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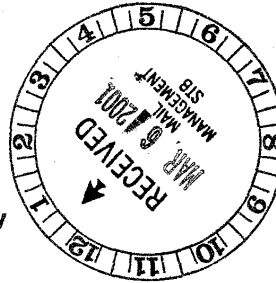
March 6, 2001

Ms. Victoria Rutson
Environmental Project Manager
Powder River Basin Expansion Project
Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K St., NW
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary

MAR - 6 2001

Part of
Public Record



Re: Comments on Draft Environmental Impact Statement for the Proposed Dakota, Minnesota & Eastern Powder River Basin Expansion Project Affecting Mankato, Minnesota.

Dear Ms. Rutson:

On behalf of the Shakopee Mdewakanton Sioux (Dakota) Community and the Prairie Island Indian Community, two federally recognized Dakota Indian Tribes located in southern Minnesota ("the Tribes"), we are submitting the following comments to the Draft Environmental Impact Statement for the Dakota, Minnesota & Eastern Powder River Basin Expansion Project as it affects the area of Mankato, Minnesota. The Tribes request the Board to adopt alternative M-1 and take no action. If the Board determines that some action is necessary, then the Tribes request the Board to adopt alternative M-2 and build a bypass around the City of Mankato. The Tribes agree with the Board that the M-3 proposal of expanding the existing rail line through Mankato, should not be accepted. The proposed M-3 alternative would have a negative impact upon at least two sites in Mankato that are very important to the Tribes, other American Indians and non-Indians. These two sites, Reconciliation Park and Land of Memories Park, both adjoin the current rail right-of-way.

It is essential to note that Mankato is important to all Dakota people, not just those located in Minnesota. A glance at a map listing present-day Indian reservations ignores the continuing significance of much of Mankato and the surrounding areas to the Dakota. These lands are a part of the aboriginal lands of the Dakota. Reconciliation Park and Land of Memories Park are symbolic of the suffering, conflict, and perhaps more importantly, the desire to heal longstanding wounds between the Dakota and non-Dakota. In order to more completely

understand the Tribes' position regarding Mankato, with specific focus on the two above-mentioned sites, these comments will address the historical and continuing significance of these sites to the Tribes.

HISTORICAL BACKGROUND

Introduction

Between September 28 and November 3, 1862, nearly four hundred Dakota warriors were tried by a military court without legal representation following a conflict between the Dakota, white settlers and the United States military. Following trials that frequently took only minutes, all but seventy of these men were convicted, and 303 of these were condemned to die. There was no judicial review of the convictions, the only review was that given by the President of the United States, who narrowed the number of condemned to thirty-eight men. On December 26, 1862, these thirty-eight men were hanged in Mankato, Minnesota, in the largest mass execution in American history.

The Dakota

The Dakota (sometimes referred to as Sioux) are a group of seven politically distinct tribes which share a similar value system, social organization and language and comprise the Oceti Sakowan, or Seven Council Fires: Mdewakantonwan (Mdewakanton); Wahpekute; Sissetonwan (Sisseton); Wahpetonwan (Wahpeton); Ihanktonwana (Yanktonais); Ihanktonwan (Yankton); and Tentonwan (Teton).

The Dakota first encountered Europeans in the early 1600s and were at that time inhabiting most of present-day Minnesota, South Dakota and North Dakota. They were active in trading and worked well with and at times intermarried with traders.¹ However, European expansion soon demanded more than furs. In 1805, land near the confluence of the Mississippi and Minnesota Rivers was ceded in a legally questionable treaty for the building of a military fort.

During the War of 1812, the indigenous tribes of Minnesota sided with the British, whom they believed represented their interests better than the agents of the United States. A series of treaties between the United States government and the Dakota were signed in Minnesota over the course of the next forty years drastically reducing the land base. The Treaties also changed the animal and plant resources that sustained Indians for so long in an increasingly crowded region.

¹ June Namias, *Editor's Introduction* to Sara F. Wakefield, Six Weeks in the Sioux Tepees, a Narrative of Indian Captivity, 12 (June Namias, ed. Univ. of Okla. Press: Norman and London.

