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SURFACE TRANSPORTATION BOARD  
TRIBAL CONSULTATION SUMMIT

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Transcript of Proceedings  
October 9, 2007  
at 9 o'clock a.m.

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PRESENT:

Cathy Glidden, Surface Transportation Board  
Randy Withrow, Louis Berger Group  
Dave Bibler, Louis Berger Group  
Herb Jones, DM&E Railroad  
Jafar Karim, DM&E Railroad  
Ian Ritchie, Forest Service  
Wyatt Thomas, Santee Sioux Nation  
Jim Whitted, Sisseton-Wahpeton Oyate  
Alan Stanfill, HDR Engineering  
Mike Madson, HDR Engineering  
Doug Jackson, HDR Engineering  
Richard Wright, Ponca Tribe of Nebraska  
Melissa Lundberg, HDR Engineering  
Michelle Terrell, Two Pine Resource Group  
Curley Youpee, Ft. Peck Assiniboine & Sioux  
Jason Cruse, Augustana Archeology Lab  
Austin Buhta, Augustana Archeology Lab  
Bill Rannery, Augustana Archeology Lab  
Adrian Hannus, Augustana Archeology Lab  
Elgin Crows Breast, 3 Affiliated Tribes  
JoAnn White, Northern Arapaho  
Pamela Halverson, Lower Sioux Community  
Russell Eagle Bear, Rosebud Sioux  
Robert Campbell, Santee Sioux  
Erin Salisbury, SWCA  
Scott Slessman, SWCA  
James Lowe, TRC  
Nathan Fleming, TRC  
Gilbert Brady, Sr., Northern Cheyenne  
Ray Strelesky, Canadian Pacific Railway

Reported by Cheri McComsey Wittler, CRR, RPR

1                   The following proceedings were taken at the  
2                   Rushmore Plaza Civic Center, Room 101, Rapid City, South Dakota,  
3                   on the 9th day of October 2007, commencing at 9 o'clock a.m.;  
4                   before Cheri McComsey Wittler, a Registered Professional  
5                   Reporter, Certified Realtime Reporter, and Notary Public within  
6                   and for the State of South Dakota.

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1 MR. WITHROW: My name is Randy Withrow. I represent  
2 the Louis Berger Group, which is acting as the third-party  
3 contractor for the Surface Transportation Board. I need to  
4 begin this morning with an announcement and a couple of other  
5 items and then we'll do some introductions and those who would  
6 like to offer a prayer or blessing before we start can do so at  
7 that time.

8 The announcement is that Cathy Glidden who is the  
9 representative from the Surface Transportation Board is not here  
10 yet this morning. She's on her way. She was scheduled to  
11 travel in yesterday and she had a traffic mishap that apparently  
12 wasn't serious but it was enough to keep her from missing her  
13 flight so she didn't arrive yesterday as scheduled. She's due  
14 to arrive this morning at 10:30 so hopefully we'll see her by  
15 lunchtime. But she won't be here until then.

16 She asked me to fill in on her behalf to provide the  
17 opening remarks. And I'll do the best I can to cover some of  
18 the things I know she wanted to talk about.

19 Some other notes, we do have a recorder here to  
20 transcribe the meetings so that we can get copies of the  
21 discussions out to tribal representatives who aren't able to  
22 attend today. Cheri Wittler is our recorder. She has asked  
23 that just so she can make sure she's hearing everyone well  
24 enough, that we all use the microphones. They can be passed  
25 along the table. And as you do so, if you can please state your

1 name before you ask your questions or provide your comments,  
2 that would be helpful as well. She's got a lot of different  
3 names to try to remember, and it's obviously not an easy task.  
4 If we can all do that.

5 Let's see. By way of introduction, again, my name is  
6 Randy Withrow. I work for Louis Berger Group. We're  
7 third-party contractor to STB. We're essentially providing an  
8 assist role. We help set up these meetings. We do a lot of  
9 coordination to set up the meetings and contact tribal  
10 representatives. We also assist STB in reviewing reports and  
11 things that are created by DM&E and their contractors and just  
12 help facilitate a lot of the different project tasks.

13 I guess I'd like to ask folks to kind of go around the  
14 table. Maybe we could start on my right here with -- to the  
15 left. Okay. We can start with Pam here on the left, and we can  
16 just go around the table clockwise. Just please state your name  
17 and your organization and tribal affiliation if you would,  
18 please.

19 MS. HALVERSON: Pam Halverson, Lower Sioux THPO,  
20 Morton, Minnesota.

21 MS. WHITE: Good morning. JoAnn White, Northern  
22 Arapaho Tribe THPO, Wood River Reservation.

23 MR. CROWS BREAST: Good morning. Elgin Crows Breast,  
24 cultural preservation officer, THPO, NAGPRA rep, 3 Affiliated  
25 Tribes, New Town, North Dakota, Mandan Hidatsa Arikara Nation.

1 MR. HANNUS: Good morning. I'm Adrian Hannus. I'm  
2 from over at Augustana College and the Augustana Archeology  
3 Laboratory. We're doing the south new build part in  
4 South Dakota.

5 MR. WHITTED: Jim Whitted, Sisseton-Wahpeton Oyate  
6 Tribal Historic Preservation Office.

7 MR. RANNEY: I'm Bill Ranney. I'm an archeologist  
8 with Augustana.

9 MR. BUHTA: I'm Austin Buhta, archeologist with the  
10 Augustana Archeology Lab.

11 MR. CRUSE: Jason Cruse, archeologist with Augustana  
12 College Archeology Lab.

13 MS. TERRELL: I'm Michelle Terrell with Two Pines  
14 Resource Group. We're doing the archeology along the Minnesota  
15 portion of the route.

16 MS. LUNDBERG: Melissa Lundberg with HDR Engineering.

17 MR. STANFILL: Alan Stanfill with HDR Engineering,  
18 Sioux Falls.

19 MR. MADSON: Mike Madson with HDR Engineering. I'm  
20 the manager of the cultural resources program for DM&E for the  
21 Powder River Basin Project.

22 MR. WRIGHT: Good morning. My name is Rick Wright.  
23 I'm with the Ponca Tribe of Nebraska.

24 MR. BIBLER: I'm Dave Bibler. I'm with Louis Berger,  
25 STB third-party consultant.

1 MR. KARIM: I'm Jafar Karim. I'm with DM&E Railroad.

2 MR. JACKSON: I'm Doug Jackson with HDR Engineering.  
3 I'm the project manager for the engineering and the construction  
4 of the project.

5 MR. STRELESKY: Good morning. I'm Ray Strelesky with  
6 Canadian Pacific Railway out of Minneapolis.

7 MR. JONES: I'm Herb Jones with the DM&E Railroad,  
8 director of government affairs and tribal liaison.

9 MR. RITCHIE: I'm Ian Ritchie with Thunder Basin  
10 National Grassland with the Forest Service.

11 MR. BRADY: Good morning. I'm Gilbert Brady. I'm  
12 with the cultural resource consulting for my tribe, the Northern  
13 Cheyenne, and I was also the former THPO officer, the NAGPRA  
14 rep, and all that goes with the tribal titles.

15 MR. FLEMING: I'm Nathan Fleming with TRC. We did a  
16 portion of the Wyoming archaeological survey.

17 MR. LOWE: James Lowe with TRC. Working on the same  
18 thing Nathan is.

19 MR. SLESSMAN: Morning. Scott Slessman with SWCA, and  
20 we are conducting archeology on the new build portion in  
21 Wyoming, segments 3 and 4.

22 MS. SALISBURY: Erin Salisbury with SWCA. I'm doing  
23 the same thing as him and also assisting with the archeology  
24 along the whole alignment.

25 MR. CAMPBELL: Robert Campbell, Santee Sioux Nation,

1 Santee, Nebraska.

2 MR. THOMAS: Good morning. I'm Wyatt Thomas. I'm  
3 from the Santee Sioux Nation Tribal Secretary, tribal rep.

4 MR. EAGLE BEAR: My name is Russell Eagle Bear. I'm  
5 the RST THPO.

6 MR. WITHROW: Okay. Thank you all very much for  
7 coming. I know many of you traveled a long distance to get  
8 here, and we appreciate you being here. I'd like to welcome  
9 everyone, and I guess at this time if anyone would like to offer  
10 a prayer or blessing to get us started here, please welcome to  
11 do so.

12 MR. EAGLE BEAR: First of all, welcome to the Paha  
13 Sapa, the Black Hills. Our Lakota people have been fighting for  
14 this Black Hills for a little over a century now. And it's  
15 still a legal issue. And it's a sacred area to our people. And  
16 so every time I step into this area then I do it with prayer.

17 So with that, I'm going to say a prayer in my  
18 language, the Lakota language, so bear with me.

19 (Mr. Eagle Bear says prayer in Lakota)

20 MR. WITHROW: Okay. Just in terms of some general  
21 housekeeping items and things like that before we get too far  
22 into the discussion today, there are some handouts available  
23 over on the table by the wall. Some of you who have been to  
24 previous meetings for this project may already have copies of  
25 some, but you're welcome to help yourself to what's over there.

1           There are some project maps, copies of Programmatic  
2 Agreement that's been executed for the project as well as some  
3 copies of the PowerPoint presentations that are going to be made  
4 today, which you're welcome to any of those handouts and please  
5 help yourself.

6           Just in the way of background and some notes about the  
7 purpose of this meeting, just like to say a few words to get us  
8 started.

9           As I said, there were several meetings that were held  
10 in August in Gillette, Pierre, and Tracy in the middle of  
11 August. The purpose of that meeting was really to reestablish  
12 the Government-to-Government consultation between the Surface  
13 Transportation Board and other federal agencies and Indian  
14 nations. Also to discuss the consultation need for the project  
15 and to get a sense for what preferred procedures were for  
16 continued consultation on the project.

17           And the purpose, of course, is to provide a means for  
18 tribal involvement in the identification and evaluation of  
19 cultural resources and traditional cultural properties that may  
20 be affected by the proposed railroad project.

21           The tribal representatives present at those meetings  
22 gave us a lot of good information, and in particular several  
23 asked for several things, which we then used to help set up and  
24 organize this meeting, one of which was a request to hear from  
25 the survey teams involved in doing the archaeological surveys

1 along the project corridor and to hear from them and have an  
2 opportunity to ask questions of them about the work that they're  
3 doing and the things that they are finding.

4 And as you've heard in the introductions, there are a  
5 lot of archeologists sitting at the table today. Those people  
6 represent the different subcontractors working for HDR and the  
7 DM&E Railroad on those survey efforts. And they'll be giving  
8 some presentations as part of today's discussion, and you'll  
9 have an opportunity to ask questions of them.

10 There's also a request for time to be set aside for  
11 tribal representatives to caucus in private amongst themselves  
12 to discuss the project and coordinate some of their concerns.

13 And also another key item was discussion of ways to  
14 provide adequate tribal involvement in the process. And in  
15 particular one thing that was discussed was designing or  
16 developing a way to do cultural surveys that would be conducted  
17 by tribal members, different parts of the project where they had  
18 concerns.

19 So today's meeting was set up in response to some of  
20 those comments and is designed to address those -- at least get  
21 us started in those directions.

22 And I'd like to call your attention to today's agenda  
23 just to tell you a little bit about how the day will run today,  
24 at least as it's planned and as well as day two and three of  
25 this tribal summit.

1 Day one is really an information session primarily.  
2 Again, it's mostly survey teams are here to provide some  
3 background on what they've been doing and looking at each of  
4 them, 15- to 20-minute presentation describing the work that  
5 they're doing and some of the things that have been found to  
6 date and update people on where the reporting process is on that  
7 work.

8 And that will be followed by question and answer  
9 sessions following each individual presentation.

10 We're going to start this morning, however, with some  
11 background information on the project. We have several  
12 individuals here from DM&E Railroad who will provide some  
13 background on the project itself. Doug Jackson is here from  
14 HDR, the lead design firm on the project and ask answer  
15 questions about the project design itself.

16 And Mike Madson will provide an overview of the  
17 cultural resource survey work that is being coordinated by HDR.

18 We'll have a brief break in the midmorning and start  
19 the survey team presentations.

20 Lunch today is actually being served in the  
21 Holiday Inn. There's a dining room. It's called the Private  
22 Dining Room. You can find it as you go through the main door at  
23 the hotel, kind of bear to the left through the little dining  
24 area that's the open area in the courtyard and just continue  
25 following left and there's a private dining room that's being

1 reserved for us for lunch.

2 This afternoon we'll wrap up what remains of the  
3 survey team presentations still to be discussed and then we'll  
4 have an open discussion session this afternoon to talk about  
5 that work and how we move forward from there.

6 And part of that discussion really will emphasize or  
7 needs to emphasize our overall goal for this meeting, which is  
8 to start thinking about areas that tribes are interested in  
9 along the project corridor. Again, it's about a 1,000-mile long  
10 corridor, and STB has been working with or contacting 33  
11 different tribes with interests along the project, and many of  
12 them unable to attend today's meeting, but I still expect a  
13 number to arrive yet today.

14 We need to identify areas along -- of tribal interest  
15 along that corridor. Obviously there will be some areas of  
16 overlap that we'll too -- and to the extent that that's the  
17 case, we'll be interested in coordinating efforts in those  
18 sections of each of the project areas as much as possible.

19 But we really need to talk about, you know, the basic  
20 kinds of information that need to be gathered as part of these  
21 cultural surveys and then I think start talking about how we  
22 operationalize that or put that into action. So we're really  
23 looking at defining a set of tasks designed to gather the  
24 information that's needed, perhaps site visits, individual  
25 surveys by tribal members, oral history reviews, and other

1 things that may be needed. It's really looking to tribal  
2 representatives to help us understand what they think is needed,  
3 and then we will find a way to make that happen.

4 So those really are the goals, primary goals and  
5 objectives for this set of meetings for the next three days. We  
6 really hope to end up after day three -- I guess I hadn't  
7 mentioned that yet, but day three is kind of set up as an open  
8 discussion but really focusing on developing a plan of action or  
9 a work plan, if you will, for the cultural surveys that need to  
10 be done.

11 And there are some -- I guess as part of the agenda,  
12 there are some suggested questions and things that outline the  
13 kinds of information needs that I think we have. And obviously  
14 there may be others, but just a way to try to coordinate that  
15 discussion, move us in the right direction.

16 In terms of I guess I can provide some brief  
17 background to those who are attending the project meetings on  
18 this for the first time. A lot of the information that I think  
19 will help you understand the project and where things are at  
20 this point are included in a lot of the handouts. And in  
21 particular I would call your attention to the Programmatic  
22 Agreement itself, which includes a copy of the identification  
23 plan developed as part of that agreement.

24 There's a six-page Status Report over there as well,  
25 which was sent to tribal chairs and representatives back in May

1 of this year. It includes an update, I guess, an overview of  
2 the work that had been completed on the project since 1998,  
3 including information about the 20 or so tribal meetings that  
4 took place between 1998 and 2002 when the Programmatic Agreement  
5 was being developed.

6 And there's also a document over there called the  
7 Tribal Consultation Summary. It's somewhat dated. It was  
8 included as an appendix item to the Environmental Impact  
9 Statement that was issued in 2002. It summarizes the  
10 consultation efforts that took place between 1998 when the  
11 initial tribal notification took place and 2002 when -- or I  
12 think actually it only goes through 2000. But it does summarize  
13 the meetings and some of the attendees and who was participating  
14 in the effort at that time. So you may find that useful.

15 There's also a more detailed project time line over  
16 there that we've put together to try to give people an overall  
17 sense of different kinds of activities that have taken place  
18 since the DM&E's intention for the project was announced in  
19 1998. And it reviews some of the milestone dates for completion  
20 of the Environmental Impact Statement, the tribal consultation  
21 meetings, development of the Programmatic Agreement, and runs  
22 through starting some of the survey work, some of the reporting  
23 that was done on those early surveys, some of which were  
24 actually done in 2000 and 2001 and continues up through the  
25 present.

1           Basically what you'll recognize is that this project  
2 has a very long history already. And for some of you attending  
3 for the first time this may come as something of a surprise.  
4 But it's very possible and likely, I think, that other  
5 representatives of your tribe may have participated at one time  
6 in the past. And some of that information is included in the  
7 tribal consultation summaries. You may want to review that.

8           Some of the rest of us, myself included, are fairly  
9 new to the project. Louis Berger has been involved since  
10 January of this year. We were not involved in the earlier work.  
11 So our memory or understanding of the project is somewhat  
12 incomplete for that early period. And actually there are a lot  
13 of new actors on the consulting side of this project for DM&E as  
14 well. There's been some unfortunate discontinuity in personnel,  
15 but there still are people who were involved from the very  
16 beginning, including Herb Jones from DM&E is here today and  
17 Kevin Schieffer who was planning to be here but apparently could  
18 not attend. And those folks can speak a little bit more in a  
19 minute about some of that early tribal consultation work.

20           As far as the NEPA review and things that were done  
21 initially, as I said, DM&E announced their intention to expand  
22 their network into the Powder River Basin in eastern Wyoming in  
23 1998. And STB in response to that issued their intent to  
24 develop an Environmental Impact Statement for the project, which  
25 was done, and STB issued their final approval and issued the

1 final Environmental Impact Statement in February of 2002.

2 There was then a fairly long hiatus when the  
3 Environmental Impact Statement was challenged in court soon  
4 thereafter, and there were a series of court challenges that  
5 were resolved through the Eighth Circuit Court of Appeals. And  
6 there were several remands by the court which the STB addressed  
7 in a supplemental Environmental Impact Statement which was  
8 approved in February of 2006.

9 And shortly thereafter the cultural resource  
10 investigations resumed. But there was a hiatus there from  
11 between 2001 when some of the survey work was -- initial survey  
12 work had been started with the assistance of tribal monitors, I  
13 should mention, and the time that they were resumed last fall.

14 Let's see. What else is of importance there to note  
15 in terms of the time line?

16 STB's renotification of agencies and tribes was issued  
17 in a letter dated May 18 of this year, and as part of that  
18 process we held our first set of new consultation meetings with  
19 tribes in August. And this is the second round of meetings with  
20 tribes to, again, help bring everyone up to date on what's been  
21 completed thus far and to design a plan for where we go from  
22 here. So this meeting really is a key and important meeting for  
23 this project, and I'm happy that everyone is -- that's here is  
24 able to attend, and I really hope for a positive and productive  
25 meeting.

1           And with that as an introduction I guess I'd like to  
2 turn the microphone over to Herb Jones who is again with  
3 DM&E Railroad, and Herb can provide some background on the  
4 project itself and his project team.

5           MR. JONES: Thanks, Randy. Am I on here? Okay. I  
6 want to thank everybody for being here today too. And this  
7 is -- this meeting, these meetings these next three days are  
8 kind of the result of the first round of meetings in August. I  
9 thought those were informative. I did want to let you know too  
10 that Kevin Schieffer who intended to be here and is unable to  
11 attend, he had to cancel all of his meetings in South Dakota and  
12 Minnesota and Iowa we've got scheduled for these days this week.  
13 And he asked me to express his regrets to you for not being able  
14 to be here.

15           He was able to attend the meeting in Pierre in August,  
16 and it was a good meeting. We had probably about as many  
17 attendees as we had in those three. Anyway I wanted to let you  
18 know that he's not able to be here.

19           I'm Herb Jones, the Government affairs director for  
20 the DM&E Railroad, serve as the tribal liaison as well. I've  
21 been that for two years, and I too am coming up to speed on some  
22 of the history of the project and interaction with the tribes  
23 and look forward to visiting with some of you who have been  
24 around longer than that who can share how this all happens to be  
25 where we are today.

1           But I think the one thing that is important in looking  
2 at is there is a 10-year history that's been successful, and  
3 people have worked together to get us here. And we're changing  
4 phases. We're going from this kind of planning that we've been  
5 in for the 10 years. We're at the beginning of the construction  
6 phase coming up, and when we make that transition there are  
7 things that need to be done in order to allow that to happen.  
8 So that's part of what we're here to discuss as well is kind of  
9 that transition from the planning to the construction phases.

10           I did want to let you know I know there's been news  
11 recently about the acquisition of the DM&E by the Canadian  
12 Pacific. That's new. That's new to us. Don't know how all of  
13 that shakes out exactly, but we're working those issues today.

14           Ray Strelesky is here from the Canadian Pacific beside  
15 me. Introduced himself earlier. Ray's here to observe and get  
16 up to speed himself on these issues. So we're here again, as I  
17 think we should be, to observe and to hear what people have to  
18 say, to try to open the door to communications to those who we  
19 haven't spoken to before and to let you know -- I want to let  
20 you know for the next three days I'm going to be here. If you  
21 have questions you'd like to discuss with me about the DM&E  
22 Railroad, about the project, any aspects of the project, I'd be  
23 happy to discuss those with you in any way that you choose.

24           Before we get underway, I do want to kind of highlight  
25 a little bit about the history of the project and explain a bit

1 about how we got here. Randy covered that history, you know,  
2 from 1998 when the DM&E applied to the Surface Transportation  
3 Board for the authority to build into the Powder River Basin  
4 Project and to rehabilitate its existing line.

5 And, Jaf, if you could put the map up there, I'm going  
6 to go into that a little bit because I think it's helpful for  
7 people who are new to the project to kind of understand what  
8 this is and what the project really is about, where it is and  
9 how the DM&E itself is configured today.

10 But in that time line, just so you know, the DM&E  
11 Railroad, if you look at the map there, the segment that is the  
12 furthest to the left it says, New Build Section. That section  
13 doesn't exist today. That's the section of the railroad that  
14 would be built in to access the Powder River Basin in Wyoming.

15 The rest of the line that you see that goes from  
16 essentially Wall, South Dakota to the river at Winona in  
17 Minnesota, that is our existing DM&E main line railroad. That's  
18 where we are today.

19 And the project that we're talking about impacts the  
20 entire area in that we would be rehabilitating parts of that,  
21 and we would be expanding parts of that. But I just wanted to  
22 get that at least frame of reference kind of in your mind as  
23 we're talking about it.

24 But in 1998 when the DM&E went to STB and applied for  
25 the authority it included the ability to build into the Powder

1 Basin and to rehabilitate the existing line. There was a long  
2 process, the Environmental Impact Statement process that we went  
3 through, and in November of 2001 the STB released the final  
4 Environmental Impact Statement, and then in January of 2002 the  
5 Surface Transportation Board based on that Environmental Impact  
6 Statement approved the project to move forward.

7 One thing that I think is important to understand in  
8 that process is that this isn't something -- the configuration  
9 that you see, for instance, in the new build was something that  
10 was the result of a lot of public comment and tribal  
11 consultation. There were various routes that could have been  
12 selected that were looked at before the final route was  
13 selected.

14 And I think sometimes that's kind of forgotten because  
15 this is where we are today, that there was a process that  
16 everybody went through that ended up with the alignment that you  
17 see up there today.

18 But I'll get into that just a little bit. But, again,  
19 what you see here is what's the approved route. There were a  
20 number of alternative routes that were considered for that new  
21 build portion of the line especially.

22 As Randy said, that initial decision was challenged  
23 and approximately 98 percent of it was supported by the  
24 Eighth Circuit Court of Appeals. There were four issues that  
25 they sent back to the STB for further review. The STB looked at

1 those issues and issued what ended up being the Final  
2 Supplemental Environmental Impact Statement then. And that was  
3 issued in December of 2005. And then based on that, the STB  
4 provided its final approval for the project in February of 2006,  
5 and that was, again, challenged in court.

6 And then the Eighth Circuit Court of Appeals in  
7 December of 2006 ruled in favor of the entire EIS, and that was  
8 the final green light, no challenge to that.

9 So it was a long process, 10 years of getting through  
10 that or nine years of getting through that. And that was the  
11 green light then to be able to proceed with some of the  
12 activities that have been on and off for some of the years prior  
13 to that based on some of these actions that needed to be taken  
14 or were taken.

15 The one thing I think is important is that there  
16 was -- in the process there was -- and Randy covered this too.  
17 And maybe you have the documents, but the tribal consultations,  
18 there is a history of that in the early part highlighted in the  
19 draft EIS. It was Appendix I, Attachment 1, which kind of  
20 highlighted that.

21 But there's one part that I thought was pretty good,  
22 and that was in the Final Supplemental Environmental Impact  
23 Statement so it was the final document. There was one paragraph  
24 I'd just like to read one highlight from the paragraph because I  
25 think it kind of captures a lot of what went on, and I'd rather

1 not waste your time. Let me just kind of read what this says.

2 It says, "During preparation for the EIS and the  
3 Programmatic Agreement STA and the cooperating agencies attended  
4 two intertribal meetings, one in Williston, North Dakota and one  
5 in Rapid City, South Dakota. These meetings were scheduled for  
6 the express purpose of reviewing the Programmatic Agreement to  
7 the tribes, discussing their concerns and making appropriate  
8 revisions to the Programmatic Agreement.

9 "Additionally, STA participated in 20 other informal  
10 meetings with the tribal chairman, Tribal Historic Preservation  
11 Officers, and other tribal representatives to discuss the  
12 proposed project and any tribal issues related to the project or  
13 the Programmatic Agreement. Draft copies of the Programmatic  
14 Agreement were circulated to the 33 tribes identified as  
15 interested parties.

16 "Additionally, the tribes were provided copies of the  
17 EIS, had the opportunity to provide comments on the Programmatic  
18 Agreement during the comment period of the draft EIS."

19 The reason I say that is we've had some of the  
20 meetings people asked about are there ways we can change things?  
21 Is there something that can be done with the Programmatic  
22 Agreement? Is there something that can be done with the route  
23 or anything like that?

24 I think it's important to understand the history of  
25 what went into the development of the route. I'd just cite one

1 example to you. And I've talked this over with some folks too.  
2 But in the course of looking at the alternatives, the different  
3 ways, for instance, that you could get from Wall, South Dakota  
4 to Gillette, Wyoming, a number of alternatives were discussed.

5 One route in particular was of concern to tribes. It  
6 was expressed at several of the meetings. And that was a route  
7 that followed the Cheyenne River down by Shannon County and went  
8 right next to the community of Red Shirt. That was an issue  
9 expressed to the -- at the public meetings. There was actually  
10 a -- I know at one public meeting besides the tribal meeting  
11 that came up. And ultimately the decision was made not to use  
12 that route and to go further west.

13 Again, it was a result of input from the public,  
14 inputs from the tribes that allow the impacts of those routes --  
15 the various routes might have. Ultimately, again this is the  
16 configuration that we've got to work with today. This is what  
17 we have.

18 When we talk about what can be done, for instance,  
19 during construction, and people have asked, well, can we -- are  
20 there other ways to look at routing the train traffic or routing  
21 the construction. That part of it is something that's been  
22 dealt with already.

23 Now there are impacts, for instance -- we're going to  
24 be able to hopefully discuss a lot of this with you and how best  
25 to go about this. There are things for instance we can do to

1 minimize impacts during construction or to avoid particular  
2 sites or areas during construction. For instance, putting in --  
3 if you're accessing a property in a certain way, there are ways  
4 you can access the property that would avoid any kind of  
5 problems with sites.

6 So, I mean, those kinds of things. But the route  
7 selection itself, where we are, is a product of this 10-year  
8 process that got us here today. But I just -- to me I think  
9 from questions that have been asked some kind of frame of  
10 reference for that history a little bit and what went into where  
11 we are today I hope is helpful.

12 That is, this process ended up with what we have today  
13 in the Programmatic Agreement. I think we all probably have a  
14 copy of the Programmatic Agreement that was actually finalized  
15 in -- Randy, is it May of 2003 I think?

16 MR. WITHROW: That's right.

17 MR. JONES: I think when it was executed anyway. And  
18 that document was arrived at through this process, and it's  
19 documenting some of that history that went into it. But we had  
20 the Programmatic Agreement to operate from today. That's our  
21 blueprint. When we look at it that's what we're acting on in  
22 how to move forward. And I would encourage those who are new to  
23 it to spend some time going through that document if you haven't  
24 already. I think it's pretty enlightening just to see what all  
25 is in there. And it may answer a lot of the questions that

1 people have about identification or, again, some of the process  
2 that went into this as well.

3 I've covered the map overview. But the one thing I  
4 wanted to make sure too people understand is from Wall -- the  
5 first segment up there says, New Build Section, and then it  
6 says, PRC, Pierre-Rapid City Section, from Wall to Pierre, that  
7 is all -- that construction will be within our existing right of  
8 way that we have today.

9 A lot of that section requires more work because that  
10 rail line will be offset from the current configuration. It's  
11 still within the -- some of it will be. Still within our right  
12 of way, but there will be more work done in that area than if  
13 you go from Pierre to that whole last section going through  
14 Minnesota. That will be rebuilding the existing line as it is  
15 today, rehabilitating it.

16 So that is -- the entire thing is covered by the EIS.  
17 Not just the new build part. We're talking about the whole  
18 thing is covered by the EIS. But the relative impacts, as you  
19 can see, would be different based on the type of work to be  
20 conducted over the project.

21 Hope that, again, sheds some light a little bit about  
22 how we operate today. This isn't our entire system. This is  
23 the main line on the DM&E as you see it. We also have a line  
24 that goes up into Cowley, Wyoming. We have the sister railroad,  
25 the ICE, that is from Iowa to Minnesota, Illinois, Missouri,

1 et cetera. But this is the part that's covered by the project.

2 The one thing I would like to say is when we move into  
3 the construction phase there will be employment opportunities  
4 out there too. And I think that's one of the issues that  
5 have -- that people have expressed interest in as well,  
6 coordinating that, what has to be done. And I asked the folks  
7 at the meetings that we had in August if you have thoughts about  
8 successful programs that include the bringing on line for work  
9 tribal members. We'd sure like to visit with you about how  
10 those things have worked, how best those things would be  
11 structured.

12 The employment that we're looking at, there's a couple  
13 of ways of looking at. One is construction phase and then  
14 long-term employment beyond that. And ideally you would find  
15 people that you can bring in in the early part of that, have  
16 them work on the construction phase and transition them into  
17 long-term employment as well.

18 But that's something, again, some of you said things  
19 to me. If you want to discuss those types of opportunities and  
20 how they worked, how they worked best for the tribe before, I  
21 hope you would share that with me.

22 For the next three days, today, tomorrow, and  
23 Thursday, I'm going to be around here. I'd be happy to discuss  
24 with you any of your concerns, try to answer any of your  
25 questions that you have. I'm not going to pretend like I've

1     been around long enough to have all the answers. I'll probably  
2     learn a lot from you. But I would like to, if there are  
3     questions that I can help you with, try to get the answers for  
4     you. I look forward to working with you as we move forward  
5     here.

6             And I just want to say my phone line's always open.  
7     The door's always open. If you have anything after we get out  
8     of here on Thursday that crosses your mind, don't hesitate to  
9     call or stop by too.

10            This to me is a process that will take a long time to  
11     go through, and it's going to require a good relationship with  
12     the people. And I hope to get to know you and hope you get to  
13     know me throughout this process.

14            Randy, that's kind of what I wanted to do, just an  
15     overview, and if there are questions, I'd be happy to try to  
16     address whatever I can. But what we are doing is working with  
17     our consultants, with the engineers to do this thing, do it the  
18     right way, use the blueprints that we have to guide us, and to  
19     work with the STB using your guidance with them and your  
20     consultation with them to help do this thing right.

21            And, again, always an open door. Hope you'll keep us  
22     in mind if there is anything we can be doing directly with you.  
23     We'd like to help in any way we can and not make this more  
24     anymore of a -- you can call any time. That's all I'd say.

25            Thanks, Randy. I appreciate it.

1 MR. WITHROW: Thank you, Herb. Are there any  
2 questions people have? Anything in my opening remarks or  
3 anything that Herb covered?

4 MR. YOUPEE: Curley Youpee, Ft. Peck Assiniboine and  
5 Sioux Tribes. I'm going to comment on the opportunity that you  
6 addressed, the employment opportunity.

7 Have you did any research or any ground work to  
8 establish the social economic picture of the tribes with any  
9 area, those conditions?

10 MR. JONES: Currently for me just looking to say, I  
11 mean, this is what we're here for now, to work with you folks  
12 and find out how --

13 MR. YOUPEE: I understand that. I understand that.  
14 Just answer the question, please.

15 MR. JONES: I have not.

16 MR. YOUPEE: You have to realize that the tribes are  
17 in a captive existence, if you will, who are sometimes forgotten  
18 or not included in the table of discussions regarding social or  
19 economic development. And the project here, the railroad  
20 project, that is treading on a great deal of treaty territory.

21 Now treaties that were established, tribes also had  
22 reserved rights that weren't included in those treaties. They  
23 weren't stated in those treaties. That includes burial grounds  
24 or sacred sites. Tribes didn't have a mechanism with the higher  
25 powers to establish monetary benefit on these items. There in

1 the land claims, those weren't included as part of the  
2 discussions or part of those compensation. So we still have  
3 that to deal with in monetary figures.

4 We understand that just this railroad is for the  
5 benefit nationally, possibly globally, but we examine this. We  
6 see little, very little, of that economic (Inaudible) going to  
7 tribes who will be losing the greatest resources, the sacred  
8 resources that is part of their life. So there is a great  
9 disruption that is happening as we speak.

10 I just wanted to make sure that you're aware of those  
11 as well. They will be part of our discussions.

12 MR. JONES: Look forward to that. Thank you.

13 MR. WITHROW: Any other questions, comments?

14 Okay. I guess the next presentation we were looking  
15 for some discussion of the project engineering. Doug Jones --  
16 I'm sorry. Doug Jackson from HDR Engineering.

17 MR. JACKSON: Good morning to you all. Welcome. I'm  
18 going to stand up here so I can point out some things on the  
19 slide presentation I'm going to give you. I promise you're not  
20 in trouble with the engineer with a laser pointer and a  
21 PowerPoint up here. I'll keep it brief and try to keep the  
22 engineering detail out of here as best we can or brief as we can  
23 so I don't bore you.

