

FD 33407

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SURFACE TRANSPORTATION BOARD MEETING

Pierre, SD

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TRIBAL

Transcript of Proceedings
August 14, 2007
at 1 o'clock p.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
- Ian Ritchie, Forest Service
- Kate Divis, SHPO Office
- Paige Hoskinson, SHPO Office
- Leah Hunter, Winnebago Tribe
- Kathy Arcoren, Rosebud THPO
- Caroline Schrader, Flandreau Sante Sioux Tribe
- Wyatt Thomas, Sante Sioux Nation
- Jim Whitted, Sisseton-Wahpeton Oyate
- Alan Stanfill, HDR Engineering
- Brady Grant, Turtle Mountain
- Mike Madson, HDR Engineering
- Amen Sheridan, Omaha Tribe
- Roger Trudell, Sante Sioux Nation
- Kevin Schieffer, DM&E Railroad
- John Hotopp, Louis Berger Group

Reported by Cheri McComsey Wittler, CRR, RPR

1 The following proceedings were taken at the Ramkota
2 Hotel Best Western, Pierre, South Dakota, on the 14th day of
3 August 2007, commencing at 1 o'clock p.m.; before
4 Cheri McComsey Wittler, a Registered Professional Reporter,
5 Certified Realtime Reporter, and Notary Public within and for
6 the State of South Dakota.

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1 MS. GLIDDEN: I'm Cathy Glidden with the Surface
2 Transportation Board.

3 MR. WITHROW: I'm Randy Withrow with the Louis Berger
4 Group, third-party contractor.

5 MR. BIBLER: Dave Bibler with Louis Berger Group,
6 third-party contractor.

7 MR. JONES: Herb Jones with the DM&E Railroad,
8 Government Affairs Director, and I serve as the tribal liaison.

9 MR. RITCHIE: Ian Ritchie with the Forest Service, and
10 I'm coordinating on the cultural resources end for Buffalo Gap
11 and Thunder Basin National Grassland.

12 MS. DIVIS: I'm Kate Divis, and I work with the
13 South Dakota SHPO's Office.

14 MS. HOSKINSON: Paige Hoskins, South Dakota SHPO's
15 Office.

16 MS. HUNTER: Leah Hunter, Winnebago Tribe, Nebraska.

17 MS. ARCOREN: Kathy Arcoren, Rosebud THPO.

18 MS. SCHRADER: Caroline Schrader. I'm a member of the
19 Flandreau Santee Sioux Tribe.

20 MR. THOMAS: Wyatt Thomas, Santee Sioux Nation Tribal
21 Secretary.

22 MR. WHITTED: Jim Whitted, Sisseton-Wahpeton Oyate,
23 Tribal Historic Preservation Office.

24 MR. STANFILL: Alan Stanfill, HDR Engineering,
25 Incorporated.

1 MR. GRANT: Brady Grant, THPO Natural
2 Resource Director, Turtle Mountain Band of Chippewa Indians,
3 Belcourt, North Dakota.

4 MR. MADSON: Mike Madson, HDR Engineering,
5 archeologist with DM&E Railroad.

6 MR. SHERIDAN: Amen Sheridan, Omaha Tribe, Nebraska,
7 Tribal Chairman.

8 MR. TRUDELL: Roger Trudell, Chair, Santee Sioux
9 Nation, Nebraska.

10 MR. SCHIEFFER: Kevin Schieffer, President,
11 DM&E Railroad.

12 MR. HOTOPP: John Hotopp, Louis Berger Group.

13 MS. GLIDDEN: I want to thank you all for coming
14 today. I know that many of you came somewhat long distances,
15 and it was very short notice, this meeting.

16 And the reason we're here is to discuss the
17 Programmatic Agreement, which was one of the conditions that was
18 attached to the final decision for the approval of the DM&E
19 project. And the P.A. specifically addresses the cultural
20 resources and tribal resources component on the project.

21 And really I think the purpose of this particular
22 meeting is just to introduce ourselves, to get to know you, and
23 to get input from you on how we should continue the consultation
24 process. And we're envisioning perhaps a meeting after we have
25 the three meetings and we have three tribal meetings to have a

1 larger meeting where everyone would meet.

2 So Kevin was going to provide a background. He's been
3 involved in this project from day one. And I just actually
4 recently have become involved in the project as the project
5 manager for the Programmatic Agreement aspect of the project.
6 And I have a cultural resources background.

7 As far as the Surface Transportation -- Surface
8 Transportation role in this, we are the federal agency that
9 approves -- or approved the construction and operation of the
10 DM&E Railroad. We are an agency that -- we have 150 people, and
11 our role is to approve new railroad constructions, abandonments,
12 and mergers.

13 And the reason we are involved in this particular
14 project is because there's new construction, and there's a fair
15 amount of new traffic that's going to be moved along the line.

16 So the project was approved but with a number of
17 conditions. So a conditional approval, obviously. One of the
18 specifications is specifically the Programmatic Agreement but
19 there's many other conditions and I believe you do have the
20 information available.

21 Randy, as far as the conditions.

22 MR. WITHROW: As far as the conditions are, I don't
23 think those were included in the notification. One of those
24 conditions specifically addresses implementation of the
25 Programmatic Agreement. I think it's Condition No. 106,

1 coincidentally.

2 MS. GLIDDEN: Right.

3 MR. WITHROW: But there are a number of others that
4 deal with some other issues of concern to the tribe as well.

5 MS. GLIDDEN: Right. And, you know, I'm here as a
6 representative of the federal agency for
7 Government-to-Government consultation purposes. And we have
8 Randy and Louis Berger Group and Dave Bibler to assist us as a
9 third-party contractor. So they're basically helping us. We
10 have a very small staff of environmental people, nine people
11 total. So we're relying on Randy and the Louis Berger Group to
12 oversee all the work that's been completed to date. And I think
13 that's about it.

14 I was thinking that maybe Kevin could provide a
15 background on the project at this point.

16 MR. SCHIEFFER: Sure. I would be glad to. A little
17 bit of background on our company to put it in context.

18 DM&E Railroad was formed in 1986 to acquire a part of
19 the rail line that another railroad wanted to abandon. So we
20 are here because of the communities along the line and the
21 shippers wanted to preserve service and the railroad that used
22 to own this line wanted to close it down because it just didn't
23 make enough money and there wasn't enough traffic on it and it
24 was literally -- that term you run something into the ground,
25 that's a railroad term because you literally run a railroad into

1 the ground before you abandon it.

2 And our railroad had literally been run into the
3 ground. And the previous owners were about to abandon it. As a
4 matter of fact, they tried to abandon it, and that created a
5 pretty big -- I actually got in the railroad business by
6 fighting with the railroads I'm proud to say. And I had no idea
7 15 years later I'd end up working for it, but I did.

8 But the point of that background is to convey to you
9 that our railroad has been in existence for a little over
10 20 years. We inherited a railroad from somebody who literally
11 did run it into the ground. And it's what you call a light
12 density railroad. That means there's not a whole lot of traffic
13 on it. And because there's not a whole lot of traffic on it,
14 that means it's very hard to keep it functioning much less be
15 able to fix up all of the things that have been let to
16 deteriorate over the years.

17 And it's been a challenge. The employees have done an
18 amazing job of keeping it alive for its first years of
19 existence. About 10 years ago it was very clear to us that
20 there's just no way this railroad could -- the original folks
21 who wanted to abandon it were right. This is not sustainable
22 because of the cost of fixing up the track. It's a terribly
23 capital-intensive business, and the cost of fixing up the track
24 is just more than the business could support.

25 So we were faced with either ourselves allowing this

1 railroad to be run into the ground or trying to figure out a way
2 to save it. And the only way to save it was to find some
3 opportunity to generate more traffic. And that's really where
4 the Colorado Basin Project originated from. People look at this
5 and say, boy, that's a bold move because such a small railroad
6 took on such a big project. It wasn't bold at all. It was
7 desperate. We really didn't have any other option.

8 So we took a gamble to develop this project so that we
9 could attract enough business to build up the railroad. And
10 we've been working on it for 10 years. And in that time we've
11 been able to acquire, make a couple of acquisitions that have
12 helped and the railroad has turned around on its own. We have
13 been able to track more traffic than we were 10 years ago.

14 So it's doing better than it was 10 years ago, but
15 still fundamentally to fix this railroad the way it needs to be
16 fixed we need to find a way to be able to invest more capital in
17 it so it's sustainable for the long-term. And that's really
18 what the PRB project is about. It's also about the ability to
19 serve our customers better. And the communities we operate in,
20 most of the communities we operate in are very small towns, and
21 this is very much part of their economic development, survival.

22 We operate through 56 communities. 55 of them support
23 the project and one of them opposes it, and that gives you an
24 idea of how much the communities rely on this, particularly the
25 smaller ones in the rural parts of our service area.

1 As it relates specifically to the Indian Country
2 issues related to the project, we certainly -- building a
3 project like this you can't do it without having impacts. We
4 recognize that. And there are very specific tribal impacts.
5 Over the years in the last going on 11 years -- the last
6 10 years that we have been involved in this project I've been
7 through a lot of meetings and -- at all levels, spent an awful
8 lot of time in consultations with different tribal organizations
9 and tribal governments on different Indian Country issues.

10 We have made a lot of adjustments to the alignment
11 based on those consultations. We have incorporated a lot of
12 things in the Programmatic Agreement based on those
13 consultations as Cathy was pointing out. But now that we're at
14 a stage where we have an agreement, we look forward to
15 continuing those consultations to not just follow the letter of
16 the agreement but more importantly the spirit of this, which is
17 truly working with anyone who wants to work with us to try to
18 make this as positive an experience as we can.

19 We certainly know there are impacts, and we want to be
20 sensitive to those and be as responsive as we can. We also
21 think there are some opportunities in terms of economic
22 development and things of that nature, and we are -- while it
23 doesn't require it, per se, in the Programmatic Agreement, we're
24 looking for additional opportunities to reach out and work with,
25 whether it's tribal organizations, tribal governments, or really

1 anyone else.