Traditional hunting domains were compressed and the money promised for ceded land often did not come as promised.²

Treaties and Increased Hardship

The Treaty of Traverse des Sioux was executed by the Wahpeton and Sisseton Bands on July 23, 1851, near present-day Mankato. With this treaty, the Wahpeton and Sisseton Bands ceded their territory and rights to most of southern and western Minnesota and portions of Iowa in return for a reservation, assistance with schools, trade, and farming, as well as yearly payments in food and gold. Shortly thereafter, on August 5, 1851, the Mdewakanton and Wahpekute bands saw their lands, which had consisted of most of the southeast corner of present-day Minnesota, drastically reduced. In total, the Dakota ceded approximately 24,000,000 acres of prime agricultural and hunting land.³ Unfortunately, it would be over eleven years before the lump sum payments were received.⁴

Additionally, the government agreed to pay \$500,000 to move Indian villages and pay for debts the Dakota owed to traders. The Dakota were placed on two reservations, but were unhappy with the locations and many believed they were cheated in the treaty, especially since it gave priority to padded claims from traders. Very little of the \$500,000 saw its way to the Dakota, going directly to traders instead to pay Dakota debts.⁵

Increased pressure from white settlers encroaching on the Dakota reservation led the government to redraw the boundaries of the reservation, severely crowding the Dakota, while allowing most settlers to stay. On March 13, 1858, twenty six Dakota chiefs were taken to Washington to meet with President James Buchanan. These men were held against their will in Washington for four months before finally agreeing to cede about one million acres along the north side of the Minnesota River, at an eventual price of approximately \$.30 per acre. Little of this money found its way to the Dakota, again going instead to satisfy the dubious claims of the traders, who often took up to four times their valid claims directly from tribal funds before they

²During negotiations for the Washington Treaty (1837), Mdewakanton leader Little Crow remarked, "I see all your people are well dressed - we are obliged to wear skins". *Id.* at 15.

³Kenneth Carley, *The Sioux Uprising of 1862*, at 2 (1961).

⁴Carol Chomsky, *The United States-Dakota War Trials: a Study in Military Injustice* 43 Stan. L. Rev. 13, 16 (1990).

⁵Carley, *supra* note 3, at 3.

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went to the individual. Sadly, there was little or no legal recourse to a Dakota who had been wronged.⁶

Due to the dramatic reduction in land that made supporting oneself in the traditional ways almost impossible, the Dakota became more and more dependent on annuities, goods and services. These annuities, goods and services were used to leverage the Dakota into compliance. In 1857, annuities were withheld by the local Indian agent contingent upon the capture of a group of outlaw Dakotas who were not part of the community, thereby punishing many for the acts of an unrelated few. Annuities were often unequally distributed to those who abandoned their traditional ways and paid first to traders, based on unverified claims which the Dakota viewed with great suspicion.⁷

Dakota Conflict of 1862

The conditions described above, when combined with subsequent events, led to conflict. Widespread hunger occurred due to a blight that severely damaged Dakota crops in the spring and early summer of 1862, coupled by late annuity payments from the government. Further, rumors of decreased or discontinued annuities as a result of the American Civil War increased Dakota fears, who demanded that payments be made to the people first before the traders. In response, the traders refused to sell on credit, exacerbating the starvation. The spokesman for the traders, when informed of the starvation, replied, "So far as I am concerned, if they are hungry, let them eat grass."

Frustration and hunger led to foraging. One Indian foraging party attacked a settler family near Acton on August 17. With three men and two women dead, the Dakota gathered in Councils. If serious grievances had not been building up over several years, it is likely that the Dakota would have delivered the men to the Americans for punishment. Most of the older tribal members were reluctant to go to war, including the Dakota leader Little Crow (Taoyateduta). However, the younger tribal members managed to convince Little Crow that the time to go to war against the settlers was at hand.

On August 18, 1862, a Dakota force struck the Lower Sioux Agency, killing the inhabitants and taking control. They then surprised a forty man relief party of United States Army troops from Fort Ridgely, Minnesota, killing nearly all the troops. Attacks on Fort Ridgely and New Ulm followed over the course of the next week. Stiff resistance from settlers and soldiers prevented complete Dakota victory, but New Ulm was so badly burned that the inhabitants abandoned it and fled for safety.

⁶ Douglas Linder, The Dakota Conflict Trials, located at http://www.law.umkc.edu/faculty/projects/trials/dakota/Dak_account.html. Bishop Henry B. Whipple of Minnesota decried the lack of protection provided by the United States to murders committed against Indians in a letter to President Abraham Lincoln. He further described the corrupt nature of the Indian agents who received their jobs from political patronage and upon "a pittance of salary" were able to make a fortune within only a few years by misappropriation of funds sent for the benefit of the Indians. Bishop Henry B. Whipple, Light and Shadows of a Long Episcopate, (1902), located at <http://www.law.umkc.edu/faculty/projects/trials/Dakota/Light&Shadows.html>.

