



EO-1253

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SURFACE TRANSPORTATION BOARD
395 E Street, SW
Washington, DC 20423-0001
Section of Environmental Analysis

May 21, 2009

Ms. Paige Hoskinson-Olson
South Dakota State Historic Preservation Office
Review and Compliance Coordinator
900 Governors Drive
Pierre, South Dakota 57501-2217

RE: STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin: Request for Review and Comment

Dear Ms. Hoskinson-Olson:

The Surface Transportation Board (STB) is pleased to submit the following four (4) reports for your review and comment in accordance with the Section 106 Programmatic Agreement (PA) regarding the Powder River Basin Expansion Project (Project), STB Finance Docket No. 33407.

- *A Level III Cultural Resources Evaluation of the Proposed Dakota, Minnesota & Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor, PRC Segment 1, Haakon, Jones, and Stanley Counties, South Dakota (LBG-SD3a)*
- *A Level III Cultural Resource Inventory of the Dakota, Minnesota and Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor, PRC Segment 1, Haakon, Jones, and Stanley Counties, South Dakota, Addendum 1 (LBG-SD3a_Ad1)*
- *A Level II Cultural Resource Inventory of the Dakota, Minnesota and Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor, PRC Segment 3, Pennington, Jackson, and Haakon Counties, South Dakota (LBG-SD3c)*
- *A Level III Cultural Resource Inventory of the Dakota, Minnesota and Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor, PRC Segment 3, Haakon, Jackson, and Pennington Counties, South Dakota, Addendum 1 (LBG-SD3c_Ad1)*

These reports present the results of Level III cultural resources investigations conducted by the Archeology Laboratory, Augustana College (ALAC), and SWCA Environmental Consultants, Inc. (SWCA) for segments of the new construction right-of-way, in southwestern South Dakota. All four (4) reports were prepared as addenda to the Level III survey report completed by Burns & McDonnell in July 2001 for the new construction right-of-way which our agency submitted to you for review and comment on May 12, 2008 (Ref. Project 080515042F; LBG-SD3).

The four (4) enclosed reports document the identification of 23 archaeological sites and 11 historic buildings/structures within the Area of Potential Effect (APE) for direct effects (see attached site tables). The survey teams from ALAC and SWCA also revisited three (3) archaeological sites (39HK0078, 39JN0004, 39JN0009) originally described in the 2001 Burns & McDonnell report and provide additional information about these sites.

STB has applied the National Register of Historic Places (National Register) evaluation criteria to 27 of the 37 properties in accordance with the terms of the PA and 36 CFR 800.4 (c)(1). Ten (10) archaeological sites located within the APE for direct effects remain unevaluated for listing on the National Register under one or more evaluation criteria (see attached site table). We do not request your feedback of these properties at this time. We do, however, request your concurrence with the following determinations of eligibility.

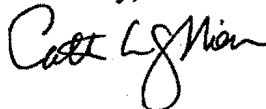
- A total of 14 identified archaeological sites and nine (9) historic buildings/structures located within the project's APE for direct effects are considered not eligible for listing in the National Register.
- A total of two (2) archaeological sites located within the project's APE for direct effects are considered eligible for listing in the National Register: sites 39HK0103 and 39JN0041 are each evaluated eligible under both Criteria A and D.
- Segments of historic Highway 14 located in Jackson (JK-003-00001) and Pennington counties (PN-033-00001) are considered eligible as a historic district under Criteria A and C. One (1) segment of the historic road grade or berm in Jackson County (JK-003-00001) is considered contributing to the district's historic significance, while one bridge (JK-003-00004) and three culverts (JK-003-00002, JK-003-00003, JK-003-00005) in Jackson County and the additional road grade segment in Pennington County (PN-033-00001) are considered non-contributing.
- The Capa Bridge (JN00000001) is currently listed on the National Register and is considered eligible under Criteria A and C.

We will address the eligibility of the ten (10) unevaluated properties in one or more addendum reports for your review and comment at a future date. Further analysis regarding the potential for buried archaeological sites within the construction right-of-way and indirect effects to historic properties that may be located outside the construction right-of-way will also be included in the addendum report(s) (as summarized in our December 24, 2008 letter to you and

attached again here for your convenience). I have also included applicable comments that we received from the U.S. Forest Service and Lower Brule Sioux Tribe for your information.

In accordance with the PA, you have sixty (60) days from receipt of this letter to provide us with your comment. If you have any questions regarding any of the above please contact me at (202) 245-0293 or by email Catherine.Glidden@stb.dot.gov.

Sincerely,



Catherine L. Glidden
Section of Environmental Analysis

Enclosures: Survey Reports (4)
Project Meeting Summary Letter (December 24, 2008)
Consulting Parties Review Comments (BLM, LBST)
List of Evaluated Archaeological Sites and Associated Buildings/Structures
List of Unevaluated Archaeological Sites



SURFACE TRANSPORTATION BOARD

**395 E Street, SW
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Section of Environmental Analysis**

December 24, 2008

Herb Jones
Government Affairs Director
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**Re: STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad
Corporation Construction into the Powder River Basin: December 2, 2008 Meeting
Summary**

Dear Mr. Jones:

The Surface Transportation Board's (STB) Section of Environmental Analysis (SEA) is pleased to provide you with the following summary of its December 2, 2008 meeting with representatives of the State Historical Preservation Offices (SHPOs), cooperating Federal agencies, and the Dakota, Minnesota and Eastern Railroad (DM&E) held in Sioux Falls, South Dakota. The meeting was requested by DM&E to present its response to procedural issues and concerns expressed by the STB, as well as participating Federal agencies and SHPOs, regarding archaeological survey reports distributed for review. The meeting was planned and presented by DM&E, at its expense, to assist it in resolving those concerns.