2 I view this very much the same way I view our local
3 community outreach program or our landowner outreach program.
4 There are a lot of constituencies affected by this. The
5 individual communities, the individual landowners, tribal
6 organizations, state organizations, right on down the line. So
7 I view this as a key part of the development process. And we
8 always look for ways to make it win/win where we can.

9 And where we can't, be honest and acknowledge it and
10 do the best we can to mitigate the problems but more importantly
11 to focus on where there are some opportunities. Because we
12 can't solve all the problems, and we don't pretend to be able to
13 solve all the problems. We try to keep an open door and do the
14 best we can.

15 From a personal standpoint, maybe not directly related
16 to the project, I will tell you I'm very much personally
17 committed to making this work as best we can. I have had over
18 my career wearing -- and other jobs over the years had a lot of
19 dealings in Indian Country. I was the U.S. Attorney for
20 South Dakota, and am pretty familiar with all of the nine
21 South Dakota tribes from that experience. And I should say
22 governments, from that experience. I don't have a lot of -- I
23 think three Nebraska tribes here today. That's my home state
24 and I'm neighbors with some and so I look forward to working
25 with you.

1 I don't know. Is there any -- oh, and North Dakota.
2 Is there anybody other than North Dakota, South Dakota, and
3 Nebraska areas? I should say tribal organizations that are in
4 other states, or is that -- is there anybody from Minnesota?

5 MR. WITHROW: There are a number that have been
6 contacted from other states. And last Thursday we had a meeting
7 in Gillette, Wyoming which included other folks from Wyoming and
8 Montana.

9 MR. SCHIEFFER: Right. I understand. Just today
10 nobody's here from Wyoming or Minnesota? Was there someone from
11 Montana? Nobody?

12 Anyway, that's who we are, a little bit of background
13 about the project. Be happy to answer any questions. But we're
14 here to work with you as best we can and commit that on a
15 personal level.

16 MS. GLIDDEN: Thank you. Just to step back a little,
17 I know that you all have -- I'm hoping that you have copies of
18 the Status Report that was provided up front. This Status
19 Report provides a background basically on, you know, what we're
20 talking about. And basically the action involves the proposed
21 construction of about 200 miles of new ground line and the
22 rehabilitation of 600 miles of existing ground line in Wyoming,
23 South Dakota, and Minnesota.

24 And if you look at the Status Report, there's a map in
25 here. And the map shows the different sections. One of the

1 sections is the rehab section, and that's a section where the
2 track is in really poor condition. And some of the new -- as I
3 understand it, some of the areas are going to be off on a
4 different alignment, and so there will be some siding track
5 there.

6 You can see some of the areas I think, the Mankato
7 section here, New Ulm, there's going to be some stations or
8 maintenance facilities or yards. And then the PRC Section is
9 the Powder River Section. I guess that's also pretty poor
10 condition; correct?

11 MR. SCHIEFFER: Yes. The section that's labeled as
12 PRC, which is basically between Wall and Pierre, is probably in
13 the poorest condition of any portion of our track and is in the
14 most need of repair.

15 MS. GLIDDEN: Yeah. And, as you can see, from Wall to
16 almost Gillette that's the new built construction. So it's
17 basically going to be an entirely new line that's going to
18 impact land that hasn't been impacted before. So just to give
19 you a sense of the size of the project. It's really quite
20 extensive.

21 And Randy is going to provide a little bit of
22 background on the cultural resources work that was done
23 originally. This project has been basically going -- I mean,
24 it's a longstanding project. There's a history behind -- a time
25 line behind the project, and the -- some of the issues that were

1 brought up in court and suits and remands and so on. And I
2 don't know if you wanted to speak to that specific issue, the
3 time line issue, and maybe talk about some of the cultural work
4 that was done previously and the work that's going on right now.

5 MR. WITHROW: Sure. The Status Report that Cathy
6 referred to, this was prepared earlier this year, and copies of
7 it were sent out with the original notification letter that was
8 sent to the tribal governments. So you may have seen it -- it's
9 the same document -- if you were able to pick up one today.

10 Since you have it, I'm not going to go through it in
11 great detail but will walk you through the main parts and give
12 you some more explanation about what has been done.

13 As Kevin indicated, this has been in progress for some
14 time. And it was initiated with an environmental review
15 performed in compliance with the National Environmental Policy
16 Act, or NEPA, which includes an environmental impact statement
17 and environmental review of a variety of factors, only one of
18 which is cultural resources.

19 And that review was started in 1998 and continued for
20 several years, ending in I think it was early 2003 with the EIS.

21 As part of that process, a number of meetings were
22 held with various interested parties, including tribes. And one
23 of the handouts that we had up front as well it's entitled
24 Tribal Memorandum of Agreement and Tribal Consultation Summary.

25 There's a document included in that that actually

1 describes a lot of the different meetings that were held and
2 part of that process, the content of the meetings, who attended
3 and so on, just to bring you up to date on the past consultation
4 work.

5 But there were a number of meetings and a lot of
6 different issues were discussed including treaty issues, how the
7 surveys and things would be conducted and so on.

8 Out of those conversations a number of -- a couple
9 different documents were developed, one of which is the
10 Programmatic Agreement, which there is also a copy of that
11 provided up front.

12 That was signed in 2003. There are a number of
13 different federal agencies that signed on to that agreement
14 besides STB: The United States Forest Service; Bureau of Land
15 Management; Bureau of Reclamation; the Corps of Engineers, a
16 couple different districts, St. Paul and Omaha; most recently
17 the Federal Railroad Administration added on in 2006; SHPOs from
18 Wyoming, South Dakota, and Minnesota signed.

19 And there were three tribal signatories: The Lower
20 Brule Sioux Tribe here in South Dakota; the Winnebago of
21 Nebraska; and Pawnee.

22 And I know Scott Jones -- talked to Scott Jones from
23 Lower Brule. He wasn't able to make today's meeting. Leah, of
24 course, is here representing the Winnebago. And the Pawnee have
25 actually indicated that they're not interested in consulting on

1 the project any further.

2 But the Programmatic Agreement itself is a complex
3 document. There's a lot of detail in there. It primarily
4 governs the methods and investigations and standards that will
5 be used to complete the cultural resource review process. And
6 that includes identifying or inventorying cultural resources
7 present within the project area, potential affect, evaluating
8 those resources in terms of their significance relative to the
9 National Register of Historic Places.

10 And then it also addresses developing treatment plans
11 to avoid, minimize, or otherwise mitigate adverse effects to
12 historic properties along the corridor.

13 Most of the details of that work and a lot of the more
14 methodological issues were also summarized in something called
15 an Identification Plan, which is appended to the Programmatic
16 Agreement and part of it. Actually the Programmatic Agreement
17 calls for development of an I.D. plan. And so it's actually
18 part and parcel of that document. And you should have copies of
19 that as well.

20 You'll notice throughout that there are a lot of time
21 tables established for things like report reviews and so on.
22 There are a number of different points in the process where the
23 SHPOs and tribes and other interested parties, signatories, need
24 to be consulted and involved in the process of -- particularly
25 the identification evaluation process. And that work was

1 started to some agree early on while the EIS was being developed
2 and while the Programmatic Agreement was being developed.

3 MS. GLIDDEN: Basically back as early as 1999;
4 correct?

5 MR. WITHROW: Yes.

6 MS. GLIDDEN: So we're talking a number of years ago.

7 MR. WITHROW: Some of the cultural surveys were
8 started, as you say, in 1999. It continued up through 2002.
9 And work was suspended in early 2002, and there were some
10 litigation, legal challenges, to the EIS and how it was
11 prepared.

12 But so a lot of the work stopped at that point. And
13 they've been on hiatus until this last year after the STB --
14 after those legal issues had been resolved and the STB granted
15 approval to the railroad to proceed with the project. The
16 railroad reinitiated some of those surveys under the guidance of
17 HDR and a number of subconsultants working for them actually
18 doing the field surveys.

19 Just to give you some background on the type of work
20 and what was done during the early part of the process while the
21 EIS was still in progress, that would be prior to 2002, at that
22 time the STB's third-party contractor was a company called
23 Burns & McDonald of Kansas City, Missouri. And they served as
24 an assisting role to STB just as Louis Berger Group is now.

25 But they were also conducting surveys. Their staff

1 did some background work in Minnesota. They didn't do any field
2 surveys to speak of. Some reconnaissance level survey you might
3 call it but primarily background research, and there was not a
4 report prepared for that work before the project was shut down
5 in 2002.

6 Most of the survey work in that early period was
7 actually done in South Dakota. Burns & McDonald did a Phase I,
8 Phase II survey of the existing alignment from the Minnesota
9 border west all the way to Wall. And the report was generated,
10 drafted for that work, and it was circulated for partial
11 comment, but we don't have a clear record as to who actually
12 provided written comments on that. We've got some people
13 probably didn't just respond, I guess. So it's unclear where
14 the review process was in that.

15 But the South Dakota SHPO's Office received a copy of
16 the report and returned a letter, which we have, that said they
17 felt the survey methodology was appropriate, but they're still
18 waiting for determinations and eligibility for the resources
19 that were identified along the project corridor.

20 MS. GLIDDEN: And that was a while ago; right?

21 MR. WITHROW: This would have been in 2000 and 2001.
22 And, of course, those determinations cannot be reached without
23 tribal involvement. So that still needs to happen.

24 The University of South Dakota was also working for
25 Burns & McDonald during that period, and they were responsible

1 for surveying parts of what is referred to as the new build
2 section. So from Wall west to the South Dakota-Wyoming border.
3 And they examined part of that section, not the entire thing.
4 There were a number of areas that they didn't have access to or
5 didn't get around to surveying.