24 Herb mentioned earlier I think one of the new things  
25 that's just recently come up was the merger between the DM&E

1 Railroad and the Canadian Pacific Railway. And this is just a  
2 slide that shows the system map of those two railroads. The  
3 trackage or the alignments shown in red is the CP railroad's  
4 existing track, their system. They have about 13,000 miles of  
5 track.

6 And what is shown in blue is what's referred to as the  
7 DM&E and IC&E, the Dakota Minnesota & Eastern. Herb mentioned  
8 earlier the Dakota Minnesota & Eastern runs from on the east  
9 point from Minnesota right at the Mississippi River all the way  
10 over into Rapid City currently and then with the planned  
11 extension into the Powder River Basin in Wyoming.

12 The other track that you see on here is the IC&E,  
13 which is the Iowa, Chicago & Eastern Railroad. It's a sister  
14 railroad to the DM&E, and that together makes up the total  
15 system of the DM&E and the IC&E. You also hear reference to the  
16 Cedar American Railroad, which is the company that holds both of  
17 those railroads.

18 First off, I'll apologize a little bit as we go  
19 through these slides. I noticed already as the people made  
20 their introductions the different subconsultants that are  
21 working for HDR talked about the sections that they're working  
22 on, and it may be confusing for everybody in the way we've  
23 termed these sections. But I'll apologize.

24 As we go through these mileages keep in mind we  
25 engineers have a tendency to juggle the mileages that we're

1 talking about, and we're not always clear on them. There's a  
2 difference for us in root miles versus track miles. Some of the  
3 miles I'll tell you in these slides have to do with root miles,  
4 being the end-to-end track system that's there. Track miles,  
5 meaning if we have yards or siding, we add the track mileage to  
6 that so the mileages are higher.

7 This line actually we had 280 miles shown for the new  
8 build section which runs from Wall, South Dakota. And right now  
9 if you know where the airport is in Wall, we basically come  
10 along the north and west side of the Wall Airport, go under  
11 Interstate 90. We have to build two new bridges on  
12 Interstate 90. And then from there we start heading south and  
13 west toward Smithwick, South Dakota.

14 New build section, it's actually 262 miles. I think  
15 this slide is a little bit old. We actually stop short and cut  
16 the mileage off where we cross under an existing highway just  
17 before we go into mine property. That's the difference in the  
18 mileage.

19 So you're going to go hear reference to the new build  
20 section. New build meaning it's all brand new territory. New  
21 alignment, new grade. There is no track there currently.

22 The next section that you'll hear us refer to is the  
23 PRC. The PRC, the railroads name their subdivisions, and they  
24 divide their line up based on how they perform maintenance and  
25 where they assign staff. So you'll hear the term used

1 subdivisions. The PRC used to stand for the name was the Pierre  
2 and Rapid City Subdivision. It will no longer run from Pierre  
3 to Rapid City on alignment because of the new alignment. This  
4 section of track will actually stay in place. But we kept the  
5 name PRC because of the past history on the project and the PRC  
6 is a separate segment and I'll get into it because of some  
7 distinct issues that we have there with designing and  
8 reconstructing that part of the project.

9 The third project we have is what we refer to as the  
10 rehab section, and that runs from Pierre, South Dakota all the  
11 way to Minnesota City where we actually now actually then  
12 connect with the CP Railroad, or we will build a connection to  
13 the CP Railroad as a part of this project. And that's all an  
14 existing right of way. It's all existing track. I'll talk  
15 about some of the differences there.

16 The fourth project that we have is Mankato, Minnesota.  
17 We'll talk a little bit about it in detail. Mankato, Minnesota  
18 has two routes that we are doing engineering on and cost  
19 estimating on. They have what we refer to as the south route,  
20 which is the southern alignment around Mankato when we bypass  
21 the city. And then there's what we refer to as the through town  
22 route or the north town route, which is where we run through  
23 Mankato on existing track on existing right of way that is  
24 there.

25 So those are the four projects you'll hear references

1 when the archeologists talk a little bit later about these  
2 projects and see that the way we divide up the territories  
3 that's the way we assign staff and assignments to these.

4           So we've got the four distinct projects. These  
5 projects also include yards, sidings, signals, all the  
6 components to go with it. A couple of the rail yards that we're  
7 building on the project are large projects which will be done  
8 through a contract mechanism as a standalone project. But for  
9 the purpose of this presentation and what we talk about, if  
10 there's a yard -- for instance in a new build we have what we  
11 call the west yard. That's a part of the new build project.

12           I want to talk to you about the new build project,  
13 and, like I said, I'm not going to get into a lot of the detail  
14 in the engineering. I won't bore you. If you have any  
15 questions specifically about the engineering, I can take those  
16 at the end. But I'm just trying to give you some overview. And  
17 I think it's important that you understand why we divided up the  
18 projects the way they are and the distinctions between those  
19 four projects with their impacts to the surrounding areas that  
20 we're working in.

21           As I said, it's 262 route miles in the new build  
22 section. It's 340 total miles of track. We have two yards in  
23 that section that we're building. The biggest of the two yards  
24 in this section is the West Yard, which is just outside of  
25 Wright, Wyoming. It will be used as a crew change point,

1 maintenance point for the trains as they go into the mines. And  
2 then we have another small yard at Wall. Again crew change  
3 point and maintenance and so forth, but it's a much smaller yard  
4 at Wall.

5           16 sidings. You'll hear us refer to a lot over in  
6 Creek Nation about siding structure. A siding is basically a  
7 parallel track for the main line. We install turnouts to allow  
8 the trains to maneuver onto the sidings, and we're building  
9 sidings on this project for the purpose of what we call passing  
10 sidings. The sidings are about two miles in length, just under  
11 2 miles in lengths. And they're set up so that as we run loaded  
12 and empty trains back and forth on this alignment you can use  
13 the siding to divert the empties onto and allow the loaded  
14 trains to stay on the main line so that they can make a passing  
15 movement because this is being constructed as a single track  
16 railroad. It's not a double track.

17           The name that we refer to is the main alignment we run  
18 the freight traffic on or the coal traffic on. We do have one  
19 section of it that's double tracked, and that's basically where  
20 you come up the Wall hill. As you come out of the Cheyenne  
21 River Valley and make your way up Wall that is the controlling  
22 grade for us on the railroad. With the loaded coal train by the  
23 time they reach the top of that hill they're not going very fast  
24 anymore because it takes a lot of power to get them up there.  
25 So we do have one section in there that's been planned as double

1 track in that area so it allows us if we need a train on the  
2 hill to keep the empties and loaded trains going the same  
3 direction. Or moving.

4 This section is unique out here because we're  
5 reconstructing -- or building it new with concrete ties. We  
6 have 875,000 concrete ties. The current plan is actually to  
7 build a tie plant, a concrete tie plant that will cast these  
8 ties in Rapid City. There's 710 culverts and 72 bridges to  
9 construct. I wanted to point this out. I apologize for the  
10 white background on the cross-section. But the distinguishing  
11 factor of the new build project and really I think the separator  
12 from this job is it is all brand new alignment. We're going  
13 through new territory we've got to acquire the land for.

14 And then in a simplified explanation I guess, to move  
15 coal efficiently, coal trains as big as they are we have a very  
16 limited grade. You can't go over a 1 percent grade, which is  
17 not very steep. So for us to climb any elevation at all  
18 requires a massive amount of grading because we have to keep  
19 that grade so low.

20 That's what's driving us -- this is the distinguishing  
21 factor right here for the new build alignment. It will be --  
22 for the first two years of construction on this project it will  
23 be a pretty massive grading project within the right of way that  
24 we're talking.

25 53 million yard of cut. So 53 million cubic yards of

1 excavation and 57 -- almost 58 million cubic yard of embankment  
2 or what we call fill to build the railroad cross section.

3 So this is just a simplified representation of it.  
4 I'm sorry about the lines again. But this section that you see  
5 here is what we refer to as the fill section or the embankment.  
6 And where you have to go through a hill you would cut that same  
7 shape into a hill by doing excavation. So the distinguishing  
8 factor of the new build project is that it will be for the first  
9 two years of construction a very big grading effort and also  
10 very big bridge effort. But the bridges are more --  
11 (Inaudible).

12 MR. YOUPEE: When you do the grading and you have your  
13 right of way, how much of that right of way is included in that  
14 grading? (Inaudible) and the mound and everything else?

15 MR. JACKSON: Right now what we're doing it's 100 foot  
16 of right of way either side of the track centerline is what  
17 we're planning on. It depends on where you're at in the  
18 alignment. If you're in a deep cut section, so a deep  
19 excavation, our cut slopes that we use when we lay the slopes  
20 back at an angle where you would support the embankment without  
21 a lot of erosion or lost slope area, that drives us much wider  
22 in those areas.

23 So in those areas we're actually making that area wide  
24 enough to accommodate those slopes so we can maintain those  
25 slopes. But for the most part inside that 100-foot right of way

1 by the time we build our embankment for sidings and a roadway  
2 for maintenance access and also we have to do some things that  
3 have been mandated through the process with STB, put in fire  
4 breaks, we're basically going to have a lot of that 200 feet is  
5 graded.

6 MR. YOUPEE: So you're cutting before you're filling?

7 MR. JACKSON: Yes. Well, it depends on where you're  
8 at in the alignment, but, yes, we would want to do that because  
9 we're going to try to take that cut that we have and use it in  
10 the section you want to fill. So you would use the scraper to  
11 transport that from the cut section to the fill section.

12 MR. CROWS BREAST: You established the corridor for  
13 your -- when you do your sidings and double track is it going to  
14 be wider in those areas?

15 MR. JACKSON: The footprint is going to be pretty much  
16 the same because we designed the new section to accommodate the  
17 sidings and what's called set out track beyond sidings. And  
18 then we also have to accommodate a roadway for maintenance  
19 purposes so it's all contained within the slope we're talking  
20 about.

21 MR. CROWS BREAST: With your sidings and your double  
22 track and your yards which are base station areas, am I correct,  
23 are you going to have two of those in the area in the west new  
24 build section? Have they been monitored or surveyed --

25 MR. JACKSON: Yes.

1 MR. CROWS BREAST: -- in that area? Are they a single  
2 report, or does that come in one of these reports here, Randy?  
3 Somebody answer me.

4 MR. JACKSON: Mike, you know.

5 MR. MADSON: Those are included in the reports.  
6 They're not a separate report.

7 MR. CROWS BREAST: Okay.

8 MR. MADSON: Basically given the footprint, we  
9 surveyed the footprint plus the mandated extra piece, and those  
10 are included in those survey reports.

11 MR. CROWS BREAST: Okay. Thank you. Well, the reason  
12 I am asking those questions is because it would seem to me as  
13 a -- just a common man, I guess, not an engineer, but if you're  
14 going to do side tracks, if you've got 200 feet for one rail,  
15 you would have a little bit more extra.

16 And I understand what you're saying when you go  
17 through a hill and you've got to keep it level; right? And then  
18 you cut off more of the hill, and then you push that dirt  
19 forward to kind of make everything level. I was just wondering  
20 if there's anywhere on this new rail line or the old one where  
21 the actual corridor or the right of way has been extended. I  
22 know the highways in North Dakota are like 75 feet from  
23 centerline.

24 MR. JACKSON: Yeah. That's actually a good question.  
25 Back up a little bit. This is the standard corridor width for

1 what we refer to as a typical section. So the typical section  
2 that we can fit in those areas, this is what we're representing.  
3 Where we've got either large fill sections, which means the base  
4 of your fill -- we have fills out here that are 50, 60 feet  
5 high. On 50- or 60-foot high fill the base of that embankment  
6 is (Inaudible) wide. In that area we widened out the area and  
7 the archeologists have actually surveyed that limit.

8           And on the deep cut section it's the same thing.  
9 You're real light at the top and, however, at the base if you're  
10 looking at a cross-section of it and those areas we widen out  
11 the right of way and the survey.

12           Where the yards are, that's different. This footprint  
13 you would go through with a 200-foot strip. And where the yard  
14 is, like the west yard, the yard actually sits on the north side  
15 of the alignment, and we bumped the right of way out there so we  
16 have indicated the right of way that's going to be necessary for  
17 the construction of the yard.

18           Right now the new build because this is all new  
19 alignment, we're basically patterning our right of way cake  
20 based on requirements for construction. So we're setting a  
21 right of way boundary that we would like to acquire either  
22 through purchase or eminent domain that fits our construction  
23 limits. And that's the same boundary that the archeologists  
24 have been given to survey.

25           When we get into the PRC and the rehab I will talk a

1 little bit about that. We do have some areas in those projects  
2 where we go outside of the right of way boundary because of our  
3 shifting and because of the construction technology we're using.

4 The PRC Section -- I'm sorry, I tell you the top is  
5 wrong. This is actually the PRC Section. I apologize. It's  
6 104 miles long. The unique part about the PRC and its  
7 distinguishing factor from the rest of the project is there is  
8 an existing alignment that runs from Wall to Pierre. We have  
9 very bad subgrade conditions, Pierre shale. It's a geotechnical  
10 condition that we have to deal with.

11 Right now it's not very well -- it's not doing a very  
12 good job of supporting the loads that the trains are putting on  
13 it. So that's requiring us to take this section, and we're  
14 actually 70 percent of that alignment is being built off line.  
15 So we're actually taking the existing track. We're shifting it  
16 25 feet north or south depending on where we are in the  
17 alignment. It doesn't say one side or the other. We will cross  
18 the existing track. But 70 percent of this is an offset  
19 alignment 25 feet from the existing track, and we're actually  
20 constructing a new embankment.

21 Because of that to answer your question, in the PRC  
22 there are sections in this where there's existing right of way  
23 that because we're shifting a track 25 feet, it will require us  
24 to go outside of that right of way boundary. And those areas,  
25 we've identified those areas, we've mapped those areas, and

1 again the archeologists and subs that are working for us have  
2 added those boundaries to include them in their surveys.

3 We are going to try to take and use that language --  
4 or obtain that land by acquiring it from private landowners or  
5 in this case because it's where we've made that 25-foot track  
6 shift, a lot of it's just where our slopes end up catching the  
7 existing ground, and in that case we may just try and get  
8 temporary construction easement or permanent easements on that  
9 land, build our fill slope, and put the fences right back where  
10 they were.

11 A lot of the bordering land is ranch land. The  
12 ranchers can still take advantage of the grassland with -- we  
13 put the (Inaudible). So we will use both right of way and  
14 easements to acquire that portion of the property.

15 MR. CROWS BREAST: Elgin Crows Breast, 3 Affiliated  
16 Tribes. When you do your railroad you have -- you have a --  
17 like a -- you must have this all figured out, how much cars  
18 you're going to pull on that railroad, how much the weight that  
19 particular railroad takes before it kind of crushes in and you  
20 have a derailment.

21 What type of chemicals -- are you carrying any  
22 chemicals on there, or is it just coal?

23 MR. JACKSON: Just coal.

24 MR. CROWS BREAST: Just coal?

25 MR. JACKSON: This is being constructed primarily just

1 as a coal route. There is some -- when you come out of  
2 Rapid City on the existing line there is some freight traffic  
3 that runs on there now. I can verify this, but I don't believe  
4 there's any hazardous materials at all on that motion of the  
5 railroad. I think the primary product that's hauling out of  
6 there right now is benzamide, which comes from a colony in  
7 Wyoming.

8 MR. CROWS BREAST: The reason I say that is because  
9 you talk about this shale, this unstable rock, that there's too  
10 much weight, it crushes and sets your rail kind of wiggly, I  
11 suppose. I'm concerned as a -- not only as a tribal member but  
12 as a person living in an area for the tribal people or anybody  
13 as far as that goes, the hazards that may come off the rail.

14 Don't get me wrong. I'm not trying to say there's  
15 going to be any hazard or anything, but you're always thinking  
16 ahead, you know. And we have a lot of areas out when you skirt  
17 around the Black Hills like that that we have a lot of what they  
18 call vision quest. And you can sit up on a hill, and there's  
19 pretty much a lot of what they call eye sores, you know. You  
20 got towers and things like that where the view shed is kind of  
21 ruined, so to speak.

22 So I was just wondering, are you putting up any towers  
23 to go along with this too for communication purposes?

24 MR. JACKSON: Not as a part of what we're building  
25 right now there will not be any communication towers. In the

1 future there may be depending on what technology the railroad  
2 uses for train-based communication.

3 But I know a lot of the investigation that they're  
4 doing right now with that is that they're talking to existing --  
5 existing companies that are already out there that have these  
6 towers in place, you know, where possible. The railroads would  
7 just as soon use a company that supplies that technology,  
8 already has the capital and infrastructure there to do that  
9 versus putting their own infrastructure in.

10 Your question was a great one about the Pierre shale  
11 because it leads to my next slide. Again, sorry. On the other  
12 projector at home these things showed up a little better. These  
13 are some pictures of what we have out there right now. And from  
14 an engineering standpoint what's causing our problem with the  
15 Pierre shale, you can actually use the Pierre shale that's out  
16 there to build a stable foundation for traffic for both roadway  
17 traffic and train traffic.

18 The issue we have right now, if you look at these  
19 pictures here, there is no drainage ditches whatsoever. The  
20 Pierre shale becomes very unstable when it's wet. If it's kept  
21 dry and compacted, it's a good material to build on. It's a  
22 satisfactory material to build on to support the weights and  
23 operationally what we are looking at. The problem we have right  
24 now is the track that's shown here in the PRC Section, it's the  
25 lowest grade right now, and it's just a lot to do with this was

1 constructed years ago that they didn't have ditches in like we  
2 do now to maintain the drainage away from the embankment  
3 section.

4 So what's happening right now is because this is  
5 taking on water and the Pierre shale becomes unstable, they end  
6 up just dumping a lot of rock, a lot of ballast material. They  
7 dump this on the track to be able to hold the stability of the  
8 track itself. Over time that leads to this diagram we have on  
9 top, which is what we refer to as the ballast drop.

10 The ballast starts driving deep below the track  
11 because that's the section that's taking the site loading from  
12 the trains. It becomes unstable. But when you start building a  
13 ballast pocket it adds to your trouble because now you have a  
14 pocket of clean rock material that takes water. So the water  
15 drains to the pocket right below the track, and it sits there  
16 and makes the Pierre shale unstable again. So it becomes a sink  
17 hole problem from the railroad's standpoint.

18 And then this out here that you see, this embankment  
19 was not cut this way originally. Usually you see a section like  
20 this, and you would think that they came in and actually cut the  
21 track through there and take that down. This material that you  
22 see out here is what we call a pouch or a haunch.

23 From the load on the train with the unstable Pierre  
24 shale because it's wet it keeps forcing out to the sides. So it  
25 forces out under the train load and, again, because it's forcing

1 out and it's making a hump on this side of the section, it adds  
2 to our problem because now tracks are water (Inaudible).

3 So these two slides are exactly what's happening here  
4 where this material from the load coming off the ties and the  
5 rail keeps forcing the clay material out because it's wet and  
6 this is what we get. Or the shale material.

7 So this will turn out a little bit better. This is a  
8 cross-section of what we are going to construct in the PRC, and  
9 this is a very simplified version. But if you look over here on  
10 the left side, this is what's meant to represent the existing  
11 track. We have ballast pockets, and we have no ditches now  
12 currently.

13 So what we intend to do is come in here and cut a  
14 ditch in, excavate the ditch that you see, use that material to  
15 build an embankment. We'll come over here. We actually have a  
16 plan in place to cut these ballast pockets out before  
17 construction or drain them with under drains so this material  
18 stays free draining and this ditch section will come back off  
19 the edge of the railroad.

20 Where you go into the PRC Section today where we have  
21 good 5- and 6-foot high embankments they've been standing up  
22 very well at 2-to-1 slopes, which is a fairly steep slope with  
23 repeated loading on from the trains today, and we don't really  
24 have any issues. So our issue with this the geotechnical  
25 engineers have really determined it's due to drainage.

1           So, again, this is our whole construction operation of  
2 PRC. We're all offset alignment far enough so we can actually  
3 cut the ditches in, keep the water away from the track bed, and  
4 drain where it needs to go.

5           MR. CROWS BREAST: I was reading this report where  
6 some of this railroad line was constructed in the late 1800s.  
7 Now historical value there with all the railroad lines. I'm  
8 just wondering also with the arched bridges, all those bridges,  
9 you know, with the historical value there, any bridge that's  
10 over 50 years old needs to be put on the National Register of  
11 Historic Places.

12           Now I was just wondering how you're -- what are you  
13 doing with those -- that particular railroad line that's old and  
14 the old bridges there? What are you doing there? I guess I'm  
15 kind of wondering about those particular, if you will -- no  
16 offense -- white man made objects that are old that they want to  
17 keep as opposed to our cultural resources that we have in that  
18 corridor.

19           What is going on with that?

20           MR. JACKSON: Okay. That's a good question. The two  
21 things I guess. As a part of what was done through the STB and  
22 the approval of this project with the EIS, the NEPA process that  
23 was going on, they basically took the entire DM&E alignment, the  
24 existing alignment that they're working on in that right of way,  
25 and it was classified as a historic district for the purposes of

1 evaluating what we were going to do with this project, hauling  
2 coal and running trains. So that was a part of the evaluation.

3 Now there's a lot of archeologists and cultural  
4 resource experts probably explain this better than me because  
5 you'll get an engineer's explanation. From that aspect when  
6 they declared a historic district what that -- the value from  
7 the historic standpoint doesn't necessarily come from having an  
8 old structure, per se. It's because of what was this railroad's  
9 impact on history from the 1800s or 1880s. It's a different  
10 concept, I guess.

11 We do have then -- as they evaluated that district we  
12 do have specific structures that they are looking at and are  
13 being addressed as not just cultural resources and the tribal  
14 resources that are being considered in these valuations but also  
15 just the plain historic resources. We have architectural  
16 historians that are looking at not just bridges but also some  
17 buildings in Minnesota that are adjacent to the right of way  
18 that are historic. They're adjacent to that historic district.

19 As far as the bridges go themselves, again,  
20 architectural historians have explained it to me this way.  
21 Having an old bridge doesn't necessarily make it historic.

22 One of the interesting parts about our project is as  
23 you get into more South Dakota and Minnesota on the eastern side  
24 there are a lot of box culverts, and actually the architectural  
25 historians we're working with talked to the SHPOs, the state

1 SHPOs, and there's certain classification of stone box culverts  
2 because they are unique, they were arched or they used stone  
3 arches on some of these bridges. But the every day stone box  
4 culverts out there where they just used the slabs and stones are  
5 not really unique for the time and history they built them.  
6 It's the quickest and easiest way to build them.

7 As historians go through and look at bridges and they  
8 look at box culverts they are evaluating structures. For the  
9 most part our stone arches, the significant ones are on the  
10 eastern end of the railroad in Minnesota. And there are some  
11 very nice stone arch structures just outside Winona, just to the  
12 west of Winona, Minnesota that we're actually keeping in place.  
13 We're going to rehab those structures, and they don't really  
14 require -- from our evaluations, the engineering evaluations,  
15 they can support the loads that are on there now. The  
16 structures that we're talking about are in the very high fill  
17 section so they don't get the repeated loading from the trains.

18 I guess one of the unfortunate things about that was I  
19 don't know how much you've heard from the DM&E just had a pretty  
20 significant flood event that happened in Lewiston, Minnesota.  
21 We lost -- six bridges were washed away in a storm that just  
22 happened there just a little bit over a month ago. And we lost  
23 about somewhere between 5 and 8 miles of track.

24 Several of those bridges that we lost were historic  
25 masonry bridges. They just couldn't withstand the amount of

1 flow that came out of this. It was estimated somewhere around  
2 (Inaudible). So we did lose a few of those bridges, or a few of  
3 them were damaged with that storm beyond repair. But these  
4 stone arches that are there are being maintained.

5 Again, anything we're doing as far as the rehab goes,  
6 we're evaluating those, we're getting recommendations both from  
7 the SHPO agencies, the STB, and our own architectural historians  
8 as to what type of treatment methods we can do, what type of  
9 construction methods we can employ that keep the historic nature  
10 of the structure.

11 MR. CROWS BREAST: Elgin Crows Breast, 3 Affiliated  
12 Tribes. I guess the reason I'm asking all of these questions I  
13 must tell you is, you know, in the structure of anything that  
14 you have there's a mitigation process. That's destruction or  
15 taking apart or activation or whatever. Mitigation also means  
16 rebuilding. It also means helping. Replace something that was  
17 destroyed.

18 For example, the Department in North Dakota, the  
19 Department of Transportation in North Dakota, built a new bridge  
20 across the Missouri, across Lake Sakakawea, and in that process  
21 negotiated they took 75 almost 100 feet of our ceremonial  
22 grounds, powwow -- I call it ceremonial. People say powwow. I  
23 don't like that word. Ceremonial. Because at that particular  
24 grounds you have particular dances. You have your grass dances.  
25 You have traditional dances. You have giveaways. You have

1 eagle feather ceremonies. You have name giving ceremonies. So  
2 that particular area was classified as a traditional cultural  
3 property.

4 And I'm sure you're all aware of what a traditional  
5 cultural property is. It's a place that it still can be used.  
6 And there is no criteria for a TCP, and basically it -- the  
7 tribes established that TCP, okay, and they took 100 feet of  
8 that. So what they did is they kind of interrupted area where  
9 we bury our medicine for protection of that area so in the  
10 process I single handedly negotiated them to build us a brand  
11 new harbor, ceremonial harbor.

12 And they were kind of -- you know, they didn't think  
13 about it. They didn't -- they figured no. But after I told  
14 them, you know, mitigation is helping rebuild.

15 So there in the construction of this railroad there's  
16 a possibility some of negotiations to rebuild some cultural  
17 preservation fund, if you will, for Indian education and  
18 cultural for the tribes. And I think that's part of what  
19 Mr. Youpee was reverting to, not only that he talked about other  
20 things.

21 So, you know, we're -- I don't know. I didn't  
22 count -- read too much of the report of how many sites in an  
23 area, how many were classified as TCPs, but I've did the same --  
24 so, yeah, the Department of Transportation did build us a  
25 \$750,000 new arena because of the mitigation procedures that

1 went through. And they helped us rebuild.

2           And it was a great thing, you know, because we hold a  
3 lot of things there, and it was moved. So somehow we come  
4 through this -- it sounds to me like you're going to build it,  
5 you're going to build it. I don't know in particular -- I know  
6 that's treaty land, you know. I know that.

7           And, for example, the Black Hills was -- when they  
8 found gold there it was taken away, you know. And our Arikara  
9 people were the first to find gold there way back. They adorned  
10 their horses with it and found it in like streams of just --  
11 they painted their horses and they'd come riding in.

12           There's a story on that, old traditional story. And  
13 they filled all of these satchels for these kind of raw hide  
14 blankets or bags full of those gold. And they took it back to  
15 where they went, and they come riding into the village on that.

16           So there is stories connecting, you know, our tribe to  
17 the Black Hills and only -- the Mandan too and the Sioux also.  
18 So, you know, we're quite concerned about the area in particular  
19 on cultural resources, and we're quite concerned about rock  
20 cairns, the stone circles. I think those are mistaken as tepee  
21 rings, you know.

22           And you find a lot of these on hills. And we  
23 discussed it at one of the meetings, who would put a tepee on  
24 top of a hill, you know? It's windier than hell up there, you  
25 know. So those are ceremonial things, and you're going to come

1 through and -- granted, we understand the need for the railroad  
2 to -- for the coal. That's some of the best coal you get in  
3 Wyoming. It burns clean. And to produce hydroelectric power  
4 for the nation. We understand that.

5 But we -- we want you to see our point of view too as  
6 tribes in the Midwest concerned about our church, our religious  
7 areas. And some of them are used yet. Just because we're out  
8 in the middle of nowhere, doesn't mean we don't use them. So we  
9 have those concerns.

10 That's why I ask the questions about if the railroads  
11 are going to go through, what are they going to destroy on the  
12 way through. If they have any view shed there, we're going to  
13 do some ceremonials, and we're going to sit up on the hill. All  
14 the sudden Burlington Northern or whatever it is comes through  
15 making all kinds of racket, those things it has to be some kind  
16 of trade-off.

17 MR. JACKSON: Yeah. The questions are good. I don't  
18 mind the questions at all. Again, I think Herb explained the  
19 project's had a long history, certainly longer than Herb and I  
20 have been involved with it.

21 But there's been a series of consultations, series of  
22 plans. We've gone through the NEPA process. We've been led by  
23 the STB as far as coming up with an approved process and  
24 alignment based on the environmental impacts. We do have  
25 approval where we're going.

1           And you're right. As we talk about the PRC and we  
2 talk about new builds where the alignment is today and where  
3 we're constrained because of the route that's been selected and  
4 what's been evaluated to date through the approval process our  
5 chances of being able to, as you said, miss the things that were  
6 in that alignment right now are not very good.

7           I mean, you can't put -- you can't put steep hills and  
8 you can't put big curves in a railroad. It just doesn't work.  
9 We can't operate the train efficiently. You can't move the  
10 trains across those things. So we are very interested as far as  
11 this process and where we are today to talk to the  
12 representatives that are in this room about what are the  
13 mitigation strategies.

14           Those mitigation strategies, the ones you mentioned,  
15 we're interested in hearing about those things. And I know  
16 that's part of what the STB, the lead federal agency -- that's  
17 what this dialogue is about. We realize mitigation, that's to  
18 be a part of it.

19           The other things we're doing mitigation on the  
20 construction standpoint. We still have to (Inaudible) impact,  
21 whether we are removing or whether we have to destroy a historic  
22 structure and put a new bridge in or not, we still have to do  
23 some sort of mitigation for that.

24           And the other one that we have with other environment  
25 agencies that we're working with, firming agencies, we have to

1 mitigate the wetland impacts we have.

2           So one of the things I didn't mention is outside of  
3 the alignment we're constructing for this project we are  
4 reconstructing or building new wetland mitigation sidings as  
5 well throughout. They're not connected to the alignment.

6           What we've worked out with the resource agencies that  
7 do permitting for that is build those sites off line because  
8 they can build them a much more quality wetland site, and you  
9 can replace the small acres that were impacted. As you go  
10 through along the footprints you can actually put that acreage  
11 back into better use, higher use, by going to a different site.

12           We do realize mitigation's going to be a part of our  
13 discussions here today. Certainly that's why again, you know,  
14 the archeologists and the STB are here to get that dialogue and  
15 take that consultation (Inaudible).

16           MR. YOUPEE: So we're looking at constructing a  
17 mitigation strategy inclusive of tribes. That's what I'm  
18 hearing.

19           MR. JACKSON: That's part of the dialogue. That's why  
20 we're here today, to try to figure out, you know, what are those  
21 mitigation strategies, what's acceptable to the tribes. What  
22 are the --

23           MR. YOUPEE: Because there's been a lot of work going  
24 on without that strategy or at least a policy in place. I think  
25 it's really created a vacuum for tribes because we're like

1 playing piecemeal. Whenever new administration, new consultant  
2 comes we have to catch up again. The THPO has taken the lead  
3 role with this project. And that really eliminates tribes in  
4 certain areas of discussion.

5 And so we in turn have to catch up to this stuff. I  
6 feel it's really necessary that we start discussing mitigation  
7 strategies, okay, because I think those have to be in place  
8 before any other discussions take place. We need to know what's  
9 going to happen in the loss of cultural resources.

10 I also see in 1999 and 2006 and 2007 that there's a  
11 cultural survey inventory. Now what does is that mean, cultural  
12 survey inventories?

13 MR. JACKSON: I'm going to let the cultural resource  
14 expert answer that question. And I know that's part of what --  
15 the presentation they'll come to. Randy, I don't know if you  
16 can answer that. I know that's part of what -- as soon as I'm  
17 done with the engineering side hopefully I can get done here in  
18 the next five minutes or so, but I know that's what the rest of  
19 the day is focused on as far as the presentation, what's been  
20 done to date and what's -- you know, what's the next step.

21 MR. YOUPEE: And if they might jot that question down  
22 or questions down, we can discuss that if you're just strictly  
23 on design because we start getting into mitigation. And I don't  
24 want to get too far from that where we can discuss that.

25 MR. WITHROW: Yes. You're exactly right, Curley. We

1 are still very much in the identification and evaluation stage.  
2 It's always good, I think, to be thinking ahead. And obviously  
3 there will be some mitigation involved. A variety of different  
4 kind of resources not only with bridges but also things like  
5 archaeological sites and other cultural properties that need to  
6 be -- some still need to be identified. As you point out, there  
7 were a number of identification surveys, inventory surveys if  
8 you want to refer to them that way. Essentially what we're  
9 referring to are archaeological surveys done to try to identify  
10 and locate archaeological resources that are present within the  
11 right of way.

12 And there were some tribal members participating in  
13 the surveys that were done dating back from 1999 and 2001. It's  
14 not clear exactly whether or not those people were participating  
15 on the behest of the tribal governments or all tribal  
16 governments who are interested in this project and have a vested  
17 interest in it. So it's unclear exactly how representative that  
18 was.

19 And because of that we still have concerns about  
20 whether or not we do have a complete inventory of the cultural  
21 properties that exist. And that really is the focus of this  
22 tribal summit in our mind is to talk about what needs to be  
23 done, what information needs do we have regarding identifying  
24 important cultural properties including traditional cultural  
25 properties, and to work out or develop a work plan for getting

1 that information.

2 And we're assuming it's going to involve site visits  
3 to properties we already know about but also getting proper  
4 tribal members into the field to look at areas where nothing has  
5 yet been identified to make sure nothing has been overlooked.

6 And we recognize that there's a lot of work still  
7 remains to be done. And, like I said, it's not too early, I  
8 suppose, to be thinking along the lines of mitigation work, but  
9 certain alternatives and some of the things that Elgin mentioned  
10 a moment ago, I think those are all good things. And it is  
11 about rebuilding and compensating and replacing to the extent  
12 that we can. And I think we need to be open to lots of  
13 different kind of alternatives there.

