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>

04/08/2009 06:06 PM

To <Vicki.Rutson@stb.dot.gov>

cc <Catherine.Glidden@stb.dot.gov>, "Withrow, Randy"
<rwithrow@louisberger.com>, "Randy Henke"
<rhenke@cedaramerican.com>, "Jackson, Doug"

bcc

Subject

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CG

Vicki--

Randy Henke asked me to thank you once again on his behalf for the meeting and to send you an electronic copy of the follow-up letter he sent you today (see attached).

Please let us know if you have any questions or concerns.

Herb M. Jones
Director, Government Affairs
DM&E Railroad
(605) 782-1223

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Dakota, Minnesota & Eastern Railroad Corporation

April 8, 2009

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E. St. SW
Washington, DC 20423-0001

RE: Dakota, Minnesota & Eastern Railroad (DM&E) Powder River Basin Expansion Project (PRB Project); April 2, 2009 Meeting Follow-up

Dear Ms. Rutson:

Thank you for meeting with Doug Jackson and myself, representing the DM&E, at your offices last week to address issues concerning the Surface Transportation Board's (STB) overview of the PRB Project. We especially appreciate that you spent several hours of your valuable time ensuring that the various parties are working together to address our mutual interest in successful Section 106 compliance activities. It is our impression that face-to-face meetings are the most fruitful, and the April 2, 2009 meeting was no exception.

With this letter, it is my hope to accurately record our understanding of the STB's position with respect to several topics covered at the meeting. Based on our conversation last Thursday, the attached document summarizes seven important issues and my impression of the STB's position on each. Please advise if my understanding of your position is incorrect. It is our intent to use these positions to guide the work ahead.

As you heard at the meeting, it is our intent to do whatever is necessary to complete the pre-construction cultural resource activity per the Programmatic Agreement. Our aim is, and always has been, to accomplish the work properly. It is now more critical than ever that the path to permitting be as clear as possible in order for us to move forward. We truly appreciate your direct involvement and trust that you appreciate the tremendous commitment of resources we are allocating to ensure the job is not just done, but done well.

Please let us know at your earliest convenience if any of the attached items are inaccurate in any way. Again, thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Henke", written over the word "Sincerely,".

Randy Henke

enclosure

Dakota, Minnesota & Eastern Railroad/Surface Transportation Board
April 2, 2009 Meeting
Issue Items Takeaways

- 1) The Dakota, Minnesota & Eastern Railroad (DM&E) will assist the Surface Transportation Board (STB) and Louis Berger Group (LBG) in identifying easily accessible unevaluated sites in order for STB to prioritize sites for any Tribal (Context) Study visits. This work will be done in a timely manner to ensure that STB/LBG can use the information at the Tribal meeting set for April 21, 2009.
- 2) On the 22 miles that have not been surveyed due to access issues, DM&E will be coordinating a single visit to conduct all work necessary for NRHP eligibility determinations including the field survey and any criteria A, B, C and D data gathering. This work will be videotaped per our standard practice. DM&E recognizes that treatment of any eligible sites may require a future visit(s). In addition to the Tribal monitors joining the survey, interested tribes may wish to make elders available for this work.
- 3) Per Paragraph A.5 of the Programmatic Agreement (PA) the STB will provide construction approval on all areas covered by fully reviewed surveys where there are no eligible sites and/or where eligible sites have been treated as per any agreed upon treatment plan (Paragraph G) as those areas become known. This phased approval will be accomplished by the DM&E submitting letters to the STB requesting approval to build in such areas and providing detailed references to any report(s) covering the identified area(s), and STB responding within a reasonable timeframe.
- 4) Survey report processing will not be delayed by STB due to any aspect of the Traditional Sites Evaluation (Context) Study.
- 5) The STB will be making determinations of eligibility without delay at the conclusion of the Traditional Sites Evaluation (Context) Study according to the timeline provided in the STB's Traditional Sites Evaluation (Context) Study proposal (study completed by July 15, 2009).
- 6) The DM&E will meet the requirements of the PA and Identification Plan (I.D. Plan) by providing the STB, for approval, the geomorphological plan (see ID Plan 3.4 Paragraph 5) we discussed. Fieldwork conducted in conjunction with the associated geomorphological plan will be performed once a decision has been made to move forward with project construction. Construction of the project will not be done in high potential areas until the geomorphological field reviews are completed in the manner outlined in the geomorphological plan.
- 7) STB and DM&E will continue to hold weekly conference calls and will meet at least once per month in South Dakota, Iowa or Washington, DC.