6 They did, however, prepare a report based on the work
7 they did complete. And that was also circulated for comment.
8 We have record of comment from several federal agencies, the BLM
9 in particular, the Corps of Engineers, I believe. There is no
10 comment from the South Dakota SHPO on that one.

11 There was at least one tribal meeting that was held to
12 review the results of that report, but again the comments that
13 came out of that meeting were not well documented. So I think
14 that probably has to be recirculated for review again.

15 The University of South Dakota also did some
16 preliminary field work in Wyoming. That report -- that survey
17 work was never completed by them prior to the shutdown, and no
18 report was prepared for that either.

19 Since then, since STB approval in 2006, the railroad
20 hired HDR to oversee and manage the ongoing cultural resource
21 surveys to complete the work that was done -- or needed. And
22 they have hired several different cultural resource firms,
23 archaeological firms to go out and look at different segments of
24 the project corridor.

25 And currently the group working in Minnesota on the

1 Minnesota segment of the existing railroad is a company called
2 Two Pines Resource Group based in a town called Shafer,
3 Minnesota, and so they're looking at the entire alignment in
4 Minnesota. Again, that's an existing rail line there.

5 In South Dakota the primary work is focused on the new
6 build section. University of South Dakota is no longer
7 involved, but HDR has hired work crews from Augustana College in
8 Sioux Falls to complete that work. And so that survey work is
9 progressing. I think at last word I think there were about
10 15 percent of that new build section in South Dakota that was
11 not available for survey due to some private land ownership, and
12 access is an issue there. So that part has not been looked at
13 at all.

14 But Augustana did go back and look at some of the same
15 sites that the USD crews had identified, had done some more
16 testing on those sites, and have supplemented where they can.
17 And we have yet to produce a report on those results. So that
18 work is in progress.

19 In Wyoming there are a couple of different
20 companies involved in research there, primarily a company called
21 TRC Mariah based in Sheridan, Wyoming. And they have been
22 conducting surveys in Wyoming, part of the new build corridor
23 there. There was one time another company called ACR involved.
24 They're no longer with the project, but TRC is following up on
25 some of their unfinished survey work.

1 So there's a lot of work that's still ongoing, still
2 in the identification and evaluation process. As far as tribal
3 involvement in that work is concerned, in the earlier section or
4 earlier period of the cultural resource survey USD had recruited
5 tribal monitors from a number of different groups, and they had
6 accompanied the field surveys. But there's some question as
7 to -- I mean, certainly they didn't represent the interests of
8 all 33 tribes involved in the project. And it's not clear
9 exactly how those monitors were hired or brought in to the
10 project.

11 So in terms of its representativeness and representing
12 the views and interests of different tribes, it's problematic
13 that way.

14 There have been some tribal monitors involved in the
15 more recent work as well. I believe an individual
16 Alvin Grassrope has been involved.

17 MR. MADSON: Not in a monitoring role. He's not
18 representing any specific tribal as a professional.

19 MR. WITHROW: From STB's standpoint, the survey
20 monitoring work that's going on is problematic. We don't see
21 that as clearly representing the interests of the tribes. And
22 certainly there is some input there concerning sites that have
23 potential traditional values and so on. But very interested in
24 looking at a different way to involve tribes more directly in
25 looking for and identifying places of religious and cultural

1 significance along the corridor.

2 MS. GLIDDEN: If I can interrupt for a minute, just to
3 explain, this Programmatic Agreement was developed as part of
4 the 106 process. And so even though we had this condition as
5 part of the NEPA process, the National Environmental Policy Act,
6 this agreement document came specifically out of the National
7 Historic Preservation Act Section 106.

8 And Section 106 basically calls for us to identify
9 properties within an area that's going to be affected by a
10 project. And part of that identification is determining the
11 location or at least having some sense from you where
12 traditional cultural properties are located, properties that are
13 important to you, properties that we ourselves cannot identify.

14 And so we've had crews out there looking at the
15 archeology and identifying the archeology and determining if the
16 archaeological sites are eligible for the register. But we have
17 not had tribal input on that particular question. And that's
18 something that we really need. And if you -- I don't know if
19 you've all read the Programmatic Agreement carefully or the
20 I.D. Plan, but both of these spell out the requirements but not
21 really the process whereby we would get your input. And that's
22 part of what we really would like to get from you.

23 We've spoken to some of the tribes in Gillette, and
24 one of the recommendations was a tribal survey. And I know the
25 Crow Tribe apparently does know where their sites are located.

1 They don't need to be out in the field. But we're looking at
2 methods, construction suggestions from you in ways that we can
3 get your input on identifying these types of properties. That's
4 where we're -- our main concern is.

5 MR. THOMAS: I think it's majorly important that you
6 involve more Sioux Tribes in there because, you know, from
7 Minnesota all the way to South Dakota -- I've been reading this
8 book, as a matter of fact. I just -- I bought this in 1992.

9 And this here is going to explain a lot about -- there
10 was a major walk from Crow Creek -- was it Crow Creek to --
11 well, actually it was from Martin to Fort Stanley. And a lot of
12 our people died on that walk. And what they did is they just
13 took them off to the side and just buried them.

14 So you're going to probably run into major, you know,
15 findings, and without no tribal input how are you going to do
16 this? What's going to happen when you find these things?

17 I mean, we've been asking who is HDR from Big Stone
18 Project, Big Stone Phase II. You know, there's an understanding
19 there that there's three representatives there representing the
20 tribes, and we have no knowledge of that.

21 And so when are we going to -- you know, once again,
22 the Programmatic Agreement is already put in stone, but there's
23 no tribal input.

24 MS. GLIDDEN: Well, that's precisely why we're going
25 through this process right now. Because the Programmatic

1 Agreement, although it was developed a while ago, it basically
2 calls for certain things that, you know, we need. And one of
3 those things is to identify what's out there. And we need to --
4 you out there to help us locate the sites that are important to
5 you.

6 MR. THOMAS: And I think that one week of advanced
7 notice is too short. You need more input from -- you need
8 different -- we can't speak for the Standing Rock. We can't
9 speak for all the other tribes, like they said. We need them at
10 the table here also. Because this is coming right across their
11 lands.

12 MS. GLIDDEN: And I really do apologize for the short
13 notice. I think what we were intending is to get the tribes --
14 as many tribes as possible involved as quickly as possible, and
15 we intend to have other meetings. And what we're going to do
16 with the minutes here is distribute them to all the tribes, even
17 those who were unable to come so that they'll know what your
18 feelings are regarding what you would like and how would you
19 like to proceed with consultation.

20 But we intend to have more meetings. This is just the
21 beginning. And I do recognize it's very short notice. And I do
22 apologize for that.

23 MR. THOMAS: And I do have another concern. The
24 SHPOs, the State SHPOs, how are they interacting with the THPOs?
25 I mean, has South Dakota contacted Sisseton on this?

1 MR. WHITTED: We haven't heard from South Dakota on
2 this, no.

3 MR. THOMAS: That's what I'm saying. All this input's
4 being put in, and the THPO officers have no knowledge. So
5 that's what I'm saying. This is already put in front of us
6 again. Once again, we're having to go way back again.

7 You know, in the beginning if you would have said,
8 okay, let's come on in, let's do the THPO part and had that
9 implemented, you know, it probably would have worked a whole lot
10 easier. But now it's not. Now we have to go way back, and
11 you're probably going to have, you know, a lot of these other
12 tribes and they're going to have a lot of questions.

13 MS. GLIDDEN: Well, that's what we want. We want
14 questions, and we want to have your assistance in figuring out
15 precisely how to proceed. And because certainly the board, and
16 I represent the board, the federal agency here, needs your
17 participation and wants your participation, and we want to make
18 sure that your participation is included.

19 Because we can't identify sites that are important to
20 you without your help. And we can't determine whether or not
21 they're significant or not without your help. So we've
22 identified the archaeological sites. And some of those may very
23 well be traditional cultural properties to your tribes, but
24 there may be other -- we recognize that there may be other
25 things out there that we just don't know of, and there's no way

1 that we can evaluate sites that we haven't even recognized.

2 MS. HUNTER: So in the agreement, this 30 days for any
3 signatory that objects, is that this meeting?

4 MS. GLIDDEN: Basically the Programmatic Agreement is
5 a document that --

6 MS. HUNTER: But it says final draft. And I see that
7 there are some signatories on here. And if it was --

8 MS. GLIDDEN: There were three tribal --

9 MS. HUNTER: If it was stopped in '02, why are the
10 signatories '03 during the dispute time?

11 MS. GLIDDEN: One of the things that occurred and one
12 of the things that was remanded as part of the original document
13 that went out is that the Programmatic Agreement had actually
14 not been signed prior to the decision being made, and that was
15 one of the remanded issues. And that's why you'll see that some
16 of the signatures came afterwards.

17 But the Court basically ruled at that point that we
18 were in compliance because we did get the signatures.

19 And basically the way the Programmatic Agreement works
20 is the signatories have the power to amend, to make changes as
21 it's shown in the document. If you look at -- I don't know if
22 you all have the Programmatic Agreement in front of you, but
23 it's Appendix D, page 8. Page 14 of 27.

24 Do you see the document, the Programmatic Agreement?

25 MR. TRUDELL: While they're looking at that, I see we

1 were invited to the table in 1999 and again in 2000, and we have
2 to apologize for not being there. We've been playing catchup
3 for quite a while.

4 But some of the concerns that have been expressed to
5 us is that the group in Minnesota -- what are they called?

6 MR. WHITTED: Minnesota Indian Affairs?

7 MR. TRUDELL: Yeah. They're not knowledgeable of our
8 history and that's, you know, our homelands.

9 MS. GLIDDEN: Would you mind introducing yourself
10 again.

11 MR. TRUDELL: Roger Trudell. We extend from somewhere
12 way up in Canada, the Arctic Circle maybe, to somewhere down in
13 central Iowa to Wisconsin, to the home state of Minnesota.