14 But we are still very much finding out -- in the stage  
15 of identification, finding out what's out there and making sure  
16 we know all the things that are important that exist. And they  
17 also need to be evaluated in terms of the Section 106 process  
18 requires that the STB determine eligibility for the register for  
19 each of these resources. And that can only be done with tribal  
20 involvement.

21 STB has not made any determinations of eligibility on  
22 any properties aside from the structures and bridges and things  
23 like that along the existing line. And we're not going to do so  
24 until we have proper tribal input on the resources that exist.

25 MR. JONES: Randy, if I could, I think the one thing

1 like in the presentation and I think it's helpful to everybody  
2 is the one thing I think we want to be able to see is we know or  
3 are very aware of the fact that the project has impacts. I  
4 think one of the things that people need to understand too is  
5 why it has impacts.

6 And that's kind of the presentation. Here's what it  
7 takes to put a railroad together. Here's what the process was  
8 that got us where we are.

9 But I think we are fully aware of the fact that there  
10 are impacts of this project and that there are going to be  
11 offsets for impacts.

12 I think the one here is, yes, there needs to be the  
13 inventory done to know what you're dealing with in the first  
14 place and figure out how to look forward there. I just want to  
15 tell you we welcome conversation with you about how to address  
16 impacts. We know that's a part of this process. We want to  
17 work with you in that regard as well. But I think this is real  
18 helpful for Doug to be able to explain -- I think what that goes  
19 to show you in a lot of this is you don't have a whole lot of  
20 breathing room when you're working in the confines of a right of  
21 way to construct a railroad. There are things that you can  
22 do -- excuse me, things that you can't do, but it's very limited  
23 on anything that you can do there.

24 And what we want to be able to do is make sure again  
25 that we do it right, that we do it with the consultation, and we

1 do it coordinated in a way that makes sense to folks, and that's  
2 why we're hopefully here today is to do it that way.

3 MR. YOUPEE: I think that those restrictions that you  
4 face under regulatory measures are compounded for tribes when we  
5 have to look at certain impacts, okay. Because we weren't  
6 involved head on. We were involved after the fact.

7 It's always been the case of a captive existence that  
8 people seem to look down on it. Down on you. Construct means  
9 and measures to overcome the weaker even as yet. And so we have  
10 federal statutes, regulations in place to help tribes maintain a  
11 life way, a life way which is guaranteed to all in the  
12 Constitution and in the United States as free citizens.

13 As tribes there's contractual -- there's a treaty for  
14 trust relationship between the U.S. Government. And it always  
15 seems that private sector tries to take advantage because of  
16 that. They use regulatory. They use the laws against us. And  
17 they use the courts against us. And it is very hard to -- when  
18 we have to address the impacts.

19 So we're playing catch-up again. Okay. And it's  
20 created somewhat of a problem for tribes. I think of the  
21 chronology of events, and I look at some of the tribes that have  
22 been involved. They've been involved because there's certain  
23 systems and boundaries established by state and federal  
24 governments recognized within those boundaries.

25 Now the Dakota, Lakota, and Nakota have no boundaries

1 as far as their relationship stretching from Minnesota to  
2 Montana as far down as Texas as far as the traditional  
3 territories are concerned and well up into Canada.

4 Now ICE, does that mean Canadian?

5 MR. JACKSON: IC&E is Iowa, Chicago & Eastern.

6 MR. YOUPEE: The Canadian railroad is involved in this  
7 project as well?

8 MR. JACKSON: Yes.

9 MR. YOUPEE: So it has international scope; right?

10 MR. JACKSON: The project is within the bounds of the  
11 U.S. And we talked about it's been Wyoming, South Dakota, and  
12 Minnesota.

13 MR. YOUPEE: But how is Canada included in this?

14 MR. JACKSON: Canada Pacific Railroad, which is a  
15 private company, just acquired through a merger and acquisition  
16 the DM&E.

17 MR. YOUPEE: So is the State department involved in  
18 this? Is there that ramification?

19 MR. JACKSON: No. It's governed by the STB as far as  
20 the mergers go.

21 MR. YOUPEE: All right. But catch up as we will  
22 again, to this process, we have to have systems in place. We  
23 have no sign-off confidentiality division in our clause. You  
24 have tribes that are signing off that had no relationship with  
25 this area for hundreds of years.

1           So that's something that we need to really consider.  
2 We can look at this project and where it goes and the impacts as  
3 far as non-Indian what it takes to build and design to be more  
4 sensitive, I guess, and those areas. But as far as talking to  
5 tribes there really has to be -- regarding impacts, regarding  
6 mitigation, regarding the confidentiality clause.

7           MR. JACKSON: I'll just try and get finished up here  
8 on the design side of this quick so we can let the archeologists  
9 make their presentations to you about, you know, what they've  
10 done to date.

11           The rehab project is the next project that we have.  
12 That's the project that we -- runs from Pierre, South Dakota to  
13 just outside of Minnesota City or Winona, Minnesota. It's 478  
14 total miles. There's about 300 miles of that that we will  
15 actually upgrade in order to carry coal trains. We do have to  
16 construct yards at Huron, New Ulm, and Lewiston.

17           The Lewiston yard may or may not be constructed  
18 depending on how we build connection into the C.P. We have --  
19 the biggest yard that we have is at Huron. That's where most of  
20 the maintenance facilities for the DM&E will be. And so we do  
21 have a large footprint that's been surveyed there, and that is  
22 the footprint that again is quite a bit longer and wider than  
23 our 200 foot of right of way that we're talking about or the  
24 existing right of way that ran through that part of  
25 South Dakota.

1           MR. YOUPEE: Are those sections, are those investment  
2 sections?

3           MR. JACKSON: No, sir.

4           MR. YOUPEE: No.

5           MR. JACKSON: Those sections are all driven by  
6 construction type, engineering type, and basically what means  
7 and methods we have at our disposal to be able to get contracts  
8 in place to construct it.

9           MR. YOUPEE: You know, because we go beyond just  
10 the -- discussing this project with you folks. I mean, we  
11 discuss this project with business people in the country as well  
12 and state legislators too. So this is not coming just from our  
13 tribal standpoint.

14           MR. JACKSON: Sure. No. These boundaries were picked  
15 based on the engineering and construction methodology or dealing  
16 with the existing railroad operations that currently, you know,  
17 are in that section.

18                   And then we extend or construct 42 sidings in that  
19 section.

20                   Again, just some of the points on it. We rehabilitate  
21 or replace 285 bridges in that area. There's 360 culverts. I  
22 mentioned the 300 miles of existing track. We're renewing the  
23 cross ties and rail, and then we're doing what we call  
24 undercutting on a lot of that track.

25                   And, again, I tried to point out I guess a

1 distinguishing factor between each of these projects as it may  
2 or may not affect the resources that we evaluate or the  
3 boundaries that we work within. The rehab project is really --  
4 it's much different than the other two projects that I have  
5 mentioned to you because it is primarily on track work except  
6 for where we reconstruct or where we build a new siding.

7 As I talked to you, the siding track, that's adjacent  
8 to the main line. In a lot of areas that takes grading for the  
9 length of that. Those are less than 2 miles in length for the  
10 most part, 2 miles good round number, and there are 42 of them  
11 throughout the alignment. So you can see the number of sidings  
12 that we have relative to the amount of track that we're  
13 rehabing, most of the impact is being driven off tie  
14 replacement, rail replacement, and that's machinery that works  
15 off the track. So it is quite a bit different than what we do  
16 in the other sections.

17 The other two sections, as I mentioned, we have to  
18 build a new track bed so you don't work with on-track machinery  
19 as much. So that really is the distinguishing factor here.

20 Other than the yards that I have mentioned, this  
21 construction is contained within the boundary -- the existing  
22 right of way boundary that's out there today. We have a couple  
23 of areas where we're changing grade or flattening curb, but I  
24 think there's only two areas we actually get up against that  
25 boundary or we're looking at an easement to be able to construct

1 our slopes. Again, quite a bit different.

2 Mankato project, I talked about this before. This is  
3 just a map of Mankato. It shows North Mankato and the city of  
4 Mankato. The alignment in red is what we call the south route.  
5 That route was approved by the STB. It takes a southerly  
6 alignment around.

7 The blue route is existing DM&E track. But where we  
8 run through the limits of -- the city limits of Mankato the  
9 U.P., the Union Pacific Railroad, currently operates there  
10 today. And so in order to go through the through-town route we  
11 have to do a negotiation or we have to be able to negotiate an  
12 agreement with the Union Pacific railroad to be able to use the  
13 through-town route.

14 Depending on which one of those routes ends up being  
15 advanced and constructed, if you're the south route, it's new  
16 construction. It's new bridges. It's new grading. There is no  
17 alignment there. If you're on a through-town route, it's  
18 maintenance, rehab to existing alignment, much like the rest of  
19 the project. We add additional track within our existing right  
20 of way, but those are the two projects around Mankato.

21 So hopefully I gave you some indication of the areas  
22 that we're surveying and a little bit of background on some of  
23 the elements of the construction that are driving us to where we  
24 are today with the segmentation of the projects and also the  
25 limits that we're evaluating as far as its impacts to cultural

1 tribal resources or even historic resources.

2 MR. YOUPEE: I've got one question. The railroad  
3 ties, what is the life of a railroad tie?

4 MS. STRELESKY: Well, a concrete railroad tie --

5 MR. YOUPEE: No. A wood one.

6 MS. STRELESKY: It depends on the climate you're in,  
7 if you're in dry air areas versus moist, humid areas. And  
8 depending on the number of trains, how heavy the cars going over  
9 it, but a rule of thumb, 25 to 35 years.

10 MR. YOUPEE: 25 to 35 years. Back home we see our  
11 railroad ties changed every five years possibly. About every  
12 five years back home.

13 MR. JACKSON: What you're seeing is when the railroads  
14 rehab the wood ties they don't go into a section and replace  
15 every tie. They go through, they mark the damaged or the bad  
16 ties, and they replace them. But you don't usually go through  
17 and replace every tie within a mile. And part of the reason  
18 they do is operational reasons, number one, but also just for  
19 maintenance purposes. Because then you end up with sections of  
20 railroad that are brand new and sections of railroad that are  
21 real old versus being able to maintain the longevity through a  
22 particular section.

23 MR. YOUPEE: Who makes the railroad ties?

24 MR. JACKSON: There's several different companies in  
25 the U.S. makes the --

1 MR. YOUPEE: What type of tree is that? Is that oak?

2 MS. STRELESKY: Primarily. We used to use soft wood  
3 trees, but they just don't last.

4 MR. YOUPEE: Is there any move to go to alternative  
5 ties? I know there's going to be some cement ties, but is that  
6 really a good thing that the track would be all laid with  
7 concrete ties?

8 MR. JACKSON: Actually there is a movement in the U.S.  
9 to use concrete ties more on the heavy freight tonnages now  
10 because of longevity and ply issues. There are different  
11 fastening devices you use. It's driven by the technology within  
12 the rail itself.

13 And then there are other materials being looked at for  
14 tie use, depending on the application. There are steel ties  
15 used today, and I believe also some recycled tie materials come  
16 out. I think a lot of these things are still being tested.

17 MR. YOUPEE: Okay. So we have locomotives, megaton  
18 locomotives and megaton cars for that matter that carry coal  
19 across the United States. Is there greater concerns regarding  
20 that type of transportation than just ties? That seems like  
21 it's outdated. I don't know. It's a heavy -- it seems like  
22 it's a -- a heavy way to do transportation.

23 MR. JACKSON: Actually I'll just make a brief answer.  
24 I mean, if you compare railroad traffic to what's happening on  
25 freight traffic on the trucking side of it, per se, you know,

1 the railroads can carry so much higher tonnages. And then just  
2 from a pure engineering standpoint, if you look at a footprint  
3 of a railroad relative to the footprint of a roadway, it's much  
4 less impact on the actual landscape that you're constructing  
5 depending where you're at.

6           You know, you're dealing with roadways today that are  
7 200 and 300 foot right of ways that are 5 and 6 foot lanes.  
8 You've got roadway sections, you know, most lanes are 12-foot  
9 wide so if you've got a 5-lane roadway and you're 60-feet wide  
10 plus the concrete, plus your shoulders, plus any interchanges.  
11 So, you know, there's a whole comparison between railroad  
12 freight and tonnages as far as the actual materials used and the  
13 design.

14           It's not just the ties themselves. It's the  
15 embankment. It's the materials you use below the embankment.  
16 It's the rail. It's the slopes that you construct. There's a  
17 whole series of parameters that have to be put together to look  
18 at the engineering applications.

19           MR. YOUPEE: When we're looking at a surface vehicle  
20 for that type of transportation, would it be just as good or  
21 maybe easier to pipe that stuff down?

22           MR. JACKSON: Again, it just depends on the type of  
23 material that you're using.

24           MR. YOUPEE: And I know that they make that coal, they  
25 pump coal and they liquify it and they pipe that out and it

1 still has the same type of use for combustion.

2 That's something that I guess I need an answer to. I  
3 guess any answers to that, why they're not being piped?

4 MR. JACKSON: No, I don't. No.

5 MR. YOUPEE: Because you guys would lose your job if  
6 that happened. Just think of what the comparison would be. No  
7 idea?

8 MR. JACKSON: I don't. I'd have to do some research  
9 on it to be able to find the answer for you.

10 Any other questions?

11 MS. HALVERSON: At Mankato why are you looking at  
12 putting new track to the south?

13 MR. JACKSON: It was evaluated as far as the EIS in  
14 negotiations with the STB because we have to be able to  
15 negotiate an agreement that is acceptable both to the DM&E and  
16 the Union Pacific Railroad because that's their ownership of  
17 track that runs through Mankato. So the south route was looked  
18 at and evaluated, and it was one of the approved routes through  
19 the EIS process.

20 It was also indicated to me through that documentation  
21 that the through-town route was also left on the table and  
22 pending negotiations with State Government in Minnesota, the  
23 City Government, the County Government, and then certainly the  
24 U.P., and that's where we are today. So that's why a south  
25 route gives a completely independent route.

1           There's nothing that the STB through this matter could  
2 really do to force one train operation or another train  
3 operation's private property (Inaudible). So we're currently in  
4 negotiations with U.P. to try and run through town. That's why  
5 two routes were (Inaudible).

6           Any other questions?

7           I think that's it for me. Thank you.

8           MR. WITHROW: Okay. Thank you, Doug. We're running a  
9 little bit behind, but we had good questions and good comments  
10 and a very good discussion. Those are questions we all need to  
11 keep in mind, I think, as we continue our discussions in the  
12 next couple of days.

13           I think we've identified some recurring themes.  
14 Proper involvement for tribes and mitigation options and things  
15 like that. But I'm sure they'll be subject to more discussion  
16 as we move forward here in the next couple of days.

17           We were scheduled for a break midmorning. We're kind  
18 of running a little bit behind. It's 11. If people are  
19 interested, we could take a few minutes.

20                           (A short recess is taken)

21           MR. WITHROW: Okay. Let's get started again. We're  
22 about ready to I guess conclude the project background section  
23 here. Mike Madson from HDR has asked to provide an overview for  
24 everyone on the survey efforts being arranged and organized by  
25 HDR. He'll also introduce some of the different survey team

1 representatives who are here, some who will be making  
2 presentations later.

3 Cheri, our recorder, has asked me to remind everyone  
4 please use the microphone whenever possible, including our  
5 presenters. She's having difficulty hearing people especially  
6 when they're facing away from her. Just to ensure we get a  
7 proper transcript, use the microphones please, and it will help  
8 her a lot.

9 Mike.

10 MR. MADSON: In the effort of saving some time here  
11 this morning and thanks to the good presentations and comments  
12 and questions that came out of that, I think that's very  
13 valuable. That was not part of the three previous tribal  
14 meetings. We did not have much of a discussion on the actual  
15 engineering process of the project. It's really helpful to put  
16 everything in perspective a little bit.

17 I did have a PowerPoint presentation, but Randy's  
18 asked me to cut the thing a little bit short. I will introduce  
19 myself. My name is Mike Madson. I'm an archeologist by  
20 training. They call me cultural resources project manager at  
21 HDR, the HDR office in Minneapolis, Minnesota.

22 For this project I was assigned to work for  
23 Doug Jackson out of the Sioux Falls office, the project office  
24 at DM&E, and we have assembled a group of people to complete not  
25 only the archaeological investigations but also the standing

1 structure inventories, and I want to comment on what Elgin had  
2 asked before regarding what the disposition of those structures  
3 is.

4 We are in the process of developing a treatment plan  
5 for the district, the historic railroad district, that is a  
6 multifaceted plan. It is not just data recovery. In other  
7 words, not just recording the structures that are going to be  
8 removed, but it also has aspects in it that relate to community  
9 outreach, museum program development, publication of popular  
10 histories of the railroad, coffee book histories, if you will,  
11 other aspects that are not limited to data recoveries or  
12 traditional recordings of these structures before they were  
13 demolished or removed.

14 So there is a multifaceted approach to treatment to  
15 the historic district. And I think there has been some mention  
16 of that here as well, looking at compensation, other mitigation  
17 measures that are outside of just destructive data recovery.

18 Again, Mike Madson with HDR Engineering. We have a  
19 project management team at DM&E to work with all the  
20 subcontractors. They include Alan Stanfill, formerly of the  
21 Advisory Council in Denver, now employed by HDR close to coming  
22 up on a year, now lives in Sioux Falls now full time to support  
23 the project.

24 Melissa Lundberg is also a recent hire to HDR. She  
25 works on our environmental compliance team or the project

1 management team. And Erin Salisbury from SWTA Consultants is  
2 also part of our management team for the environment or for the  
3 cultural effort and the archeological destructions effort.

4 I guess you'll get to know the project teams as they  
5 make their introductions, see what areas they're involved in.  
6 And like Randy wants us to give some time at the each of end of  
7 those discussions to allow for comments and questions, and I'll  
8 participate at that time, again, if there's something that you  
9 would like to ask of me related to each individual segment.  
10 Also Erin will be able for questions and Alan as well.

11 With that, I think I'll ask Michelle to start.  
12 Michelle's group, Two Pines Resource Group, is based out of  
13 Shafer, Minnesota. They were contacted and contracted to survey  
14 the entire alignment in Minnesota. This was something that had  
15 been attempted on an overview basis years ago. Burns & McDonald  
16 was the previous NEPA contractor for the STB, also did cultural  
17 resources work. And they proposed an overview of archaeological  
18 sites along the existing corridor in Minnesota. That overview  
19 prepared in -- Randy's going to talk about -- talk about some of  
20 the other work they did, but the overview was done in '99 for  
21 Minnesota and didn't really see much distribution.

22 When we started to come to grips with the amount of  
23 work that was outstanding for the project, we determined an  
24 entirely new overview was necessary for Minnesota and also a  
25 real solid survey plan for how the archaeological sites along

1 the alignment would be identified.

2 Michelle's team has been very integral from that  
3 process from the beginning. They've been working on the project  
4 I think since October or September of last year, about a year  
5 now. And they're in the midst of a 3- to 4-month archaeological  
6 effort to look across the entire alignment of Minnesota. It's  
7 quite a comprehensive survey effort unlike any that have been  
8 conducted I believe in the state.

9 So, Michelle, with that, if you want to discuss your  
10 team and the work that was done there and then we'll have time  
11 for comments and questions afterwards.

12 MS. TERRELL: I'm originally from Minnesota. I did my  
13 undergraduate schooling at the University of Minnesota in  
14 anthropology. I went out east for a bit, and I did my doctorate  
15 work at Boston University and then came back to Minnesota.

16 And I've been working in cultural resource management  
17 doing archaeological and historical research in Minnesota for  
18 about the last 10 years. I am currently a -- I should say a  
19 little bit in the past I've had the opportunity to do several  
20 projects in southern Minnesota, including a few that are within  
21 just a mile or two of the U.P. corridor. So it's an area that I  
22 am archaeologically familiar with and also interested in.

23 I am currently co-owner of Two Pines Resource Group,  
24 and we in Minnesota actually have a project team that consists  
25 of three firms.

1 (Ms. Terrell gives presentation)

2 MS. TERRELL: I would be glad to take any questions  
3 about our work done in Minnesota.

4 MS. HALVERSON: Did you have any tribal involvement?  
5 Pam Halverson, Lower Sioux.

6 MS. TERRELL: At this time, no, we have had not had  
7 anyone in the field with us.

8 MS. HALVERSON: What about the SHPOs?

9 MS. TERRELL: The SHPO's involved. Someone's being  
10 kept apprised of our findings and progress.

11 MS. HALVERSON: But not the THPOs.

12 MS. TERRELL: All that consultation has been -- is  
13 ongoing. That's why we're having the meeting.

14 MR. YOUPEE: It seems like it's always after the fact  
15 you contact tribes, your agency as well.

16 My question is no further work is recommended at the  
17 seven sites. Recommended for what type of work are you talking  
18 about?

19 MS. TERRELL: Additional archaeological work.  
20 Certainly --

21 MR. YOUPEE: Okay. Maybe that needs to be cleared.

22 MR. BRADY: My tribe is known as Cheyenne, has two  
23 groups, two groups in the tribe that were separated across --  
24 when we were crossing the Minnesota River. One group remained  
25 behind that formed these -- you know, that formed its own

1 cultural identification identity while the other pushed onward  
2 to the Plains and became the Plains tribes. They were called  
3 the Tatitsa (phonetic). The Sunta (phonetic) remained behind  
4 and became another one -- formed their identity, formed their  
5 own religious organization, formed their own covenants,  
6 covenants we still have today in our tribe.

7           It's called the Sacred Buffalo Hat. And it was  
8 given -- it was taken out of one of the lakes in Minnesota. The  
9 other is the Sacred Arrows. It was given to the Tatitsas from  
10 the Black Hills here -- from the Bear Butte. So we have those  
11 two cultural affiliated tribes that came back together in time  
12 after 400 years of separation.

13           And we do have a lot of sites within that area that  
14 you're talking about and also here in the Wyoming and Montana  
15 with our TCPs that are -- that are -- that are passed down  
16 through oral history that we -- and that we know how to  
17 identify, you know. We know where they are or the history  
18 associated with our TCPs, our sacred sites.

19           I am certainly going to be interested when you start  
20 doing these excavations and testing these sites that you have  
21 mentioned. So my tribe should be kept, you know, informed on  
22 the progress that you're doing whenever you're going to do this.  
23 It would be nice to have a Cheyenne representative there.

24           Thanks.

25           MS. TERRELL: And that's one of the reasons that it's

1 very important that we have this discussion before we go into  
2 those areas.

3 MS. YOUNG: Hi. My name is Wastewin Young, and I am  
4 from the Standing Rock Sioux Tribe THPO Office.

5 I just wanted to say that I agree with what Curley was  
6 saying because it's really imperative that you have to have, you  
7 know, the tribal spiritual advisors that are from these areas.  
8 I think that it would be a really good idea or recommend that  
9 you have one on hand from, you know, these various tribes that  
10 live in this area.

11 For example, where I live on Standing Rock in  
12 North Dakota whenever there are various projects that go on when  
13 there are sites that are found they know to call our office, and  
14 we have people that deal with this and are -- you know, are  
15 spiritual advisors or leaders, medicine people that go out with  
16 them. Because there are a lot of sacredness and sacred things  
17 that are found. And they could be housed at a laboratory, yeah,  
18 but our people and the people indigenous to the area may be able  
19 to help you and assist you.

20 And that's the only comment that I have to say is that  
21 I really think that you need to have spiritual leaders or  
22 advisors from the various tribes that you consult with. Because  
23 these are, you know, sites that the people, indigenous  
24 communities, still hold in high regard.

25 That's all I have to say.

1 MS. HALVERSON: Pam from Lower Sioux in Morton,  
2 Minnesota. I think that tribal involvement needs to be from the  
3 beginning. As soon as you get those projects and you know  
4 they're going to impact tribal lands, those are our homelands.  
5 And I'm speaking for Lower Sioux. I'm not speaking for any of  
6 the other tribes. But I am speaking for Lower Sioux as their  
7 THPO officer.

8 You need to contact us. We need to be involved.  
9 You're determining what those sites are. There's probably sites  
10 there that you can't determine that. Only a Dakota person can.  
11 Only a tribal member can.

12 And when you take those things from their places where  
13 they've been put -- they've been put there for a reason. Our  
14 people had ceremonies there, or we had burial mounds there. You  
15 have to take those back to your laboratories? What gives you  
16 that right?

17 That's why you need our involvement. Nothing should  
18 be disturbed unless there is a person there that gives you a  
19 right to disturb that.

20 MR. MADSON: Randy, could you comment a little bit on  
21 the involvement that has occurred in Minnesota and the outreach  
22 that the STB has done with Pam and other organizations?

23 MR. WITHROW: Well, let me just say that there's a  
24 real effort to get into the field and do these surveys  
25 appropriately. And I think when the discussion happened one of

1 the things that people were concerned about was how to best  
2 include the tribes in that effort.

3 And we recognize, I think, that there are a lot of  
4 different tribal groups, governments, that are interested in  
5 these areas. And in the past when the surveys were done back in  
6 '99 and 2000 and that time period, there were individual tribal  
7 members, I'm not sure if they were authorized formally by tribal  
8 governments or not to participate, basically working with the  
9 archeology survey crews.

10 And I guess because of the number of different groups  
11 involved we weren't quite sure how to best facilitate that. I  
12 think our approach and our suggestion here and part of the  
13 reason we wanted to have this extended tribal summit is talk  
14 about maybe a different way of doing this. And based on what  
15 you just said I'm thinking this probably wasn't a very smart  
16 thing to do or the right thing to do necessarily.

17 But we were interested in having a similar kind of  
18 effort conducted by tribal members to help identify areas of  
19 importance along the project corridor. A point was made in some  
20 of the earlier meetings a month or so ago that we had done  
21 surveys to identify bridges and structures along the railroad.  
22 And there have been a number of archaeological surveys done  
23 along the corridor to identify archaeological resources. But  
24 surveys had not been done to identify cultural properties of  
25 importance to tribal governments.

1           And I guess it was our feeling too that that was a  
2 very good point and that that effort should be on a par with  
3 those other kinds of surveys. Not as just an add-on or a  
4 supplement or -- but to try to structure them in a more formal  
5 way with more involvement from tribal members.

6           And I guess we've been referring to those as cultural  
7 surveys, or some people have referred to them as tribal surveys.  
8 But the purpose would really be to identify places of importance  
9 along the right of way.

10          Now understand that over the years people have tried  
11 to figure out a way to involve tribes in a way that was  
12 meaningful to them. Because all of these archaeological surveys  
13 that are being done -- or a variety of projects, not just this  
14 one. But to the extent there really hasn't been kind of a  
15 coordinated effort I guess to figure out how to do that.

16          And I think when you're dealing with smaller projects  
17 that aren't, you know, crossing three states it's probably more  
18 feasible to do it with monitors who are out working with the  
19 crews, the archeology crews, while they do that survey and to  
20 coordinate those efforts that way. But a project this size with  
21 so many different people interested in participating it becomes  
22 a real challenge to figure out how to best do that.

23          And I think there's a real need to look for a  
24 different way, maybe a different model to involve people in a  
25 way that accomplishes the same thing but gets the information we

1 all need and want to manage the project properly when it comes  
2 to cultural resources and particularly TCPs.

3 But I guess that was sort of our perspective here.  
4 And, like I say, that doesn't necessarily respond to the  
5 comments that were just made by Pam and -- I'm sorry. I didn't  
6 catch the woman's name from Standing Rock. Okay. But what  
7 you're saying is that it's still important to have spiritual  
8 leaders or proper tribal members present during those surveys to  
9 guide the archeologists in the work that they're doing.

10 Obviously that's too late to fix that now. We do want  
11 to deal with it more appropriately from here on out. And so I  
12 appreciate your comments, and I am sorry that we did kind of  
13 jump the gun there with the survey work. And I know this is a  
14 problem you probably have to deal with time and time again. But  
15 they are, I think, looking at finding a different way to do this  
16 because in some ways it's just not practical to maybe have half  
17 a dozen representatives there. And there may be ways to  
18 coordinate among the tribes to describe --

19 MR. YOUPEE: Before you get going too far on that, I'm  
20 going to interject something. You're talking about having half  
21 a dozen representatives from the tribes, I assume. We just seen  
22 13 individuals on the archeology site working for archeologists.  
23 You're saying half a dozen tribal members is too much?

24 MR. WITHROW: I don't know that I'm saying it's too  
25 much. But I guess it's something we need to talk about, how is

1 the best way to do this.

2 MR. YOUPEE: More for you is good? And less for us is  
3 good?

4 MR. WITHROW: I wouldn't put it that way.

5 MR. YOUPEE: You have European ideology here,  
6 archeology, fairly new science here, still constructing, still  
7 trying to get leverage, okay, as a science.

8 But as a -- really as an opponent, opponent to tribal  
9 interests as far as their spirituality and culture is concerned.  
10 So we're always at odds, all right? These individuals do their  
11 work as described by their studies. We live our life as  
12 described by those ones before us to live and to sustain life  
13 for ourselves and future generations. They're not doing that.  
14 They're studying this archeology.

15 Okay. We're existing, living life. There's some  
16 differences there. The sites that we talk about, many of them  
17 we had no access. My tribe got chased out of Minnesota. Do you  
18 understand that? We got chased out. Sure, we declared war on  
19 the United States. Because they unfulfilled their obligations  
20 on the treaty rights. It's a known fact.

21 War is war. Declaring war on the United States at  
22 that time was a right of the Lakota to do, okay? They violated  
23 the laws of the treaty. The treaty therefore had no binding to  
24 the Lakota. Let's get these people off our land. Okay. It was  
25 a great encroachment.

1           Thousands and thousands of immigrants even today find  
2           some kind of strength that there were immigrants and that there  
3           were illegal aliens, as far as we're concerned. And now you got  
4           a problem with illegal aliens doing the same thing that you do,  
5           which is encroachment. I want this. I want this. I want this.  
6           I want this.

7           And now going into our sacred areas. I want this. I  
8           want this. I want this. And usually it's just a -- a false  
9           stereotype resulting in commercial trend.

10          These areas that we talk about exist for us not  
11          because someone said it was an area, but those associations and  
12          affiliations to those areas by certain times and periods and  
13          seasons and occasions have a specific purpose, okay, drawn from  
14          deities more, more sacred than ourselves but consistent to the  
15          path of natural orders.

16          And what's interjecting today by these ideologies is  
17          inconsistent with natural orders. And so we find ourself in a  
18          place discussing foreign matter, okay, involving the sacred  
19          areas that are very important to us as people.

20          Now how many federal agency representatives do we have  
21          here today? Just one? You're acting as lead -- two?

22          MR. RITCHIE: Catherine Glidden from the Surface  
23          Transportation Board was late today. She was delayed in her  
24          flight. She should be here after lunch.

25          MR. YOUPEE: You're not delegated any authority from

1 her, the lead agency?

2 MR. RITCHIE: No.

3 MR. WITHROW: He's pointing at me. I'm the third  
4 party contractor for STB.

5 MR. YOUPEE: He's private sector. He's not lead  
6 agency. You have to have lead agency on this consultation. I  
7 just wanted to point that out.

8 These sacred areas that we're talking about, you know,  
9 given to us in a sacred way, even our medicine is presented in a  
10 sacred way. It's not a try there and a try there. You'd have  
11 people with no minds if you did that with medicines, herbs and  
12 medicines. There's a lot of medicines out there that can really  
13 hurt you.

14 So these medicines come to us in a very sacred manner.  
15 And we have those places where that information was given to us.  
16 We hold that place sacred. Hopefully sometime we can go back to  
17 that area and have that same communication that they would also  
18 give us something else, AIDS or cancer or other illnesses.

19 You know, that's what we think. That's how we think.  
20 That's how our relationship is with those special areas.

21 When we buried our people, you know, great ceremony  
22 and great festivity and even selection for our relatives,  
23 building mounds, paying homage every year, bringing more dirt to  
24 those mounds to remember and support the old history of those  
25 mounds and fashion those mounds eventually into something else,

1 turtles, lizards, or snakes, or people, everything what comes to  
2 mind. And it's true the events and sacred practices, something  
3 else would come and manifest itself to something that is  
4 relevant to that application.

5 This is how those burials happened. And as a result,  
6 you know, we had not had access to those areas. We've been  
7 pushed out, chased out, myself, all the way into Montana. Sunny  
8 and Sibley, the Minnesota militia, who with the burial  
9 (Inaudible) who provided incentive in the way of \$200 per head  
10 or specimen, okay, for the militia to track down Indian folks  
11 and to kill them but to cut their head off because the head at  
12 that time was the most important part of the human body for  
13 information gathering. Put into wagons, shipped down to  
14 St. Louis, and shipped over back east to be studied.

15 But not only the people that were involved with the  
16 declaration of war on the United States but any tribal person,  
17 Indian person, that was in the area, including the Upper  
18 Yanktonia. They didn't have nothing to do with that, nothing at  
19 all, chased down and got their head cut off.

20 Okay. Now these people were buried, but the idea of  
21 getting their head chopped off and not having a full body, you  
22 know, is eery, just eery for us to even think about it, but  
23 that's how you degrade. In war you degrade. You belittle. You  
24 cause for that to happen to scare, and tactics. And they still  
25 do it today in Iraq.

1           But they were cutting these heads. The tribes didn't  
2 realize what's going on until a missionary told them there's  
3 bounty on your head. They are giving money for your head. And  
4 so when they learned of that the Upper Yanktonia, of course,  
5 they started cutting heads too, cutting heads, cutting heads,  
6 slinging these heads all over.

7           And outcry began by Minnesota citizens. You know,  
8 what kind of savagery is this? These Indian people are cutting  
9 all of these guys' heads off for crying out loud. What are they  
10 doing that for? What savages. I mean, it's always a thing for  
11 the weak to imitate the oppressor, and we got to do it too. So  
12 they do it. But the name Unkbatsa (phonetic) was tagged on to  
13 the Upper -- Unkbatsa, cut head, Cut Head Sioux.

