



EO-1352
CG
FD 33407

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

November 10, 2009

Mr. Russell Eagle Bear
Rosebud Sioux Tribe
Tribal Historic Preservation Officer
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:

I am sending this letter as a follow-up to our October 27, 2009 meeting in Pierre, SD. At the meeting, and in an earlier letter to me, you expressed concerns regarding information that you and other tribes provided the Surface Transportation Board (STB) to support your opinion regarding the National Register eligibility for stone circle sites in the DM&E project's New Build Section in Wyoming (WY) and South Dakota (SD). You were concerned about what parties would be allowed access to the documents and asked how these documents would be handled once the National Register eligibility determinations for the stone circle sites had been finalized. In addition, you also asked if the STB would be requiring the tribal experts who submitted information to meet the Secretary of Interior's Standards and if archaeologists would be the ones ultimately deciding what sites are eligible.

First, let me assure you that the STB will be giving equal weight/value to the National Register recommendations provided by tribes to those provided by archaeologists. Section 106 of National Historic Preservation Act (at 36 CFR Part 800.4) specifically states the agency official shall acknowledge that Indian tribes possess special expertise in assessing the eligibility of historic properties. Nowhere in the regulations are tribal experts required to meet the Secretary of Interior's Standards. Also, the Section 106 regulations and our project PA both state that the STB is responsible for making final eligibility determinations based on all the input provided, not the archaeologists.

During the meeting in Pierre, we agreed that the supporting documents submitted to STB by the Rosebud Sioux Tribe, Sisseton Wahpeton, Standing Rock, Yankton Sioux and Northern Cheyenne, would remain confidential, would not be placed in any public domain or website, and would be returned to the respective tribes once STB's National Register eligibility recommendations are finalized. As agreed, we will be

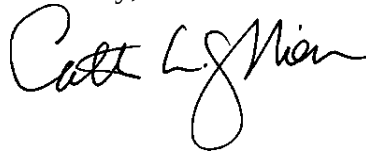
sending copies of the confidential documents to the State Historic Preservation Officers (SHPOs) in SD and WY. However, no other parties will have access to the documents (see possible exception for the Keeper of the National Register below).

We also agreed that official archaeological site forms would not be updated to include any features identified by any participating tribes. The site forms will thus be updated to indicate that tribes visited the sites and made their recommendations. Site boundaries would be enlarged to encompass the locations of all tribally identified features, but individual features identified by the tribes would not be listed on the site forms or depicted on the associated site maps since these records would then become available to a broad group of individuals.

We are currently in the process of assembling our National Register eligibility determinations for the unevaluated sites. Once these are finalized, they will be submitted to the appropriate SHPOs in WY and SD. Each SHPO will then have 60 days to provide its opinion regarding STB's recommendations. If the SHPO and STB do not agree regarding the eligibility of any given site, either party can then appeal to the Keeper of the National Register for a final decision on eligibility. However, I am hopeful that both the SD and WY SHPOs will concur with our recommendations. Please be aware that the Keeper may request copies of the confidential tribal documents in cases where a dispute may occur.

I intend to provide copies of this letter to the SD and WY SHPOs and the other tribes that participated in the field visits to make sure that these parties are aware of what we have agreed to do. If you have any remaining concerns regarding any of the above please do not hesitate to contact me at 202-245-0293.

Sincerely,

A handwritten signature in black ink, appearing to read "Catt L. Glidden", written in a cursive style.

Catherine Glidden
Section of Environmental Analysis

cc. Clair Green, Lower Brule Sioux Tribe
Linwood Tallbull, Northern Cheyenne Tribe
Dianne Desrosiers, Sisseton-Wahpeton Oyate
Waste'Win Young, Standing Rock Sioux Tribe
Brady Grant, Turtle Mountain Band of Chippewa
Faith Spotted Eagle, Yankton Sioux Tribe
Scott Larsen, Upper Sioux Community
Michael Catches Enemy, Oglala Sioux Tribe
Curley Youpee, Fort Peck Assiniboine & Sioux Tribes
Rick Wright, Ponca Tribe of Nebraska
Richard Currit, WY SHPO
Paige Hoskinson-Olson, SD SHPO