14 MS. GLIDDEN: And you had mentioned some group. That
15 was?

16 MR. TRUDELL: What do they call themselves?

17 MR. WHITTED: Minnesota Indian Affairs Council.

18 MR. TRUDELL: I don't know who they are, but even the
19 people in Minnesota don't know who they are.

20 MS. GLIDDEN: Are they important to you?

21 MR. TRUDELL: Well, it's important to us that our
22 input is put because that's our traditional homelands going
23 right across some of our old encampments and all of that type of
24 stuff, some of our old burial grounds. So, you know, we would
25 have to probably have a lot of input in there in that part of

1 it.

2 MS. GLIDDEN: That's what we want. That's what we
3 need. We're hoping that these maps will be helpful, the foldout
4 maps that show the exact location --

5 MR. TRUDELL: We do apologize for coming late to the
6 table, but I know it's been a long process. We still want to --

7 MS. GLIDDEN: It's not too late to get your input.

8 MR. TRUDELL: Our ancestral burial sites and sacred
9 sites --

10 MS. HUNTER: That's what my question comes back again
11 is this 30 days, you know, for objection. There's no way that
12 we could get all of the tribes --

13 MS. GLIDDEN: Could you point out the section that
14 you're talking about?

15 MS. HUNTER: Appendix D, page 7 under M, Dispute
16 Resolution.

17 MS. GLIDDEN: The way this process works is the
18 Programmatic Agreement is -- once it's executed the signatories
19 are the ones that this applies to. In other words, the sections
20 that talk about dispute resolution and a process for amendment
21 and so on.

22 It's the signatories that would have the ability to
23 make those sorts of changes if needed.

24 MS. HUNTER: Well, that goes back to, see, my -- in
25 '03 the tribal chairman did sign this document. That's where my

1 question is coming in, you know.

2 MS. GLIDDEN: Right.

3 MS. HUNTER: Does our tribe have that right?

4 MS. GLIDDEN: Absolutely, if you're one of the
5 signatories?

6 MS. HUNTER: What is the 30-day notice for the
7 objection?

8 MR. SCHIEFFER: I think I don't know if I should take
9 a crack at this.

10 MS. HUNTER: What is the date that the 30 days would
11 extend from?

12 MR. SCHIEFFER: Let me start by saying I'm not an
13 expert in this area. I'll give you my understanding of it, and
14 take it for what it's worth. But I think that 30 days is not
15 something that starts from today, first of all, to answer your
16 question.

17 The way I understand this is each one of these are
18 broken down into sections. Like you have the Minnesota section.
19 And this kind of ties in to I think what Wyatt was saying, what
20 he was saying, what Roger was saying about, number one, how do
21 we have an input in this process and, number one (sic), just
22 what is that?

23 The way I understand it is the surveys are either done
24 or being done, but in addition to the actual archeologists out
25 there in the field doing the surveys, we also -- and when I say

1 "we" I guess it's actually the STB through the third-party
2 consultant is sending around questionnaires and other things to
3 all of the different tribes.

4 Now as Cathy was saying, there's certain tribes who
5 have signed this. Those have a right to. But there's nothing
6 in the document that says we can't as a matter of courtesy or
7 anything else extend it to any other tribe. And it should be.

8 MS. GLIDDEN: I think the main point is that we have
9 this document and it my not be perfect. I think that there are
10 some inconsistencies in it. But I think that we can work with
11 this document in a way that will provide you whatever input you
12 want to provide us.

13 MS. HUNTER: Well, see, that's like my question came
14 up at lunchtime during the creation of who's working with who
15 and who's doing what. And I brought the question up where is
16 the Native American input in even the working process that you
17 have going through?

18 And there was no native input. And that's where, you
19 know, the question keeps coming up, where you are getting the
20 information for these surveys to identify -- to do the I.D. Plan
21 when you have no native input?

22 MS. GLIDDEN: Well, I guess the way I look at it is
23 that we have -- for instance, we have the Historical Structures
24 Report that we've completed that deals specifically with
25 historical structures, and then we have an archaeological report

1 that deals with the archaeological site and then we have the
2 Native American component that deals with the other kinds of
3 sites.

4 MS. HUNTER: But who's under that one?

5 MS. GLIDDEN: None of the -- basically the way the
6 process works is these reports are produced, and what they are
7 doing is basically helping us to identify sites out in the
8 field. So we have some archaeological work that's been done.
9 But that doesn't mean that we're not going to involve you in
10 terms of identifying sites that are important to you.

11 None of these reports have been finalized. None of
12 these reports have even gone around for review. And, I mean, we
13 can amend them. We can -- however you think would be
14 appropriate. I mean, we can involve you in looking at these
15 sites that have been already identified and informing us if
16 they're significant to you. We could maybe get you out in the
17 field to look at these sites.

18 The bottom line is is that we haven't gone through or
19 completed the identification process. So that's part of why
20 we're here to figure out how we can involve you in that. So
21 even though these archaeological surveys have been ongoing,
22 that's just one part of what we're doing here. And that's why
23 we need your input right now, figure out precisely
24 methodologically we're going to get you involved in this.

25 MR. WHITTED: On some of the projects that we've been

1 involved in -- for instance, the North Dakota DOT, we did a
2 Programmatic Agreement with them. Big Stone Phase II Project in
3 South Dakota, we're doing a Programmatic Agreement with them.
4 The Keystone Pipeline, which is running through North Dakota,
5 South Dakota, and I believe goes through nine states, we're
6 involved in Programmatic Agreement with them.

7 And in all of these instances we've had input into
8 this document, the P.A. But here you're bringing it to us
9 completed and asking us to sign it.

10 MS. GLIDDEN: No. We're not asking you to sign it.

11 MR. WHITTED: We have a problem with that.

12 MS. GLIDDEN: No. Actually the way the process has
13 worked is that this document went through a consultation process
14 a number of years ago. And it was sent around -- I mean, if you
15 look at the pages here --

16 MR. WHITTED: A lot of these tribes here right now are
17 just coming on line with their THPO offices. We came on line in
18 '05. That's three years. And this was before we were set up as
19 a Tribal Historic Preservation Office. Other tribes are just
20 now coming on line. So I think we need to almost start from the
21 beginning and get caught up here.

22 And, sure, you said 33 tribes. But who from those
23 tribes were those people you were dealing with?

24 MS. GLIDDEN: Well, we do have names of the particular
25 people that were involved.

1 MR. THOMAS: Can you e-mail those?

2 MS. GLIDDEN: We have it right here, I believe.

3 MR. WITHROW: They're in the tribal consultation
4 summary, which is one of the handouts there. It says right on
5 the front page.

6 MR. WHITTED: I guess that's our biggest question is
7 we want some involvement in this, whether it's amended or
8 whatever to incorporate what we think should be in here. That's
9 what we're asking.

10 MR. THOMAS: One more question I'd like to ask to you
11 is can you define consultation for us?

12 MS. GLIDDEN: No, we can't. That's why we're here.
13 We need to know what consultation means to you. We can't define
14 it.

15 MR. THOMAS: We're not going to approve for any phone
16 calls and saying that's a consultation.

17 MS. GLIDDEN: It's not a consultation.

18 MR. THOMAS: Exactly.

19 MS. GLIDDEN: Totally agree with you on that.

20 MS. HUNTER: Where can I find the I.D. Plan?

21 MS. GLIDDEN: The I.D. Plan is appended to the
22 Programmatic Agreement. I just want to point out even though
23 this Programmatic has been signed and it's fairly old, that the
24 Programmatic if you read through it carefully calls for us to
25 involve you in identification of what's out there and to develop

1 a treatment plan in how those particular sites will be treated
2 basically.

3 So the real meat of this has yet to be done. And, in
4 other words, the treatment plan -- I don't know, Mike, if you
5 want to go into some detail about what the treatment plan is
6 specifically in terms of explaining what it does.

7 MR. JONES: Cathy, if I could for one second. Jim
8 asked the question, somebody being asked to sign the P.A. today.
9 As far as I know, nobody's being asked to sign anything today.
10 This is just a session to discuss kind of where things have come
11 from, where they are today, and kind of how you go forward. And
12 this is a part of the consultation process. This is what's
13 needed here.

14 The Programmatic Agreement is a document that was
15 worked on a few years back that involved participation and
16 consultation of a lot of tribes to get to that point. But the
17 follow-through on that is where we are today. And that is
18 there's no 30-day clock starting on anything today or anything
19 like that.

20 That only begins when there are reports to review and
21 those things. It's trying to get to that point where there can
22 be proper participation from the tribes to identify those TCPs
23 and to include that in the process to make these things work.

24 And from the company's perspective, we'd like to do
25 whatever we can to help people get what they need to get to help

1 the process move and to work with you on the things that you
2 need to have worked on.

3 And whether you address each issue that you have, each
4 site by site, or you have some ways of looking at it where you
5 say if these are the kinds of things we find but there's a way
6 to offset that someplace else or work on something, we want to
7 work with everybody to make those kinds of things happen, to
8 facilitate that.

9 My understanding, there's no 30-day clock starting
10 today. This is kind of a review of how things got where they
11 got. I think that's right, Cathy.

12 MS. GLIDDEN: Right. This is just the beginning of
13 involving you in this process.

14 MR. WHITTED: In all of those other instances I
15 mentioned this is just the way it all began. I mean, they came
16 out with a P.A. that was all ready to be signed, and we had no
17 input. So we have to back them up and say we need input in
18 this. Before we sign anything, we need to have some involvement
19 how this is written.

20 MR. SCHIEFFER: Just by way of historical background,
21 I think we went through exactly that kind of process years ago,
22 and recognize not a lot of people around this table today were
23 involved in that. Ian I think was involved in it. I was. And
24 we had exactly those kinds of discussions.

25 And we started out with a draft Programmatic Agreement

1 and folks commented, wait a second, we need to back up here,
2 just exactly what you're saying, and we made a lot of changes in
3 that based on that.

