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History: This message has been replied to.

1 Attachment



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Greetings everyone,

The Surface Transportation Board has received a written transcript for the Section 106 Consultation meeting held in Rapid City on January 25-26, 2012. The meeting was held to discuss the Tongue River Railroad Project in southeast Montana.

An electronic copy of the transcript is now available for download on the following FTP website:

<http://ftp.louisberger.com/>

Please login using the following Username and Password. Note that all characters are case sensitive.

Username: STBTRRC

Password: 9t82S5HD

The project materials posted on the FTP site are organized in two folders: one that contains the meeting handouts and one that includes the meeting transcripts. I've also uploaded a typed list of the meeting participants along with a scanned copy of the sign-in sheet that was circulated at the meeting.

If you have any difficulty using the website, please notify me by email (rwithrow@louisberger.com)

Randy Withrow

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SECTION 106 CONSULTING PARTY MEETING

Conducted By: Surface Transportation Board

DAY 1

* * * * *

Taken at
Holiday Inn, Rushmore Plaza
Rapid City, South Dakota
January 25, 2012

A P P E A R A N C E S

CATHY GLIDDEN

(Surface Transportation Board)

CONRAD FISHER

(THPO, Northern Cheyenne Tribe)

DAVID COBURN

(Steptoe and Johnson, TRRC)

CHARLENE VAUGHN (Appearing Telephonically)

(Advisory Council on Historic Preservation)

ELIZABETH MERRITT (Appearing Telephonically)

(National Trust for Historic Preservation)

MARK FIX (Appearing Telephonically)

(Northern Plains Resource Council)

CURLEY YOUPEE

(Historic Preservation Officer

Ft. Peck Assiniboine and Sioux Tribes)

DOUG MELTON

(Bureau of Land Management - Miles City Field Office)

DAN HADLEY

(Mission Engineering)

DARLENE CONRAD

(THPO, Northern Arapaho Tribe)

DANA DUPRIS

(Cultural Specialist, Cheyenne River Sioux Tribe)

PETE COFFEY JR.

(Deputy THPO, Three Affiliated Tribes) (MHA Nation)

JAMES B. WESTON

(THPO, Flandreau Santee Sioux Tribe)

WANDA WELLS

(THPO, Crow Creek Sioux Tribe)

LANA GRAVATT

(THPO, Yankton Sioux Tribe)

A P P E A R A N C E S (Continued)

BRYCE IN THE WOODS

(Council Member, District 1, Cheyenne River Sioux Tribe)

ODELL C. ST. JOHN, JR.

(Crow Creek Sioux Tribe)

JEROME D. WHITE HIP

(Crow Nation)

RICHARD WHITE CLAY, SR.

(Crow Nation)

FRANKY JACKSON

(Flandreau Santee Sioux)

RICHARD ANTELOPE

(Advisory Board, Northern Arapaho Tribe)

HUBERT FRIDAY

(Advisory Board, Northern Arapaho Tribe)

STEVE BRADY

(Cultural Committee Chair, Northern Cheyenne Tribe)

JOE FOX, JR.

(Vice President, Northern Cheyenne Tribe)

YULBERTON ALEC SANDCRANE

(Council Member, Northern Cheyenne Tribe)

RUSSELL EAGLE BEAR

(THPO, Rosebud Sioux Tribe)

BEN RHODD

(Tribal Archaeologist, Rosebud Sioux Tribe)

RICK THOMAS

(THPO, Santee Sioux Tribe of Nebraska)

DIANNE DESROSIERS

(THPO, Sisseton-Wahpeton Oyate)

TAMARA ST. JOHN

(Sisseton-Wahpeton Oyate)

A P P E A R A N C E S (Continued)

TERRY CLOUTHIER

(Tribal Archaeologist, Standing Rock Sioux Tribe)

GAIL HUBBELING

(Council Member, Yankton Sioux Tribe)

HONOR KEELER

(National Trust for Historic Preservation, AAIA)

RANDALL WITHROW

(Archaeologist, The Louis Berger Group, Inc.)
(STB's 3rd Party Consultant)

STAN WILMOTH

(Montana State Office of Historic Preservation)

JOEL AMES

(Tribal Liaison, U.S. Army Corps of Engineers,
Omaha District)

SHANNON L. JOHNSON

(U.S. Army Corps of Engineers, Omaha District)

SHANE FINDLAY

(Bureau of Land Management - Miles City Field Office)

MARK SANT

(Bureau of Land Management, Montana/Dakotas State Office)

BARBARA RANF

(Burlington Northern & Santa Fe Railway Company)

SCOTT CASTLEBERRY

(Burlington Northern & Santa Fe Railway Company)

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P R O C E E D I N G S

* * * * *

MS. CATHERINE GLIDDEN: I thank you so much for coming. This is the Tongue River Railroad Project that's being presented by the Surface Transportation Board. I'm with the Surface Transportation Board. Catherine Glidden is my name, and I'm an environmental protection specialist for the board.

Before we get started, I'm going to start with the court reporter who is going to be recording this entire meeting, and she has very specific needs and requirements, and I'm just going to let her have the floor for a few minutes to kind of describe what she needs from all of you.

(Court Reporter's Instructions)

MS. CATHERINE GLIDDEN: And so we're going to start next with Richard Antelope who has offered to give us a prayer for the meeting.

(Prayer)

MS. CATHERINE GLIDDEN: Thanks again. We're going to start now.

Thank you so much for that wonderful prayer. I appreciate it very much.

This is the Surface Transportation Board's Tongue River Railroad meeting. We're here to

1 discuss the Section 106 process for the Tongue River
2 Railroad Project.

3 I appreciate that so many of you are here. I
4 know you've come from long distances to be here, and
5 it's really impressive that there are so many voices
6 here for this meeting, and I just want to thank each
7 and every one of you for being here.

8 We're here basically primarily to provide you
9 with some additional information about this
10 undertaking, what it is, and we're here to seek your
11 views on what we need to do in order to move this
12 process forward for the 106 process.

13 So I would like to start with each person going
14 around and introducing themselves and explaining who
15 you are, where you're from and why you're here at
16 the meeting.

17 Darlene, do you want to start?

18 MS. DARLENE CONRAD: My name is Darlene Conrad.
19 I'm the Tribal Historic Preservation Officer for the
20 Northern Arapaho Tribe in the Wind River
21 Reservation, Wyoming, and we are here at the Tongue
22 River Railroad Section 106 Consultation Meeting
23 because our ancestors, the Arapahos, worked and
24 traveled with both the Cheyenne and Sioux Nations
25 many years ago in the Powder River area in Eastern

1 Montana.

2 MR. RICHARD ANTELOPE: Richard Antelope,
3 Advisory Board, Northern Arapaho Tribe.

4 MR. HUBERT FRIDAY: Good morning. My name is
5 Hubert Friday, Northern Arapaho. I'm on the
6 advisory board for the preservation. We've come up
7 to see what's going on on this railroad. Years ago
8 the Tongue River Railroad was (unintelligible).
9 That's all I got to say.

10 MS. CATHERINE GLIDDEN: Can you find someone to
11 get these microphones fixed?

12 MR. RUSSELL EAGLE BEAR: I was hoping
13 Catherine Glidden and Randy and Conrad would do a
14 rendition of Peter, Paul and Mary before we get
15 started, if you want to sing a song.

16 (Laughter)

17 MR. RUSSELL EAGLE BEAR: My name is Russell
18 Eagle Bear. I represent the Rosebud Sioux Tribe,
19 the THPO office.

20 MR. BEN RHODD: I'm Ben Rhodd, contract
21 archeologist, Rosebud Sioux Tribe.

22 MR. ALEC SANDCRANE: I'm Alec Sandcrane, Tribal
23 Councilman for the Northern Cheyenne Tribe.

24 MR. TERRY CLOUTHIER: Terry Clouthier, Standing
25 Rock Sioux Tribe, Tribal Archeologist, and I'm here

1 to ensure that the 106 Process is actually followed
2 properly.

3 MS. DIANNE DESROSIERS: Dianne Desrosiers,
4 Sisseton-Wahpeton Oyate, Tribal Historic
5 Preservation Officer.

6 MR. RICHARD WHITE CLAY, SR.: Richard White
7 Clay from the Crow Nation, Cultural Department.

8 MR. JEROME WHITE HIP: Jerome White Hip, the
9 Crow Reservation, Cultural Department.

10 MR. CURLEY YUPEE: Curley Youpee from the
11 Fort Peck Assiniboine and Sioux Tribes, Cultural
12 Resource Department.

13 MR. RICK THOMAS: Rick Thomas, Santee Sioux
14 Tribe, THPO office.

15 MR. FRANKY JACKSON: Good morning. Franky
16 Jackson, Cultural Resource Consultant for the
17 Flandreau Santee Sioux Tribe.

18 MR. JOE FOX, JR.: Joe Fox, Jr., Northern
19 Cheyenne Tribe. I'm the Vice President.

20 MS. LANA GRAVATT: Lana Gravatt, Tribal
21 Historic Preservation Officer for the Yankton Sioux
22 Tribe. I'm here to ensure that the lands that this
23 project is falling on are, that our sites are
24 preserved there, that we get a tribal survey and
25 that those get protected.

1 MS. GAIL HUBBELING: I'm Gail Hubbeling,
2 Yankton Sioux Tribe, Council Member.

3 MR. DOUGLAS MELTON: Doug Melton. I'm the lead
4 archeologist for the Bureau of Land Management in
5 Miles City.

6 MR. SHANE FINDLAY: Good morning. I'm Shane
7 Findlay. I'm a supervisor for (unintelligible)
8 Resources in Miles City, BLM, which includes the
9 cultural program and the realty program. So I'm
10 here, I guess, on behalf of our field manager Debbie
11 Johnson. So thank you.

12 MR. MARK SANT: My name is Mark Sant. I'm the
13 Tribal Coordinator for the BLM, Montana/Dakotas in
14 Billings, and I'm here to relay the tribal concerns
15 to our state director.

16 MR. STAN WILMOTH: Good morning. I'm
17 Stan Wilmoth. I'm at the State Historic
18 Preservation Office in Montana.

19 MR. CONRAD FISHER: Good morning. Conrad
20 Fisher, Northern Cheyenne Tribal Historic
21 Preservation Office. I'd like to welcome everybody.

22 MS. HONOR KEELER: Good morning. My name is
23 Honor Keeler. I'm here with the Association on
24 American Indian Affairs by invitation of the
25 Northern Cheyenne Tribe.

1 MS. BARBARA RANF: I'm Barbara Ranf. I'm with
2 the BNSF Railway out of Helena, Montana, and for
3 them I do state government affairs for Montana and
4 Idaho. I'm glad to be here. Thank you.

5 MR. SCOTT CASTLEBERRY: Good morning. My name
6 is Scott Castleberry. I'm also with BNSF Railway.
7 I'm out of Fort Worth, Texas, and I'm glad to be
8 here as well.

9 MR. DAVID COBURN: I'm David Coburn. I'm with
10 Steptoe and Johnson in Washington, D.C. for the
11 Tongue River Railroad Company.

12 MR. DAN HADLEY: My name is Dan Hadley. I'm
13 with Mission Engineering, Inc. out of Billings,
14 Montana, Consulting Engineer for the Tongue River
15 Railroad.

16 MR. BRYCE IN THE WOODS: I'm Bryce In the
17 Woods, Council Representative for the Cheyenne River
18 Sioux Tribe.

19 MS. CATHERINE GLIDDEN: Cathy Glidden with the
20 Surface Transportation Board.

21 MR. DANA DUPRIS: My name is Dana Dupris with
22 the Cheyenne River Sioux Tribe, Cultural
23 Preservation Office.

24 MR. RANDALL WITHROW: I'm Randy Withrow. I'm a
25 consultant with the Louis Berger Group, and I'm

1 working as a third party contractor with STB.

2 MS. CATHERINE GLIDDEN: Could people in the
3 back, please, who haven't spoken up, introduce
4 yourselves?

5 MR. JOEL AMES: Joel Ames, Army Corps of
6 Engineers, Tribal Liaison, Omaha District.

7 MS. TAMARA ST. JOHN: Tamara St. John,
8 Sisseton-Wahpeton Oyate, Tribal Historic
9 Preservation Office.

10 MS. SHANNON JOHNSON: Shannon Johnson with the
11 Corps of Engineers in Billings.

12 MR. ODELL ST. JOHN, JR.: I'm Odell St. John
13 with the Crow Creek Sioux Tribe. (Unintelligible)

14 MR. JAMES WESTON: James Weston, Flandreau
15 Santee Sioux Tribe, THPO.

16 MR. PETE COFFEY, JR.: My name is Pete Coffey.
17 I'm Mandan, Hidatsa, Arikara Contract -- excuse me,
18 Compliance Officer, Tribal Historic Preservation
19 Office, Fort Berthold, North Dakota.

20 MS. CATHERINE GLIDDEN: Okay, that's everyone?

21 All right. We have provided you all with a
22 series of handouts, if you could open that. I would
23 just like to walk you through what we have here and
24 explain it.

25 First is the attendee list, and -- so if you

1 see a person's name but you're not sure where
2 they're from, it should describe it. If there's any
3 mistakes here or any changes that need to be made,
4 please bring it to my attention. And obviously this
5 is not entirely accurate because we have some
6 additional people that came and some people that
7 didn't come. And we do expect some people to join
8 us by phone. And we have one person --

9 Who do we have on the phone right now?

10 MS. ELIZABETH MERRITT: This is Elizabeth
11 Merritt from the National Trust for Historic
12 Preservation. Am I the only one?

13 MS. CATHERINE GLIDDEN: I think so.

14 Anybody else on the line? Anybody else on the
15 phone, or is it just Elizabeth?

16 (No response)

17 MS. CATHERINE GLIDDEN: Elizabeth, I think it's
18 just you by phone, so welcome.

19 MS. ELIZABETH MERRITT: Maybe I will send an
20 e-mail to Charlene because I believe Charlene Vaughn
21 from the Advisory Council was expected to join.

22 MS. CATHERINE GLIDDEN: Right. Yeah. And we
23 have her on our attendee list, but she doesn't
24 appear to be on the line currently.

25 MS. ELIZABETH MERRITT: Okay.

1 MS. CATHERINE GLIDDEN: Great. Thank you. Do
2 you have the items that we're looking at? Have you
3 downloaded them from the FTP website? We're going
4 to be going through these items. We just went
5 through the attendee list, and now we're going to go
6 through and talk about the agenda.

7 The agenda is something that is flexible, and
8 if you see items here that you don't like or you'd
9 like to change things around, we can talk about it
10 now. We were going to -- basically, one of the
11 things I wanted to do was give you an opportunity to
12 take a look at it, and if you see anything on it you
13 don't particularly care for or you'd like to change,
14 we can do that.

15 We plan to have the meeting go until four
16 o'clock today with a -- I'm going to give you a
17 brief overview of the project, and then we'll have,
18 we'll go around the table, I thought, and allow each
19 person, each group essentially three minutes to
20 speak.

21 The reason that's, we have this limited time is
22 because we have so many people participating today,
23 and just to be sensitive to other people's time
24 and -- I mean, they come from a long distance. That
25 seemed reasonable, but if you'd like to increase

1 that or if you think everyone should have a chance
2 to talk, let me know or speak up right now if you
3 think that that's not appropriate. Otherwise we're
4 going to go ahead and stick with that to give
5 everyone a chance to speak and say what they have to
6 say about the meeting and about the 106 process.

7 Curley?

8 MR. CURLEY YOUPEE: Yeah, I only want to bring
9 out that we had the Agreed Upon Next Steps position
10 paper that was established between the tribes, ACHP,
11 as well as the other members of this consulting
12 group, and I don't see that in your agenda.

13 And the other thing is that I think that, first
14 and foremost I think that Cheyenne trust property
15 issues have to be discussed so tribes can understand
16 their involvement in this consultation. We have
17 to -- I think we have to take care of those issues
18 that are Northern Cheyenne Reservation trust
19 properties, as well as the NHLs that are situated in
20 that area. Then tribes will have an understanding
21 where they're at regarding getting to facilitate
22 their own TCP surveys or studies in that area.
23 Otherwise we're going to be on hold as far as the
24 outside looking in on what has to transpire between
25 the Northern Cheyenne and the state as far as

1 Federal Government.

2 MS. CATHERINE GLIDDEN: Yeah, I mean, obviously
3 we can provide opportunity for Conrad to speak about
4 that or the other members of the Northern Cheyenne
5 Tribe regarding any particular concerns they have.

6 MR. CURLEY YOUPEE: We're on hold until that
7 happens.

8 MS. CATHERINE GLIDDEN: Yeah, I did actually
9 send an e-mail to Conrad asking him about that.

10 Conrad did you want to speak about that issue?
11 Because it seems to be a major concern here.

12 MR. CURLEY YOUPEE: I see he brought his
13 attorney there.

14 MR. CONRAD FISHER: Yeah, this is Honor Keeler.
15 You want to introduce yourself again, Honor?

16 MS. HONOR KEELER: My name is Honor Keeler.
17 I'm from the Association on American Indian Affairs.
18 Today a legal advocate for the Northern Cheyenne
19 Tribe on some of these matters. I came here by
20 invitation of the tribe, and hopefully we can all
21 get these issues out on the table from the Tribal's
22 perspective.

23 MS. DIANNE DESROSIERS: I guess I'd like to say
24 something prior to Conrad's comment.

25 Excuse me.

1 I would like to reiterate Curley's statement
2 and concern about the issues that the Northern
3 Cheyenne have because I feel that, the
4 Sisseton-Wahpeton feels that that issue needs to be
5 resolved before the rest of the tribes should be
6 able to come to the table. And it's almost as
7 though the federal agencies are going to use the
8 tribes in consultation to override the North
9 Cheyenne issue, and so it's important that we
10 resolve the issue with their boundaries prior to
11 consultation with other tribes because that would be
12 like me infringing on their homelands. And so I
13 feel that it's important that we hear out Conrad and
14 see what the tribal issues are on that end, the
15 boundary issue, which is very important because
16 they're a sovereign nation.

17 MS. CATHERINE GLIDDEN: Okay, Dianne.

18 Can I make a suggestion that we amend the first
19 day of the agenda then to include time for Conrad to
20 talk about this issue?

21 Conrad?

22 Or other members of the Northern Cheyenne
23 Tribe, would you be prepared to do that today?

24 MS. HONOR KEELER: I'm sorry, could you repeat
25 that?

1 MS. CATHERINE GLIDDEN: Would you be prepared,
2 the Northern Cheyenne Tribe, to talk about this
3 particular issue? And we could amend the agenda to
4 include that.

5 MS. HONOR KEELER: I believe they want to do
6 that, yes.

7 I think something, again, that is very
8 important is to talk about this potential for a
9 cultural resources survey. Again, the tribes have
10 just mentioned that it's difficult for them to
11 proceed with this process without, without having
12 that information in front of them.

13 MS. CATHERINE GLIDDEN: Well, I appreciate
14 your -- I'd like to continue on with my presentation
15 just to walk you through what I have in this
16 pamphlet, and then we can move on to some changes
17 that you might want to make for the session today.

18 But as I'm hearing it from you all, you want to
19 amend the agenda to include some time for the
20 Northern Cheyenne Tribe to talk about the issue,
21 right?

22 MR. CONRAD FISHER: Well, I think it's really
23 important. And I'm happy that the tribes are
24 concerned with what the local tribe, in this case
25 the Northern Cheyenne, is engaged in as far as the

1 Ninth and the relatedness of the Ninth Circuit
2 Court's decision. I think the Ninth Circuit Court
3 decision has a number of concerns in it, and I think
4 a lot of it is relevant to why we're here today.

5 I think probably -- and I agree with you,
6 Cathy, that maybe we can -- if you want to talk
7 about the Ninth Court decision, that's fine, but I
8 think we need to have, the Northern Cheyenne Tribe
9 needs to sit down with the tribes and maybe we could
10 have a little get-together so they have an
11 understanding of where we're coming from.

12 MS. CATHERINE GLIDDEN: So you'd prefer not to
13 make that an issue that everyone would hear but more
14 of a private discussion?

15 MR. CONRAD FISHER: More of a tribal so that
16 they have an idea of where we're at.

17 MS. CATHERINE GLIDDEN: We've set some time
18 aside this afternoon from 1:30 to 3:30 for tribes to
19 meet with each other. Would that --

20 MR. CONRAD FISHER: However you decide, that
21 would be fine, but I think we need to come together
22 as a tribe.

23 MR. CURLEY YOUPEE: Cathy, I think that we
24 should do that first so we're not stumbling on
25 ourself or have to go back to Northern Cheyenne

1 again and again just to get some clarification. We
2 should be able to do that first and foremost and
3 then speed it along with the other agendas.

4 MS. CATHERINE GLIDDEN: One of my concerns here
5 is that we do have a lot of different, you know,
6 consulting parties here with different views on this
7 project, and I wanted to give everyone a chance as a
8 group to state their particular concerns and
9 objectives and feelings about the project. And I
10 think that that's only fair, you know, given that we
11 have people flying in from other places and so on.
12 And can we do that first, and then after that you
13 could meet so we go ahead and move --

14 MS. LANA GRAVATT: No, we want to caucus first,
15 please.

16 MR. RICK THOMAS: We want to caucus with all
17 the tribes so that we can get on the same page and
18 support the Northern Cheyenne, and you guys can sit
19 down and go where you want to go, but at least we
20 know where we're at as tribes representing tribes.

21 MS. CATHERINE GLIDDEN: Can I tell you what we
22 have in the booklet, what I've provided you, finish
23 doing that at least? Can I do that?

24 We have the agenda, and then we have a letter
25 from Vickie Rutson that was sent to the consulting

1 parties regarding this particular project and
2 basically outlining what we plan on doing, what our
3 intent is with this project, which is to go back and
4 look at some of the steps in the 106 process. And
5 we tried to do that, in part, asking you about
6 additional consulting parties that you think we
7 should include. And we have received some feedback,
8 and we have increased the number of people that we
9 are currently consulting with.

10 And to explain the undertaking, we have
11 Dan Hadley from Mission Engineering to actually walk
12 you through what the undertaking is and
13 modifications that were made to the line in
14 Tongue III. So he's prepared to provide a really
15 nice presentation on that.

16 And then also additional identification efforts
17 that we need to do along with Tongue River I
18 alignment that we want input from you regarding what
19 those are.

20 So, anyway, and then if you move on, we've got
21 a couple of maps here showing the Tongue River I
22 alignment, Tab 4, which this is the current
23 alignment. It's not the same as the one that's
24 shown in the Tongue I documents because there was
25 some changes to the alignment that were made and

1 that are discussed in Tongue III, but this is the
2 alignment the way it is currently designed.

3 And then --

4 MR. RUSSELL EAGLE BEAR: I have a question.
5 Going back to the Surface Transportation Board's
6 letter from Victoria Rutson, and the dialogue there
7 is based on the decision by the Ninth Circuit Court
8 of Appeals. And since that December 9th letter, the
9 court had a ruling, and basically I think we need to
10 go back and have a discussion on that.

11 But basically what you're saying is, you know,
12 we will not be discussing NEPA issues. If you're
13 interested in discussing NEPA concerns,
14 (unintelligible) EIS or the need for a new EIS,
15 that's something that tribes need to --

16 MS. CATHERINE GLIDDEN: I agree. The letter
17 obviously is not current in that regard because we
18 obviously do have a decision.

19 MR. RUSSELL EAGLE BEAR: You know, we should be
20 concentrating on that ruling, the Ninth Circuit
21 Court of Appeals' ruling. And I thought you were
22 going to start off with an overview of that and what
23 it entails and what options that tribes have now at
24 this point, or should we go back to Square 1? That
25 should be the issue, I think.

1 MS. CATHERINE GLIDDEN: Well, we have copies of
2 the Ninth Circuit Court ruling with us. They're out
3 on the desk outside. But basically Tongue River --
4 the decision addressed Tongue River II and III, not
5 Tongue River I, and that is actually stated in the
6 decision whereby it says, "The issuance of the TRRC
7 application is not before us in this litigation. We
8 note, however, that to date the TRRC line has not
9 been constructed." And really that's the only part
10 of the decision that really addresses Tongue I. And
11 it says from the very beginning that this decision
12 does not address Tongue I. Now, that is not to say
13 that the board is not going to decide to do a new
14 EIS or to do whatever it decides, a supplemental EIS
15 for Tongue I or whatever, but it's currently
16 deliberating on that particular question right now.
17 And we probably won't know, I don't know, for a
18 month or so how the board is going to decide on
19 that.

20 But in the interim I felt it appropriate that
21 we move forward with the 106 process in knowing that
22 the board may decide one way or the other. But the
23 court clearly, in making its decision, was making
24 its decision on Tongue II and III, not Tongue I.

25 MS. HONOR KEELER: But, Cathy, there are

1 aspects of Tongue II and Tongue III that have been
2 integrated with cultural resources in Tongue I.
3 That was mentioned in the decision.

4 MS. CATHERINE GLIDDEN: Well, I mean, again --

5 MS. HONOR KEELER: So I think it's something
6 that we do need to talk about here today.

7 MS. CATHERINE GLIDDEN: I am not prepared to
8 talk about the decision today because I'm not an
9 attorney, and I don't have any real background on
10 that. I'd really like, and I think it's appropriate
11 that we simply move forward with discussing what the
12 undertaking is and the steps in the 106 process.

13 We did meet with the advisory council on this
14 very question, and they advised us to keep the NEPA
15 process and the 106 process separate for the time
16 being until, you know, at the time we've either
17 gotten a decision or the board decides on how to
18 move forward, which is really the case now, the
19 second part of that.

20 So, you know, I mean, I was hoping that within
21 the three-minute time frame that each group is going
22 to be allotted that you could go ahead and express
23 your opinions as we go around the table about, you
24 know, any issue, other than the things that are on
25 the agenda, that concern you about this project for

1 the record, your statements about the decision or
2 what you feel about the decision or what you feel
3 about the project so it'll be something then that
4 the board can weigh when they decide what to do.

5 MS. LANA GRAVATT: Maybe at the end of the
6 meeting like tomorrow we could issue a statement
7 after we've had time to listen and process what you
8 have to present us and time to caucus with each
9 other, but for you to throw that out there at us
10 right away is not appropriate.

11 MS. CATHERINE GLIDDEN: Well, we can switch,
12 like I said --

13 MS. LANA GRAVATT: And you told me the agenda
14 was not set. You said that it's flexible.

15 MS. CATHERINE GLIDDEN: That's correct. We can
16 move it around.

17 MS. LANA GRAVATT: And we told you what we want
18 to do, so . . .

19 MS. CATHERINE GLIDDEN: Okay. Can I finish
20 going through the handouts that I have here? We
21 also have sections of the EIS documents. The first
22 one -- these sections deal with cultural resources,
23 so obviously they're much larger documents, but I've
24 simply called out the sections that pertain to the
25 cultural resources.

1 So the first document is the draft
2 Environmental Impact Statement for Tongue I, Docket
3 No. 30186, and so this is the draft. It talks about
4 the cultural resources in here that would be
5 affected by the undertaking.

6 Now, keep in mind that the alignment has
7 changed slightly, but like on Page A12-11 you have a
8 description of the sites that would be affected
9 within the 3,000-foot corridor; A12-9, prehistoric
10 sites within that 2,000-foot corridor; and on
11 Page A12-8, Table A12-3, the number of sites
12 affected by the undertaking in the direct APE.

13 The second document --

14 MR. TERRY CLOUTHIER: Cathy, before we move on
15 to the second document, this is for Tongue River I,
16 this --

17 MS. CATHERINE GLIDDEN: Tongue I, yep.

18 MR. TERRY CLOUTHIER: -- 30186?

19 MS. CATHERINE GLIDDEN: Yeah.

20 MR. TERRY CLOUTHIER: And you guys were
21 planning on using this for your EIS requirements?

22 MS. CATHERINE GLIDDEN: The Interstate Commerce
23 Commission basically approved this project in 1986,
24 and there were updates to the mitigation and to the
25 alignment that were done later on and discussed in

1 other, or in the later EIS documents, but -- and I'm
2 going to get to that, the updates.

3 So -- and then the second document is the final
4 Environmental Impact Statement for the Tongue River
5 Railroad Project, which again is the one before us.
6 And the alignment that was chosen is the preferred
7 alignment. So if you look at these tables, that's,
8 or the proposed action, rather, is the one you're
9 going to be wanting to be looking at on Page 127,
10 the proposed action.

11 The last document is the Draft Supplemental
12 Environmental Impact Statement for Tongue III in
13 which there are some adjustments to the Tongue I
14 alignment that were done. And there's a good
15 summary of Tongue I on Page 1-5 and the different
16 alternatives that were considered at the time,
17 Figure 1-12 -- or 1-2.

18 And then on Page 1-8 there's a chronology of
19 important dates in Tongue I. And as you can see at
20 the bottom, it discusses Tongue I, that it's
21 administratively final, and no judicial review
22 proceeding is pending. Judicial review was sought
23 in the U.S. Court of Appeals for the Ninth Circuit,
24 but the Ninth Circuit dismissed that appeal. That
25 was in 1987.

1 And then the other thing is on Page, I want to
2 bring this to your attention, 3-6 and onward it
3 talks about additional analysis that was done for
4 Tongue I.

5 Chapter 5 is basically looking at a more
6 focused review of Tongue I and Tongue II. There's a
7 description of the cultural resources in this
8 chapter and an update to the original surveys that
9 were done showing that there's an actual decrease in
10 impacts as a result of the change of alignment, and
11 that's on Page 5-16.

12 So why don't we go back to the agenda then and
13 make a decision about how we want to update this to
14 change it.

15 MR. RUSSELL EAGLE BEAR: Catherine?

16 MS. CATHERINE GLIDDEN: Yeah.

17 MR. RUSSELL EAGLE BEAR: Am I to understand
18 that following the Section 106 process, that the
19 first step is to initiate the Section 106 process?

20 MS. CATHERINE GLIDDEN: Right.

21 MR. RUSSELL EAGLE BEAR: And this is a second
22 meeting, this is our second -- the second step is to
23 identify or initiate -- identify historic
24 properties. Is this what this meeting is about
25 today?

1 MS. CATHERINE GLIDDEN: Well, we're here
2 basically to --

3 MR. RUSSELL EAGLE BEAR: Well, you're calling
4 it a Section 106 process, so are we going to be
5 sitting here talking about --

6 MS. CATHERINE GLIDDEN: Our intent is to --

7 MR. RUSSELL EAGLE BEAR: -- identifying the
8 historic properties of Tongue River I?

9 MS. CATHERINE GLIDDEN: Well, obviously some
10 work has already been done for this. Is it
11 sufficient for a current --

12 MR. RUSSELL EAGLE BEAR: Well, that's what we
13 have questions about. If that ruling, you know,
14 based on II and III, yet it was done, what, years
15 ago, and we kind of wanted an update from,
16 especially from Northern Cheyenne to see if we are
17 going to go back to Step 1.

18 I mean, at some point it seemed like --

19 MS. CATHERINE GLIDDEN: "Step 1" as in?

20 MR. RUSSELL EAGLE BEAR: We need -- and I'm
21 sure Conrad will provide that layman's term and what
22 it means, you know, for the court ruling.

23 MS. CATHERINE GLIDDEN: Well, one of the things
24 that I wanted to do as part of this meeting was to
25 provide you with a complete description of the

1 undertaking, which is part of that. And Step 1, you
2 know, is this an undertaking? What is the
3 undertaking? So we wanted to present you with that
4 information, but we're also here to hear what your
5 concerns are about this project. That's what
6 consulting is is to hear your points of view and
7 your concerns about the project.

8 So just, you know, not to delay this, but can
9 we go ahead and adjust the agenda so that perhaps
10 you can meet initially for a while and then come
11 back and we can provide you with a presentation on
12 the undertaking? Because I think that's very
13 important so that we can actually present what this
14 project is as part of that step.

15 MR. RUSSELL EAGLE BEAR: Well, I'll turn my
16 three minutes of discussion time over to Ben so he
17 can have six minutes, just to let you know.

18 MS. CATHERINE GLIDDEN: Okay, that works.
19 That's fair.

20 MR. CURLEY YOUPEE: Cathy?

21 MS. CATHERINE GLIDDEN: Go ahead.

22 MR. CURLEY YOUPEE: Kind of switched gear
23 there. I almost lost my place here.

24 I think we should start arranging for that
25 agenda. A lot of this stuff is procedural, and I'm

1 not sure Bob or really Scott, David or the other
2 party came here to listen to all that. I think they
3 want to be involved in that defining the undertaking
4 itself and how the tribes -- or, rather, how Federal
5 Government is going to respond to tribes and their
6 needs and issues.

7 And so if we can get -- again, we need Conrad
8 up first and get him out of the way within our
9 tribal caucus time, and then I think we're better
10 fit and we build a consensus. And then we can come
11 back and --

12 MS. CATHERINE GLIDDEN: So it's ten o'clock.
13 How long do you think you'll need to discuss
14 whatever your concerns are as a group?

15 MS. LANA GRAVATT: An hour.

16 MR. CONRAD FISHER: We'd kind of like to stay
17 within a certain time frame, so if we could have at
18 least an hour and --

19 MS. CATHERINE GLIDDEN: 10:00 to 11:00?

20 MR. CONRAD FISHER: Yeah.

21 And I think, you know, Curley has a point
22 there. I think when we're talking about personal
23 individual concerns and issues about this project, I
24 think if we have a caucus, then we sort of are on
25 the same page, you know, so we kind of have the same

1 concerns once we come out of the caucus.

