

**Tongue River Railroad Environmental Impact Statement
Docket No. FD 30186**

National Historic Preservation Act, Section 106 Teleconference

March 11, 2013

DRAFT Meeting Summary

Attendees: (Note: Please see meeting agenda for list of invited parties.)

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

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

Other Federal Agencies

Shannon Johnson	Army Corps of Engineers
Doug Melton	Bureau of Land Management
Erica Jones	USDA Agriculture Research Station - Stoneville, MS
Mickey McGuire	USDA Agriculture Research Station - Fort Collins, CO
Larry Chandler	USDA Agriculture Research Station - Fort Collins, CO
Mark Petersen	USDA Agriculture Research Station - Miles City, MT
Maribeth Wuertz	USDA Agriculture Research Station - Miles City, MT

800.2(b) Advisory Council on Historic Preservation

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

800.2(c) Consulting Parties

800.2(c)(1) MT SHPO

Stan Wilmoth	Montana SHPO
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800.2(c) (2) (ii) Indian Tribes, off Tribal lands

Conrad Fisher	Northern Cheyenne
Terry Clouthier	Standing Rock Sioux
Mary Wilson	Standing Rock Sioux
Dianne Desrosiers	Sisseton-Wahpeton Oyate Sioux
Jim Whitted	Sisseton-Wahpeton Oyate Sioux
Faith Spotted Eagle	Yankton Sioux

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

Jennifer Sheetz	BNSF Railway
Mike Stanfield	BNSF Railway
Derin Warren	BNSF Railway
David Coburn	Steptoe and Johnson, Attorney for Applicant
Doug Dorsey	Hansen Professional Services, Consultant to Applicant
Dan Hadley	Mission Engineering, Consultant to Applicant

800.2(c) (5) Additional Consulting Parties

Betsy Merritt	National Trust for Historic Preservation
Amy Cole	National Trust for Historic Preservation
Jim Jenks	Montana Preservation Alliance
Chere Jiusto	Montana Preservation Alliance

800.2(d) The Public

Alexis Bonogofsky	National Wildlife Federation
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800.4(a) (3) Other parties likely to have knowledge or concerns with historic properties

Natalie Snyders	Northern Plains Resource Council
Adriann Killsnight	Contractor to Bureau of Land Management for Ecoregional Ethnographic Assessment

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

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

Meeting Summary

Catherine Nadals of the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) began the teleconference by thanking everyone for participating. Ms. Nadals asked the participants to introduce themselves. She reviewed the agenda which included items for: project updates, status of records search, draft preliminary methodology, mapping of river and stream crossings, project website for Section 106, general discussion, and the upcoming in-person consulting party meeting.

Ken Blodgett of OEA thanked everyone for calling in and provided a general update on the environmental review. Mr. Blodgett reported that the Final Scope of Study for the Environmental Impact Statement (EIS) is currently being prepared. He explained that over 2,500 comments were received during the scoping period and would be summarized in the Final Scope. The alternatives to be studied in the EIS will also be included in the Final Scope, along with details about the environmental

impact categories that will be analyzed. Mr. Blodgett informed the attendees that OEA is currently requesting property access from owners in the project area. Owners in the project area are being contacted individually to seek their permission to conduct environmental surveys on their property, including cultural resources. Access to properties in the project area will facilitate an analysis that compares the project alternatives. No date has been established for the release of the Final Scope, but OEA expects to issue it soon. Availability of the Final Scope will be announced several different ways (e.g., email, postcards).

Charlene Dwin Vaughn, Advisory Council on Historic Preservation, asked whether a project schedule has been established for the EIS. Mr. Blodgett responded that the goal is to complete the Draft EIS in late fall, but that this is a target date and the schedule could change.

Ms. Nadals introduced Rick Starzak of ICF International, the Board's third-party consultant. Mr. Starzak discussed the draft Section 106 methodology.

Mr. Starzak indicated that one of the items discussed on last month's teleconference was a methodology for compliance with Section 106 of the National Historic Preservation Act (NHPA). The consensus from last month's teleconference was that the consulting parties would like the project team to develop a methodology that the parties could review. Mr. Starzak informed the meeting attendees that the preparation of a methodology was already underway at the time of the previous meeting and as a result of the expressed interest the methodology was reviewed and distributed prior to the teleconference via email and Outlook meeting invitation.