4 That doesn't change the fact -- and maybe I have a
5 question for Louis Berger. Because I put myself in your shoes,
6 and I'd be pretty frustrated too because we've kind of gone
7 through that consultation. That was done several years ago.
8 The document is signed. Now we're implementing the document
9 that's already been signed.

10 And you've asked the question several times, and I
11 have not heard an answer to it yet, which is how do we
12 participate in this process. And I don't think it's just
13 limited to this 30-day time period. The 30-day time period
14 starts when, as I understand it, Louis Berger and the STB send
15 around this completed report and says here's the report, do you
16 have any comments on it?

17 That's technically when that 30-day clock starts. But
18 the real question is you don't want to wait until then to have
19 input, and I don't think from the STB standpoint and the
20 consultant's standpoint they do either. And the real question
21 is how do you have input in this between now and that report so
22 that when you're looking at that report during that 30 days you
23 want to see is what I told them in here and is it taken care of
24 and addressed, I think is what I'm hearing your question being.
25 And I don't know that I've heard an answer to it.

1 And the question is how do you do that? Is it
2 something as simple as you send out the map and say -- because a
3 big part of the consultation process before was just getting
4 that alignment set. Now the alignment's set, and that can't be
5 changed very easily.

6 So the issue is now that the alignment is set, here's
7 what work we've done so far. Here are the cultural resources
8 we've identified so far. And those are laid out in that map in
9 that book back here.

10 And I'm assuming -- and this is really a long-winded
11 question, but I'm assuming the process is pretty much you
12 distribute the map with a background of the work that's been
13 done to date, which is pretty much what this is a summary of,
14 and you're asking on behalf of the Federal Government here's the
15 alignment, here's what we've seen so far, what are we missing,
16 what observations do you have.

17 As Roger was talking about some of the ancestral
18 migration, here's where the railroad's going, are there any
19 sensitive spots there that you're aware of we should be
20 concerned about? Let us know. Is that how -- just explain the
21 process.

22 I think everybody's sitting here today, how are we
23 supposed to participate in that. And I've heard the question
24 three or four times, but I can't hear an answer.

25 MR. WHITTED: Everyone seems to think that we

1 automatically know where all of these sites are. You know, we
2 were taken out of this area and put on these reservations so our
3 knowledge is limited. 100 years has passed where we don't --
4 we've lost track of where these are. So we need to be a part of
5 the process from the start.

6 MR. BIBLER: That's what these meetings are for. This
7 is a reach out for you folks to get you involved in the process
8 not only look at the archeology that we've done but also to
9 create a plan where you guys --

10 MR. WHITTED: I guess that's my point. We should
11 actually be involved from the start from when the plan is
12 actually conceived be a part of the survey so we're a part of
13 the process from day one, not at the 11th hour.

14 MR. WITHROW: If I may answer the question that Kevin
15 posed too. Just to step back a minute, because obviously my
16 background statement didn't make a lot of sense to everyone.

17 There's been a lot of work that's been done to try to
18 identify different kinds of historic resources along the project
19 corridor. Some of that was focused primarily on looking at the
20 railroad itself, the embankment, the bridges, the culverts, and
21 all the structures along the railroad. That was part of what's
22 required under Section 106 to look at those kinds of resources.
23 That work was done very early on, and those reports have been
24 completed and been reviewed and is going into the treatment
25 phase trying to figure out how to minimize or avoid or mitigate

1 some of the alterations that need to be made to those bridges.
2 That's just one part of what's going on.

3 The second piece that needs to be done is to look at
4 other kinds of resources. One large piece of that is looking at
5 archaeological resources. Now when the EIS process started,
6 again this was 1999 through 2001, while meetings were going on
7 with the tribes to try to define how tribal involvement was
8 going to take place, which ultimately led to developing this
9 Programmatic Agreement, it was done with tribal involvement.

10 There were a number of meetings that were done and
11 committees that set up, tribal committees to look at it and help
12 draft it.

13 If Scott Jones were here, he would tell you that he
14 actually was quite involved in writing a large portion of that
15 document. So there was a lot of tribal involvement, some more
16 on the part of some tribes than the others. But it was there.

17 What was also going on at that time, unfortunately or
18 fortunately depending on your point of view, is that some of the
19 survey work to identify archaeological sites within or near the
20 corridor was also going on. And they said there was some --
21 there were some tribal monitors involved in that effort. But,
22 again, who they represented and whether or not all different
23 tribal groups were being represented adequately, we don't think
24 that's probably the case, but that's what they did.

25 MR. THOMAS: Can I interrupt right there? You hit an

1 important part right there. Because in two days you're going to
2 have another meeting. How many tribes are going to be able to
3 get there? How short of notice is that? What type of input are
4 you going to actually get? You're going to have to come back to
5 the table again.

6 MS. GLIDDEN: We want to.

7 MR. BIBLER: That's what this is about.

8 MR. WITHROW: What we're really looking to do in this
9 meeting -- again, this is the first meeting with the tribes and
10 the project proponent and the STB has taken place since 2002.
11 There's been no progress. Most of the project was shut down
12 through up through 2006. So it was actually no activity on it
13 whatsoever.

14 MR. SCHIEFFER: That's not true. It wasn't shut down,
15 but it was going through the legal review process and waiting
16 for --

17 MR. WITHROW: Things were on hold.

18 MR. SCHIEFFER: -- getting the direction from the
19 courts as to what to do.

20 MR. WITHROW: But there weren't any cultural surveys
21 work being done during that period.

22 MR. THOMAS: I have one more question. Let's say you
23 found a cultural site. Right here. Is there a possibility that
24 300 feet away is there going to be another part to this
25 connection?

1 In this P.A. agreement you said 300 feet. So if
2 you're going to go hit -- what's on the other side of this?
3 That's 300 feet. You know, even the cell towers ask 500 feet.

4 MR. WITHROW: Are you talking about the area of
5 potential effect, where it's defined in there?

6 MR. THOMAS: Yeah. And that's something that needs to
7 take a look at. Because once you find a sacred site there's
8 going to be other areas all the way around that that's going to
9 be affected.

10 Now we ran into this with the Secretary of Interior
11 already on the Keystone Project, and I'll bring that to your
12 attention here today.

13 MS. GLIDDEN: It may be that we may need to have a
14 separate APE for the types of sites that will be identified.

15 MR. THOMAS: That's why we're talking about that you
16 need tribal input at the beginning of this.

17 MS. HUNTER: Why can't the Repatriation Act take
18 affect when any remains are found because that deals with
19 identifying which tribal artifact that belongs to?

20 MS. GLIDDEN: Well, the P.A. does talk about
21 identification of unanticipated discoveries. And one of the
22 things that we need input from from you is exactly how we would
23 deal with --

24 MS. HUNTER: Identifying that?

25 MS. GLIDDEN: -- identifying them.

1 MS. HUNTER: But, see, just like the gentleman said
2 before, there's no specific way you can say this belongs to this
3 tribe without, you know, inquiring with the other tribes and
4 then knowing the tribal histories and cultures and, you know,
5 paint colors, you know, all of that.

6 MS. GLIDDEN: We recognize that all the tribes aren't
7 here. In fact, we were told that it actually was kind of a bad
8 time of year, a lot of ceremonies. We are intending to at least
9 sort of at this point have a combined tribal meeting. Maybe
10 we're looking at --

11 MR. THOMAS: That's a need.

12 MS. GLIDDEN: In September, October? At a time when
13 basically, you know, it's a better time for tribes to
14 participate, and it would be --

15 MS. HUNTER: At least 30 days' notice.

16 MS. GLIDDEN: There would be much more notice in this
17 meeting, and there would be several days of discussions and
18 meetings and --

19 MR. THOMAS: Some of the things that we took a look
20 at, like I said, you know, New Ulm, Tracy, right here this book
21 talks about all of our ancestors going through there, women and
22 children dying there. You know all about it, right?

23 Okay. So what we're talking about, you know, we have
24 reservations all the way down to -- why couldn't we have a
25 monitor to be monitoring all the way to certain areas there?

1 Because we don't know. You know, we don't know if HDR is
2 finding things. What are they doing with our artifacts?

3 MR. SCHIEFFER: Wyatt, just as background -- and,
4 first of all, I'm anxious to read that book. It looks like just
5 for the record is it entitled In The Footprints Of Our
6 Ancestors.

7 MS. SCHRADER: In The Footsteps.

8 MR. SCHIEFFER: Who's the author of that just so we
9 have it correct?

10 MR. THOMAS: Angela Wilson.

11 MR. SCHIEFFER: Angela Wilson? Okay. Just to your
12 specific point because it ties with something Randy said before,
13 I'm sitting here from a perspective of having been involved in
14 this for 10 years. And as I listen to this conversation, I have
15 a little frustration.

16 As I sit here listening to it, I can sense a real
17 frustration on your part because this is -- you just personally
18 are just getting involved in it now. Some of you some
19 predecessors have been involved in it. Some haven't. I'm
20 listening to Randy who's talking about what he's reviewed in the
21 record and what he does or doesn't see.

22 For example, with the tribal monitors. I remember the
23 discussions about that. Whether you have found the documents or
24 not, there were a lot of discussions about it, and it goes
25 exactly to what Wyatt was just raising, which is we want to be

1 there.

2 Well, when you have 30 or 40 different tribes being
3 involved and you've got 900 miles to survey, it's not
4 practical -- this was the discussion eight years ago which
5 neither you heard nor you heard, but I did and I'm just -- I'm
6 listening to all the ships pass in the night here.

7 Back then there was a discussion about who ought to be
8 the tribal monitors and the tribes were involved in those
9 discussions and there was a discussion who the candidates were
10 and they were selected specifically for the purpose so that it
11 wasn't only this tribal perspective or that tribe's perspective
12 but that everybody had sort of a consensus that, yeah, this made
13 sense or that didn't or this person or group doesn't work and
14 that one does.