There was a general consensus amongst the meeting participants on how to address three main issues of concern regarding the project survey reports. The issues involve: (1) the use of the term "unevaluated" for sites in project reports and the development of a plan on how to assess such sites; (2) the need to better establish the potential for the project to have indirect effects on historic properties located outside the area of potential effect for direct impacts; (3) the necessity for STB to better assess project impacts to previously unidentified buried or deeply buried sites. The following planned courses of action are proposed to resolve these and other procedural issues.

Unevaluated Sites

During the meeting, it was agreed that several actions will be taken to further assess sites that have been designated "unevaluated" in project reports. To begin with, STB will initiate a "traditional sites evaluation study" in January 2009 with a kickoff meeting between participating tribes and the STB on January 15th. The study will be conducted by STB and its third-party

contractor and will include tribal involvement to help resolve the National Register eligibility of unevaluated sites that may be eligible for listing as traditional cultural properties under criterion "a." This study is scheduled for completion by the end of May 2009 (a scope of work for this study is currently being prepared by SEA).

The completion of the traditional sites evaluation study will be followed by subsurface testing of any sites that remain unevaluated with regard to their National Register eligibility under criterion "d." Such testing will occur in instances where the traditional sites study concludes that sites are not otherwise eligible under criterion "a" and/or where tribes have no objection to testing sites deemed eligible under criterion "a."

Archaeological fieldwork is scheduled to begin as early as April 2009 at previously identified sites for which subsurface testing has not yet been conducted. Tribal monitors will be invited to be present when the archaeological evaluation work is initiated and may recommend against the continuation of such fieldwork at any point during the excavations. In addition, as part of its traditional sites evaluation study, the STB will work with tribal representatives and SHPOs to develop approaches to individual sites scheduled for such activity to resolve their eligibility under all applicable National Register criteria.

For sites that extend outside the project's right-of-way (ROW), DM&E will attempt to evaluate eligibility for the entire site wherever possible. In those instances where survey teams are denied access to part of the site, eligibility will be evaluated on the basis of information gathered from the portion of the site for which access is available. Unevaluated portions of such sites will be recommended "unevaluated" or "ineligible," depending on the outcome of consultations with the relevant SHPO(s).

Indirect Effects Area of Potential Effect (APE)

The assessment of potential indirect effects (visual, audible, and vibration) to historic properties located within the New Build section of the project area will be followed in accordance with the procedural clarification paper provided at the meeting (see attached statement). DM&E and its consultants have already completed a file search for listed and eligible properties in South Dakota and the file search for listed and eligible properties in Wyoming is currently underway as requested by Wyoming SHPO at the December meeting. The file search results will provide the data necessary for determining which National Register listed and eligible properties within a six-mile-wide corridor may be affected by project construction and operation through line-of-sight analyses. Visual and audible impacts will be assessed based on elevation and topographic information for those properties where integrity of setting contributes to their significance. DM&E will submit its findings of potential effects to STB for consultation with SHPOs and appropriate consulting parties.

Buried Archaeological Sites

DM&E and STB will develop a plan to identify and evaluate buried archaeological sites that may be located within the New Build portion of the project. This plan will be circulated to consulting parties for review and comment in February 2009 and will include copies of

geomorphological survey reports completed for the project as attachments. The plan is expected to make use of existing geomorphological information to assess the project area's potential to contain buried archaeological deposits. Areas with buried site potential will be sampled and tested for the presence or absence of archaeological deposits in order to model or predict where additional buried sites may exist within the New Build segment. The results of the predictive model will be circulated to the consulting agencies in the Spring or early Summer of 2009 for additional discussion and refinement. The predictive model will then be used to guide subsequent investigations conducted thereafter prior to construction. Additional opportunities to examine subsurface deposits are expected to continue through the construction monitoring program based on a construction monitoring plan that will be developed in consultation with the consulting parties.

Report Review Schedules

The information package distributed at the December 2nd meeting included a table entitled "PRB Report Review Schedule" (found under the tab labeled "Next Steps" and also attached to this letter). This table identifies each archaeological survey report prepared for this project by its report title and the date that it is scheduled to be distributed to the various consulting parties for review (or the date for which it has already been distributed). We expect to hold to the dates as indicated on that spreadsheet; in fact, we recently mailed four new reports associated with archaeological surveys conducted along the South Dakota Rehab/PRC Segment to Federal agencies and participating Tribes for review and comment.

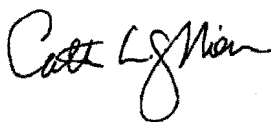
Follow-Up Meetings with SHPOs

DM&E will schedule meetings with the Wyoming and South Dakota SHPOs to review construction plan maps and profiles for all properties recommended as eligible or unevaluated within the New Build segment. These meetings will likely occur in middle to late January after the SHPOs have received associated reports for their review and comment.

Please feel free to contact me at 202-245-0293 (email gliddenc@stb.dot.gov) or Randy Withrow at 319-373-3043 (email rwithrow@louisberger.com) if you have any concerns regarding the meeting summary or our plans for moving ahead in addressing the issues discussed in this letter.

Best of wishes to you throughout the Holiday Season!