14           Okay. Leaving Minnesota and then going over to  
15 White Stone, you know, having to battle losing men, women, and  
16 children, going over to Big Mound, losing men, women, and  
17 children, going over to Kielder Mountains, losing men, women,  
18 and children, and then ended up in Montana and having some  
19 leverage areas to fight back but also be assisted by the  
20 (Inaudible) to fight back, and then running into Canada as  
21 refugees. Refugees for crying out loud. Refugees. Native  
22 American refugees.

23           You know, how does that sound to you? In the books  
24 until probably the '80s when things slowly start changing as far  
25 as having more Indian people, Indian history into the history

1 books, it was almost unknown for us as Indian people to go to  
2 school, public school, Catholic school, and to find something  
3 about us in these books other than savaging, okay. Or the  
4 noble -- the noble red man. The myth of the noble red man. Did  
5 you guys read that?

6 And it's all there was. Going to the Bible there's  
7 nothing in this Bible about us and the sacred thing, you know,  
8 for everybody around me. There's not a God damn thing in this  
9 Bible about me. There's nothing in these history books about  
10 me. There's nothing about the future about me.

11 We look at TV, listen to the radio, read the writing.  
12 Nothing about me. Okay. And this is my country. This is my  
13 country, and I'm supposed to have certain allegiance to this  
14 country in a captive existence?

15 I heard earlier that there's recurring themes. I  
16 think there's recurring themes because people just don't  
17 understand, just don't listen. They hear it, but they don't  
18 listen. And so as a result of that, there is no reflection in  
19 the record or in the discussions that were brought or that are  
20 brought that are being part of the agenda that discusses those  
21 things as well.

22 How do we become greater humanized than this effort?  
23 Because this effort should be a project not only for archeology  
24 interests or for DM&E interests, commercial interests or  
25 collaborating interests of private sector and public sector and

1 tribal sector, but it should be a humanitarian interest, that  
2 things need to stop as far as tribes being looked down on and  
3 not having the resources or the vehicle to move in a way that  
4 brings meaning to our existence on this table.

5           Again, a captive existence, you can look down on  
6 people. There was a -- there was a great undertaking within the  
7 last decade through the United Nations to bring some way -- t  
8 would bring greater meaning to the lives of the indigenous  
9 people. Okay. And the 100 some countries have signed that  
10 declaration, the United Nations Declaration of Indigenous  
11 People's Rights. The only countries that haven't signed that  
12 document is who? Tell me. Anybody.

13           Australia, New Zealand, Canada, and the United States,  
14 claiming that it may infringe on the treaties that they  
15 currently have with the indigenous people. I mean, what treaty  
16 has the United States kept? It's all been broken.

17           So we're not only looking at archeology, cultural  
18 resources matters, we are looking at social capital. We are  
19 looking at economic benefit and opportunity, and we're looking  
20 at sustained American heritage, American heritage, American  
21 heritage, not cultural heritage, not cultural resources of the  
22 tribes but American heritage in a form that consolidates  
23 private, public and tribal interests. We have mutual benefit.

24           There is a great institutional arrogance that the  
25 tribes have to face ongoing, continuously, which is fostered,

1 designed, and implemented out of public agencies as well as  
2 private sector agencies towards their relation to tribes in  
3 dealing with matters such as this.

4           So it's time, ladies and gentlemen, that you look at  
5 what has happened in the past, not try to stain (Inaudible)  
6 tribes and have them like it. Because we don't like it. Not  
7 only for us, but we have hopefully future generations that will  
8 come, and they will have a better relationship with the Federal  
9 Government as well as private sector agencies in dealing with  
10 American heritage.

11           Thank you.

12           MR. THOMAS: I just wanted to add just a little bit  
13 more. Just before Curley started to explain, you know, a little  
14 bit about his feelings all of you sat here and listened to Randy  
15 talk about, okay, we're going to change that now. We know we've  
16 been doing this for so long but now we want to -- all of you, it  
17 seems like do you understand that? Do you understand exactly  
18 what he just got done telling you?

19           I'd like to request the minutes of today before  
20 tomorrow's meeting, and I want all of you to take a look at what  
21 he's just got done telling you because you know what? That  
22 there is -- is that breaking the law? And if it is, who's all  
23 involved?

24           There's no reporting to the tribes. He explained  
25 that. He heard two individuals over here saying, well, we need

1 a spiritual leader there. When you go bury or unbury your  
2 relatives from your cemeteries isn't there a priest there?  
3 Isn't there a procedure there?

4 The theory is that a lot of these artifacts are being  
5 taken, and none of it's even being addressed to the tribes. I  
6 mean, isn't that robbery under the United States law? But I'd  
7 like you to take a look at his notes what Mr. -- what Randy said  
8 earlier. He just described it to you that he's saying it  
9 doesn't matter, we're going to do it anyway.

10 MS. HALVERSON: I just wanted to comment again that  
11 how important it is that respect is given to these sites. When  
12 you have to rebury -- Elgin has said a number of times, we don't  
13 have ceremonies to rebury. But when you get skulls back and  
14 nothing else to rebury, you have to do something to respect that  
15 person that's been dug up and kept in a collection for longer  
16 than he was alive.

17 So it's hard for us to have to do that, to have to  
18 come to these meetings and beg for you to leave our ancestors'  
19 burial mounds alone, to not take them back to your laboratories,  
20 not to call the universities and put them on display in their  
21 laboratories.

22 It's not easy for us to come here and have to defend  
23 that. You don't have to do that to your cemeteries. You don't  
24 have to defend your cemeteries. Those are respected with the  
25 utmost. There's fences around those. You have protection. We

1 don't have it. We don't have that.

2 MR. WITHROW: Well, let me just say in response to the  
3 comments that have just been made that the purpose of this  
4 meeting, one of the purposes of this meeting is to bring people  
5 who are here together to hear these kinds of comments. Because  
6 we understand it's important. We understand that maybe some of  
7 the things that have been done and not been done in a way that  
8 best responds to these concerns, and we're also here to make  
9 sure that we do hear these things and that we can change the way  
10 that things are being done so that it's more responsive, that  
11 tribal involvement is done in a more meaningful way instead of  
12 just sending you reports to read.

13 We don't want that level of involvement. We want you  
14 to be more involved. We want tribal members out helping us  
15 identify places of importance so that those kinds of things  
16 aren't repeated.

17 And to be clear, no burials have been investigated  
18 that way. It is true that human bones have been encountered.  
19 Some of the surveys -- there was one done which I was going to  
20 talk about here shortly near Pierre. There were tribal monitors  
21 present during that survey. And no one knew that they were  
22 there until they were discovered. And they were dealt with at  
23 that time in a way that -- I wasn't there personally, but my  
24 understanding is that it was dealt with in a fashion that was  
25 acceptable to all parties. But I may be corrected. I know,

1 Elgin, you probably have some knowledge of that event. But this  
2 was in 1999.

3 But it does underline the importance of what you were  
4 saying is that it's important to have tribal members present at  
5 those times in the field so that if something like that does  
6 happen, someone is there to help guide the archeologists and  
7 make sure that these are handled properly.

8 So I think we recognize that that was not -- that was  
9 not done. It was not done properly in accordance with people's  
10 wishes. And the purpose of this meeting is to really help us  
11 correct those things and have people more closely involved. And  
12 we need your help to try to identify ways to do that in a way  
13 that's best.

14 So that really is the purpose of this meeting in my  
15 view.

16 MR. JONES: If I could, Randy, I just want to make  
17 sure too that it's understood when it comes to human remains the  
18 P.A. and the I.D. Plan are very clear about any time human  
19 remains are come upon how those matters are dealt with. That  
20 includes the work stoppage within 300 feet, that the tribal  
21 representatives if they wouldn't be on hand are notified. I  
22 mean, those are all clearly dealt with in the existing I.D.  
23 Plan. I just wanted to make sure. I thought it was less than  
24 clear.

25 MS. HALVERSON: But we should be involved from the

1 beginning. I mean, it's late in the process. It should be from  
2 the beginning. The tribes should be there not when you find  
3 something but from the beginning, from the beginning of the  
4 project. When those surveys start you should have tribal  
5 involvement. When you contact that SHPO you contact a THPO, I  
6 mean, or the cultural preservation person of the tribes. You  
7 contact the tribes and have a designated person that has been  
8 designated by the tribal council to be it -- to be on that  
9 project or where the project is from the beginning.

10 MR. JONES: If I could, Pam, I just -- I think that  
11 there is some discussion on that this morning, and I don't think  
12 there's anybody questioning the need for that involvement in the  
13 process.

14 I think that -- you know, I think Randy kind of  
15 touched on part of it is is I think there's a difficulty  
16 figuring out how that is best done when you're working with the  
17 interests of a lot of different tribal entities.

18 And we're hopeful through this process, in fact, that  
19 there might be a better way arrived upon to coordinate with the  
20 tribes to ensure that there can be a realistic way of addressing  
21 that and incorporating those kinds of things as early as  
22 possible in the process.

23 It needs to be there. I mean, I don't think there's  
24 anybody here who challenges that or questions that. I mean, I  
25 think part of it is the practical part of how do you -- how do

1 you organize that? I think that's part of what Cathy and the  
2 STB have been trying for us to do is to figure out how that can  
3 be best coordinated and do it in a way that's realistic and  
4 practical to do it.

5 But hopefully -- I mean, that's what we'd like to  
6 learn, and hopefully in the future that can be applied as well.  
7 I mean, if there's a way to coordinate the interests of the  
8 tribes in a way that allows everybody the proper involvement in  
9 the process in a way that (Inaudible) use for all parties.

10 I hear the concern too. I appreciate that. I know  
11 where you're coming from.

12 MR. YOUPEE: But you can't try to do it yourself.  
13 You're trying to figure that yourself. You've been trying to  
14 figure it out without the tribal help. You're talking about the  
15 real world or looking at it realistically. Realistically you  
16 have to contact tribes for their input in developing things that  
17 would be interested to tribes.

18 MR. JONES: From our perspective what we're just  
19 trying to do is I think there are a lot of different things that  
20 need to be done. Coordinating those is not an easy matter in a  
21 project of this magnitude.

22 I think in the end all of the considerations that will  
23 need to have been considered will be, but this is we hope a real  
24 important part of that is to figure out how best to coordinate  
25 between a lot of different interests, Curley.

1           And I know your sense is we could have done this  
2 before anything started. That isn't where we are today. But  
3 the other part of it is trying to get the -- there was work that  
4 needed to be done in order to keep things going too. But this  
5 needs to be incorporated into that process. It needs to be done  
6 in a way that addresses those concerns and does so in a way that  
7 doesn't short-circuit those interests in any way.

8           MR. YOUPEE: Yeah. But it doesn't wipe away the past.  
9 It doesn't make that clean as well. We have to address things  
10 that have happened in the past, okay, so they don't happen in  
11 the future. That's remedial.

12           MR. JONES: And I hope we have a constructive dialogue  
13 about those things because I think -- let me just -- if I can go  
14 off the page a second, my own background a little bit that I  
15 have, if there's a way for the tribes, if there's a way for them  
16 to be coordinated in such that whether it's the private  
17 businesses such as ours or the Federal Government can have a way  
18 of working that, if there's a structure there that helps  
19 facilitate that kind of interaction in an efficient way, Lord, I  
20 know we would welcome that.

21           Because this is for us too somewhat of a frustrating  
22 process in that it takes the time that it does. But that's not  
23 because there is anything that isn't of interest to us or  
24 concern to us. It's a matter of here's what you have to go  
25 through to get things done. I would love to deal with you one

1 on one and have a relationship over it and figure out how to get  
2 things done. But we're set with kind of a prescribed set of  
3 rules to work with too. And so that's why we're here.

4 But I don't think there's anybody here at least  
5 speaking for the company that has any intentions of overlooking  
6 your concerns or -- I didn't have a whole lot to do with the  
7 history of how we got here from years back. I mean, generations  
8 back. I can only deal with what we've got today and I'm here to  
9 work with you and would like to find a way to work forward. I  
10 sense there are a lot of people want to do that. I understand  
11 the frustration and can appreciate that. Hopefully we can move  
12 forward here.

13 MR. YOUPEE: We are looking at discussing these issues  
14 that are relevant to tribes. That is our purpose as well. The  
15 Federal Government have been neglectful in developing these  
16 processes with tribes in the past and are currently working up  
17 to speed developing different agency programmatic agreements  
18 across the board, not only in regions but on a national -- on  
19 national -- the national area as well.

20 We know that dialogue is the pivot point on where we  
21 go from here in establishing a vehicle that we can both receive  
22 some benefit. But it's got to be mutual benefit. So far the  
23 tribes are losing and losing and losing so many resources. And  
24 it has a lot more implication than just federal preservation  
25 statute and law. The impacts are greater than that.

1           MR. JONES: Thanks. And I appreciate that too. And I  
2 think hopefully that's the road we get on is how do we address  
3 those things, what is the mitigation, how do you offset those  
4 impacts. And that takes two or three parties to figure out how  
5 to get that done. You're right. I think that's hopefully where  
6 we are and that's where we can work from.

7           MS. GLIDDEN: Hi. I'm Cathy Glidden from the Surface  
8 Transportation Board. I'm sorry I'm late today. I got in a  
9 fender-bender yesterday and I got hit on the head and I couldn't  
10 get out of D.C. It seems like getting into Rapid City is next  
11 to impossible. Getting into Chicago is really easy.

12           I hear what you're all saying. I think it's important  
13 to listen to your concerns and to hear you and to work with what  
14 your concerns are. And I think that in my mind that's what this  
15 is about, this meeting.

16           I know that there have been a lot of past wrongs that  
17 have been done, but we're hoping that this will be something  
18 that will be beneficial to you and to us as we move through this  
19 project.

20           We've scheduled this Tribal Summit to try to involve  
21 you and have a tribal caucus where you can have a discussion  
22 amongst yourselves about what your concerns are and then come  
23 back to us. We really want this to be interactive and not just  
24 a situation where we're, you know, just saying this is how it's  
25 going to be done. And, of course, we have to work within the

1 provisions of the P.A. But there's a lot of latitude there.

2 Yes. A lot of these sites have been identified but  
3 we're still in the identification phase so we're still looking  
4 at identifying sites that are important to you. So we're not at  
5 the point of having really made any decisions about these sites.  
6 And we would like your input to determine what sites are  
7 important to you and how to go about getting you out in the  
8 field or otherwise so that you can identify those sites for us  
9 so we can move forward.

10 And I'm hoping my bump on the head will help me today  
11 to be more lucid.

12 MR. YOUPEE: I think when you describe past wrongs  
13 please qualify that, you know, by either taking ownership of  
14 what wrongs you're talking about.

15 MS. GLIDDEN: Well, I think the ones that you  
16 expressed today.

17 MR. CROWS BREAST: Okay. I think I got something  
18 that's going to possibly affect everybody here. And I know  
19 everybody feels the same way I do just about.

20 I'm hungry. Let's go eat. Everybody hold those  
21 thoughts, and we'll come back and hammer this out again. That's  
22 a good suggestion, I think.

23 MR. WITHROW: Thank you, Elgin. Again, let's take a  
24 break and get something to eat and we can come back and work  
25 through some more discussion. I think this is all very good and

1 productive. We want this to continue. The lunch is being  
2 served next door, again, in the Holiday Inn. Go through the  
3 main entrance there and kind of bear to the left, walk through  
4 their little open courtyard cafeteria, keep bearing to the left  
5 and you'll see a room called the private dining room and lunch  
6 will be served there.

7 (A lunch recess is taken)

8 MR. WITHROW: There are these paper printouts of I  
9 think all of the PowerPoint presentations perhaps with the  
10 exception of the one that Doug Jackson gave this morning. But  
11 Doug says he'll provide me with that printout version, and I'll  
12 make sure we send out copies of that to everyone. That's the  
13 presentation on the engineering, which I think was useful.  
14 Everyone should have a copy of that.

15 MS. HALVERSON: HDR didn't have one?

16 MR. WITHROW: For Mike? No. It was more of an  
17 introduction with the team.

18 MR. MADSON: Yeah. The substance was with the team.

19 MR. WITHROW: Are there any other questions on the  
20 Minnesota segment Michelle spoke to before we jump to the next  
21 piece?

22 Okay. Next portion of the project corridor as you  
23 move west is referred to as the South Dakota Rehabilitation  
24 Segment or the rehab segment. This section runs from the  
25 Minnesota state line to Wall so it includes the PRC Section as

1 well.

2           Essentially it's the remainder of the existing  
3 railroad alignment. And a survey was done of that section by a  
4 company called Burns & McDonald.

5           (Randy Withrow gives presentation)

6           MS. HALVERSON: Is there any GPS or anything done on  
7 these sites or on this -- no?

8           MR. WITHROW: Burns & McDonald didn't use GPS at that  
9 time. So no, no GPS coordinates were taken as far as I know for  
10 this area. I don't know if HDR is aware of any GPS files for  
11 this segment?

12           MR. MADSON: Not from the investigation, no. And the  
13 USD investigation, yes.

14           MR. WITHROW: Right. Okay.

15           (Randy Withrow continues presentation)

16           MR. WITHROW: If there are any questions, I can try to  
17 answer them again. It's not a survey I participated in. It's  
18 just a report based on my reading of the report and summarizing  
19 it for you.

20           MR. RITCHIE: It seems like there were recommendations  
21 of avoidance, but is that practical?

22           MR. JACKSON: Yes. Actually within the existing right  
23 of way we have tried to avoid known sites. Actually the process  
24 that we worked out is that through the surveys, the use of  
25 mapping or identification as to where these sites lie in

1 relationship to known features on the railroad, we then -- our  
2 biggest impact again on the rehab portion of what we're talking  
3 about is where we construct sidings.

4 For that 2-mile stretch that's where we're doing a lot  
5 of grading. That's where we're doing a lot of disturbance to  
6 the earth. So in those areas what we've actually done is is  
7 took an operational layout, engineering layout that said you had  
8 to plan to put your sidings so many miles apart because the  
9 train spacing and speeding that you travel at and so forth, we  
10 lay out those sidings and based on our engineering operation and  
11 then evaluated where they fell next to known sites.

12 So cultural resource sites, the surveyed sites that  
13 we're talking about, any of these that were identified as being  
14 a potential site we then tried to reshift that siding spacing to  
15 get it to work out and shift sidings up and down.

16 We also did that with wetland mitigation as well. Any  
17 place that we could shift our siding locations to avoid wetland  
18 impacts we've also tried to account for that.

19 There's some other things, I guess, in that same  
20 regard, which side of the right of way, which side, north or  
21 south of the west railroad, which side of the main line  
22 alignment you end up putting those sidings on.

23 In all of those cases we continue to work to refine  
24 the engineering. We have a plan right now as to where those  
25 sidings go based on the operational efficiency. We adjusted it

1 once for known constraints, and we continue to adjust as we go  
2 through as the sites are identified. So that's really the  
3 minimization or the avoidance we're talking about there.

4 There could possibly be other things just related to  
5 what you do with your cuts and fills to avoid a particular site.  
6 You know, we will consider any of those as we work through with  
7 Mike and his team and the rest of the other folks to try and  
8 (Inaudible) as possible.

9 MR. WITHROW: Any other questions? Okay.

10 I can also talk about the next segment. Want to move  
11 to the next?

12 (Randy Withrow gives presentation)

13 MR. YOUPEE: What is the purpose for the 20-foot  
14 buffer zone?

15 MR. WITHROW: I don't know. It's included in the  
16 identification plan that was written as part of the Programmatic  
17 Agreement, as it defines the area of potential effect for direct  
18 impacts. It requires that they also look at an additional  
19 20-foot buffer on each side.

20 MR. YOUPEE: Do we have any notes and minutes of any  
21 of that action with the tribes there?

22 MR. WITHROW: You mean, the meetings to develop the  
23 P.A.?

24 MR. YOUPEE: Uh-huh.

25 MR. WITHROW: I think I've seen one transcript of one

1 of those tribal meetings, but I don't think it actually dealt  
2 with the Programmatic Agreement. I have not seen it if it does  
3 exist. There are still some files that Burns & McDonald has  
4 that we have yet to go through more thoroughly.

5 MR. YOUPEE: The 20-foot buffer, that would be beyond  
6 the bar pit then?

7 MR. JACKSON: Yeah. I believe. As I recall, that  
8 20-foot buffer was an attempt just to be conservative again on  
9 making sure we covered the right of way or covered the corridor  
10 that we were trying to survey. At the time that they were  
11 trying to do this with the right of way you remember the  
12 engineering was very preliminary, was early. They didn't have  
13 the refined mapping that we have now so they were trying to be  
14 very conservative in the footprint they were identifying to make  
15 sure they surveyed as much as possible in that corridor. And I  
16 believe the buffer was just go 20 feet outside of those known  
17 right of way lines just to make sure it's covered.

18 MR. WITHROW: And, again, if there are things  
19 immediately adjacent to the right of way, you know, they could  
20 be at risk so it's a good thing to do that, I think, just to be  
21 on the safe side.

22 MR. BRADY: Northern Cheyenne Tribe representative.  
23 The monitors, did they do any reports on what they may have seen  
24 or --

25 MR. WITHROW: My understanding is there was no written

1 report in that sense. They would provide their comments to the  
2 survey crews present on site. And there would be some record of  
3 that recorded -- there is some record of that recorded in the  
4 notebooks kept by the archeology survey crews. And whether or  
5 not monitors kept their own record, I assume they probably did,  
6 but I don't -- I'm not aware of any.

7 If anybody has been working with the USD -- Mike, can  
8 you comment on that?

9 MR. MADSON: There are none in their records.

10 MR. BRADY: None of the TCPs they may have  
11 encountered.

12 MR. WITHROW: They would have identified too the  
13 archeologists on site that this place could be considered a  
14 potential TCP and, therefore, more consultation with tribes  
15 should be involved with that site. So usually their  
16 recommendations were of that nature.

17 MR. BRADY: So how were these -- how were these  
18 monitors picked? How did they come up --

19 MR. WITHROW: Well, that's a good question, and I  
20 don't know the answer to that question. That was part of our  
21 concern too that, yes, there were tribal monitors out there,  
22 which was good. But in terms of who they were representing and  
23 if they were representing more than one tribal Government is not  
24 clear.

25 By this time I mentioned -- and some of you may not

1 have been in the room at that time, but we went through a  
2 previous description of a survey done by a company called  
3 Burns & McDonald, the South Dakota rehab section. As part of  
4 that they -- the surveys of the report at that time, just seven  
5 times. This report was distributed to all 33 tribes that have  
6 been invited to participate in these meetings.

7 So somewhere between the time of where Burns &  
8 McDonald did their report and the time USD did theirs, sometime  
9 in 2002, 2001 that consultation effort had been expanded to  
10 include more groups.

11 MR. GRASSROPE: I'm the tribal monitor on this survey  
12 and I was contacted by Augustana to get involved in the survey  
13 and so far I am held by my own vague notions -- I do not know  
14 what's going on because I am under a contract with HDR with  
15 Augustana to not say anything which would jeopardize the  
16 railroad from continuing on through.

17 And one of the things I am -- I need to know is that  
18 what has power here? What has the most power, NAGPRA or if I  
19 say anything that holds up the DM&E with that confidentiality  
20 statement that I had agreed upon to follow?

21 That's what I would really like to know. What has  
22 power here, the law of the land of treaty or my thing on the  
23 DM&E and HDR that says that I have to be quiet if it will hold  
24 up the railroad.

25 Can I be clarified on that? Alvin Grassrope.

1 MR. YOUPEE: Yeah. I think there's several questions  
2 or issues that have, you know, come up, and I think there's some  
3 clarification that's necessary.

4 MS. GLIDDEN: I think that's very concerning if that,  
5 in fact, is how it's occurring because that's not how the laws  
6 work.

7 First of all, again Randy mentioned we're not aware  
8 specifically how the tribal monitors were chosen, but we  
9 certainly understand the tribal individuals that need to be out  
10 in the field are representatives from the tribes from the  
11 federally recognized tribes. And if those representatives  
12 haven't been out there and they need to be out there, then we  
13 get them out there. And unless the tribes agree to a specific  
14 tribal monitor being out in the field, that's not adequate.

15 And so that's something that needs to be addressed.  
16 So, I mean, I understand your concern.

17 MS. HALVERSON: What gives HDR the right to have a  
18 native person sign a contract to keep his mouth shut? What  
19 right is that?

20 MR. YOUPEE: Well, again, recurring themes. But we've  
21 addressed that over there in Minnesota during our meeting. And  
22 it was brought on by Byron? What's his name, Upper Sioux  
23 fellow?

24 MR. WITHROW: Scott Larsen.

25 MR. YOUPEE: Scott Larsen. What we thought about

1 third-party representatives who are not -- who are not supported  
2 or who are not added to our tribal programs or resolution and  
3 they're working on their own. And HDR, is it, HBR, you know, is  
4 very much involved in that type of activity. In the past we  
5 have other projects that we're questioning whether or not the  
6 Indian representatives doing the cultural surveys were even  
7 representing a tribe. And the tribe said, you know, they  
8 weren't aware of these people working on their behalf. And so  
9 that has become a big issue.

10 But we discussed that in Minnesota and we resolved it  
11 between the tribes that were present that no, we don't -- we  
12 don't recognize that. And I think that people that were there,  
13 the Sisseton-Wahpeton -- Jim was there. Was Jim there?

14 MS. HALVERSON: Dennis was there.

15 MR. WHITTED: Tracy?

16 MR. YOUPEE: Yeah.

17 MR. WHITTED: No.

18 MR. YOUPEE: Dennis was there, Scott Larsen, Pam,  
19 myself. I think another tribe wasn't there.

20 MR. WITHROW: Jim Jones.

21 MR. MADSON: I'd like to speak to this if I could.  
22 There is no such contract regarding Alvin not saying anything.  
23 Alvin is an archeologist. He was brought on the project in  
24 cooperation with Augustana and has been employed by Augustana  
25 for the project while they've been doing field survey and

1 providing excellent service just like other members of the  
2 project.

3           There was no intent to have anyone represent an  
4 official -- in an official capacity, a tribal Government. Alvin  
5 was recommended to us or to Augustana and to HDR to participate  
6 in the project because of his field experience; correct, Alvin?

7           MR. GRASSROPE: No. I was signed on to act as a  
8 tribal monitor. Okay. I do have a contract that states that I  
9 work -- my contract is different than the other employees of  
10 the -- of Augustana.

11           My question is where does my confidentiality deal that  
12 I signed with HDR with DM&E, what does that cover I'm saying on  
13 that?

14           MR. MADSON: I understand what you're saying now.

15           MR. GRASSROPE: So am I going to report to the Lower  
16 Brule Tribal Government or the elders there? What can I be sued  
17 on if I say something that will hold up the railroad? That's  
18 what I'm --

19           MR. MADSON: Alvin, I understand what you want to know  
20 about. Confidentiality agreements, we can talk about that, that  
21 everyone was asked to sign a confidentiality agreement that  
22 works on the project. It's a matter of course.

23           Doug, if you can speak as to confidentiality  
24 agreements that we all sign. I see which agreement you're  
25 speaking to, Alvin. It's the general agreement that we all sign

1 as employees of the project.

2 MR. JACKSON: You've got to understand on a project  
3 this large especially where we are today in South Dakota and  
4 Wyoming in particular, we are still negotiating with private  
5 landowners and with federal agencies to get access to land.

6 Part of the whole process for why we have  
7 confidentiality agreements in place as a team for people that  
8 work on this project is that in South Dakota in particular there  
9 have been landowners that requested that this be put in place  
10 because the nature of the situation out west is that they would  
11 rather stay -- have the fact that they may have an interest in  
12 working with the DM&E be a confidential matter.

13 They don't want their neighbors to know that. There  
14 are other neighbors that are out there that are, you know,  
15 definitely opposed to the project and that's what the  
16 confidentiality agreements cover.

17 It also covers things like that, you know, as we go  
18 through and I know on the survey side of it there's a process  
19 that's in place that says what by professional standards and  
20 state laws and federal laws what the archeologists can and can't  
21 do as far as what they collect and they identify or they find  
22 sites, how that information gets shared, how it gets  
23 distributed.

24 In fact, within the archaeological group at HDR it's  
25 kept very tightly. They're identified by site number. They

1 don't describe their sites to just anybody because of the  
2 nature. That's what the confidentiality agreement is in there  
3 in place to do.

4 First and foremost, I'll go back to why we're here.  
5 The STB is the lead federal agency in this. The recommendations  
6 and findings that are done through the process to get these  
7 surveys and stuff go back to the STB. Nobody's determined  
8 eligibility yet. That process is yet to come. The STB will be  
9 the one who makes final recommendation on the eligibilities but  
10 all of the archeologists that are employed doing this, the  
11 archeologists that are doing this currently are operating with  
12 professional standards and to a set of regulations that govern  
13 what they do.

14 MR. YOUPEE: Yeah. But I think federal statute  
15 supersedes your firm's confidentiality policy.

16 MS. GLIDDEN: Right. You're exactly right. DM&E or  
17 HDR may have a confidentiality agreement amongst themselves, but  
18 that is entirely separate from what the federal agency or the  
19 STB is requiring. And that is that although there may be tribal  
20 monitors out there assisting the survey groups, it doesn't  
21 replace having the federally recognized tribal representatives  
22 out in the field to identify those sites that are important. So  
23 it's an entirely different and type of issue.

24 I mean, having people out there to assist, you could  
25 have maybe a (Inaudible) out there or you could have somebody

1 who isn't Native American who has some interest or background on  
2 this and you could have tribal monitors. But it doesn't replace  
3 having the tribes out there themselves to identify these sites  
4 and determine which ones are significant.

5 So in my mind, you know, the tribal monitors, they may  
6 be helpful in the field, but they do not replace having the  
7 federally recognized tribes out there to identify these sites.

8 MR. JACKSON: Yeah. And, again, the confidentiality  
9 agreement we're talking about is internal to the team that we  
10 work on and was put in place to protect information related to  
11 landowners.

12 You've got to remember a lot of people in the position  
13 on this team see things related to valuation of lands, pricing  
14 of lands, what we're paying for easements, all of this sort of  
15 thing. And you just -- you put that in place to make sure that  
16 type of information just doesn't end up, you know, going to the  
17 wrong person, another neighbor or anything like that.

18 That's a -- that is not new to this project or this  
19 process. That's a pretty standard practice on these bigger jobs  
20 when any time you're dealing with right of way, eminent domain,  
21 valuation of land, any of those sorts of issues.

22 MR. YOUPEE: What you really have to do is put that  
23 tribal monitor in perspective. I mean, this person supposedly a  
24 tribal monitor working on behalf of tribal issues and concerns  
25 should be allowed, not restricted, to provide that information

1 to tribal personnel or Government entities.

2 Now if he was restricted to do so, then certainly the  
3 archeology company has restricted or put up restrictions that  
4 is -- I think that is adversarial to the true intent of cultural  
5 tribal monitoring.

6 MS. GLIDDEN: Herb, can you address that because that  
7 seems to me that should be some information that should be  
8 shared with the tribes.

9 MR. JONES: One thing I would add is this is what I  
10 understand on that front too is that I don't think Alvin was  
11 hired as a result of his -- of a recommendation by the tribes to  
12 fulfill that role. I understand that that was from the SHPO's  
13 Office, their interest in having somebody that would be on board  
14 with that perspective. I think that's one thing.

15 But the other thing I just want to say with regard to  
16 confidentiality agreements, those are standard, and they also  
17 help protect the sites and everything else from I think what we  
18 all would think is in the best interest of those sites. So  
19 that's the standard, and it's necessary. I don't think you  
20 would want something different than that.

21 Now whether or not there's a way to -- obviously if  
22 you have a tribal representative, a person who's there as a  
23 monitor on behalf of the tribes and their ability to share that  
24 information with the folks that they're there for, that makes  
25 sense. But there are the confidentiality agreements for their

1 intended purpose. It's essential. You wouldn't want something  
2 different than that.

3 MS. GLIDDEN: My impression is that there's a concern  
4 among Curley and some of the other tribal members that that  
5 information that Alvin -- correct?

6 MR. GRASSROPE: Yes.

7 MS. GLIDDEN: That Alvin has identified or has seen in  
8 the field as something that he feels should be shared with the  
9 tribes; correct?

10 MR. GRASSROPE: Yes.

11 MS. GLIDDEN: And, I mean, how do the other tribal  
12 members feel about that? Is that something that you would want,  
13 or is that something that you think is irrelevant and that  
14 really it should be based on having representatives from the  
15 federally recognized tribes out in the field?

16 MR. YOUPEE: We had a discussion regarding the same  
17 issue because one of the tribal monitors who passed away in  
18 Northern Cheyenne brought that same issue, was told not to  
19 disclose information regarding I think there was a number of  
20 sites. That's why I was asking about the minutes of the  
21 comments you've made in other consultations.

22 But brought the issue that he was told to not disclose  
23 that information and so -- and then we're -- it's haunting us  
24 again, what policies are taking place that really restrict  
25 tribes in gaining the information they need to make those

1 decisions.

2 MS. HALVERSON: In the past I think -- you know, when  
3 tribal members were contracted by HDR, when they were contracted  
4 by them and went out in the field with them and did work they  
5 were paid very well. They would not say nothing to none of the  
6 tribes. They would not come back and report to the Dakotas and  
7 Minnesotas or to Lower Sioux anyway. They would not come back,  
8 and they would not say these sites were found, remains are here,  
9 sacred sites are here. They didn't do any of that.

10 Maybe they were paid to keep their mouth shut so a  
11 project could get done. That's what we need to avoid. And, you  
12 know, I was on a few projects where -- and heard of several  
13 projects that that had happened. You know, something was moved.  
14 The burial mounds were moved. And Minnesota Indian Affairs  
15 Council was with them too. We have no documentation. We have  
16 nothing. Lower Sioux has no reports of what happened to those  
17 sites. They're just wiped off the face of the earth.

18 MR. BRADY: Randy, the problem I have with this is  
19 that Luke Brady's my cousin. So is Steve Brady. They're both  
20 (Inaudible). And I was the former THPO officer for the tribe.  
21 We worked independently. They worked independently. They don't  
22 share information with me, with the tribal entities. They keep  
23 their information to themselves.