Mr. Starzak explained that the 106 methodology was organized according to the relevant regulations, 36 CFR Part 800, with an explanation of the proposed approach and tasks summarized under the relevant sub-sections of the regulation. Mr. Starzak pointed out that this methodology is a work-in-progress. He indicated that as the team learns more through records search, knowledge shared by the parties, and access to property, the methodology may evolve to accommodate new information. Mr. Starzak explained that there were two attachments to the draft methodology: Attachment A and Attachment B. Attachment A is a preliminary bibliography. Mr. Starzak stressed that this bibliography is preliminary and requested that the parties inform the team of other sources and resources. Attachment B is a preliminary historical background of the area and a list of possible property types that might be encountered within the Area of Potential Effects (APE). Mr. Starzak solicited questions and comments.

Dianne Desrosiers, Sisseton-Wahpeton Oyate Sioux, indicated that she could not find a copy of the methodology or attachments. Mr. Starzak answered that the documents were attached to both the Outlook meeting invitation and email reminder regarding today's teleconference. He promised to send them to Ms. Desrosiers again.

Ms. Nadals asked Mr. Starzak to review the methodology, with an emphasis on the time frames involved. Mr. Starzak explained that each section of the draft methodology included a proposed time frame and indicated that the process will unfold over the next few months. Currently, the effort is focused on collecting existing information. There will be an in-person consulting meeting held in April 2013, which will assist in the information-gathering effort. Field work is scheduled from May to August

2013. Once the field work is complete, the information gathered will need to be processed, analyzed, and summarized on appropriate forms. The goal is not to have definitive findings on every site in the APE by fall 2013, but to have enough information to compare alternatives in the EIS. Once the field work is complete, there will be an opportunity for the parties including SHPO, tribes, Miles City preservation office, Montana Preservation Alliance, and other historic groups to consult on the identification and evaluation effort and draw conclusions about historic properties and effects. This consultation will assist in comparing alternatives in the EIS. Mr. Starzak noted that it is not clear how much access will be granted to do field work. Where there is no access, the cultural resources team will need to develop predictive models and rely on the parties' knowledge to determine the nature and location of the historic properties so that the alternatives can be compared.

Jim Jenks, Montana Preservation Alliance, noted that the amount of survey coverage in the project area is very low, possibly 6-8 %. Doug Melton, Bureau of Land Management (BLM), disagreed, saying that some BLM properties have been intensively surveyed.

Charlene Dwin Vaughn asked whether previous surveys had included Traditional Cultural Properties and cultural landscapes with tribal significance. Mr. Jenks indicated that the survey work done to date is outdated and that property boundaries for identified sites are not well defined. Mr. Jenks stated that BLM lands had been extensively surveyed. Mr. Melton added the Colstrip area has been extensively surveyed. Mr. Jenks explained that areas along the Tongue River have neither been surveyed nor evaluated for National Register eligibility and offered that consultation and information gathering regarding potential sites is important. Mr. Starzak agreed that consultation is essential. Mr. Starzak expressed a hope that even in places where property access is not granted, property owners might be willing to share information with the project team regarding historic properties and tribal sites on their land. Limited access to property and lack of access over the years poses a challenge to the identification and evaluation effort. In those cases where access is granted, the project team will invite tribal cultural staff and elders to participate in surveys.

Ms. Desrosiers asked who is going to be performing the archaeological field work. Mr. Starzak explained that ICF International, the Board's third-party consultant, would be conducting field surveys. He indicated that the Northern Cheyenne and some other tribes have already been invited to participate in the field work. However, it is unclear where property access (other than government lands) will be granted so plans for field work are still evolving.

Ms. Desrosiers asked where ICF International is located. Mr. Starzak explained that ICF's closest office to the project site is located in Gillette, Wyoming and the company's headquarters is in Fairfax, Virginia. He stated that ICF's cultural staff is located in offices along the west coast. Ms. Desrosiers offered that she has been involved in other projects located on the northern plains, including North and South Dakota, where cultural staff assigned had expertise in marine archaeology. Mr. Starzak explained that Mark Robinson, one of ICF's lead archaeologists is from Montana and was educated in Missoula. He stressed the team's desire for cooperation and input from the consulting parties.