Sincerely,



Catherine Glidden
Section of Environmental Analysis

Enclosures: **Distribution List**
Procedural Clarification For Resolving the Eligibility of Unevaluated Sites
Procedural Clarification For Assessing the Project's Direct and Indirect Impacts
to Historic Properties
PRB Report Review Schedule
CD: Copy of All Materials Distributed at December 2, 2008 Meeting
CD: December 2, 2008 Meeting Transcript

PRB Report Review Schedule

Report Title	Submittal to Cooperating Agencies and Tribes for Review and Comment	Submittal to SHPO for Review and Comment
Minnesota - Rehab		
Phase Ia Overview and Phase I Survey Methodology for Cultural Resources for the Minnesota Rehabilitation Segment and Mankato South Alignment Two Pines Resource Group (2006) SHPO #2002-0815PA	21-Jan-08	21-Jan-08
Phase I and II Archaeological Investigations of the Minnesota Rehabilitation Segment Two Pines Resource Group (2007) SHPO #2002-0815PA	16-Jan-09	27-Mar-09
Phase I Archaeological and Geomorphological Survey for the New Ulm Yard Project, MN Rehabilitation Segment Two Pines Resource Group (2007) SHPO #2002-0815PA	23-Jun-08	19-Dec-08
Historic District Treatment Plan for DM&E's PRB Expansion Project HDR (2007) SHPO #080515042F	23-Jun-08	23-Jun-08

PRB Report Review Schedule

Report Title	Submittal to Cooperating Agencies and Tribes for Review and Comment	Submittal to SHPO for Review and Comment
South Dakota - New Build Segment		
A Level III Cultural Resource Inventory of the DM&E's PRB Expansion Project, Custer, Fall River, and Pennington Counties, South Dakota SWCA/ARCHLAB (1999/2007) SHPO #99223006F	22-Feb-08	9-Jan-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, Custer, Fall River, And Pennington Counties, South Dakota Addendum 1 (SWCA/ARCHLAB) ALAC (2007) SHPO #99223006F	6-Jun-08	9-Jan-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, Custer, Fall River, and Pennington Counties, South Dakota Addendum 2 (SWCA/ARCHLAB) SWCA (2007) SHPO #99223006F	1-Jul-08	9-Jan-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, Custer, Fall River, and Pennington Counties, South Dakota Addendum 3 (SWCA/ARCHLAB) SWCA (2007) SHPO #99223006F	19-Dec-08	27-Feb-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, Custer, Fall River, and Pennington Counties, South Dakota Addendum 4 TRC ARCHLAB USD (2007) SHPO #99223006F	19-Dec-08	27-Feb-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, Custer, Fall River, and Pennington Counties, South Dakota ALAC (2006-2007) SHPO #990223006F	30-May-08	9-Jan-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, Custer, Fall River, and Pennington Counties, South Dakota Addendum 1 ALAC (2007) SHPO #990223006F	30-May-08	9-Jan-09

PRB Report Review Schedule

Report Title	Submittal to Cooperating Agencies and Tribes for Review and Comment	Submittal to SHPO for Review and Comment
South Dakota - Rehab/PRC		
Level I and II Cultural Resource Survey & Site Testing/Evaluation for 317 miles of Railroad Reconstruction from the MN Border to Wall, SD:DM&E's Proposed PRB Expansion Project Burns & McDonnell (1999) SHPO #080515042F	21-Jan-08	12-May-08
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, PRC Segment 1, Haakon, Jones, and Stanley counties, South Dakota ALAC PRC Segment 1 (2007) SHPO #080515042F	6-Jun-08	27-Feb-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, PRC Segment 1, Haakon, Jones, and Stanley counties, South Dakota SWCA (2008)	19-Dec-08	27-Feb-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, PRC Segment 2, Haakon and Stanley Counties, South Dakota ALAC PRC Segment 2 (early draft 2007) SHPO #080515042F	30-Jan-09	10-Apr-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, PRC Segment 3, Pennington, Jackson, And Haakon Counties, South Dakota SWCA PRC Segment 3 (2007) SHPO #080515042F	6-Jun-08	27-Feb-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, PRC Segment 3, Pennington, Jackson, And Haakon Counties, South Dakota Addendum 1 SWCA (2008) SHPO #080515042F	19-Dec-08	27-Feb-09
A Level III Cultural Resource Inventory of DM&E's PRB Expansion Project, Huron Yard Locale, Beadle County, South Dakota ALAC Huron Yard (2007) SHPO #080515042F	21-Jan-08	12-May-08

PRB Report Review Schedule

Report Title	Submittal to Cooperating Agencies and Tribes for Review and Comment	Submittal to SHPO for Review and Comment
Wyoming - New Build Segment		
A Class III Cultural Resource Inventory of Eight Portions of Segments 1 And 2, Campbell, Niobrara, And Weston Counties, WY TRC (2006)	21-Jan-08	19-Dec-08
A Class III Cultural Resource Inventory of the Seven Remaining Portions of Segments 1 and 2, Campbell, Niobrara, and Weston Counties, WY TRC (2007)	21-Jan-08	19-Dec-08
A Class III Cultural Resource Inventory of DM&E's PRB Expansion Project, Segments 3 and 4, Campbell and Converse Counties, Wyoming SWCA/ACR (2007)	27-Feb-08	19-Dec-08
A Class III Cultural Resource Inventory of Three Wetland Mitigation Sites for the PRB, Converse County, Wyoming TRC (2008) SHPO #0608JRD008	8-Apr-08	2-Jun-08

PROCEDURAL CLARIFICATION FOR RESOLVING THE ELIGIBILITY OF UNEVALUATED SITES

Issue

The Surface Transportation Board (STB) and the Dakota, Minnesota and Eastern Railroad (DM&E) have developed the following plan/clarification statement to help resolve and establish the National Register eligibility of archaeological sites located within the project's Area of Potential Effect (APE). This plan is intended to provide clear guidance to project participants regarding procedures for applying all evaluation criteria (as defined at 36 CFR 60.4) to previously unevaluated and newly recorded sites located within the APE.