⁷ Chomsky, *supra*, note 4, at 17.

On August 19, 1862, Governor Ramsey sent Colonel Henry Sibley to lead a relief party 1400 men strong. A burial party sent out by Sibley was promptly ambushed by Dakota led by their leader Mankato near Birch Coulee. Sibley continued to move up the Minnesota River Valley, requesting that Little Crow surrender, but refusing to negotiate with the Dakota absent a total release of the Dakota's prisoners of war. Little Crow refused to yield without a guarantee of amnesty for his people, believing that no mercy would be shown the Dakota. However, Chiefs Wabasha and Taopi, who had always opposed the war, contacted Sibley.⁸ The fighting ended at Wood Lake on September 23, 1862, in a clumsy standoff with neither side sustaining major casualties. Little Crow, Shakopee (Little Six) and Wakanozanzan (Medicine Bottle) and others fled to the Dakota Territory after Wood Lake, and Sibley's force moved in and took 1200 Dakota men, women and children into custody, with 800 more surrendering in the coming days.⁹

Dakota Tried by a Military Commission without Representation

Colonel Sibley may have originally desired a court of inquiry with the simple purpose of collecting information. However, the order he issued appointed a five member military commission with authority to summarily try and pass judgment on Indians or mixed bloods if found guilty of murder or "other outrages."¹⁰ Although Sibley spoke of separating the guilty from the innocent, he also made statements which betrayed his prejudgment, stating that most of the men were "deeply implicated in the late outrages" and going so far as to warn that if any more Dakota went off to war against the whites he would "fall upon their camp and cut them to pieces, without regard to age or sex."¹¹ The trials were conducted illegitimately: if the Dakota action was considered as war with the United States, enemy soldiers could not be tried absent proof of gravely inhumane acts. Even if treated as sedition, as opposed to a federal criminal proceeding, the Dakota should have been afforded the complete protections of the United States Constitution, including the right to counsel and being judged by a jury of their peers. They were denied these protections.

The trials began immediately after the conflict ceased and were held near the sight of the battles. They began even though there was continued fear that other Dakota who had fled might return in battle. Those who had previously been under attack by the Dakota were now slated as their judges.¹² As such, the military trials of 425 full and mixed-blood Dakota took on a farcical

⁸ Chomsky, *supra*, note 4, at 21.

⁹ Id.

¹⁰ Order No. 55, issued at Camp Release (Sept. 28, 1862), reprinted in Trial Transcripts, cited in Chomsky, *supra*, note 4, at 23.

¹¹ Letter from Colonel Henry Sibley to Maj. Gen. John Pope (Oct. 7, 1862), cited in Chomsky, *supra*, note 4, at 25.

¹² Chomsky, *supra*, note 4, at 55.

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air, with many trials lasting only a few minutes each.¹³ Many convictions relied upon testimony of other accused who plea-bargained in return for leniency. The Commission conducted 393 trials over a six week period hearing and decided 40 cases on the last day alone.¹⁴ Reverend John Williamson stated that each defendant was "first prejudged guilty of any charge" and lamented that "innocence [would] be no guaranty of safety."¹⁵ Reverend Riggs, who secured information from the Dakota and was an observer at the trial was of the belief that the majority being tried participated in the conflict, but did not believe that a military commission acting with such haste could secure a fair trial for the accused.¹⁶

Bishop Whipple later wrote to the Secretary of the Interior stating that officers present at the trial assured him that the Commission "could not and did not make a careful examination."¹⁷ Even William Marshall, a member of the Commission, stated simply that his "mind was not in a condition to give the men a fair trial."¹⁸ Perhaps Reverend J.P. Williamson summarized the rapidity of the proceedings most succinctly when he stated that "400 [men] have been tried in less time than is general[ly] taken in the courts with the trial of a single murderer."¹⁹

As the trials progressed the quantity and quality of the evidence decreased and, many times, the mere allegation that one was present at a particular battle was sufficient to find guilt.²⁰ It is notable that no Dakota were provided with counsel, in contravention of the Sixth Amendment. One defendant who was educated and fluent in English later wrote that he thought that the trials were only to determine which prisoners would be held for future trials - he was not even aware that he could lose his life depending on the trial's outcome.²¹ Reverend Riggs later

¹³ Isaac Heard, Recorder for the Commission, noted that many trials would only last five minutes because the Commission had already learned the details of different battles and did not feel that they needed to hear more. Isaac Heard, History of the Sioux War and Massacres of 1862 and 1863, (1864), cited in Chomsky, *supra*, note 4, at 47.