Ms. Desrosiers asked what type of surveys would be conducted. Mr. Starzak explained that, in areas where access is granted, three types of survey are planned: 1) archaeological pedestrian transects surveys to 300 feet on both sides of the alignment that will be staffed by cultural resources professionals and tribal members; 2) Built environment surveys which will look out further than the 300 feet to capture homestead sites, visual effects, settlers' cabins, cavalry outpost sites, ranching landscapes, rural landscapes, and properties of that nature which will be staffed by qualified historians/architectural historians; and 3) TCP surveys which will include tribal members. Mr. Starzak stressed that this is a draft methodology and solicited input from the parties on other ways to get information. He reiterated that a model will be developed to assist in areas where access is limited or not available.

Ms. Desrosiers inquired as to what percentage of land the cultural resources team will be granted access. Mr. Starzak replied that the extent of access to privately owned property is unknown at this point, but that there will be access to government owned land. Alan Summerville, ICF International, explained that a first wave of property access request letters were sent several weeks ago and that a second wave was sent last week. Responses are beginning to arrive and they include some permission and some denials. Mr. Starzak explained that once the project team knows where access is available, they will map in GIS and develop a work plan based on access. Mr. Starzak explained that this task will likely happen in April and May 2013.

Charlene Dwin Vaughn asked whether comments provided in response to previous Tongue River Railroad undertakings have been incorporated in the current scope of work and methodology. Ms. Nadals responded that comments made in previous consultation meetings are being incorporated.

Ms. Desrosiers asked what percentage of land on which access is being requested is owned by the government. Mr. Starzak responded that the United States Department of Agriculture (USDA) and BLM own some land, but he did not know the exact percentage. Ms. Desrosiers requested a map showing land ownership. Mr. Starzak responded that a map could be prepared showing the locations of known sites (only SHPO and tribal access for locations of restricted sites) based on the records search.

Mr. Starzak replied that once the NEPA scope of study is finalized, a map can be generated. Ms. Desrosiers responded that without a map, she cannot provide comments or information about tribal historic sites and oral history. Mr. Starzak indicated that a map with the alternatives is provided on the project website. He referred back to a discussion from the February Section 106 teleconference in which a list of the water crossings was requested and indicated that this list was being prepared and mapped in GIS. Ms. Desrosiers agreed that it would be helpful to see river and stream crossings as these areas are very relevant to the tribes.

Terry Clouthier, Standing Rock Sioux, asked for clarification regarding the TCP survey methodology with respect to tribal involvement. Would, for example, the tribes be invited to participate in TCP or was the project team just asking for information from the tribes regarding such sites? Mr. Starzak clarified that the methodology anticipated the participation of tribal representatives in the pedestrian transect surveys, but that there was also a need to develop an approach to "fill in gaps" for locations where property access was not granted. Mr. Starzak indicated that Curley Youpee (Ft. Peck Assiniboine and

Sioux Tribes) and the Northern Cheyenne tribe had expressed interest in participating in surveys. Mr. Clouthier expressed concerns about participating in surveys with ICF staff because of the confidentiality of data. Mr. Clouthier mentioned he worked on a project with a consultant who copied down anything that the tribes were doing so the consultant could say that they (the consultants) could conduct the tribal surveys on their own. Mr. Clouthier clarified that he was not accusing ICF of this because, other than noticing that ICF has hired people in California, he has not had any dealings with ICF. He did not know what the tribes will think with respect to conducting surveys independently of ICF or in conjunction with ICF. Mr. Starzak indicated that the goal was to identify the locations of TCPs in a general way in order to assess impacts and compare alternatives. He explained that the locations of confidential sites would not be published.

Mr. Clouthier asked if the APE for tribal properties might be expanded in order to capture areas of continued use. Mr. Starzak responded that in areas of sensitivity, the APE might expand beyond the proposed 300 feet. Chere Juisto, Montana Preservation Alliance, recommended that the APE expand based on the type of properties encountered, including both archaeological and historic properties. Ms. Juisto indicated that viewsheds are important. Mr. Starzak indicated that the definition of the APE can be discussed but, in order to do that, the team needs information about the most sensitive areas. Mr. Starzak encouraged the parties to engage in open dialogue and to call or email with any thoughts.