Evaluating Significance to Tribes and Information Potential

A number of archaeological sites located within the project's APE currently remain unevaluated with regard to National Register eligibility. Many of these remain unevaluated due to the need for additional input from tribes regarding the association of suspected traditional religious and cultural values that could qualify these sites for listing in the National Register under Criterion "A". A majority of the sites in this group include surface features such as stone circles and/or rock cairns which were consistently identified as potentially sensitive areas by tribal monitors who accompanied the archaeological survey teams. In most cases, tribal monitors recommended against archaeological testing at these locations pending further consultation.

Most of the sites identified as sensitive areas by tribal monitors also remain unevaluated with respect to establishing their archaeological information potential under Criterion "D" due to restrictions imposed by STB on archaeological testing pending resolution of Criterion "A" eligibility. In a few instances, DM&E's contractors were able to offer recommendations in their survey reports regarding the eligibility of properties under Criterion "D" based on surface assessments and other observations which indicated no possibility that any subsurface cultural remains (or important scientific information) could exist. Consequently, in these rare instances, properties are recommended "not eligible" under Criterion "D", but remain unevaluated under Criterion "A" pending tribal input.

In their survey reports, DM&E's contractors referenced the comments of tribal monitors as part of their description of unevaluated sites to alert tribal reviewers of their presence so they could either notify STB if further field work (e.g., site visits by elders and traditional practitioners) might be necessary to determine whether any were of traditional religious or cultural importance, or to issue their comments to STB where information contained in the reports was sufficient to determine their traditional cultural values. To date, STB has received very few comments from tribes regarding the traditional significance of sites described in these reports; however, tribal representatives have provided STB with general information that emphasizes the traditional cultural

significance of places marked by stone features like those found at a number of archaeological sites located within the project's APE.

Recommendations

1. STB will continue to seek assistance from interested tribes who wish to accompany archaeological survey crews for the purpose of identifying places of traditional religious and cultural significance within the project's construction ROW. Sites identified by tribal representatives as having potential traditional value will not be tested to assess their scientific research potential if the representatives object or request a delay in archaeological testing pending an evaluation of eligibility under Criterion "A."
2. STB will continue to process survey reports for review by cooperating agencies, interested tribes and State Historic Preservation Officers (SHPOs) in accordance with the procedures specified in the Programmatic Agreement (PA). Sites that require additional tribal consultation or subsurface testing to resolve eligibility under one or more evaluation criteria will continue to be reported as "unevaluated" pending further investigations. In each instance, STB will ensure that DM&E's consultants provide clear recommendations regarding the nature of additional work needed to eventually apply all evaluation criteria. Reports submitted by STB to cooperating agencies and interested tribes where no comments are received within the review period specified in the PA (PA Stipulation A.3.1) will be forwarded to SHPOs for review. STB will provide clarification in its cover letter regarding STB's eligibility determinations, effect findings, and specifications for any subsequent procedural steps needed to resolve eligibility for all unevaluated sites.
3. STB will work with tribes to develop a cultural context to identify places within the project's APE that have potential traditional religious and cultural significance to interested tribes. The main purpose of this study will be to assist STB in determining the eligibility of prehistoric stone feature sites and other site types that have already been identified in the project area that may be significant to tribes. As part of the context development effort, STB will work with DM&E and participating tribes to arrange and schedule field visits by traditional leaders, identified by the tribes, to archaeological sites and other places of traditional religious and cultural importance to tribes that may be identified as a result of the context study.
4. DM&E will redeploy its archaeological contractors and tribal representatives to those archaeological sites where Criterion "A" does not apply to resolve the applicability of Criterion "D" through archaeological testing and to acquire sufficient information to formulate treatment plans (see PA's Identification Plan Section 3.2.6 and Section 3.4.4). In effect, the identification and evaluation of these sites will be conducted in two phases, with the first involving site visits by tribal representatives for the purpose of resolving Criterion "A" applicability and

the second phase focused on archaeological testing for the purpose of resolving Criterion "D" eligibility.

5. The results of traditional cultural and archaeological evaluations under Criterion "A" and Criterion "D" will be provided for review by consulting parties as addenda to the original archaeological survey reports in accordance with the terms of the PA (PA, Stipulation A.3.4). Some information regarding the basis for Criterion A eligibility may be withheld from these addenda in accordance with the confidentiality provisions of the PA (PA, Stipulation I).
6. Unevaluated sites eventually determined eligible under Criterion "A", or other criteria, as properties of traditional religious and cultural significance will be subject to consultation with relevant tribes to develop appropriate treatments to mitigate any potential impacts to such sites.
7. Tribes will continue to have opportunities throughout the PA process to issue comments and eligibility recommendations on properties described in future survey reports. Tribes may also offer information relevant to the reassessment of any property identified at any time during the implementation of the PA process.

Evaluating Sites Located Partially Within the Construction Right-of-Way

Sites situated partially within the project's construction right-of-way (ROW) and partially outside the ROW also remain "unevaluated" in the archaeological survey reports. This is due in part to lack of access to private property located adjacent to the existing or construction ROW or landowner refusal to allow subsurface testing. In such cases, National Register evaluations recommended in reports have been, and will continue to be, based on the best available information, including archival research, historic maps, aerial photography, and archaeological testing within the ROW to an appropriate level. In most cases, DM&E's consultants have not provided specific recommendations regarding National Register eligibility due to their inability to characterize or evaluate the site as a whole; instead, the portions of sites which extend into the ROW have been described as either "contributing" or "non-contributing" to indicate whether the archaeological deposits that extend into the ROW retain important information potential regardless of the overall eligibility of the partially accessible site.