24 And, like Curley said, Luke is deceased. So I don't  
25 know, you know, Steve does not share whatever information he

1 might have gotten from Luke to the tribal entities who are the  
2 legal representatives of the tribe. We've been trying to --  
3 I've been trying to work with Steve and -- Steve particularly to  
4 share that information. For some reason or another he don't do  
5 that. And we're -- that information that the coalition has is  
6 not shared with the tribal entities like with the tribal THPO  
7 office now.

8           We don't have no information of what Minnesota  
9 Coalition is doing or did or whatever, you know. And we're  
10 having a problem with that. And we try to work -- they  
11 almost -- they went to the tribal council this past couple  
12 months ago to try to clear up the situation, but Steve didn't  
13 want to cooperate. So it ended there because Steve has his own  
14 political contacts that he uses to avoid sharing the information  
15 with the tribal legal entities.

16           So I -- you know, we're -- like I mentioned here, you  
17 have to consult with who has -- you know, if these records or  
18 these reports would be sent to that THPO office -- that's what  
19 they were created for, you know, to have these records. So if  
20 they don't have them, we have no knowledge of what's going on  
21 out here like now, you know. And that was my concern. Thanks.

22           MR. THOMAS: Wyatt Thomas, Santee Sioux Nation. The  
23 last meeting I brang my tribal chairman to the meeting. These  
24 concerns were brought up and it frustrated him and he got up and  
25 walked out.

1           One of the things that he did express to me and to  
2           make sure that everybody knew that there's a lack of  
3           communication from the State to the tribes. I mean, we're not  
4           receiving nothing from them.

5           But also there is no contracts like what's your name  
6           again?

7           MR. MADSON: Mike.

8           MR. THOMAS: Mike stated, there's no contracts from  
9           the tribes to HDR saying that these monitors are representing  
10          these tribes. There's none. But yet there's individuals out  
11          there saying that they are representing our tribes and that they  
12          are doing this for, you know, the Santee Sioux Nation. And our  
13          tribal chairman verbally stated there is no representation  
14          that's out there except for Robert Campbell and myself.

15          So somewhere down the line the communications are  
16          being broken. And it's really, really sad because you know  
17          what's happening? Everything's coming out on the table today.  
18          How can this project even move on? I mean, you've seen a lot of  
19          downfall. We've heard about it. We've heard about it. Now  
20          it's coming out.

21          You know, you always tell us to do the right thing.  
22          Now we're asking you to do the right thing. Be honest with us.  
23          That's all we're asking. I mean, this is your project, your  
24          business. Let's work together. Let's be honest with each other  
25          and bring it up. Let's move on. Otherwise, we'll be right here

1 at the table again discussing the same old thing next time and  
2 not getting anywhere.

3 Tomorrow we have a caucus with the tribes. These  
4 issues will come out. And hopefully you'll be able to work with  
5 us. It's about process. It's about gain. We're not here to  
6 offend anything or anybody. And that's what we're trying to say  
7 about these sacred sites. Don't offend them. Don't offend --  
8 because you know what? It's up to us to tell the story of the  
9 relatives that are passed on.

10 A lot of our elders are dying. We don't know the  
11 information ourselves. But yet somewhere out there there's  
12 information backed up in boxes with remains and artifacts that  
13 don't belong to them. But yet we don't -- we never get a piece  
14 of paper saying, okay, we found this here artifact, we found  
15 these remains. We don't never get that from the tribes. We  
16 don't receive none of that unless they're in a museum and this  
17 artifact's been in here over 80 years and can you come and see  
18 if you can identify it?

19 That's what we're asking. We're asking what's  
20 happening. You know, these tribal monitors are very important.  
21 And so I ask that you guys take a look at that. If you want  
22 this project to progress the way that it's trying to, you know,  
23 then the truth -- let's talk truthful. Let's be honest to one  
24 another. It's all about choice. You can chose to hold it back  
25 and hold the whole program back, or you can choose to move on.

1 That's a principle that we live by.

2 MR. JACKSON: Randy, I'd like to take a minute and  
3 address, I guess, the process that we're using.

4 First, there is no policy on withholding, whether  
5 there's a confidentiality agreement or not in place, of any of  
6 the information that's found by a survey team of archeologists.  
7 I'll tell you that right now.

8 The process that we're under, though, is, you know, I  
9 think everybody's assuming that these surveys are done that, you  
10 know, there is no further survey. From our standpoint on what  
11 we're trying to construct here with 1,000 miles of alignment  
12 that covers three states every day we work on this job there's  
13 200 different items moving at any one time.

14 So from my perspective on what we're trying to achieve  
15 is that to give you a little background, there's actually  
16 147 conditions imposed upon the DM&E to build this project by  
17 the STB. That was a part of the rod that came out of this. If  
18 you take those 147 conditions and you boil them down to the  
19 detail that they consist of, the number of actual conditions  
20 that that relates to because of the interaction with the other  
21 federal agencies that's dictated by the STB and other state  
22 agencies, that 147 conditions becomes extremely large.

23 We got those conditions on a list. We're trying to  
24 whittle those away. Part of those issues that we're dealing  
25 with is not just the identification of the tribal properties

1 that are out there, the tribal resources that we have to be  
2 concerned about, but it is the historical, it is the cultural,  
3 it is the archaeological. We have biological and wetland  
4 resources as well. We're under seasonal constraints as to when  
5 those surveys can be done.

6 And then from my perspective being the project manager  
7 on the project we have a ton of logistical constraints that need  
8 to be worked out.

9 I guess one of the things I'm hearing a little bit is  
10 I don't think anybody in here has proposed -- or has said that  
11 the surveys are done. I think that's in part why we're here is  
12 to start -- you know, to have that consultation and figure out  
13 how we put a game plan together that addresses to get the right  
14 tribal representatives in the field, you know, at the STB's  
15 direction.

16 I think the other part is is that getting where the  
17 project was before and where we are today and the lag of, you  
18 know, when there was -- there was a point in time when the  
19 lawsuit was going on that the project was I guess put on hold  
20 for lack of a better term. There was things being done legally,  
21 and the actual field work was not continuing. We're trying to  
22 get that back up and going now. We're into a different phase of  
23 it.

24 Again, we still -- the STB's the lead federal agency.  
25 We take our direction from the STB as to the conditions that

1 have been imposed and how we do our work. I think we were  
2 trying to start this process off now recognizing that the  
3 Government-to-Government relations has to be there. So this was  
4 our official summit to try and get this kicked off.

5 We actually -- Mike and myself, early on we -- there  
6 was discussion about, well, how do you get the tribes involved  
7 at the point that we were then. And the timing wasn't right.  
8 We didn't have the STB into place where we could make that move  
9 at that point in time.

10 And again from our standpoint trying to identify who  
11 those correct representatives are, who are the ones qualified to  
12 do that work, we haven't done any of that. We purposely did not  
13 do any of that so we didn't get off on the wrong foot.

14 We're trying to do that now. I think we could  
15 coordinate and we will coordinate if that's the direction the  
16 STB tells us to get the tribal monitors out in field. But,  
17 again, I was trying to explain earlier, from my standpoint the  
18 practical measures it takes to do that on the existing right of  
19 way itself are not small.

20 In Minnesota there are a lot of places in Minnesota to  
21 (Inaudible) the line efficiently and take so you're not spending  
22 months and months walking the alignment you have to do that by  
23 (Inaudible) vehicle. We have to do that around train  
24 operations. The FRA's requirements for safety on there, they're  
25 daunting actually when you get people into the right of way. So

1 I've got to take that into consideration.

2 That's why we're hoping -- I spoke to Randy earlier.  
3 We're hoping Wednesday some of those details can get put down,  
4 put together a plan that addresses that.

5 In Wyoming, for instance, we have land out there that  
6 we have court order access to that the lands that are involved  
7 in the eminent domain cases. The court order had access that  
8 was given to the DM&E to perform surveys is very, very  
9 prescriptive down to the hours that we can operate, the number  
10 of people that we can take into those -- onto those private  
11 lands.

12 So those are the logistics that have to be put  
13 together to get these (Inaudible) complete. So I am trying  
14 to -- I guess we are trying to be very, very honest with you  
15 about where we are to date.

16 We don't have the tribal monitors on board. We will.  
17 I think Herb and I and all of us envision putting contracts  
18 together with the tribal monitors to get them out there and  
19 compensate them for the work that they do. I think we recognize  
20 that's a part of it. But we aren't there yet. We're not trying  
21 to say that that's what's been done with these surveys.

22 MR. YOUPEE: Well, I think that there needs to be a  
23 confidentiality clause constructed to establish here between  
24 these parties but also underlying responsibilities of tribal  
25 monitors and how they perform their duties to support tribal

1 concerns.

2           And, you know, I understand when you have multiple  
3 conditions and there is restrictions you have to produce a court  
4 order for access to continue. We, on the other hand, have to  
5 provide court orders on almost everything we do in our life.  
6 We're governed by federal regulation on everything we do.  
7 Everything we have. Everything we produce is governed by  
8 federal regulations.

9           And I think that, you know, the safety measures is one  
10 thing, but, you know, if those -- those areas produce sites that  
11 are sacred in nature to tribes, then there is a purpose for  
12 that, of those being an area that they are.

13           And we know -- we know why. No one can interpret  
14 those areas but ourselves. I fear for this gentleman over here,  
15 his employment, because he was between a rock and a hard spot,  
16 what you guys classify a problem area. But I fear for his  
17 employment.

18           But he had to present that issue because it was  
19 daunting, something daunting on him. He needed to get  
20 clarification. And he may continue with employment, or he may  
21 decide himself that, you know, it's too cumbersome, problematic,  
22 to be Indian or to lie to Indians and hold back information that  
23 is necessary to make decisions.

24           So that's -- I think that's the underlying -- where we  
25 hear the policy conflicting between federal statutes. We have

1 to establish a confidentiality clause whether it be in our P.A.  
2 agreement or separate M.O.A., but all in all it's necessary to  
3 have that done for us.

4 MR. WITHROW: Well, I would just like to say a couple  
5 of things, I guess. I think it was pretty clear from the  
6 discussions we had earlier today too that everyone is in  
7 agreement we need tribal members present with the archeology  
8 crews while that work is going on for a variety of reasons.

9 It seems the issue is how do we make sure that the  
10 people who are out there are the right people? I think we need  
11 to find some way of doing that. And obviously it's -- some  
12 cases it's done by a council resolution or training programs or  
13 certification programs and things like that.

14 I think some tribal governments probably have those  
15 kinds of people, you know, established and available to assist  
16 with projects like this, and others may not. But it clearly  
17 needs to be part of what we're developing here in the next few  
18 days.

19 MR. YOUPEE: Well, if it comes from an existing tribal  
20 program that has responsibility to the tribes, if it comes from  
21 that program, recommendations or suggestions or rules or a list  
22 of individuals, then it's probably right. It's probably the  
23 right list.

24 But if you go beyond the tribes to individuals, it's  
25 probably the wrong thing to do again. And that's what's been

1 happening. Those people haven't been contacting tribes for  
2 those individuals. Or the people that have responsibilities  
3 such as cultural resource departments or THPO offices to gain  
4 that expertise. It's as simple as that. We don't need to go  
5 any further than that.

6 MS. GLIDDEN: Yeah. I mean, tomorrow or whenever you  
7 can outline your specific concerns and, you know, tell us what  
8 you need to address them. Because, you know, as a federal  
9 agency we want to make certain that your concerns are addressed  
10 as part of this identification phase.

11 And, again, although there may have been tribal  
12 monitors out in the field who were assisting in the project,  
13 they don't replace individuals that you believe need to be out  
14 in the field to identify which sites are important to you.

15 So maybe that could be one of the things that comes  
16 out of the caucus tomorrow is get specific feedback on that sort  
17 of issue.

18 MR. CROWS BREAST: I'm hungry again. No. I just have  
19 a few questions for my friend over there. I guess I -- on my  
20 part I need to understand what type of deadlines and time lines  
21 DM&E is under and what kind of time frame are we looking at  
22 before all the issues that you have -- you're talking eminent  
23 domain, court action, whatever.

24 How long before all of that stuff is done? Do you got  
25 any idea how long all of that's being said and done -- when it's

1 all said and done are you going to start building a railroad and  
2 start going -- are we looking at a couple years, three years,  
3 four years, five years? It gives me some time to think about  
4 what I got to do in that time frame to --

5           Because the way I see it is, you know, it's going to  
6 be -- it's going to be built, and we have to work on some kind  
7 of strategy here. We have to work on a strategy where the  
8 tribes' concerns are being met. And in order to do that if and  
9 when we caucus tomorrow I need to see what type of time frame  
10 and deadline you're on and the issues and concerns that you have  
11 on the DM&E side.

12           MR. JACKSON: Right now we have plans in place to be  
13 in construction in mid -- early 2008, mid-2008 or early 2009.  
14 And I say one or the other because the process that we have to  
15 work through with the STB and the conditions that have been laid  
16 out, it's a series of I guess boxes or -- you know, you have to  
17 be able to check off a box that you've done the amount of work  
18 that's required either for identification or due diligence or  
19 for mitigation. And we're working through that process right  
20 now.

21           So, you know, the soonest that we would be at  
22 construction I would guess on parts of this would be sometime  
23 in, you know, the summer of 2008, mid-2008, and that would  
24 probably be sections of it. It would not be the entire  
25 alignment. And early 2009 as soon as the winter weather allows

1 you to get into the field.

2 MR. CROWS BREAST: So you would be like, for example,  
3 you may do a section of 5 miles in the new build section? You  
4 may be -- there may be several projects working at one time  
5 within the rehab section and the PRC Section?

6 MR. JONES: Yeah. I think that's the one thing to  
7 think about. This isn't a project where you would start at one  
8 end and go to the other end or start at one end of the new build  
9 even and go to the other end of the new build.

10 There are parts of the project that take more years of  
11 construction in a particular area. Some places are fairly  
12 routine type of work. Some are more complex. And so it is one  
13 of those things where you need to have earlier access to some  
14 places than others to do it. And you do start in multiple  
15 locations depending on the construction demands for what it  
16 takes to complete construction.

17 So there is the having to comply with everything that  
18 you need to get done and also the demands of the construction  
19 itself, you know, what that time line requires.

20 MR. CROWS BREAST: Okay. When you do finish that  
21 little checklist you have and you're ready to start on a certain  
22 section we would like to know that, what section that is. We  
23 would like to know, you know, how long you got on that section  
24 to finish so that we can get our ducks in a row, so to speak,  
25 and we can do what we have to do to protect, preserve, mitigate,

1 or whatever we have to do.

2 But also you must also think about the situation where  
3 we're going to -- tribes are looking maybe at some kind of  
4 setaside for the destruction that -- the actual destruction and  
5 mitigation of certain sites. We can't really put a monetary  
6 value on such a thing because they're -- they're sacred.

7 You know, they're -- the best I can say is like you --  
8 I receive something from my elders that I get to have and keep  
9 forever. It's mine. And it's a way that they appreciate me and  
10 show me that you have to carry this on, you have to do this.  
11 Now this is what you do when you do this and to help your other  
12 people, your people, your relatives, your friends, your tribe.

13 So they bestow upon you something that has no value  
14 but to us it's like a really -- or even to you it's something  
15 that there's no price on it, but it's really great. It's good  
16 to have. Okay. So when we think in that situation we need to  
17 figure out ways that now we're going to be able to help our  
18 nations.

19 And you're in a really complex situation because what  
20 you have is maybe 14, 15 different tribes. And I don't like the  
21 word "tribe," but that's what it is. Nation. You've got 14  
22 different dialects. Even the Mandan nation, they have two  
23 separate dialects. So you got each nation with each dialect,  
24 language, different from the other. Plus you've got different  
25 rituals, different ceremonies. Within the tribe you've got

1 societies, and you've got clan systems.

2           And you have to talk to these people. You have to go  
3 to -- for example, in the Mandan area they've got three  
4 different bands, the Neuta, the Domesik, and the Nautadi. And  
5 the Hetats (phonetic). They're called the Four Clan. They got  
6 a Wide Ridge. They got the Knife. They got the Low Cap, the  
7 Water Busters, the Thunder Bird Clan. They got Moxoxtti, the  
8 different types of clans.

9           And within those clans you have society members,  
10 society members within those clans that regulate and operate  
11 with certain ceremonies within each society into the clan into  
12 the tribe. So you have a very complex system. And when I said  
13 we need to get our ducks in a row that's what I mean. We have  
14 to talk to all of these people, okay. So we want to know when  
15 and how and the time frame we have to work with.

16           Because you've got peyote ceremony people. You got  
17 euwepi ceremony people. You got sweat lodge people, sun dance  
18 people. These are different ceremonies. Plus you've got  
19 individual bundle keepers that have something to do with the  
20 ground or the rocks or the dirt or the sun and moon and stars  
21 and these other things that we hold kind of like our church.

22           So we need to take all of this into consideration  
23 amongst our tribes, and then we got to -- we're delegated  
24 authority, some of us are. Still I have to go back and say,  
25 okay, Mr. Councilman, this is what's happening. They're going

1 to do this, this, and this. They're working on sections. We  
2 need X amount of people on the line into the corridor to monitor  
3 the activities of the archeologists.

4 We've got to make sure they have a place to stay, they  
5 have a place to eat. We've got to make sure that they're, you  
6 know, all of these things. So there's a lot to it. So, you  
7 know, there's a lot of planning that needs to be done.

8 MR. JONES: Thanks, Elgin. And we look forward to  
9 working with you on that too. And I would say that I again know  
10 what you're saying on that that there's things -- kind of like  
11 the advertisement on TV, there's certain things you can buy with  
12 Mastercard, and other things are priceless. And you've got to  
13 figure out what you do to offset those things. We understand  
14 that.

15 And when it comes to that, the other part of this is  
16 the -- I think from our perspective too I kind of touched on a  
17 little bit this morning. We realize there isn't a single -- you  
18 can't go to -- there isn't a place you can go and say this is  
19 (Inaudible) tribes here. It is working with a lot of different  
20 entities to make things work, and you all have to go back with  
21 your folks and make sure those things work too.

22 We aim to work with you in whatever way we can to help  
23 you facilitate whatever actions you need to facilitate with your  
24 folks.

25 In the big scale kind of things obviously the new

1 build part we're doing would be the longest construction part.  
2 That would be the earliest areas we'd be into. I think that's  
3 right, Doug. There's areas within that that would take the  
4 longest amount of time for construction. So those would be the  
5 higher priorities areas, generally speaking, just so you know.

6 MR. CROWS BREAST: There's also a possibility the  
7 tribes here could set up some criteria as to if and when you  
8 come across something that's really important, that we are  
9 immediately contacted. For example, burial. Or something that  
10 you're just not sure of. And I don't know if there would be  
11 somebody on line in the corridor 24-seven.

12 Now I don't know, you know. People have -- probably a  
13 single person maybe, someone with no family and no bills to pay  
14 or something like that, you know, that -- but you have to  
15 realize that we have some other things to do too. So speaking  
16 for myself, maybe I might not be there all the time, but if  
17 there's something really important, give me a call. I'll come  
18 down. But I come down on your dime, not mine, okay.

19 MR. JONES: That's understood. Let me say during the  
20 construction part of this too you understand in the I.D. Plan in  
21 particular and you mentioned the human remains part there are  
22 very specific instructions on how human remains are dealt with  
23 in that construction phase. And you do stop work. You do  
24 contact the tribe immediately, and everything is stopped within  
25 300 feet of that. And that's -- if you're interested, it's on

1 page A-10 of the I.D. Plan. But that specifically is dealt with  
2 during the construction phase. But we have a ways to go to get  
3 to that. I understand that.

4 MR. THOMAS: So exactly what type of outline under  
5 your box that you have to agree with on your plan that we need  
6 to focus on?

7 So what I'm asking is what are you really asking for  
8 us, and how can we help you to achieve that and what steps, what  
9 type of process you're looking for? Because we're going to have  
10 to have a certain process to deal with this also.

11 But also one of the things I was taking a look at I  
12 was talking with Randy earlier is that, you know, every program  
13 that we go to or every time there's something like this goes on  
14 we're back at stage one.

15 You know, there should be some type of -- and I know  
16 Curley has been working on a few things, I know. Tim has been  
17 working on a few things, on trying to create some type of  
18 manual, some type of template for the Federal Government so that  
19 individuals -- as an individual company such as yourself can  
20 follow, okay, this is what their, you know, expectations are,  
21 and then we won't have to be going through all of this.

22 So I myself I would just like to see an outline of  
23 what you're asking from us. How can we compensate each other?

24 MR. JONES: Well, let me just say I think you asked  
25 what we can do here or what we're hopeful of here. And I will

1 tell you from the company's perspective -- and, again, it is  
2 STB's show here, but what we hope to achieve through this  
3 process -- it's kind of really two things.

4           One is -- and I think these are -- in my mind they're  
5 on two tracks at the same time. One is to figure out how to  
6 work through the conclusion of the identification of the  
7 resources. What can the tribes do to help conclude -- you know,  
8 get that through to its conclusion. And then, secondly, what's  
9 necessary. The other part of that includes the cultural tribal  
10 surveys --

11           Just as a reminder, when we met in Gillette in August  
12 we had some who said we don't need to send anybody out in the  
13 field to do TCP identification. We can look at a map, and we  
14 can look at maps and say here are sites. We can identify them  
15 without being in the field. There are others who said, no, we  
16 would prefer we need to be in the field to go see things.

17           What we want to be able to do is figure out how to  
18 coordinate it, what we can do to best address the desires of you  
19 all here, understanding that we have limitations that we have to  
20 work under too but to the best of our ability to be able to  
21 address those things.

22           That's one approach I guess is to make sure that those  
23 things are done and done properly.

24           And then second is I think a number of people have  
25 touched on this today and that is, you know, what do you have

1 for impacts? You know, what do you do to offset those impacts,  
2 and we want to have that dialogue at the same time. I think  
3 it's important to be able to determine what will work.

4 And I think you really touched on something that is  
5 really good. I think that's a great deal. This process  
6 shouldn't have to be as difficult as it is for everybody. And I  
7 think, again, from my experience -- I used to work for the  
8 Federal Government. And I know from that perspective what  
9 you're facing because I've seen this on other projects.

10 To the extent that you can come up with something that  
11 others can benefit from, that you can find a way to more  
12 institutionalize how things work and coordinate, to that extent  
13 you'll be to everybody's benefit as you well know, and we would  
14 be interested in this process and hearing people's thoughts on  
15 that from finding out what could be. You know, what's their --  
16 how could we as part of what we're looking at in addressing  
17 impacts help with that system so that people will have the  
18 smoother operation, better relationship, not have to go through  
19 these kind of things every time a project comes through.

20 Those are the kind of two things that I would like to  
21 think of that I would like to say. Again, you've got to talk to  
22 Cathy and Randy. Again, it is STB's show, but from our  
23 perspective that's what we're looking at.

24 MR. THOMAS: You talk about Winona and going all the  
25 way across the State of South Dakota and you've got a limited

1 amount of representatives from tribes here. You know, have you  
2 ever thought about even trying to take a look at sectioning this  
3 off? You know, you're talking about a monitor in every area. I  
4 know we're currently in Nebraska right on the other side of  
5 the -- but our ancestorhood goes all the way to Minnesota, you  
6 know. They say that we're the mother tribe of the Santee Sioux  
7 Nation.

8 Well, a lot of people were -- and I am the descendant  
9 of an exile. And I believe that we all are, have relatives that  
10 were hung in Mankato. But I guess what I'm saying is that, you  
11 know, it's important for us to have some type of monitor on your  
12 surveys. We don't know what's happening out there. You can  
13 send them to the state SHPO office, and if we get contacted --  
14 that lack of communication.

15 Like Curley said, you know, we're always the last one,  
16 and then we have to play catch-up. And then that foundation  
17 that's being built has so many cracks and loopholes in it it's  
18 just that it's never going to be solid enough to hold anything.

19 So I appreciate your honesty, you know, as we talked  
20 about earlier, and I seen it start to come out. But we need to  
21 work together. And I guess my whole point of why I asked you  
22 that, so that we all know what it is that you're looking for.

23 MS. GLIDDEN: I just sent around a kind of simplistic  
24 list of questions that we would hope to have answered out of the  
25 summit. And I know that these are very simplistic, and they're

1 just a couple -- three questions primarily. But if we could get  
2 answers to these three questions out of this caucus, it would be  
3 really very, very helpful in terms of moving forward. And we  
4 know that these are not the only things that are going to be  
5 discussed in the caucus. There's a lot of other issues that  
6 obviously need to be addressed.

7 But I tried to make it simple by just having these  
8 three questions that could at least get the ball rolling in  
9 terms of specifically what we need and what the railroad's needs  
10 are in terms of getting you out there in the field as soon as  
11 possible.

12 Any questions?

13 MR. CROWS BREAST: I just want to mention that in  
14 North Dakota I have a pretty good working relationship with the  
15 State Historic Preservation Office. There is a person before  
16 me -- well, I've been working in this field since 1986. And to  
17 this date we've buried over 5,000 human remains. I and  
18 George Iron Shield, Tim Mentz, Ron Little Owl, Francis Cree,  
19 Paul Little. Most of those are gone. Most of those old timers  
20 are gone except for George.

21 If I called up to the State Historical Society in  
22 North Dakota and then asked them for any kind of site or known  
23 historic properties' effect on a certain project, they would do  
24 a file search, and I would do my file searches in my own area on  
25 our reservation.

1           We have authority -- have assumed the duties on the  
2 reservation. But I guess what I'm getting at is I don't know  
3 the South Dakota thing, you know. And I know that their site  
4 numbers start with 39, and I don't know what numbers follow  
5 that. And I haven't seen -- because there was somebody else  
6 that Chairman Hall before he was taken off as chairman or was  
7 defeated in the elections that he had other people working.

8           And speaking of playing catch-up, I'm the one that's  
9 playing catch-up right now. So I guess I don't know if -- where  
10 all the documentation is that was sent to our tribe.

11           So what I need is in the corridor the sites that were  
12 listed, 39 whatever. I need all of those, and I need the new  
13 sites that were found, a whole list of those, so that I can run  
14 down and see Paige and find out what narratives or  
15 archaeological data they had put within the site forms within  
16 those areas. So we could be talking, I don't know -- and I  
17 don't even know the number of how many sites there are within  
18 that corridor from Winona to Gillette.

19           And there's one thing I wanted to ask, you know. I  
20 was looking at the map, you know. And it looks like you've  
21 added almost 100 miles to the new -- to the new route. I mean,  
22 that's your bag of tricks. You recall whatever you want to do.

23           But wouldn't it be simpler to go above Rapid? It's  
24 real closer and less, less money, less cultural resources  
25 probably in the way, less -- why did you go all the way around

1 the Black Hills and then up to Gillette when you can go straight  
2 across the top? That's just an answer.

3 Getting back to those sites, could somebody send me  
4 something? Do you guys have that? Does somebody have all of  
5 that info? Thank you. Can you answer my question about going  
6 above?

7 MR. JONES: Yes, Elgin. And at one point that was  
8 actually -- that was one of the -- when the project was first  
9 conceived I think a northern route was considered. In the end I  
10 think environmentally and otherwise it was determined that that  
11 was not the preferred route to go, although I think there was a  
12 way to make that shorter. I think there were -- I think it was  
13 multiple reasons including I think there were as well there  
14 resources and environmental -- it was I think almost impossible  
15 to do.

16 And I think they ended up with a -- as I recall, there  
17 was a particular issue with one of the river passages where  
18 there would have been absolutely no wiggle room for anything  
19 through it. And it ended up not being a feasible to do it that  
20 way. But there were multiple alternative routes considered and  
21 a significant amount of public comment, volumes of public  
22 comment on that process involving route selection. When you  
23 look at the map it sure looks like an obvious place to go.

24 MR. YOUPEE: So we had this DM&E Railroad designed  
25 specifically for hauling coal; right?

1           MR. JONES: Well, the EIS work that was done was done  
2 for the expansion of the railroad. That would include  
3 everything. It was to accommodate building the Powder River  
4 Basin to haul coal. The railroad will continue to haul all  
5 commodities it will haul, but the additional impact was by  
6 hauling the coal. That was the reason for the needing to  
7 conduct an EIS for that expansion.

8           MR. YOUPEE: What about transporting people, Amtrak,  
9 tourism?

10          MR. JONES: There has been interest in those types of  
11 things. And I wouldn't say, though, they're impossible. I  
12 would say probably more things along the line of excursion type  
13 of things have been -- the areas that we've had the most public  
14 interest in doing. You know, could you do, you know, excursions  
15 in particular areas and those we think are things that the  
16 railroad will probably entertain.

17                 I'm sure that that's a whole new set of dynamics.  
18 This isn't something that's designed for that. I don't know  
19 that that isn't something that operationally couldn't be done,  
20 but there have been -- there have been inquiries about that  
21 possibility, and I'm sure it's something that could be  
22 entertained.

23          MR. YOUPEE: Have you received any federal subsidies?

24          MR. JONES: Federal subsidies?

25          MR. YOUPEE: Yeah.

1           MR. JONES: Well, you probably know what happened --  
2 what we were doing a year ago right now. We had applied at that  
3 time for a loan through the Federal Railroad Administration, the  
4 FRA. They had a program for infrastructure development for  
5 railroads. And we applied for a loan at that time for this  
6 project. That program had a set of priorities, but part of it  
7 was to address national issues including energy and with this  
8 project and its impact on the ability to access low sulfur coal  
9 from the Powder River Basin fit within the guidelines they were  
10 looking for in the programs to support.

11           It wouldn't have been a grant. It would have been a  
12 loan to the company. They in February of this year denied that  
13 loan application. And we didn't get that.

14           And since that point we have then -- now we have in  
15 the last week -- like I said, you probably saw the news with the  
16 Canadian Pacific. We were part of an acquisition there within  
17 the last month. And that is -- I think, keeps us in the game as  
18 far as it goes for being able to develop this resource, this  
19 line at some point here.

20           But we did apply for a loan with the FRA and did not  
21 receive that in February this year. That was kind of big news a  
22 year ago what we were doing at that point. I guess I want to  
23 make sure that would have been the loan. There was no subsidy,  
24 no grant for doing anything like that. That would have been a  
25 loan to the company that would have required collateral and

1 interest and payments, and taxpayers wouldn't have had any  
2 subsidization of the railroad. You can't do that. That's not  
3 allowed by law under that program. They couldn't subsidize it,  
4 couldn't cost the taxpayers money to do that.

5 MR. YOUPEE: You utilize the taxpayers' money for your  
6 benefit. Tell me, has DM&E ever utilized the eminent domain law  
7 to acquire land?

8 MR. JONES: To answer honestly, I mean, I don't know  
9 the answer to that question. I don't know how -- the DM&E  
10 itself has been around for 20 years. Not that I'm aware of.  
11 I'm not aware of any eminent domain exercised by the DM&E.

12 MR. WITHROW: I just want to answer Elgin's question  
13 quick, and then I think we need to take a break because I'm sure  
14 Cheri's fingers are about to fall off.

15 Elgin, in answering your question about getting  
16 information and site lists and so on, for those that attended  
17 the series of meetings in August at Gillette, Pierre, and Tracy,  
18 we handed out a stack of project maps that showed all the site  
19 locations and included a list of sites, and some additional  
20 copies of that I think were supposed to be brought to the  
21 meeting today for new folks attending. And I'm not sure --

22 MR. CROWS BREAST: Did you send one to me?

23 MR. WITHROW: They weren't mailed out. They were  
24 handed out at the last meeting.

25 MR. YOUPEE: We also requested ethnographic records

1 concerning the areas of this development. And we were supposed  
2 to get that today.

3 MR. WITHROW: Not -- I don't know that I recall that.  
4 But ethnographic reports haven't been prepared for this project  
5 at all yet. That's something that still needs to be done.

6 MR. YOUPEE: Well, it would be existing reports,  
7 accumulation of existing reports that tribes can use --

8 MR. WITHROW: Oh, yes.

9 MR. YOUPEE: -- also for their information.

10 MR. WITHROW: Some have been sent, and there are a  
11 couple that are about ready to be sent too. The Burns &  
12 McDonald report I described earlier this afternoon will be  
13 coming out in the next week or so.

14 MR. CROWS BREAST: I read in a report or at least  
15 skimmed through, and I don't like Burns & McDonald. I had them  
16 do some work for me, and they really screwed up. You know, in  
17 that report it shows that they listed a bunch of sites in there,  
18 but they had nobody comment on them, anybody. There was no  
19 comments.

20 So I have a problem with Burns & McDonald because we  
21 had them work on what they call a cultural resource management  
22 plan. And we sent a bunch of our site forms down there for them  
23 to incorporate into the plan, and I sent them in -- I'll tell  
24 you the reason why I don't like them. I sent them in real nice  
25 plastic cases, and when they came back they were in boxes.

1           But, you know, they still wanted plastic cases. That  
2 gets me mad. Cost me about 50 bucks a piece. I sent four of  
3 them.

4           But that's beside the -- the point is they really  
5 didn't do a good job for us. We had to redo all of their work.  
6 And I can name some names, but I'm not going to, you know. But,  
7 I don't know, maybe you guys -- I just don't feel comfortable  
8 with Burns & McDonald doing any kind of work for us, with the  
9 tribes anyway.

10           MS. GLIDDEN: They are no longer working on this  
11 project.

12           MR. WITHROW: Okay. Let's take a quick break. And  
13 we'll reconvene in 10 minutes or so.

14                           (A short recess is taken)

15           MR. WITHROW: Okay. If it's all right, I think I'd  
16 like to push on with the rest of the presentations because some  
17 of our archeology survey team people need to get on the road to  
18 other things.

19           Just continue wrapping up the USD survey that was done  
20 in 1999 and then see if we can follow through with the last  
21 couple of presentations today. It kind of seems like according  
22 to the agenda we had a fairly long period in the afternoon set  
23 aside for general discussion, and it kind of seems like we've  
24 been touching on a lot of important issues all the way along.

