first week of September. Ms. Reynolds informed the teleconference participants

that the survey work went well. Ms. Reynolds expressed her gratitude to the tribal representatives that supported the field work effort.

Colleen Davis of ICF then provided a summary of the built environment field work effort. The crew that conducted the architectural surveys also conducted field survey work on ten-day rotations but finished their field work earlier than the archeologists. These crews confirmed some previously identified properties and discovered some new ones. Examples of identified properties includes farmhouses, barns, private bridges, a fairground, windmills, and a graded railroad alignment. The team is now in the process of analyzing the data gathered during fieldwork.

Cathy Nadals invited questions.

Matt McCullor, Army Corps of Engineers (Corps), asked how much land was not accessible. Cathy Nadals responded that access was granted to approximately 44% of the total acreage of land in the survey area. Mr. McCullor asked how many historic period resources were identified. Cathy Nadals said that field work has just been completed and the analysis is not yet complete.

Mark Fix asked if the field survey work is finished for this year. Alisa Reynolds responded that field surveys are done and that the team is reviewing the data gathered regarding locations accessed and surveyed. Mr. Fix asked whether additional survey work will occur next year. Ms. Reynolds replied that there are no plans to do additional survey work. She recalled that Mr. Fix had spoken to her about possible sites outside of the study area and clarified that there are no plans to survey these sites.

Matt McCullor asked how much emphasis was placed on traditional cultural properties (TCP), sites of religious/cultural nature, and viewsheds during the field surveys. Alisa Reynolds replied that tribal representatives participated in each field survey crew. Ms. Reynolds explained that the field crews recorded everything that tribal representatives considered sacred, relevant, or important to their tribe. In some cases, these sites overlapped with archeological recordations. Sites of this nature were seen on each rotation, but only a few were recorded.

Darlene Conrad, the Tribal Historic Preservation Officer (THPO) for the Northern Arapaho Tribe, asked whether a list of the TCPs identified by each tribe would be made available to tribes. Ms. Conrad indicated that such a list would be helpful and should be shared with the THPOs. The specific details of the sites might not be shared, but the identity of which tribe identified it ought to be provided. Tamara St. John and Jim Whitted of the Sisseton Wahpeton Oyate Tribe, Steve Vance of the Cheyenne River Sioux Tribe, and Andrew Wiley of the Cheyenne Arapaho Tribe, supported Ms. Conrad's suggestion regarding the TCP information. Cathy Nadals asked if any other tribal representatives agreed or disagreed with this suggestion. Ms. Nadals suggested convening a teleconference for the tribes to discuss the list including what information they would like included and how best to keep sensitive information confidential.

Cathy Nadals asked Terry Clothier of Standing Rock Sioux tribe, who also joined the call late, if he had any questions. Ms. Nadals asked whether Mr. Clothier agreed that providing a list of tribally important sites to the THPOs is a good idea. Mr. Clothier agreed that it is a good idea if all the tribes agree.

Cathy Nadals invited questions regarding field work.

Mark Fix said that he is aware of a tipi ring located approximately a half mile outside of the study area. He wondered if the STB would record the site. She said that the STB would not record the site as it is located outside the direct impact APE. Cathy Nadals explained that if an alternative is licensed, much more detailed studies would be conducted as part of the Section 106 analysis. This would include an assessment to determine indirect effects and analyzing areas outside the direct impact area. However, at this juncture, the STB is only analyzing data within the direct impact APE.

Matt McCullor asked about the schedule for the Corps to review sites near river and wetland crossings. Alisa Reynolds indicated that site information could be made available to the Corps, but that it won't include determinations of National Register eligibility at this stage. Alan Summerville stated that ICF would be in contact with Shannon Johnson of the Corps regarding the results of the wetlands surveys and would coordinate that information with the cultural resource surveys to create overlays.

Tamara St. John asked whether the Draft EIS would include an analysis of the effect of diesel fuel emissions on rock art. Cathy Nadals stated that she did not recall whether a specific comment had been received regarding that particular effect during the scoping period. She stated that Jim Whitted has seen a study regarding this topic. Ms. Nadals asked that Mr. Whitted provide a copy or reference for the study. Ms. St. John stated that an effect of this nature would extend beyond the corridor.