Ms. Nadals suggested moving to the discussion of the records search. Mr. Robinson reported that the site files request has been submitted to the Montana Historic Society. The staff there is working on the request which includes hundreds of sites. The project team has received GIS information from BLM and is gathering reports and information from other sources. Mr. Starzak pointed to Attachment A of the draft 106 methodology which includes a preliminary bibliography. He encouraged the parties to suggest additional sources including historic and archaeological contexts. Mr. Robinson stressed that the bibliography is preliminary.

Mr. Starzak reminded the parties that Matt McCullor and Steve Vance requested information regarding river and stream crossings at the February 106 teleconference. Mr. Starzak indicated that a table listing the crossings was in process and would be available after the Final Scope of Study was released.

Mr. Starzak indicated that a tab on the project website specifically designed to provide information related to the Section 106 process is being developed. The URL for the project website is www.tonguerivereis.com. Ms. Nadals indicated that information relevant to the 106 process as well as maps and letters regarding the NEPA process would be posted here. Mr. Summerville reported that the historic preservation site should be up in a few days, after formatting is completed (the website is up now and can be accessed [here](#)).

Ms. Desrosiers expressed a concern about relying on previous surveys that likely overlooked recording certain sites. Previous surveys, for example, might not include TCPs or other sites of importance to tribes. Mr. Robinson indicated that, in areas where access is granted, surveys will be conducted. The project team does not assume that the previous surveys are complete and understands that existing surveys may be out of date.

Ms. Jiusto recommended using primary source material to inform the historic context and survey work, including General Land Office (GLO) records, tribal consultations, diaries, and military records. Mark Robinson responded that the project team contemplates research in GLO records and homestead records.

Jean Riley asked whether the archaeological analysis will take account of related roadway realignments. Will, for example, the 300 foot APE extend further if roads are realigned? Mr. Robinson responded that the 300 foot APE would be beyond the area of disturbance, including lay down areas, road relocations, bridge abutments, etc. Mr. Starzak emphasized that the APE would be drawn out to include the area of disturbance from construction activity.

Mr. Jenks asked whether cultural resources professionals in the field will determine adjustments to the APE or whether it would be based on mapping/engineering records. Mr. Starzak responded that adjustments to the APE will be based on sensitivity. The APE may change based on field observations by cultural resources staff and tribal representatives in the field. Mr. Starzak explained that the methodology proposes to have at least two tribal representative in the field during archaeological and TCP surveys.

Ms. Dwin Vaughn asked if the ultimate goal is to avoid impacts to sites that are important to the tribes. The methodology emphasizes identification and evaluation, but Ms. Dwin Vaughn inquired whether there was a plan for avoidance. Mr. Starzak responded that the analysis will progress in stages. Since there are several alternatives identified and need to be analyzed, the information gathered in the identification and evaluation stage will inform the comparison of alternatives. Information regarding the impacts will inform the decision about which alternative is selected. The analysis performed for the Draft EIS serves as the first screening opportunity. To the extent that impacts to cultural resources are identified through the analysis of a particular alignment, that information will inform the conclusion regarding which alternative is the environmentally preferable alternative. The goal at this stage is to compare alternatives. Once an alternative is selected and the project is permitted, more detailed analysis will follow that could help refine the engineering and may allow some amount of impact avoidance.

Ms. Desrosiers asked if public scoping meetings had been held and what is the feeling or disposition among local landowners regarding the project. Mr. Blodgett replied that 10 scoping meetings were held in November 2012 in multiple locations including Lame Deer, Miles City, Ashland, and Forsythe. Over 2,500 scoping comments were received. In general, the comments received indicated that area landowners preferred that the railroad not be built.

Ms. Desrosiers expressed concern about the safety of field survey crews. Mr. Blodgett responded that survey work would only proceed on land where access was granted. Scheduling will be coordinated with landowners to ensure that owners are aware of the presence of survey crews. Mr. Robinson offered that the field survey crews will have access to good mapping through GIS that will inform them of property boundaries. Ms. Nadals stated that landowners will sign a document that will grant permission to perform surveys.