25           So I think I'm just going to push ahead with the rest

1 of the presentations. And if there's more discussion, please  
2 share your thoughts, and we'll see if we can still wrap things  
3 up here pretty much as planned on schedule anyway.

4 (Mr. Withrow gives presentation)

5 MR. WITHROW: With that, unless there's some immediate  
6 questions, we can pass it on to Augustana.

7 Adrian, do you want to take it from here?

8 MR. HANNUS: Well, good afternoon. Have you ever felt  
9 like you were handed a sticky wicket that you couldn't hand off  
10 to somebody else?

11 Anyway, I will persevere here and see where we can  
12 next go with this project.

13 Let me clarify one thing, though, that came out  
14 earlier because I think it was slightly -- well, I think it  
15 might have been misunderstood. It certainly wasn't meant to be.  
16 But the issue of the confidentiality and where all of us were  
17 working on this, again I would just like to say that Augustana  
18 wasn't creating some kind of a vacuum within which nobody could  
19 breathe or anything.

20 We were working under a set of legal agreements that  
21 said we would not be disclosing information about the work we  
22 were doing, and it was meant to protect the areas so that, in  
23 other words, we do try as archeologists, believe it or not, not  
24 to share the information with the public because sites are being  
25 looted out of existence while we're all sitting here having this

1 debate.

2           And it's not being done by archeologists, and it's not  
3 being done by Native Americans. It's being done on ebay. So  
4 lest everyone sees us in some strange light, I certainly haven't  
5 functioned nor have we in our office functioned over the years  
6 in some kind of counterpoint to any community. We're trying to  
7 protect in my mind at least our heritage, all of our heritage.

8           I'm an immigrant. My parents come from France and  
9 Poland. So I can't say that I have a claim on the sites that  
10 we're looking at, except that if we all came out of some point  
11 of the earth's surface many, many, many millennia ago, then  
12 we're all the same people. So these sites are mine as much as  
13 they are yours, as far as I'm concerned.

14           I'm not trying to be selfish about that. I'm trying  
15 to be absolutely as deadly clear as I can be.

16           MR. YOUPEE: I disagree with that statement.

17           MR. HANNUS: Well, you're welcome to disagree --

18           MR. YOUPEE: I don't think it's wise to say that in  
19 front of tribal people.

20           MR. HANNUS: I think maybe I can say if you'll give me  
21 a few minutes --

22           MS. GLIDDEN: I think maybe we should move on.

23           (Mr. Hannus gives presentation)

24           MR. CROWS BREAST: Can you back up two frames. One  
25 more. Okay. Right there. I see that you have from block 12

1 all the way to maybe 16 there's a really concentrated area where  
2 you guys did some work. Is there a lot of -- was there found a  
3 lot of archaeological material or sites or --

4 MR. BUHTA: Actually basically all these boxes are  
5 reflecting is -- Austin Buhta.

6 Elgin, the boxes are basically representing the areas  
7 that they had obtained permission for for us to survey. So  
8 they're just areas that we surveyed.

9 MR. CROWS BREAST: Are those like -- are they acre,  
10 two acres, a section or half a section? Or is it just an area  
11 randomly picked out? Do you know what I'm saying?

12 Like when you do a survey you would have a township  
13 range number, you have a land description. Is that what those  
14 are kind of like in land description areas?

15 MR. BUHTA: Sort of, except they're in a larger scale.  
16 There would have been -- in some of those boxes there might be  
17 four, five, six small pieces of land that they got permission  
18 for and others that they didn't or others that had already been  
19 looked at.

20 MR. CROWS BREAST: All right. It kind of seems like  
21 you concentrated quite a bit in that one area from 12 through  
22 16, and it looks like there was maybe a lot of work done in  
23 there.

24 MR. HANNUS: This is just a representation of areas  
25 that were -- that were visited and, like I said, not just by

1 ourselves. We did parts of these boxes. Other parts of these  
2 boxes were done earlier by the work in Vermillion and the areas  
3 in between the boxes show zones that, you know, maybe have not  
4 been examined.

5 So I wasn't meaning that to be confusing. The more I  
6 look at this, the more confused I become.

7 (Mr. Hannus continues with presentation)

8 MR. YOUPEE: Did you do all your survey by -- like it  
9 may have something, there's potential there? Or did you do the  
10 whole corridor as far as pedestrian survey, 30 meter or --

11 MR. HANNUS: We went across all of the land areas we  
12 were asked to look at with the pedestrian surveys.

13 MR. YOUPEE: You just didn't concentrate on certain  
14 features?

15 MR. HANNUS: No. Initially you're looking at the  
16 maps, and you're looking at the landscaping, obviously. And in  
17 your mind -- at least in my mind after 37 years of walking these  
18 landscapes all over the world I had some sense there may be  
19 areas on the landscape that would look more interesting to me  
20 than areas that I would think there's a better chance that there  
21 may have been something -- that somebody settled there briefly  
22 or for a longer period of time.

23 But we really are asked to look at it in a  
24 100 percent, you know, across -- and then as you begin to find  
25 evidence of some type of activity, either activity that happened

1 in the distant past or activity that's happened in the historic  
2 period, you then come to have a narrower -- I mean, you know,  
3 you get a group of yourselves together. You begin to put flags  
4 out so you can show where you're finding materials.

5           And then ultimately that gives you a representation of  
6 where there may be material. And we put out pin flags to begin  
7 with. And then ultimately those are -- we take global  
8 positioning readings on those and when we leave we collect  
9 everything that we've put in and take it off the ground surface  
10 and we walk away. Because we're trying to not disturb anything  
11 more than in the recordkeeping sense.

12           Now where we did testing because we were trying to  
13 ascertain that there may be subsurface materials available, it's  
14 again a standard set of procedures, I think, within the  
15 archaeological community, really basically throughout the world,  
16 where you dig a small shovel test to begin with. You screen the  
17 material. The shovel tests were about 40 centimeters in  
18 diameter.

19           MR. YOUPEE: So that's common practice. You have your  
20 archeology laboratory staff. All of these individuals, have  
21 they been trained in school in the Northern Plains area, or did  
22 they come to teach at the Augustana College?

23           MR. HANNUS: Most of them have worked for quite a long  
24 time in the Northern Plains. You have to understand that all  
25 the universities -- I mean, people are coming from various

1 university training, if that's what you're asking. Yes, from  
2 various parts of the country.

3 MR. YOUPEE: I say this because, you know, I -- and I  
4 know there's a lot of areas, states colleges, that provide this  
5 type of training.

6 MR. HANNUS: Sure.

7 MR. YOUPEE: And so we have to question the competency  
8 of those individuals, whether or not they're trained enough for  
9 Northern Plains, okay?

10 MR. HANNUS: Yes.

11 MR. YOUPEE: We were confronted with a project just a  
12 couple of weeks ago where they told us that they did a complete  
13 survey, cultural resources. And we had our tribal specialist up  
14 there, and they told us what they found and that they didn't  
15 find any of this.

16 And so he said, well, yes, there's some of this around  
17 here, some over here, over here, over here. And their excuse  
18 was, you know, we got trained back east. We're not familiar  
19 with this type of area or this type of culture.

20 I'm just wondering if you have any of those type of  
21 people out there. Because this is what we came up against a  
22 couple of weeks ago.

23 MR. HANNUS: Well, I guess it's an interesting  
24 philosophical question, I guess, you posed because I personally  
25 have been trained in the Plains. I mean, this is where I come

1 from, and I have worked in the Plains for 37 years.

2 But I've also made treks over and worked in the Old  
3 World as well. And I guess somebody -- I mean, now that you ask  
4 that question somebody could have said to me, well, you're over  
5 here working in France, what do you know about the Neanderthal  
6 sites in France?

7 And I would have to say I've read a lot of material  
8 about the Neanderthal sites in France, but I guess I was  
9 learning as I was over there more specifically some very fine  
10 detail about them.

11 But I guess since our profession works with a certain  
12 set of guidelines, I would like to think that in the case of at  
13 least the people that are working for me that we have people  
14 that really not only well trained as archeologists but actually  
15 that we can say that these people have been working in the  
16 Northern Plains for, you know, some numbers of years now.

17 I guess we could go down the list, and I could tell  
18 you how many years for each person. But I think we do have  
19 people that do recognize the uniqueness as it were of what you  
20 find in the Northern Plains. And I appreciate that.

21 I mean, one of the things, work that takes you across  
22 a number of broader geographic areas, it requires you, I guess,  
23 to continually try to keep up with and be aware of -- and if I  
24 go to a new area to work -- and I'm only speaking for myself --  
25 I try to look at collections and try to find out something about

1 that area before I go out and start just, you know, looking  
2 about the landscape.

3 But there are characteristics of what we all leave as  
4 human beings when we leave things from activities in the past  
5 that have some similarities.

6 MR. YOUPEE: I understand all of that. Looking at the  
7 qualifications of your staff -- because, you know -- and I'm  
8 going to hold you to what you're saying, what you're telling me.

9 MR. HANNUS: That's fine. I'm willing to be held to  
10 what I'm saying.

11 MR. YOUPEE: I'm hoping that's all honest and true  
12 until we prove that wrong. Because we want to go out there and  
13 do a traditional cultural survey as well. And if you have  
14 missed anything -- and it's my job to find things out there that  
15 you have missed. You know, there should be some discredit there  
16 regarding your competencies.

17 MR. HANNUS: I guess, again -- and I certainly mean  
18 no -- I mean nothing by this comment in an insulting way at all.  
19 I don't see myself as your adversary. I don't see myself as  
20 somebody who's trying to second guess you at all. I truly  
21 don't.

22 If four or five of us go out into the field and we go  
23 across an area and we're all archeologists, we may or may not  
24 all find the same thing. That's really true.

25 And I guess, for instance, I know there have been

1 times I've been kidded about it immercifully where I'll walk  
2 across a field where I am very specifically trained and I think  
3 and understand how prehistoric stone tools were made by people  
4 going back to the depths of prehistory and I've worked on stone  
5 tool making so and so I look for evidence of flakes and so on  
6 from stone tools.

7 I've been kidded about how I overlooked some little  
8 pieces of pottery. Well, I guess my eyes are calibrated better  
9 for stone tool chips than they are for pieces of pottery. And I  
10 think that's part of the nature of it.

11 If you come out and look at these site areas, I think  
12 in my sense it would be understood that it's only going to  
13 enrich the entire process for all of us. It isn't something  
14 that -- and if we've missed things, I'm truly hoping that you  
15 will find them because otherwise it will be an incomplete  
16 process.

17 And that's -- that was my understanding of coming to  
18 this meeting in the first place. I thought that there was  
19 attempting to be some kind of a different tone set for tones  
20 that have been set in the past maybe. And I can tell you we  
21 need lots of assistance.

22 MS. GLIDDEN: Yeah. Adrian, if I can just interrupt,  
23 I think we need to move forward, but I think it's important to  
24 note that we're in -- we've had a number of archaeological  
25 surveys that were done by archeologists. And they identified a

1 number of sites, some of which archeologists have identified as  
2 significant based on, you know, archaeological schooling and so  
3 on, and other sites that were determined to be Native American  
4 sites based on tribal monitors that were hired specifically for  
5 that purpose.

6 But none of these reports were completed. None of  
7 these surveys were completed. We will be -- we're soliciting  
8 your help in identifying those sites that archeologists weren't  
9 able to identify out in the field because they don't have that  
10 expertise. And so that's what this is about.

11 MR. YOUPEE: Well, this is also about right of  
12 possession when we have artifacts that are not within the hands  
13 of the tribes. So that's the big issue too. They're stored  
14 someplace else.

15 MS. GLIDDEN: Well, I would think that -- I'm not  
16 entirely sure but that there might be an ability to have access  
17 to those artifacts. I'm not sure exactly where they're all  
18 stored, but I know that some of the artifacts are -- should be  
19 accessible, I would think.

20 MR. YOUPEE: Well, you would think so. A mitigation  
21 plan or a confidentiality clause or at least some process that  
22 tribes will have access. And that hasn't been established yet.  
23 Those are things that has to be developed.

24 MS. GLIDDEN: Yes.

25 MR. YOUPEE: This is why those questions are coming

1 into play.

2 MS. GLIDDEN: Okay.

3 MR. HANNUS: I'll move ahead for the sake of whatever  
4 it is here.

5 (Mr. Hannus continues with presentation)

6 MR. YOUPEE: Historic farmstead in terms of what,  
7 tribal farmsteads?

8 MR. HANNUS: No. Euro-American farmstead.

9 (Mr. Hannus continues with presentation)

10 MS. GLIDDEN: Thank you.

11 MR. HANNUS: You're welcome.

12 MR. WITHROW: Okay. All we have left to cover yet  
13 today following the agenda anyway is a presentation on the  
14 Wyoming part of the new build. So we're almost there. Hang in  
15 there, folks.

16 MS. HALVERSON: I wanted to see your last page. I  
17 wanted to see the last page of your PowerPoint. You went too  
18 fast. I wanted to see what you were doing with SWCA.

19 MR. KARIM: You're talking about Augustana? We  
20 haven't done SWCA yet.

21 MR. SLESSMAN: Are you referring to the last sentence  
22 there? Basically we were asked to take the original USD report  
23 and try to go through and clean it up a little bit and address  
24 any deficiencies that we had that were identified by, you know,  
25 the agencies.

1           That's all -- we weren't necessarily doing anything  
2 with Augustana College. He was just giving you the time line  
3 for the USD reports.

4           Does that help?

5           MS. HALVERSON: Yeah. I was just wondering. He went  
6 too fast.

7           MS. GLIDDEN: I was just going to say, you know, one  
8 of the reasons we brought Louis Berger on board is to review all  
9 the reports and identify any deficiencies and things that needed  
10 to be done, additional work, additional inclusions and rewrites  
11 and so on. And so that's part of what's going on here.

12           MR. FLEMING: Good afternoon. I'm Nathan Fleming with  
13 TRC.

14           (Mr. Fleming gives presentation)

15           MR. YOUPEE: Does that mean that no matter how  
16 significant or large the item might be that it won't be  
17 considered as a site otherwise?

18           MR. FLEMING: Not necessarily. Are you talking  
19 like --

20           MR. YOUPEE: If you go back to your --

21           MR. FLEMING: That one there?

22           MR. YOUPEE: The other page. Here. Containing 15 or  
23 more prehistoric artifacts, 50 historical items.

24           MR. FLEMING: So something like a cairn would be  
25 considered a site because it's a cultural feature. But if we

1 found, say, 10 flakes or stone tool -- well, maybe not stone  
2 tools, but, yes, it's pretty number driven unless there's a  
3 cultural --

4 MR. YOUPEE: Why is it number driven?

5 MR. FLEMING: I wish I knew the answer to that.

6 That's something they revised and had a lot of difficulty  
7 getting agreement on throughout Wyoming because it was put up to  
8 comment for a lot of people. And a lot of people didn't agree  
9 with just --

10 MR. YOUPEE: Is there any other state that has that  
11 type of criteria?

12 MS. HALVERSON: Did the tribes agree?

13 MR. FLEMING: I don't think -- yeah. I don't know who  
14 was consulted on that.

15 MS. TERRELL: Do you still fill out a site form in the  
16 resource room?

17 MR. FLEMING: They had a unique form, isolated  
18 resource form. So they are documented. It's just we don't  
19 necessarily have to draw a map for it. They are documented and  
20 are in the record.

21 (Mr. Fleming continues with presentation)

22 MR. YOUPEE: What are multicomponent sites?

23 MR. FLEMING: They contain both historic or  
24 prehistoric artifacts or features.

25 (Mr. Fleming continues with presentation)

1 MR. FLEMING: That is it. Any questions?

2 MR. WHITTED: That work that was done earlier on by  
3 USD, they didn't provide a report for it, was that work  
4 completed by you or redone by you?

5 MR. FLEMING: We completely redid the entire -- we  
6 resurveyed the whole thing. Because we didn't have any  
7 documentation of the site. So we had the location, and we were  
8 able to go back and find the site. So we had to -- we had to  
9 resurvey and rerecord each of those sites.

10 MS. WHITE: In the prior one we just had they  
11 evaluated some things. They suggested Native American  
12 consultation? I didn't see any suggestions in yours.

13 MR. FLEMING: The two stone circle sites we're going  
14 to recommend -- they're unvaluated right now, and that's  
15 pending. Yeah. They're pending.

16 MS. WHITE: Pending what?

17 MR. FLEMING: Consultation. And the other sites are  
18 just our recommendation.

19 MS. WHITE: The artifacts that you said you collected,  
20 what did you guys do --

21 MR. FLEMING: We did not collect any artifacts on our  
22 survey. I believe USD did.

23 MR. MADSON: They're in collections at DM&E. They're  
24 housed safely at DM&E right now.

25 MS. WHITE: My question was I'd like to see a list of

1 what was collected.

2 MR. MADSON: Fine.

3 MS. WHITE: And where they are.

4 MR. MADSON: Sounds good. We can do that, absolutely.

5 MS. WHITE: Okay.

6 MR. WITHROW: Any other questions for Nathan?

7 All right. I think we have one presentation left.

8 I'm hoping it's short.

9 Scott Slessman from SWCA is going to talk about  
10 segment 3 and 4 in Wyoming.

11 MS. HALVERSON: You've got 5 minutes.

12 MR. SLESSMAN: Start the clock.

13 Howdy. All right. I will keep this as quick and  
14 short as possible as I've been tasked.

15 (Mr. Slessman gives presentation)

16 MR. SLESSMAN: I'll go ahead and open it up to  
17 questions here. Anyone have questions?

18 MS. GLIDDEN: All right. Well, I think it's been a  
19 really long day, and I've only been here for part of it. Thanks  
20 everybody here for participating, especially the survey crews  
21 that came in here and gave all of these presentations. I know  
22 I've found it to be very helpful. And I think that there were  
23 some concerns that were expressed today by the tribes, some of  
24 which I know that I heard when I was here having to do with  
25 concerns about confidentiality, honesty, the need to know what

1 areas need to be surveyed first.

2 And DM&E, if you can facilitate that, that would be  
3 very helpful I think for the tribes and for us. And the need  
4 for monitors, to get tribal monitors out representing the  
5 tribes. And also access to artifacts so that they can be looked  
6 at by the tribes.

7 I've got -- I developed a series of three questions  
8 because I know there was a lot of interest in knowing what STB  
9 wants out of this tribal caucus, what specific information. And  
10 so I've drafted three questions. And I think you should all  
11 have copies of this.

12 Basically what are your tribal Government's needs for  
13 identifying traditional cultural properties on a project area?  
14 Do you need to go out to the field? Reviewing maps or  
15 archaeological reports, is that sufficient?

16 What section of the project area is your tribal  
17 Government interested in? And if you can use the accompanying  
18 list of counties, it would be very helpful.

19 And if field visits are necessary, how soon can you  
20 complete these visits? And understanding, of course, that we do  
21 need information from DM&E regarding areas of concern and  
22 interest.

23 So thank you everyone. Any tribal individuals want to  
24 weigh in on anything here? Anybody else?

25 MR. WITHROW: I just have one quick note about

1 tomorrow. Our agenda for tomorrow as proposed includes a time  
2 set aside in the morning and I guess in the afternoon if needed  
3 for tribal representatives to meet on their own to discuss some  
4 of the things they heard today and some of the questions that  
5 Cathy just posed.

6 Does that still seem like the way you would like to  
7 use your time tomorrow, or do we want to do something else  
8 tomorrow or --

9 Okay. We'll meet privately. You can use this room  
10 here, and we'll just check in on you at the lunch break. They  
11 may move us to a different room tomorrow for lunch. If so, I'll  
12 stop by and let you know.

13 MR. BIBLER: Randy, lunch is going to be in the center  
14 atrium of the hotel tomorrow.

15 MR. WITHROW: Oh, it is. Did everyone hear that?  
16 It's in the courtyard area of the Holiday Inn. Breakfast should  
17 be in here tomorrow morning as well, and they should bring in  
18 food for breaks as well for you. So we'll probably be over at  
19 the Holiday Inn atrium area, the area there. And just let us  
20 know when you're ready to reconvene as a whole.

21 MS. GLIDDEN: Or if you want to talk to any of us  
22 individually --

23 MR. WITHROW: Yeah. If you want someone else to come  
24 in here and join your discussion, that's fine too. Let us know  
25 what you want.

1 MS. GLIDDEN: I was just wondering if anybody would  
2 like to offer a prayer, one of the elders or THPOs? Anybody?

3 (A song in Lakota)

4 (The proceedings concluded at 5:10 p.m.)

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STATE OF SOUTH DAKOTA)  
  
COUNTY OF HUGHES )

:SS CERTIFICATE

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 9th day of October 2007, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 2nd day of November 2007.

\_\_\_\_\_  
Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter

SURFACE TRANSPORTATION BOARD

TRIBAL CONSULTATION SUMMIT

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Transcript of Proceedings  
October 11, 2007  
at 9 o'clock a.m.

= = = = =

PRESENT:

Cathy Glidden, Surface Transportation Board  
Randy Withrow, Louis Berger Group  
Dave Bibler, Louis Berger Group  
Herb Jones, DM&E Railroad  
Jafar Karim, DM&E Railroad  
Ian Ritchie, Forest Service  
Wyatt Thomas, Santee Sioux Nation  
Jim Whitted, Sisseton-Wahpeton Oyate  
Alan Stanfill, HDR Engineering  
Doug Jackson, HDR Engineering  
Richard Wright, Ponca Tribe of Nebraska  
Melissa Lundberg, HDR Engineering  
Curley Youpee, Ft. Peck Assiniboine & Sioux  
Elgin Crows Breast, 3 Affiliated Tribes  
JoAnn White, Northern Arapaho  
Pamela Halverson, Lower Sioux Community  
Robert Campbell, Santee Sioux  
Erin Salisbury, SWCA  
Scott Slessman, SWCA  
Gilbert Brady, Sr., Northern Cheyenne  
Ray Strelesky, Canadian Pacific Railway  
Gary Smith, BLM  
Barry Williams, BLM  
John Stone, Yankton Sioux  
Alvin Grassrope  
Ruben McCloskey, Rosebud Sioux Tribe  
Wastewin Young  
Kate Divis, South Dakota State Historic Preservation Office  
Amy Rubingh, South Dakota State Historic Preservation Office  
Charlie Spotted Tail, Rosebud Sioux Tribe

Reported by Cheri McComsey Wittler, CRR, RPR

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The following proceedings were taken at the  
Rushmore Plaza Civic Center, Room 101, Rapid City, South Dakota,  
on the 11th day of October 2007, commencing at 9 o'clock a.m.;  
before Cheri McComsey Wittler, a Registered Professional  
Reporter, Certified Realtime Reporter, and Notary Public within  
and for the State of South Dakota.

1 MS. GLIDDEN: Good morning, everybody. We'd like to  
2 start with an opening prayer. If one of the tribal members  
3 would like to volunteer, it would be really nice.

4 Anyone?

5 MR. YOUPEE: It's customary and tradition to the  
6 tribal people that the elders always do that.

7 MS. GLIDDEN: Can we have a tribal elder here that  
8 could give a prayer?

9 MR. MCCLOSKEY: I guess I'm the oldest here. Before I  
10 pray I would like to say that we are very concerned about the  
11 railroad. And I know the tribe at home -- I'm from Rosebud and  
12 I sat on the treaty council for the Rosebud Sioux Tribe. And  
13 our concern is the sacred land.

14 As far as we're concerned, we stand by our 1868 Treaty  
15 and in South Dakota you're going across our land, whether it  
16 belongs to the state or whoever it belongs to, in our minds we  
17 signed a treaty and it's still our land and that's what we stand  
18 by.

19 We got sacred sites is what we're worried about too.  
20 We don't like to see any of our ancestors dug up or molested or  
21 anything like that. With that, I'd like to pray.

22 (Prayer by Mr. McCloskey)

23 MS. GLIDDEN: Well, I know during the caucus that you  
24 developed a couple of documents, including a plan, a survey  
25 plan.

1 Did anybody here want to go over that?

2 MR. JONES: Cathy, could we go around the room?

3 MS. GLIDDEN: Yeah. Let's go around and have everyone  
4 introduce themselves. There's new people today.

5 MR. BIBLER: I'm Dave Bibler. I work for Louis  
6 Berger. We're third-party consultant with STB.

7 MR. KARIM: I'm Jafar Karim. I'm with the DM&E  
8 Railroad.

9 MR. JACKSON: I'm Doug Jackson. I'm the project  
10 manager for HDR and working for the DM&E, engineer.

11 MR. STRELESKY: I'm Ray Strelesky with Canadian  
12 Pacific Railway.

13 MR. JONES: I'm Herb Jones with DM&E Railroad.

14 MS. DIVIS: I'm Kate Divis with the South Dakota State  
15 Historic Preservation Office.

16 MS. RUBINGH: I'm Amy Rubingh also with the South  
17 Dakota State Historic Preservation Office.

18 MR. STANFILL: I'm Alan Stanfill with HDR Engineering.

19 MS. LUNDBERG: Melissa Lundberg with HDR Engineering.

20 MR. SLESSMAN: Scott Slessman with the SWCA,  
21 environmental consultants.

22 MS. SALISBURY: Erin Salisbury with SWCA.

23 MR. THOMAS: Wyatt Thomas, Santee Sioux Nation.

24 MR. CAMPBELL: Robert Campbell, Santee Sioux Nation.

25 MS. GLIDDEN: Cathy Glidden with the Surface

1 Transportation Board.

2 MR. WITHROW: I'm Randy Withrow. I'm with the Louis  
3 Berger Group, third-party contractor with the Surface  
4 Transportation Board.

5 MS. HALVERSON: Pam Halverson, THPO, Lower Sioux,  
6 Morton, Minnesota.

7 MR. SMITH: Gary Smith, BLM Montana State Office.

8 MR. WILLIAMS: Barry Williams, BLM zone archeologist  
9 for the Dakotas.

10 MR. BRADY: Gilbert Brady, Northern Cheyenne.

11 MR. WHITTED: Jim Whitted, Sisseton-Wahpeton Oyate  
12 Tribal Historic Preservation Office.

13 MR. STONE: I'm John Stone, Yankton Sioux.

14 MR. RITCHIE: I'm Ian Ritchie. I'm with the Forest  
15 Service in Wyoming and the railroad has proposed to cross  
16 Buffalo Gap National Grassland west of Wall, South Dakota and  
17 Thunder Basin National Grassland, northeast Wyoming.

18 MR. WRIGHT: Good morning. My name's Richard Wright.  
19 I'm with the Ponca Tribe.

20 MR. MCCLOSKEY: Ruben McCloskey, member of the treaty  
21 council at the Rosebud Sioux Tribe.

22 MR. YOUPEE: Curley Youpee, Ft. Peck Assiniboine and  
23 Sioux Tribes.

24 MR. BIBLER: For the sake of the recorder, let's try  
25 and use the microphones as much as possible, please.

1 MS. GLIDDEN: I was going to mention the same thing.  
2 She's having a little bit of trouble hearing some of us so if  
3 you could use the microphone if you're going to be speaking,  
4 that would be really helpful. And, yeah, state your name before  
5 you speak just so she can have a better ability to record the  
6 meeting today. Thanks.

7 Did someone want to start regarding the results of the  
8 tribal caucus to bring us all up to speed? I know that we have  
9 a couple copies of documents that you produced as a result of  
10 the meeting. Maybe we can start there, a summary of what you  
11 came up with.

12 MR. YOUPEE: Let me do it in a nutshell so we don't  
13 have to go through the whole -- I will do it in a nutshell.  
14 I'll try to do it in a nutshell. We can reflect back on to  
15 the -- she knows me -- on the documents and then if there's any  
16 questions, we can expound, I guess. Does that sound okay?

17 As a result of our caucus, there was many, many issues  
18 and concerns including concerns and issues regarding a position  
19 paper or a plan and strategy involving a traditional cultural  
20 properties survey.

21 We were handed a questionnaire, three-part  
22 questionnaire, asking us needs for identifying TCPs in a project  
23 area, what sections of the project area we were interested in,  
24 and if there is field visits, were there necessary to have field  
25 visits, as well as what counties were the tribes interested in

1 in doing these traditional cultural properties surveys.

2 And so we wanted to go beyond that because, you know,  
3 we have thoughts that go a long ways too. We look into the  
4 future for future generations and how it would benefit or affect  
5 them.

6 The tribal involvement thus far has been more of  
7 informal and maybe formal settings from DM&E regarding  
8 discussions, dissemination of information, as well as what they  
9 feel is consultation. Although tribes have been attending these  
10 informational sessions, they don't feel or believe that these  
11 are truly consultation. Consultation happens after information  
12 is gathered and then we sit down with each and every tribe for  
13 that formal consultation, and a consultation doesn't start until  
14 the tribes are requesting consultation.

15 And so tribes are in agreement in that respect. The  
16 tribes feel that they're affected throughout this project  
17 corridor, including counties in Minnesota, South Dakota, and  
18 Wyoming. And tribes have asked for information regarding  
19 monitored activities and recordings of tribal interests or site  
20 information, and that hasn't really surfaced to this point where  
21 we can effect on that and bring that to the table for  
22 discussion.

23 And so we're kind of at a loss in that respect,  
24 although we can use information gathered by archeologists,  
25 archeology firms that then work in these areas so that we can

1 examine that information and concentrate on areas that we  
2 believe have potential for sites that would have significance in  
3 sacred nature or sites that have importance to tribes.

4 Now you're dealing with a number of tribes. So each  
5 tribe unique in its own way with customs and their own  
6 traditions. You cannot force two tribes into an action that  
7 these tribes are going to come out with the same outcome. It's  
8 not going to happen that way.

9 We heard yesterday that certain tribes have seasonal  
10 importance to areas and that they are not sacred past a season.  
11 Now for the Lakota, Dakota, and Nakota, once areas have been  
12 sacred, made sacred, you cannot wash that sacredness away. That  
13 doesn't wash away -- that doesn't wash away by season, by night  
14 or day. It continues in that sacred way. It is not us but the  
15 deities that provide that information and space for us. We're  
16 just human beings.

17 So we have some hurdles will to overcome and obstacles  
18 to confront as well as a -- finding a consensus amongst tribes.  
19 So that becomes a problem at times.

20 All in all, as far as a traditional cultural probably  
21 survey plan, this cultural survey properties plan -- TCP plan  
22 and strategy will allow tribes to gather information and to  
23 analyze and use existing information for the identification and  
24 protection of tribal cultural properties.

25 Okay. Now you have to understand that a lot of these

1 areas we haven't had access to. There's a great fear out there  
2 that federal statutes regulation allow tribes to land graft.  
3 Now that hasn't happened, as far as I know. Maybe it has  
4 happened someplace, but that fear is still there.

5 And I realize that there's some controversy regarding  
6 DM&E on crossing in South Dakota and Minnesota. Because that  
7 information comes to us too in many forms through private sector  
8 and public sector and legislators. And so we get that  
9 information collectively as well. And we tried to get as much  
10 information to base our decisions.

11 But in gathering information a TCP cultural survey is  
12 one way that the tribes can examine the sites and create this  
13 oral history document to reinstall history where it was  
14 completely roped away through the many developments.

15 There's counties that exist if not for tourism, the  
16 existence of Native American people would not be included in the  
17 every day happening.

18 And so through this type of plan we feel that it would  
19 be a start because yesterday's meeting or the day before  
20 yesterday we were very confused about what was happening and got  
21 more confused when other stakeholders expressed the same. And  
22 so as a viable vehicle and nonadversarial approach, an approach  
23 to bring synergy, common good, common ground, we feel this  
24 approach is probably the best that we can offer in doing ground  
25 work so that we can gather information to provide tribal

1 governments so they can make decisions regarding formal  
2 consultation.

3 That's what I wanted to say. Did I catch everything  
4 that you've read?

5 MS. GLIDDEN: Yeah. I'm looking. I think pretty much  
6 from what I can tell. I think one of the things that didn't  
7 come up in what I read was the need for federally recognized  
8 tribal representatives to get out in the field in the near  
9 future where there's some field work planned.

10 One of the areas is the Mankato to New Ulm section  
11 where there's additional work that's being planned, but where  
12 tribal reps are needed.

13 MR. YOUPEE: Yeah. In all fairness, there has been  
14 work going on in Minnesota, but the tribes weren't included  
15 until the day before yesterday in those undertakings in  
16 requesting their assistance in those areas. Not having time to  
17 examine records or materials, information so that they can  
18 adjust their schedules gives us no way that we can fly into an  
19 area at the whims of those who schedule these things and be  
20 expected to operate our programs and move our personnel.  
21 Because that takes time. It takes clearance. It takes approval  
22 by tribal governments as well.

23 So if we are requested to do work, whether it be  
24 monitoring, whether it be traditional cultural surveys, it's  
25 going to take time to organize. And with all due respect, we

1 operate in a land of democracy, should be given the same  
2 opportunity and right as anyone else.

3 MS. GLIDDEN: Well, I think that I certainly  
4 understand your concerns. And I think that, however, there were  
5 letters that were sent out with information provided regarding  
6 field work that was being completed.

7 I think the first letter went out May 18, 2007. And  
8 in that letter -- it was sent to all the cooperating agencies  
9 and 38 tribes, basically discussing the resumption of the  
10 consultation process and the implementation of the Programmatic  
11 Agreement. And in that letter tribal monitors were requested.  
12 And in additional follow-up letters also.

13 And, Pam, I understand that you did have some  
14 discussions with Randy regarding the need to get people out to  
15 the Mankato to New Ulm section.

16 MS. HALVERSON: Randy contacted me, and I told him I  
17 would not come out there until the tribes were brought together  
18 and this was discussed. So, no, I told -- Randy did contact me  
19 about going out to Mankato. And I said, no, the other tribes  
20 need to be involved in this. They need to be informed.