Recommendations

1. DM&E and its consultants will attempt to gather sufficient information to fully evaluate the National Register eligibility of properties that extend outside the ROW. This will be accomplished "...to the extent that access from landowners is available" (PA Stipulation A.2). In instances where DM&E's consultants are unable to gain access to the entire site for purposes of evaluating National Register eligibility, and where DM&E is unable to avoid the site during construction, DM&E's consultants will attempt to estimate the boundaries of the site from within the ROW and will ensure that the unavoidable portion of the site

is evaluated and considered on its own merits using the best available information derived from background and archival research and direct observation. Properties will be considered to be eligible if the accessible portion of a property supports this finding. If eligible, the property will be considered in accordance with the terms of any treatment measures developed through consultation in accordance with the terms of the PA. Sites will not be recommended as eligible under any criteria unless available information supports such a finding. Inaccessible portions of sites will continue to be considered unevaluated until or unless additional information is obtained to indicate otherwise.

PROCEDURAL CLARIFICATION FOR ASSESSING THE PROJECT'S DIRECT AND INDIRECT IMPACTS TO HISTORIC PROPERTIES

Issue

The Surface Transportation Board (STB) and the Dakota, Minnesota and Eastern Railroad (DM&E) propose the following plan/clarification for assessing direct (ground disturbance) and indirect effects (noise, visual, vibration) of the project on properties listed on or eligible for listing on the National Register of Historic Places (National Register).

Indirect Effects

The Environmental Impact Statement (EIS) prepared by STB's Section of Environmental Analysis (SEA) for the DM&E Project included information regarding potential noise and vibration impacts to historic properties within the project area. In the Draft EIS, SEA determined that "structures within 100 feet of a new rail line of the type contemplated as part of this project could experience some damage by project-related vibration." In the Final EIS, however, SEA concluded that "...structures would likely need to be within 50 feet of the rail line to potentially be damaged by rail vibration (Final EIS, Volume 1, Chapter 3 at page 3-65)."

SEA also assessed potential audible impacts to the project area in the EIS. SEA concluded that audible impacts would not be adverse. However, STB included Conditions 86-96 in its 2006 Decision to assure that if noise levels increase due to increased haul tonnage levels, mitigation measures would be imposed to address any potential adverse effects including consultations with the appropriate State Historic Preservation Officer (SHPOs) for impacts that could affect historic properties. In Condition 95:¹

...Should noise mitigation be required at locations identified as containing structures that are potentially eligible for listing on the National Register of Historic Places, Applicant shall consult with the appropriate State Historic Preservation Officer to assess effects and implement appropriate mitigation measures...

The Wyoming (WY) and South Dakota (SD) SHPOs have requested that STB assess potential visual or audible adverse effects on historic properties extending three miles on either side of the construction corridor or New Build Segment. The WY SHPO asked that STB conduct a file search to locate all properties within the 6-mile corridor currently listed on the National Register while the SD SHPO requested an inventory of properties that are both listed and considered eligible for listing on the National Register. Preliminary site file searches conducted by DM&E indicate that approximately 35 sites are located within the six-mile corridor encompassing the New Build Segment in WY and SD.

¹ See 2006 Decision at page 39.

Recommendations

1. DM&E will analyze the results of its site file search to determine what qualities of each individual site contribute to its historic significance and what kinds of indirect impacts could potentially affect the integrity of each site. DM&E will also conduct an analysis to determine which of these sites is situated within the viewshed of the rail corridor and which may be visually or audibly adversely affected by the project.
2. DM&E will prepare a report consolidating the site file searches and viewshed analyses and provide it to STB for review and consideration in accordance with the terms of the Section 106 Programmatic Agreement (PA).
3. Depending on the results provided in the above report, DM&E recognizes that further consultation may be necessary under the terms of the PA to assess any adverse effects and discuss the development of treatment measures intended to avoid, minimize or mitigate such effects.

Construction Impacts/New Build - Direct Effects

DM&E has prepared detailed project maps showing the location of planned cut and fill activity within the construction right-of-way. DM&E provided examples of these maps in recent meetings it held with the SD and WY SHPOs. The SD SHPO suggested that information regarding project impacts and determination of effect could be submitted as a separate companion volume. The maps will be provided as part of that volume.

Recommendation

1. DM&E will prepare large-scale maps that show the construction ROW and the proximity of proposed cut & fill activity within the construction ROW to all historic properties. These maps will be provided to SHPOs following comment on STB's determinations of eligibility and as supporting information accompanying STB's determinations of adverse effect.

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From: Ian Ritchie [iritchie@fs.fed.us]
Sent: Friday, January 23, 2009 3:34 PM
To: Withrow, Randy
Cc: Ian Ritchie; Misty A Hays
Subject: RE:STB/DME PRB Expansion: Forest Service comments and review regarding 4 SD addendum reports (named herein)

Follow Up Flag: Follow up
Flag Status: Red

Randy,

Here are our comments regarding the 4 recently circulated draft reports:

We agree that tribal consultation is needed regarding considering many sites under Criterion A, as well as determinations of eligibility and project effect for most sites.

Report format: With large scale projects involving numerous reports, similar report formats are useful if not vital. For example, PRC Segment 1 Addendum 1 provided a table of sites and ownership prior to section describing sites and work done (Table 4-1). The similar table in Addendum 4 of Custer, Fall River and Pennington Counties (also titled Table 4-1) does not have site ownership and is in a different section of the report. For continuity between reports and ease of review, the reports should have similar formats, including tables. Those tables should be located in the same locations and contain exceedingly similar headings and contents.

PRC Segment 1, Addendum 1

We concur that more work is needed at five sites. As this is a draft report we will need to review the results of further study and final determinations as well as the results of work on un-inventoried parcels.

PRC Segment 3, Addendum 1.

We concur with findings and further survey for un-inventoried parcels. We'll need to review the report at that point.

Custer, Fall River and Pennington Counties, Addendum 4:

The Summary table (Table 4-1) does not present site information in the same order as sites are presented in the report, making review difficult. In addition Table 4-1, for "NRHP eligible" sites the table lists Criterion D first and then Criterion A. For the "unevaluated sites" Criterion A is listed first and Criterion D second. They should be reported in the same order throughout the table (probably alphabetically).