Conrad Fisher, Northern Cheyenne, shared that he and Mr. Starzak discussed the issue of assurances regarding the participation of tribal people in the survey team. Mr. Fisher stated that safety is an important issue and that survey work can be dangerous. He offered that it is important the tribal people to have sense of security as they participate in this important project. He stated that everyone involved, including landowners, is a partner in the common goal of following the process. Ms. Desrosiers indicated that she appreciated these comments because tribes have been on projects where they have been shot at. David Coburn, Steptoe and Johnson, Attorney for the Applicant, expressed that safety is an understandable concern. Mr. Coburn pointed out that the project is in an early stage and that there will be properties to which access is not granted to either the Board or TRRC. It may occur that detailed surveys will not be possible until the permit is in place and the alternative is selected and the project is going forward. At that point, when access is secured through eminent domain if necessary, surveys would occur according to the terms of a programmatic agreement. When the permitting is completed, TRRC will have legal right to access the property. Whether that access will include the whole APE is not clear.

Alexis Bonogofsky, National Wildlife Federation, emphasized that the Otter Creek coal mine is seeking a permit. Ms. Bonogofsky stated that landowners have no obligation to permit access to the railroad. She suggested that landowners might allow tribal people on their land to conduct surveys. The TRRC does not yet have a permit. Ms. Nadals stated that cultural surveys would be conducted by the Board and its third- party contractor, not TRRC.

Mr. Fisher agreed that these are important points to discuss. Ms. Nadals agreed that safety is an important concern and stated that a safety plan that all participants are comfortable with would be developed.

Ms. Nadals asked if anyone on the teleconference had any other items to discuss.

Mr. Fisher suggested discussing the timeframe for the in-person consulting meeting and associated field/windshield survey. Ms. Nadals said that the first in-person consulting meeting is scheduled for the week of April 15th. Mr. Fisher had offered to host the meeting on the Northern Cheyenne Reservation in Lama Deer, Montana. Mr. Fisher stated that Steve Brady, Northern Cheyenne, suggested that the consultation meeting include discussions with local residents.

Ms. Desrosiers suggested that there might be a conflict with another meeting hosted by the Wyoming National Guard. Mr. Fisher clarified that the Wyoming National Guard meeting Ms. Desrosiers mentioned is a teleconference rather than an in-person meeting. Ms. Nadals asked that people on the call email her to indicate availability.

David Coburn asked for clarification that three days of meetings, April 16-18th, were contemplated and asked if April 15-17th was possible. Ms. Nadals replied that those dates would entail Sunday travel which could be difficult for some participants.

Ms. Nadals confirmed that this was, tentatively, the schedule. Ms. Nadals suggested that if Mr. Coburn was not available for the entire time, perhaps he could send a representative. Ms. Nadals asked for

input from the group regarding whether three days was necessary. Mr. Fisher offered that two days would be needed for meetings, including a tribal caucus and questions, plus a full day for the field visit. Mr. Fisher noted that the alignment is minimally an 80-90 mile roundtrip over a partially paved and partially gravel road. Ms. Nadals agreed that it was undesirable to rush the field visit. Ms. Nadals suggested that the meetings would include presentations. Ms. Desrosiers agreed with Mr. Fisher regarding the scheduling needs.

Ms. Nadals asked for other comments or concerns before adjourning the meeting.

Mr. Starzak noted that developing a map outlining public/private land ownership is an action item. This will be distributed after the Final Scope is issued. There will be another monthly conference call held before the in-person meeting. Mr. Starzak encouraged parties to share information with the cultural project team to help refine the methodology.

Ms. Nadals confirmed that the next Section 106 update call is scheduled for April 8th.

Ms. Nadals asked participants to confirm attendance at the April 16-18th in-person meeting. Mr. Clouthier indicated one or two Standing Rock Sioux representatives would attend. Ms. Desrosiers said two Sisseton-Wahpeton Oyate representatives would attend. Shannon Johnson, Army Corps of Engineers, offered that the Army Corps would attend. Mr. Fisher confirmed Northern Cheyenne attendance. Mr. Starzak indicated that a notice regarding the April 16-18th meeting would be sent out.

Ms. Desrosiers asked if the Crow tribe has been participating in the Section 106 process and offered that the Crow has a new THPO. Ms. Nadals responded that representatives from the Crow have attended previous 106 meetings for other TRRC proposals. Mr. Starzak confirmed that he had communicated with Emerson Bull Chief, the new Crow THPO.

Ms. Nadals thanked all the participants for joining the call.

Action Items:

- ICF to prepare map of public vs. private land ownership.
- ICF to prepare map of property along the alternatives where access is granted and not granted.
- ICF to distribute map of stream and river crossings after the Final Scope is issued.
- ICF to address the safety plan for conducting the field work.