2 MS. CATHERINE GLIDDEN: The one concern I have
3 as far as the other consulting parties is, you know,
4 we don't have two rooms currently. We had set
5 aside --

6 We do?

7 So we do have an extra room. It looks like
8 we're going to be okay.

9 MR. CONRAD FISHER: So why don't --

10 Go ahead.

11 MS. CATHERINE GLIDDEN: David?

12 MR. DAVID COBURN: Thank you, Cathy and Conrad.

13 Before you caucus, I'm wondering if you could
14 give us a very short description, Conrad? Because
15 there are those of us who aren't as close to the
16 dispute that you've referenced. And I'm generally
17 aware of a dispute but, you know, day in and day out
18 I'm not involved in it, and I don't know all the
19 details. And I'm not asking you to share all the
20 gory details with me, but if you could give us,
21 those of us who won't be in your caucus, just an
22 overview of what is this all about and what's the
23 current status. Because I'm sure there's some
24 public element to it, right?

25 MR. CONRAD FISHER: Right. Well, I think all

1 the tribes that have an interest here claim the area
2 as ancestral lands, so that's the primary issue is
3 that all the tribes that are with us today have some
4 connection, a cultural tie to that area.

5 The Northern Cheyenne, of course, are
6 geographically the closest tribe, and our neighbors
7 to the west, the Crow Tribe also lay claim to that
8 area because of their ancestral tie to it.

9 And so there's a number of different mining
10 issues that are, energy development going on there,
11 so that if you take into consideration Coal Bed
12 Methane, oil and gas, coal mine -- what else is
13 there? Those are the three primary energy
14 developments going on.

15 And then you have this issue, the Tongue River
16 rail line. And, of course, we're surrounded by coal
17 mines, coal generating plants, Colstrip to the
18 north, coal mines in Decker and Spring Creek. So
19 there's energy development going on there.

20 But more importantly I think is the social,
21 economic and environmental effects, all of that
22 combination, so we have a number of things going on,
23 and the railroad seems to be the primary focus, the
24 environmental and cultural concerns.

25 MR. DAVID COBURN: Conrad, is there a boundary

1 dispute, though, that somehow ties into --

2 MR. CONRAD FISHER: Well, we're doing a --
3 we're trying to validate a cadastral survey to
4 ascertain if there is a boundary issue at this
5 point.

6 MS. CATHERINE GLIDDEN: Who is doing the
7 survey?

8 MR. CONRAD FISHER: The Bureau of Indian
9 Affairs.

10 MS. CATHERINE GLIDDEN: So it's currently in
11 progress or --

12 MR. CONRAD FISHER: Yep.

13 MS. CATHERINE GLIDDEN: Well, I mean, I
14 understand that this is a concern, an issue, but if
15 there hasn't been a boundary, a specific boundary
16 determined, it's kind of, you know, I think it puts
17 us all in kind of an odd situation because we're
18 trying to talk about a specific project without
19 knowing, you know, what future action may occur
20 here.

21 MR. CONRAD FISHER: Well, I think that would be
22 one of the concerns that the tribes would have. And
23 I don't know if we need to really get into it right
24 as we're speaking.

25 MS. CATHERINE GLIDDEN: Because we have so many

1 people here that would want to hear also about --

2 MR. CONRAD FISHER: I think it'll come out.

3 Once we have a tribal caucus I think we'll bring out
4 those finer points for everybody. And we're not
5 trying to hide anything. But I think more
6 importantly is we're trying to get the tribes
7 updated about currently what is going on.

8 MS. CATHERINE GLIDDEN: Right. Well, can we
9 agree that when we return that we can provide the
10 railroad with an opportunity to talk about the
11 undertaking --

12 MR. CONRAD FISHER: Sure.

13 MS. CATHERINE GLIDDEN: -- at eleven o'clock?

14 MR. CONRAD FISHER: Yeah.

15 MS. CATHERINE GLIDDEN: From 11:00 to --

16 MR. CONRAD FISHER: Well, the sooner we get
17 started I think the sooner we'll come back together.

18 MS. CATHERINE GLIDDEN: 11:00 until --

19 MR. CONRAD FISHER: Any other questions,
20 Mr. Coburn?

21 MR. DAVID COBURN: No. Thank you, Conrad.

22 MR. CURLEY YOUPEE: How do we turn these folks
23 off that are eavesdropping on us?

24 MS. CATHERINE GLIDDEN: What was the question,
25 Curley?

1 MR. CURLEY YOUPEE: How do we turn these guys
2 off who are listening?

3 MS. CATHERINE GLIDDEN: Well, I think what
4 might be a good idea is conference, if you
5 conference in the other room that we set aside for
6 the tribal -- that way we could continue our
7 discussion here amongst, you know, not tribal
8 individuals, and we'll have it recorded. That way
9 your discussion will not be reported. Does that
10 make sense? We have another room where you could
11 have your caucus.

12 MR. CURLEY YOUPEE: As long as -- because you
13 might be touching on some sensitive issues in
14 discussing those without tribal participation, and
15 I'm against that. We need to be involved in those
16 type of discussions because tribes need a way in
17 just to help regulate the disturbances of these
18 cultural resources. And if you don't allow us to do
19 so, then there's a disconnect, and I'm afraid that's
20 what happens when we're not involved.

21 MS. CATHERINE GLIDDEN: We're just going to
22 simply talk about, you know, whatever concerns that
23 other consulting parties have while you're
24 caucusing, and we're going to have it recorded.

25 MR. CURLEY YOUPEE: And you'll bring that back

1 to the table?

2 MS. CATHERINE GLIDDEN: Yes, absolutely.

3 MR. CURLEY YOUPEE: Okay.

4 MS. CATHERINE GLIDDEN: All right. Let's
5 adjourn then.

6 (Recess for tribes to caucus from 10:05 a.m. to
7 11:20 a.m.)

8 MR. CONRAD FISHER: At this time we'd like to
9 see if there is anybody on the phone via
10 teleconference. I understand that we had one entity
11 that was on the phone.

12 Is there anybody currently on the phone as we
13 speak?

14 MR. MARK FIX: Mark Fix with Northern Plains
15 Resource Council.

16 MR. CONRAD FISHER: Okay, Mark Fix with the
17 Northern Plains Resource Council. Welcome, Mark.
18 This is Conrad Fisher, Northern Cheyenne Tribe. I
19 hope you can hear us. Can you hear us, Mark?

20 MR. MARK FIX: Yeah.

21 MR. CONRAD FISHER: Great. We're trying to get
22 everybody back to the table, so hang tight, Mark.

23 (Brief pause)

24 MR. CONRAD FISHER: Okay, I think we'd like to
25 go ahead and get started here. But before we start,

1 I'd like to have Steve introduce himself from the
2 Northern Cheyenne Tribe because he's one of the key
3 players in the, some of the energy development in
4 Southeastern Montana, particularly the Otter Creek
5 tracks. And I work with him every day, and I'll
6 have him introduce himself.

7 MR. STEVE BRADY: My name is Steve Brady, Sr.
8 I'm the Chairman for the Northern Cheyenne Cultural
9 Commission, (unintelligible) commission for the
10 Northern Cheyenne Tribe.

11 And of course we have Conrad, our THPO officer,
12 and Vice President Fox, Joe Fox here today, and one
13 of our council members, Alec Sandcrane, so far that
14 I've seen.

15 I do want to apologize for being so
16 traditionally late. But, nonetheless, you know,
17 it's great to be here.

18 MR. CONRAD FISHER: Again, I'd like to thank
19 the tribes for wanting to have a caucus and sort of
20 briefing them on current events on or near the
21 Northern Cheyenne Reservation. And I appreciate
22 some of the other agencies being very patient with
23 us. I think it was needed to kind of clarify some
24 of the issues that were pressing and that the tribes
25 needed to know.

1 And at this time I'm going to turn it over to
2 Honor Keeler, and she is going to make a little
3 presentation on, a synopsis of what took place in
4 our caucus.

5 MS. HONOR KEELER: Hi. I'm just going to go
6 over some of the things that we had discussed within
7 the caucus.

8 And if any of the other tribal members would
9 like to speak after I get through that list and add
10 onto that, then please do.

11 One of the most important things we discussed
12 was compliance with NHPA and the information that
13 needs to be gathered on historic, cultural and
14 archeological resources, because the information
15 right now is out of date. It's -- these surveys
16 started or were done 30 years ago. And part of this
17 information gathering is consultation process with
18 the tribes. So we would like a cultural resources
19 survey conducted over this expansive area, this
20 79-mile area, 78-mile area.

21 The other thing, other bit of information that
22 we need are detailed maps of exactly where the
23 railroad will be. Some suggestions were to create a
24 map with specific coordinates where we could zoom in
25 such as on Google or with a GPS view.

1 And the other issue that was brought up was the
2 Otter Creek Spur and how an EIS has never been done
3 on it and how this information in particular has to
4 be gathered at this point. And all of this should
5 be done in consultation with the tribes.

6 And finally, the timeline that has been
7 proposed seems inadequate to gather this
8 information. So that is something I think we should
9 discuss today as well.

10 If anyone else --

11 Is Curley going to speak?

12 MR. CONRAD FISHER: At this time I think if
13 some of the other tribes have a comment on our
14 caucus, we'd sure appreciate it.

15 I think one of the things, Mr. Coburn, that we
16 discussed was just looking at the tribal state
17 agreement as it relates to the Otter Creek tracks,
18 the proposed coal mining there and the possibility
19 of that becoming a direct tie to the, to TR 1 -- or
20 PR 1. And the assumption is that it is going to be
21 a reality that there will be mining in the Otter
22 Creek tracks.

23 So having said that, I think there's a concern
24 about, more so with the PR 1 from Miles City to
25 Ashland. And so it becomes really a concern to have

1 renewed data and information about that whole area.

2 And I know that, also that these are ancestral
3 lands to many of the, to all the tribes that are
4 gathered here, and we all have a stake in the
5 ancestral lands and the cultural landscape and the
6 tribal cultural properties that may be within the
7 corridor, not just the corridor but also the
8 cumulative impacts that really the tribes are not
9 aware of.

10 And so, you know, overall -- I know that there
11 was some discussion about it this morning, but these
12 are -- this is something that's real and that we all
13 have, not just the Northern Cheyenne Tribe but I
14 think all the tribes have a real concern about.

15 And so I'd like to have maybe Curley or Ben
16 just talk a little bit about, and maybe Terry even,
17 I know they have a real concern about how we can
18 make this work and what are some of the mandates
19 that are found within federal laws and policies that
20 we can look at in terms of finding maybe some
21 alternatives on how we can best approach PR 1.

22 So, gentlemen, if any of you would -- don't
23 raise your hands all at once.

24 MR. CURLEY YOUPEE: Cathy, I just want to
25 address the agreed-upon next steps. You know, that

1 hasn't been even brought up at this point. Because
2 I think there was a specific plan or plans, and
3 everyone agreed to them. But let me point those out
4 to you at this point.

5 Timeline for a PA completion, and we thought we
6 were to begin last August, but that didn't happen,
7 and they would try to complete a one year PA within
8 that time. This was contingent upon the railroad.
9 Charlene Vaughn believed that one year was
10 reasonable given the long history of this project.
11 Victoria Rutson agreed. (Unintelligible) requested
12 a TCP survey be completed on accessible land before
13 a PA was executed. Not certain if this was
14 possible, as much of the land is privately owned.
15 Also, David Coburn wondered why a TCP could not be
16 built into a PA, as adjustments can be made to the
17 alignment provided by STB. Tribes needed details
18 about what's out there.

19 Two, tribal funding, and this is where Tongue
20 River said that it would agree to funding tribal
21 expenses based on numbers of people involved and
22 tribal (unintelligible) for additional meetings
23 needed to complete the tribal consultation for the
24 PA. So there was an agreement by the railroad at
25 that point to provide the funding for this

1 consultation to actually happen. Doug said he
2 needed to get (unintelligible) approved by
3 management of course. And tribes requested two
4 persons per tribe be funded to attend these
5 meetings. Because it's always good to have a
6 situation such as Conrad and Steve Brady. Steve is
7 on the Cultural Committee of the advisory capacity,
8 where Conrad is the actual THPO officer.

9 Next meeting location, we thought we were going
10 to have it in Montana because we needed
11 participation from Stan Wilmoth because he is the
12 SHPO officer there, and so we tried to get as close
13 as we could at that point. And it's good that we
14 have SHPO here today.

15 ACHP said they would attend. Is ACHP on the
16 line then?

17 MS. CATHERINE GLIDDEN: Charlene, are you on
18 the line? Is it just -- is it just Mark Fix?

19 MS. ELIZABETH MERRITT: This is Elizabeth
20 Merritt from the National Trust, I'm on the line.
21 And I believe Charlene is planning to be on the
22 line, too.

23 MS. CATHERINE GLIDDEN: So we have two people
24 on the line right now.

25 MR. CURLEY YOUPEE: So we have National Trust.

1 National Park Service, which is good. We asked
2 for that. And then Army Corps of Engineers.

3 Is BLM in here?

4 MR. DOUGLAS MELTON: Yes.

5 MR. CURLEY YOUPEE: Miles City area? So we
6 have that.

7 So that's where we are with this position
8 paper. So they had some work to do regarding the
9 first item regarding when this was going to start,
10 kind of time frames, can tribes anticipate and plan
11 for. Are you going to address this position paper
12 or --

13 MS. CATHERINE GLIDDEN: I can address it right
14 now, if you'd like.

15 MR. CURLEY YOUPEE: Do you want it?

16 MS. CATHERINE GLIDDEN: Sure. Well, I've
17 written down -- I'm okay.

18 As far as the PA is concerned, we're not going
19 straight to a PA because we've separated the 106
20 process from the NEPA process, and we're going back
21 to Steps 1 and 2 of the 106 process. And that's one
22 of the reasons why today we wanted to provide you
23 with an overview of the undertaking.

24 So we're not going to -- we're not going to the
25 point of a PA. We are no longer doing that. And

1 we're doing that in part because of advisory council
2 input that we got and also because the EIS was being
3 litigated for Tongue River. Now, we have a decision
4 in that, and it addresses specifically Tongue
5 River II and III, but we don't know how the board is
6 going to decide on how it affects Tongue I, if at
7 all. So it's really difficult for me to, you know,
8 to comment on that further.

9 MR. CURLEY YOUPEE: Tell me this, Cathy: Has
10 STB and ACHP, have they come to an agreement?

11 MS. CATHERINE GLIDDEN: No. I mean, we've had
12 advisory council provide us guidance and we've
13 requested guidance.

14 MR. CURLEY YOUPEE: Well, that really doesn't
15 engage us as tribes because we're not privy to that
16 information or how that decision was being made.

17 MS. CATHERINE GLIDDEN: Yeah, but we have the
18 guidance that was provided by the advisory council.
19 It's on our website. And I can certainly send that
20 to you all. I've sent it to a few of you. I think
21 Dianne.

22 Right?

23 MR. CURLEY YOUPEE: I think in satisfying this
24 position that you agreed to, we're not satisfied
25 with the information that we're getting at this

1 point.

2 MS. CATHERINE GLIDDEN: Well, we would like to
3 provide you with, actually go back and not even get
4 to the point of talking about identification but
5 really step back, way back in the 106 process and
6 provide you with a better description of the
7 undertaking and get your feedback on what you think
8 the area of potential effect should be for direct
9 and indirect effects and get your feedback on other
10 consulting parties that you think should be
11 included.

12 And we have had a lot of feedback, and we have
13 a lot more people and a lot more tribes and agencies
14 represented today than we did before. So the
15 project has changed, in essence, because the
16 railroad is no longer interested in, at this time in
17 building Tongue II and Tongue III, so we're just
18 talking about Tongue I right now.

19 And as far as describing the project better,
20 that's what we were hoping to do today because we
21 have the railroad here, and we have Dan Hadley from
22 Mission Engineering here to tell you about what is
23 planned for this undertaking and exactly what the
24 alignment is going to be, and we hope that they have
25 a chance to present that today. Dan Hadley is

1 actually leaving in the morning, so it really does
2 need to be today.

3 So as far as providing information, certainly
4 that's -- understand that the surveys are old and
5 they have to be redone. This is the information
6 that we currently have but definitely understanding
7 that we need to, you know, get out there and find
8 out what's out there on the ground. We haven't had
9 these kinds of surveys for the time with the
10 project. So we certainly understand that, and we
11 fully intend to do that.

12 Go ahead.

13 MS. DARLENE CONRAD: The way you're talking and
14 you're describing Tongue I right now, we have a new
15 undertaking? This is an entirely new undertaking?
16 Is that right? That's how you're coming across.

17 MS. CATHERINE GLIDDEN: Well, we think that we
18 need to step back in the 106 process and not go
19 directly to a PA because we obviously need to do --
20 we need to further involve people because so much
21 time has elapsed in this project. So we're going to
22 be looking at, you know, we've added additional
23 consulting parties, and we're going to be looking at
24 getting your feedback on additional identification
25 needs that we need. We're not ready to get to a PA

1 and mitigating adverse effects. In a sense we are
2 stepping back in the 106 process for this
3 undertaking because of the time that's elapsed and
4 the need for further efforts, identification efforts
5 and so on and so forth.

6 MR. CURLEY YOUPEE: When you shift gears like
7 that and you don't do maintenance on what was
8 established prior, it really throws tribes in a
9 tailspin because what control do we even have to be
10 in here as far as our input? How are you going to
11 engage tribes to further this trust relationship?

12 There was no assurances that a PA was even
13 going to be initiated from what I'm hearing. So if
14 we have to create some type of assurances for tribes
15 for even being here in this consultation, it is
16 necessary that we have something. So perhaps we can
17 have an MOA regarding a TCP study that is agreed
18 upon by the tribes.

19 MS. CHARLENE VAUGHN: Cathy, can you hear me?

20 MS. CATHERINE GLIDDEN: Yeah. Go ahead. Who
21 is this? Is this Charlene?

22 MS. CHARLENE VAUGHN: This is Charlene from the
23 advisory council.

24 MS. CATHERINE GLIDDEN: Okay.

25 MS. CHARLENE VAUGHN: Betsy and I can barely

1 hear what's being said. There are a lot of
2 references to what the ACHP said yet we're going in
3 a different direction.

4 So can you all talk closer to the phone or
5 something? Or this will be unproductive for us.

6 MR. DAVID COBURN: Use the mic.

7 MS. CATHERINE GLIDDEN: We'll see what we can
8 do, Charlene. Sorry you're having difficulty
9 hearing the conversation.

10 MS. CHARLENE VAUGHN: Okay. Thank you.

11 MS. CATHERINE GLIDDEN: Sure. We're going to
12 be working on it right now.

13 MR. CURLEY YOUPEE: Got a mic now.

14 MR. RUSSELL EAGLE BEAR: Bang it on the table a
15 couple times.

16 MR. CURLEY YOUPEE: Charlene, can you hear me?

17 (No response.)

18 MR. CURLEY YOUPEE: Charlene, can you hear me?

19 MS. CHARLENE VAUGHN: I can hear you.

20 MR. CURLEY YOUPEE: Good.

21 MS. CHARLENE VAUGHN: I can hear you.

22 MR. CURLEY YOUPEE: I'm trying to go back and
23 reflect what I said now. It was kind of an
24 emotional blurt, but I was saying if we're going to
25 switch gears, it really disengages tribes to fully

1 understand what's going on. And when ACHP and STB
2 is talking outside of the tribes and STB is saying
3 that they've come to a decision based on information
4 gotten from ACHP, then it really disengages us more.

5 MS. CHARLENE VAUGHN: Well, I don't think that
6 I've disengaged anyone, and I don't think that ACHP
7 has. We have to deal with the situation at hand.
8 The project has changed. The undertaking has been
9 redefined. So per our regulations, we're starting
10 at Step 1. So you're bringing in the history,
11 context, expectations, and I don't know how we get
12 there until we build a foundation of what it is
13 we're looking at, what is informing how we do this
14 work, how the court decision informs the activities.

15 So I don't think anybody is trying to work
16 around the tribes or disenfranchise you. I think
17 it's just the contrary. We work with STB very
18 closely to clarify how we conduct the four-step 106
19 review process in a way that is consistent with the
20 regulations, the National Historic Preservation Act
21 and which addresses all of the concerns that you all
22 articulated previously about being engaged early,
23 being clear about the parameters of the project and
24 understanding that STB has a plan to involve you in
25 defining the APE in how identification and

1 evaluation is conducted.

2 MR. CURLEY YUPEE: Well, you're saying that
3 you're not disengaging us but you are. These
4 decisions are made by the Federal Government, and
5 you are Federal Government, as well as STB, that we
6 have no knowledge of these decisions that are being
7 made outside of what we're dealing with today.

8 MS. CHARLENE VAUGHN: We're here today, and
9 we're making a decision inside that's inclusive and
10 that will include all parties. So I don't know
11 where you're going with this comment, but STB is
12 within their right to consult with the ACHP about
13 interpreting the regulations. That's per regulation
14 and statute.

15 MR. CURLEY YUPEE: How that's presented is
16 kind of a fallout. And, you know, what is
17 demonstrated here is not a descent of government but
18 a discord in federal agency policies that are
19 disempowering tribes.

20 Now, as of the late decade I guess we see a lot
21 more federal agencies participating in tribal or
22 Indian affairs, yet we have little or none tribal
23 involvement in government affairs. Now, that's
24 disempowering, I don't care how you look at it.
25 When it becomes a (unintelligible) protection --

1 MS. CHARLENE VAUGHN: Well, we have a different
2 opinion about that. And what we'll do, so this
3 meeting can proceed, is get our attorney to put in
4 writing to all the tribes the role and
5 responsibility of the ACHP as a federal agency that
6 was created to oversee and guide Section 106
7 consultations. I'm comfortable in our role. It's
8 been affirmed by court, and I can get an attorney to
9 put in writing for you --

10 MR. CURLEY YOUPEE: Maybe that's necessary
11 because what we --

12 MS. CHARLENE VAUGHN: -- what we have a right
13 to do with the federal agency, which is to discuss a
14 Section 106 strategy that improves upon oversights
15 and missed steps that were made in an earlier
16 consultation which was truncated and remanded by the
17 court to go back to start over in many aspects.

18 MR. CURLEY YOUPEE: Well, you know, that's good
19 what you said and you're following policy, but we're
20 talking about people's lives here. We're also
21 talking about lifeway protection. And certainly
22 these (unintelligible) can't be the best that we can
23 do for the protection of our cultural existence.
24 And when we feel disengaged, we mean disengaged.
25 And so those things should be addressed, not just a

1 steamroller allowing other participation or other
2 discussions without tribal engagement as well.
3 That's what I'm saying.

4 MS. CHARLENE VAUGHN: I don't think that STB
5 did anything wrong in consulting with the ACHP about
6 how it planned to resume or start the Section 106
7 consultation. I don't think anybody was left out of
8 the discussion. I think that you all wrote a letter
9 that clarified what the steps would be that you all
10 would take.

11 Is there an agenda for this meeting? Because
12 we could be stuck on this point for two days and
13 never accomplish what you all brought people to the
14 table to discuss. Is there an agenda?

15 MS. CATHERINE GLIDDEN: Yes, we do have an
16 agenda. It's been modified slightly. The tribes
17 met and consulted. They caucused for about an hour
18 regarding some issues and concerns that they had.
19 And we planned to have an overview and a briefing on
20 the undertaking which Dan Hadley of Mission
21 Engineering will present, along with members of the
22 BNSF Railway that are here, and we really do hope
23 that we can present that to everybody so that they
24 have a better understanding of what this undertaking
25 is all about.

1 MS. CHARLENE VAUGHN: Since you have people on
2 the telephone who are trying to participate despite
3 the technological challenges, if we could follow an
4 agenda it would be helpful. But more importantly,
5 if we could learn what the undertaking is that we're
6 on this call about, it would really be great.

7 MS. CATHERINE GLIDDEN: Okay.

8 So can we agree, everybody, that we go ahead
9 and allow Mission Engineering to present the
10 undertaking?

11 MR. CURLEY YOUPEE: Can we see the plan first?

12 MR. TERRY CLOUTHIER: There's still a few more
13 things to discuss aside from Curley's issues.

14 MS. CATHERINE GLIDDEN: If you can do it
15 succinctly, because we have a lot of people here
16 that have come a long distance to --

17 MR. TERRY CLOUTHIER: Everyone sitting on this
18 side of the table, Cathy, has come a long distance
19 as well.

20 MS. CATHERINE GLIDDEN: Right, but --

21 MR. TERRY CLOUTHIER: I'm not going to get into
22 that argument with you.

23 MS. CATHERINE GLIDDEN: But in order to
24 present, you know, to you information about what
25 this project is about --

1 MR. CURLEY YOUPEE: Well, that's disengagement.
2 So now you know what disengagement means.

3 MS. CATHERINE GLIDDEN: Go ahead.

4 MR. CONRAD FISHER: Cathy, I think what we're
5 doing is commenting on some of the issues that were
6 raised in our caucus.

7 MS. CATHERINE GLIDDEN: Okay.

8 MR. CONRAD FISHER: And Curley has brought up a
9 point that he feels is an issue. And I know that
10 Terry and Ben and Russell have a comment that they'd
11 like to make. And so I'd like to go ahead and have
12 Terry and then Ben and then Russell make some
13 comments about our caucus this morning. And I think
14 that's where we're at right now, and I'd like to
15 give them that opportunity right now and then pass
16 it over to --

17 MS. CATHERINE GLIDDEN: Okay.

18 I would like to ask then Charlene and everyone
19 that's on the phone if you're okay with the, if
20 you're comfortable with the tribes basically
21 explaining to us what their concerns are coming out
22 of the caucus. And that we then break for lunch,
23 and then immediately following lunch we allow the
24 presentation of the undertaking to occur. Is
25 everyone okay with that?

1 MS. CHARLENE VAUGHN: Okay. So should we get
2 off the phone and resume at lunch? Is that what
3 would be most prudent at this point?

4 MS. CATHERINE GLIDDEN: If you feel you don't
5 want to be part of this discussion, it might be
6 best, yeah. If you think it's pointless to hear
7 what the tribes have to say --

8 MR. TERRY CLOUTHIER: I actually have a comment
9 directed towards Charlene actually.

10 MS. CATHERINE GLIDDEN: Excuse me?

11 MR. TERRY CLOUTHIER: ACHP needs to stay on the
12 line, please. This is Terry Clouthier with the
13 Standing Rock Sioux Tribe.

14 MR. DAN HADLEY: I don't think she can hear you
15 without a microphone.

16 MR. TERRY CLOUTHIER: Charlene, are you still
17 on the line?

18 MS. CHARLENE VAUGHN: I'm here, but I can't
19 hear you all.

20 MR. TERRY CLOUTHIER: At this moment we request
21 that you stay on the line. Charlene, at this moment
22 we request that you actually stay on the line while
23 Russell speaks.

24 MS. CHARLENE VAUGHN: I'm here.

25 MR. RUSSELL EAGLE BEAR: This is Russell Eagle

1 Bear from the Rosebud Sioux Tribe.

2 First of all, you should have been here. They
3 should have invited you. Since other people come
4 from a long ways, you should have been here, too.

5 MS. CHARLENE VAUGHN: Yeah, I know.

6 MR. RUSSELL EAGLE BEAR: I guess one comment,
7 you made a comment and you referred to the recent,
8 the court, the Ninth Circuit Court of Appeals'
9 decision, and I'd like to know what your agency's
10 position is on that.

11 And also I'm going to ask that of the Surface
12 Transportation Board because that's kind of creating
13 some issue and conflict here, and we want to hear
14 from these federal agencies to see what stance
15 they're taking at this point.

16 MS. CHARLENE VAUGHN: Our attorney has the
17 decision --

18 MR. RUSSELL EAGLE BEAR: Well, my attorney is
19 here, too, so he's listening.

20 MS. CHARLENE VAUGHN: Okay. And he has not
21 completed his review of it. He said that it was
22 pretty complex and detailed. And he has other
23 pressing commitments, so he had not completed that,
24 but I will get on my cell phone and tell him that
25 we'd like to have an assessment by the end of this

1 meeting. So I'll do that as I listen, but I am so
2 sorry, I can't give you our legal read on that at
3 this juncture.

4 MR. RUSSELL EAGLE BEAR: You guys are putting
5 us in a position. Maybe we should go back and
6 consult with our lawyers, too, I guess at this point
7 because I think we're putting the cart before the
8 horse here.

9 MS. CHARLENE VAUGHN: So why do you think that
10 we're putting the cart before the horse? What's the
11 concern?

12 MR. RUSSELL EAGLE BEAR: There was a statement
13 made by you or --

14 UNIDENTIFIED SPEAKER: Victoria Rutson.

15 MR. RUSSELL EAGLE BEAR: -- Victoria Rutson,
16 and the whole question of that legal, the Circuit
17 Court of Appeals' decision was to say that the
18 information that was given was stale and we need to
19 go back to Square 1.

20 MS. CHARLENE VAUGHN: I think that's what's
21 happening. You don't think so?

22 MR. RUSSELL EAGLE BEAR: No.

23 MS. CATHERINE GLIDDEN: Well, you know, just to
24 present you once again, and I have a prepared
25 statement that Vickie Rutson gave me regarding our

1 position on the Ninth Circuit Court of Appeals'
2 decision.

3 MS. CHARLENE VAUGHN: So can you share that?

4 MS. CATHERINE GLIDDEN: Yes. I'm going to read
5 it right now.

6 "As most of you know by now, on December 29th,
7 2011, the Ninth Circuit Court of Appeals issued its
8 decision in Northern Plains Resource Council, Inc.
9 versus Tongue River Railroad. This is what the
10 court found: We hold that the Board failed to take
11 the requisite 'hard look' at certain material
12 environmental impacts inherent in TRRC II and III in
13 the manner required by the National Environmental
14 Policy Act (NEPA) prior to approving those
15 applications. We further hold that the Board did
16 not err in its public convenience and necessity
17 analyses, except with respect to its reliance on the
18 viability of TRRC II during the approval of
19 TRRC III. Accordingly, we reverse and remand in
20 part, and affirm in part.

21 Page 21430. The parties now have 45 days from
22 the issuance of the court's decision (or until
23 February 13th, 2012) to file for rehearing. If no
24 one files for rehearing, then the decision is final.
25 This means that the railroad no longer has approvals

1 from the Board in Tongue River II and III and cannot
2 construct either of those rail lines.

3 Regarding Tongue River I, the court said on
4 Page 21432 of its decision, 'The ICC [the Board's
5 predecessor agency] approved the Tongue River
6 Railroad "C" I application on May 1, 1986. The
7 issuance of the TRRC I application is not before us
8 in this litigation. We note, however, that to date
9 the TRRC I line has not been constructed."

10 And then she provides the statement, "You have
11 made it clear to us that you want to see a new EIS
12 prepared for the Tongue River I proceeding. Right
13 now, the Board is carefully considering what steps
14 to take next in Tongue Rivers I, II and III. We ask
15 your patience as we evaluate what is the best course
16 of action consistent with the court's decision."

17 So that was it.

18 MR. RUSSELL EAGLE BEAR: Was the Federal
19 Government going to appeal this? You have 45 days.

20 MS. CHARLENE VAUGHN: What does this mean in
21 terms of this meeting?

22 MS. CATHERINE GLIDDEN: Well, we're hoping to
23 get input from everyone who is here regarding their
24 opinion about the current actions before the board,
25 I mean, the terms of this undertaking.

1 We were also hoping to add consulting parties,
2 if you have additional consulting parties. We have
3 a comment sheet if you have specific comments that
4 you want to put in writing rather than presenting it
5 here for the court reporter.

6 We would like to present you with an overview
7 of the undertaking, which we have members here from
8 the railroad and Mission Engineering to do that.
9 And if you have a copy of the agenda, you can see
10 the other items that are on that agenda, which
11 basically includes getting input on additional
12 identification efforts that need to be conducted and
13 so on.

14 MS. HONOR KEELER: Cathy, I think everyone
15 would like a copy of --

16 MS. CHARLENE VAUGHN: So you're saying this
17 meeting is the form in which the tribes can go on
18 record sharing with STB how they would recommend you
19 coordinate the undertaking with them beginning with
20 Step 1, or are you saying that we have to go off of
21 what happened in 1986, which is complicated in that
22 that agreement was never implemented, nor was the
23 railroad ever constructed? So I guess I'd like
24 clarity in that regard. What opportunity will the
25 tribes have to go on record and influence how STB

1 conducts the consultation that you're attempting to
2 conduct in this meeting?

3 MS. CATHERINE GLIDDEN: Well, that's one of
4 the, actually the first things that was on the
5 agenda was an opportunity for each group to just
6 basically present its views on the actions before
7 us, anything they wanted to, on the decision,
8 anything. And that, unfortunately, was not
9 completed because we had the tribes wanting to
10 caucus.

11 So we still are hoping that we're going to be
12 able to go around the room and get input from each
13 and every person. I actually originally had
14 assigned three minutes per group because we have
15 such a large group. It might be very, very time
16 consuming to have everyone speak, but --

17 MS. CHARLENE VAUGHN: So are they asked to
18 comment before they understand what your action plan
19 is to go forward, or do you want to hear their views
20 before you even introduce the new project?

21 MS. CATHERINE GLIDDEN: Well, I mean, again we
22 were open to any views that people had about the
23 agenda. And if you had been on the phone you would
24 have realized that we were asking input from all
25 consulting parties if they felt the agenda should be

1 changed.

2 MS. CHARLENE VAUGHN: Okay.

3 MS. CATHERINE GLIDDEN: So what we decided to
4 do was we were going to go ahead and have the
5 undertaking described before we went around the room
6 and asked people for their opinions about the
7 action.

8 MR. CONRAD FISHER: Cathy and Charlene, this is
9 Conrad Fisher, Northern Cheyenne Tribe. I think one
10 of the reasons why we had a tribal caucus was to
11 have the tribes get a little historical background,
12 the whole Tongue River Railroad line including
13 PR I, II and III and also the current events that
14 are happening with energy development on or near the
15 reservation.

16 And, in addition, I think what we were trying
17 to do was come to some consensus on how we can have
18 a summary of all the tribes represented here so that
19 we don't have individual comments. Because I think
20 that individual comments is something that we've
21 consolidated in our tribal caucus so that what
22 you're hearing today is really the voice of all the
23 tribes that are represented here.

24 So we've already had discussions in our tribal
25 caucus about these issues, and some of the concerns

1 you're hearing are, that are being voiced by several
2 of the tribes represented here, I think they're
3 speaking on behalf of all the tribes represented.

4 Now, if you're going to have individual
5 comments, Cathy, I think that you're just, we're
6 just being redundant because these are questions
7 that have already been asked in our tribal caucus.
8 But we can do that -- if you want to have individual
9 comments, then we can sit here all day and all
10 afternoon and have individual comments.

11 MS. CATHERINE GLIDDEN: Well, I guess what I
12 was hoping was to, as an opportunity, you know, at
13 this meeting to get feedback from you about what you
14 think about this action, about this undertaking. So
15 we were going to go around the room and for each
16 group have three minutes to tell us what your
17 concerns are or what your feelings are and so on and
18 so forth for the record so that I can go back to --

19 MS. CHARLENE VAUGHN: But, Cathy, you're
20 telling them to express their views and comments on
21 what? The new proposal?

22 MS. CATHERINE GLIDDEN: On anything they want
23 to, I mean, basically whatever their concerns are.
24 I wasn't going to limit it.

25 But what we intend to do is present the

1 undertaking first, and then people can provide their
2 opinion on what their specific concerns are.

3 The reason I wanted this to happen is simply we
4 have, for the record, you know, a record basically
5 of what people are concerned about moving forward
6 with the board so that their comments and opinions
7 can influence the board's decision in this. Since
8 the board hasn't made the decision yet on how it's
9 going to move forward with Tongue I, I think it's
10 very important that they're aware of whatever
11 concerns are out there moving forward.

12 MS. CHARLENE VAUGHN: So I guess the question
13 from the board should be is Tongue I different from
14 the undertaking that was previously presented to the
15 tribe?

16 MS. CATHERINE GLIDDEN: Well, I think we have
17 to -- perhaps David Coburn --

18 MR. TERRY CLOUTHIER: Since I've been standing
19 here for ten minutes.

20 MS. CATHERINE GLIDDEN: Oh, sorry.

21 MS. CHARLENE VAUGHN: I can't hear David at
22 all.

23 MR. DAVID COBURN: Yeah, I haven't said
24 anything yet, Charlene.

25 MS. CHARLENE VAUGHN: I don't want to have

1 people talking and not understand what they're
2 saying.

3 MR. DAVID COBURN: Charlene, can you hear me?
4 This is David Coburn for the railroad.

5 MS. CHARLENE VAUGHN: I can hear you.

6 MR. DAVID COBURN: You've referenced several
7 times now a new project or a new undertaking, and I
8 just want to be clear so that nobody here is
9 confused that there is no new project. The railroad
10 is proposing to build Tongue River I, so it's the
11 same project that we've been talking about, that we
12 talked about at the last meeting, that the board
13 decisions, that the Ninth Circuit decision
14 references, it's the same. There is no new project.
15 So I just wanted to clarify that so we don't get off
16 in the wrong direction. That's the only point I
17 want to make at this stage. And I know that
18 somebody else wants to speak.

19 MS. CHARLENE VAUGHN: So if that's the case,
20 the tribes caucused when we last met and came up
21 with some very pointed issues and concerns. Are
22 they building upon those where you want to hear what
23 additional views they have in light of the court
24 decision, or did STB go back and look at the issues
25 raised by all the tribes at that meeting and have

1 that inform where we're at in today's meeting?

2 MS. CATHERINE GLIDDEN: Well, I think that the
3 last meeting that we had, you know, it happened --
4 it preceded some of the things that have happened
5 since then, including the fact that we now have a
6 decision on Tongue II and Tongue III, and the board
7 is yet to decide on how it's going to proceed with
8 Tongue I.

9 But basically we feel as though we need to
10 continue on with the 106 process despite the fact
11 that we're still, the board is still deciding on
12 whether or not a new EIS for Tongue I is appropriate
13 or a supplemental EIS or whatever.

14 So yeah, as far as going around the room and
15 getting input, I really think it's important to get
16 input on whatever the decision -- whatever opinions
17 are out there about how you think we need to move
18 forward with this project.

19 So yeah, there is a change, but we're not
20 moving straight towards a PA, which we originally
21 were going to do in a year, because we know that
22 that's not appropriate given the fact that we're
23 going back to Steps 1 and 2 in the process. And
24 obviously mitigation, a PA would be mitigation, so
25 it's much further in the process.

1 So yeah, we are taking a step back. And so
2 we're -- as part of that process we want to get
3 feedback from the consulting parties. We want to
4 identify additional consulting parties. We want to
5 identify the area of potential effect or effects,
6 and we want to describe the undertaking. And we
7 have people here who are prepared to do that. And
8 if there's any changes or whatever that were
9 described in Tongue III, can discuss that, too. So
10 that's pretty much what we had planned for today.

11 So I would like to ask everyone if you would
12 like to break for lunch now and --

13 Terry, I'm so sorry.

14 This is Terry. He's been waiting to speak.

15 MR. TERRY CLOUTHIER: Charlene, I think Cathy
16 just hit on one of the main points that I'm having
17 trouble with is that the Surface Transportation
18 Board will not commit to whether they're actually
19 going to use that 25-, 30-year-old EIS for Tongue
20 River I. Plain and simple, we need to know that
21 because that is part of the Section 106 process.
22 Whether you want to separate NHPA out of it or not,
23 it is part of it because the decisions made during
24 the Section 106 process and the sites that are
25 identified during that process will directly affect

1 any NEPA document that comes relating to Tongue
2 River I.

3 And right now we're sitting here going, Well,
4 are they going to use it or aren't they? And we
5 don't get a commitment from that. And then it's
6 tied directly into the decisions made by the Ninth
7 Court decision recently. And I can go through. For
8 coal methane beds, it's integral for that. You
9 know, they keep saying that it's not relating to
10 Tongue River I, but it is. And I'll actually quote
11 you where it is. It states that the board -- it's
12 under the five-year time frame and how that affects
13 coal methane beds.

14 One of the critical things that it states is
15 that the greatest concentration of CBM development
16 is anticipated to occur in the Rosebud, Big Horn and
17 neighboring Powder River counties, which is
18 proximate to where TRRC II and III railroad would
19 have ran had they been okayed. Those are TRRC I.
20 That's directly right where those are, so therefore
21 it's tied right in.

22 Also the Surface Transportation Board in their
23 NEPA document included updates to Tongue River I.
24 By doing so, they forced Tongue River I to be part
25 of the Tongue River III EIS. Therefore, the

1 decisions directly relating to Tongue River III
2 directly relate to the updates that were applied in
3 Tongue River I. So by them stating that it doesn't
4 apply is BS.

5 MS. CATHERINE GLIDDEN: Well, I just want to
6 make it clear that the STB is not saying that this
7 does not apply to Tongue I. I just quoted from the
8 decision in which, in which it was stated that
9 Tongue I was not before us now, was not before us at
10 this point, that the decision was for Tongue II and
11 Tongue III. The board has not decided yet how it's
12 going to proceed regarding Tongue I and the effect
13 of the decision and your opinions on how we're going
14 to move forward with Tongue I.

15 And so that's -- despite the fact we have this
16 decision and we still don't know what the board is
17 going to do, it's very important to us that we know
18 how you feel about this project and what your
19 concerns are, and that's, in part, why we asked you
20 to be here today.

21 MS. CHARLENE VAUGHN: So what I heard him say
22 is that many of the tribes, if not all, have
23 concerns about the use of the existing EIS, and for
24 many reasons which the tribes feel they have
25 articulated, they would think that a supplemental

1 EIS or a new EIS was appropriate as Tongue River I
2 was planned and implemented.

3 Did I get that correct from the perspective of
4 the tribes who are there?

5 MR. TERRY CLOUTHIER: I believe that is the
6 perspective of the tribes, Charlene.

7 MS. CHARLENE VAUGHN: That is what I heard.

8 So, Cathy, I would hope that you would document
9 that as a comment. And I'm sure over the course of
10 this meeting they will amplify specifics about why
11 they feel this way, but that's a huge statement, and
12 I think we should respect it on the merits.

13 MS. CATHERINE GLIDDEN: Yeah, I agree.

14 And I certainly hope and encourage you all to
15 tell us more about specific concerns you have.

16 MR. STEVE BRADY: This is Steve Brady.

17 This is more to the Surface Transportation
18 Board than the Tongue River Railroad. What is the
19 exact deadline for the 45-day appeal?

20 MS. CATHERINE GLIDDEN: It's February 13th.

21 MR. STEVE BRADY: You're contemplating on
22 appealing?

23 MR. DAVID COBURN: I didn't say that.

24 MR. STEVE BRADY: I mean, I just got in here,
25 so if there's any consideration for appeal or the

1 Surface Transportation Board or Tongue River
2 Railroad appeals, then where does that put this
3 process?

4 MS. CATHERINE GLIDDEN: Well, we'd make the
5 decision at that point final, and so --

6 MR. DAVID COBURN: He's saying if there is an
7 appeal.

8 MR. STEVE BRADY: If there is an appeal.

9 MR. DAVID COBURN: It's not -- technically
10 speaking, I did not say and I'm not here to say that
11 the railroad is going to appeal, to use your word.
12 The technical term, actually just so we're clear, is
13 not appeal. It's petition the court for a
14 rehearing.

15 MR. STEVE BRADY: Whatever it is, yeah.

16 MR. DAVID COBURN: And I'm not here to say that
17 that's what we're saying. We're not saying that we
18 are going to ask for a rehearing. I don't want to
19 leave you with the impression that on February 13 we
20 will be filing for rehearing, okay?

21 MR. STEVE BRADY: How about STB?

22 MS. CATHERINE GLIDDEN: I'm not the decision
23 maker regarding that.

24 MR. STEVE BRADY: The board would --

25 MS. CATHERINE GLIDDEN: Yeah.

1 MR. STEVE BRADY: The board would ultimately
2 make the decision?

3 MR. DAVID COBURN: Steve, you might also ask,
4 because the Northern Plains Resource Council and
5 Mark Fix were parties to the case, they lost on many
6 issues, they could petition for a rehearing.

7 MS. CHARLENE VAUGHN: Are you understanding
8 what's being said? I'm not.

9 MS. CATHERINE GLIDDEN: Can you hear?

10 MS. CHARLENE VAUGHN: No.

11 MS. CATHERINE GLIDDEN: Please speak into the
12 mic.

13 MR. CONRAD FISHER: You want to repeat what
14 you --

15 MR. DAVID COBURN: Yes.

16 Charlene, I'm sorry. This is David Coburn. I
17 was speaking without a mic, so I'll repeat what I
18 was saying.

19 MS. CHARLENE VAUGHN: We can hear better now.

20 MR. DAVID COBURN: I was saying that we are,
21 the Tongue River Railroad is one party to the case.
22 The Surface Transportation Board is another party to
23 the case. The Northern Plains Resource Council and
24 Mark Fix were also parties to the case. They would
25 have an opportunity, if they wanted to, to seek

1 rehearing by February 13. I have no idea if they
2 intend to do that or not. They can speak for
3 themselves. I think Mr. Fix is on the phone.

4 MS. CHARLENE VAUGHN: Okay.

5 MR. STEVE BRADY: So in the event -- again,
6 this is Steve Brady.

7 In the event that there's a petition for a
8 rehearing, where would that put this process with
9 the, the consultation process with the tribes?
10 Would they be put on hold or the consultation
11 process continue?

12 MR. DAVID COBURN: That's really a decision for
13 the board, not the railroad. I can tell you that if
14 a petition for rehearing were filed, the issues
15 raised on rehearing would be considered by the
16 court, whatever issues they are, whoever files that
17 petition, and in due course the court would issue a
18 further decision, either potentially reversing
19 itself or affirming what it did. But I can't and I
20 won't speak to the process of what --

21 MS. CHARLENE VAUGHN: What would be the time
22 frame for a rehearing if there was one?

23 MR. DAVID COBURN: Well, a petition for
24 rehearing would be due by February 13. There's no
25 time frame on when the court would act.

1 MS. CHARLENE VAUGHN: Okay.

2 MR. STEVE BRADY: Well, since the lead federal
3 agency is STB, then what would be the process,
4 consultation process for the tribes? Would we be
5 put on hold if there's a petition for rehearing?

6 MS. CATHERINE GLIDDEN: I can't speak to that
7 because I'm not an attorney, and I'm not sure
8 precisely what the process would be. And it really
9 depends on what, whether or not somebody even files
10 for rehearing. It may not happen. We don't know.
11 We simply don't know. So it's too speculative for
12 me to comment.

13 MR. STEVE BRADY: I think it's about three
14 weeks away, so . . .

15 MR. CURLEY YOUPEE: And I think that adds to
16 what Russell said as far as the cart before the
17 horse. I mean, we're spinning our wheels here
18 because some things are not happening. We're
19 spinning our wheels here because things are not
20 happening and we have to wait in turn until those
21 things happen.

22 MS. CATHERINE GLIDDEN: Well, you know, I'd
23 like to go back to presenting with the undertaking.
24 I think that perhaps we could break for lunch at
25 this point and then come back and we'll present you

1 with the undertaking.

2 Is everyone okay with that? Do they agree with
3 that?

4 MS. CHARLENE VAUGHN: How long will the break
5 be?

6 MS. CATHERINE GLIDDEN: Take an hour lunch?
7 Is everyone okay with an hour?

8 MR. RUSSELL EAGLE BEAR: Are you buying?

9 MS. CATHERINE GLIDDEN: Maybe, if you don't ask
10 for too much.

11 MS. CHARLENE VAUGHN: So it's 12:17 there?

12 MS. CATHERINE GLIDDEN: What time is it? Does
13 anybody have a watch?

14 MR. DAN HADLEY: 12:20.

15 MS. CATHERINE GLIDDEN: It's 12:20 right now.
16 I think that maybe --

17 MR. DAVID COBURN: 1:30.

18 MS. CATHERINE GLIDDEN: We'll meet back here at
19 1:30.

20 UNIDENTIFIED SPEAKER: Let her talk.

21 MS. CHARLENE VAUGHN: Okay, I'll call back.

22 MS. LANA GRAVATT: Charlene, just hold on one
23 second. Catherine has referenced the ACHP
24 guidelines several times this morning before you
25 were on, and I just want to make it clear that those

1 are fresh guidelines. And the way the agency or
2 their lawyers are looking at those are different
3 from a tribal interpretation. As far as what it
4 looks like is there's like a checklist of four
5 things and as long as they have those, they've done
6 the 106 process, but that's not -- as far as the
7 tribal view of the guidelines, they're so broad that
8 I just want you to understand that we interpret them
9 in a different way. There's language in there that
10 we do disagree with and that needs to be worked out.
11 But I just wanted to make that for the record and
12 make that clear, because I don't want them to be
13 able to use this consultation and the information
14 that's been provided in anything in a future court
15 case saying, Oh, yeah, we talked with all these
16 tribes on this day, you know, concerning the
17 guidelines. Okay?

18 MS. CHARLENE VAUGHN: I don't think I quite
19 understand, but we could talk about it later. What
20 we would continue to state is that Section 106 is a
21 four-step process. Tribes are an integral player
22 from the beginning to the end in the discussion and
23 that their views and involvement is required in
24 carrying out all aspects of Section 106 per the
25 revisions to the regs that occurred in 1999 and the

1 subsequent promulgation in 2004. I think the tribes
2 who work with us on many other projects and with
3 many other agencies understand that to be our
4 position, and it would not be different in this
5 project.

6 MS. CATHERINE GLIDDEN: And I'd like to say the
7 STB also agrees with that position.

8 So can we break for lunch now, everybody?

9 MR. TERRY CLOUTHIER: Charlene, before you
10 leave, I think that the discussion that Lana is
11 starting to address here is something that we
12 definitely need to talk to you and Valerie Hauser
13 about in terms of consultation with tribes. Right
14 now there isn't any single federal agency, and I
15 won't include the Surface Transportation Board in
16 this comment because I've actually never dealt with
17 them, that actually consults properly. Your
18 guidelines specifically state that they should be
19 consulting prior to an archeological survey being
20 conducted. This is not being done by any federal
21 agency. And, again, I will put the caveat that I
22 haven't had any dealings with the Surface
23 Transportation Board, so I'm not including them in
24 that discussion.

25 MS. CHARLENE VAUGHN: So we will discuss that

1 in this context because that's what this meeting is
2 about and why people were flown to or driven to this
3 site, so let's make sure we're on point for STB.

4 The broader policy issue about involvement of
5 tribes and archeological surveys is something that I
6 think the agency can address in another context, but
7 I'd like everybody's attention to stay focused on
8 Tongue River.

9 MR. TERRY CLOUTHIER: Yes, exactly. And that's
10 something that I want to discuss with you and
11 Valerie that we really need to have a meeting with
12 you guys about that because of the issues that are
13 not being addressed.

14 MS. CHARLENE VAUGHN: I'll let her know that we
15 can anticipate talking to you about that.

16 MS. CATHERINE GLIDDEN: Thanks, everyone.
17 We'll meet up again at 1:30. Thank you.

18 (Lunch recess from 12:25 p.m. to 1:50 p.m.)

19 MR. SCOTT CASTLEBERRY: Before Dan starts going
20 through the alignment, I just wanted to take a
21 couple of minutes and just introduce myself and
22 Barbara Ranf because we are kind of a new face in
23 the room. At least we haven't participated in these
24 meetings in the past. We are pleased to be here.
25 We're glad that you're here as well.

1 We're respectful of the process. We understand
2 our role, and to that end we think our role is to
3 provide what information we have, to do our best to
4 answer questions or to find answers to your
5 questions, and to listen. So with that said, that's
6 what we want to do.

7 A couple of things have changed since the last
8 time that you guys met together in June. Just right
9 after that in July, BNSF, along with Arch Coal and
10 Forest Mars, bought the Tongue River Railroad, and
11 so that's why there's new faces in the room.

12 And our plan is to only build the Tongue
13 River I, so that's what Dan will walk you through.
14 Dan, you saw him at the last meeting if you were
15 here. He's probably the most knowledgeable person
16 on the alignment. So hopefully what he's prepared
17 will help.

18 And we'll also ask David Coburn to just kind of
19 walk through a little bit of the history of Tongue
20 River I.

21 MR. DAVID COBURN: Thank you, Scott.

22 And maybe a lot of you know the history of
23 Tongue River I, but I thought it appropriate, if
24 you're interested, I'll spend just a minute or two
25 going through it just so we're all on the same

1 wavelength.

2 The application that got this whole process
3 going was filed by the Tongue River Railroad Company
4 in, with the ICC, the Interstate Commerce
5 Commission, which was a predecessor to the Surface
6 Transportation Board, back in 1983. And the line
7 that was applied for at that time is essentially the
8 line that you're seeing in this map that Dan will
9 walk us through, not exactly the same, and we'll
10 talk about that in a minute, but essentially the
11 same from Miles City down to Ashland for one
12 terminus and for a second terminus at the south,
13 Otter Creek. That's been on the drawing board, so
14 to speak, since that application was filed in 1983.

15 The ICC undertook to do an Environmental Impact
16 Statement. Once the application was filed, they
17 issued a draft EIS in 1983. The application was
18 filed in '83. The draft EIS was also '83. That's
19 because the railroad had been consulting with the
20 ICC in doing environmental work actually for several
21 years prior to '83. So the draft EIS was issued in
22 '83, comments received on it, and a final EIS was
23 done in '85, September of '85.

24 And then the board issued a final decision
25 approving of the construction of this railroad in

1 May of '86. And a court challenge was mounted at
2 the time not focused on environmental or cultural
3 resource issues. That court challenge was focused
4 on a different legal issue altogether that was
5 relevant to the owners of the railroad at the time.
6 And the Ninth Circuit dismissed that court
7 challenge. So when the Ninth Circuit in its recent
8 decision said that Tongue River I was final, they
9 were referring to the fact that the board issued a
10 final decision and the Ninth Circuit had previously
11 affirmed that decision.

12 Tongue River III then came along in 1998, and
13 in Tongue River III the railroad proposed a series
14 of refinements to the line that you see there. And
15 the line that Dan is going to take us through that
16 you see on the map reflect those refinements,
17 basically straightening and reduction of grade. And
18 Dan will walk us through that.

19 In Tongue River III the board approved those
20 refinements. It also did a series of updates to the
21 Tongue River I EIS. That is the EIS that was
22 finished back in '86 -- '85. I'm sorry. For
23 example, there had been some changes in the law with
24 respect to water quality issues. The board updated
25 its assessment on that. There have been some

1 changes to the alignment up in the Miles City area.
2 Actually the fish hatchery had expanded its
3 boundaries so there was some impacts up there that
4 needed to be studied. And there was an updating of
5 cultural resource issues.

6 And I should add that back when the board did
7 its initial EIS in the '80s, there was an assessment
8 of impacts to cultural resources, including of
9 course areas of interest to Native Americans, and
10 those were identified in the Tongue River I EIS.

11 There was an updating of that assessment in the
12 Tongue River III EIS, and I think there was a slide
13 up on the screen before showing the difference in
14 the numbers of cultural resource areas as a result
15 of the refinements that were made to the Tongue
16 River line.

17 There was no PA that was ever finalized at the
18 time of the Tongue River I EIS, but as you all know,
19 a PA was finalized in connection with the Tongue
20 River III EIS. That PA, again as you all know, it
21 has expired, and so right now there's no PA in
22 place.

23 The Tongue River III PA that was in place
24 before it expired applied to the entire line, that
25 is this Tongue River I section that we're talking

1 about, as well as Tongue River II and Tongue
2 River III.

3 Of course the other intervening fact that's
4 happened in, within the last month or so is the
5 Ninth Circuit decision. The Ninth Circuit decision
6 is under review at the STB now, as Cathy has
7 indicated, so I would say it's fair to conclude that
8 right now, as we sit here today, the board is in
9 something of a holding pattern. It will have to
10 decide how to proceed in light of the Ninth Circuit
11 decision relative to what we're talking about.

12 So unless there are any questions, I'll turn it
13 over to Dan who will walk us through the map in some
14 more detail.

15 MR. CURLEY YOUPEE: Could you put that on more
16 of a show so we can have a bigger --

17 MR. DAN HADLEY: Yeah, I'll blow it up.

18 Do we have anybody on the telephone?

19 MS. CHARLENE VAUGHN: Yes.

20 MR. DAN HADLEY: For those, there was some
21 handouts that were provided, and I think you could
22 also download those on the Web.

23 Is that right, Cathy?

24 MS. CATHERINE GLIDDEN: That's correct.

25 MR. DAN HADLEY: Because what I would like you

1 to refer to is in the handouts under Tab 4 in maps.
2 This is the map we're going to be walking through as
3 far as the description. So I apologize for you
4 folks that are on the phone if you don't have an
5 exhibit in front of you, it's going to be hard for
6 you to follow along.

7 MS. CHARLENE VAUGHN: We've got them.

8 MR. DAN HADLEY: Okay, great.

9 Well, I'm going to start out by Miles City
10 where the existing BNSF Railroad runs through
11 basically the south part of Miles City. I'll pen
12 over here to this bigger blowup of the Miles City
13 area, along with Interstate 94. The Tongue River
14 Railroad will begin at Mile Post 00 at approximately
15 a quarter mile south and west of where the main BNSF
16 line crosses the Tongue River, which is right here.

17 You can see the "Y" connection just right along
18 the north and east side of the fish hatchery, and so
19 obviously that would allow train movements to go
20 either east or west along their mainline.

21 Just at Mile Post 1.1 or just to the south part
22 of the fish hatchery, the alignment will cross
23 underneath the interstate and as a result not cause
24 any problems with -- there wouldn't be any kind of a
25 grade. At grade crossing, it would be a grade

1 separated crossing there.

2 It will then proceed south through -- I'll pen
3 over to this other side. The first 10 miles from
4 this point here -- I'll zoom in a little bit closer.
5 This first 10 miles, or actually -- it's actually
6 9 miles because we cross the interstate at Mile
7 Post 1. This 9 miles down to this point right here
8 is across the existing Livestock and Research
9 Station, also known as Fort Keogh.

10 And from there we proceed pretty much, well,
11 continuously on the west side of the river valley
12 until we get down to, closer towards, closer towards
13 Ashland.

14 You notice this is State Highway 59 here, and
15 this brown line represents the Tongue River Road.
16 When we first looked at laying out possible railroad
17 routes to get from Miles City to the Ashland area,
18 we looked at paralleling the Tongue River Road.
19 However, there's -- as one might guess, most of the
20 access to existing ranches and ranch houses and
21 major access to people's property are off of the
22 Tongue River Road, and as a result there would have
23 been a lot of conflicts with grade crossings, access
24 to people's property, and for the most part most of
25 the improvements, physical improvements were

1 paralleling the Tongue River Road.

2 In addition to that, the Tongue River Road
3 itself doesn't have to follow the same kind of
4 gradients that railroad design criteria have to
5 follow. So it may not seem like a rollercoaster
6 when you're driving it, but compared to what the
7 railroad grade constraints are, it would be too much
8 in the way of cut and fill.

9 As a result, from where we leave Fort Keogh
10 here at Mile Post 10, we proceed down the western
11 side of the Tongue River Valley. As you can see, in
12 some cases through here -- maybe I can zoom in a
13 little closer -- if we had followed real close to
14 the river through here, we would have encroached
15 upon a hundred year flood plain, so there are
16 several cases that we diverge away from the main
17 Tongue River Valley through some tougher terrain,
18 but it allows us for a straighter alignment and
19 avoids many conflicts that we'd have with the flood
20 plain. And actually a lot of this lower ground is
21 now under agriculture through pivot irrigation
22 systems, et cetera. So that's why we've pulled away
23 from the river in some of these refined alignments.

24 We proceed further south, still staying on the
25 westerly side of the river, again the opposite side

1 from the Tongue River Road. As we get down to --
2 and I'll back out here just a minute. I'll kind of
3 give you a reference. This is I-94 up here. This
4 is the main county road that accesses the western
5 side of the Tongue River Valley. It's called the
6 Moon Creek Road.

7 When we get down here to roughly Mile Post 35,
8 that Moon Creek Road comes in and then crosses the
9 Tongue River and comes over to the Tongue River
10 Road. We will have a railroad bridge proposed over
11 the top of the county road at this location.

12 To proceed further south, again you can see
13 we've got a little bit higher terrain over here with
14 some larger cuts and fills to avoid conflicts
15 with -- this is a spur of the county road that ends
16 down here, ranch headquarters, and as a result there
17 would have been quite a few conflicts there, so we,
18 again, to avoid the Tongue River flood plain and
19 some amenities, we pulled our alignment a little bit
20 further away from the river valley.

21 This is the only at grade crossing that we will
22 have with the county road that's proposed. Because
23 of the existing topography of the county road and
24 the railroad, it would be fairly difficult to try to
25 put a grade separated crossing here, so there would

1 have to be the correct signaling put in to take care
2 of that particular crossing. And this is at roughly
3 Mile Post 48-1/2.

4 We proceed a little further south, you can see
5 the Tongue River Road crosses from the east side.
6 There's a bridge crossing here for the Tongue River
7 Road. We come down, and the Tongue River Road is
8 actually fairly close to the river through here, but
9 to avoid at grade crossings, we proposed on
10 reconstructing the county road through this section
11 for approximately a mile, mile and a half and to
12 where the two transportation features of county road
13 and the railroad won't encroach upon each other,
14 they'll just parallel each other.

15 We've got that same situation down here at
16 roughly Mile Post 56, 57 where we'll have to do a
17 county road realignment, as well as a few -- about a
18 mile further south there would be another county
19 road realignment to take care of, avoid any at-grade
20 crossings.

21 Here at Mile Post roughly 58, there will be a
22 county road bridge over the railroad to avoid any
23 conflicts. And at this point the railroad crosses
24 from the western side of the valley over to the
25 eastern side of the valley. This would be our only

1 crossing of the Tongue River. Would be a Tongue
2 River bridge here. That bridge -- let me find the
3 right button here to push.

4 And this map is identical to what you have in
5 your pamphlets. It's identical to the map that's up
6 on the wall. But at this point there's, we're
7 proposing a 580-foot bridge over the Tongue River at
8 that point.

9 As we proceed further south, the railroad stays
10 along the eastern side in the Tongue River Valley,
11 progresses down here to Ashland. It leaves -- it
12 goes further to the east, somewhat paralleling
13 U.S. 212 and crosses U.S. 212 with a bridge over the
14 highway approximately -- I'll zoom in a little bit
15 closer here to see if we can get a better idea for a
16 scale. It's a mile between here and here, so it's
17 about -- well, actually it's 2 miles. So it's
18 roughly about a mile and a half east of the town of
19 Ashland is where we'd cross over U.S. 212. And
20 immediately thereafter we would be crossing Otter
21 Creek with another bridge crossing over Otter Creek.

22 And then a mile south of that is the
23 bifurcation point of where the Otter Creek Spur
24 comes down and then the alignment that comes down to
25 Terminus Point 1.

1 Going down to Terminus Point 1, the railroad
2 comes back in and parallels the County Road 566,
3 which is essentially the southern part of the Tongue
4 River Road and comes down and terminates at Mile
5 Post roughly 77-1/2. This is in the area of King
6 Creek for those of you who are familiar with the
7 area.

8 Back up to this bifurcation point at Mile
9 Post 70, we head off paralleling somewhat the Otter
10 Creek Valley along the western side of Otter Creek
11 and follow the terrain down to Terminus Point 2,
12 which is about 5.7 miles south of this bifurcation
13 point.

14 So that's basically the proposed Tongue River I
15 segment of construction.

16 Any particular questions about the alignment
17 or --

18 MS. LANA GRAVATT: I have a question. I
19 guess -- so you've made this line with what
20 information on historic and cultural sites? Any?
21 Or no?

22 MR. DAN HADLEY: In the very beginning no. In
23 the very beginning we looked at grade encroachment
24 upon the Tongue River Valley, existing residences,
25 agriculture and the grade constraints that we'd be

1 working against.

2 In the second aspects of that when we got into
3 the environmental studies for Tongue River I, there
4 were environmental studies that were done, some
5 cultural resource studies.

6 MS. LANA GRAVATT: Any tribal cultural resource
7 studies, though?

8 MR. DAN HADLEY: I can't honestly -- I don't
9 know that for sure.

10 MS. LANA GRAVATT: Can anybody answer that
11 question?

12 MR. DAVID COBURN: Well, I can speak generally
13 to the issue. When you're planning a project of
14 this sort, a right-of-way project like a railroad or
15 a pipeline, you don't do the cultural resource
16 studies first and then map out the pipeline or the
17 railroad.

18 MS. LANA GRAVATT: Well, that's not
19 traditionally what has been done, but with the new
20 laws that's what's supposed to happen. Because if
21 we knew what was out there, then that would change
22 the land a little bit, so you guys have to really
23 understand that that when we do get to do the study,
24 then this is going to shift. And then I just want
25 to know what fish and wildlife are saying about it

1 being so close to the river. And then -- you know,
2 from the west side.

3 MR. DAVID COBURN: I can tell you that a
4 biological assessment was done by fish and wildlife,
5 and it was done at the time of the Tongue River I
6 EIS and again at the time of the Tongue River III
7 EIS. I'm not saying that to the extent there is
8 more work to do that they won't have input into it,
9 but they have had input into it to date.

10 As far as shifting the line goes based on
11 cultural resource studies, that's something that one
12 considers after the studies are done, but there are
13 other -- there are fundamental constraints to
14 building a railroad to where you can put it. You
15 can't put it through --

16 MS. LANA GRAVATT: That's exactly why the study
17 should have happened before you even produced this
18 line. And that's what we were saying earlier that,
19 you know, none of the federal agencies are doing
20 their part in the 106 process and getting ahold of
21 us and consulting with us before you even lay out an
22 APE is what we're saying. So now when we get out
23 there and we find that these -- some of these are
24 not just historic sites, you know, they're Sacred
25 Sites, and some can't be mitigated is what I'm

1 saying. And you just really need to think about
2 that. How are you going to -- you know, how is that
3 going to happen? I mean, we asked this question
4 like several times today, and nobody is answering
5 it.

6 MR. DAVID COBURN: I think I should leave it to
7 the agencies to answer it. I'll just point out that
8 we did have a programmatic agreement, and that was
9 the way in which these issues were going to be
10 addressed, as they typically are.

11 MS. LANA GRAVATT: I just don't feel it's
12 appropriate for you to be speaking for the federal
13 agency.

14 MR. DAVID COBURN: I'm not.

15 MS. CATHERINE GLIDDEN: He just handed me the
16 microphone, and he was just trying to answer your
17 question.

18 But, you know, when the Tongue River I project
19 was initially done, 1983 to '86, there was no
20 requirement at the time to consult with federally
21 recognized tribes. The changes in the National
22 Historic Preservation Act didn't happen until 1992,
23 and then later of course the regulations were
24 updated to make sure that that was done.

25 I'm not saying that we shouldn't have

1 consulted, but there wasn't a requirement
2 specifically to consult under 106 at the time. So,
3 I mean, it's just the way it is. I mean, obviously
4 we feel it's very important at this point to consult
5 with you.

6 And, once again, we don't know how the board is
7 going to, you know, how it's going to decide in
8 terms of the applicability of the decision on
9 Tongue II and Tongue III to Tongue I, so -- but we
10 certainly welcome any ideas or opinions you have
11 about the current action.

12 MR. BRYCE IN THE WOODS: I was going to have a
13 question. This is, what, 89 miles?

14 MR. DAN HADLEY: Basically it's --

15 MR. BRYCE IN THE WOODS: 81 miles? All new
16 construction?

17 MR. DAN HADLEY: Yes, it's all new
18 construction. To Terminus Point 1 it's 77 and a
19 half miles, and it's an additional 5.7 miles on the
20 Otter Creek Spur.

21 MR. BRYCE IN THE WOODS: So when you know BNSF
22 is going to be hauling coal, is that all that's
23 going to be hauled is coal, or what is the
24 projection that you guys are looking at on the use
25 and how frequently, how many rail cars? What is

1 exactly the estimate of tonnage that's going to be
2 coming out? Is that projection there yet? And how
3 much use is that land going to have?

4 And that's why you're building it because
5 you're looking at all that coal that's going to be
6 transported out of there, and do you guys have
7 figures on that on how much -- you know, you can see
8 what's happening on the other side of Gillette in
9 that big open mining that they're doing there and
10 all of the railroad cars that are coming in and out
11 of that area. What is that going to do to that
12 area? I mean, do you guys have that projection of
13 how much is going to be coming out? I mean, that's
14 part of all your projections. Because this is an
15 energy development, but it's also an economic
16 development.

17 I'm just trying to figure out -- a big concern
18 that we have is that, the degradation that's going
19 on now to the water, and that's my primary concern
20 on this planet is what's happening to the water.
21 And if you use what's happening in Wyoming, is BNSF
22 going to be -- who's going to be liable for that
23 degradation when you're hauling coal through there?

24 So is coal going to be -- you know, you already
25 have an example from -- the Surface Transportation

1 Board already has an example on DM&E, and I believe
2 that was 280 miles of new track. This is 80 miles
3 of new track.

4 You mentioned some flood plains there that you
5 had to avoid, and you mentioned the people factor on
6 the east side of the river. It's not just the
7 people factor, it's probably the same factor that
8 what's coming out of there and what is going to
9 happen to that area because of the proximity to the
10 river. And everything flows, all the heads of the
11 rivers flow towards the Missouri and then down into
12 the Gulf. And I just had to say that because of the
13 degradation to the water, not only the surface water
14 but the groundwater, the aquifers.

15 It's getting to be a point where the same
16 old -- they're saying that the tribes are being a
17 thorn in the side of industry and the government,
18 but that question still hasn't been answered. The
19 way we see it, like Curley was saying, the
20 disconnect or disengagement is that the federal
21 agency permitting agencies in the industry, the
22 federal agency relies on industry or EIS and
23 everything else that's required, and we're saying
24 that's not enough, you know, because we're not part
25 of that. And when we're part of that, my concern is

1 still going to be the water quality, and because of
2 the degradation, that the federal agencies and the
3 tribe, tribal governments are going to have to --
4 the federal agencies are going to have to answer
5 that question that we pose on the degradation of the
6 water because it's becoming a real (unintelligible).

7 Just this past year is the best example on
8 record is that -- but this is kind of -- it's kind
9 of the same thing with like uranium and oil and gas.
10 But for coal, what is that? Who's going to be
11 responsible so that the water is preserved and not
12 polluted? Because it was kind of like carte
13 blanche, the relationship between federal permitting
14 agencies and industry to go ahead and do, move
15 forward with those economic developments for the
16 industry and for other agencies and for elected
17 officials to make the legislation for that to
18 happen.

19 Now, the saying "a thorn in the side" is that
20 we're still here and we still have those same
21 questions from a long time ago that -- and now it's
22 more prevalent in today's society and on this
23 planet, it's more prevalent than any other time in
24 our history. That's why I'm asking this question of
25 not only the Surface Transportation Board but of the

1 FCC and NRC and BLM and everybody else that's a
2 permitting agency, Corps of Engineers, especially
3 with the corps is that who's going to clean up the
4 water? Can that question be answered?

5 And it's a tough question because you ask the
6 uranium companies if they drill and have a
7 protection need that doesn't go horizontally but it
8 goes vertically, then they're talking about reverse
9 osmosis of that aquifer (unintelligible). At least
10 that's the truth, but that still doesn't answer the
11 question, you know, who's going to be responsible to
12 make sure that water, the very limited fresh water
13 that we have now on this planet is protected? It's
14 going to be the same question I pose to everybody
15 that's doing this in our territory is that who's
16 going to be responsible to make sure that the water
17 is protected, not only for economic development for
18 the industry and permitting of the agency but for
19 every life form in that area? Because it's become
20 very sacred water. So that's the same question that
21 I pose all the time is that who's going to be
22 responsible?

23 Because you guys are so close to the water,
24 it's kind of like a red flag. You know, what is
25 going to happen in 10, 20, 30 years? Whereas now,

1 10, 20, 30 years, now we're starting to see things
2 in Wyoming, people that are drinking that water are
3 starting to say, "What's in the water" because of
4 that adverse effect that's happening. So is there
5 going to be money set aside? Who's going to clean
6 up that water in those communities right now? Not
7 only in Wyoming but on the East Coast and wherever
8 all this is going on.

9 So we think we're in a rural area, but this is
10 where most of the energy development is at. And
11 we're concerned because we're downstream. We
12 already have our river, the Cheyenne River, it's
13 heavy metals and all that from a hundred some years
14 of mining, so what we're saying is real for us, and
15 is this just another addition? You know, the super
16 fund was created to clean up 18 miles of
17 (unintelligible) river up there in the Black Hills
18 when Homestead was there. So is there going to be
19 accountability on keeping the water clean?

20 MS. CATHERINE GLIDDEN: Thanks.

21 Anybody else?

22 Dianne?

23 MS. DIANNE DESROSIERS: I guess it seemed that
24 Mr. In The Woods had posed a question to you, or I
25 don't know if it was a question, and so I really

1 don't want to interrupt that question. You can
2 answer it.

3 But I just have a couple of comments that I'd
4 like to make. And one of them was on Cathy's
5 earlier statement about the 1992 amendments were not
6 in place at that time and in 1984 whenever the
7 earlier EIS was done, so that to me presents all the
8 more reason to, you know, revisit the EIS and to
9 start the process according to the regulations from
10 Step 1 as tribes have stated earlier this morning.

11 The other thing that I would like to say is
12 that with the understanding with the water, as
13 Dakota people, our people have always viewed the
14 water as our first medicine because that's what
15 gives us life, it brings life, it keeps life. And
16 so to reiterate on what Mr. In The Woods had said,
17 the way we view water, we call it (native language).
18 It's the water of life.

19 And just so you understand and know our
20 viewpoint on it, the water, it is a cultural
21 resource. That's why it falls into this process of
22 Section 106 because we view it as a cultural
23 resource because it's what gives life. So I want to
24 reiterate that and so that you have that
25 understanding that's how we view it. And that's why

1 different ones in here have stated and it's going
2 back to that that the water is so important to us
3 and to life, it is our cultural resource.

4 Thank you.

5 MR. JEROME WHITE HIP: I'd like to make a
6 comment on that. If the railroad is running
7 parallel on Tongue River, on your Environmental
8 Impact Study did you talk with Ashland, the town of
9 Ashland? Where do they get their water from? Is it
10 the well or from the Tongue River? What about
11 Rabbit Town, where do they get their water from?
12 And all of this construction is going to be upriver
13 and how will that be affecting them? Did you have
14 that assessment on that today to show us that you
15 had a meeting with Ashland city council how it's
16 going to be affecting that water system with them?

17 MR. DAN HADLEY: I didn't have that assessment,
18 but I know in studies over the last 20 years we've
19 taken into account the water systems, not only of
20 the town of Ashland but Miles City, and --

21 MR. JEROME WHITE HIP: Where do they get their
22 water from? From the river or from the well?

23 MR. DAN HADLEY: I'm not really too sure. When
24 I used to work down in that area for the forest
25 service, they had water from several sources. But

1 today I don't know exactly where they get their
2 water.

3 MR. JEROME WHITE HIP: The Cheyenne community
4 is just right there. Where do they get their water
5 from, from the well or from the river?

6 MR. STEVE BRADY: I think the St. Labre
7 community gets their water I think from the river,
8 and they process it in a treatment plant.

9 And then I think, I want to say Rabbit Town
10 gets theirs from I think a well, I think. Is that
11 right?

12 MR. DAN HADLEY: Evidently from various sources
13 then.

14 MR. STEVE BRADY: Yeah.

15 But anyway, I also had a couple of comments.
16 First of all, with regard to water, I think it's
17 important to understand that what's going to happen
18 at Otter Creek, Otter Creek Mine, Otter Creek itself
19 is probably about 7, 8 miles from Ashland southeast,
20 and it drains down into, right next to Ashland into
21 Tongue River. And so keep in mind that whatever
22 goes on there is going to go downstream, down
23 through Tongue River into Yellowstone and then on
24 into the Missouri through Three Affiliated Tribes
25 and on back around to Rosebud Tribe. So whatever is

1 going to transpire there, it's going to come all the
2 way around. Keep that in mind.

3 Secondly, historically, you know, we're talking
4 about a lot of legal timelines here, time frames and
5 things like that, but in 1877 we had the Wolf
6 Mountain Battle, which is on Tongue River just south
7 of white Bernie. Fort Keogh was then established.

8 What was the time on that?

9 MR. DOUGLAS MELTON: 1877.

10 MR. STEVE BRADY: About 1877. And General
11 Myles, Colonel Myles came out there at that time to
12 finish up what was going on in the Plains area there
13 with the tribes. And initially the Crow Tribes
14 scouted for General Myles at Wolf Mountain Battle,
15 and shortly thereafter some of the Northern Cheyenne
16 surrendered, Ice, Brave Wolf, Two Moons and others.
17 Maybe about 300 Northern Cheyenne surrendered. And
18 the buffalo pretty much had disappeared by that
19 time, so there was no food really. So this group of
20 300 surrendered to Fort Keogh, and they established
21 pretty much a residence there, and eventually got
22 enlisted as scouts, as well as Lakota.

23 And then from there in that spring of 1877,
24 May, they had the incident with Lane Deer,
25 Minneconkou, what is now Lane Deer, Montana, where

1 he was killed by General Myles and his scouts. And
2 that includes Northern Cheyenne and Lakota scouts.

3 And shortly thereafter Chief Joseph had just
4 left his home over there in Washington working in
5 that area there coming over the Rocky Mountains.
6 And that's been established as a national historic
7 trail coming through Yellowstone National Park and
8 then up to Bear Paw.

9 Now, the military operation that caught
10 Chief Joseph was launched from Fort Keogh under
11 General Myles with Lakota and Northern Cheyenne
12 scouts in September of 1877, forcing Chief Joseph to
13 surrender. And he was then sent down to Oklahoma
14 Indian territory, and a small group of his band
15 escaped into Canada and apparently melded with,
16 merged with Sitting Bull and that group.

17 And then shortly thereafter -- well, just to
18 kind of think about time frames a little bit, this
19 was all of 1877. And then in late 1890 the troops
20 from Fort Keogh were sent to Wounded Knee and again
21 with Northern Cheyenne and Lakota scouts.

22 So historically we have been there for a long
23 time. Inevitably, consequently, however you want to
24 put it, there are burial sites, traditional sites.
25 You know, it's extensive. And I just wanted to

1 cover that a little bit and the connection to all of
2 these tribes that are here. And the history of that
3 goes farther back than that, but that's just recent.

4 And then once our reservation was established
5 in 1884, another part of the reservation was
6 established in 1900. Those Northern Cheyenne that
7 were ordered to go find a place to live, Two Moons
8 and his group, settled along Otter Creek along the
9 east bank of Tongue River up to Hanging Woman, what
10 is now white Bernie. They were ordered by the
11 military to go settle on the west side of the Tongue
12 River. So they lived extensively there. They had
13 homesites, regular homesites and so forth.

14 Maybe Doug Melton can show us a little bit in
15 Miles City where Fort Keogh, was the old Fort Keogh
16 and some of the tribal encampments where the
17 Northern Cheyenne and Lakota lived adjacent to the
18 Fort Keogh situation.

19 So the esteemed Doug Melton.

20 MR. CONRAD FISHER: Doug Melton, our tribal
21 historian.

22 MR. STEVE BRADY: War chief from BNSF and high
23 priest.

24 MR. CONRAD FISHER: High priest.

25 MR. DOUGLAS MELTON: Actually, if you go on the

1 other side of the railroad sort of --

2 MR. DAN HADLEY: Let me back up a little bit.

3 So the limits of Fort Keogh are just south of
4 I-94 here down to approximately this section line
5 through here, like I say Mile Post 10.

6 MR. DOUGLAS MELTON: That's actually the
7 agricultural research station. It's not necessarily
8 Fort Keogh itself. Part of that is Fort Keogh's
9 withdrawal from various property laws and things
10 like that from the Federal Government.

11 Fort Keogh itself is actually on the other side
12 of the fish hatchery. So it would be there. And
13 then actually probably within the fish hatchery and
14 the sort of flats around there would have been where
15 the Cheyenne had established homesites and things
16 like that. There were cabins that Hoffman has
17 photographs of.

18 Can you hear me?

19 MS. CATHERINE GLIDDEN: Would you mind coming
20 up and pointing out those things? I'd appreciate
21 it.

22 MR. DOUGLAS MELTON: This is the existing
23 railroad, the BNSF mainline. Fort Keogh would be
24 over here in the area actually --

25 MR. DAN HADLEY: This is the interchange, and

1 this is the highway, end of Miles City right here.

2 MR. DOUGLAS MELTON: So Fort Keogh would be
3 right about where U.S. 12 is. But right in here
4 would be the main area of Fort Keogh. The tribes
5 probably would have been living in this area when
6 they were staying there. There's Spotted Eagle
7 Recreation Area over here which is named for the
8 Sioux Chief Spotted Eagle.

9 MR. DAN HADLEY: Which is right here.

10 MR. DOUGLAS MELTON: Yeah.

11 But generally most of this, there's not been
12 much inventory done to identify the tribal
13 properties within Fort Keogh, but this would make
14 the most sense of where people would have been
15 living. They also would have been living up the
16 Yellowstone outside of Miles City, the town site of
17 Miles City boundary and Miles town.

18 At one point Fort Keogh extended on the other
19 side of the river until about 1890, and then they
20 moved the boundary back to the west side of the
21 Tongue River. But it was actually a fairly big area
22 and still covers -- the agricultural experiment
23 station covers, I think, 22-, 23,000 acres. It's a
24 big area.

25 Is that what you needed, Steve?

1 MR. STEVE BRADY: Any questions for Doug?

2 MS. CATHERINE GLIDDEN: Can you provide us with
3 that information about that area? If you could give
4 us maps and boundaries and references and so on,
5 that would be very helpful.

6 MR. DOUGLAS MELTON: I can certainly do that.

7 I know actually one of Stan Wilmoth's
8 colleagues, his master's thesis was on the history
9 of Fort Keogh.

10 MS. LANA GRAVATT: Is Charlene still on the
11 phone? Does anybody know?

12 MR. DAN HADLEY: Is anybody still on the phone?

13 MR. MARK FIX: Mark Fix.

14 MS. ELIZABETH MERRITT: This is Betsy Merritt.
15 I'm on.

16 MS. LANA GRAVATT: If you guys haven't been
17 able to hear this whole conversation within the last
18 40 minutes, I need some clarification because it
19 sounds like the federal agency is not willing to do
20 a TCP study or they're trying to move away from it
21 and use existing documentation, but none of that is
22 tribal. So can you give us some clarity on our, you
23 know, where --

24 MS. CATHERINE GLIDDEN: Can I answer that
25 question since it's directed at STB?

1 As far as not wanting to do tribal consultation
2 or --

3 MS. LANA GRAVATT: I didn't say that. I said a
4 TCP study.

5 MS. CATHERINE GLIDDEN: -- TCP studies, that's
6 not the case. I mean, one of the things we have on
7 the agenda is to discuss what you think additional
8 identification needs are. So we're seeking input
9 from you, from all of you here and all consulting
10 parties regarding what additional identification
11 efforts are needed, including TCP studies. Whatever
12 studies you think, I mean, we want to hear about it.

13 MS. LANA GRAVATT: Okay. I just haven't heard
14 you actually say it. Went around it a couple times,
15 but you didn't actually say it.

16 MS. CATHERINE GLIDDEN: Unfortunately the
17 agenda morphed a bit, so I -- we obviously made some
18 changes to it. I did have a time frame in which I
19 was going to discuss the project a little bit, but
20 we got kind of sidetracked. But no, we definitely
21 want input.

22 And as you can see on the second day of the
23 agenda, we have marked out a discussion on -- well,
24 in fact, the end of today we had discussion on the
25 area of potential effect. Tomorrow, additional

1 identification needs, inventory surveys, whatever
2 else people here at the table feel, and on the
3 phone, is needed.

4 MS. LANA GRAVATT: And I guess I just didn't
5 understand when you were trying to tell us that when
6 the time that EIS was made back in the '80s or
7 whatever, the preservation laws didn't exist so they
8 don't apply? Is that what you were saying?

9 MS. CATHERINE GLIDDEN: No, they certainly
10 apply now, but I was just trying to explain why that
11 particular type of consultation wasn't done way back
12 then. It simply wasn't required at the time, but
13 it's clearly required now. We want to make sure we
14 have input from all the tribes that have concerns
15 and issues and all the other consulting parties that
16 have issue.

17 MR. CONRAD FISHER: We have a question here,
18 and then Ben.

19 MS. WANDA WELLS: My name is Wanda Wells. I'm
20 the Tribal Historic Preservation Officer for Crow
21 Creek Sioux Tribe.

22 First of all I would like to say that I don't
23 understand why the Surface Transportation Board
24 scheduled this meeting without deciding whether
25 they're going to file for a rehearing or not and

1 being able to inform us of that. It seems as though
2 you should have waited until after you decided if
3 you were going to file for a rehearing or not to
4 bring us together.

5 My concern is I do not want these transcripts
6 or documentations of this meeting to be submitted by
7 Surface Transportation Board to any rehearing that
8 may be filed as an indication that proper
9 consultation is occurring with the tribes, number
10 one.

11 Number two is a completely new EIS has to be
12 done on Tongue River I. Obviously it's so old and
13 outdated and inadequate that a completely new one
14 has to be done, and I don't know why that hasn't
15 been stated by the Surface Transportation Board or
16 Tongue River people.

17 So I think if we're truly starting this whole
18 106 process over again, then start with the new EIS,
19 a good EIS for us to review, provide input and
20 comment on and then we can start somewhere.

21 You know, the programmatic agreement is
22 outdated, and it appears as though the Surface
23 Transportation Board is dodging trying to do a new
24 programmatic agreement so that we could proceed on.
25 And so I think I would like that clarified as to

1 whether the Surface Transportation Board sees it
2 necessary to do a programmatic agreement.

3 Obviously just by the comments that have been
4 made on the historical sites and the cultural sites
5 in that area, we are going to need a programmatic
6 agreement in the future anyway.

7 And so I guess I thought the last time we met
8 that the TCP was going to be part of this
9 programmatic agreement. Now the Surface
10 Transportation Board appears to be coming at us with
11 a new pathway to get this project done.

12 You know, I don't know what the plans are for
13 Tongue River II and Tongue River III but certainly
14 you'd better get your act together on Tongue River I
15 when you pull us together because you're not giving
16 us any straight-up answers at all. And I worry
17 about how tribes, tribal involvement may be
18 manipulated to look to the courts as sanctioning of
19 projects.

20 MR. CONRAD FISHER: Ben?

21 MR. BEN RHODD: You caught me with my mouth
22 full. Well, not full, but stuck over in the cheek.
23 I look like one of those prairie dogs.

24 I have several concerns. Hearing --

25 Is it Doug?

1 MR. DOUGLAS MELTON: Yep.

2 MR. BEN RHODD: With what you had to say in
3 that particular area, I'm sure that you have access
4 to the State of Montana's site files, right?

5 MR. DOUGLAS MELTON: Yes.

6 MR. BEN RHODD: And that you know the number
7 of, number of sites that may be located in this area
8 beyond just where there was a tent camp and where
9 there was, well, historical period or era site.
10 Okay, that's what I'm looking at here. I mean,
11 that's what I'm wondering about in this area.

12 Not only -- and I think I go back, I think it
13 was Steve might have said it on that site about
14 burials, that will be in this area. You know that
15 we went through a heavy period of disease and
16 particularly when we were brought in and being in a
17 sedentary situation, and we had to deal with that.
18 We were having difficulties being able to go out and
19 being in a nomadic lifeway prior to that time.

20 We had to change customs. We had to do a lot
21 of different things, but that's just one side of it
22 that I'm dealing with. I'm thinking in my mind of
23 what took place down in this area right in here and
24 how many people were lost, that's going to take
25 research. That's going to have to be out of the

1 whole army and navy records. It's going to have to
2 come out of D.C. There's no access to those out
3 here, so the archives over there of how many were
4 purported to have died in this area. I'm just using
5 that as one example. There's much more here.

6 There's a lot more that's going to be coming
7 across this creek because that was a conduit.
8 Water, food, shelter, clothing, four things every
9 human has got to have, these creeks provided it.

10 There's going to be a tremendous amount of
11 sites along this corridor. I don't know how many.
12 I won't even presume to say how many, but I'm
13 concerned that because you had -- you have a -- I'm
14 trying to think about it in my head, what is it,
15 30-year-old EIS? That is something that we've dealt
16 with with Randy down on the DM&E project down coming
17 across on the new build in South Dakota coming along
18 the Cheyenne River.

19 Deposits, you have erosion going on on these
20 hills. Whenever I hear there's an experimental
21 station up here for agriculture, that tells me
22 several things are going on: There's runoff;
23 there's deposition going on. How many of our sites
24 are still being buried down here along this creek
25 and at what depth? We dealt with this on DM&E, at

1 least got the dialogue going, particularly the
2 terrace systems. I'm looking at it from an
3 archeological view, but I'm also looking at it from
4 another view and that's continuity over time,
5 continuity of our tribal use of this area.

6 So I know, Doug, that you're mentioning this
7 right here, but I am pretty sure that there's going
8 to be much, much more up and down that waterway.
9 And how we are going to get to that when we come to
10 a PA, eventually we hope, at least I do, I hope
11 there's going to be, this process will be followed
12 in its entirety and correctly this time.

13 Until the amendments happened in 1992 we really
14 didn't have a voice. I was a lone ranger out there.
15 I've been at this since 1980 in dealing with issues,
16 projects, national forums but trying to do just
17 exactly what we've been brought together to do in
18 this room, trying to have equity and justice for our
19 ancestral places either as a culture, a patrimony.

20 So now I'm going into that a little bit because
21 now we need to come to a decision. I'm not trying
22 to shortcut anything, but out of this court decision
23 we're now at a place where we're going to have to
24 make a determination of what it is that we want out
25 of this, to see happen out of this, and TCP is

1 number one with Rosebud, I'll tell you that. The
2 archeologists are missing too much. The 1980
3 surveys and things that were done are inadequate.
4 They do not reflect the cultural history of that
5 area. You may be able to have a great research done
6 on your historical sites, that's fine. We're not so
7 much worried about those, except for those that do
8 influence our history such as what happened here
9 with that fort and around that area.

10 But our cultural history, it's been rewritten
11 here on the Plains. I'm not sure that the railroad
12 and others, you would not have any idea what I'm
13 talking about, but it's being rewritten and it's
14 going to be.

15 We're looking at it from many different views
16 here. Everyone has their own idea of what they want
17 to bring to this table, to this consultation, but a
18 TCP study has got to be number one. That has to be
19 the foci, as we commonly use in archeology, the
20 focus, the center piece. It's got to be. There's
21 no getting out of this now. I say that to STB and
22 third party contractors and to the ACHP, it's time
23 for them to stand up and support what we're doing
24 here on the Northern Plains, not only with this
25 project but with many more.

1 I sat quietly earlier. I knew Terry had many
2 things, and he was ready to jump up on the table.
3 And I thought, Well, I'm just going to hold back;
4 I'm going to wait on this a little bit and see where
5 we're going. But it's going to be perhaps a
6 consensus.

7 Well, I didn't say a lot of things
8 specifically, but what I'm trying to get at
9 ultimately in all of this is that we have a lot of
10 sites in that area. Granted, we haven't had access
11 to that area for a long time, but that does not
12 negate our tribal memory nor our tribal history, not
13 in the books but which was transferred orally. So
14 there's more. And your so-called experts with the
15 Ph.Ds, you know, they just pile it a little higher
16 and a little deeper.

17 So it's time. I'm just letting you know
18 Rosebud's position is going to call for an EIS, full
19 blown.

20 I think I've had about my six minutes that
21 Russell mentioned earlier. So -- well, I took his
22 three, too.

23 But this is my concerns right now: Full blown
24 EIS, with a PA to follow in there and an MOA,
25 something with legal standing. I'm not trying to

1 cut it all short or anything. I'm just saying what
2 I have to say.

3 And Russell had to leave for a few minutes and
4 attend a critical thing that affects his community.
5 They'd heard enough, so to speak.

6 Okay, thank you.

7 MR. CONRAD FISHER: Ben can say that because
8 Russell is out of the room, so he can say anything
9 he wants.

10 Steve?

11 MR. STEVE BRADY: I also want to add a couple
12 other points.

13 Keep in mind that General Terry came through
14 there with Arikara scouts in 1876 hunting the
15 Cheyenne and the Lakota.

16 Then the other one is, the other military
17 operation is right there in Lame Deer on our
18 reservation, our final engagement with the U.S.
19 Calvary in 1890 with the head chief and Young Mule,
20 and the calvary came from Fort Keogh there.

21 But most tribes call that Fort Keogh Elk River
22 Fort in reference to Yellowstone, what was commonly
23 known as Elk River to many tribes. So I just wanted
24 to cover some of those points.

25 And then the other thing is Sitting Bull and

1 the Northern Cheyenne traveled through there from
2 Powder River and then back up through there in 1876
3 on their way to Little Big Horn.

4 So keep all of those details in mind. There's
5 been a lot of historical activity, cultural activity
6 and things like that.

7 MR. CONRAD FISHER: Thank you, Steve.

8 And I think that is really an important iconic
9 structure.

10 And I'm not sure if that is -- is that a
11 historic district of any sort, or not?

12 MR. DOUGLAS MELTON: I believe it's listed --
13 the fort itself is listed on the National Register,
14 but there are no buildings remaining from the fort.
15 There's one that's now out in (unintelligible)
16 that's a bed and breakfast.

17 THE COURT REPORTER: I can't hear him very
18 well.

19 MS. CATHERINE GLIDDEN: We need to get him a
20 microphone.

21 UNIDENTIFIED SPEAKER: Doug, you have to sing.

22 MR. DOUGLAS MELTON: You don't want me to
23 sing.

24 MS. CATHERINE GLIDDEN: Could you repeat
25 yourself?

1 MR. DOUGLAS MELTON: Okay, yeah, I'll go ahead
2 and repeat myself.

3 Conrad, I believe Fort Keogh is listed on the
4 National Register, but I don't believe there are any
5 buildings from the military era that are still
6 standing at Fort Keogh. There's one at the little
7 museum there in Miles City, the Range Riders Museum
8 that's incorporated into the museum, and the other,
9 two of the officers' quarters, which were the last
10 three remaining buildings from 1877 --

11 MS. CHARLENE VAUGHN: We can't hear whoever is
12 talking.

13 MR. DOUGLAS MELTON: This is Doug Melton from
14 the BLM. I'm just explaining a little bit about
15 Fort Keogh is listed as a National Register site,
16 but there are actually no buildings from the
17 military period standing at the fort. One is now a
18 bed and breakfast and Custer Creek drainage to the
19 northeast of Miles City, from -- west of Miles City.
20 And the other is incorporated into the little museum
21 by Fort Keogh, but it's actually part of the museum
22 now.

23 MR. CONRAD FISHER: Thank you.

24 MR. STEVE BRADY: And then the fort was
25 established in 1877 and was disassembled when?

1 MR. DOUGLAS MELTON: Actually, it was pretty
2 much -- I guess they burned a lot of the buildings
3 in the 1970s, that they didn't want to deal with
4 preservation laws. That is what I've been told
5 secondhand. A military fort becomes, well, it
6 becomes -- from being a military fort, it goes to
7 being a remount depot about 1912. In about 1922 it
8 becomes the agricultural resource station.

9 MR. CONRAD FISHER: Thank you, Doug.

10 I think a couple of points that come to mind is
11 the one that Ben Rhodd has eloquently defined, and
12 that is that we're here today and we're looking at
13 this map here of PR 1, and too often I think we look
14 at specific sites, site identification. What we're
15 looking at is we're looking at sites within a narrow
16 focus, and that focus is the corridor of the
17 proposed rail line. And the reason I say that I
18 think is because of the inadequacy of the EIS.

19 And now today we're making comments about,
20 initially this morning what we were looking at was
21 making comments on what we felt was important in
22 this line area. And we see that I think in Indian
23 Country too much that we went -- somebody made a
24 point, the cart -- or the horse before the --

25 MS. CATHERINE GLIDDEN: Cart before the horse.

1 MR. CONRAD FISHER: Cart before the horse. I
2 can't even say it. And I think Russell had made
3 that statement. And I think -- my interpretation
4 was that, you know, we should be looking at these
5 things proactively in collaboration and partnership
6 with those federal agencies before we even see a
7 proposal like this. Now we have a proposed line,
8 and we're looking at possible sites within that
9 narrow corridor, and that really limits I think the
10 tribes' ability to participate in meaningful
11 consultation.

12 So, you know, we don't -- the tribes don't want
13 to get bogged down on just having to compromise this
14 area and say, Okay, here's what we're going to look
15 at, we're going to look at this really narrow
16 corridor of this area and see what kind of impacts
17 that may have because of the rail line.

18 And I think we needed -- we need to take a
19 broader perspective on this particular issue and
20 just referring to what Mr. Rhodd had mentioned about
21 this, this issue of the proposed undertaking. So I
22 appreciate his comment on that, and I think it
23 really opened up my eyes about this, the strategy I
24 think that is being proposed today, and that is, you
25 know, what is an undertaking? That was one of the

1 things that was on the agenda is -- and I had a
2 little discussion with Cathy about it and I said,
3 "What is the undertaking? Define what we're talking
4 about. Are we talking about 106? Are we talking
5 about an EIS or everything that, everything and
6 anything that we want to comment on?"

7 And I think when we make comments, we also,
8 Cathy, I think need to -- we can make comments here,
9 but we also need to take our -- this information
10 that you're providing, we also need to take it back
11 to our tribal government and get their comments on
12 this. So we're kind of stuck in this catch 22.

13 This morning I heard that you can't really make
14 a decision and you don't know what the Surface
15 Transportation Board's recommendation is going to be
16 on this, on the EIS and this Tongue River I, but at
17 the same level, Cathy, I think we also have to, we
18 have to go back home and do the same thing.

19 So the comments you see here may be preliminary
20 comments, but they're not final comments from our
21 respective tribal governments, and so we need to
22 make sure that that is on record also.

23 Steve?

24 MR. STEVE BRADY: Back in June I think I said
25 that this is going to require a full ethnographic

1 study. And at this point I think it would include
2 archeological, historical and including oral
3 histories if the tribal representatives so desire.
4 And some oral histories are kept confidential.

5 MS. CHARLENE VAUGHN: Cathy, having listened to
6 the people who commented thus far, I have heard a
7 lot of comments that while definitely related to
8 Section 106, also speak to broader cultural issues
9 and tribal concerns, which I'm hearing the tribes
10 want to understand how they will all be taken into
11 account and a new EIS or supplemental EIS, whatever
12 direction we ultimately decide.

13 But as I listen, it's obvious to me we haven't
14 talked about natural landscapes. We haven't talked
15 about a lot of features that in the 21st Century
16 cultural resource management paradigm goes beyond
17 what happened in 1983.

18 So that being the case, has STB considered or
19 spoken to any of the stakeholders about
20 opportunities to integrate NEPA and NHPA in a manner
21 so that the issues the tribes are raising can be
22 looked at more holistically and inform all aspects
23 of project planning early on from the beginning with
24 (unintelligible) and with defining what it is you're
25 looking at? Because what I'm concerned about is

1 that the bright lights we normally look for in
2 historic properties versus cultural resources is not
3 going to be prudent or feasible in this
4 consultation. There's too much interplay and
5 interrelationship between the issues.

6 And my thinking from listening is that if we
7 try to pigeon hole each of these reviews of a
8 distinct manner, we're going to lose out and cause a
9 lot of frustration. At the outset the Surface
10 Transportation Board could look at a more innovative
11 approach to doing this where the tribes do inform
12 the project planning at the outset.

13 MS. CATHERINE GLIDDEN: Thanks, Charlene, for
14 your comments. And, you know, we'll certainly take
15 those into consideration.

16 I'm not the decision maker here regarding how
17 the board is going to move forward with Tongue I and
18 how they're going to decide on how the decision in
19 Tongue II and Tongue III, the judicial decision
20 affects Tongue I, if at all. I'm simply not in a
21 position to make those decisions, but it's good for
22 the record that we have your comments on your
23 thoughts. Thank you.

24 MR. CONRAD FISHER: And this is Conrad again.
25 And I think when we talk about traditional cultural

1 properties and cultural landscapes that tribes have,
2 as has been mentioned, have their own
3 interpretation, and oftentimes they don't mesh well
4 with the site forms. Site forms are very specific.
5 But that's a whole other issue I think when it comes
6 time for identification. But I just want to bring
7 that up because even there we have this dichotomy of
8 site identification and how they are legitimized
9 when it comes to making sure that they're identified
10 and possibly registered.

11 And cultural landscapes are, of course, the
12 same way, we have different views of looking at the
13 cultural landscape and having different boundaries.
14 Sometimes horizontal, the horizon could be a
15 boundary. But those are things that I think hadn't
16 been possibly thought of.

17 But certainly this day that the tribes haven't
18 become a relatively new player in this whole idea of
19 cultural resource management, are going to be
20 asserting those types of interpretation as far as
21 the cosmology of their history is concerned.

22 And I just want to give this gentleman an
23 opportunity to have a comment. Since he paid for
24 our lunch, he gets a lot of air time, for those of
25 us that was around his table.

1 MR. RICK THOMAS: I wanted to say on behalf of
2 the Santee Sioux Nation, you know, that I want to
3 thank these federal agencies for helping us to
4 reidentify old (unintelligible).

5 Going back to the memories of our people and
6 also the ancestry in our homelands, it's really
7 interesting because I've been only working with
8 (unintelligible) now for about a year. And I've
9 been with federal communications in Rapid City, and
10 they were totally stunned, want to have an open mind
11 to listen to the Indians' concerns when it comes to
12 cultural properties and our Sacred Sites.

13 Because we even had to oppose archeologists'
14 surveys, just like what they're talking about,
15 because they wouldn't identify rock formations on
16 how powerful and sacred ceremonial they were. As
17 soon as they brought up that fort and where the
18 Northern Cheyennes had a camp there, that opened up
19 a whole new world for us as tribal people.

20 And even though the Northern Cheyennes and the
21 Crows are way in Montana, you're wondering what is
22 the tribe talking about way up in northeast
23 Nebraska. Well, the reason why I'm up here in Rapid
24 City on behalf of the Northern Cheyennes, we are one
25 of six signatory bands of the 1868 Fort Laramie

1 Treaty. And our people fought at the battle of
2 Little Big Horn, Paduta (phonetic) and also his two
3 sons. As a matter of fact, forensic files may even
4 show that it was one of our people, the Dakota, that
5 took Custer's life finally.

6 So it's very interesting, you know, that when
7 these federal agencies want to develop a railroad or
8 a bridge or construction, automatically they're
9 encountering Sacred Sites, and that's the reason why
10 it's so important that you guys listen to us.

11 And the Surface Transportation Board, I wish we
12 could have a hearing with them so they could hear
13 what we're saying, either a hearing or even
14 representatives when they sit down and make some
15 decisions to see how they're thinking up there with
16 the Surface Transportation Board.

17 Like you said, you have no influence or
18 anything, but what we're saying right here is very
19 critical to where we stand. And I, myself, am going
20 to go back to my reservation and talk to the
21 chairman and also develop a resolution supporting
22 the TCP that our relatives from Rosebud said,
23 Sisseton, Yankton Sioux, the Crows, all putting
24 something together to show where we stand. And I'm
25 really glad you guys are open to that. You're just

1 not saying, Hey, let's build a railroad here. This
2 is really going to help us. You know, all kinds of
3 stuff as far as American Indians, you know, the
4 original inhabitants of this land.

5 So I just want to thank you for old new facts
6 on who we are as people.

7 Thank you.

8 MR. JEROME WHITE HIP: Thank you for bringing
9 that out.

10 Our ancestors have been here from the dawn of
11 time, you know, the Sioux, the Cheyenne, Arapahos,
12 Shoshone, all over. We've got these sacred grounds.
13 Like this gentleman had said, campsites, old
14 campsites. And right now you're asking us in the
15 cultural department to identify these, and that is a
16 study on the line there, historical sites.

17 You know, I'm really glad that -- sometimes the
18 European people that came over, they didn't respect
19 our way of life. They just went ahead and did what
20 they wanted. But I'm glad that you brought it up.
21 Because if I remove Plymouth Rock, what would you
22 do? Probably put me in jail. And that's one of
23 your historical sites, Gettysburg and all of them
24 sites that you identified yourself there, and that's
25 part of the eastern country, and you respect them

1 sites there, the Alamo. What about my sites? And
2 now the only thing I'm asking is to respect and
3 leave them alone.

4 And I support this gentleman, you know, and I'm
5 glad you brought these things up for us and working
6 with us.

7 And my other question is that what about them
8 farmers and ranchers down in the valley, farmers and
9 ranchers that rely on that water? And to my reading
10 of these papers in front of me, them ranchers are
11 against this project, right? Or am I wrong? Fix,
12 isn't that his name?

13 MR. CONRAD FISHER: Mark Fix.

14 MR. JEROME WHITE HIP: He's against that
15 project, right?

16 MR. CONRAD FISHER: Mark, are you still on the
17 phone, Mark Fix?

18 MR. MARK FIX: Yeah, I'm still here.

19 MR. CONRAD FISHER: Did you want to make a
20 comment, Mark?

21 MR. MARK FIX: Yeah. I'd like to say it
22 definitely affects our ranches. And it goes three
23 miles from my place, and it cuts the cattle off from
24 getting to the river to water. It makes it more
25 difficult to run the ranch.

1 And kind of getting back to some of the
2 cultural things, I think on Fort Keogh there were
3 also some buffalo jumps and stuff that I think are,
4 were there and stuff that have never been
5 considered.

6 MR. CONRAD FISHER: Thank you, Mark.

7 MR. RICHARD WHITE CLAY, SR.: My name is
8 Richard White Clay, and I'm with the Crow Nation.
9 And I'm here to get networking for my chairman.

10 There's a lot of history that I've listened to
11 from Mr. Brady, and, you know, our Principal Chief
12 Black Foot was against railroad, the first principal
13 chief that we had. He had the vision that buffalo,
14 elk, deer, our way of life, our water is going to
15 vanish. He was against that. So D.C. Government
16 kept coming with the proposal to have a railroad
17 through our reservation.

18 How many reservations in here have a railroad
19 going through there?

20 (Show of hands)

21 MR. RICHARD WHITE CLAY, SR.: I see three.

22 How many lives were taken from that railroad?
23 I have a family member that the train, was ran over
24 by the train because of the speed from the no
25 whistle.

1 I mean, Black Foot had a vision where he was
2 concerned about his way of life, but here now my
3 concern was the human lives. I mean, that train --
4 I mean, we have kids. I have kids. I have
5 grandkids. They're on the Crow Reservation, Crow
6 Agency. Right a few blocks from there is the
7 railroad tracks. And kids will be playing out
8 there, and those trains, I mean, man, they're
9 zooming fast about, I'd say about 90 miles an hour.

10 I mean, that's -- you know, with all this
11 cultural history, it's really informative for me.
12 My main reason was -- what I'm going to say is this
13 chief, when he died, the senator telegraphed D.C.
14 and said, "Black Foot is dead. Proceed with the
15 railroad." So our (unintelligible) chiefs, they
16 took them to D.C. as delegates without being --
17 Black Foot being gone, dead and gone, they took them
18 up there to D.C. in a motel, and they took them
19 down, and they gave them a proposal like what's
20 going in front of us, "You sign, and we'll send you
21 home." (Unintelligible) was one of them.

22 My great great grandfather is Chief Pretty
23 Eagle and he was there. They kept them there for
24 three months as prisoners in their own motel rooms.
25 They weren't let out. They wouldn't -- one of them

1 got sick, pretty sick. He was worried because he
2 wanted to see his family. So they all banded
3 together like what we did with in the caucus in the
4 next room. They said, "Let's sign. Let's go home."
5 They went against the principal chief's word. And
6 the treaty was signed, was made and everything.
7 That's history. I mean, the whole State of Montana
8 is history for all of them natives.

9 MS. LANA GRAVATT: That's the history of the
10 Native American people in this region.

11 MR. RICHARD WHITE CLAY, SR.: Not only just the
12 Northern Cheyenne Reservation or the Crow, but the
13 whole State of Montana is history, cultural history
14 for us.

15 Thank you.

16 MR. JEROME WHITE HIP: I want to go through a
17 few things that my brother-in-law brought up about
18 the fatalities that we have. In our area on our
19 reservation it's pretty high, fatalities from the
20 train.

21 From the Wyoming line up to where Hardin,
22 Montana is, that's where our reservation is. In
23 between that we have a lot of fatalities. And like
24 my brother-in-law said, them trains move fast,
25 (unintelligible) every 20 minutes that go through

1 there.

2 And then we talked with the Burlington Northern
3 a few years back in the '80s, latter part of the
4 '80s, "What can we do about these fatalities?" This
5 was one of the biggest safety issues. So in the
6 town of Lodge Grass and Wyola, Crow Agency and in
7 Hardin, we had Burlington Northern put them arms
8 down with flashing lights. That's what I'm worrying
9 about Ashland. That's what I'm worrying about
10 Rabbit Town. I don't want you guys to go through
11 what I went through. We lost some family members
12 there.

13 Safety should be one of the biggest issues of
14 this construction, safety. I inherit that from
15 the (unintelligible). It's always on our mind.
16 Safety is one of the biggest issues that you guys
17 should be talking about when you build that
18 railroad. They dictate how many, how fast you're
19 going to go on the interstate. We should look at
20 that, too, going through towns.

21 MS. CATHERINE GLIDDEN: I just want to point
22 out -- I'm really sorry to interrupt, but this
23 meeting is really focused on the cultural resources,
24 not on the safety issues. Those issues were
25 actually already addressed in the --

1 MS. LANA GRAVATT: The socioeconomic issues
2 were already addressed?

3 MS. CATHERINE GLIDDEN: No, the safety issues.
4 He's talking about the safety issues. He didn't say
5 socioeconomic. I just want to stay focused, if
6 possible, on the specific issues at hand.

7 MR. JEROME WHITE HIP: This gentleman wanted to
8 make a comment.

9 MR. CONRAD FISHER: Curley Youpee, could you
10 state your name, please?

11 (Laughter)

12 MR. CURLEY YOUPEE: I want to say that all
13 these experiences and emotional dynamics that we
14 have as tribes in some of this development and the
15 tragedies, you know, those are not addressed in the
16 court document or opinion, ruling. It's not
17 addressed in ACHP. It's not addressed in NHAP -- or
18 PA. You know, it's not addressed. They're not
19 going to address these hardship scenarios, so we
20 waste our time, we spin our wheels when we look to
21 what happened to our people. We tell it to
22 ourselves as tribes and so we understand each tribal
23 situation, and that's why we come together because
24 we become stronger as tribes.

25 We have to -- and I agree with Cathy for the

1 first time, we have to concentrate on cultural
2 resources and Section 106 policies, you know, what
3 is allowed as far as these undertakings.

4 Now, I'm not comfortable in making any
5 comment -- I'm not comfortable providing any comment
6 the way I've heard it. All comments are wanted at
7 this time, and I want to reserve that and I want to
8 talk with my tribe because I see a situation here
9 that might be bigger than myself or my
10 (unintelligible).

11 I've examined -- I took this court ruling, and
12 I examined it, and I've come up with what I feel are
13 irregularities. And so I'm not a legal person, I
14 have to consult with our own attorneys on that. But
15 like Russell Eagle Bear said this morning, you know,
16 we have the cart before the horse here, and I agree
17 with that.

18 And I'll continue with this consultation or
19 this exchange of information until tomorrow, but
20 that's kind of my position.

21 Don't lose ourselves in these emotional
22 dynamics because they're not getting any place with
23 these folks.

24 MR. CONRAD FISHER: Thank you, Curley.

25 Speaking of consultation parties, you know, I'd

1 like to recognize the Bureau of Land Management from
2 Billings and Miles City for being here because I
3 think they're a player also. And I know that Doug
4 has made a few comments, specific comments on
5 specific questions. And we also have Mr. Stan
6 Wilmoth there, if I may, from the Montana SHPO here.

7 I'm glad you could make it, Stan.

8 And the reason I -- and then Mr. Joel Ames from
9 the Army Corps, Omaha, here. And these folks I
10 think are also very important players in this
11 particular proposed undertaking because they also
12 are people with positions of authority that have a
13 say in this proposed project. So I'm glad that
14 they're here today. And I'm not sure if they're
15 allowed any, to make any comments on what their role
16 is just for the record or --

17 MS. CATHERINE GLIDDEN: I mean, anybody who
18 would like to make a comment specific to this
19 project is welcome to do so. That's what this is
20 all about.

21 MR. CONRAD FISHER: Okay. Well, the tribes I
22 think want a break here at this time.

23 And then after that if we could just have Stan
24 and Joel and maybe Mark or somebody that, if you
25 have anything to say just for the record, unless

1 you're going to have a song and dance --

2 MR. CURLEY YOUPEE: Conrad, I wanted to mention
3 that some of the tribes felt that a caucus at the
4 end of the day before the day was out because we
5 understand that the day is going to be out at four
6 o'clock. Is that correct?

7 MS. CATHERINE GLIDDEN: Well, again, the agenda
8 was -- you know, I had sent out a copy of the agenda
9 early on, and I requested anybody that had any
10 concerns about the agenda to let me know. I called
11 Conrad. You know, I called Dianne Desrosiers.
12 Anyway, I did want to have input on the agenda. And
13 even at the meeting this morning I requested input
14 on the agenda. It was not set to be a certain way.
15 And I didn't have any real input from tribes in
16 creating the agenda, didn't have any feedback, any
17 responses to my original message that was sent with
18 the attached agenda, so --

19 MR. CURLEY YOUPEE: Well perhaps we can have
20 that caucus because I understand some of the tribes
21 are leaving tomorrow?

22 MS. LANA GRAVATT: Well, the meeting is
23 scheduled just until noon tomorrow.

24 MS. CATHERINE GLIDDEN: We can stay as long as
25 we feel is necessary today, so that's -- we can

1 change the agenda any way that we feel we need to
2 change it. So if there's more work we need to do
3 tonight, then that's fine.

4 MR. CONRAD FISHER: Well, let's take and break
5 and come back.

6 (Recess taken from 3:30 p.m. to 3:55 p.m.)

7 MS. CATHERINE GLIDDEN: I know that some of you
8 would like to continue the meeting a little bit
9 longer today. If you have any specific suggestions
10 for how we can modify the agenda or any specific
11 concerns about additional items that you would like
12 to address today -- for tomorrow -- I mean, for
13 today we did have on the agenda that we would have a
14 discussion on the area of potential effect, so
15 getting feedback from you regarding the areas of
16 effect that you think should be considered.

17 Some of the things, Ben, that you were talking
18 about, for instance, you know, as far as tribal
19 centered kind of view on things.

20 MR. BEN RHODD: Well, I'd like to go ahead and
21 just say that what Steve brought out just after
22 that, a lot of that information may be within
23 certain text that is used for their research for the
24 historical background of that region, of that area,
25 but some of the things that he's talking about

1 aren't in those books, they're not in that in how it
2 would be considered as to the cultural use of that
3 area and the landscapes.

4 So as far as what I was alluding to was
5 archeological in a context, but it is also the
6 broader historical view from the Native Peoples that
7 has to be considered here. And specifically to the
8 referencing for these sites, I'm going to drop back
9 to DM&E again in the sense of what we've learned
10 from that process, is that these sites that may be,
11 that are and may be eligible for nomination to the
12 National Register, that these sites, in our purview
13 of native historical recollection and history, these
14 are eligible no matter what.

15 Now, many a number in this room, in particular
16 from the railroad and others, that doesn't mean
17 anything to them, but it does to us. And the oral
18 history, a bit of the oral history that he just
19 reiterated and brought to our attention, that type
20 of information is important to our continuity, to
21 our cultural patrimony and to our use. Now, that's
22 not just in a historical sense, it is also pertinent
23 to today. Obviously it is pertinent because
24 otherwise we wouldn't be sitting in this room.

25 So when we get back to what Lana brought up

1 about when the process begins, and while I
2 understand that engineers have to draw a line, he's
3 gotta figure on a pitch, the elevation; he's gotta
4 figure on how much nothing over 3 percent grade and
5 all of that stuff, well, that's fine, but when we go
6 out to do a survey, that we would have the
7 expectation -- now, this is a big bomb to drop in
8 the room, but we would have the expectation that
9 those sites that we identify will be protected and
10 will be avoided.

11 Now, fully realizing that that's a very loaded
12 statement to make, but at this point in time I'm not
13 sure that you or any of you from the railroad are
14 aware of what is happening within, when I said a
15 littler earlier, that the process that is involved
16 in these projects, no matter what they are, whether
17 it's railroad, new highways, rare minerals
18 exploration, whatever, it's changing here on the
19 Northern Plains. Hence, we're in this room.
20 Because this is our history that you're dealing
21 with. This is our continuity as a people.

22 And so there's many issues here that we're, we
23 are addressing but we're not, to a degree, but we're
24 trying to set the process down. And I appreciate
25 STB's efforts and Louis Berger, what they're trying

1 to do in setting down what direction that we need to
2 go. But we also have our opinion of that direction.
3 We have our opinion of where and how that we're
4 going to look to our protection of our history.

5 So the process, I've said for decades now, is
6 bass-ackwards, just to put it that way. And the
7 reason I'm saying that is because if you do not
8 know, and this is why it's so important to us, if
9 you do not know what is out ahead on that line drawn
10 on that platted map, on that topographic map, on
11 that geologic map, on the geography of that area, if
12 you don't know what's out ahead of it, then allow us
13 to have the first shot at it, so to speak. This is
14 what we have said to federal agencies continuously
15 in these past ten years: Allow for us to protect
16 our history. That is what we're asking. All the
17 rest is the mechanics of it.

18 So I wanted to say that and kind of reiterate
19 it again because what Steve and, what he said and
20 what Lana was bringing up. This process is --
21 cultural resources are always the last thing that's
22 within the EIS to get done, it seems like. You go
23 out and you do your hydrology, you do your geology,
24 you do your zoology, your botany, all these
25 analogies, but cultural resources is way back at the

1 last and all of a sudden, Wait a minute. You know,
2 we gotta problem here, and we definitely have a
3 problem in this process. And until that's changed
4 with the federal agencies, until that process is
5 reversed, so to speak, we're still going to be
6 having to have continual meetings with federal
7 agencies, with third-party contractors, everybody,
8 corporations. So I'm just saying this is a broad
9 scale, that's on a broad scale, broad overview of it
10 in a way, but this is where we're at.

11 Now, how we're going to be able to come to
12 whether, whatever the Surface Transportation Board's
13 decision will be, that is where it's the crux of the
14 matter. And I still keep feeling that something
15 isn't right, something isn't being said, and I don't
16 know what that is. I just throw it out there to
17 you. As I'm sitting here and listening, something
18 is missing.

19 And I appreciate the, with David and others who
20 came up to give an overview of the project
21 parameters with the APE, the APE is the cultural
22 landscape itself. Now, that's another loaded one.

23 However, we are going to be dealing with a
24 corridor. It will have defined boundaries and
25 defined parameters of what we can and cannot do.

1 But we learned off of DM&E. We learned how that
2 process can be, in the processes how we can extend
3 outside of those boundaries, sometimes perhaps a
4 little contentious, but to be able to fully record
5 and to observe what those sites that may be within
6 that corridor, what their extent is.

7 So I'm just throwing those two cents out there,
8 I guess. But I'm trying to encapsulate a little bit
9 of what we're up to here or what's being done.

10 So with that, thank you.

11 MS. CATHERINE GLIDDEN: Any other opinions on
12 the APE from anyone here in the room, please speak
13 up.

14 MR. CONRAD FISHER: Let me say a word, and then
15 I'm going to give it to Terry because I know Terry
16 always has some real fine points that he wants to
17 give.

18 You know, when Ben was talking, it just -- I
19 had made some comments earlier about where we find
20 ourselves. In many of these situations when it
21 comes down to, in many cases, 106, that we find
22 ourselves being very limited again. And in
23 situations where we can't back out, we sort of find
24 ourselves in a place where we have to identify sites
25 that the process has gone so far deep into the

1 process that we're just identifying sites within the
2 APE. Ben mentioned the APE. And I think this is a
3 real good example of that, of finding ourselves in
4 the hole, so to speak, that we're so far in there
5 that we can't climb back out to reinterpret this
6 whole idea of an EIS, and we don't like that
7 situation. We don't want to be in that situation.

8 Again, I just want to reemphasize that we
9 should be looking at this from a broader
10 perspective, redefining that corridor. Ben
11 mentioned we should be given the opportunity to look
12 at, be the first ones there. Well, back in the '80s
13 we weren't given that opportunity. I mean, STB says
14 we were and that they approved it, I understand
15 that, but, again, we're relatively new players into
16 this whole idea of cultural resource management.
17 Back in the '80s there were no THPO offices. Back
18 in the '80s there wasn't a NAGERA law. Back in the
19 '80s there were other -- Bulletin 38. There weren't
20 other federal laws and statutes that we have today.

21 And we want to -- you know, in Indian Country,
22 at least for Northern Cheyenne, our elders always
23 say -- they keep telling us these stories, these
24 stories and these stories, but why they do that is
25 they want to make sure that we understand what these

1 stories represent. So if our elders keep telling us
2 a story and we say to ourselves, Why is he -- He's
3 already told me that, it's because they want to make
4 sure we fully understand what that story was all
5 about. And I think in this case that's what we're
6 trying to tell you is we want to keep reinforcing
7 what we feel is right in this case.

8 So having said that, you know, we should be
9 given an opportunity to look at that line again.
10 And I'm proposing that. I'm proposing we reevaluate
11 that whole line.

12 I know there was a presentation about the
13 gradient and that sort of thing, but either that or
14 we find ourselves in the hole, and that's not very
15 fair. When you're deep in a hole, you're deep in a
16 hole and rather than having, being a partner and
17 looking at the broader perspective of where this
18 line should go. So I just wanted to mention that.

19 Terry?

20 MR. TERRY CLOUTHIER: In terms of the APE, I've
21 got a couple of questions.

22 There's a representative from Montana SHPO
23 here, correct?

24 MR. STAN WILMOTH: Yes.

25 MR. TERRY CLOUTHIER: I've got a quick question

1 for you. Would a rock cairn be listed as an isolate
2 or be listed as --

3 MR. STAN WILMOTH: Usually they are recorded as
4 isolates without site numbers, but that is in the
5 process of changing because we know that's pointless
6 and doesn't -- we know that cairns are monuments.
7 We just don't know what they're monuments to.

8 MR. TERRY CLOUTHIER: Okay, I just wanted that
9 on record because I was under the impression that
10 they were being recorded as isolates, and that's a
11 huge issue for the tribes based on what our beliefs,
12 the tribes' beliefs are.

13 Would that also being applied to,
14 quote/unquote, teepee rings?

15 MR. STAN WILMOTH: No, teepee rings are
16 considered enough of a recognizable feature with a
17 commonly understood function that they are recorded
18 as sites.

19 MR. TERRY CLOUTHIER: And is the function
20 listed for those rings as habitation for those
21 sites?

22 MR. STAN WILMOTH: They usually are. Some
23 people recognize that if there's a big variation in
24 size or shape or interior additional rock clusters
25 or something that they should be thinking about

1 something else, but yeah, most people write down
2 habitation on that.

3 MR. TERRY CLOUTHIER: Okay. That's going to
4 relate directly to any of the rings that are
5 identified within Montana by the tribes because we
6 certainly do not, or at least the tribes that I
7 generally work with certainly do not recognize them
8 as habitation rings. Other tribes are free to
9 identify them however they like, but I know when I'm
10 identifying it would never be identified as a
11 habitation site for Standing Rock Sioux Tribe.

12 This directly relates to your APE, the question
13 on rock cairns being listed as isolates, isolates,
14 by their very definition, are not protected under
15 NHPA. They're not listed as eligible because
16 they're not considered a site. And if a rock cairn
17 is listed as an isolate, it would not be protected
18 and therefore it could be destroyed by your
19 construction, and we would not agree with that in
20 any circumstance.

21 MS. CATHERINE GLIDDEN: I just want to note
22 that in terms of determining eligibility, it's
23 determined by the federal agency in consultation
24 with tribes and the SHPO, but it's a federal
25 agency --

1 MR. TERRY CLOUTHIER: There wouldn't be any
2 determination on an isolate, that's the problem.
3 Only on sites. Isolates don't get a determination.
4 They're ineligible based on their definition as an
5 isolate.

6 MS. CATHERINE GLIDDEN: Yeah, but, you know, if
7 you identified it as a site or a feature that's
8 important to you, then we would --

9 MR. TERRY CLOUTHIER: I'm talking about
10 existing, though, Cathy.

11 MS. CATHERINE GLIDDEN: Okay. From our
12 perspective for this project we would definitely,
13 you know, take whatever you say about the site as,
14 at face value.

15 I do have a question for the Montana SHPO,
16 though, regarding confidentiality of tribal sites
17 and site forms and so on and so forth. I mean, how
18 do you perceive at the Montana SHPO's office
19 regarding requiring certain information on site
20 forms for sites that may be important to tribes?

21 MR. STAN WILMOTH: We've had no trouble, to the
22 best of my knowledge, protecting information. What
23 we really need to know is what needs to be
24 confidential. But we've worked with tribes all over
25 the state in doing things like, Well, send us

1 whatever information you think we need to see, and
2 we return it, to having things like burial sites and
3 things be completely restricted so that only one
4 person, myself, has access to that information.
5 We're pretty open. We've never been challenged.
6 Seriously mining interests have occasionally said
7 that's not appropriate, but state and federal law
8 allow us to protect information that could lead to
9 the destruction of those places.

10 MS. CATHERINE GLIDDEN: And in terms of
11 determining eligibility on sites that tribes view as
12 significant, what's your stand on that?

13 MR. STAN WILMOTH: I'm not sure I understand
14 what you're --

15 MS. CATHERINE GLIDDEN: If we have a tribe
16 saying, We think this site is significant, we think
17 it is eligible for the National Register in
18 Criterion D or whatever or A for association, what
19 would be your position in terms of questioning that?
20 Would you support the tribes' interpretation of the
21 significance of the site, or would it be viewed in
22 relationship to archeological viewpoints or
23 whatever?

24 MR. STAN WILMOTH: I'm still not real sure I
25 know what you mean.

1 MS. CATHERINE GLIDDEN: If the tribes say that
2 a site that, let's say, an archeologist had said is
3 not significant, if they said, Yeah, we think this
4 is significant, what would your stance -- would you
5 question --

6 MR. STAN WILMOTH: We have no standing default
7 saying that just because Indians say that it's not
8 true, if that's what you're trying to say. We have
9 to have some kind of information about why it's
10 important to them.

11 MS. CATHERINE GLIDDEN: What kind of
12 information?

13 MR. STAN WILMOTH: Well, it depends on what
14 site they're talking about. I don't know what you
15 mean.

16 MS. CATHERINE GLIDDEN: Could you give an
17 example of like a lithic rock site, for instance,
18 that the tribes think is important but archeologists
19 had dismissed as not being significant?

20 MR. STAN WILMOTH: Yeah, I think I probably
21 could. There could be places where material was
22 collected and archeologists think that it was used
23 for tools or something like that without realizing
24 that there were oral histories and traditions of
25 travel corridors and people moving through there and

1 using that place for other things besides just
2 picking up the rock to make tools out of them. So
3 it is Criterion D, association of that place with
4 historic traditions. It's up to tribal people to
5 tell us a little bit about those associations.

6 MR. TERRY CLOUTHIER: Stan, can I give you
7 another example? A lithic site that was identified
8 by the archeologists, our tribal monitors or
9 resource specialists go out into the field and
10 identify features on top of the lithic procurement
11 area that are significant to the tribes, thereby
12 changing a non-eligible site to eligible based on
13 Criteria A, its association with tribal history,
14 would you be amenable to that being changed that
15 way?

16 MR. STAN WILMOTH: Yes.

17 MR. TERRY CLOUTHIER: Okay.

18 MR. STAN WILMOTH: And we have a record of
19 doing that, but we need something to --

20 MR. TERRY CLOUTHIER: You need some kind of
21 reason to why it's --

22 MR. STAN WILMOTH: Yeah. And if it doesn't
23 need to be shared with other people and if that's
24 the confidentiality question, those things can be
25 returned to the tribes as far as we're concerned.

1 MS. CATHERINE GLIDDEN: Okay. Thanks so much.

2 MR. TERRY CLOUTHIER: Secondly, a lot of the
3 sites that have been identified under, in particular
4 with the stone ring sites, and I won't bother to
5 call them teepee rings, they're generally not
6 eligible under Criteria D based on the information
7 that they didn't meet, that they could yield to the
8 scientific value of the site. We generally list
9 them under Criteria A, the importance to the tribal
10 history. That's what they should be listed under.
11 Any number of sites within your area that are
12 already recorded as ineligible potentially and need
13 to be looked at by the tribes to see if they, in
14 fact, are eligible under Criteria A, which is
15 something that the archeologists can simply not do.
16 The tribes are the only ones that evaluate under
17 Criteria A for a ceremonial site or Sacred Site.

18 MS. CATHERINE GLIDDEN: Yeah, we agree with you
19 entirely on that point.

20 MR. TERRY CLOUTHIER: Okay.

21 I've had a little bit of time to look through
22 your EIS and through the court's decision. In
23 looking at your EIS, your latest one for Tongue
24 River III where you incorporated Tongue River I, it
25 says here, "Of the 44 sites within the 3,000-foot

1 area, ten of these are located within the
2 right-of-way." In your previous document from the
3 mid '80s you only had two there. In this latest
4 document, however, for Tongue River I you don't
5 actually list what those sites are or what those
6 site numbers are, and that's a huge failing because
7 we don't get a chance to actually know what those
8 sites are.

9 MS. CATHERINE GLIDDEN: Yeah, I agree with you
10 on that point. I noticed the same thing. And I'm
11 going to look into that a little bit more and see if
12 I can find out what those additional sites were.

13 MR. TERRY CLOUTHIER: Okay.

14 MS. CATHERINE GLIDDEN: It might be actually
15 listed in another part of the EIS and I didn't
16 include it.

17 MR. TERRY CLOUTHIER: Okay.

18 MS. CATHERINE GLIDDEN: But I'll definitely
19 look into that because I noticed the same thing.

20 MR. STAN WILMOTH: Can I add something else
21 that's real important? Which is: I don't know
22 anything about the percentage of existing inventory
23 or the age of it or anything of that sort, but a
24 good guess would be that less than 5 percent of it
25 has been looked at, so that means those numbers are

1 absolutely not representative if you look at other
2 traditional use areas.

3 MS. CATHERINE GLIDDEN: Okay. Thanks.

4 MR. TERRY CLOUTHIER: Can I actually get a
5 clarification on that from you, Stan? You're saying
6 that the cultural resource inventory for the Class 1
7 survey, which is basically just your literature
8 search, is based on a 5 percent --

9 MR. STAN WILMOTH: Overall that's about our
10 state average. And that gets bumped up from the
11 work that gets done on land managing agency lands
12 like the BLM. There's a relatively small federal
13 land ownership component here. So I think it's
14 probably less than 5 percent for that --

15 MR. TERRY CLOUTHIER: Okay, thank you for the
16 clarification.

17 MS. WANDA WELLS: I have a question.

18 MS. CATHERINE GLIDDEN: Yeah, sure.

19 MS. WANDA WELLS: Wanda Wells, Crow Creek.

20 These isolate finds that Terry is talking about
21 that aren't necessarily -- could those be part of
22 the literature research so we know how many isolates
23 are within that corridor?

24 MS. CATHERINE GLIDDEN: Yeah, we certainly
25 could do that.

1 MR. STAN WILMOTH: The problem is that, and
2 this is what Terry was trying to explain, is if they
3 were conceived to be isolates, nobody made a site
4 form for them in the first place, so there is no
5 record of them in our records. There may be in the
6 reports where they list isolates usually in the back
7 of the report, but there was never even a one-page
8 site form that got entered into the state system.

9 MS. WANDA WELLS: How many reports are we
10 talking about?

11 MR. STAN WILMOTH: I don't know.

12 MS. CATHERINE GLIDDEN: Well, as part of, you
13 know, additional identification efforts, one of the
14 things that we would definitely want to do is get
15 tribes out on the ground to identify what's
16 significant. And if these sites are significant to
17 you, then we want to know that. So we need to get
18 you on the ground.

19 MS. LANA GRAVATT: I just wanted to -- I don't
20 know if everybody got this, but it's the review by
21 the Northern Plains Resource Council on their take
22 of the court decision, and I just wanted to read it
23 for everybody just in case everybody hasn't heard
24 their review of it, because we've heard the lawyer
25 over here.

1 I'm sorry, what's your name again?

2 MR. DAVID COBURN: David.

3 MS. LANA GRAVATT: David.

4 MR. DAVID COBURN: You haven't heard my review
5 of the Ninth Circuit decision.

6 MS. LANA GRAVATT: Well, the history of the
7 whole project is coming from the lawyer. It's kind
8 of a review, I think.

9 It just says that the railroad cannot begin
10 right-of-way acquisition or construction until a
11 thorough Environmental Impact Statement is done,
12 including starting over with baseline surveys to
13 identify affected fish and wildlife habitat and
14 other resources. The Surface Transportation Board
15 will have to go back to Square 1 and do a new EIS
16 that includes Otter Creek. Also STB must now look
17 at the cumulative impacts of Otter Creek mining.
18 STB cannot rely on stale data. STB cannot rely on
19 after-the-fact mitigation which implicates the study
20 of the Miles City Fish Hatchery, sage grouse,
21 (unintelligible) and other troubled wild species.
22 STB must look at cumulative impacts of CBM.
23 Development cannot arbitrarily choose a time frame
24 to limit its look.

25 That's the review that the Northern Plains

1 Resource Council put out and I know e-mailed to
2 several of us, but I thought it would be good to
3 read it so we could kind of have a clear picture of
4 what came out of that court decision.

5 MS. CATHERINE GLIDDEN: Well, I just appreciate
6 that, but I just want to point out that, again, this
7 court decision was in reference to Tongue II and
8 Tongue III, not Tongue I. And so, yeah, of course,
9 you know, as far as Tongue II and Tongue III are
10 concerned, we have specific language in the decision
11 regarding items that are remanded to the board and
12 so on, including cumulative impacts, but the
13 decision doesn't talk specifically at all about, you
14 know, Tongue I. And the board is going to be making
15 a decision, however, regarding how they're going to
16 move forward, whether or not they believe that the
17 decision is going to impact how we move forward with
18 Tongue I. I simply don't know what that is, and I
19 simply can't say that here at this meeting because I
20 just simply don't know.

21 MS. LANA GRAVATT: All right. But, I mean, as
22 far as Otter Creek, though, and the other mines that
23 are associated with the project, you know, those
24 haven't been analyzed ever, right? Or they have?

25 MR. DAN HADLEY: Otter Creek, Arch Minerals is

1 in the process of completing baseline information to
2 complete an Environmental Impact Statement for the
3 development of that mine, and as a result they'll
4 have to go through all the particular EIS process
5 for that development. And in addition to that, once
6 that EIS is done, they will then have to apply for a
7 mine permit application within the Department of
8 Environmental Quality and go through that process.

9 MS. LANA GRAVATT: Before that process begins,
10 I mean, I think for, you know -- I mean, we've been
11 talking about it all day, but we need to talk about
12 when we're going to do a tribal survey. And
13 especially along the Otter Creek Spur right there,
14 that needs to be clear that that's going to be done.
15 And then the other is the (unintelligible) for the
16 TCP.

17 MS. CATHERINE GLIDDEN: Okay. Thanks.
18 Curley?

19 MR. CURLEY YOUPEE: Yes. Since we're pretty
20 much in agreement regarding a TCP study of what
21 tribes need to do, could we possibly construct, for
22 the sake of the (unintelligible) tribe, that this
23 will be done? So it doesn't become obstructed in
24 some of the other proceedings, could we develop an
25 MOA regarding a TCP study so that at least that

1 would be completed?

2 MS. CATHERINE GLIDDEN: That's not something
3 that we can do at this meaning. I mean, as I noted
4 at the beginning, the purpose of this meeting is to
5 look at Steps 1 and 2 and go back and sort of relook
6 at the steps of the 106 process. Going for an MOA
7 is --

8 MR. CURLEY YOUPEE: I'm not talking about a
9 programmatic agreement. I'm talking about a simple
10 MOA that's deemed for traditional cultural
11 properties.

12 MS. CATHERINE GLIDDEN: I can't -- I simply
13 can't -- I can go back to my --

14 MR. CURLEY YOUPEE: You can do it. We did it
15 in DM&E.

16 MS. CATHERINE GLIDDEN: But we were actually
17 going in and implementing what was stated in the
18 programmatic agreement in that case. In this case
19 we don't have a PA that outlines specific things
20 that are going to be completed. So I have to go
21 back to my decision makers to ask them specifically
22 about that, which I can do.

23 MR. STEVE BRADY: I wanted to make several
24 points.

25 First of all, just keep in mind that at the

1 time that this Tongue River I was initiated maybe
2 one of the only federal laws that existed at that
3 time was the American Indian Religious Freedom Act,
4 and that was thrown out by the courts a short while
5 later.

6 Secondly, the Northern Cheyenne have litigated
7 a number of cases with regard to coal development
8 over the past two or three decades, maybe several
9 decades, and among them, probably the more important
10 is the -- well, they're all important, but obvious
11 is the Northern Cheyenne versus Hodel, Secretary of
12 Interior, when the Bureau of Land Management done
13 coal leases and it left out the Northern Cheyenne in
14 their EIS, and the Northern Cheyenne challenged that
15 in federal court. And the end result of that is
16 that the Interior had to do a supplemental EIS that
17 included Northern Cheyenne and Crow Tribe, and that
18 was somewhat of an extensive EIS, supplemental EIS.
19 So kind of keep that in mind that there's, that's
20 out there.

21 And then another part: You know, we talked
22 extensively about cultural historic sites, but the
23 other thing is I know that my traditional ceremonial
24 people still go out and gather plants east of Tongue
25 River and sometimes into the Otter Creek area.

1 That's (unintelligible) traditional ceremonial
2 plants. So that we have to keep in mind as well.

3 MR. CONRAD FISHER: Response by BLM? No, I'm
4 just kidding. Doug?

5 MR. DOUGLAS MELTON: It's true.

6 MR. CONRAD FISHER: I know that when the -- and
7 forgive me, the gentleman that had the presentation
8 this morning had the Tongue River map and then close
9 to Ashland that there was going to be a bridge that
10 would cross over onto the east side of the Tongue
11 River.

12 Has the Army Corps of Engineers been involved
13 with, do they -- do you need to get a permit from
14 the corps to build a bridge over the Tongue River?

15 MR. DAN HADLEY: Yes, as well as the crossing
16 of Otter Creek right next to U.S. 212, so they'll be
17 army corps 404 permit, applications for those.

18 MR. CONRAD FISHER: Have you filed an
19 application yet?

20 MR. DAN HADLEY: No, we have not.

21 MR. CONRAD FISHER: Okay.

22 Did you want to say anything, Joel, anything
23 about the application process or anything?

24 MR. JOEL AMES: Actually, I have Shannon
25 Johnson from our regulatory office here who can

1 speak directly to the application process, for those
2 who are interested in hearing it.

3 Again, my name is Joel Ames with the Corps of
4 Engineers.

5 But just very shortly, Shannon and I have been
6 talking a little bit about this. Right now it
7 doesn't appear there's a large number of crossings.
8 So the course here -- because obviously there are
9 potential issues where the corps will be involved in
10 it. However, it appears right now that there's
11 going to be a limited number of permits and
12 applications associated with this that's going to
13 affect the Corps of Engineers, but I'll let Shannon
14 speak directly to the application process.

15 MS. SHANNON JOHNSON: Hi. I'm Shannon Johnson
16 with the Corps of Engineers Regulatory Office in
17 Billings.

18 And right now we don't have any pending
19 applications. One of our check boxes before we can
20 issue a permit is 106 consultation is complete, and
21 so essentially that's why we're here just, you know,
22 as a participating agency. But usually these kind
23 of things are worked out well ahead of time of
24 permitting. So, you know, that would be one of the
25 last steps I guess prior to construction would be a

1 404 permit.

2 Do you have any specific questions about how
3 that process works?

4 MR. CONRAD FISHER: Can you just explain the
5 106 process in the corps' view. Does that mean once
6 106 has been completed then you issue a permit, or
7 how does 106 become a player in and a factor in
8 issuing a permit?

9 MS. SHANNON JOHNSON: Well, we have to comply
10 with all the other federal laws, so we can't issue a
11 permit that would be contrary to another federal
12 statute. So basically 106 has to be completed and
13 taken care of. You know, the PA would have to be
14 done, and the surveys have to be done and the
15 mitigation all lined out before we would ever issue
16 a permit.

17 MR. CONRAD FISHER: Would that include an EIS?
18 I know it's complete right now, but should there be
19 an opportunity to readdress an EIS, that would fall
20 under the same process?

21 MS. SHANNON JOHNSON: Yep. We're not the lead
22 federal agency, so we wouldn't make the
23 determination of whether an EIS versus an EA was
24 complete or if there's a supplemental EIS. We
25 basically are in a commenting role. So if STB

1 issued a supplemental EIS or started over or
2 whatever they do, we would just be a commenting
3 agency, not a -- I mean, that's out of our decision
4 making process.

5 MR. DAVID COBURN: Conrad and Shannon, if I can
6 just clarify, the corps has been a cooperating
7 agency with the STB in this whole process. We have
8 dealt in the past -- I know Shannon -- we haven't
9 consulted with Shannon but with her predecessors we
10 have. And we prepared documents that are of
11 interest to the corps that describe the impacts to
12 wetlands and U.S. waters of the project. So we're
13 very well aware of our permitting obligation
14 relative to the corps, and that's something that
15 will be handled in due course, but first we have to
16 get through the EIS and the 106 process, as Shannon
17 indicated. They cannot act, just like the board
18 cannot act, until the EIS and the 106 process are
19 completed.

20 MR. CONRAD FISHER: Sure. Thank you.

21 MR. JOEL AMES: And I'd just like to add,
22 similar for the folks who were involved in the
23 Keystone Pipeline Project --

24 Again, I'm Joel Ames, Corps of Engineers --

25 -- the corps typically retains the right to do

1 additional consultation, even if the lead federal
2 agency closes out consultation, for the permitting
3 action. If there's an issue of concern specific to
4 404 or Section 10, we can do additional
5 consultations on that.

6 MR. TERRY CLOUTHIER: Thanks. That ties right
7 into my question that I was going to
8 (unintelligible). In such an instance where the EIS
9 is 30 years old, would the corps still offer a
10 permit or accept a permit application on something
11 like that?

12 MS. SHANNON JOHNSON: Well, I guess in our
13 alternatives review and cumulative impact review we
14 could potentially ask for additional information
15 from the applicant, but we wouldn't, I don't think,
16 ever say you have to do a new EIS.

17 MR. JOEL AMES: I don't know. The situation I
18 don't think has come up, not that I'm aware of.

19 MS. SHANNON JOHNSON: I could see where there
20 might be an instance where we wouldn't have enough
21 technical information to do a cumulative review
22 or -- we could request information.

23 MS. LANA GRAVATT: Would you guys be available
24 to consult on that issue with the tribes?

25 MS. SHANNON JOHNSON: Yes.

1 MS. LANA GRAVATT: Okay.

2 MR. CONRAD FISHER: Russell, have you got your
3 hand up, or are you just scratching your underarm?

4 MR. RUSSELL EAGLE BEAR: She mentioned the
5 Section 106 process, and I was going to ask her how
6 she viewed this meeting. Is she piggybacking off of
7 the Surface Transportation by seeing this as a
8 Section 106 process and opening doors for them to
9 continue working with her office?

10 MS. SHANNON JOHNSON: No, I don't think so. If
11 there's -- if after this consultation is closed out
12 and the corps receives a permit application, if
13 there are still standing issues as they're related
14 to a permit crossing, then we could reinitiate
15 consultation.

16 MR. RUSSELL EAGLE BEAR: With tribes?

17 MS. SHANNON JOHNSON: With tribes.

18 MR. CONRAD FISHER: Thank you.
19 Cathy?

20 MS. CATHERINE GLIDDEN: Any other questions or
21 concerns about the area of potential effect? And
22 after that can we discuss what your ideas are for
23 ending the meeting today or if you want to continue
24 or if, and if you're comfortable with the agenda
25 items that we have set for tomorrow morning?

1 So tomorrow we have --

2 MR. CONRAD FISHER: Russell?

3 MR. RUSSELL EAGLE BEAR: This morning we were
4 talking about the agenda, and my main issue or
5 concern was we didn't have a lot of discussion or
6 clarity on the summary of the Ninth Circuit Court's
7 decision. You know, we kind of hem hawed around it.
8 We had a discussion on that, and I thought you were
9 going to do an overview of that particular decision,
10 and it's still -- there's still questions on it. Do
11 you still want to continue and try to do an
12 overview, or do you want your lawyers to come or
13 your decision makers to come and explain it to us at
14 some point?

15 MS. CATHERINE GLIDDEN: Well, I mean, the -- I
16 was asked to simply read that statement which I read
17 earlier. I don't know if you heard it, that Vickie
18 had provided.

19 MS. LANA GRAVATT: Could you make us copies of
20 that?

21 MS. CATHERINE GLIDDEN: We can make copies for
22 you, but it's been entered into the record.

23 So I really can't talk about how the decision
24 is going to impact Tongue I in terms of the board's
25 actions in the future. I simply don't know.

1 MR. CURLEY YOUPEE: Can we get the existing
2 decision --

3 MS. CATHERINE GLIDDEN: Yeah. We have copies
4 of it outside.

5 MR. CURLEY YOUPEE: -- based on ACHP
6 recommendations and your plan to consult with
7 tribes?

8 MS. CATHERINE GLIDDEN: In the plan? What
9 plan?

10 MR. CURLEY YOUPEE: You plan to --

11 MS. CATHERINE GLIDDEN: For this project?

12 MR. CURLEY YOUPEE: For this project, right.

13 MS. CATHERINE GLIDDEN: We obviously don't have
14 any comments from Advisory Council regarding the
15 decision.

16 MR. CURLEY YOUPEE: Well, you said your
17 decision was based on comments from ACHP this
18 morning.

19 MS. CATHERINE GLIDDEN: No. The decision --
20 we're talking about the Ninth Circuit Court
21 decision, which --

22 MR. CURLEY YOUPEE: No, I'm talking about
23 administrative decision and how you're going to
24 approach --

25 MS. CATHERINE GLIDDEN: In terms of how we're

1 moving forward with the 106 process, we did seek
2 guidance from the Advisory Council. It was a
3 federal agency decision.

4 MR. CURLEY YOUPEE: But did you construct an
5 actual plan to consult with tribes?

6 MS. CATHERINE GLIDDEN: Well, that's why we're
7 here, in part, you know, obviously --

8 MR. CURLEY YOUPEE: Is it in writing? Can we
9 see it?

10 MS. CATHERINE GLIDDEN: The Advisory Council --

11 MR. CURLEY YOUPEE: No, your administrative
12 plan, your protocol in consulting with tribes.
13 You're supposed to have one.

14 MS. CATHERINE GLIDDEN: Yeah, I know. We're
15 actually working on it. And I know that I'd gotten
16 an e-mail from you regarding it, and --

17 MR. CURLEY YOUPEE: That was supposed to be
18 here today as well. And even Victoria said she will
19 have that.

20 MS. CATHERINE GLIDDEN: Well, we're still
21 working on the tribal protocol, but I think that's a
22 slightly separate issue from the 106 issue for this
23 particular project. But, you know, we agree that we
24 need a tribal protocol, and we are working on it,
25 and we are going to seek input from tribes regarding

1 that protocol. And if you have any specific
2 suggestions, we'd be more than happy to --

3 MR. RUSSELL EAGLE BEAR: In the near future are
4 you going to give us -- you know, you have a 45 day,
5 your office or the Surface Transportation Board has
6 or the railroads, to appeal that decision. So far
7 nobody is saying, We're not going to do it or, We're
8 going to do it. How are you going to let us know
9 what you guys are going to do at some point here in
10 our near future? I mean, we're already probably in
11 the 45 days, right?

12 MS. CATHERINE GLIDDEN: Yeah. Well, it'll be
13 on the 13th of February that the decision -- that
14 they would have to file any kind of --

15 MR. RUSSELL EAGLE BEAR: Okay. I kind of left
16 for a period of time, but am I under the assumption
17 that there's going to be a complete EIS study on
18 this proposed line and that we're going to do some
19 TCP studies? Is that what I'm hearing?

20 MS. CATHERINE GLIDDEN: No. I did not say
21 that. I'm asking for input.

22 MR. RUSSELL EAGLE BEAR: Well, I'm asking that,
23 I guess.

24 MS. CATHERINE GLIDDEN: No. I mean, I'm not a
25 decision maker. I can't decide that. The board

1 would decide that based on their deliberations,
2 which they're in the process of right now, and so I
3 really can't say.

4 MR. RUSSELL EAGLE BEAR: Maybe next time you
5 bring your decision makers here so we can have a
6 true government-to-government consultation.

7 MS. LANA GRAVATT: Yes, please.

8 MR. CURLEY YOUPEE: Cathy, are you waiting for
9 that 45 days to elapse and then in seven days for
10 the mandate to come up before that decision is made?

11 MS. CATHERINE GLIDDEN: Mandate of the month?

12 MR. DAVID COBURN: No, the court issues a
13 mandate, which --

14 MS. CATHERINE GLIDDEN: I'm not an attorney,
15 and this is unfortunately --

16 MR. DAVID COBURN: Curley is right that after
17 the 45 days is up, and assuming nobody files a
18 petition for rehearing, then the court issues its
19 mandate. It's standard in any appellate court
20 decision, and that means the decision becomes final
21 and effective. And that does happen, as I said,
22 seven days after the 45 days, so that's going to
23 happen February 20.

24 I can't speak for the board as to whether
25 they're going to, as to when they're going to make a

1 decision on how they're going to respond to the
2 Ninth Circuit's decision. I don't know if we're
3 going to see that on February 14 or February 20 or,
4 I don't know. And I don't think Cathy knows at this
5 point. So I certainly can't answer your question.

6 MR. CURLEY YOUPEE: I've seen the points to
7 consider regarding redress, and it seems that tribes
8 can match each one of those as far as filing a
9 claim. And they're very specific. So maybe that's
10 what the tribes need to caucus on whether or not we
11 want to -- because it's giving us an opportunity
12 within that 45 days. The 45 days is over
13 February 13th, and maybe they're waiting on us to
14 invite some type of comment or claim within that
15 structure. Maybe that's what we need to do.

16 MR. CONRAD FISHER: Well, having said that, do
17 you want to -- what is the agenda like for tomorrow?
18 I think we need to get some idea of where we're
19 going to move after this.

20 MS. CATHERINE GLIDDEN: Yeah.

21 Can people turn to the agenda and provide some
22 input or ideas about whether or not you're happy
23 with the current agenda for tomorrow? We plan to
24 have only a half-a-day meeting, and we were going to
25 start out with request for information on additional

1 inventory needs. We sort of got into that a bit
2 today. And then the railroad I think was going to
3 talk a bit about potential access issues. And then
4 we had some final thoughts and comments and a review
5 of basically some of the things that we talked about
6 during the meeting and next steps, including a
7 potential spring meeting near the current alignment.
8 But it's open to change, so any ideas that, that you
9 or anyone else in the group has about an alternative
10 agenda for tomorrow is fine.

11 MR. CONRAD FISHER: Can you say it one more
12 time? In the morning there's going to be some more
13 discussion from the railroad companies about the
14 line, is that what you're saying?

15 MS. CATHERINE GLIDDEN: The way we had it
16 scheduled, we were going to spend some time talking
17 about additional identification needs that need to
18 be done or additional identification that needs to
19 be done in the project area and what types of
20 studies need to be done specifically and to get
21 input from you all regarding those studies. We did
22 touch upon that a bit this afternoon, but that is
23 specifically what we wanted to talk about.

24 MR. CONRAD FISHER: Who is "we"? STB or --

25 MS. CATHERINE GLIDDEN: Well, yeah.

1 MS. LANA GRAVATT: No, we didn't just touch
2 upon it, we told you what needs to be done.

3 MS. CATHERINE GLIDDEN: Right. So that's why
4 I'm saying it might be redundant, and that's what
5 I'm asking.

6 MR. CONRAD FISHER: Well, you know, the tribes
7 might want to caucus after this, and maybe they can
8 make some final comments tomorrow morning.

9 MS. CATHERINE GLIDDEN: Okay.

10 MR. CONRAD FISHER: And that would probably be
11 it.

12 But I know that Russell has got some real wise
13 and powerful words he wants to say.

14 There's a mic right there, Russell.

15 MR. RUSSELL EAGLE BEAR: I just had a question.
16 You know, it seems like we're dealing with an EIS
17 that was, you know, that's been on the table. We
18 don't know if there's going to be an appeal process
19 with the Ninth Circuit Court of Appeals' decision,
20 and we're acting like, you know, we're still going
21 to move forward with this EIS. And I guess my
22 question: Is that how the railroad people view it,
23 that basing our involvement in this EIS process, the
24 current one, what if the tribes said, Go back to
25 Square 1 and do a complete thorough EIS? Would you

1 guys be willing to do that?

2 MR. DAVID COBURN: I can't speak for my client
3 on that issue, Russell, and I know that's
4 frustrating for you, and it's a bit frustrating I
5 think for all of us. But we need to await the
6 board's decision as to how they're going to respond
7 to the Ninth Circuit, and then we will respond to
8 what the board does. We'll either like it or we
9 won't like it, and we'll have our -- we'll have a
10 dialogue, if need be, with the board and with all of
11 the interested parties. But sitting here today, I'm
12 not prepared to say that yes, we're going to do
13 this, that or the other thing. I just can't do
14 that.

15 MR. RUSSELL EAGLE BEAR: I guess we get caught
16 up in these situations where, you know, there's
17 dialogue happening and then you call it consultation
18 process. We bring our representatives, and then we
19 can't meet with decision makers, and so then we have
20 a waiting game. So maybe we should wait to see what
21 you guys do and then maybe do a follow-up meeting
22 after that and --

23 MR. DAVID COBURN: Well --

24 MR. RUSSELL EAGLE BEAR: -- start fresh.
25 Otherwise, you know, we're spinning our wheels.

1 MR. DAVID COBURN: I don't disagree at all that
2 once the board makes a decision as to how they're
3 going to move forward and we all know it, then it
4 would be appropriate to have a further meeting. I
5 mean, that would be my view. I'm not speaking for
6 the board but a further meeting and continue this --
7 I think this consultation is valuable. It's what
8 106 calls for, but I think we're not going to be
9 done today or tomorrow. We all know that.

10 MR. RUSSELL EAGLE BEAR: Well, I have some
11 ideas, suggestions, and I'm sure every tribe does,
12 but until that is resolved, then I'm not going to
13 sit here and try to work out a plan of action or
14 details or -- you know, it's kind of like -- and I
15 said that earlier, you know, I think we put the cart
16 before the horse here. But I am thankful for
17 whoever paid my expenses up here, I want to thank
18 you for that.

19 And I guess I heard through the grapevine that
20 Catherine is going to do a show at Wild Horse Saloon
21 at Sturgis.

22 Is that true? Is there any truth to that?

23 (Laughter)

24 MS. CATHERINE GLIDDEN: And Russell is going to
25 do his show, too. He's going to be doing some mud

1 wrestling.

2 Right, Russell?

3 MR. CONRAD FISHER: I think that there's some
4 very good points brought by Mr. Coburn and of course
5 Russell on this. And I think it was a meaningful,
6 we had some meaningful dialogue today. I think it
7 kind of gave us an idea of what still needs to be
8 done, what kind of, what work still needs to be
9 done. And I think the tribes have made it clear
10 that, you know, we sort of have our hands tied right
11 now.

12 I think, Cathy, we need to know what decision
13 STB is going to -- we need to wait for that
14 decision. And I don't think that we have a clear
15 understanding about what this meeting was all about.
16 I think one of them is you want comments. Now, the
17 question is going to be, and we've had some -- we've
18 given you some recommendations on what we feel is
19 important, and there's been comments, and some of
20 them, these may be preliminary, as I had mentioned
21 earlier that we probably need to go back home and
22 regroup and talk to folks back home that are in
23 leadership positions.

24 So -- and the question that I have right now,
25 Cathy, is: Are the comments, these preliminary

1 comments that we have, all the questions that we've
2 given you, are they going to contribute to and
3 influence the decision of STB when they do make a
4 decision?

5 MS. CATHERINE GLIDDEN: I certainly think so.
6 I mean, I think, you know, knowing exactly how you
7 feel about this project and the way, and your view
8 that a new EIS needs to be completed will definitely
9 influence the decision makers, and I think that's
10 very important that you've stated your concerns for
11 the record and that the decision makers will have a
12 copy of this record to look at. So I think if
13 getting that out of the meeting, you know, despite
14 the fact I don't have all the answers to a lot of
15 questions you're asking, but I think that's very,
16 very important.

17 MR. CONRAD FISHER: And I think that's where we
18 have this stalemate is that we're asking all these
19 questions and at the same time we can't get any
20 definitive answers, so we really don't have a clear
21 picture of where we're going with this. We're
22 trying to give you some input, but at the same time
23 we want that input also; we want to know that we're
24 contributing and that you're listening. But you're
25 not giving us a whole lot of definitive answers.

1 One of the questions that was asked is: Well,
2 why are we having a meeting if we don't have people
3 at the table that can readily answer the questions
4 that we have? These folks here come from a long
5 way, and there's representatives here from the rail
6 company that went to a great expense to get here,
7 and at the same time, you know, we don't have
8 that -- we didn't come away with really an
9 understanding. All we came away with is that you're
10 going to make a decision and we have our comments.

11 Even those, the questions that were asked this
12 morning, Is it an undertaking; is it an EIS; what is
13 the purpose of this meeting, those were sort of very
14 generalized, and we didn't really know how to
15 respond to some of the presentations that were made
16 this morning.

17 So personally I think from a Northern Cheyenne
18 perspective, I just feel that -- I think Ben was the
19 one that said that I just can't put my hands on --
20 there's something missing. There's something
21 missing here that we just can't put a finger on.
22 And I think he's got a good point there that we, you
23 know, we all feel that. And I think Mr. Coburn can,
24 has already mentioned that.

25 But let me give this to Lana because she had

1 her hand raised, and then we'll get your comment.

2 MS. LANA GRAVATT: I just wanted to -- in the
3 agenda you have the "Summary of 9th Circuit Court
4 Decision," and all you did -- it wasn't a summary.
5 You just basically read Victoria Rutson's statement.
6 Now, if you had us all travel here just so you could
7 read Victoria Rutson's statement and she's not here
8 to back it up and you can't answer any questions,
9 you know, that is really disappointing.

10 MS. DIANNE DESROSIERS: Could have e-mailed
11 them.

12 MS. LANA GRAVATT: And then you didn't even
13 give us copies. You just kind of read the statement
14 and that's it. And I can't remember anything that
15 was said in that statement.

16 MS. CATHERINE GLIDDEN: It's been entered into
17 the record, and you'll get copies of the minutes.
18 And we could make copies of the statement as well
19 and send it around.

20 MS. LANA GRAVATT: I mean, after everything, it
21 just seems like that was the only reason for this
22 meeting. And why isn't she here? Why isn't she
23 here?

24 MS. CATHERINE GLIDDEN: I can't answer that,
25 but I'll certainly --

1 MS. LANA GRAVATT: Every question is like, "I
2 can't answer that," and it's just getting --

3 MS. CATHERINE GLIDDEN: I'm not her. You know,
4 I can't answer the question.

5 MS. LANA GRAVATT: Yeah, but she is the
6 decision maker, right?

7 MS. CATHERINE GLIDDEN: Yeah. And the question
8 has been heard, and I appreciate it, for the record.

9 MR. CONRAD FISHER: David?

10 MR. DAVID COBURN: I know it's getting late in
11 the day, and I'm thinking of the court reporter's
12 fingers. So I just want to lay an issue on the
13 table that's already on the agenda, so it's not a
14 new issue, for you all to think about when you're
15 caucusing because it's an issue that we've got that
16 you've got, too. We also share this issue, which is
17 the issue of access. Because I heard today about,
18 you know, you want -- and I heard it at the last
19 meeting, too, you want a TCP survey. And there
20 obviously would need to be other historic and
21 archeological surveys, I suppose, done
22 simultaneously.

23 Access is an issue, and I know we would like to
24 hear your views on access. I know we raised this at
25 the June meeting. We don't own the property. We

1 don't own the land. We have -- we have landowners
2 who, as you all know, are opposed to the railroad.
3 One of them is on the phone. Mark Fix indicated in
4 court pleadings that he was never asked for access.
5 I don't know if that's true or not, and I don't want
6 to get into a debate on that, but that was back in,
7 you know, a long while ago. So -- and I was not
8 involved. I don't know.

9 But if he's willing to give access now, and
10 he's on the phone, I think, if he's willing to agree
11 to access, then I think that would set a model for
12 other landowners who are in the area who may also be
13 opposed to the railroad but who recognize that the
14 access is necessary to do the surveys you want done.

15 So, again, I don't think that this is the time
16 at this hour of the day to get into a discussion of
17 that. I'm just raising it for you to consider in
18 your caucus, and we can discuss it again tomorrow.

19 MS. LANA GRAVATT: David, I think a lot of
20 getting that access is how those landowners are
21 approached. And I think when you send that land
22 agent, you need to send a tribal representative so
23 that tribal representative can explain to that
24 landowner, This is what a tribal survey is, and this
25 is what it means to us. Because if you send a land

1 agent out there, they don't have any idea who we
2 are, they're just going to make it sound like
3 something else and they're not going to get the full
4 picture of why it'll be important to them but why
5 it's important to us, because that's what happened
6 in the Keystone survey.

7 So I would suggest that right now if you're
8 going to take a suggestion that a tribal
9 representative go with the land agent and, for the
10 access issue when that comes time.

11 MR. CONRAD FISHER: And I think your point is
12 well taken. I think that's part of the overall
13 process that we need to consider, but that wouldn't
14 be something that we can readily discuss at this
15 point.

16 So tribes, shall we caucus and have final
17 thoughts tomorrow? It might be a short meeting
18 tomorrow morning. I think that's -- we're kind of
19 at the -- I think we've just about killed the horse.
20 Or maybe he was dead a long time ago. I don't know.

21 Any final thoughts? Do you agree to that to
22 come back tomorrow morning, and we'll call it a day
23 after we have some final thoughts tomorrow?

24 And, again, thank you, Cathy. I think you did
25 what you needed to do, and we appreciate you

1 bringing the tribes together. It's always good to
2 do that.

3 MS. CATHERINE GLIDDEN: All right.

4 MR. CONRAD FISHER: What time tomorrow?

5 MS. CATHERINE GLIDDEN: Tomorrow we're going to
6 be starting at the same time. Come down here for
7 breakfast at 8:30, and we'll start at nine o'clock.

8 MR. CONRAD FISHER: Nine o'clock tomorrow?

9 MS. CATHERINE GLIDDEN: Yes.

10 MR. CONRAD FISHER: And I'd like to ask
11 Mr. Antelope if he would say a closing prayer for
12 us.

13 (Closing prayer.)

14 * * * * *

15 (Proceedings adjourned at 5:10 p.m.,
16 January 25, 2012.)
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1 STATE OF SOUTH DAKOTA)
2) ss.
3 COUNTY OF PENNINGTON)
4

5 I, CINDY K. PFINGSTON, hereby certify that
6 the foregoing pages numbered from 1 to 185, inclusive,
7 constitute a full, true and accurate record of the
8 proceedings had in the above matter, all done to the best
9 of my skill and ability.

10 DATED this 13th day of February, 2012.
11

12 _____
13
14 CINDY K. PFINGSTON
15 Registered Professional Reporter
16

17 My commission expires:
18 February 4, 2016
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12:17 there [1] 75/11	404 [3] 162/17 164/1 166/4	acquisition [1] 157/10
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173/13 186/10	45-day [1] 70/19	93/22 112/14 161/3 165/17
14 [1] 173/3	48-1/2 [1] 88/3	165/18
16 [1] 27/11	5	acting [1] 175/20
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185 [1] 186/6	155/14	59/16 61/18 62/7 63/14 94/11
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1876 [2] 118/14 119/2	5.7 miles [2] 90/12 94/19	actions [3] 59/24 61/6 168/25
1877 [8] 103/5 103/9 103/10	56 [1] 88/16	activities [1] 49/14
103/23 104/12 104/19 120/10	566 [1] 90/2	activity [2] 119/5 119/5
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1884 [1] 105/5	58 [1] 88/21	actually [45] 8/1 15/8 20/11
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1900 [1] 105/6	59 [1] 85/14	55/8 55/9 55/22 61/4 61/13
1912 [1] 121/7	5:10 [1] 185/15	67/18 68/10 71/12 77/16 77/17
1922 [1] 121/7	7	80/20 82/2 85/5 85/5 86/20
1970s [1] 121/3	70 [1] 90/9	88/8 89/17 105/25 106/6
1980 [2] 115/15 116/2	77 [1] 94/18	106/11 106/13 106/24 107/21
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SECTION 106 CONSULTING PARTY MEETING

Conducted By: Surface Transportation Board

DAY 2

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Taken at
Holiday Inn, Rushmore Plaza
Rapid City, South Dakota
January 26, 2012

A P P E A R A N C E S

CATHY GLIDDEN

(Surface Transportation Board)

CONRAD FISHER

(THPO, Northern Cheyenne Tribe)

DAVID COBURN

(Steptoe and Johnson, TRRC)

CHARLENE VAUGHN (Appearing Telephonically)

(Advisory Council on Historic Preservation)

ELIZABETH MERRITT (Appearing Telephonically)

(National Trust for Historic Preservation)

MARK FIX (Appearing Telephonically)

(Northern Plains Resource Council)

CURLEY YOUPEE

(Historic Preservation Officer

Ft. Peck Assiniboine and Sioux Tribes)

DOUG MELTON

(Bureau of Land Management - Miles City Field Office)

DAN HADLEY

(Mission Engineering)

DARLENE CONRAD

(THPO, Northern Arapaho Tribe)

DANA DUPRIS

(Cultural Specialist, Cheyenne River Sioux Tribe)

PETE COFFEY JR.

(Deputy THPO, Three Affiliated Tribes) (MHA Nation)

JAMES B. WESTON

(THPO, Flandreau Santee Sioux Tribe)

WANDA WELLS

(THPO, Crow Creek Sioux Tribe)

LANA GRAVATT

(THPO, Yankton Sioux Tribe)

A P P E A R A N C E S (Continued)

BRYCE IN THE WOODS

(Council Member, District 1, Cheyenne River Sioux Tribe)

ODELL C. ST. JOHN, JR.

(Crow Creek Sioux Tribe)

JEROME D. WHITE HIP

(Crow Nation)

RICHARD WHITE CLAY, SR.

(Crow Nation)

FRANKY JACKSON

(Flandreau Santee Sioux)

RICHARD ANTELOPE

(Advisory Board, Northern Arapaho Tribe)

HUBERT FRIDAY

(Advisory Board, Northern Arapaho Tribe)

STEVE BRADY

(Cultural Committee Chair, Northern Cheyenne Tribe)

JOE FOX, JR.

(Vice President, Northern Cheyenne Tribe)

YULBERTON ALEC SANDCRANE

(Council Member, Northern Cheyenne Tribe)

RUSSELL EAGLE BEAR

(THPO, Rosebud Sioux Tribe)

BEN RHODD

(Tribal Archaeologist, Rosebud Sioux Tribe)

RICK THOMAS

(THPO, Santee Sioux Tribe of Nebraska)

DIANNE DESROSIERS

(THPO, Sisseton-Wahpeton Oyate)

TAMARA ST. JOHN

(Sisseton-Wahpeton Oyate)

A P P E A R A N C E S (Continued)

TERRY CLOUTHIER

(Tribal Archaeologist, Standing Rock Sioux Tribe)

GAIL HUBBELING

(Council Member, Yankton Sioux Tribe)

HONOR KEELER

(National Trust for Historic Preservation, AAIA)

RANDALL WITHROW

(Archaeologist, The Louis Berger Group, Inc.)
(STB's 3rd Party Consultant)

STAN WILMOTH

(Montana State Office of Historic Preservation)

JOEL AMES

(Tribal Liaison, U.S. Army Corps of Engineers,
Omaha District)

SHANNON L. JOHNSON

(U.S. Army Corps of Engineers, Omaha District)

SHANE FINDLAY

(Bureau of Land Management - Miles City Field Office)

MARK SANT

(Bureau of Land Management, Montana/Dakotas State Office)

BARBARA RANF

(Burlington Northern & Santa Fe Railway Company)

SCOTT CASTLEBERRY

(Burlington Northern & Santa Fe Railway Company)

P R O C E E D I N G S

* * * * *

MS. CATHERINE GLIDDEN: I'd like to start --
I've asked Hubert to do the prayer to start off this
morning.

(Prayer)

MS. CATHERINE GLIDDEN: Thank you.
Looking at the agenda for today, at 9:15 to
10:30 we had discussion on additional identification
needs, but I think there was sort of an agreement
that we might have already touched upon that
yesterday.

So, Conrad, if there's anything that you wanted
to talk about as a result of some of the discussions
that you had, maybe this morning or maybe this would
be the perfect time to do that.

MR. CONRAD FISHER: Well, first of all, I'd
like to thank everybody for showing up at this very
important meeting. STB and the rail company and all
the tribes that are present have been very
consistent and patient about this very important
undertaking.

You know, this Tongue River line has been a
controversial issue, and it didn't start in 1980.
This rail line has been there for the last half a

1 century. I think it was there in the early '50s,
2 early '40s. If I'm not mistaken, it's been talked
3 about for a long time. And I think today, you know,
4 we're at it again. And it's become a little more
5 real today.

6 And I think we've had some good dialogue the
7 last day and a half. And I appreciate also BLM
8 being here and Stan from the State Historic
9 Preservation Office in Montana and the Army Corps of
10 Engineers being here and again the consulting
11 tribes.

12 We've talked a lot about different parts and
13 peripheral issues also. Otter Creek coal was one of
14 the issues. II and III has been discussed in the
15 past. And with the recent decision, the Ninth Court
16 decision, I think the focus is now on Tongue
17 River I. And we have some grave concerns about the
18 history of Tongue River I. And I think there's a
19 strong -- we have a strong argument for some of the
20 concerns that we have.

21 And I think we've talked -- you know, the
22 discourse that we had yesterday was certainly
23 important to understanding our gathering here this
24 morning.

25 And I think we've reached a conclusion on some

1 of the statements we'd like to present this morning,
2 Cathy.

3 **MS. CATHERINE GLIDDEN:** Okay.

4 **MR. CONRAD FISHER:** And at this time I'd like
5 to turn the mic over to Mr. Russell Eagle Bear, and
6 he's going to give you some talking points. And
7 then Bryce is going to talk a little bit about
8 looking at it from a government perspective and
9 talking about possibly having a position paper or a
10 resolution from our tribal governments, those
11 leaders of our tribes that have formal authority to
12 be able to send official documents to your office.

13 I know some of the comments that we had the
14 last day or two have been preliminary comments, and
15 hopefully we'll have final comments through our
16 tribal governments.

17 So at this time I'd like to have Mr. Russell
18 Eagle Bear say a few words. And Russell told me
19 that he talks better in his Native language so he
20 can bring those points across to you folks. He's
21 very fluent in his Native language, so he's going
22 to -- and I'm going to interpret for him.

23 (Laughter)

24 **MR. RUSSELL EAGLE BEAR:** Thank you, Conrad.

25 He was supposed to do the speech in Cheyenne,

1 and I was going to translate in Lakota for the
2 benefit of our court reporter here.

3 (Laughter)

4 **MS. CATHERINE GLIDDEN:** She's fluent in Lakota.
5 You didn't know that?

6 **MR. RUSSELL EAGLE BEAR:** But living in Lakota
7 country, you should know the language.

8 **THE COURT REPORTER:** Tatanka.

9 **MR. RUSSELL EAGLE BEAR:** First of all, I thank
10 everybody for coming today and being part of this
11 meeting. Welcome to the sacred Black Hills of the
12 Lakota. We're getting some good weather out there
13 today. I don't see ourselves sitting here. We need
14 to go out and enjoy that warm weather.

15 Conrad, he's good at skirting the issues and
16 using flowery college words, and I'm going to be
17 right point blank. We sent him to college for that
18 purpose, you know, to meet with government agencies
19 and speak their language, and he's really getting
20 good at it. Today he didn't bring his computer, but
21 we got ours over here.

22 But I think one of the things, the discussions
23 that took place -- first of all, I want to say thank
24 you to the railroad people. And one of the things
25 that, you know, this whole issue of the railroad and

1 the EIS is questioned, and I know the tribes, you
2 know, we want to go back to Square 1. I guess our
3 message to you is that we do a complete different
4 EIS for that corridor.

5 We heard yesterday that we have to do one for
6 Otter Creek area. The whole consultation process
7 has to take place, Section 106. So in light of
8 that, that's what we're -- that's what we want, and
9 also at the same time to do a TCP study along the
10 route. And also that if you're going to do any
11 engineering work, that we be at the table. Because,
12 you know, so many times companies can go out and do
13 their own routes and engineering and then it's
14 basically set in stone, and we come after the fact
15 and say, No, there's a Sacred Site; there's cultural
16 sites, and they want to mitigate. So I think to
17 avoid that, let's start from, start over and do it
18 right this time.

19 Now, the Ninth Circuit Court of Appeals'
20 decision, certainly we're going to look at that
21 again. And, you know, it looks like the Surface
22 Transportation Board kind of dropped the ball big
23 time on III, II and implicating I. And so, you
24 know, we're going to seriously look at the legal
25 issues, possible legal issues. You know, we're

1 going to have to go back to our respective tribes
2 and put our lawyers to work. So I just -- you know,
3 we just want to put that out to you.

4 The other option or down the road -- I don't
5 know what you guys are going to do after
6 February 13th. Yesterday we heard the term a
7 "rehearing". In legal, you know, it's basically an
8 appealing of the appeal process. And I don't know
9 if we're actually going to get -- or you guys are
10 going to go after a rehearing. We don't know that.
11 I don't know what you guys are going to do.

12 With that being said, if you want us back at
13 the table at some point in the near future, then
14 certainly we're willing to come back to the table
15 but preferably in the area. We had a discussion
16 with Northern Cheyenne. Maybe they can host us at a
17 meeting, an area of the meeting spot and we can go
18 there and actually physically be on site for some of
19 the tribes that haven't been to the area. So if you
20 want to bring us back to the table, maybe the
21 spring, early summer, whenever, we're willing to
22 come back to the table.

23 So with that, those are the points that we had
24 discussion on and just right to the point, and
25 hopefully you understand what we're saying.

1 Do you have any questions?

2 **MS. CATHERINE GLIDDEN:** No. I think that
3 everything that you just described was pretty much
4 what I'd also gotten out of the meeting, but the
5 fact that you went through all those points and
6 clarified precisely where you're at as a group is
7 very helpful. And it really is -- what you did was
8 you reviewed the agreed-upon points on this agenda.

9 And then I guess the next steps for us would be
10 to, once we -- once the board decides on how they're
11 going to go, you know, as quickly as possible inform
12 you. And I certainly would hope that the board
13 makes a decision before we do meet again. And I
14 think it would be wonderful if we could meet out
15 somewhere around Tongue River, Northern Cheyenne
16 Tribe, in the spring after the board has actually
17 decided on how it's going to move forward, because I
18 think that makes sense rather than swimming around a
19 bit in the unknown on this.

20 So, I mean, I hear you that you need a new EIS
21 or you think that a new EIS should be completed for
22 the project, particularly in light of the fact that
23 Otter Creek is doing an EIS, and that you need a TCP
24 study on the route. You want to be involved in the
25 engineering work. You need tribes at the table so

1 that you can identify anything that might be
2 significant before an alternative is chosen and that
3 you ultimately feel that we need to start over. And
4 that you plan to go back to your attorneys and look
5 at the Ninth Circuit Court of Appeals' decision and
6 make your own decisions about how you think it
7 affects this project. And that you're willing to
8 come back to the table. And so I think, you know, I
9 think that's really encouraging.

10 **MR. RUSSELL EAGLE BEAR:** This whole court issue
11 is on the environmental issues. You know, hardly
12 any cultural significant sites were mentioned, and
13 that's where we're coming as a tribe. You know, we
14 have a charge to protect. That's our charge to
15 protect cultural resources, and I think that's why
16 we're going to have our legals kind of look at, look
17 at who dropped the ball in this.

18 **MS. CATHERINE GLIDDEN:** I think the reason
19 is --

20 And, David, please correct me if I'm wrong.
21 -- is that cultural resources weren't part of
22 the litigation. It wasn't really part of the
23 litigation, so that's why it wasn't addressed.

24 **MR. RUSSELL EAGLE BEAR:** Well, let me tell you
25 it could be now.

1 **MS. CATHERINE GLIDDEN:** Yeah, I understand.
2 But looking at that particular court decision,
3 that's why they didn't discuss it.

4 **MR. RUSSELL EAGLE BEAR:** So I'll turn the mic
5 back over to my attorney here and --
6 (Laughter)

7 **MS. CATHERINE GLIDDEN:** So now he's an
8 attorney. I didn't know that.

9 **MS. LANA GRAVATT:** Catherine?

10 **MS. CATHERINE GLIDDEN:** Yeah.

11 **MS. LANA GRAVATT:** At the next meeting I want
12 you to make sure the board is present, please, so
13 that we can get some real answers and have a real
14 discussion.

15 **MS. CATHERINE GLIDDEN:** Okay. The actual
16 board? I'm not sure that they would --

17 **MS. LANA GRAVATT:** Well somebody from the
18 board, whether it's Victoria --

19 **MS. CATHERINE GLIDDEN:** I'm from the Surface
20 Transportation Board.

21 **MS. LANA GRAVATT:** Well, but you can't answer
22 any questions, though.

23 **MS. CATHERINE GLIDDEN:** Well, I couldn't answer
24 the questions because the board, we have a chairman
25 and we have two commissioners and that's the board.

1 They're the ones that are going to be making a
2 decision ultimately.

3 **MS. LANA GRAVATT:** Okay, then one of them.

4 **MR. PETE COFFEY, JR.:** Why can't they come?

5 **MS. CATHERINE GLIDDEN:** You know, it's -- I
6 just can't say. I don't know.

7 **MS. LANA GRAVATT:** I'm requesting that one of
8 those three be present. If they don't come, then
9 they don't come, but I'm requesting that one of
10 them --

11 **MS. CATHERINE GLIDDEN:** I guess what I'm trying
12 to say is that we'll know at some point exactly how
13 the board is going to decide, and then at that point
14 I could answer any questions; Vickie could answer
15 any questions related to --

16 **MS. LANA GRAVATT:** I still think they should be
17 at the table.

18 **MS. CATHERINE GLIDDEN:** Okay. I'll make a note
19 of that.

20 **MS. LANA GRAVATT:** Thank you.

21 **MR. CONRAD FISHER:** Just to add to that, Cathy,
22 I think part of the concern of the tribes is that,
23 you know, when we had specific questions yesterday,
24 you weren't able to answer or respond to some of
25 them in a way that the tribes felt that they were

1 comfortable with your responses. And it's not your
2 fault, I understand that, but if you want to have --
3 you're saying sometimes, "I'm not a lawyer. I don't
4 know what the STB is going to decide on these
5 issues." I think if we're going to have a
6 consultation meeting that's meaningful, we need to
7 have responses that are comfortable with the tribes.

8 We have folks here. We have our tribal Vice
9 President, Mr. Joe Fox here, and he's the leader of
10 the Northern Cheyenne Tribe, and if there's a
11 specific question you want answered, he's able to
12 answer those, those types of questions. And I think
13 that's the type of dialogue that we're wanting to
14 see in future consultation meetings.

15 **MS. CATHERINE GLIDDEN:** Yeah. I mean, one of
16 the things, one of the reasons that Vickie I think
17 decided not to come is because, and when we had that
18 conference call or the first Tongue River meeting,
19 it was made clear during that call that there was a
20 concern about having attorneys present at any of
21 these meetings, so that was very clear from the
22 minutes.

23 And coming into this, I was prepared to discuss
24 the 106 process, which I can do on behalf of the
25 board, but dealing with the legal issues having to

1 do with this decision, that's not something that I
2 can discuss. And even if I could discuss it, even
3 if I was an attorney I wouldn't be able to discuss
4 it because the board has to decide, the chairman and
5 the commissioners, on exactly how the board will
6 proceed on this. So -- but I certainly will make
7 note of your concerns.

8 **MR. CONRAD FISHER:** Thank you.

9 **MS. CATHERINE GLIDDEN:** Okay.

10 **MR. CONRAD FISHER:** Dianne?

11 **MS. DIANNE DESROSIERS:** I guess one comment,
12 too, I'd like to say: I think that someone from the
13 ACHP should also be present at our next meeting.
14 Charlene or Val or somebody needs to be at the table
15 with us. It's important. It's important enough
16 that, you know, we're all here, and we need them to
17 be at the table with us, so that would be the other
18 thing that I'd like to have you request.

19 **MS. CATHERINE GLIDDEN:** Yeah, I think it would
20 also be good for you to make that request directly
21 to the advisory council. We can request it. We
22 invited them to come, and I called several times and
23 didn't get any responses and sent follow-up e-mails
24 and didn't get any responses. So I think that it
25 would also be very important and helpful for you,

1 for the tribes to contact them directly and say, We
2 want you to participate.

3 **MS. DIANNE DESROSIERS:** We can do that.

4 **MR. CONRAD FISHER:** Yeah. And I think --

5 Bryce, you want to go ahead and say a few -- I
6 think, Bryce --

7 In that respect, I think it should be part of,
8 it should come from the tribal authorities to put it
9 in their resolutions.

10 **MR. BRYCE IN THE WOODS:** We're finally getting
11 a good working relationship with a lot of the
12 federal agencies. That was due to each secretary.
13 There's 13 of them. Everybody underneath of them
14 were supposed to come up with a consultation policy
15 with tribal governments, and a lot of them have, and
16 a lot of them have been working with the tribes, you
17 know, like the Department of Interior. That's
18 treaty language. And I know treaty councils
19 question that, but tribal governments, our
20 consultation with the federal agencies, our contact
21 point is usually our chairmans, our presidents, and
22 then it comes to council, which is the
23 decision-making body. And I'm the Chairman of the
24 (unintelligible) Committee, which the preservation
25 office, that's one of our programs that we have

1 oversight, you know. The treaty issue, the whole
2 Lakota community deals with the treaty issues for
3 our tribe.

4 We have four bands on the Cheyenne River. And
5 finally we're getting to sit down with
6 commissioners. I sat down with -- the commissioner
7 came out in this very hotel from the, Commissioner
8 Magwood with the NRC. Oglala and Cheyenne River
9 were there. So when those things happen, not all of
10 our tribes get to participate, so -- but it's
11 inclusive, and that's why we have to be around the
12 table to be inclusive as tribal governments when it
13 comes to consultation.

14 And then you hear Councilman Eagle Bear talk
15 from that point of view of elected officials. It's
16 no different than Senator Thune and Senator Johnson
17 or Representative Noem. And the federal agencies,
18 usually when they ignore or they don't adhere to
19 federal law, hence lawsuits. And now the industry
20 is at the table. And industry really needs to be
21 educated on our tribal governments. There's 50
22 state governments. You know, nobody is, knows --
23 everything is different in this United States of
24 America, but there's a Federal Government, a state
25 government, and tribal government. There's

1 different laws.

2 But we have a close relationship with the
3 Federal Government, and that's why we have -- we
4 should be at the table with all federal agencies.
5 You know, we should be in the loop, but we haven't
6 been in the loop. And now industry is coming into
7 the loop.

8 And the way that we respond in consultation, we
9 usually develop a resolution or a position paper,
10 and then that's our record. That's our tribal law
11 on the issue at hand, whatever issue it is, if we're
12 for, against or we just have our comments and
13 concerns, that's our official
14 government-to-government dialogue to resolution.
15 That's how we put our concern out there on any
16 issue.

17 This is a treaty issue. That's why I'm at the
18 table now. And it is a concern, as I mentioned
19 yesterday, from a government perspective is that who
20 is responsible? Who is accountable? And the only
21 reason I say that is because it's coming to light
22 now, it's coming to bear now that decision makers in
23 D.C. don't always have the best decisions for the
24 people here in America. And it's having an
25 influence by industry, and that kind of puts a thorn

1 in our side that industry, through their lobbyists,
2 develop law through their attorneys and hand it to
3 their legislative representative, who in turn
4 introduces that legislation and it might be very
5 detrimental to the people of America, to the planet.

6 But the consultation, as you heard Mr. Eagle
7 Bear state, and I support everything he said, that
8 needs to happen, but under consultation that factor
9 hasn't been -- you know, now we're starting that
10 process. That's my concern, you know, that we
11 haven't been in the loop.

12 And we sat down with NRC. We sat down with
13 FCC, BLM, forest service, corps, STB, and now we're
14 getting that dialogue, and that's what has to
15 happen. We might not agree on every issue, but what
16 is the best benefit, you know? What is the best
17 issue that can be addressed that will satisfy all of
18 us?

19 Me, I'm not satisfied. That's my personal
20 opinion. And every one of us has a personal opinion
21 on any issue that comes before us. But I guess a
22 matter of law, I think today we really need to move
23 forward with what the tribes are putting down on
24 record that there should be an EIS. Those laws
25 weren't in place at that time, and they should be

1 now that there's no more --

2 Is that right that TRRC is no longer in
3 existence; it's now BNSF?

4 **MR. DAVID COBURN:** No, that's not --

5 **MR. BRYCE IN THE WOODS:** So TRRC is still in
6 existence?

7 **MR. DAVID COBURN:** Yes.

8 **MS. CATHERINE GLIDDEN:** It just was sold.

9 **MR. DAVID COBURN:** Do you want me to clarify
10 that now?

11 **MS. CATHERINE GLIDDEN:** Yes.

12 **MR. DAVID COBURN:** I will just clarify that
13 now, and then I will hand the microphone back to
14 you.

15 BNSF is one of three owners of TRRC, has a
16 one-third interest. Arch Coal has a one-third
17 interest, and an entity related to the Mars
18 Corporation has a one-third interest. So there are
19 three, three owners. But TRRC as a legal entity
20 still exists just as it did before. It just has
21 three owners.

22 **MR. CONRAD FISHER:** Are you talking about
23 TR I, II or III, or all of them?

24 **MR. DAVID COBURN:** All. TR I, II, III are the
25 names of three separate cases at the STB, but

1 there's one railroad applicant, let's say, in each
2 of those three cases, and that's the Tongue River
3 Railroad Company.

4 **MR. BRYCE IN THE WOODS:** Thank you for that
5 clarification.

6 I guess that's all I have to say. There's
7 probably more that I'm not touching on, but I'll
8 just leave it at that.

9 **MR. CONRAD FISHER:** Thank you, Bryce.

10 And I think it's important that we have those
11 formal comments from our tribal governments so that
12 they -- I think they carry a lot of weight. I think
13 it's also important for our tribal THPOs to weigh in
14 on this also from a cultural resource perspective,
15 but certainly with the backing of our tribal
16 governments, I think it makes a statement, it makes
17 more of a collective and formal statement from the
18 tribal groups that are represented.

19 Any other comments from the tribes? Now that
20 we've given Cathy some of the discussion points that
21 we had in our caucuses, is there anything that we
22 may have omitted? I'd like to give the --

23 Pete, do you have anything over there that
24 might be pressing that you -- I know you've been
25 patiently waiting back there.

1 **MR. PETE COFFEY, JR.:** My name is C-o-f-f-e-y.
2 I can talk loud. I do a lot of announcing at
3 powwows and stuff like that and a former radio
4 announcer, so I know how to project.

5 The Mandan, Hidatsa, Arikara people, of course,
6 go along with the consensus arrived at by the
7 members of the tribal nations here in regard to, you
8 know, the general overall project.

9 But just on a personal note here, you know,
10 Cathy, and as Conrad said here, you know, we
11 realize, of course, that you're just a
12 representative of your office and that those
13 decisions are not yours to make. You know, I feel
14 frustrated in that, you know, well, where are the
15 decision makers? We are here. We have these
16 gentlemen here who speak for their nations. I have
17 the authority to speak for my nation. Who speaks
18 for yours? I mean, where are these people? Where
19 are they? If they're the ones that can make the
20 decisions, let's talk to them. Let's talk to them.
21 If they can't come here, we'll go there. But it
22 would seem to me that, you know, a government agency
23 of that import, you know, the Surface Transportation
24 Board, you know, it would seem to me they should be
25 responsive to the needs of the people here,

1 especially in this important political season right
2 now.

3 Maybe I am saying something here that I -- I
4 apologize to my fellow members here. My father
5 always told me that I had a bad habit of opening my
6 mouth before I thought, and sometimes I revel in
7 that because sometimes certain things have to be
8 said with no beating around the bush or anything.

9 Where are these people who can make the
10 decisions? Let's talk to them. Let's get them
11 here. Otherwise we're all wasting our time. You
12 know, this is just an exercise in futility, it
13 seems.

14 Again, I apologize to those who are older here
15 for my words. Gentlemen and ladies, I apologize
16 for, you know, the passion that I may have conveyed
17 here in my words and all of that. I ask that you
18 forgive me, my elders, for speaking in that way, and
19 you gentlemen who are elder than I am. But, I'm
20 sorry, I've just gotta say those things. You know,
21 it just seems like we're sitting here spinning our
22 wheels. You know, we've got to do something about
23 this. If those people can make those decisions,
24 let's talk to them.

25 **MS. CATHERINE GLIDDEN:** Well, Pete, I just want

1 to make it clear that I was not here at this meeting
2 to go over the Ninth Circuit Court decision, if
3 that's what you're making reference to.

4 **MR. PETE COFFEY, JR.:** No. I'm just referring
5 to the fact that where are those people who can
6 answer our questions then?

7 **MS. CATHERINE GLIDDEN:** Questions about what,
8 other than the Ninth Circuit Court decision?

9 **MR. PETE COFFEY, JR.:** The ones that you can't
10 answer.

11 **MS. CATHERINE GLIDDEN:** Well, those all had to
12 do with, you know, how the board is going to move
13 forward, and I simply don't know. Vickie wouldn't
14 know.

15 **MR. PETE COFFEY, JR.:** Well, that board should
16 have been here.

17 **MS. CATHERINE GLIDDEN:** Well, there's one
18 person who's in China right now.

19 **MR. PETE COFFEY, JR.:** If they're a government
20 agency, they serve me and him.

21 **MS. CATHERINE GLIDDEN:** Well, you can certainly
22 write letters to them and make your --

23 **MR. PETE COFFEY, JR.:** We're here. Where are
24 they?

25 **MS. CATHERINE GLIDDEN:** I'm here to seek input

1 from you as part of the consulting process.

2 **MR. PETE COFFEY, JR.:** I understand that,
3 Cathy. I'm not --

4 **MS. CATHERINE GLIDDEN:** No, but I guess what
5 I'm trying to explain is that your views are going
6 to be --

7 **MR. CONRAD FISHER:** Can we talk one at a time?
8 I know the court reporter's hands are sore.

9 **MS. CATHERINE GLIDDEN:** I just want to finish
10 my statement.

11 **MR. PETE COFFEY, JR.:** I'm done. I'm done.
12 Thank you.

13 **MS. CATHERINE GLIDDEN:** I just want to say
14 that, you know, the point of this meeting was to get
15 your input on this project and to gain information
16 and insight about the project from everybody at this
17 table, which I believe we did.

18 So there may be some frustration about the fact
19 that there's certain questions I was unable to
20 answer, but there's really nobody -- Vickie would
21 not have been able to answer the question about how
22 the board is going to decide on this because it's
23 the board that will decide.

24 **MR. PETE COFFEY, JR.:** Yeah, well, that's what
25 I'm saying: Where is the board?

1 **MS. CATHERINE GLIDDEN:** One of the board
2 members is actually in China right now. And they're
3 not going to make any decision about this until
4 after February 13th, which I made clear I think as
5 well. And how that's going to affect this project,
6 I don't know.

7 But as far as moving forward with the 106
8 process and getting input from everyone on how you
9 feel, we need to do additional identification
10 efforts, how we need to look at the area of
11 potential effect, all these things, I think we did
12 gain clarity from you all on exactly how we need to
13 move forward.

14 So I don't think that the meeting was
15 pointless, and I apologize to those of you that felt
16 that you came here and felt that way.

17 The bottom line is that your comments are going
18 to inform the decision-making process at the board,
19 and that's very important. You know, you're going
20 to be heard, and you are being heard.

21 Anyway, I guess, you know, I'm sorry again if
22 you feel that the meeting was pointless, and I
23 apologize to you that came here and feel that way,
24 but I really don't see it as being pointless, not
25 from my perspective. I think it's important that

1 you be heard.

2 **MR. CONRAD FISHER:** Darlene and then Curley and
3 then Terry.

4 **MS. DARLENE CONRAD:** Cathy, I believe that you
5 sent an e-mail out and you told us to become
6 familiar with the Ninth Circuit Court decision.

7 **MS. CATHERINE GLIDDEN:** Vickie sent that out.

8 **MS. DARLENE CONRAD:** And I think that's why
9 everyone here assumed that that was going to be part
10 of the discussion. So to say that it wasn't going
11 to be discussed shouldn't have been said, sent out.
12 It just should have said, For your information,
13 rather than --

14 **MS. CATHERINE GLIDDEN:** Well, Vickie sent that
15 out right after it came out just to make everybody
16 aware of the fact that we received the decision, but
17 there had been no decision made internally at the
18 board about how it was going to move forward with
19 that. And it was sent separate from the meeting
20 invitation, and I didn't send it as an attachment
21 with the agenda or any of items.

22 **MS. LANA GRAVATT:** It's on the agenda, though,
23 Catherine.

24 **MS. CATHERINE GLIDDEN:** All I did was say that
25 I was going to have a summary, and the summary was

1 basically the statement that I read, which we're
2 going to provide that --

3 **MS. LANA GRAVATT:** And you can just e-mail that
4 to us, you know, that statement.

5 **MS. CATHERINE GLIDDEN:** I apologize if there
6 was a misinterpretation. But, you know, the thing
7 is even if Vickie had come here, she wouldn't really
8 be able to provide you with any information. She
9 would simply reiterate the fact that the Ninth
10 Circuit Court decision addressed Tongue River II and
11 III and made clear in the page that I had quoted
12 from before that Tongue I was not before the court.

13 The board may decide, however, that there is
14 some sort of nexus between the decision and
15 Tongue I. And I think that it probably does make
16 sense, given the frustration here, that we hold off
17 on having another meeting until we know how the
18 board is going to move forward with this.

19 **MR. TERRY CLOUTHIER:** I actually want to
20 address that very comment, if I can. It's the
21 opinion of the tribes and me, in particular, and
22 I'll be bringing this to my attorneys for their
23 decision, that Tongue River I is directly affected
24 by the court's decision in the Ninth Court, and I
25 outlined that yesterday. Because you guys tied in

1 your updates to TRR I into the FEIS for Tongue River
2 III, there is directly, any decision made on that
3 EIS applies to the whole EIS. You can't separate
4 out Tongue River I out of, that way. I understand
5 that there was no direct court ruling, but the
6 rulings directly affected anything within the EIS.

7 And what I'm asking of you, Cathy, is that you
8 make sure that that's brought up to your higher
9 level. Since they're not sitting here right now, we
10 need to make sure from you on record that you will
11 be addressing that to them.

12 **MS. CATHERINE GLIDDEN:** I absolutely will. Not
13 only will we have the minutes that I'll make sure
14 that everybody gets copies of, all the decision
15 makers, but I will also be taking my notes, and when
16 I get back to the office I will immediately advise
17 Vickie and probably other people at the board about
18 specifically what comments were received from this
19 meeting.

20 **MR. TERRY CLOUTHIER:** I just wanted that on
21 record, Cathy. Thanks.

22 **MR. CONRAD FISHER:** Cathy, can you raise your
23 right hand so we can --

24 (Laughter)

25 **MS. CATHERINE GLIDDEN:** You're not going to --

1 I'll swear. I don't know about on the Bible,
2 though. Have you got some kind of tribal thing I
3 can swear on?

4 **MR. CURLEY YOUPEE:** I don't think we want to
5 get religious with this meeting.

6 Cathy, you are, in fact, the spokesperson or
7 the mouthpiece for the STB, and this undertaking as
8 it pertains to Section 106 is funneled to you. And
9 from what I've heard here and in the presentations
10 with the railroad as well, I guess I lack
11 understanding of their understanding of how
12 Section 106 works because I haven't -- that hasn't
13 been reflected.

14 And the process of 106 is really a step and
15 phase procedure. And, you know, we're bouncing
16 around so much, it's hard to catch up sometimes to
17 what we're supposed to be doing. But in the
18 Section 106 process, again, there are six charted
19 domains: Constitutional relevance, commitment and
20 partnership, tribal poverty, social capital and
21 territories.

22 Environmental justice has not been brought up
23 or tribes have not looked at that as an avenue of
24 recourse and perhaps, you know, they should.

25 Third is alignment of design features of ACHP's

1 strategy objectives. Again, alignment of design
2 features of ACHP's objectives, strategic objectives.

3 We're looking at rural development policies,
4 analysis and lessons learned and results framework.
5 We've done these things before again and again.
6 We've created a template in forming what we thought
7 forged a relationship with STB in our DM&E railroad
8 experience. And perhaps that's not the case.

9 Also, implementation arrangements and
10 institutional aspects, you're the mouthpiece that
11 STB generates their information, gives it to you,
12 you disseminate it to the tribes in a manner that is
13 understandable, comprehensible. We heard jargon.
14 We heard stuttering. You know, that's very
15 confusing coming from a federal agency.

16 **MS. CATHERINE GLIDDEN:** Stuttering?

17 **MR. CURLEY YOUPEE:** Stutter, yeah.

18 S-t-u-d-d-e-r-i-n-g, I think.

19 **MS. CATHERINE GLIDDEN:** Misspelling?

20 **MR. CURLEY YOUPEE:** Is that misspelled?

21 **MR. CONRAD FISHER:** S-t-u-t-t-e-r.

22 **MR. CURLEY YOUPEE:** Well, you know what I mean.

23 **MS. CATHERINE GLIDDEN:** Well, I think if it was
24 spelled properly I would have a better idea.

25 **MR. CURLEY YOUPEE:** Well, you know what I mean.

1 **MS. CATHERINE GLIDDEN:** No, I don't.

2 **MR. CURLEY YOUPEE:** Not to throw me off, I'll
3 continue.

4 And your attitude, you know, can be changed
5 next meeting as well, because that will be a matter
6 of the record.

7 The risk and sustainability, we had an actual
8 plan that you developed along with tribes and ACHP.
9 It was my assumption that we were going to jump back
10 into that plan. However, that plan was not brought
11 up. The plan was not even part of this meeting.

12 **MS. CATHERINE GLIDDEN:** Well, one of the things
13 that we can do --

14 **MR. CURLEY YOUPEE:** Let me finish.

15 **MS. CATHERINE GLIDDEN:** -- if I can answer your
16 question --

17 **MR. CURLEY YOUPEE:** Let me finish, and then you
18 can answer all of those questions.

19 **MS. CATHERINE GLIDDEN:** Well, I'm not going to
20 answer all of them.

21 **MR. CURLEY YOUPEE:** Well, don't interrupt me,
22 please. Give me a chance.

23 So sustainability, I think, you know, we have
24 to go a long ways in order for tribes to have the
25 assurances that we do have sustainability and

1 stability regarding this consultation.

2 And innovation features, you know, what are you
3 bringing to the table as far as learning and
4 knowledge management, as well as information systems
5 management? What tribes are giving you today, what
6 have you offered tribes in terms of managing this
7 information in your trust responsibility as a
8 federal agency? And so these domains also provide
9 three essential elements that underpin the delivery
10 of Section 106 to tribes.

11 An agency-accepted definition of quality as the
12 term relates to financing, consultation and
13 consensus on the factors which can contribute to
14 enhanced quality, trusts, tribal ownership, the
15 stability, implementation, we heard that tribes have
16 ownership to what they were saying, and I feel it
17 necessary to publish my comments before I make them
18 at these meetings, and so I do that because I don't,
19 sometimes I don't see that, those reflected in
20 decisions or even brought back to the table by those
21 federal agencies, in this case the STB.

22 And so we're looking for an agreed framework
23 that all the designers and agency managers or people
24 that have decision-making capacity and tribes can
25 use the focus efforts through successive stages in

1 the design implementation and completion of the
2 project objective. It means there's an actual
3 stage, actual process out there again, procedure,
4 that in your discussions with ACHP, you know, those
5 should have been brought to your attention or your
6 decision makers' attention before this meeting took
7 place.

8 As well as we need the participation. We
9 strongly urge you that ACHP staff or those ones that
10 have responsibility to this project be in attendance
11 in future proceedings. You have backed tribes up
12 into a wall towards litigation. You've
13 single-handedly done that. And I'm not sure that
14 the guidelines and requirements of ACHP forces any
15 federal agency to do that --

16 (Interruption)

17 **MR. CURLEY YUPEE:** I'm not sure that the
18 ACHP's guidelines, you know, expects federal
19 agencies to have such a relationship with tribes
20 that forces the tribal hand towards litigation.

21 And that's what I have to say for the most
22 part.

23 You can answer my question.

24 **MS. CATHERINE GLIDDEN:** Okay, any other
25 comments?

1 **MR. DAVID COBURN:** I'm not going to speak to
2 that, so if you're going to --

3 **MS. CATHERINE GLIDDEN:** Yeah, I was going to
4 say that actually what we're doing here by stepping
5 back in the 106 process and looking at the initial
6 steps in the 106 process is really a much better
7 thing for the project because if we jump right into
8 a PA, then, you know, we're not looking necessarily
9 at identification at this point but possibly at a
10 later point which would be included in a PA. But if
11 that's what you want as a group, you know, we can go
12 there. I mean, we fully expect to be at some point,
13 but we were advised that we need to step back a bit
14 in the 106 process before going towards a PA. But,
15 you know, we'd be more than willing to do that if
16 that's what you want.

17 **MS. LANA GRAVATT:** I think the most important
18 thing right now is that there has to be some kind
19 of, we've got to start organizing the TCP study
20 because we can't further any more discussion unless
21 we know what's on the ground because that's going to
22 change the whole picture. It's going to change the
23 route, the line, the corridor. It's going to. And
24 either we're going to get out there and we're going
25 to identify and evaluate these sites or we'll end up

1 in court over cultural resource issues with this
2 project.

3 **MR. DAVID COBURN:** Yeah, I'd like to respond to
4 that, but a few other points, too.

5 First, we, the railroad, are also a consulting
6 party, as you know. And -- but we, like the board,
7 like Cathy in this particular case, are --

8 And like you, Conrad, and others who have to go
9 back and talk to your tribal leadership, Cathy has
10 to go back and consult with her leadership at the
11 board when they make their decision and will take
12 back what she's heard and take back the transcript
13 which will inform their decision, we, too, have the
14 same constraints. We have management. We're not
15 the people who make the decisions.

16 So I just wanted it clear on the record that we
17 have taken no position on the points that have been
18 very well articulated this morning and yesterday in
19 terms of what the tribes would like to see. Don't
20 read that to say that we totally disagree with what
21 you're saying, but read it to say what it is, which
22 is that we're just taking at this meeting at this
23 time no position.

24 We will at some point have a position. And
25 we'll want to see what the board says. We're still

1 studying it. We'll talk to our own management, and
2 we'll have a position. We don't right now. I just
3 wanted to make that clear.

4 On the question of the -- let me just say this,
5 though, on the question of the TCP survey, whether
6 it be a TCP survey and were there to be other
7 surveys, because let's assume, for the purpose of
8 this discussion let's assume that the board decides
9 to conduct further surveys of the Tongue River I
10 alignment, biological surveys as well as historic
11 surveys and all of the surveys that might be called
12 for as part of an EIS process, that, as I suggested
13 at the end of the day yesterday, that suggests the
14 need for better access than we had back when the
15 folks who were doing the Tongue River I EIS -- none
16 of us in this room were involved in Tongue
17 River I -- conducted their surveys and gathered
18 their data. There would have to be better access.

19 And I know, Lana, you suggested yesterday, and
20 I appreciate it, that the tribes would assist, and
21 you think, and I hope you're right, that the tribes
22 can help attain that access. I just want to say
23 great. I think that's very constructive.

24 **MS. LANA GRAVATT:** David, are you a lawyer for
25 the company?

1 **MR. DAVID COBURN:** I am.

2 **MS. LANA GRAVATT:** Well, see, it's just -- you
3 know, for us to take anything you say into
4 account -- because you're leading. You're leading;
5 you're leading for your company for them, so
6 everything you say is going to be biased and it's
7 going to be for the promotion of that, when we're
8 concerned with the cultural resources.

9 **MS. CATHERINE GLIDDEN:** He's talking about
10 access.

11 **MR. DAVID COBURN:** Lana, each of us represents
12 our own interests, okay?

13 **MS. LANA GRAVATT:** Yeah. I'm just saying
14 that's my opinion, okay?

15 **MR. DAVID COBURN:** That is your opinion.
16 You're entitled to it.

17 **MS. CATHERINE GLIDDEN:** It's a consulting party
18 meeting.

19 **MR. DAVID COBURN:** Right.

20 **MS. CATHERINE GLIDDEN:** And so each of us at
21 the table has a right to be here and a right to
22 speak and to be heard.

23 **MR. DAVID COBURN:** If you choose to discount
24 everything I say, that's your prerogative.

25 **MS. LANA GRAVATT:** You're getting defensive.

1 **MR. DAVID COBURN:** But I'm going to say it
2 anyway. And hopefully others will listen, which is
3 that we hope you will help at the point, assuming
4 the point is reached, when access is needed. We
5 hope that you will help, as Lana suggested you would
6 yesterday, achieve that access.

7 And as a practical matter, what that means is
8 that the people who own property along the
9 right-of-way who are opposed to the railroad, that's
10 not necessarily a majority but I haven't done a
11 headcount to know where each of them stand, but
12 there are some people who are not against the
13 railroad and there are others who are obviously.

14 But the people who are against have, in the
15 past, not been cooperative in terms of access, and
16 yet they went to court and they said that the
17 railroad didn't do adequate studies. Well, the
18 railroad arguably didn't do adequate studies or the
19 board didn't do adequate studies because of lack of
20 access. So it's sort of circular. You can't say
21 with one hand you didn't do adequate studies and
22 with the other hand deny access.

23 So I would hope that you would help prevail
24 upon those people who might not be willing to
25 provide access, that they should so that the TCP

1 studies, if that's the direction the board takes,
2 and other studies can be fruitful.

3 **MR. CURLEY YUPEE:** I think that -- you know,
4 this rests on STB regarding access, and I believe
5 it's their responsibility as a federal regulatory
6 agency to make those bridges, to construct those
7 bridges and to align those people that are involved
8 in the undertaking, whether it be landowners or
9 whoever.

10 But beyond talking about sites of American
11 Indians, attributes associated with traditional
12 cultural properties, it is necessary to be aware of
13 and appreciate that American Indian civilization is
14 a prideful daily organizational and communal
15 activities of their lives.

16 We're not on the shelf as historic properties.
17 We're not on the shelf as cultural resources. These
18 things are ongoing. To understand tribal
19 communities, it must be realized that American
20 Indian culture is the joining of their moral,
21 scientific, intellectual values that come alive of
22 the relationship of man to his environment in an
23 experience that is whole and communal.

24 Daily life involves our understanding of our
25 surroundings. We come outside to look up in the air

1 to see what's flying, see what's not flying, see
2 where the wind is blowing. This is everyday,
3 everyday events. This is not on the shelf that we
4 take it off the shelf to look at it to see where we
5 need to be.

6 Now, American Indians' science is the
7 understanding of cosmic laws and energy, whose
8 nature -- whose natural orders and application are
9 in harmony with a sequence made of space and time
10 that materializes intentionally for a cosmic
11 balance. We always seek that equilibrium. We come
12 outside and seek that equilibrium in a cosmic
13 balance. That's who we are as a people.

14 Again, we're not on a shelf to open and look
15 what we need to do on a daily basis, but we're
16 reduced to that as we come to these consultations,
17 and what is expected of us is simply process and
18 procedure. We are humans after all. It's essential
19 to why the indigenous have harmoniously developed
20 cosmic energies as a component to the evolutionary
21 process of being human. Applying their genetics,
22 astronomy, architecture, engineering, medicine,
23 techniques and applications, et cetera, always for
24 the benefit of communal life.

25 Within this capacity, tribes can affirm that

1 indigenous science is the materialization of
2 knowledge and wisdom as a sum of consciousness in
3 total conjunction with theory and practice.

4 Today indigenous science is considered by the
5 Westerners to be the product of superstition, which
6 corroborates their complete ignorance. Among the
7 most important values of tribal lifeways, which can
8 be demonstrated through the process of this
9 consultation, is the organization of the Indian
10 community such as bands, clans, social
11 organizations, governed under a communal cosmic
12 order, our profound respect for nature and the
13 creatures that comprise it manifested in rights,
14 ceremonies, offerings, et cetera, to Mother Earth,
15 Grandma Earth, the wind's directions and their
16 prescribed deities.

17 When I tell people that I'm a product or I'm a
18 child of my mother, in the context of earth,
19 everything around me is shaped in a harmony,
20 orchestrated not by human beings, orchestrated by
21 the elements by the creator and by other beings
22 other than human beings. They can do without us.
23 This earth can exist without human life form or
24 their (unintelligible).

25 The purpose of our -- the purpose of our being

1 here, I guess, is to try to protect a lifeway and
2 understanding a prescribed lifeway that goes back
3 thousands and thousands of years within our own
4 creation story, those things that we hold sacred and
5 natural, a natural order, again prescribed to us by
6 sacredness, deities that come down and share that
7 information with tribes.

8 These special places that we have, sometimes we
9 have not access, have no access to these areas for
10 such a long, long, long time, and then we hear that
11 we may not have access.

12 The federal agency, in this undertaking the
13 STB, has responsibility to gain access. Because
14 under law they have to comply with those policies,
15 mandates. And so we hear stuttering. We stagger
16 around with them trying to find some substance
17 matter, and it seems that we're spinning our wheels,
18 as you heard before.

19 You know, it's really a pitiful state that we
20 should come here and try to gain understanding and
21 all we're getting I think is added bureaucracy. And
22 there's so many layers of bureaucracy that it
23 becomes frustrating. And perhaps that's the route
24 to go is the litigation so we can clear the air.
25 I'm not certain.

1 **MS. CATHERINE GLIDDEN:** Terry, did you want to
2 say something?

3 **MR. TERRY CLOUTHIER:** I actually had a question
4 for David.

5 David, how familiar are you with the
6 Section 101 and Section 106 process?

7 **MR. DAVID COBURN:** I'm familiar.

8 **MR. TERRY CLOUTHIER:** Okay. You understand
9 that the Federal Government is required under
10 101(d)(6)(B) to take into account historic
11 properties of significance to tribes, correct?

12 **MR. DAVID COBURN:** Sure.

13 **MR. TERRY CLOUTHIER:** And then for you to say
14 that if the Surface Transportation Board allows a
15 TCP to go forward, that's totally contradictory to
16 the implementing regulations of 36-CFR 800.4 (a) and
17 (b) in terms of the identification process for those
18 very historic properties that we consider
19 significant.

20 This is also directed towards Cathy. How is
21 101(d)(6)(B) going to be addressed if a TCP study is
22 not allowed?

23 **MR. DAVID COBURN:** Well, I didn't say that --

24 **MS. CATHERINE GLIDDEN:** He didn't say that.

25 **MR. TERRY CLOUTHIER:** I'm just asking that

1 question.

2 **MR. DAVID COBURN:** The board will make a
3 decision based on the law. And if it doesn't you'll
4 let them know. So I'm not here saying what the
5 board is going to do or not.

6 **MR. TERRY CLOUTHIER:** You specifically stated
7 that if the board allows a TCP to go through.
8 That's what you stated. And that's why I was
9 getting clarification.

10 And the secondary question is to Cathy: How
11 are you fulfilling 101-D-6(b)? The tribes are
12 requesting specifically for a TCP study to be done.

13 **MS. CATHERINE GLIDDEN:** Well, we know what you
14 want, and I'm going to go back and let people know
15 that that's what you want. And I'm going to make
16 your wishes known to Vickie and the decision makers,
17 and -- but there's a lot of unknowns still about
18 this project, unfortunately.

19 And so, you know, I'm going to have a
20 conversation with everybody. I'm going to tell them
21 that you want a TCP study, that you feel you need to
22 be on the ground, that you want a new EIS, that you
23 want to help with the engineering because that can
24 be a concern, and all the other concerns that you've
25 brought forward in this meeting today.

1 I do think it's a bit pointless to go around
2 and around in circles, and so maybe we should just
3 call it a day and we'll go ahead and present your
4 concerns to the board and to Vickie when I return.

5 **MR. DAVID COBURN:** I have one other issue I'd
6 like to lay on the table, which is that assuming
7 that the board authorizes the study, a TCP study,
8 assuming that they do that, then we would want there
9 to be going into it some understanding, perhaps laid
10 out in a memorandum or agreement or programmatic
11 agreement, you can call it what you will, either
12 one, but that sets forth the process for responding
13 to cultural properties that are, in fact, located so
14 that we all have a common understanding of how
15 they'll be dealt with, how this might or might not
16 affect the routing of the railroad.

17 **MR. TERRY CLOUTHIER:** So you can take this back
18 to your guys, I can tell you that for us it's a
19 hundred percent avoidance. If we can manage 100
20 percent avoidance, that's what we do, and that's
21 usually by micro setting and rerouting. That's our
22 general policy is that if it's a significant -- it's
23 not a matter of criteria for us. It's a matter of
24 if we've identified it as a historic property of
25 significance, it doesn't become potentially eligible

1 or ineligible. It is eligible, plain and simple, as
2 far as the tribes are concerned and we have the
3 requisite knowledge to back that up. And that must
4 be taken into account under 800.4(c)2 that the
5 tribes have expertise knowledge in evaluating sites.

6 **MR. DAVID COBURN:** Well, again, I think this is
7 something we would need to talk about because I
8 can't sit here and --

9 **MR. TERRY CLOUTHIER:** Yeah, I understand that.
10 I'm just saying that's the tribes' position. At
11 least that's the Standing Rock Sioux Tribe's
12 position, and I'm pretty sure for the people that I
13 normally deal with, that's their position as well.

14 **MS. CATHERINE GLIDDEN:** All right.

15 Well, thanks so much, everyone.

16 Conrad, are we ready to call it a day?

17 **MS. HUBBELING:** I don't have a question. I
18 just want to make a statement that the tribes, in
19 dealing with federal agencies, have always had to
20 adhere to these stringent policies, regulations,
21 guidelines, steps, et cetera, et cetera. Yet, when
22 the federal agencies deal with us, there's always
23 loopholes, ways around these same policies that we
24 are required to follow, and you need to follow your
25 own policies.

1 **MS. CATHERINE GLIDDEN:** Well, I'd like you to
2 make an example of how we're not following the
3 policies today.

4 **MS. LANA GRAVATT:** If the board does not allow
5 a TCP, you're out of compliance.

6 **MS. CATHERINE GLIDDEN:** Okay, so that's what
7 you're saying. Okay.

8 **MR. TERRY CLOUTHIER:** You're failing in
9 101-D-6(b).

10 **MS. CATHERINE GLIDDEN:** All right. Great. I
11 think we're good.

12 Anybody else have anything to add?

13 **MR. CURLEY YOUPEE:** Yeah, I've got one more.
14 As a matter of record I want to say that at what
15 point has the applicant made a reasonable and good
16 faith effort to identify historic properties as the
17 (unintelligible) require, decision regarding
18 National Register eligibility, assessments of
19 effects and adverse effects to historic properties,
20 as well as development of reasonable and appropriate
21 mitigation measures to resolve those adverse
22 effects?

23 **MS. CATHERINE GLIDDEN:** Can I answer the
24 question now?

25 **MR. CURLEY YOUPEE:** Yeah.

1 **MS. CATHERINE GLIDDEN:** Those are the steps in
2 the 106 process, and we're back in the initial steps
3 of the 106 process, which means we are still working
4 towards some of the things that you've mentioned,
5 identification, determining eligibility, assessing
6 adverse effects and so on. Those are steps in the
7 Section 106 process which are still before us. Then
8 a PA at the end to mitigate adverse effects.

9 So we're back at the beginning of those steps.
10 We're trying to define the undertaking, get input
11 from the consulting parties and determine, you know,
12 the APE for the project with input from tribes. So
13 I do believe that we are following the 106
14 regulations.

15 **MR. CURLEY YUPEE:** No, we're back on track
16 because you neglected this in the last ten years
17 when the railroad initiated this project. You could
18 have had tribes at the table but no, you didn't.
19 You only concentrated on one tribe at that time. So
20 the process, the whole process was a shamle.

21 **MS. CATHERINE GLIDDEN:** Well, at the time that
22 the project, you know, was, when the applicant
23 applied for the project, like I'd mentioned before,
24 the National Historic Preservation Act didn't
25 require consultation with tribes. It only later

1 required and the regulations were only later amended
2 to require that, so --

3 **MR. CURLEY YOUPEE:** But you had activity after
4 1992.

5 **MS. CATHERINE GLIDDEN:** Right, on Tongue --

6 **MR. CURLEY YOUPEE:** Up to 2004 you had
7 activity, yet you didn't include the tribes, which
8 was your responsibility.

9 **MS. CATHERINE GLIDDEN:** I'm just talking about
10 Tongue I, and that's what's before us now.

11 **MR. CURLEY YOUPEE:** It's all related.

12 **MS. CATHERINE GLIDDEN:** Anyway . . .
13 Conrad?

14 **MR. CONRAD FISHER:** Cathy, you know, there's, I
15 think, a lot of questions that are still unanswered
16 today. And I know you're trying really hard to
17 answer a lot of the questions that we have, and I'm
18 hoping that you go back over to your superiors and
19 really seriously, and I know you're serious, and try
20 to get some clarification on these issues.

21 I think one of the pressing questions we have
22 is on an agreement, an agreement, whether or not
23 it's an MOA, a PA, MOU, some type of an agreement.

24 106 is about -- 106 implies that you have a
25 corridor already.

1 Correct me if I'm wrong for those of you that
2 have knowledge of this.

3 **MS. CATHERINE GLIDDEN:** Well, you define the
4 undertaking.

5 **MR. CONRAD FISHER:** You define the undertaking
6 based on the area of potential effect. And
7 yesterday we had a presentation about the proposed
8 rail line, so we have a defined area that needs to
9 be looked at as 106.

10 And I think part of the discussion is that
11 we're looking at a PA, a programmatic agreement in
12 terms of where should the proposed route be based on
13 the participation of the tribes. In other words, we
14 would like to be part of the discussion on where the
15 proposed line should run all the way to Ashland, if
16 the line is going to be -- I think we're assuming
17 that there's going to be a railroad line at this
18 point in the game.

19 The other issue is that STB has already said
20 yes to --

21 **MR. TERRY CLOUTHIER:** Excuse me, Conrad. Can I
22 actually address something?

23 David, when he mentioned that, you just mouthed
24 the words "no". Can you please say that out loud?

25 **MR. DAVID COBURN:** No, I'm not prepared to talk

1 for the railroad on that.

2 **MR. CONRAD FISHER:** Okay, I understand.

3 I'm just saying that I think theoretically
4 speaking the tribes -- you know, hindsight is 20/20.
5 And I'm just saying that a real ideal situation
6 would be to have the tribes be part of this broader
7 perspective as far as looking at a potential line
8 from Miles City to Ashland.

9 What we're stuck at, and I mentioned this
10 yesterday, is that we're pushed after the fact. And
11 somebody mentioned that already. After the fact --

12 And, Cathy, this is what I'm talking about,
13 we're looking at 106, and we're being -- this is a
14 very narrow focus saying, Here's the railroad line.
15 We want you guys to go in there and see where your
16 sites are. But the line is already there without
17 the participation of the tribes.

18 If I'm not mistaken, correct me if I'm wrong,
19 if this line was here from A to B and the tribes had
20 a say in it, tell me now if that was the case.
21 Somebody tell me that the tribes were involved in --

22 **MS. CATHERINE GLIDDEN:** Not involved in
23 determining the current alternative. However, I
24 think I'm under the understanding that it would be
25 possible to move the alternative slightly.

1 Is that correct?

2 **MR. DAVID COBURN:** Within engineering
3 constraints. Again, you can't build a railroad
4 anywhere. It's not like a highway and even not as
5 flexible as a pipeline. Because I've been involved
6 in highways, pipelines and railroads, and the least
7 flexible of all, it's just a reality, it's physics
8 that we have to deal with, is that railroads are
9 less flexible.

10 So yeah, in an ideal world maybe I could say to
11 you, Sure, we can move it over here and over there.
12 The flexibility is not there.

13 **MR. CONRAD FISHER:** Yeah, but we were never
14 told that when this was -- I mean, we would
15 certainly understand your position on that.

16 **MR. DAVID COBURN:** Conrad, nobody is debating
17 that the tribes were not, all of these tribes were
18 not active participants in Tongue River I. I mean,
19 that's a reality.

20 **MR. CONRAD FISHER:** I totally understand that.

21 **MR. DAVID COBURN:** I'm not here to explain why.
22 It's not my place to explain it. It's just a
23 reality.

24 **MR. CONRAD FISHER:** I'm just making a scenario
25 about theoretically what should be the case. And I

1 think as tribes we feel like this should be the
2 case.

3 Let me just finish with this presentation, and,
4 you know, you can listen to me or you don't have to
5 listen to me. I'm making a presentation.

6 So 106, again, we're just being limited to that
7 area. That's all I'm saying is that here's a line.

8 You want the tribes, Cathy, when you talk about
9 106, to look at that line and say, Show us your
10 sites, what's important, and we'll deal with that,
11 simplistically speaking.

12 The reason I say PA or MOA is that I think the
13 tribes need to look at how they're going to define
14 the TCP study. Should we look at a PA and define
15 the responsibility of each agency?

16 David, I think you mentioned we need to have an
17 agreement. We need to have an agreement so we know
18 each, everybody's role and responsibility in this.
19 Cathy is saying 106, which means an MOA.

20 Is that correct?

21 **MS. CATHERINE GLIDDEN:** Or a PA.

22 **MR. TERRY CLOUTHIER:** Either a PA with an MOA
23 attached to it to allow for the TCP study, something
24 along those lines.

25 **MS. CATHERINE GLIDDEN:** Yeah.

1 **MR. TERRY CLOUTHIER:** An MOU has no legal
2 boundaries, so we don't do MOUs, I'll tell you that
3 straight out.

4 **MR. CONRAD FISHER:** Okay, so that's going to be
5 an issue. You know, we don't want to get stuck
6 with -- we don't want to just get stuck with an MOA.
7 And I just want to mention that just to have the
8 tribes think about this that there's, we can look at
9 a PA or we can look at an MOA and --

10 **MS. CATHERINE GLIDDEN:** Or both.

11 **MR. CONRAD FISHER:** Or both. There's some
12 flexibility in this whole situation.

13 **MS. CATHERINE GLIDDEN:** And, Conrad, I just
14 want to make it clear that we had always intended on
15 developing a programmatic agreement for this
16 project, but we were advised by the advisory council
17 that it was premature to jump into a PA at this
18 point because so much time has elapsed on this
19 project and that we really needed to step back in
20 the 106 process. And the PA, you know, it's a
21 fourth step. It's mitigating adverse effects. So,
22 you know, the sense was that we really needed to
23 step back and look and do some additional
24 identification, better define the APE, seek out
25 additional consulting parties and so on.

1 **MR. CONRAD FISHER:** And I agree. I think
2 you're the lead agency. But in addition, I think,
3 Cathy, you just want to listen to what the tribes
4 have to say about either a PA or an MOA.

5 **MS. CATHERINE GLIDDEN:** Sure, yeah. I just
6 wanted to make it clear that we had always intended
7 that we were going to develop a programmatic
8 agreement for --

9 **MR. CONRAD FISHER:** That's still on the table
10 for --

11 **MS. CATHERINE GLIDDEN:** Yeah, absolutely.

12 **MR. CONRAD FISHER:** Okay.

13 Terry and then Rick and then Bryce, and then we
14 should be closing shop after that. I think we've --
15 I think the horse is dead now and that we need to
16 close shop.

17 **MS. LANA GRAVATT:** We need to quit kicking it.

18 **MR. CONRAD FISHER:** Yeah, we need to quit
19 kicking it, that's right.

20 **MS. CATHERINE GLIDDEN:** There's a bunch of
21 horses nextdoor.

22 **MR. TERRY CLOUTHIER:** Just to clear up a little
23 bit, to make a clarification, David, because you
24 seemed to be a little bit concerned when I said that
25 we request a hundred percent avoidance on sites,

1 that doesn't mean every archeological site we will
2 request that. It's specifically relating to the
3 sites that the tribal people will find and determine
4 to be historically significant. It's not every
5 lithic scatter. You know, it might be a lithic
6 scatter if there's an association that makes it
7 important to the tribes. You know what I mean? We
8 would like to see a hundred percent avoidance of
9 every lithic scatter, but, I mean, that's
10 unfeasible. You know what I mean? And I wanted to
11 clear that up a little. That's coming from my
12 perspective. I'm not speaking for any other tribes
13 when I make that statement, so . . .

14 **MR. RICK THOMAS:** I wanted to say, because I'll
15 be leaving here in a little bit, you know, but I
16 think the tribal representatives that are here, I
17 think we're talking until we get hoarse. You know,
18 and I really appreciate, you know, the long sitting
19 yesterday and today hearing the same thing over and
20 over. I will report to my chairman. And to be able
21 to get back and hopefully the things that we have
22 shared today, what Mr. Conrad has relayed the
23 message to you guys, that you guys will follow up on
24 the tribes' recommendations.

25 I do feel disappointed because of the fact that

1 we should have had this meeting after February 13th
2 where we know the direction of what the board has
3 decided, but it's good to hear firsthand on where
4 we're coming from as tribes. It gets very difficult
5 when we try to relate to a federal agency who has
6 good eyes but no ears. And it's good if you guys
7 can follow up, you know, with an e-mail or a
8 message, at least to me and the rest of the tribes,
9 on the actual directions that you will be taking.

10 **MS. CATHERINE GLIDDEN:** Yep.

11 **MR. RICK THOMAS:** But I also wanted to say that
12 with your board sitting in D.C. or wherever their
13 board is set up, it would have been good if we could
14 have people like Conrad or Curley or Russell to give
15 firsthand insight to where we're at to the board
16 like a congressional hearing. You know, this way
17 they can hear from us without seeing it on a piece
18 of paper or listening to it on a recorder but live,
19 you know. That's something that you could probably
20 check out or take a look at.

21 But I wanted to depart right now and say palama
22 to all the tribal representatives that are here.
23 This is the largest representative in the territory,
24 Montana, North Dakota, South Dakota, Nebraska, that
25 came with open hearts. And so before I walk out

1 this door I just want to sing one song, and then I'm
2 going to say (native language), I'll see you guys
3 later.

4 So I'm going to sing this song, and then I'm
5 going to depart.

6 (Song in Native language)

7 **MR. CONRAD FISHER:** Before I get to Bryce, I
8 think that the tribes need to kind of keep their
9 thoughts open about what has been said here about
10 the agreement. I know that that's something that
11 kind of opened my eyes is that, you know, this is a
12 huge, huge undertaking.

13 And we want to make sure that we have input,
14 Cathy, into whether or not an MOA is going to be the
15 best alternative or a PA. I totally understand.
16 You don't have to repeat what you were saying about
17 why we're not having, pursuing a PA at this
18 junction. However, you know, there's other avenues,
19 and certainly the tribal input into a PA or an MOA
20 is also important, not just from the feedback of
21 ACHP. I think that if we are involved in this
22 process, things are going to run a lot smoother and
23 we won't be having these types of discussions.
24 Tribes need to be informed.

25 I think Rick has said it that if you could keep

1 the tribes informed on what's going on and when the
2 decision is reached, you know, the sooner we get it,
3 the sooner things are going to keep going. And
4 hopefully it's a decision that is in the best
5 interests of everybody.

6 Having said that, Bryce, I think you've got the
7 last word, and then we'll close this meeting.

8 **MR. RUSSELL EAGLE BEAR:** I'd like to slap that
9 horse one more time.

10 (Laughter)

11 **MR. BRYCE IN THE WOODS:** This is Bryce In The
12 Woods with the Cheyenne River Sioux Tribe.

13 I'd like to direct my comments to the chairmen
14 and the two board members for the Surface
15 Transportation. As a council representative and a
16 tribal government official, consultation means that
17 we have face-to-face dialogue. And, again, with the
18 Surface Transportation Board developing a
19 consultation policy, a programmatic agreement or
20 policy or whatever the document looks like, you
21 know, it's very -- it's not only the National
22 Historic Preservation Act, it would be the National
23 Environmental Protection Act and the Archeological
24 Resource Protection Act and the American Indian
25 Religious Freedom Act and the Endangered Species Act

1 and the Clean Water and Clean Air. That's why you
2 have the corps here that actually issues a permit.
3 So there's other multi agencies that are involved,
4 Bureau of Land Management. We're all developing and
5 moving in that direction to have that consultation
6 policy developed to better the communication between
7 Tribal Government and Federal Government.

8 And I think the close ties with federal agency
9 and the tribal governments, this is part of what
10 would strengthen that tie. And all of those acts
11 that I just mentioned, there's probably more that
12 the board needs to be real up on and that we work
13 together and develop this consultation policy. That
14 would be the number one thing that needs to happen.

15 And on behalf of the Cheyenne River Sioux Tribe
16 and all of our sister and brother tribes, we thank
17 you for this meeting today that we get to make
18 recommendations like this and make comments. And I
19 look forward to the next meeting in that we have a
20 productive meeting and that something good will come
21 out of this that will benefit all around the table.

22 I think it's one sided, and it has been
23 unilateral for a long time, and that's why I say I
24 appreciate this meeting because we haven't seen this
25 type of effort before that a lot of our lawyers and

1 leaders have fought for this day of true
2 consultation as it was before face to face, and
3 that's what I believe you hear a lot around the
4 table that are requesting that to the board, and I
5 would, again, reiterate that the chairmen or one of
6 the board members be at the next meeting.

7 So with that I'll do a prayer (native
8 language).

9 Thank you for this meeting.

10 **MS. CATHERINE GLIDDEN:** Thank you.

11 Again, I appreciate that everybody attended
12 this meeting, and thanks so much for everybody's
13 input on what you think and are concerned about.

14 We'll make sure when we get a copy of the
15 tribal transcripts that we send them around to
16 everybody.

17 And we'll also advise you of the board's
18 (unintelligible due to coughing in the room) as soon
19 as it decides it, and I'll keep you all in the loop
20 on what's happening.

21 And, Conrad, thanks so much for your assistance
22 with the meeting.

23 And everyone else and the prayers and the
24 railroad and everyone else that was here.

25 So thanks.

1 **MR. CONRAD FISHER:** I'm glad that we have
2 Hubert and Richard and Darlene here also and all the
3 elders that are present. Myself, I'm only 25, so
4 I've got a long ways to go.

5 **MR. RUSSELL EAGLE BEAR:** Talking about IQ,
6 right?

7 (Laughter)

8 **MR. CONRAD FISHER:** Well, I ran right into that
9 one.

10 But Richard has been sitting there patiently,
11 as our elders usually do, and soaking everything in,
12 and he'll come up and talk to me every now and then
13 about it, so I know he's listening and he's taking
14 everything in, as our elders usually do.

15 And at this time I'd like to ask Richard if he
16 could give us a closing prayer so that we have a
17 safe trip home and that everybody has a good day.

18 Mr. Antelope, if you would, please, I'd sure
19 appreciate it.

20 (Closing prayer)

21 * * * * *

22 (The proceedings concluded at 11:10 a.m.,
23 January 26, 2012.)

1 STATE OF SOUTH DAKOTA)
2) ss.
3 COUNTY OF PENNINGTON)
4

5 I, CINDY K. PFINGSTON, hereby certify that
6 the foregoing pages numbered from 186 to 249, inclusive,
7 constitute a full, true and accurate record of the
8 proceedings had in the above matter, all done to the best
9 of my skill and ability.

10 DATED this 13th day of February, 2012.
11

12 _____
13
14 CINDY K. PFINGSTON
15 Registered Professional Reporter
16

17 My commission expires:
18 February 4, 2016
19
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