Cathy Nadals summarized the teleconference for Conrad Fisher of the Northern Cheyenne Tribe, who joined late. Mr. Fisher stated that if the tribal consensus is that a list of TCPs would be helpful, he agrees with the consensus. Ms. Nadals asked Mr. Fisher to provide his perspective on the field work effort. Mr. Fisher shared his view that the field work had been a great experience for ICF and tribal archeologists. He said that he had heard that tribal crew members wished that there had been more time due to the number of sites discovered. Mr. Fisher noted that every alternative surveyed had both previously identified and newly discovered sites and that this speaks to the rich heritage of the Tongue River area. Mr. Fisher noted that the railroad's preferred alternative (Colstrip) is still in question (the STB has not been granted access to most of this alternative by a consortium of private landowners). He is not sure how much land along the various certain alternatives was surveyed. The Northern Cheyenne Tribe, represented by James Walksalong, participated in all the survey rotations. Other tribes also participated and Mr. Fisher expressed gratitude to those tribes.

Tamara St. John asked whether it is true that there is a private landowner who will allow tribal representatives to conduct field survey on his land (along Colstrip). Conrad Fisher replied that the Northern Cheyenne Tribe was invited to conduct a traditional cultural survey on private property along the Colstrip Alternative (the STB has been denied access to most of this alternative by private landowners there). Ms. St. John asked whether this area would be surveyed. Mr. Fisher indicated that he believes it is in the best interests of everyone that it be surveyed. He stated that when he toured the area, several landowners pointed out burials and other cultural features along or adjacent to the corridor. Mr. Fisher noted, however, that the Northern Cheyenne Tribe does not have the money to conduct such a survey.

Steve Vance asked whether any of the privately owned areas along the Colstrip alternative have been surveyed. Mr. Fisher replied that he believed most areas had not been surveyed. Mr. Vance wondered that if these areas were to be surveyed, how the results would be treated (this is unknown to the STB and it is unclear if the Board would be provided this information should the Northern Cheyenne Tribe conduct a survey here). Mr. Fisher noted that he has been very busy with other projects and has not spoken to the private landowners, but remains interested in performing field surveys along areas within the Colstrip alternative where STB has been denied access. However, he reiterated that there is no money available to the Northern Cheyenne Tribe to conduct such a survey.

Steve Vance requested a list of the sites that have been identified by tribes as significant to them during field work (there could be some overlap with archaeological sites identified but in other cases a tribe may view a non-archaeological site as sacred or significant). Mr. Vance additionally requested that his tribe be provided with the river and wetlands information requested by the Corps.

Mark Fix stated that he could not speak for Mr. McRae and other private landowners along the Colstrip alternative, but he believed that if more studies are conducted next year, those landowners might grant access to the STB to complete surveys to assist with its NEPA alternatives analysis. Victoria Rutson stated that the Board will assess the need for additional studies based on the results of the current studies. If more studies are needed, she stated that OEA could conduct them. But, she said, "...this is a big if." Ms. Rutson then expressed her gratitude to the tribal representatives that have supported the field work.

Conrad Fisher clarified that any study the Northern Cheyenne Tribe would conduct (along the sections of the Colstrip alternative where STB has been denied access) would be independent of the work performed by ICF on behalf of the Board and not related to the EIS process. Mr. Fisher explained that such an effort would be difficult for the Northern Cheyenne Tribe due to the expense involved in conducting field surveys. He stated that a survey of the land would have benefitted the Northern Cheyenne Tribe and other tribes that have ancestral ties to the area. The landowners have knowledge of cultural resources on their properties. Mr. Fisher was unclear if the information provided by the landowners would be kept private by the landowners and Northern Cheyenne Tribe or be shared with the STB. The Northern Cheyenne Tribe is still working with the landowners Independent of the EIS process.

Mr. Fisher then noted that the Northern Cheyenne Tribe is in the process of trying to gain access to private land where a burial was discovered by the survey crew. He has been assigned as lead by the Montana Burial Council for this action.

David Coburn, attorney for the Tongue River Railroad, stated that his client is fully committed to the project and has ample financing available.