39CU1850, 38FA1361, 39FA1362 39FA147, – non-ground disturbing magnetometer work in relation to the Treatment Plans to be developed may help identify additional intact buried hearth features at these sites.

39CU1872 – ineligible sites like this should be considered for monitoring during construction for unanticipated discoveries.

For sites unevaluated for NRHP eligibility under Criterion D, like 39FA1417, magnetometer work may make finding subsurface magnetic features like hearths and firepits as well as associated activity areas possible.

39CU1830, 39CU1831, 39FS1361, 39FA1362, 39FA1379, 39FA1417, 39PN1747 and 39PN1753—magnetometer work might be undertaken to locate hearth and fire related features and may be appropriate for these sites.

39FA2003, and historic structures FA000000139-43, and FA0000045-48 we concur with determinations, project effects need to be determined.

Custer, Fall River and Pennington Counties, Addendum 3:

We concur with the findings as presented in the report.

Summary comments:

For all inventories: we would like to review reports for the remaining un-inventoried segments once those inventories are complete as well as the evaluations of currently unevaluated sites as well as the further work recommended on recorded sites..

Feasibility for magnetometer work in South Dakota still needs to be evaluated for site eligibility and treatment for sites in the various geological settings the proposed route crosses. Evaluation of sites and developing treatment plans for sites may greatly benefit from non-ground disturbing magnetometer surveys.

We also note that these inventories do cover any areas outside the proposed ROW and as such do not address the PA stipulation for assessing indirect effects. Access is, and has been possible, on most public lands for the entirety of fieldwork since the signing of the PA several years ago. Indirect effects and work to identify sites affected were specifically placed in the PA due to the nature of the project and its radiating effects from the proposed ROW.

Lastly, these are all draft reports, we look forward to the further work to be done and to reviewing the final reports with STBs determinations.

Sincerely,

Ian

March 10, 2009

To: Cathy Glidden, Surface Transportation Board
From: Clair Green, Cultural Resource Office
Subject: Lower Brule Sioux Tribe Comments on Powder River Basin Expansion
Archaeological Reports

As we move forward to work on implementation of the Programmatic Agreement, please find attached our comments on the archaeology reports you forwarded to us. I apologize for the delay in getting them to you.

Attachment

Comments to the Surface Transportation Board on
Archaeological Reports regarding the Powder River Basing Expansion Project

From the
Lower Brule Sioux Tribe

The Lower Brule Sioux Tribe received for review and comment the following documents, as part of the Programmatic Agreement: Burkard, Zietz, and Salisbury 2008; Corbett, Doyle, Dumm, Shosky and Witt 2008; Zietz, Burkard and Salisbury 2008; and Schneider, Fleming, Nelson and Lowe 2008. These documents (fully referenced below) represent in part additional surveys of lands originally surveyed in 1999 and reported in 2000 (Molyneaux, et al. 2000). The Tribe was an active participant in the review of this latter report in 2000.

The Cultural Resources Office concludes that there are significant differences between the results and recommendations of the archaeological surveys conducted in 2007 and the earlier 1999 survey – in particular, changes in site boundaries and National Register eligibility that affect the potential for disturbance or destruction of cultural sites by construction. These changes are not fully supported or justified by the information presented in the 2008 reports with regard to fieldwork results, analysis, or interpretation. To this issue, we provide the following general comments:

- The 2007 survey reports use as their background data a report referenced as Retter et al. (2007) that apparently contains information from the 1999 University of South Dakota survey report, which the Lower Brule Sioux Tribe reviewed at that time. The report by Retter includes the names of the 1999 surveyors as co-authors. As USD closed the Archaeology Laboratory in 2004, USD archaeologists could not have worked on the 2007 surveys or advised on the re-evaluations in this and subsequent reports.
- In some of the 2007 survey reports (Corbett, Doyle, Dumm, Shosky and Witt 2008; Schneider, Fleming, Nelson and Lowe 2008), some cultural site boundaries established in the 1999 survey were redrawn because the 2007 surveyors did not find any of the cultural material on the surface that the original surveyors recorded in 1999. The fact that the 2007 surveyors did not find additional cultural resources in the site areas defined by the original archaeologists should not cause changes in the original site boundaries.
- In the 2007 TRC survey report (Schneider, Fleming, Nelson and Lowe 2008), the investigators changed the National Register eligibility of some cultural sites originally

surveyed in 1999 from eligible to not eligible because the 2007 surveyors could not associate the cultural site with a specific time period or tribe. The protection under the National Register for an undisturbed cultural area traditionally used by tribal groups – in this case, to obtain stone for tools – should not be based on the absence of specific cultural details.

- In the 2007 SWCA report (Corbett, Doyle, Dumm, Shosky and Witt 2008), the investigators changed the National Register eligibility of some cultural sites with buildings in various states of repair that the 1999 archaeologists had recommended as eligible. The 2007 investigators did this by separating each individual structure from the rest of the cultural materials on the site and buried in the ground. They declared the buildings not eligible on their own and used this evidence to declare the entire cultural site not eligible. A single cultural site cannot be divided into pieces and the pieces judged separately as to National Register eligibility. All the pieces are connected, and each contributes to an overall judgment of eligibility.
- In the 2007 SWCA report (Burkard, Zietz and Salisbury 2008), the surveyors recorded an isolated find on the ground surface without reporting any shovel testing to see whether this find marked a buried cultural site.

We are also concerned by the fact that one survey (Schneider, Fleming, Nelson and Lowe 2008) apparently revisited rerecorded and reevaluated 19 cultural sites over less than 10 days (November 6-16, 2007), using 3 archaeologists and 2 tribal monitors. We ask whether a rate of more than 2 sites per day, including travel, is sufficient to rerecord and reevaluate sites complex enough to have been originally recommended in 1999 as eligible for nomination to the National Register.

Documents Referenced:

Brian L. Molyneaux, Richard A. Fox, Linea Sundstrom, Edwin Hajic, E. Arthur Bettis III, Nancy J. Hodgson, William Ranney, Rachel M. Hinton, Damita Hiemstra and Wade Haakenson (2000) A 1999 Phase I & II Cultural Resource Evaluation of a Proposed Railway Corridor From Wall, South Dakota to the Wyoming Border for the Dakota, Minnesota & Eastern Railroad Corporation's Powder River Basin Expansion Project. Archaeology Laboratory, University of South Dakota, for Burns & McDonnell.

Retter, Michael J., Vanesa Zeitz, Jeff Adams, Paul Burnett, Rob Schweitzer, Todd Kohler, Jennifer Long, Michael Creeger, Jason Burkard, Kendy Altizer, Omar Ramirez, Scott Phillips, Erin Salisbury, Brian Molyneaux, Richard Fox, Linea Sundstrom, Edwin Hajic, E. A. Bettis, III, Nancy Hodgson, William Ranney, Rachel M. Hinton, Damita Hiemstra, and Wade Haakenson (2007) A Level III Cultural Resource Inventory of the Dakota, Minnesota and Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor, Custer, Fall River and Pennington Counties, South Dakota. SWCA Environmental Consultants, for the Dakota, Minnesota and Eastern Railroad Corporation.

Jason Burkard, Vanesa Zietz, and Erin Salisbury (2008) A Level III Cultural Resource Inventory of the Dakota, Minnesota and Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor PRC Segment 3, Haakon, Jackson and Pennington Counties, South Dakota. Addendum 1. SWCA Environmental Consultants.

Kathleen Corbett, Sean M. A. Doyle, Katie Dumm, Daniel Shosky, and Thomas Witt (2008) A Level III Cultural Resource Inventory of the Dakota, Minnesota and Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor PRC Segment 3, Haakon, Jackson and Pennington Counties, South Dakota. Addendum 3. SWCA Environmental Consultants.

Vanesa Zietz, Jason Burkard, , and Erin Salisbury (2008) A Level III Cultural Resource Inventory of the Dakota, Minnesota and Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor, PRC Segment 1, Haakon, Jones and Stanley Counties, South Dakota. Addendum 1. SWCA Environmental Consultants.

Edward A. Schneider, Nathan E. Fleming, Mark A. Nelson, and James A. Lowe 2008 A Level III Cultural Resource Inventory of the Dakota, Minnesota and Eastern Railroad Corporation's Powder River Basin Expansion Project Corridor, Custer, Fall River and Pennington Counties, South Dakota. Addendum 4. South Fork Cheyenne Archaeological Region. TRC Companies.

**COMPILED LIST OF EVALUATED PROPERTIES
POWDER RIVER BASIN EXPANSION PROJECT
SOUTH DAKOTA REHABILITATION SEGMENT**

Site Number	MP	Report Code	Property Description and Location within Direct Impact APE	NRHP Eligibility Determination ¹	Likely Impact to Site/Effect
39HK0102	531.8	SD3a, p. 5-37	Prehistoric Camp (7 artifacts) Private Land, 60% in APE	Not Eligible	Direct Physical Impact/ No Effect
39HK0103	532.75	SD3a, p. 5-39	Prehistoric Lithic Procurement (4 artifacts) Historic Hotel (48+ artifacts) Private Land, 90% within APE	Historic Component: Eligible Criteria A & D Prehistoric Component: Not Eligible	Direct Physical Impact/ Adverse Effect
39HK0107	563.4	SD3c, p. 5-3	Historic Isolated Find (1 Corn Chute) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39JK0229	573.7	SD3c_Ad1, p. 3-1	Isolated Find (1 end scraper & 1 flake) State/Local Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39JK0294	566.6	SD3c, p. 5-5	Historic Isolated Find (1 Abandoned Car Body) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39JK0295	571.3	SD3c, p. 5-6	Historic Isolated Find (1 glass fragments) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39JK0296	573.2	SD3c, p. 5-8	Historic Isolated Find (10 glass fragments) Private Land, 100% within APE	Isolated Finds Not Eligible	No Direct Impact/ No Effect
39JK0297	576.5	SD3c, p. 5-10	Historic Isolated Find (1 Cultivator) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39JK0298	570.4	SD3c, p. 5-12	Prehistoric Camp (6 artifacts) Historic Artifact Scatter (2 artifacts) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39JN0041	513.0	SD3a, p. 5-17 SD3a_Ad1, p. 4-7	Van Metre Townsite (100+ artifacts) Private Land, 100% within APE	Eligible Criteria A & D	Direct Physical Impact/ Adverse Effect
39JN0042	522.3	SD3a, p. 5-28	Prehistoric Camp (31 lithics) Historic Artifact Scatter (6 artifacts) Private Land, 60% within APE	Not Eligible	Direct Physical Impact/ No Effect

¹ All National Register criteria were applied.

Site Number	MP	Report Code	Property Description and Location within Direct Impact APE	NRHP Eligibility Determination ¹	Likely Impact to Site/Effect
39JN0043	520.3	SD3a, p. 5-24	Prehistoric Camp (44 artifacts) Private Land, 50% within APE	Not Eligible	Direct Physical Impact/ No Effect
39JN0048	516.0	SD3a Ad1, p. 4-24	Historic Isolated Find (Hay Raker) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39PN2997	585.5	SD3c, p. 5-17	Historic Isolated Find (License Plate) Private Land, 100% within APE	Isolated Finds Not Eligible	Direct Physical Impact/ No Effect
39ST0351	487.1	SD3a, p. 5-2	Prehistoric Camp (26 lithics) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
39ST0352	488.3	SD3a, p. 5-5	Historic Artifact Scatter (46 artifacts) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect
JK-003-00001	573.2 – 574.2	SD3c, p. 5-19	Historic Road (U.S. Highway 14) Private and State Land, 100% within APE	Historic Highway 14 District: Eligible Criteria A & C (APE Segment is Contributing to District)	Direct Physical Impact/ Adverse Effect
JK-003-00002	573.34	SD3c, p. 5-22	Historic Culvert (US Highway 14) Private and State Land, 100% within APE	Not Eligible Non-Contributing to District	Direct Physical Impact/ No Effect
JK-003-00003	573.79	SD3c, p. 5-22	Historic Box Culvert (US Highway 14) Private and State Land, 100% within APE	Not Eligible Non-Contributing to District	Direct Physical Impact/ No Effect
JK-003-00004	573.96	SD3c, p. 5-23	Historic Bridge (US Highway 14) Private and State Land, 100% within APE	Not Eligible Non-Contributing to District	Direct Physical Impact/ No Effect
JK-003-00005	574.17	SD3c, p. 5-24	Historic Box Culvert (US Highway 14) Private and State Land, 100% within APE	Not Eligible Non-Contributing to District	Direct Physical Impact/ No Effect
JN00000001	520.5	SD3a Ad1, p. 4-18	Historic Capa Bridge Private Land, 100% within APE	Listed on National Register Criteria A & C	Direct Physical Impact/ Adverse Effect
JN00000045	521.5	SD3a, p. 5-53	Historic Bridge Private Land, 100% within APE	Not Eligible (SD SHPO)	Direct Physical Impact/ No Effect
JN00000046	515.25	SD3a, p. 5-53	Historic Bridge Private Land, 100% within APE	Not Eligible (SD SHPO)	Direct Physical Impact/ No Effect
PN-00000752	583.1	SD3c, p. 5-32	Historic Culvert (U.S. Highway 14) Private Land, 50% within APE	Not Eligible	Direct Physical Impact/ No Effect
PN-00000753	584.6	SD3c, p. 5-35	Historic Garage (Extant Structure) Private Land, 100% within APE	Not Eligible	Direct Physical Impact/ No Effect

Site Number	MP	Report Code	Property Description and Location within Direct Impact APE	NRHP Eligibility Determination ¹	Likely Impact to Site/Effect
PN-033-00001	584.6 – 586.7	SD3c	Historic Road (U.S. Highway 14) Private & State Land, 100% within APE	Historic Highway 14 District Eligible Criteria A & C (APE Segment is Non-Contributing to District)	Unevaluated for Criteria A & C

**COMPILED LIST OF UNEVALUATED SITES
POWDER RIVER BASIN EXPANSION PROJECT
SOUTH DAKOTA REHABILITATION SEGMENT**

Property	MP	Report Code	Property Description	Consultant's Eligibility Recommendation	STB's Recommendation
39HK0078	564.7	SD3 SD3c	Prehistoric Artifact Scatter (2 lithics) Private Land, 100% within APE	Not Eligible (SD3) Not Relocated (SD3c)	Unevaluated for Criterion D
39HK0104	532.9	SD3a	Historic Artifact Scatter ("Hundreds" of artifacts) Private Land, 100% within APE	Not Eligible (Only 1 Shovel Test Excavated to Evaluate Potential Subsurface Deposits)	Unevaluated for Criterion D
39HK0105	533.1	SD3a	Historic Building Foundation (20+ artifacts) Private Land, 80% within APE	Not Eligible (No Testing Conducted to Evaluate Potential Subsurface Deposits)	Unevaluated for Criterion D
39HK0133	535.5	SD3a_ Ad1	Prehistoric Camp (12 artifacts) Private Land, 100% within APE	Unevaluated Criterion D (No Testing Conducted to Evaluate Potential Subsurface Deposits)	Unevaluated for Criterion D
39JN0004	522.9	SD3 SD3a_ Ad1	Prehistoric Camp ("Several flakes") Private Land, 90% within APE	Not Eligible (SD3) Not Relocated (SD3a_Ad1)	Unevaluated for Criterion D
39JN0009	523.45	SD3 SD3a	Capa Station & Townsite Private Land, 60% within APE	Not Eligible (SD3 & SD3a) (Only 1 Shovel Test Excavated to Evaluate Potential Subsurface Deposits)	Unevaluated for Criterion D
39JN0049	515.5	SD3a_ Ad1	Prehistoric (26 artifacts) Private Land, 50% within APE	Unevaluated Criterion D (No Subsurface Testing Conducted Within Site Area Outside APE)	Unevaluated for Criterion D
39ST0353	507.4	SD3a	Prehistoric Camp (25 artifacts) Historic Artifact Scatter (70+ artifacts) Private Land, 40% within APE	Unevaluated Criterion D (No Subsurface Testing Conducted Within Site Area Outside APE)	Unevaluated for Criterion D
39ST0354	508.9	SD3a	Prehistoric Camp (14 artifacts) Historic Cemetery (2 burials) Private Land, 70% within APE	Not Eligible (Only 1 Shovel Test Excavated to Evaluate Potential Subsurface Deposits)	Unevaluated for Criterion D

Property	MP	Report Code	Property Description	Consultant's Eligibility Recommendation	STB's Recommendation
39ST0368	487.0	SD3a- Ad1	Prehistoric Lithic Scatter (5 artifacts) Historic Artifact Scatter (7 artifacts) Private Land, 100% within APE	Unevaluated Criterion D (No Testing Conducted to Evaluate Potential Subsurface Deposits)	Unevaluated for Criterion D