21 MR. YOUPEE: That's our understanding, that certain  
22 tribes have been contacted. Now you have to understand where  
23 this information is going. You can't just believe that you have  
24 a letter and that this information's going out to all the  
25 tribes.

1 Randy contacted Minnesota tribes only.

2 MS. GLIDDEN: Yeah. That was regarding specifically  
3 the seven sites that were identified, as far as I understand it,  
4 in the New Ulm section, and that was a recent development as a  
5 result of phase one work that was being done in that particular  
6 area. And so information regarding that particular area of  
7 sensitivity, while it was known that it was a sensitive area,  
8 the information regarding those particular sites is fairly  
9 recent, as I understand it.

10 I don't know if some of the archeologists can speak to  
11 that. But I think that there was certainly an attempt on our  
12 part to get the information out to you as quickly as possible  
13 regarding those particular sites.

14 MR. YOUPEE: Yeah. Well, yesterday is yesterday, and  
15 here is now. And we have a position paper on the table for your  
16 consideration. I think that's where the bottom line is. Any  
17 other discussion is just going to take us back. I think  
18 digressing is not something that we want to do at this point.

19 We're looking at moving forward. And in an attempt to  
20 make that happen, we have issued this strategic plan for tribal  
21 involvement. And this is how we feel that we can contribute,  
22 okay, in an aggressive manner.

23 Outside of that, I think it would be more fragmented  
24 and create a vacuum which has been created long before this  
25 because tribes have not been included from day one and certainly

1 have been excluded after 2000 and 2001 from any discussions, my  
2 tribe, from this undertaking.

3 MS. GLIDDEN: Well, I should probably speak to that  
4 because what happened was once the -- and I suppose Herb can  
5 probably speak more intelligently about this because he's more  
6 aware of it. But the STB, once it made its approval of the  
7 project, was remanded. And so STB had to go back and do  
8 additional work.

9 And there were a number of issues, over four issues  
10 that came up. And so what happened was the project came to a  
11 halt as a result of the remand. And the final decision that was  
12 provided by STB didn't come out until 2006. And so it was at  
13 that point that field work was reinitiated.

14 And so we sent out the letters to the tribes and to  
15 the federal agencies in May, I believe -- yeah. May 18, 2007  
16 discussing the reinitiation of the Programmatic Agreement and  
17 the consultation process that would continue on.

18 Again, the hiatus was not anything that was created to  
19 exclude anybody. It was just a matter of legal issues and a  
20 legal remand which didn't provide -- or didn't allow STB to make  
21 final approval on the project until those issues were addressed.

22 MR. YOUPEE: Well, I believe the Programmatic  
23 Agreement to be a Democratic process. Do you believe that as  
24 well?

25 MS. GLIDDEN: Absolutely.

1 MR. YOUPEE: And that a memorandum of agreement is an  
2 agreement made by all parties within that agreement. Is that  
3 true?

4 MS. GLIDDEN: Well, whether the Programmatic Agreement  
5 process works --

6 MR. YOUPEE: No. I'm just asking you. Is that the  
7 process? Are these Democratic processes or not?

8 MS. GLIDDEN: Yeah. I mean, the way the 106 process  
9 works is although a federal agency makes the final decision, it  
10 has to be based on consultation with the Section 106 consulting  
11 parties, including the federally recognized tribes that may have  
12 been interested in the project area.

13 MR. YOUPEE: Yeah. And drafted that Programmatic  
14 Agreement as well. We have not been included in that.

15 MS. GLIDDEN: Well, I can't really speak to -- I think  
16 Herb probably can speak to and some of the tribal reps that were  
17 involved early on in the development of the Programmatic  
18 Agreement, but there were considerable tribal consultations that  
19 occurred in --

20 MR. YOUPEE: No, no, no. I disagree with that.  
21 Because in the early stages I was involved in that. And we  
22 weren't part of that Programmatic Agreement established right  
23 then. It came at us already written.

24 MS. GLIDDEN: Well, the way the process normally works  
25 is that the Programmatic Agreement is drafted and then sent

1 around for review. And I'm not sure, but I would have thought  
2 that at that point that you received a copy of it that you would  
3 have had an opportunity to review it.

4 MR. YOUPEE: No. We had opportunities to review it,  
5 and we had issues with that Programmatic Agreement which we were  
6 bringing to the table. But after a few discussions and meetings  
7 we no longer existed. We weren't called in any further to try  
8 to resolve our issues and to bring greater participation for  
9 tribes in those areas of discussion. There wasn't any.

10 I'm just telling you what has happened in the past.  
11 In order for us to start new we need to do things differently.  
12 You can't count on us if you're going to do the same thing over  
13 and over. Okay. There's got to be a practice that is -- that  
14 is built for future discussion by these tribes.

15 MS. GLIDDEN: Well, the survey plan definitely looks  
16 like it's something that is very workable. And from my reading  
17 of it, I think it's really going to be helpful to us in terms of  
18 moving forward. I think that the only concern that I have is  
19 not regarding the survey plan which you've drafted which clearly  
20 indicates future work but apparently there are some access  
21 issues and timing issues that DM&E is concerned about. And some  
22 of it has to do with engineering issues. And I'm not even  
23 entirely, you know, apprised of them, but maybe Herb can speak  
24 as to some of those issues.

25 MR. JONES: Thanks. Herb Jones. First off I want to

1 thank you for what you did yesterday in taking the time to put  
2 this together. And looking at it I can see it took a lot of  
3 effort. I know how difficult it is to get everybody to be able  
4 to get something down like this. We appreciate that.

5 The other thing that I would just say too is that  
6 Programmatic Agreement isn't something that I guess I look at  
7 and say I like that document either, but it's what we've got to  
8 work with such as it is and it has been made one of the -- one  
9 of the 147 mitigation conditions of which we are responsible to  
10 under the record of decision. And that entire matter was  
11 litigated, and the Eighth Circuit supported that in the end. So  
12 we're obligated to the terms of the Programmatic Agreement such  
13 as it is.

14 But I just want to say, you guys, we appreciate what  
15 you have here. And what I'm hopeful that we can do is we  
16 understand that you have priorities, and certainly we would too  
17 in this process. And what I'm hopeful that we can do is figure  
18 out how to put those things together in a way that allows people  
19 to get done what needs to be done here.

20 And I know there's always a difference of opinion  
21 about what consultation is. Everybody kind of has a different  
22 way of looking at it. From our perspective here today at least  
23 what we'd like to do is visit with you, talk with you about  
24 implementation on these fronts, what things could be done, some  
25 of the structure that you might have to this, time lines, what

1 the priorities are for you folks when it comes to those --

2 I think, Curley, you mentioned in your conversation  
3 you said that there were particular areas, concentrated areas,  
4 that you would have a concern about and those types of things.  
5 And to the extent that we can work with you folks and you can  
6 work with us on these things, that's what we're here for. And  
7 you're right, we're not going to be able to settle how we got  
8 here.

9 But what we can do, I think, is take what you've put  
10 together here and figure a way that maybe we can work together  
11 to see if there isn't a way to have a plan that we can move  
12 forward on and understanding that it may not be perfect for any  
13 given party but that overall it accomplishes the best possible  
14 way of getting this across the finish line that we're trying to  
15 do.

16 There isn't any intention on our part -- I just want  
17 to tell you, as far as people not being a part of what was going  
18 on on the survey crews and things like that, there was no  
19 intention to short-circuit the tribal involvement in this  
20 process. I think it may appear that way somehow because things  
21 were going on and maybe the tribes weren't there, didn't have  
22 membership there, representation there. At least from the  
23 standpoint of the Programmatic Agreement and from what we were  
24 doing from the archaeological side, there are different things  
25 that we're responsible for doing.

1           One of those, one component of that is the archeo  
2 survey work that has to be done. The tribal component of that  
3 is another thing that needs to be done. And we had a number of  
4 tribes that said at the meetings earlier that those were good  
5 documents, the archeo work would be something to go from to help  
6 them in their identification process.

7           So I know that that doesn't address every concern that  
8 you have on it, but I just want to tell you that's where we were  
9 coming from on this. We were trying to do it in compliance with  
10 the terms of the P.A. and understanding that there is an  
11 important part of this -- another area that we have to have  
12 which is your input into this same thing. It's not complete  
13 without that. We understand that.

14           So I just want to kind of at least lay some of that  
15 out there for you so you know where we were coming from, where  
16 we have been coming from. As far as how we move from here, I  
17 would like it if we could -- and maybe, Doug, you have some  
18 thoughts too about some of the processing type of things but if  
19 it's possible to go to these things and start looking through  
20 here and figure out, you know, what we can do and how you all  
21 think it should be done and see if there's not a way to get us  
22 there.

23           But, again, I want to thank you for -- I know you  
24 spent a long hard day yesterday trying to come up with something  
25 that makes sense. And it looks like there's a lot of thought

1 that went into that and we respect that and we want to work with  
2 you on that. Again, irrespective of how we got here we're not  
3 going to change that.

4 With that, Doug, this is the first time we've seen  
5 this obviously. I've seen it. I haven't had a chance to get  
6 through it. Thank you. I'm just going to pass it down.

7 MR. YOUPEE: I want to say thank you for your comments  
8 and encouraging words. And, you know, I take that as a recharge  
9 in the discussions. It's good to hear those comments in that  
10 manner. Thank you.

11 MS. GLIDDEN: I just wanted to reiterate I know that  
12 yesterday I approached you regarding four areas that, you know,  
13 that DM&E and the consultants were intending to do some work in.  
14 And I just wanted to reemphasize that we will ensure that any  
15 kind of additional testing, below ground testing, will not --  
16 will not occur until we can get tribal reps out there. And,  
17 again, those areas are the Mankato to New Ulm section, the PRC  
18 segment 2, PRC segment 3, and revisiting of the USD sites.

19 And the reason I mention those areas is because those  
20 are the areas where, you know, field work has been planned in  
21 the immediate future. And I just think it's important for you  
22 to realize, you know, my particular concern about getting tribal  
23 reps out there to those areas as a priority, you know,  
24 recognizing that this plan is an excellent plan and it's  
25 something that we can definitely work with.

1           MR. YOUPEE: Yeah. But I think your concerns -- I  
2 think your concerns regarding how quickly the tribes can  
3 expedite is pressures that we don't have, are not ours. Now if  
4 we can work with DM&E on a systematic approach, then I don't  
5 think you have anything to worry about. And so this is what we  
6 are up against. Okay.

7           Anything else that's going to bring added confusion in  
8 obstructing something that is positive, I think maybe tribes and  
9 DM&E need to really concentrate on how they can work together.

10          MS. GLIDDEN: Herb --

11          MR. YOUPEE: Monitor this as a federal agency and see  
12 how this can work and take notes. Because we have a model  
13 project that can benefit in a mutual manner.

14          MS. GLIDDEN: Herb, is this going to work for you? I  
15 mean, can you speak to that regarding the need for the tribes to  
16 have additional time and not to be pressured regarding their  
17 need to get people out in the field?

18          MR. JONES: Well, Cathy, here's what I want to say.  
19 Like I said before, I think we have priorities, and I think the  
20 tribal folks have priorities. And I'd like to see where we can  
21 get on that front.

22          I mean, if there isn't agreement on something, I think  
23 there are places that need to be able to resolve that through.  
24 I think if there are things that -- to me this really is kind of  
25 where the two parties intersect here on this stuff. And we need

1 to figure out what we can accomplish, what we can get done.

2 And I think STB has to be able to consultation with  
3 the DM&E and consultation with the tribes be able to figure out  
4 and make decisions if there are issues there that STB has with  
5 how things are done or if there are matters that there doesn't  
6 appear to be resolution to to be able to make decisions and lead  
7 on that front. But I hope we can have an interaction to figure  
8 out where we can take this.

9 MS. GLIDDEN: Well, my sense is that there needs to be  
10 a future meeting between the tribes and DM&E to discuss  
11 scheduling and discuss the concerns of each of the parties. It  
12 seems to me. Because some of the information regarding  
13 schedules and DM&E priorities, priority areas, has not been  
14 shared. And that's important information I think for everybody,  
15 certainly the tribes, to be aware of.

16 MR. JONES: Here's where -- again, this is -- here's  
17 what I'm thinking. What we would like to be able to do, I  
18 think, is discuss the framework for how the interaction takes  
19 place. We would like to interact with the tribal  
20 representatives in an organized way.

21 I think that if we could put (Inaudible) before  
22 people, what the schedule looks like for us in advance, people  
23 can look at that and plan according to that for all the parties,  
24 whoever it might be, that needs to be a part of that. That  
25 would be ideal. And that's what we can do. And people can say

1 we can see what needs to be done and when it needs to be done.  
2 We'll do that.

3 I'll just tell you the one thing that is important to  
4 us to be able to do -- and we're not asking I don't believe at  
5 all to rush anything but is to put together some kind of  
6 milestones just so that people can say here's how much time so  
7 people can plan. When we do these things here's the lead time  
8 that you'll have to figure those things out but when the time  
9 comes and the work needs to be done the work needs to be able to  
10 be done.

11 We're not intending to keep anything from anybody.  
12 Our intention is to try to -- it doesn't work that way. It's  
13 not in our interest to do that. It's in our interest to work  
14 with you and work with everybody. And, so, yes, I would like to  
15 be able to come up with something that says here's the  
16 milestones, here's what we work through, and here's the order of  
17 it.

18 I want to just tell you, though, that there is -- in  
19 discussing this framework I realized that we do have 33 tribal  
20 entities and what we would like to be able to do is have a  
21 structure that we can work with that allows for that interaction  
22 to take place in an organized way because it's very difficult to  
23 interact with 33 entities. And it's a challenge.

24 And I know the tribes experience that between  
25 themselves. But if there's -- in my mind if we can come up with

1 a structure for that interaction that makes sense and that is  
2 workable and that you can come up with time frames and time  
3 lines that people will respect and say that that makes sense to  
4 them too, those are the kind of things I think we would like to  
5 discuss and see where that would take us.

6 And, again, I'm not expecting everybody to agree on  
7 everything. You can't. A Democratic process means that some  
8 people don't get what they wanted out of it. But what it means  
9 is in the end we put something together that I think will  
10 address the -- most of the concerns and most of the people here.

11 MS. GLIDDEN: Well, how do the tribes that are present  
12 here feel about sending around this plan to the other tribes  
13 that are not here and getting input and then coming up with a  
14 consensus on a plan that would be agreeable to all the tribes  
15 involved?

16 MR. YOUPEE: Well, I think, you know, based on short  
17 notice, we had to come out with some plan or position paper, and  
18 we had to do that in a day's time amongst what, 13, 14 tribes  
19 and nations and governments. And so that was -- that was  
20 pushing it. And we had some individuals that weren't  
21 comfortable with it. I have to admit that.

22 But I think we're trying to create something with some  
23 transparency, not to exclude anyone, but I think that we also  
24 need to collectively between DM&E and federal agencies to look  
25 at this plan and to make it viable, something that is acceptable

1 by DM&E and I guess federal agencies as we look at  
2 106 compliance.

3 And certainly this is a need for tribes. So I think  
4 that we need to fine tune this and what is acceptable by DM&E  
5 and discuss that with tribes here and then send that plan or  
6 strategy out to other tribes.

7 MS. GLIDDEN: Herb, is that something acceptable to  
8 you? That sounds like a great idea to me.

9 MR. JONES: I think there are things there that make  
10 sense to me too. I think if you're looking at the general  
11 framework and structuring something that provides for a workable  
12 means of conducting the work, yes, that makes sense. We too  
13 would want to be able to visit with our folks as well. I mean,  
14 there are people who aren't at the table today that would need  
15 to be involved in this process too.

16 Again, I just want to tell you and when you're talking  
17 about the pressures on time lines from our perspective we want  
18 to be able to do things in a way -- and for us too there's work  
19 we would like to do yet this fall just because there are  
20 limitations on, for instance, ground conditions to be able to do  
21 some work.

22 If there are ways that we can ensure that the  
23 interests of the tribal community are addressed as we go along  
24 on those things, we would like to -- and we would hope that that  
25 happens that way. There are things that we would like to do yet

1 this fall when it comes to some of this work.

2           And I don't know in my mind -- when I think of -- and  
3 maybe this is my lack of understanding. And if it is, let me  
4 know that. But on the survey work that is done by the  
5 archeologists I heard Cathy say earlier that none of that work  
6 would take place if we didn't have tribal representatives there.  
7 My hope is that we could have tribal reps there yet this year.

8           If it isn't -- if it isn't -- if there isn't a perfect  
9 plan for doing that, if there's a way to do it that again does  
10 it as best as possible within the confines of what we have, my  
11 hope is that that can be done.

12           And, again, for us there isn't -- this is all for not  
13 if there isn't some kind of a structure about it that allows for  
14 the project, construction, to proceed in an orderly way.  
15 Something that we have to come up with from our perspective is  
16 something that is -- permit the construction to work itself  
17 through. And obviously we couldn't do something where you start  
18 construction and stop construction based on having something  
19 done or not done.

20           I do want to say I think for understanding of how the  
21 project is constructed, this isn't something where you start on  
22 one end and go to the other end of the project. It doesn't work  
23 that way. There are aspects of the construction that require --  
24 certain areas, for instance, require more years of construction  
25 to do the work. Doug gave a presentation two days ago.

1           Some of those efforts are -- some things can be done  
2 in very short order depending on where you are. Some require  
3 much more work. And so for us you have -- you'll have people  
4 doing construction at various spots along the line, whether  
5 it's -- whether it's in the rehab part of the line and whether  
6 it's in the new build part of the line. You'll have multiple  
7 construction sites at any given time.

8           I think at least when I started here I thought of  
9 doing construction starting one place kind of like a highway  
10 where you go from point A to point B and that's how you do it.  
11 And this is different than that, and that's why we have places  
12 in the middle of this thing where we have priorities to try to  
13 get to those so we can complete the project in a timely way.

14           And I don't like to -- I don't consider that like  
15 undue pressure if we can come up with a framework that makes  
16 sense that says, hey, here's when we need to be out there. Can  
17 we have your reps at these places or wherever you need to have  
18 them throughout that. And if there is areas of particular  
19 concern where you need to have people to make sure that those  
20 types of things are addressed in a way that makes sense.

21           That's where we're coming from. I just wanted to be  
22 very honest about it. That would be our intention would be if  
23 we can move forward with the work that needs to be done yet this  
24 year.

25           But if the tribal component of that can be

1 accomplished simultaneously, we would hope that that can happen.  
2 If it can't and there has to be something done later with that  
3 same area, whatever the case might be, however it works out, we  
4 are here at the table to work with you to see that we find a way  
5 to do that that makes sense for us.

6 MS. GLIDDEN: Well, how do the tribes feel about a  
7 staged approach? I know that a lot of the work that's being  
8 planned for, for instance, the PRC segment 2 and 3 and also this  
9 revisiting of the USD sites is really follow-up work from work  
10 that was done in I believe 1999 and 2000. And it's  
11 archaeological identification.

12 And it wouldn't preclude the tribes from getting out  
13 there at a later date to look at those sites, but it would allow  
14 DM&E to move forward on -- and the field crews to move forward  
15 on just the pedestrian surveys, in other words, walking along  
16 and identifying the sites.

17 And I know, Curley, you mentioned this plan that  
18 having information regarding sites that have been identified by  
19 archeologists, including photographs and so on, is information  
20 that would be very helpful to you and that archeologists could  
21 continue just collecting the information.

22 There are basically gaps in some of the work that was  
23 done previously because of land access issues. And so in PRC  
24 segment 2 and 3 that's the case. There's just a number of miles  
25 that still need to be inventoried. And the actual testing or

1 below ground work could be basically stayed until tribal reps  
2 can get out there. But I know that DM&E has a number of  
3 constraints, including engineering constraints and, of course,  
4 we have to be mindful of that, including weather constraints  
5 because the ground is going to basically freeze up soon.

6 And then, as I understand it from talking to Doug,  
7 even as recently as just a few weeks ago DM&E has been working  
8 with the archeologists for sites that have been identified to  
9 move the lines where needed. But it seems to me there could be  
10 some sort of consensus between the tribes and DM&E. I get the  
11 sense that everybody really wants to work together here and what  
12 we need to do is just come together and maybe, Doug, you need to  
13 go back and -- or, Herb, you need to go back and talk to your  
14 folks about this plan and then we need to send the -- oh, I'm  
15 sorry.

16 MR. CROWS BREAST: I think what we need here is for  
17 tribal involvement would be to probably have somebody from DM&E  
18 set up a schedule as to when your projects are starting. That  
19 would allow us time to think about it, let's see what we can do  
20 as tribal members to put the people that we need to help you.

21 Because right now we don't have no dates. We don't  
22 have no times. We don't know your construction phase. We don't  
23 know what type of -- what sections of the railroad you're going  
24 to start at.

25 If you're going to start on the middle section in

1 November or December, we need to know that. If other phases are  
2 going to start in the spring, we need to know that. That way we  
3 can get together here, and we can get our people together, get  
4 our firms together, the people that are going to do our work for  
5 us. Because I'm pretty sure, I'm almost positive, that maybe  
6 one or two of us might be out there for maybe a day or two.

7 But, you know, we got time to have people come out and  
8 actually do the work, you know, and do the research. We need  
9 that to do the research at the SHPO offices with either the  
10 State Historic Preservation Office, Wyoming and Kate or Paige.

11 We also need a copy of all the sites within that  
12 corridor, the new ones, the old ones, the ones that are almost  
13 there. We can put a plan together. I think it's incumbent upon  
14 the tribes to get together again after this meeting to develop a  
15 plan as to how we're going to approach this railroad, if we're  
16 going to move forward on it, things like that. I think there's  
17 a lot of different types of -- many things that need to be done.

18 If you're going to start in the Mankato area, there's  
19 tribes in that area, the Yankton, the Sisseton-Wahpeton, there's  
20 Lower Minnesota here. There's the Santee in Flandreau and other  
21 tribes that probably have enough manpower to take care of that  
22 area, including the Rosebud or Pine Ridge.

23 When you get toward the middle of the area I could  
24 come down. Curley could be a part from the middle all the way  
25 to -- this is a suggestion -- to the Wyoming part. JoAnn here,

1 have her people -- I myself and then my friend here from  
2 Cheyenne, he has people there.

3           Myself, I don't see a problem. The only problem we're  
4 going to have is we're going to be rushing like hell, pardon the  
5 language. But, you know, it's -- I don't know exactly how much  
6 time we have to put all of this together. Okay.

7           Now if we're going to be running on DM&E's time line,  
8 there's some things on our side that it's going to take a little  
9 bit more time. Not much, but a little bit more. But that's how  
10 I see it. If there's any things that you need, you guys can  
11 always talk to any one of these people here. You know, they're  
12 quite capable. Everybody here is quite capable of helping --

13           The only part I don't like about it is we have to  
14 sacrifice some of our sacred sites, you know. I really don't  
15 like that. So there has to be some type of -- some other  
16 mechanism in place to compensate that after the mitigation's  
17 done. So we need to talk about that and what's going to be set  
18 up on behalf of the tribes for losing them particular sites.

19           The tribes need to get together probably at another  
20 meeting and figure out what we can establish as tribes if they  
21 want. If they want to go on on their own, they got that option  
22 too, I guess. But it's always good to have a little group,  
23 everybody agreeing on things and doing it that way.

24           So I don't really care myself -- you know, I don't  
25 really care if you didn't tell us. Because I'm going to tell

1 you something. It's been like that for a long time, you know.  
2 It's been that way for a long time. And we're a little bit -- a  
3 little bit head shy when it comes to meeting with big companies  
4 or the Federal Government. You've got to understand that. And  
5 some things are not done -- somewhere along the road somebody  
6 dropped the ball. Well, let's pick that damn thing up, and  
7 let's get moving, you know.

8 We need to start -- there needs to be healing, a  
9 mending of relations between Indian people and white people.  
10 Because you don't see us as tribes, a lot of people. You just  
11 see us as Indians. That's the way I see it. But it doesn't  
12 mean I don't dislike you. You know, I talked to every one of  
13 you. We visited, and that's the way it is, you know.

14 And somehow some way we're going to get through this.  
15 And if the tribes can figure out -- and DM&E can figure out how  
16 we're going to do that, it would truly be beneficial to both  
17 sides that we need to work on that.

18 So I kind of had to say that before I leave here. I'm  
19 going to be leaving in about an hour. But I got a council  
20 meeting to go to. I'm going to present a paper when I get back  
21 to them. And ultimately they have the last say. You know, I'm  
22 just a pawn in their game, you know. I do what they say. And  
23 if they want to meet with you, then I have to call -- which one  
24 do I have to call, Cathy or you or one of you guys?

25 MS. GLIDDEN: Randy's working as the tribal liaison,

1 but you can also contact me so I know where and what's going on.

2 MR. CROWS BREAST: I can honestly tell you right now  
3 that I have the people that can do the job, you know. I got  
4 them. I've done a TCP already for the Corps of Engineers. But  
5 I'm not going to play hawk. This is a whole -- this is a whole  
6 tribal thing. But I can be there to assist tribes with the  
7 consulting firm that I work with.

8 So there's a lot of research that has to go into this.  
9 There's a lot of time. I want you to know that. And when  
10 Curley was saying earlier this is why he put this plan out, it  
11 takes a lot of time to do that, to set up -- to get your dollar  
12 figure together, your workers together. You have to travel  
13 distances. You might have to go to Denver to an office over  
14 there, SHPO, SARC (phonetic), SHPO office in Minnesota. Also  
15 in -- you know, there's all different places you've got to  
16 travel. That's about a 600 miles you're just driving around,  
17 you know, Wyoming.

18 You have to gather all the information from the SHPO  
19 offices and from the archaeological. And you can determine not  
20 only that but also people have to visit their tribal elders.  
21 They have to ask, and they have to interview some of them.

22 And not all our councilmen think the way we do. And  
23 if we're going to do a good job for you, then we've got to hope  
24 that there's a good vote in that council chambers to say, you  
25 know, for it. And if it doesn't work that way, then it goes to

1 office of (Inaudible) and then we have to -- I don't know what  
2 we're going to do then.

3 It's not up to us here. We're here to listen, but  
4 it's ultimately the tribal business council of my tribe, the  
5 3 Affiliated Tribes, the Mandan Hidatsa Arikara Nation, to make  
6 a decision as to what we're going to do. But they're going to  
7 rely on the information that we have and how we present that  
8 information to them.

9 So, you know, I'd definitely like to say, yeah, they  
10 gave me the resolution, they gave the authority to do that. But  
11 they always want to know what's going on, and they always ran  
12 into things before where they completely turned everything. And  
13 so I just wanted to let you guys know from my standpoint that  
14 I'm ready to help you out, but there's a lot of things that  
15 needs to be done first.

16 I'm just speaking on behalf of the 3 Affiliated. I'm  
17 not speaking on behalf of this crew. We didn't come to a  
18 consensus yet. We're going to work together on this. So you  
19 know where I'm coming from.

20 MR. YOUPEE: I want to interject something on what he  
21 was saying. Yes, the tribes do have to come to a consensus.  
22 But the key I think is what the DM&E is saying is that the  
23 tribes have to come in possession of the actual scheduling. And  
24 so, you know, the logistics, the secondary, we can always do  
25 that. But a systematic approach by tribes is probably the most

1 important thing in developing this TCP for information  
2 gathering.

3           So if we can get that information -- because it's --  
4 it doesn't do us any good for federal agencies to be (Inaudible)  
5 pressure when that information hasn't been really been afforded  
6 in the larger picture. And so once we get that information  
7 where we can develop around those systems, schedules, and we  
8 understand that it doesn't happen from one end to the next.

9           Our approach as a TCP survey is to approach it from  
10 two angles actually. And there's priorities, we understand.  
11 And so we can create systems that will accommodate for that and  
12 so -- you know, have that flexibility to enable us to work  
13 together on one phase or one length of the rail or another.

14           I don't know what else can be discussed without that  
15 type of information. And I don't want to revisit what's  
16 happened in the past because I don't think it's necessary. We  
17 can keep that for our record that we don't digress and fall back  
18 into that type of system which didn't work. But if we're  
19 looking at positive growth, I think that allowing tribes to see  
20 a schedule, to build into that schedule in a systematic manner,  
21 you know, beneficial to many folks for the tribes as a  
22 informational gathering period so we can start developing  
23 vehicles and mechanisms how tribes will interact and consult  
24 with federal agencies and the private sector as well.

25           But I really need to hear the other federal agencies

1 who are signature to the Programmatic Agreement. And I need to  
2 listen to their views as well. Because that's going to be part  
3 of the larger picture too. Thank you.

4 MS. GLIDDEN: Curley, I just wanted to ask if we can  
5 facilitate a meeting between the tribes and DM&E and if DM&E can  
6 help with that to talk about these issues and try to develop a  
7 plan that would combine both of the concerns that you have  
8 expressed, the need for a, you know, schedule and then also  
9 DM&E's concerns regarding timing. And if DM&E could facilitate  
10 such a meeting between the tribes and DM&E to discuss these  
11 issues and work out a plan that would be agreeable to the tribes  
12 and DM&E if we could facilitate that, if DM&E could facilitate  
13 that, I think that would be very helpful.

14 MS. HALVERSON: And then make that meeting joint where  
15 we can go to those sites in Minnesota if those are such an  
16 urgent --

17 MR. JACKSON: I can take a lot of time I guess and  
18 shed some light on the schedule I think that would show you some  
19 of the challenges that we're up against, but I think I can also  
20 present it in a way that allows us some opportunities to talk  
21 about what we're talking about here. But before I do that I'm  
22 going to yield the floor to Scott. He's been trying to yield  
23 the floor all morning. Or Alvin.

24 MR. GRASSROPE: I wanted to address something here  
25 that I heard Mr. Jones say on the part of DM&E, that they had

1 hoped to have the tribes there and whatever was being dealt with  
2 so far as surveys and all of that. I have to address that.

3 That wordage, I would like -- I think our councils  
4 like to hear "will" and "shall" and to (Inaudible) to make sure  
5 that we are going to, not just hope. Because there is some sort  
6 of law that states that we have to be there to protect our  
7 sacred sites, our human remains.

8 The gentleman has said, well, I don't like to go back  
9 in the past, but I think it's important that I bring this up  
10 that Beth out of Pierre that was driving us on the rails  
11 informed me and our crew that there was -- in the previous year  
12 there was human remains uncovered, brought from a borrowed site.  
13 Okay. A borrowed site is not in the corridor, but I think that  
14 borrowed sites need to be addressed also because there is  
15 digging going on.

16 And I think it's important that tribes are also in  
17 these areas where there are repairs made to the tracks and these  
18 borrowed sites are dug and they need to be monitored also. And  
19 there was no follow up on the suspected human remains that were  
20 uncovered to fix that bridge. And I think these are important  
21 to be addressed and added to this plan.

22 But wordage such as "will" and "shall" be used as  
23 directives, not hope. We need something solid like that. Thank  
24 you.

25 MR. JACKSON: Take a little bit of time, I guess. I

1 was hoping to be able to put a map up here, but I realize our  
2 projector's not here. But talk a little bit about the projects  
3 and how we schedule them --

4 MR. CROWS BREAST: He wanted to say one thing before  
5 we get started.

6 MR. BRADY: I've been sitting here listening and this  
7 is my first meeting and I noticed the consultation summary some  
8 of my tribes, some of my tribal members have been involved from  
9 the get-go on this thing. And I'm just -- I cannot disrespect  
10 or contradict the tribes, the members because they may have  
11 agreed to what's on the P.A. But lately my -- my THPO officer  
12 that took -- that I think now is the THPO officer was involved  
13 in the Gillette meeting, and he did send me over here to listen  
14 to the archeologists make presentations on their findings and to  
15 work with the program, you know, to bring back the information  
16 to him and the tribe for their consideration of how to best work  
17 with what's on the -- what's going to be -- what's involved  
18 here.

19 If there's a need for monitors, take that back and go  
20 schedule whatever, and go from there. Because a lot of things  
21 that happen, you know, I have looked over some of the papers and  
22 I see some of my tribal members were monitors at one time. And  
23 we don't have any information on what they done, but I have to  
24 respect what they did. You know, if they found something if  
25 they want to tell me, then that's fine.

1           But if they were constrained on this confidentiality  
2 agreement and they don't want to share it with me, that's fine  
3 also, you know, because I have respect for what they have done  
4 for the tribe.

5           And we are right now representing the tribe, but I do  
6 not have the full authority to make the decisions. You know,  
7 when I bring this information back they'll make the decision on  
8 who to send out there, who's most qualified to be out there  
9 working with the archeologists on whatever is required. But  
10 I'll bring back that information.

11           Like I have told the people here, we have different --  
12 each tribe is different. We have different traditions. We have  
13 different sacred sites to look for. Like I told, some of our  
14 ceremonies are only sacred during the time they're in progress.  
15 And some of the ceremonies are sacred -- some of the ceremonial  
16 sites are sacred throughout, you know. That's the differences  
17 that we have with our sacred sites.

18           And, there's, you know, some of the other things, the  
19 burials, you know, we know through our oral history how our  
20 people were buried from a scaffold or from a tree (Inaudible)  
21 and how they were placed, which direction they faced, either the  
22 west or the east. It required what their tribal standing was,  
23 ceremonial standing, you know.

24           So we know this, and we also know the (Inaudible)  
25 sometimes as you call them are actually sacred to us. It

1 depends on how they're -- where they're located, how they're  
2 constructed. You know, these things we have to look for. These  
3 were passed down through our oral history, you know, by our  
4 elders.

5           And, you know, that's the information I want to, you  
6 know, present to you is that I'm here to work with whatever you  
7 have on the table. I'm not here to (Inaudible) my fellow  
8 Cheyennes that have worked during this process because I can't.  
9 I'm not allowed. Tradition does not allow me to. That's all I  
10 would say. Thanks.

11           MS. HALVERSON: I wanted to speak before I leave. I  
12 have -- I too have a council meeting in the morning that I need  
13 to prepare for and a nine-hour drive ahead of me. This is a  
14 start, and we can't change what's happened in the past. We need  
15 to move forward.