Carrie La Seur, Baumstark Braaten Law Partners, explained that a group discussion among the consortium of the nine landowners she represents regarding tribal access to their properties has not occurred. However, she stated her belief that they are open to discussing this further. She stated that a letter was mailed to the STB early in 2013 containing landowner terms for the STB and ICF to access

their property. Those terms included the requirement that the Board increase its study period to three to five years to ensure that the land could recover from a recent spate of wildfires and droughts. Carrie La Seur noted that those same terms would apply to STB before it would be allowed to gain access to the private lands for any potential future fieldwork. She said that the landowners may be willing to consider new offers and wants to be sure studies are done correctly. (These same landowners are currently denying access to ICF and the Board to complete studies along areas of Colstrip they own.)

Cathy Nadals then asked the callers for their ideas on next steps. Mr. Fisher stated that it is important for the tribes and other consulting parties to first receive information regarding the sites discovered during field work when it is available (this should include a list and description of areas surveyed, known sites identified during the surveys, and newly discovered sites and maps). He pointed out that the consulting parties needed to be fully informed of all the data that has been collected by ICF and the STB before commenting on any next steps. Ms. Nadals agreed that this was fair.

Ms. Nadals suggested holding a teleconference with the consulting parties after all have had a chance to review the requested information. Tamara St. John asked that an in-person meeting would be more appropriate at that point.

Victoria Rutson summarized the agreed upon points from the call. She reiterated that the tribes requested a list of the tribally important sites identified during field work and the Corps requested an overlay of cultural sites with wetlands. Ms. Ruston also noted that the consulting parties should be provided with a complete list of sites identified during the field effort prior to deciding on any next steps. Ms. Rutson then asked Alisa Reynolds when this information could be available. Ms. Reynolds replied that there is a large amount of information to be organized and that it could take as long as two months. Alan Summerville stated that the ICF team would provide a projection as to when the data would be made available. Ms. Rutson pointed out that the information should be provided more quickly (less than two months from now) as it must be assembled, disseminated, reviewed and digested by the STB before being shared with the consulting parties. Ms. Nadals pointed out that a list of sites identified by tribes for tribes could be assembled more quickly and that such a list should be the priority. After that, OEA would schedule a teleconference to discuss next steps. She noted that the current federal budget tightening makes in-person meetings a challenge for the STB.

Steve Vance stated that he would like information regarding a site a half a mile outside the survey area that Mr. Fix previously mentioned. Mark Robinson stated that the ICF field crews did not conduct surveys outside the survey area as this was not part of the STB objective. Mr. Vance explained that geographically separated sites can be linked. Cathy Nadals explained that the current effort has been focused on the direct impact APE in order to collect data for the alternatives analysis. She explained that the STB has not been looking at indirect effects and has therefore not ventured or collected data on sites outside the direct impact APE. She explained that this would be done, however, once (or if), the Board licenses an alternative. The licensed alternative (and then defined Section 106 undertaking) would be subject to more extensive studies including impacts of the proposed project to resources outside the direct impact APE. (Once that happens, the STB would be working with tribes to ensure that such site linkages are made and recorded as possible landscapes.) Ms. Nadals stated that a separate call

with the tribes would be scheduled to come to a consensus regarding the information collected in the field and how to disseminate it. She said she would schedule a call and invite all the involved tribes to participate.

Mark Fix asked whether any field survey has been conducted in the Otter Creek Tract mine area and whether ICF has access to Arch Coal's work in the area. Cathy Nadals promised to follow up with Mr. Fix on these questions (post note: the STB has not conducted surveys of the Otter Creek Tract).

Victoria Rutson summarized the action items discussed on the call:

1. Assemble and distribute a list of tribally important sites identified by tribes in the field to share with THPOs; schedule a call with tribes to discuss the dissemination of the above information to other tribes;
2. Assemble a second list of all of the sites (above-ground and archaeological) identified within each of the alternatives to share with all the Section 106 consulting parties;
3. Consult with the Corps regarding wetlands/waters of U.S. near identified cultural sites; provide map/details of identified sites to the Corps and other consulting parties;
4. Follow-up with Mark Fix regarding Otter Creek Mine Tract access and access to Arch Coal's survey information (Alisa Reynolds will be conducting follow-up);
5. Acquire study from Tamara St. John/Jim Whitted of Sisseton Wahpeton Oyate regarding effects of diesel fuel emissions on rock art. (A copy of the study has been requested by OEA.)

Next monthly call is scheduled for October 21, 2013 (delayed a week due to the holiday on the 14th).