¹⁴ Douglas Linder, How Fair were the Dakota Conflict Trials?, located at <http://www.law.umkc.edu/faculty/projects/ftrials/dakota/dakfairness.html>.

¹⁵ Cited in Chomsky, *supra*, note 4, at 55.

¹⁶ Cited in Chomsky, *supra*, note 4, at 47.

¹⁷ Id.

¹⁸ Douglas Linder, How Fair were the Dakota Conflict Trials?, located at <http://www.law.umkc.edu/faculty/projects/ftrials/dakota/dakfairness.html>.

¹⁹ Id.

²⁰ Id., at 48.

²¹ Douglas Linder, How Fair were the Dakota Conflict Trials?, located at <http://www.law.umkc.edu/faculty/projects/ftrials/dakota/dakfairness.html>. It is notable that the view of non-Indians was that the trials were fair. Isaac Heard, the Commission's Recorder stated that the officers composing the Commission were "all men of more than average intelligence" who "[b]efore entering upon the trials . . . were solemnly sworn to a fair and impartial discharge of their duties. It would scarcely be supposed that men such as these, after such an oath, would take away human life without the accused were guilty. Id.

expressed his apprehension at the way the trials proceeded. He stated that although he highly regarded the officers who comprised the Commission, he believed that the Dakota should have received "as fair and full a trial as white men. This was the difference between us."²²

In the end, 321 men were convicted and 303 were sentenced to die. After reviewing the massive number of death sentences, upon a request from Bishop Whipple, President Abraham Lincoln commuted all but thirty-nine of those sentences on December 6, 1862.²³ President Lincoln himself wrote out the thirty-nine names of the condemned men on executive mansion stationery. One of the men, Tatemima, received a last-minute reprieve, lowering the final death toll to thirty-eight men.²⁴ There was no judicial review of the sentences.

The Execution

Leading up to the execution, a large number of troops assembled in Mankato.²⁵ An order was then widely circulated, proclaiming that the executions would occur in the public square at 10:00 a.m. Until that time, martial law was imposed, and all intoxicants were banned until a day after the hanging for fear of a "serious riot or breach of the peace."²⁶ Martial law was enforced by a "vigilant patrol" that was organized to enforce this ban, with violations punished by "the immediate seizure and destruction of all the liquors of the offender."²⁷ A four-sided gallows was constructed and designed to hang ten prisoners on each side.

On December 26, 1862, three thousand people gathered to watch the hanging of these 38 Dakota, an act that remains the largest mass execution in United States history. Early in the morning, the condemned Dakota Indians began singing songs of death and continued while officials bound their arms with cords and placed white caps upon their head. At around 10:00 a.m., officials ushered the thirty-eight prisoners to the wooden scaffold, which was surrounded by more than 1,400 soldiers and citizens, many watching from rooftops and windows.²⁸

While singing, the prisoners ascended the gallows, and officials rolled the caps down over the prisoners' faces. A slow, deliberate drumbeat began and at the third drum roll, the rope was cut. Almost instantaneously, all but one of the thirty-eight men were suspended by the neck.

²² Id.

²³ Kenneth Carley, The Sioux Uprising of 1862, at 5 (1961).

²⁴ Id., at 65.

²⁵ The Sioux War, Mankato Weekly Record (Dec. 20, 1862), at 2, cited in John D. Bessler, The "Midnight Assassination Law" and Minnesota's Anti-death Penalty Movement, 1849-1911, 22 Wm. Mitchell L. Rev. 577, 600 (1996).

²⁶ Execution of 39 Sioux, Mankato Weekly Record Supplement, (Dec. 26, 1862), at 1, cited in John D. Bessler, The "Midnight Assassination Law" and Minnesota's Anti-death Penalty Movement, 1849-1911, 22 Wm. Mitchell L. Rev. 577, 600 (1996).

²⁷ Id., at 601.

²⁸ Carley, *supra* note 3, at 66.

One man, whose rope broke was immediately strung up again. As the platform fell, "there was one, not loud, but prolonged cheer" from soldiers and citizens alike.²⁹

The bodies were transported in wagons to a sand bar near the town and buried in a mass grave of thirty feet in length, twelve feet wide and four feet deep. They were covered with blankets and had dirt thrown over them.³⁰ By the next morning, most were exhumed and used for medical research or, worse, for target practice.³¹ Of the thirty-eight, only the remains of Stands In The Midst Of Clouds has been returned to the Dakota.³²

A Difficult Life For The Surviving Dakota

Although they escaped the gallows, life was not easy for those who were not executed. The government unilaterally declared the various land treaties negotiated with the Dakota as null and void due to the conflict. The Dakota were no longer permitted to live in Minnesota, Governor Ramsey stating unequivocally that the "Sioux Indians of Minnesota must be exterminated or driven forever beyond the borders of the State."³³ Further, the bounty on Dakota scalps was raised and Indian annuities were suspended and given to settlers to satisfy extravagant and unproven claims.³⁴ Approximately 1700 Dakota were rounded up and marched to Fort Snelling where they lived in cramped and unsanitary conditions. A large number died in the cold and inadequate encampment, with more to die later. They were eventually forcibly repatriated, overloaded on river steamers and held in various places until finally they were placed on reservations in Devils Lake in North Dakota and Sisseton in South Dakota.

RECONCILIATION

Reconciliation Park

Despite being banished "forever", the Dakota slowly, but significantly returned to Minnesota. However, for many years the Dakota avoided Mankato, passing through only at night until the 1970s. In 1912, a marker was erected to mark the site of the hangings by Judge

²⁹ Id., at 67.

³⁰ Isaac Heard, *History of the Sioux War and Massacres of 1862 and 1863*, (1864), cited in Douglas Linder, *Trials of the Prisoners*, located at http://www.law.umkc.edu/faculty/projects/trials/dakota/Trials_of_Prisoners.html.

³¹ Harold A. Ronnenberg, *How 38 Indians Died at Mankato*, MPLS. SUNDAY TRIB., Dec. 26, 1948; see also Frank Franciscus, *Army Captain Describes Burial of Hanged Indians: bodies dug up at night re-buried by soldiers next morning. Carter relates in execution*, MANKATO FREE PRESS, Jan. 25, 1937.

³² The Remains of the 38, located at <http://www.isd77.k12.mn.us/schools/dakota/conflict/remains.htm>.

³³ Carley, *supra* note 3, at 76.

³⁴ Id.

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Lorin Cray and his brother Nelson Cray, who were residents of Mankato. However, it was the subject of much bitterness and controversy and was often defaced.³⁵

Healing most significantly started in the 1960s when a respected Dakota spiritual leader, Amos Owen, joined with Mankato businessmen to teach children about Indian culture.³⁶ Later in 1987, in stark contrast to Governor Ramsey's call for extermination of the Dakota, Governor Rudy Perpich declared "a year of reconciliation" between the Dakota and non-Dakota in Minnesota.³⁷ In solemnization of this desire for healing, Reconciliation Park, dedicated in September 1997, was created on the exact site of the 1862 hangings to symbolize both reconciliation and celebration of heritage lost and remembered between the Dakota, Mankato and the nation.

As a way to honor that heritage and to remember those who lost their lives, the buffalo, which is a symbol central to the spiritual and physical survival of the Dakota, was chosen. A local artist was commissioned by several of the Dakota tribes and others to carve a buffalo of Kasota limestone. The 67-ton buffalo was placed very near to the site of the mass execution and is a bold visual reminder to all who pass by. A nearby plaque offers a prayer by Amos Owen of reconciliation.³⁸

At the public hearing held by the Board in Mankato on November 15, 2000, former Lower Sioux Community Tribal Chairman and Dakota spiritual leader, Dave Larson, affirmed the sacred nature of the site and noted the cooperation between the Dakota and their friends in Mankato in creating the park.³⁹ He requested that the Board protect the park and what it stands for. Unfortunately, the DEIS is deficient as it gives no indication as to the effect of the increased train frequency on the limestone buffalo statue which stands upon the site of the execution. Such a marked increase in frequency and length of trains will undoubtedly have a negative effect on the limestone and may cause cracks and irreparable damage to the statute's structure and to what it symbolizes.

³⁵ Monuments and Memorials, located at <http://www.isd77.k12.mn.us/schools/dakota/conflict/monument.ht>. During the 1970s, one bright soul tried to burn the granite monument down, but succeeded only in scarring its base.

³⁶ Jenny Stelton, *A Weekend of Reconciliation: Reconciliation Park Forgives but Doesn't Forget*, MSU REPORTER, Sept. 23, 1997, found at http://www.mankato.msus.edu/dept/reporter/reparchive/09_23_97/park.htm.

³⁷ C. Rhys Gaffier, *For 13th year, children learn Dakota way on Education Day*, MSU REPORTER, Sept. 23, 1997, found at http://www.mankato.msus.edu/dept/reporter/reparchive/09_21_99/news2.html

³⁸ "Grandfather, I come to you this day, in my humble way to offer prayers for the thirty-eight Dakota who perished in Mankato in the year 1862. To the West, I pray to the Horse Nation, and to the North, I pray to the Elk People. To the East, I pray to the Buffalo Nation, and to the South, I pray to the Spirit People. To the Heavens, I pray to the Great Spirit, and to the Spotted Eagle. And below, I pray to Mother Earth to help us in this time of reconciliation." Amos Owen, Prayer of Peace, located at <http://www.isd77.k12.mn.us/schools/dakota/conflict/park.htm>.

³⁹ Tim Krohn and Mark Fischenich, Feds Hear Rail Foes: Surface Transportation Board Hold Six Hours of Hearings in North Mankato, Mankato Free Press, located at <http://www.mankatofreepress.com/00116story1.html>.

Land of Memories Park

The Dakota also have a strong spiritual relationship with Land of Memories park. It is located near the confluence of the Blue Earth and Minnesota Rivers and has long been a traditional meeting and trading place of the Dakota. Many arrowheads and stone grinding tools have been found in a large, wooded mound, approximately 150 feet high, located within the park. Land of Memories Park is similarly related to the reconciliation between the Dakota and non-Dakota. In 1965, two men, Bud Lawrence and Barry Blackhawk, made a 100 mile memorial walk in honor of Amos Owen, and in connection with that, a powwow was held. Later in 1968, two men again walked the 100 miles in honor of Amos Owen. This was followed again by a powwow.⁴⁰ From these beginnings an annual powwow was established at Land of Memories Park in celebration of reconciliation; the annual powwow continues to this day.

Each Christmas Day, a Memorial Run from Fort Snelling to Mankato occurs to honor the 38 Dakota who were hanged. At midnight a vigil fire is started at Land of Memories Park in Mankato and runners from Fort Snelling, take turns running two mile distances carrying an eagle staff with 38 feathers, symbolizing the 38 Dakota hanged on that day. After a ceremony at Reconciliation Park, the participants continue to Land of Memories Park, where a religious and spiritual ceremony is held followed by a feast. At the public hearing, Dave Larson affirmed that Land of Memories Park is also considered sacred ground to the Dakota.⁴¹

Both Parks Are Eligible For Inclusion In The National Register

Although the DEIS briefly addresses the effect of the proposed project on cultural resources found both in the existing rail line and in areas of new construction, it is deficient in that it devotes only one paragraph to both Reconciliation Park and Land of Memories Park. Should the M-3 alternative be chosen, it would have an adverse effect on these historic properties as defined in 36 CFR 800.5:

An adverse effect is found when an undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.⁴²

⁴⁰ Reconciliation, located at http://www.isd77.k12.mn.us/schools/dakota/conflict/reconciliation_intro.html.

⁴¹ Krohn and Fischenich, *supra*, note 36.

⁴² 36 CFR 800.5(a)(1).

Further, under the National Historic Preservation Act, (NHPA), 16 U.S.C. §§ 470 et seq., the Park Service "shall ... take into account" the effects of any undertaking on a "site ... included in or eligible for the National Register."⁴³ The Advisory Council on Historic Preservation must be thereafter given a "reasonable opportunity to comment with regard to such undertaking."⁴⁴ If the effects are deemed to be "adverse," as set forth above, the agency is required to consider means for alleviating the impacts after consulting the State Historic Preservation Officer ("SHPO"), the Advisory Council on Historic Preservation ("ACHP") and the public.⁴⁵

The criteria for determining what is included in the National Register include structures or property:

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.⁴⁶

Reconciliation Park is the site of the largest mass execution in American history, a contemptible distinction, especially given the summary nature of the trials that led to the hangings. It undoubtedly qualifies as a site which is "associated with events that have made a significant contribution to the broad patterns of our history".⁴⁷ It is further "associated with the lives of persons significant in our past".⁴⁸ Expanding the existing rail corridor by approving alternative M-3 would have a dramatic negative effect on both sites and would significantly "diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, [and] association."⁴⁹

⁴³ 16 U.S.C. § 470f.

⁴⁴ *Id.*

⁴⁵ 36 C.F.R. § 800.5.

⁴⁶ 36 CFR §§ 60.4

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 36 CFR 800.5(a)(1).

Further, Land of Memories Park and Reconciliation Park should be included in the National Register due to their status as Traditional Cultural Properties (TCP). The following are guidelines regarding how to evaluate and document TCPs:

- 1.) Ensure that the entity under consideration is a property;
- 2.) Consider the property's integrity
 - a.) does the property have an integral relationship to traditional cultural practices or beliefs; and
 - b.) is the condition of the property such that the relevant relationships survive?
- 3.) Evaluate the property with reference to the National Register Criteria;
- 4.) Determine whether any of the National Register criteria considerations (36 CFR 60.4) make the property ineligible.⁵⁰

Reconciliation Park is a property that is integral to the cultural practices of the Dakota, which occur to this day. It is a site that transcends its location in Minnesota and is rooted in the greater Dakota communities' history and is important in maintaining the "continuing cultural identity of the community." Land of Memories Park also qualifies as a Traditional Cultural Property given its status as sacred ground and importance as a powwow ground, making it a site that is important in the maintenance of the cultural identity of the Dakota. Both sites are Rooted in the community's history and important in maintaining the continuing cultural identity of the community.

Sacred or Ceremonial Sites

Both Land of Memories Park and Reconciliation Park qualify as sacred, ceremonial sites which are important to the historic and present day culture of the Dakota. In the DEIS, the STB set forth criteria for what constitutes a sacred site by consulting the "Handbook of American Indian Religious Freedom." These are described as a site where:

- Where the ancestors rose from the earth
- Where the clan received its identity
- Where one's ancestors are buried
- Where the people receive revelation
- Where the culture's hero left ritual objects for the people
- Where the people make pilgrimages and vision quests
- Where the gods dwell

⁵⁰ Patricia L. Parker and Thomas E King, Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register Bulletin 38, located at <http://www2.cr.nps.gov/tribal/bull3803.html>

- Where animals, plants, minerals, or waters with special powers are found
- Places frequented by one's ancestors
- Where esteemed members of a group died or were buried
- Where miraculous or mythical events took place.
- Where ceremonies were held in the past
- Places recognized by other groups.⁵¹

Reconciliation Park qualifies under these criteria because it is a site where "esteemed members of a group died or were buried" and it also a site to which many Dakota make pilgrimages.

CONCLUSION

Both Reconciliation Park and Land of Memories Park are sites of significant historical and cultural value. Reconciliation Park is the site of the largest mass execution in American history and is eligible for inclusion in the National Register and both parks are extremely important to the continued cultural practices of Dakota Indians, both within and without Minnesota. The impact that the expansion will have on American Indians cannot be truly appreciated by simply referring to a map and finding present-day reservation boundaries. Reconciliation Park, built on the site where so many Dakota simultaneously lost their lives, is sacred ground. It is of indescribable importance to the Dakota, both within and without Minnesota, as well as non-Dakota alike.

Ideally, no action would be taken on this proposed expansion and the Board would adopt alternative M-1. If the Board determines that some action is necessary, then the Tribes request the Board to adopt alternative M-2 and build a bypass around the City of Mankato. To be sure, should the M-3 alternative be chosen, the solemnity and sacred nature of the sites would be defiled. The constant noise, exhaust and vibration of the planned number of trains so close to

⁵¹ DEIS 3.1-112-13

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the park would be an affront to the reverent standing of such a sacred ground. The Tribes request that the Board not deviate from its rejection of the M-3 alternative.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley R. Crooks". The signature is fluid and cursive, with the first name "Stanley" and last name "Crooks" being the most prominent parts.

Stanley R. Crooks, Chairman
SHAKOPEE MDEWAKANTON SIOUX
(DAKOTA) COMMUNITY

Audrey Kohnen, President

PRAIRIE ISLAND INDIAN COMMUNITY