16           This iron horse is going to go across our land again  
17 no matter what we say. But to preserve our history and our  
18 burial mounds and our sacred sites we need to be able to work  
19 together with you. We don't have to agree. And that's right.  
20 We don't have to agree. But let us have our opinion. Let us  
21 have some say to what happens to these sites.

22           Being from Lower Sioux in Morton, Minnesota and my  
23 homelands, I had no boundaries. We had no imaginary lines.  
24 When I come to these meetings, I represent my people. It's not  
25 about me. It's not about money. It's about what's in my heart.

1 So when I come to these meetings my heart is opened up to  
2 express for not just my people today but my ancestors in the  
3 past and for my future for the grandchildren and great  
4 grandchildren.

5 And we have time lines. We're not all going to be  
6 here, but our children will be here. Our generations in the  
7 future will be here. I'm requesting that DM&E bring in all the  
8 tribes interested in this, and we don't have -- I mean, our  
9 plate is full for the rest of October. But I know the first  
10 part of November we should have some kind of opening. As soon  
11 as I get back to the office, I'll call Randy with a schedule of  
12 what's going on so far -- to bring the tribes to Minnesota. Let  
13 us have site visits on those sites.

14 You want to progress with this issue in Minnesota.  
15 And since the tribes there haven't had involvement I think it's  
16 time to bring in all the tribes to Minnesota and include all the  
17 tribes that are interested. The ones that show up will be the  
18 ones that have it in their hearts to be there and that will want  
19 to work with the federal agencies and DM&E.

20 So that's my request, and my statement for Lower  
21 Sioux, and I will report to my council. Pida miya.

22 MR. WITHROW: Cheri's waiving at me. She needs a  
23 break. Why don't we all take a break. I know there's some  
24 other refreshments just brought in. And we can reconvene in  
25 about 10 minutes or so. Thank you.

1 (A short recess is taken)

2 MS. GLIDDEN: Okay. We're going to start again. Are  
3 there some other folks that would like to speak up on what's  
4 been mentioned here today?

5 I know, Doug, you mentioned you wanted to talk about  
6 some things. If there's other people that want to chime in,  
7 that would be great.

8 John Stone, did you want to say something? Okay.  
9 Anyone want to add in some of their thoughts?

10 MR. MCCLOSKEY: For the record, my name is Ruben  
11 McCloskey. I'm treaty council member from the Rosebud Sioux  
12 Tribe. And I see I'm the only treaty person here, which  
13 shouldn't be. There should be more here. Because you're  
14 talking about treaty land as far as the Lakotas are concerned,  
15 1868 Treaty.

16 And I feel, Cathy, it is the trust responsibility of  
17 the Government to help look out for this -- the railroad that's  
18 going across. It's the trust responsibility of the Bureau of  
19 Indian Affairs' land. So I'm hoping in the future that you will  
20 get -- DM&E, that you will get ahold of some of the treaty  
21 council members so that they will be here. That way you don't  
22 have no repercussions afterwards, people coming and saying,  
23 well, how come we weren't involved.

24 I didn't get a notice. Mr. Eagle Bear is the one that  
25 notified me that they were having this meeting, and the council

1 felt that -- I'm talking about the tribal council felt that the  
2 treaty council should be involved. That's why I'm here today.

3 I've been listening to everything that's been said,  
4 and I appreciate all the work that my tribal members that are  
5 here that have put an effort into it is being done. And I'm  
6 sorry that Curley left, but he's done a lot of work. And the  
7 gentleman from the -- it's 3 Affiliated Tribes; right? I'm glad  
8 you're here.

9 Also I can't remember names. Sitting down there with  
10 the red cap on.

11 MR. BRADY: Cheyenne.

12 MR. MCCLOSKEY: Cheyenne. And, in fact, if I can't  
13 remember names, all the tribal members that are here, I  
14 appreciate what you've done. But I think in the future it would  
15 behoove everybody, get your treaty councils involved. And it's  
16 bad when you don't -- when the right hand don't let the left  
17 hand know what's going on and we have mass confusion.

18 But I think we're on the right track as far as the  
19 tribes and the other -- all of you ladies and gentlemen that are  
20 here. Let's get that -- let's close up that communication gap  
21 that's there so we can all work together and be involved.

22 So with that, I want to thank you for letting me be  
23 here today. I want to thank you for letting me speak. And I'm  
24 just speaking as a treaty council member. So with that, I want  
25 to thank all of you.

1 MS. GLIDDEN: Thank you.

2 MR. THOMAS: I'm Wyatt of the Santee Sioux Nation.  
3 There's just a few things that I'd like to approach the  
4 individuals about. You know, yesterday I talked about a time  
5 line or the day before I talked about a time line. Not a time  
6 line but an outline of what it is that you guys were looking  
7 for.

8 And they're still coming up. You know, the  
9 scheduling, how can you get that to us? What more -- what more  
10 information can you give us, you know, that we can take a look  
11 at before we even come to our next meeting? You know, I know a  
12 meeting's going to have to be coming soon. You know, I don't  
13 know how you're going to contact monitors, how you're going to  
14 try to get somebody into the Minnesota project immediately.  
15 That's what I was talking about, the open trust. You know,  
16 we're here to trust you so, you know, trust us.

17 But if we can work on some type of outline form that  
18 you can approach us on on what it is that -- we don't know  
19 exactly what it is that you're looking for. But, you know, this  
20 here came about yesterday. You know, we don't know if that hits  
21 your area or not. You know, 30, 60, 90 days? What? What areas  
22 at what time?

23 Like Alvin said earlier, we know it's not just going  
24 to start at one end. There's little sections in there. We know  
25 that. But if we knew the dates when you was planning on going

1 in there, we can be prepared to have somebody there. And it  
2 will go, you know, so much easier.

3 We're not here to bump heads. We're here to, you  
4 know, work together. Somewhere down the line, you know, this is  
5 breaking history, something that probably hasn't been done in a  
6 long time.

7 So my suggestion to you is if you can get us an  
8 outline form of what it is that you're actually -- in our area  
9 that you're actually looking for that we can work on, you know,  
10 for our next meeting.

11 MR. WHITTED: Jim Whitted, Sisseton-Wahpeton Oyate. I  
12 just wanted to reiterate what Wyatt was saying. When we know  
13 the scheduling we have a couple monitors that we could possibly  
14 send, and I'm sure Santee would be able to accommodate one or  
15 two, if need be. But we need to know the scheduling so we can  
16 schedule it. But we do have people available.

17 And I was hoping Pam would have someone available, but  
18 if she doesn't, we'd be willing to step in and do that for you.  
19 Thank you.

20 MR. JACKSON: Doug Jackson with HDR. I'll take a few  
21 minutes, I guess, to try and explain where we are schedulewise.  
22 In answer to your question, Wyatt, I think what you gave us  
23 today is exactly the type of thing we were looking for. So it  
24 did hit the mark with where we need to get started.

25 We've heard you loud and clear that we need to get

1 back to you with priority areas and a schedule. And we have  
2 those schedules developed.

3 What's made this a little bit of a challenge from us  
4 on our side and I guess why we've been somewhat vague on  
5 starting dates is that the recent merger and acquisition of the  
6 DM&E with the CP Railroad has added a little bit of confusion to  
7 that. Our current plan is still to start construction in 2008.  
8 We do not have any construction planned in 2007.

9 I know there was some misconceptions I heard yesterday  
10 coming back that maybe there was construction going on this year  
11 and planning going on this year, and there is none. As we  
12 currently sit here today, I'm the guy who puts all the schedules  
13 together with Randy Henke (phonetic). We're the one who planned  
14 all the contracts. We have no construction plans for 2007.

15 If there's confusion over what's going on on the very  
16 east end of the railroad from basically Rochester, Minnesota  
17 south, you know, we experienced a big flood down there. We lost  
18 six bridges. Several miles of track were damaged. There is  
19 construction contracts going on down there right now just to put  
20 those bridges back in service, but that's the only work that's  
21 being done. That is not being done as part of the PRC project.

22 MR. THOMAS: But you've got to understand there's only  
23 a few more months left in this year. That's not a whole lot of  
24 time. We come to the table now, and we've only got two and a  
25 half months, three and a half months left.

1           MR. JACKSON: Correct. Part of the reason I was going  
2 to try to talk about this a little bit is that we showed you on  
3 the map yesterday that we have the four major projects. The  
4 planned start in 2008 is that we actually start on the entire --  
5 all four of those projects start at the same time, but all four  
6 of those projects are still planned over a three-year period.

7           So from my perspective I don't need to take the time  
8 of the tribes and tax the resources of the tribes to necessarily  
9 look at work that's going to happen in year three so I can  
10 prioritize construction areas, I think, and we can get that to  
11 you.

12           We have some immediate areas in the early spring  
13 coming out that we can go through. And I think the other thing  
14 is that I talked with Cathy a little bit about this. You know,  
15 the P.A. actually provides -- there's a provision in the P.A.  
16 that allows us to basically if there are no concerns in a  
17 particular area, just to basically check off that area, and then  
18 we can concentrate on the areas that have concern to them.

19           And I know where the areas of concern to the tribes  
20 are, you know. I still think we have the ability as to where we  
21 are today to try to look at our construction schedule to  
22 accommodate those concerns and put the construction later if  
23 need be. I can't make any promises to that today. It takes a  
24 little bit of evaluation.

25           I mean, for example, on the new build project with the

1 amount of dirt that we have to move I've got to be able to do  
2 big enough sections to get the dirt balances to work so my cuts  
3 and sidings work out. It's those kind of constraints that keeps  
4 me from making the promises saying we'll shift things there.  
5 But we'll take a look at it, and I think this gives us the  
6 framework to do that.

7 I think the thing that Herb and I as a further step to  
8 what you guys have developed here the only thing we really need  
9 now is exactly what you hit on, Wyatt, is we need to know who  
10 the representatives are. And I think from what I've heard a  
11 little bit today is certain tribes seem to be focusing on areas  
12 of certain concern.

13 And if you can break that down for us, you know, the  
14 general plan you gave indicates that you're talking about two  
15 survey teams. If we can get those survey teams identified and  
16 if it happens to be two or three, I don't know that that's a big  
17 difference to us. Or whatever the number is.

18 But if we can identify those responsible individuals,  
19 the responsible areas, and then that way we know as we work  
20 through this process and we give out the schedule and so forth  
21 we know if we're contacting yourself, Wyatt, or Elgin or  
22 somebody or your representative. It may not be you guys. But  
23 if you actually have a representative that we're contacting,  
24 that we know each time we're consistent in that contact and we  
25 contact the right people so you know what we're headed to and

1 what our next actions are.

2 I know that's the framework that just needs to be  
3 added to this. I know you guys need a little bit of time to  
4 work through those issues and figure that out, but I think we  
5 can work with that. So I think the schedule's a challenge. Any  
6 time you take on a job this big with this many miles it's a  
7 challenge.

8 But I think I also look at that challenge as an  
9 opportunity because the fact that it is 1,000 miles of  
10 construction or 900 miles of construction I don't do all the  
11 construction every year all year. And there will be  
12 opportunities, I think, to focus on areas where we can go to  
13 work right away and delay areas where we need to delay or  
14 postpone them. So I do believe we can come to a workable  
15 solution here.

16 MR. JONES: Another thing, I think Doug kind of  
17 touched on this, and the P.A. does too. I just wanted to make  
18 sure if there are areas out there that clearly -- we know  
19 everybody has indicated that there are concentrated areas where  
20 you all know you have sites and you want to do additional work,  
21 need to do additional work, if there are areas that can be  
22 cleared in general, still do the TCP identification, but if you  
23 don't need to do field work and those types of things, then if  
24 you can do that, that doesn't mean you'll have monitors out  
25 there during construction. You'll have monitors out there

1 during construction for the entire thing.

2 But in order to get the recording part through, the  
3 archeo and the additional TCP part of that, if that can be done  
4 and there are larger areas that can be identified that can be  
5 cleared earlier, that also helps for the construction part, I  
6 think.

7 I just want to make sure that's clear. We will have  
8 monitors out there during construction just like the P.A. calls  
9 for. The P.A. is less than -- it doesn't call for that during  
10 the survey part of it, but we again hope to accommodate that.  
11 Or if there's anything that needs to be done for field work or  
12 TCP identification, we need to get that done here too.

13 And as far as the construction time line, whether --  
14 it doesn't matter really in some sense when that construction  
15 starts. We know what month or what year it's in. There will  
16 still be places where we need to be earliest. And we need to be  
17 able -- for our sake we would like to look at those things and  
18 figure out the clearance process for that.

19 And I just want to explain there is one kind of  
20 difficulty we've had in trying to identify -- if you go out  
21 there and say here are six particular parcels that we need to  
22 get or something like that, the problem we have is if you work  
23 those six areas through the process but the next batch takes  
24 three months or four months to get to, that's where I was  
25 talking about you can get kind of high and dry when it comes to

1 construction.

2 That part of it we have to be able to have a process  
3 that continues to put things through so that construction can be  
4 done in an orderly way too. We're just trying to put something  
5 together that makes sense for y'all and something that makes --  
6 you get the information you need when you need it and it  
7 contributes to getting the work done in an orderly way.

8 But, again, whether the construction starts next  
9 summer or whether it starts in 2009, the project, no matter how  
10 you do it, takes three years to construct it. And you'll have  
11 the areas that you need to be on the earliest. And that's where  
12 we would focus.

13 I don't want people to think we're being pressured to  
14 do something. They're just our priorities. No matter -- it  
15 doesn't make any difference when you start the areas you're most  
16 concerned about earliest. I don't know if that helped or not.  
17 And we will share with you more information on those so that you  
18 have an idea of where you need to be as well.

19 MS. GLIDDEN: Yeah. Or because actually from my  
20 standpoint some of the stuff you're explaining is difficult for  
21 me to -- you know, I'm not an engineer, but some of it is  
22 difficult for me to entirely understand regarding your  
23 discussion about those sections and what you're going to be  
24 doing there.

25 So I think an explanation perhaps, you know, in

1 your -- in addition to the scope of work would be really, really  
2 helpful. And I think also a summary of those areas that --  
3 along the corridor, especially those reconstructed areas that  
4 are going to be exactly on the alignment where there's going to  
5 be no digging or anything like that within previously, you know,  
6 unexcavated areas where all you're going to be doing is  
7 replacing rails and ties and if you can provide that to the  
8 tribes, I think that would be really helpful because then they  
9 can focus on those areas where there really are concerns. And  
10 right away you're excluding some big sections that will help  
11 everyone, I think.

12 I don't know how everyone else feels about that.

13 MR. MCCLOSKEY: With that, are you asking the contact  
14 persons; right? You want to know who they are? Well, for the  
15 treaty council in Rosebud, South Dakota is Mr. Spotted Tail  
16 sitting there. He runs our treaty office for us. So  
17 anything -- any information, any meeting or any kind of  
18 correspondence please give it to him. He'll tell you how to get  
19 ahold of him and all of that good stuff. So that's where on the  
20 treaty part.

21 MR. CROWS BREAST: Also I wanted to mention that on  
22 the part where you're going to set up your staging areas, okay,  
23 they're probably one of the first areas that you're going to,  
24 you know -- you have to bring your supplies in. And there may  
25 be an area there -- I don't know how many staging areas you're

1 going to have. But those could be priorities that we could look  
2 at first and see what's there, you know.

3 MR. JACKSON: Yeah.

4 MR. CROWS BREAST: That way after that -- I understand  
5 what you're saying about certain phases of your constructions.  
6 You don't want -- after you finish one you don't want to be just  
7 sitting there. We want to be -- the tribes, we should be able  
8 to be ahead of the game a little bit so that we'll finish with  
9 one area and then when you're finished with this construction  
10 you can move right into this area like that. So I understand  
11 what you're saying.

12 So yeah. So scheduling would be really a critical  
13 issue there that you kind of look at it in an engineer  
14 standpoint, I guess.

15 MR. JACKSON: Doug Jackson again. Elgin, you're  
16 exactly right. With the new build project, I wish I had a map.  
17 I was looking on my computer here to see if we had the map that  
18 we developed that shows our time line and construction areas.

19 I mean, you're exactly right. I mean, the three prime  
20 areas we hit in the spring or as soon as we can in '08 are the  
21 west yard. And we're building the west yard because building  
22 the west yard allows us to use it as a staging area.

23 We actually have to put in a rail welding plant in the  
24 west yard and the current plan is to truck rail from Pueblo,  
25 Colorado and weld it at the west yard. The west yard becomes a

1 staging area.

2 Smithwick, South Dakota, if you know anything about  
3 the alignment and the maps, Smithwick, if you look at the DM&E's  
4 existing alignment, the line that runs today they have a line  
5 that comes south of Rapid City and runs through Smithwick. Our  
6 new alignment crosses that alignment in Smithwick.

7 What that gives us the ability to do is actually move  
8 materials from Rapid City by rail line to Smithwick. So, again,  
9 Smithwick is an area inside of the right of way that we're  
10 concentrating on to build a temporary staging area there to  
11 build and store materials in.

12 And the third place is just coming out of Wall,  
13 South Dakota. We pointed out yesterday or Monday in the  
14 presentation that we are building a Wall -- yard, an actual yard  
15 for maintenance and operational purposes once the railroad's up  
16 and running. And, again, we're going to use that Wall yard for  
17 a staging area because of the extra width you have to build that  
18 allows us spots to go in and build materials and lay down  
19 materials there.

20 What that really allows us to do is when you build a  
21 railroad you've got to build yourself into it basically because  
22 we shuffle materials, ballasts, rails. Everything else gets  
23 shuffled by the rail line. The most economical way to do it is  
24 by rail, not by truck just because of the amount of materials,  
25 the large tonnages that you're talking about.

1           So we'll construct out from two or three headings and  
2 actually use that rail line to supply our own materials to  
3 ourselves. So we've got that kind of detail, and we can bring  
4 that. You know, not knowing where we are going with this, the  
5 reinitiation of the tribal meetings and this summit, you know,  
6 we didn't bring that detail with us. But we have it, and I  
7 think Herb and I are -- you know, we're committed to getting  
8 that to you as soon as we can.

9           Certainly within the next few weeks I think we can  
10 probably put together a package and get it out to the  
11 representatives that you identified that lays out those time  
12 lines and go ahead.

13           MR. CROWS BREAST: Also with the (Inaudible) and the  
14 SHPOs maybe there can be some collaboration there as to file  
15 search in those areas, the priority areas and the site forms and  
16 the site areas and all of that.

17           Also with that any disturbed and undisturbed areas of  
18 that area. You know, meaning there was probably something built  
19 there before already.

20           MR. JACKSON: Yes.

21           MR. CROWS BREAST: So the importance of the site,  
22 whatever was there before the rail came in, is probably already  
23 destroyed if there is anything there at all. And if there is  
24 nothing there, then there's nothing there. So there's a  
25 disturbed burial and undisturbed burial so if you're going to do

1 your yard, you may want to consider disturbed areas already so  
2 that you don't have to go through the whole archaeological bit,  
3 things like this. It's easier for the tribes to come out there  
4 and do what we have to do.

5 But also if we have to, we will be there.

6 MR. JACKSON: Right. And we are -- Cathy asked me to  
7 actually talk about that, and I forgot. We are doing that some  
8 of that currently actually as we go along. From our  
9 archaeological surveys that have been done or even the  
10 biological surveys, the wetland surveys, all of those things,  
11 when the environmental scientists or the archeologists had  
12 identified to us a significant site, meaning that there's  
13 potential mitigation that's going to be involved, we're going to  
14 have to do something with that site to the best of our ability.  
15 Where we have the leeway we've already tried to shift that  
16 infrastructure around to miss those.

17 You know, from my aspect as the project manager with  
18 the multitude of things we have to deal with I don't want to  
19 compound it by if I can make a shift in the alignment or I can  
20 shift the spacing of a siding, it's easier for me to do that at  
21 this point than have to deal with the compounded effects of  
22 dealing with mitigation of a site.

23 So we're trying to do that the best we can. The very  
24 nature of building a railroad as I tried to explain on Tuesday  
25 somewhat limits you to that because of a 1 percent curve

1 compensating grade really has some limitations on how much  
2 curvature and how much grade we can introduce to the rail line,  
3 but we're trying to do that currently.

4 And I think the thing about where it's -- what's  
5 crucial to get the tribal representatives out to see the  
6 alignment is that I think when you see portions of the PRC and  
7 the rehab project it really becomes much clearer -- I know it  
8 did for me because I was looking at maps where known cultural  
9 sites were with respect to our alignment.

10 And actually when you get out there and you look at  
11 those sites, they're either bordering up against the right of  
12 way or they're outside the right of way, and they're not going  
13 to be really impacted by the operations that we have if we're  
14 not constructing a siding. It's replacement rails, ties,  
15 ballasts. It's undercutting. It's the same type of operations  
16 that on any railroad today you see happening with normal  
17 maintenance activities for the most part.

18 MS. GLIDDEN: Doug, I think that's really helpful  
19 information. And I think if you can synthesize that and provide  
20 it to all of us, you know, the federal agencies and the tribes,  
21 it would be enormously helpful in a way perhaps that is  
22 understandable. Because some of the stuff you're talking about  
23 is a little over my head. But I think that if everybody was  
24 aware of those issues, I think it's really going to help  
25 tremendously.

1           And I wanted to respond to Elgin's comment regarding  
2 site fill searches. From what I understand a lot of it has  
3 already been completed by the arch. surveys. I don't know if  
4 you -- Randy, you want to speak to that?

5           MR. WITHROW: Well, a lot of it will be summarized in  
6 the reports, and we'll try to get as many of those that are --  
7 some are still being prepared, or there's other ones, even the  
8 Burns & McDonald report from 2000 and the USD report from then.  
9 Those can be circulated, and we'll redistribute those so  
10 everybody has copies.

11           And there's a lot of detailed information in there  
12 obviously about each site that was inventoried along those  
13 corridors, copies of the site forms and all of that.

14           So it's not so you can't go do your own records check  
15 as well just to update that and everything. But a lot of that  
16 information will be in there.

17           And I think, Herb, did you say that the map books that  
18 we had had been delivered? Okay. So these were handed out to  
19 those who attended the previous meetings back in August.  
20 Basically a collection of topographic maps that show the project  
21 alignment and shows the location of all known archaeological  
22 resources along those alignments as of August 7, I believe. And  
23 so it's current through that.

24           And those are available. Like I said, if you already  
25 have one from a previous meeting, you may or may not need to

1 take one, but for those of you who are attending for the first  
2 time here, those are available. So good, detailed information  
3 there. And I think there's an index, an inventory, and you'll  
4 be able to find specific sites on those maps. Because it's  
5 about that thick. It's a lot of information.

6 MR. JONES: I would just add one thing too again. I  
7 just want to kind of reiterate and we talked about it as well on  
8 Tuesday, the time lines for construction, of course, are subject  
9 to change. And, as you know, as of last Thursday there was a  
10 closing on the acquisition of the DM&E by the Canadian Pacific  
11 railroad that that might impact time lines and what it might  
12 mean.

13 It isn't anything we know the answer to today. We're  
14 still operating under the guidance we've had before, worked with  
15 you all on as far as starting the construction as soon as the  
16 work can be completed and ready to go. Those things are subject  
17 to change. We haven't been instructed by the trustee or  
18 anything else on that.

19 So what we're discussing with you here is what we have  
20 discussed before at our meetings for starting construction on  
21 the earliest time line, which is what Doug said would be next  
22 year in 2008.

23 What I'm saying is more specific dates that you might  
24 start construction we might not be able to provide a specific  
25 date, but I think what we can do is certainly provide the

1 priorities that we have and the sequencing, what it will take us  
2 to get, you know, from the first to the next part of the  
3 construction so that it can be done in an orderly way whenever  
4 that construction takes place. And our aim is to continue to  
5 work on this and keep it on track no matter what the  
6 construction dates might be.

7 MR. CROWS BREAST: I think on my part it's -- I'm  
8 pretty much done, I guess. And I do got to hit the road here.  
9 I'm 10 minutes overdue. But when I started doing this work I  
10 need about five helicopters. I'm just kidding.

11 But, you know, the tribes, I'm speaking on behalf of  
12 the Mandan, Hidatsa, and Arikara Nations. I'd like to thank  
13 everybody here for your hospitality and putting up the meeting  
14 and inviting me here to hear our tribe's concerns. It's always  
15 a learning experience. Every meeting I go to we always have  
16 disagreements. That's what meetings are for.

17 Like Pam said, we don't always have to agree, but we  
18 can come to some kind of negotiating agreement where we can work  
19 together in common as people.

20 And I just want to say thank you to all my red  
21 brothers and sisters here, you know, for sitting here and  
22 providing the input into everybody and the treaty council. You  
23 know, we don't have a treaty council at home, but we do have a  
24 lot of ceremonial people. But I think we do -- I guess it would  
25 be my job to start one. We're going to do it.

1           At one time I had some people together and we were  
2 going to come down and talk to -- I don't know who I would talk  
3 to but maybe it would be in a different place and different time  
4 to say it but I want to just kind of reiterate we wanted to talk  
5 to them people on that fire -- I just wanted to say to  
6 (Inaudible) we got people there that know about that fire so we  
7 wanted to come down and (Inaudible). So maybe at some time  
8 we'll visit about that. (Inaudible).

9           But I appreciate everything. Because they have seven  
10 camp fires, fire keepers in the Sioux Nation. And I need to  
11 talk to them people.

12           But I have to hit the road, and I haven't even packed  
13 yet so -- I missed lunch, damn it. And I want to apologize for  
14 not making the dinner last night. I got caught on that pool  
15 table. And I was winning so I didn't want to leave while I was  
16 winning, but I finally lost so I had to come down. It was too  
17 late. And I seen Robert, and he was barely moving.

18           Before I go I want to tell this little joke. Some of  
19 these people before have heard it.

20           There was three guys: A guy from DM&E; there was this  
21 guy from HDR; and there was this archeologist. And they're all  
22 talking about their wives. They were just -- you know, they  
23 were concerned because their wives weren't listening to them.

24           So this archeologist -- they were talking about --  
25 this archeologist said, Well, I'm going to go home and I'm going

1 to tell my wife that she's got to do this, you know. So he goes  
2 home and he says, Mrs., he says, you know, I ain't going to do  
3 no more cooking anymore. And you're going to do all the cooking  
4 from here on.

5 So he come back and told his friend, and his friend  
6 goes, What happened? What happened?

7 Well, on the first day, he says, I didn't see nothing.  
8 He said, On the second day I didn't see nothing. The third day,  
9 Oh, a nice meal on the table.

10 Boy, that's how you talk. I'm going to go try that,  
11 said that guy from HDR.

12 So he went back. Woman, he said, I ain't doing no  
13 cooking. I ain't doing no cleaning. I ain't doing nothing.

14 So he come back, and the second day, What happened?  
15 What happened? He said, Well, the first day I didn't see  
16 nothing. The second day I didn't see nothing. He said, The  
17 third day, man, the house was spic and span. He said, There  
18 was -- man, everything was clean. Nice meal on the table. Boy,  
19 that's how you do it.

20 And the guy from DM&E said, Well, I'm going to go try  
21 that. So he left and went out.

22 I told my wife, I ain't doing no cooking. I ain't  
23 doing no cleaning. I ain't doing nothing. I ain't doing shit,  
24 he said.

25 That's off the record.

1           Okay. Well, What happened, he said. Well, on the  
2 first day I didn't see nothing. On the second day I didn't see  
3 nothing. On the third day I could see a little bit out of my  
4 left eye.

5           I got to go, guys. It's been nice to visit with you  
6 guys, and we'll talk some more again. I'm on the road.

7           MS. GLIDDEN: Thanks so much. Thanks so much for your  
8 participation. We're still thinking about that joke.

9           Okay. Anybody else want to add anything before we  
10 kind of sum up what we all kind of came to as far as next steps?  
11 Anybody else want to add anything?

12           All right. Well, I think we have a general consensus  
13 that the scope of work that was developed by Curley is going to  
14 be a good first draft that we can circulate to the tribes and  
15 the federal agencies and also to DM&E and that the tribes have  
16 certain information needs and that includes time lines and  
17 specific areas of priorities and also locations of areas where  
18 perhaps just rails and ties are being replaced and that could be  
19 potentially excluded.

20           And DM&E needs information from the tribes regarding  
21 locations that the tribes have been interested in. And this  
22 first draft will, you know, be circulated for everyone, all the  
23 tribes to have input in it.

24           And then there will be another meeting that will be  
25 scheduled at some point to discuss the scope. And Pam had

1 suggested that this location might be near Mankato where those  
2 sites are that are clearly very sensitive sites, perhaps the  
3 casino where she is.

4 So am I missing anything, anybody?

5 Okay. Well, anybody want to add anything or -- where  
6 are we at now? What time is it? When is lunch?

7 MR. BIBLER: Noon. I can go over and see what's going  
8 on.

9 MS. GLIDDEN: All right. Well, thanks, everyone. Do  
10 we feel the need to continue after lunch or does everyone want  
11 to head out or what is everyone's feeling about that? Because I  
12 know we do have some items on the schedule, but I think we've  
13 kind of moved ahead and are at a point maybe we could end. I  
14 don't know how everyone feels about that.

15 Okay. That would be another point that we should  
16 probably bring up is the schedule for -- or time frame for  
17 having the next meeting. So that would be another action item.

18 MR. WHITTED: If we're going to visit sites, probably  
19 the sooner the better. November, first part of November, middle  
20 of November.

21 MS. GLIDDEN: Okay. Yeah. I understand that Pam was  
22 suggesting the first or second week in November. Obviously we  
23 have weather conditions to concern ourselves with so that's a  
24 real good point. So time frames when tribal reps can get out in  
25 the field.

1           MR. JACKSON: Yeah. Certainly by the first of  
2 November I think we want to be knowing where we're going next.  
3 And I did tell Michelle Terrell that was here that gave the  
4 presentation about Minnesota -- she was the one that was  
5 planning the work in the New Ulm, Mankato area. I told her she  
6 just needs to stand down. We're not going to do any of that  
7 until we get it sorted out a little bit and know where we're at.  
8 We'll take a few weeks to get a time frame and give you guys  
9 notification for getting back out there.

10           MS. GLIDDEN: We'll also summarize the notes that came  
11 out of this meeting to all the tribes and maybe provide a short  
12 summary of some of the action items that we agreed on just to  
13 make sure everybody's in agreement on those points.

14           MR. JACKSON: I think as far as the schedule goes we  
15 need some time to go back and talk to the archeologists and Mike  
16 and the rest of the team that's doing the work there and figure  
17 out where we sit time frame wise. And then get back to you guys  
18 and funnel that through to Cathy and Randy.

19           MS. GLIDDEN: I think as soon as we can get a draft of  
20 the scope of the work circulated. We'll go ahead and scan it.  
21 I don't know if anyone has an electronic copy of it. We'll go  
22 ahead and scan it. And obviously everybody will have an  
23 opportunity to provide potential changes or additions to the  
24 scope of work that Curley developed.

25                           Does that sound okay?

1 MR. MCCLOSKEY: One more comment. Cathy, I want to  
2 thank you for sending the information to Mr. Eagle Bear ahead of  
3 time so we could get ready. And one of the things that -- in  
4 our tribe is we have to put in our travel five days ahead of  
5 time so they can have our travel ready for us. We just got  
6 under the wire this last time.

7 But we want to thank you for -- and, all people  
8 concerned, if you're going to have us come to meetings and  
9 stuff, let us know maybe a couple of weeks ahead of time in  
10 writing.

11 And if you can put it in writing, please -- if you do  
12 have it, please attach an agenda to it. Because before we can  
13 travel -- I don't know how it is on the other reservations, but  
14 before we can travel we have to have a letter showing where the  
15 meeting's going to be plus the agenda. It could be a rough  
16 draft agenda. Some kind of agenda.

17 MS. GLIDDEN: Just something you can share with so you  
18 can get reimbursed.

19 MR. MCCLOSKEY: Yes. The finance people. Exactly.

20 MR. BRADY: Cathy, this thing that Curley developed  
21 isn't signed by the tribes. You know, we asked you guys to take  
22 it back home and have the appropriate people look at it and see  
23 what they think about it. If they agree to it, we'll let you  
24 know. But nobody has signed it.

25 MS. GLIDDEN: Yeah. I mean, we consider it clearly a

1 draft, a start. And certainly, you know, I think we're all --

2 MR. BRADY: This is Curley's plan, you know. The  
3 tribes didn't delegate him to be the spokesperson that I know of  
4 unless they did while --

5 MS. GLIDDEN: Well, I guess I'm viewing it as a draft,  
6 and everybody will have an opportunity to get a copy of it and  
7 make changes. And I guess it will be my job to -- yeah. I  
8 mean, yeah, obviously including tribes who aren't here who  
9 haven't had a chance to look at this.

10 So, again, you know, I think it's a draft. I think  
11 it's a workable draft. But if there are specific concerns that  
12 you have, then you need to share it and make some changes,  
13 recommended changes, and that's exactly what we want. And  
14 that's what the next meeting will be about.

15 You look like you want to say something else.

16 MR. BRADY: No.

17 MS. GLIDDEN: Okay. Anybody else have anything to  
18 add? Anybody feel like we need to meet some more, or are we  
19 kind of at a point where we can just have lunch and head out on  
20 our ways?

21 MR. WHITTED: I think we've accomplished quite a bit.

22 MS. GLIDDEN: Okay. I feel the same way.

23 MR. MCCLOSKEY: I think we're all satisfied, Cathy.

24 MS. GLIDDEN: Okay. Well, anybody want to provide a  
25 prayer at this point, or should we wait until lunch or -- I

1 think it would be nice to end this with a prayer from an elder,  
2 perhaps.

3 (Prayer by Mr. Grassrope)

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STATE OF SOUTH DAKOTA)

:SS

CERTIFICATE

COUNTY OF HUGHES )

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 11th day of October 2007, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 2nd day of November 2007.

\_\_\_\_\_  
Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter