



EI-15801

CG

LOWER BRULE SIOUX TRIBE

September 17, 2008

Catherine Glidden
Surface Transportation Board
395 E Street, SW
Washington, DC 02423-0001

RE: DM & E Railroad

Dear Ms. Glidden:

The Environmental Analysis for the DM&E project has concluded with the Record of Decision published in February 2006. At that time, the Surface Transportation Board (STB) took on the responsibility to ensure that mitigation measures mandated by the final and final supplemental EIS are carried out. The Lower Brule Sioux Tribe received correspondence and had discussions with the DM&E Native American Liaison and HDR -- the third party contractors working on behalf of the STB (but paid by the DM&E Railroad). Lower Brule attended one of several meetings held in the last year to discuss Native American concerns. These meetings were very general in nature and focused primarily on provisions in the Memorandum of Agreement that addressed employment opportunities and a liaison office.

Not at this meeting and at no time since the Record of Decision of February 2006, have the (60 or more) unevaluated archaeological sites in the new construction area been addressed. These sites were all recorded as features in the archaeological reports, were all interpreted by Native American monitors as having cultural significance, and therefore, were all left unevaluated by the archaeologists until further consultation with tribes could take place. Informal phone inquiries over the last two years have indicated that this issue was being "worked on" and would be addressed at a future time. We express in this letter our concern that these specific issues have not been pursued by either the railroad or HDR, and remind you that these are mitigation measures.

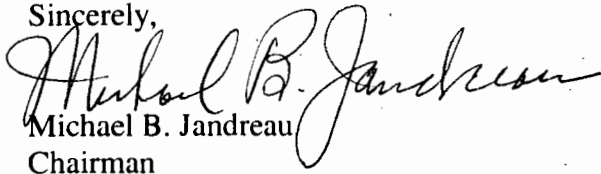
The Lower Brule Sioux Tribe therefore wishes to express its concern over the lack of willingness of all parties to address the issue of these unevaluated sites. We know that the railroad is moving forward and that there is construction in many areas. The Memorandum of Agreement and a Programmatic Agreement that was also developed (with input by Tribes) during the EIS process and included as mitigation in the final determinations, provides a model for use.

This issue needs resolution as soon as possible. The Lower Brule Sioux Tribe requests that the Surface Transportation Board, as the federal agency responsible to ensure the completion of determinations made by the NEPA process and bound by federal trust responsibilities to tribal

nations, present a clear plan for how these matters are to be addressed. I would suggest a meeting with Tribes with the proposed evaluation process of these sites as the sole agenda, keeping in mind that site visits will most likely be required thereafter.

Thank you for your consideration and I look forward to hearing from you shortly.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael B. Jandreau". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael B. Jandreau
Chairman

Cc: Jay Vogt, SD SHPO