15 And that was the basis of the selection. And there
16 was a lot of discussion about that. And you're not aware of
17 that from Louis Berger's standpoint. It's a matter of
18 continuity. You don't know that, and from your perspective on
19 the tribal side, you're not aware of that history, and you're
20 looking at it from your aspect of it.

21 But somebody else is going to come and say, wait a
22 second, the Santee Sioux Tribe had monitors up there but we
23 didn't and that's not fair. It's a question of where you draw
24 the line. Who are those monitors. And I think that's a very
25 legitimate point. It was back then and going forward.

1 Ian as somebody who was back at the table in those
2 days may shed some light on it. Just so you have that
3 perspective, these were not issues that weren't talked about.

4 MR. RITCHIE: I'm Ian Ritchie, by the way. And part
5 of it was that the intent was to have tribal monitors assisting
6 in the survey as it went along but to help identify potential
7 traditional cultural properties. And these were usually
8 traditionally young men.

9 But the intent was to follow up with elders, to visit,
10 to verify. Because the young men going on the survey said I
11 have some knowledge, I have some training, but I'm not an
12 expert. So I'll help identify what I can with the archeology
13 and traditional places, and we'll follow up with elders visiting
14 these locations to really verify if they found the real spots or
15 not.

16 MR. WITHROW: This very conversation was one we had a
17 couple of days ago in Gillette as well. People had very similar
18 concerns there. And one of the suggestions that was made by the
19 Northern Cheyenne representative there, Conrad Fisher, he
20 suggested -- well, he brought up the matter that the monitors,
21 in particular the way they're described in the P.A., is
22 problematic because the P.A. really refers to monitoring at the
23 construction end of the project while the bulldozers are
24 actually moving and people are out there and it makes good sense
25 we do that.

1 But the way people have also been using monitor is
2 describe them in terms of survey monitors. Just as you talked
3 about, there people out there with the archeology crews and
4 working with them and advising them as the work goes on with the
5 archeology surveys.

6 What Conrad was suggesting and what we think is
7 probably a very good idea, is to think about we need to identify
8 TCPs and other places of concern to tribes by doing essentially
9 a tribal survey. Look at tribal cultural resources specifically
10 and make that the focus of that study done by tribal members.
11 And each tribe can identify a segment of the corridor that they
12 are concerned about.

13 And I think what we want to do is try to look at ways
14 to involve tribes in that very, you know, I think meaningful
15 way, get people out there and actually look at it from their
16 perspective.

17 MR. THOMAS: But, once again, you're going to find out
18 that the Sioux Nation goes all the way past the Black Hills and
19 all the way through Minnesota and parts of Wisconsin.

20 MR. TRUDELL: If you're trying to narrow the scope
21 of -- you know, Minnesota basically is Winnebago way over on the
22 east and Wisconsin and then Mde Wakanton Wahpe Kute. And
23 Sisseton-Wahpeton and Yankton would be the -- would be the main
24 groups in that particular area. I don't know where the Omahas
25 come in at.

1 MR. SHERIDAN: I think where we would come in is
2 during the migration during the time we had part of our tribe
3 gone north into Canada. That's where we would come in. If you
4 look at, you know, not only that, you know, there was during
5 times they say that the Omahas were a peaceful tribe but they
6 ventured into areas at times being, you know -- into other areas
7 just to -- we had a society that went out and that were helping
8 people with medicines sharing, you know, during the certain time
9 of the year.

10 But, you know, there's where we would come in. And I
11 think that some of that as well is, you know, you have tribal
12 members back then that went on to, you know -- on their own, you
13 know, renegades considered back then or left the tribe being
14 involved in another tribe relationship, you know. Those things
15 happened as they do today.

16 And there is pretty much where our concern is that how
17 do you identify? What's the process of identifying during the
18 time you find some artifacts, you find some tribal member, you
19 know?

20 So, you know, all of these processes I think have to
21 be -- when you say consultation I believe I think each of the,
22 you know, individuals should be going directly to the tribal
23 areas, offices, and seeking these with the elders as well. It's
24 not just coming to your table. You have to come to ours. We
25 have our tradition and our ways. And, you know, you want some

1 input, you want understanding. We believe and I believe that's
2 where all tribes -- just that, you know, you call a meeting and
3 we come and sit and listen. For us, you know, we highly value
4 that teaching.

5 MS. HUNTER: And a lot of other tribes have trails of
6 tears too where we were displaced not by choice but, you know,
7 because we've had to go where the Government sent us. And a lot
8 of these lands have been traveled by many different tribes, not
9 just the ones that reside presently in those states. Because,
10 you know, the Winnebagos were displaced five times.

11 MR. TRUDELL: That's why I had a little difficulty
12 with the Minnesota Indian Council. Because they don't know our
13 history, and I'm sure they don't know your history or Omaha
14 history, you know. We all mingled there one time or another,
15 you know.

16 MS. HUNTER: That's why I think the identification of
17 an artifact is, you know, to me the logical thing to do to
18 follow the Repatriation Act, which has a process in place
19 already.

20 MR. WITHROW: Well, I think we recognize that -- I
21 mean, many different tribes have interests in these projects and
22 are interested in different parts of the project corridor. And
23 I think there's a way to accommodate that so that everyone has a
24 chance to spend some time investigating the areas that they have
25 concerns about just for some of the very reasons you were

1 talking about earlier.

2 The question is finding a way to make that work. We
3 want to make that work. We want to give people meaningful
4 opportunities to be involved and do what needs to be done.
5 Because we want to find out what's out there so that we can take
6 proper steps to avoid them or minimize effects as needed.

7 MR. SCHIEFFER: Randy, the question always comes back
8 as to how exactly to implement that. And I heard you talk about
9 before about actually having individual tribes go out there.
10 But how do you do that? Do you say for however many are on the
11 list, whether it's 30 or 40 or 50, here's where it's at, who
12 wants to go there? How do you coordinate something like that?
13 In the practical implementation of that how is that done?

14 Do you send out maps of things that have been surveyed
15 and here's what's been found to date, give us comments on that
16 and here's the survey schedule for the rest of it and whoever
17 wants to participate, let us know? Or what's the practical
18 process to get everybody's question of how we participate in the
19 process?

20 MR. WHITTED: We've run into that situation before.
21 And I guess the answer was let the tribes decide who they want
22 to -- among themselves sit down and decide we want these people
23 representing us, whether it's three, four, a dozen tribes. One
24 from each. But that's who they decide that they want, from past
25 experience are capable to do this type of a survey and then

1 allow them to do that on behalf of the tribes. Then we feel
2 comfortable.

3 MR. SCHIEFFER: That's part of what went on in the
4 tribal monitoring process some years ago. But in selecting who
5 they would be -- and it's kind of a similar thing except for
6 what we've got left here you're looking to, whether it's a
7 tribal monitor that's designated jointly by the tribes or
8 whether it's each tribe sends whoever they want.

9 MR. WHITTED: They're not necessarily monitors.
10 They've been doing this for some time. They know what they're
11 looking for. They're acting on behalf of tribes. They have
12 experience in identifying cultural sites, sites that we believe
13 are important.

14 MS. GLIDDEN: So basically what you're suggesting, if
15 I understand it, is you can have somebody who would go out in
16 the field who would represent several tribes.

17 MR. WHITTED: Right. Cultural surveys.

18 MS. GLIDDEN: You'd be comfortable with that
19 individual sort of representing your interests?

20 MR. WHITTED: Individuals.

21 MR. GRANT: I'm Brady Grant. I'm THPO from Turtle
22 Mountain. I'm going to ask Jim to step in from time to time to
23 help me with this. We've just successfully finished a
24 Programmatic Agreement in North Dakota, Department of
25 Transportation and the Federal Highway Administration.

1 And I'm going to insist that you reach a lady by the
2 name of Jeannie Bouchert with the State. I'll give you her
3 name and number later. When I stepped out I went and called
4 her, and I asked her if I could give you her name and tell a
5 little bit about what we did.

6 We had this problem. We had angry THPOs, we had
7 bitter THPOs, we had arguments, we had accusations. Everybody
8 got it out. We came clean. Jeannie led the State and listened.
9 Jeannie stepped up, and she coordinated this to where other
10 people -- THPOs didn't know what this project was, but they got
11 it on paper. They didn't see it.

12 Well, you know, they get to see it on paper. That
13 doesn't visualize what actually is happening. I have 20 years
14 road construction. I kind of explained to them. Well, some of
15 them trusted me. Well, if he's got that much experience, then
16 he kind of has an idea.

17 We brought it up -- everybody had an idea of what they
18 wanted to see and what they wanted to do. We've actually now
19 gone out to some of these projects so the THPOs aren't so leery
20 like they have been in the past for obvious reasons. Cultural
21 sites weren't significant 30 years ago. They are now. But
22 we've put something together that I think is modeled -- most
23 people do. It's working.

24 I just got a call from Teresa Martin in Minneapolis.
25 She was -- her and an associate of hers came to one of our

1 three-day meetings where we actually did field site visits. And
2 she was just amazed at how well the THPOs and the agencies got
3 along. She said, I've never seen anything like that. She said,
4 There's a buzz out there about this Programmatic Agreement. It
5 was such a big deal the Governor -- we had somewhat of a dinner,
6 a meeting, and it was historical.

7 And I'm going to give you her number. And many of
8 these questions are -- they're all legitimate, and they were all
9 answered. And we came up with an agreement that was penned by
10 the tribes, our concerns.

11 Interpretation is a big thing. I'm educated with an
12 anthropology background. But I'm also native. And there's two
13 different things. One of the greatest discoveries was we met
14 with the Corps of Engineers and the National Guard. Well, the
15 National Guard has a -- has some of their land has historical
16 cultural sites on it.

17 Well, they didn't want to bother it so they were going
18 to cover it up. They thought we won't bother it by covering it
19 up. And, you know, a lot of people had problems with that. And
20 they thought they were protecting it by covering it up. And
21 everybody's interpretation is different. Five or six people
22 stood up and explained to them that you don't this. And he had
23 no idea. He thought he was protecting it by covering it up.
24 The National Guard thought they were protecting it.

25 When all was said and done, he said, I see things

1 differently now. From what's been explained to me by four or
2 five or six of you I see things through your eyes now. And
3 that's what it took. He said, I didn't mean any harm. I
4 thought I was protecting it.

5 But what we did in North Dakota was I think ground
6 breaking as far as P.A.s go. And I just -- I stepped out to ask
7 if I could bring this up, and she said, yes, she would welcome
8 your call.

9 MS. GLIDDEN: Was that Programmatic Agreement just
10 between your tribe and --

11 MR. GRANT: All tribes.

12 MR. WHITTED: All tribes and the North Dakota DOT.
13 This was facilitated by the Federal Highway Administration.

14 MS. GLIDDEN: All tribes.

15 MR. WHITTED: That were interested in being a part of
16 that.

17 MS. GLIDDEN: That process would be something that we
18 could look to as being a model for this.

19 MR. WHITTED: Agree.

20 MR. SCHIEFFER: But that was in the drafting of the
21 P.A.

22 MR. WHITTED: The drafting of the P.A.

23 MR. SCHIEFFER: Which was -- the difference I guess as
24 between where we're at, which is the implementation of it versus
25 the drafting of it.

1 MR. GRANT: But I'm certain she could help you avoid
2 any stalemate, whatever you want to call it, roadblocks.

3 MR. BIBLER: We heard that last week in Gillette that
4 that was a wonderful document, and it was very effective. So if
5 we could work on that -- I mean, the P.A. here is set in place,
6 but there's no reason not to work together and get to the same
7 agreement that these folks in North Dakota.

8 MR. WHITTED: It would be so much easier if there was
9 one lead federal agency that facilitated all of the consultation
10 with the tribes instead of having to teach every federal agency
11 our --

12 MR. BIBLER: Right. Go back and start over every
13 time.

14 MR. WHITTED: Yeah. So learning from them might be a
15 big plus here.

16 MR. BIBLER: We did hear that. Just last week in
17 Gillette that was brought up.

18 MS. GLIDDEN: So the document, I'm assuming it can --
19 I mean, getting back to Kevin's question about, you know, the
20 practicality of how we're going to get you out in the field and,
21 I mean, does that document provide that sort of --

22 MR. GRANT: Well, she can tell you. The questions
23 that you're asking us, she can give you -- she can answer your
24 questions.

25 MS. GLIDDEN: And all the tribes here would be

1 comfortable with that approach?

2 MS. HUNTER: I haven't seen the document. I don't
3 know.

4 MS. GLIDDEN: Okay.

5 MR. BIBLER: See, that's one of the problems because
6 this thing is so linear and it covers such a big area, the Crow
7 last week said they weren't interested in going out and looking
8 at anything, and then we have other folks that are ---

9 MR. GRANT: We have an agreement in North Dakota,
10 Standing Rock, Spirit Lake, Turtle Mountain, Three Affiliated,
11 we're all friends. We've all come together.

12 In the past we'd meet each other at one meeting. And
13 part of the problem was some would have a meeting here, some
14 would have a meeting here, and would never get together. And we
15 brought it up. We need to be at one. We need all of them
16 united. Not a meeting over here and a meeting over here and a
17 meeting here. All THPOs from every tribe in the state all
18 together.

19 We need a day before together to discuss the document
20 in question. We need a day with you to discuss it and some time
21 after to discuss it. Not -- you know, in the past it's always
22 been some here on Monday, some Tuesday, and some on Wednesday.

23 What we do now, we have one meeting a year and it's
24 for three days and we're all there. Everyone is there. And
25 we're -- we're unified as far as tribes go. We all trust each

1 other. We've developed friendships and bonds. If someone can't
2 make it from Spirit Lake, Turtle Mountain steps up to the plate.
3 If someone can't make it from Three Affiliated, Standing Rock
4 steps up. We're friends. The directions are the same.

5 MS. GLIDDEN: I guess my only concern is, you know, to
6 make certain that we're consulting on a Government-to-Government
7 basis and that, you know, one approach would be, you know, would
8 be the approach that would be something that the other tribes
9 would be comfortable with.

10 So I think in a way my sense is is that we have to get
11 input from each tribe regarding, you know, what the tribe's
12 comfortable with.

13 MS. HUNTER: Well, I know if you send out whatever
14 your proposal is in black-and-white way ahead of time so we have
15 time to review it and discuss with our councils and the
16 pertinent people that need to be informed on the information,
17 then bring it back for the meeting for discussion or
18 finalization or whatever.

19 MS. GLIDDEN: That's a great idea. How does everyone
20 feel about that sort of method?

21 MR. THOMAS: That's how Steve Trahmly (phonetic) under
22 WAPA out of Colorado? He's dealing with this same type of
23 thing, and this is exactly how we're working that with
24 Big Stone.

25 MS. GLIDDEN: Steve what's his name?

1 MR. WHITTED: Trahmly.

2 MS. GLIDDEN: What agency?

3 MR. WHITTED: WAPA, West Area Power. He's also
4 affiliated --

5 MR. WITHROW: I think one of the things setting up
6 these meetings last week and this week at three different
7 locations is, of course, we're mindful of the fact that the
8 railroad covers a 1,000-mile long corridor and people's
9 interests and ability to travel may be an issue. We were trying
10 to provide some convenient options for people.

11 And understand. We've heard some of this feedback at
12 the last meeting and from other folks that I have spoken to over
13 the phone that there really is a desire for a single meeting and
14 maybe at a central location like Pierre but with all tribes
15 given enough advanced notice so that they can attend. And I
16 think that's what we would probably do.

17 We asked if folks had a suggested time frame for doing
18 it like that. And everyone at least in Gillette was saying
19 August and September are really busy months in particular for
20 tribes and that maybe the end of September, early October might
21 be a good possibility.

22 Is that -- what do you think about that as having
23 another meeting here in Pierre with all 33 tribes invited?

24 MS. HUNTER: Better watch out for snow.

25 MS. GLIDDEN: It's been so hot.

1 MR. TRUDELL: There's no unbusy time anymore for
2 tribes.

3 MR. SCHIEFFER: But to Leah's point, you before that
4 meeting put out not just an agenda but here's what we picked up
5 from the last meetings and here's how we're kind of planning on
6 doing this, what do you think, and have a month or so to really
7 wrestle through the language?

8 MS. GLIDDEN: And then we can talk about it at the
9 meeting.

10 MR. THOMAS: If you're going to make other contacts,
11 why don't you take a look at theirs and see how they're doing
12 it.

13 MS. GLIDDEN: Is there any kind of feedback that you
14 can give us right now regarding what method you would need as
15 far as helping or identifying sites?

16 I mean, would you be interested in getting out in the
17 field? I mean, just some sense that we can get from you now.

18 MS. HUNTER: I think, well, from my perspective
19 there's been an incident that happened in our area on our
20 reservation. It's been years before. But a construction worker
21 during a dig out -- the land was surveyed before and was
22 cleared. But there was a dig up, and an artifact was found. So
23 construction stopped. But yet before it was identified a
24 construction worker picked up an artifact and pocketed it.

25 So, you know, that on-site monitor or whatever you are

1 going to label that person I think should be on site.

2 MS. GLIDDEN: During construction?

3 MS. HUNTER: During construction. And that was only
4 due to they didn't know that it was against the law to be doing
5 that kind of stuff.

6 MS. GLIDDEN: Just sort of training perhaps the
7 construction workers?

8 MR. WITHROW: There was some discussion about that in
9 looking at the records about previous meetings. Tribes had
10 expressed concern about that very thing. And one of the
11 provisions that's in STB's decision document references the need
12 to develop a construction monitoring plan, doing sensitivity
13 training for the construction crews, and a number of other
14 things. But just to address that very kind of problem. And
15 having tribal monitors present during construction obviously.

16 MR. THOMAS: Just recently not too long ago -- I
17 believe it was the beginning of July? There was a training held
18 over at Lake Andes at White Swan, you know, where they're having
19 all the problems at, Sisseton-Wahpeton, Upper Sioux, Santee,
20 Lake Andes, Yankton Sioux Tribe. We bring in a trainer,
21 Sebastian Bogue, to train us and to take a look at sacred sites
22 and how we look at it and everything like that. And that was a
23 very good training, very good.

24 MS. GLIDDEN: That would be something that we would
25 attend perhaps or just the construction workers?

1 MR. THOMAS: I don't know how that would go because a
2 lot of tribes they don't want to show you our sacred sites
3 because we don't want tourism up there on the sacred sites.

4 MR. GRANT: That is also an issue, the privacy of
5 discovered sites. That is also something you will need to
6 address.

7 MR. SCHIEFFER: We ran into that a lot over the years.
8 It is a Catch-22. You don't know.

9 MS. HUNTER: Or maybe some type of an orientation film
10 that, you know, wouldn't actually show a sacred site but what
11 should be done if something should be found.

12 MR. TRUDELL: You know, the other thing too is how you
13 identify some of the sacred sites. Because wherever a person
14 has stood and prayed, that's a sacred site. Those are all very
15 critical things.

16 And, you know, the corridor that you have now, did you
17 have listings of sites or whatever? You know, I don't know if
18 you can share it. I haven't gone through all the documents yet.
19 But, you know, if they're in there, I think that's a start for a
20 lot of us I guess to cross-reference and check with people and
21 stuff.

22 MS. GLIDDEN: Well, we were thinking, you know, we had
23 those maps, those big maps. And then we were also thinking
24 about maybe sending out the draft reports in advance of the
25 meeting that we would have, the combined meeting, just to give

1 you a -- as a courtesy just to have you be able to see --

2 MR. TRUDELL: I know a lot of the -- a lot of the
3 French if you are trading ancestors, they did a lot of map work
4 and a lot of location sites. You know, like a person would have
5 to get in to the historical facility at St. Paul and start
6 cross-referencing, you know, too.

7 Because one place I don't think's on the map anywhere
8 is called Tipiota (phonetic), and that's where they used to bury
9 everybody in the winter, hang them in trees, you know, couldn't
10 dig in the ground. So just the exact location of that I don't
11 know. Do you? Do you know? Other than it's over east in
12 eastern Minnesota somewhere.

13 MS. GLIDDEN: Yeah. One of the things we're grappling
14 with too is, you know, if we do identify sites, you know, how do
15 we handle that? How do we make it -- how do we protect it or
16 consider it but also, you know, adhere to your privacy concerns?
17 So that's another issue.

18 MR. TRUDELL: And how many of the sites too, I mean,
19 just had come with the people? If you know what I mean.
20 Because we have a place down at home called Maiden's Leap, and
21 that's not really Maiden's Leap. Maiden's Leap is over by
22 Red Wing. But when the people came there it looked like that
23 place so they said this is Maiden's Leap. So, you know, you
24 have to take the time to segregate that stuff out too.

25 MR. SCHIEFFER: I wasn't familiar with Maiden's Leap,

1 and I just learned something once again.

2 MS. GLIDDEN: I didn't know what it was anyways.

3 MR. WITHROW: I think obviously there are a lot of
4 different kinds of information that need to be brought to bear.
5 Doing field visits, just getting out and getting your feet out
6 and looking at the corridor. A lot of it's on private land
7 which people don't have access to. There's no way to know
8 what's there until you have the opportunity.

9 I mean, doing the field surveys is one thing that
10 needs to be done. Doing the kind of historical records search
11 that Chairman Trudell is talking about from doing
12 ethnohistorical research it's sometimes called. I mean, that is
13 a valid component. And then oral history also plays a role in
14 this.

15 And all of those three things need to be brought to
16 bear it seems to me as part of an integrated study to really
17 help identify places of importance to the tribes. So I think
18 that's -- you know, just from my perspective that would be the
19 kind of study that would be needed. And I think obviously
20 people best prepared or qualified to do that are the tribes.
21 And the question is how do we help make that possible and do
22 that if there's a way to do that.

23 MR. WHITTED: And I don't like to belabor the point,
24 but I guess that's -- this is kind of too late in the game, this
25 project here, because the survey's pretty much done. But in the

1 future if the tribes had involvement from the beginning, then
2 avoidance is possible.

3 You come to a site that the tribes might consider
4 sacred, maybe it doesn't meet the standards to the National
5 Historic Register but they feel it's sacred at that time is when
6 it can avoided. Your route can be changed. And that's ideally
7 the time, not during the construction phase when it's cut and
8 dried.

9 MR. SCHIEFFER: One thing for what's it's worth, Jim,
10 there was an awful lot of avoidance done because there was
11 consultation. We changed the route in several places
12 significantly because of tribal input and, again, as I sit here
13 I can't repeat this enough, I fully appreciate the fact that you
14 weren't there at the earlier meetings, nor was Randy. But when
15 I hear Randy talk about, gee, we can't find -- we don't think it
16 was adequate because the monitors -- we don't have record of
17 tribal input. It's there.

18 I would encourage you to go back and talk to the
19 previous third-party consultant and find it. But those
20 consultations were there, and it was based on tribal input that
21 some of the avoidance work was done. I think the frustration
22 here for everybody sitting around the table is that was several
23 years ago and there are very few people around the table
24 today -- I see a few of them, but the majority of folks around
25 the table today weren't part of that process.

1 So it's a practical matter. You don't know that it
2 was done and are frustrated. Randy hasn't found the evidence
3 that it was done so is questioning it. And, you know, from my
4 perspective the amount of time and effort that went into the
5 whole avoidance issue was pretty overwhelming. We spent an
6 awful lot of time and had a lot of meetings like this, did that,
7 and five years later quite understandably all of that is
8 forgotten -- or not forgotten. You just through nobody's fault
9 you don't -- we can go back and look at the records.

10 And we would encourage you to go back and look at the
11 stenographer notes and other records on this stuff, but we're at
12 a different phase today than we are at the implementation stage,
13 and we would need to figure out a way to maximize your
14 participation in that.

15 Those are the questions I heard earlier. And feeling
16 like we're getting a handle on how to maximize that going
17 forward. But anything we can do obviously we want to, to
18 facilitate that within reason. But I do want to make sure
19 everybody has that sense that right or wrong and everybody has
20 their differences of opinion about what the best way do it.

21 Five years from now somebody's going to say whatever
22 we figure out here at this table today is wrong if they're not
23 here and don't have all the background. But we want to do the
24 best job we can to get it as good as we can and have a record
25 where folks can see it.

1 MS. GLIDDEN: And what I'm hearing from you thus far
2 is that you would like to have a draft plan for getting out in
3 the field or doing what you need to identify the sites and then
4 have that sent to you to -- distributed to all the tribes and
5 also have all the archaeological documents in advance to look at
6 and maybe after a couple of months having a unified meeting
7 where all of those issues can be discussed.

8 Is that right?

9 MR. SCHIEFFER: Let me ask something on that just in
10 terms of --

11 MS. GLIDDEN: Let me just get some feedback. Am I
12 reading you right on that?

13 MS. HUNTER: Yeah. Because that's what, you know, our
14 tribe would need as far as if you want our input on where our
15 people have been and which lands they traveled through, we would
16 have time to go and find and research that for you instead of,
17 you know, whatever research you have isn't the same that we
18 would have because we would have more in depth on, you know, the
19 Winnebagos.

20 MS. GLIDDEN: And how much time do you think you would
21 need for that?

22 MS. HUNTER: It depends on the lands that are -- I've
23 got the lands that are identified here that you guys are, you
24 know, questioning. Then all I have to do is take it back to our
25 historian and elders and find out, you know, were we in -- did

1 we travel some of these places as a full tribe? Naturally we
2 have individuals that have gone off on their own.

3 MS. GLIDDEN: So providing copies of maps would be
4 helpful?

5 MR. SCHIEFFER: That was actually my question. I
6 think Leah needs to hear this to have a good answer in terms of
7 how long it would take. Because if you're talking about
8 actually sending on the reports, I've seen all the reports, and
9 from the floor to the top of that stack you need to be pretty
10 tall to reach it in terms of what's been done.

11 MS. HUNTER: This right here is a good reference.

12 MS. GLIDDEN: That's helpful.

13 MR. SCHIEFFER: Is that map that is what, about an
14 inch thick there, that kind thing is helpful?

15 MS. HUNTER: Yeah.

16 MS. GLIDDEN: Well, Randy, what was your idea? I know
17 you had thought about perhaps sending out the reports in advance
18 of the meeting.

19 Do you want to talk about that?

20 MR. WITHROW: Absolutely. To the extent that they're
21 drafted.

22 MS. GLIDDEN: We only have a couple; right?

23 MR. WITHROW: There are only two reports -- only one
24 that actually reflect field survey results that's ready for
25 distribution and several others that are very close to being

1 ready. But in terms of getting how many of those the tribes
2 would see, you know, between now and a month from now is
3 probably not --

4 MS. HUNTER: Because we would need that information
5 because that's what you're requesting from us.

6 MR. WITHROW: And the map book that we prepared for
7 distribution today is a start in that direction that it reflects
8 at least the location of sites that we know about thus far.

9 I guess the point I want to make clearly for everyone
10 is that we are very much in the midst of the identification
11 process. It's still underway. The evaluations have not been
12 completed. And we can't complete those without tribal
13 involvement and assistance in identifying --

14 MS. HUNTER: We're running off of an empty plate. We
15 don't have anything in front of us other than what's been
16 produced today.

17 MR. WITHROW: Yes. I understand. I guess my point is
18 that there's -- really in response to Jim's comment it's not too
19 far into the process for tribal involvement, and that's where
20 we're at. That's really the purpose of this meeting is to try
21 to let you know where things stand and chart a course for
22 further consultation from here.

23 MR. WHITTED: Especially on a new construction.

24 MS. GLIDDEN: Yeah. My sense is to get you the
25 reports, correct me if I'm wrong, as soon as possible before any

1 meeting that we have would be critical because then you could at
2 least have some background information on what's out there
3 including these maps. We wouldn't expect you to comment on the
4 reports but you would have that information available to you to
5 look at and then you would have some -- a little bit more sense
6 of what has been found thus far.

7 MR. GRANT: I've got something to say about the
8 discretion that needs to be used when it comes to these reports,
9 maps of specific sites. We all know there are some people who
10 find these sites for other purposes and keeping them, you know,
11 where they should be. That becomes a problem too sometimes that
12 they could probably end up in the wrong hands.

13 Sometimes -- well, it's been known to happen where
14 information has ended up where it shouldn't have, and it falls
15 into the wrong hands. And this is information they would have
16 never known about had discretion been practiced early on.

17 MS. GLIDDEN: Yeah. I think that's a very good point.

18 (A short recess is taken)

19 MS. GLIDDEN: Any other concerns that you may -- that
20 you have that you would like to bring up at this point? Or
21 suggestions? Kind of an open discussion, I think at this point.

22 MR. RITCHIE: Well, I had a chance to talk with Wyatt
23 a little bit during the break, and he just wanted to emphasize
24 that we should take a look at how these other successful
25 consultations are being run. So looking at how North Dakota

1 Department of Transportation's been working and the Western Area
2 Power Administration (sic). So just to, you know, check with
3 them, see how their process works, see what we can use so we're
4 not reinventing the wheel.

5 MS. GLIDDEN: Right. Okay.

6 MR. RITCHIE: I think that's what you're saying.

7 MS. GLIDDEN: Yeah. I think that came across pretty
8 strongly.

9 MR. WHITTED: I guess one thing that we had talked
10 about on other projects is when you're doing a new construction
11 on a new project you have borrow areas that you take from. We'd
12 like to see that those areas are surveyed as well.

13 Where is that fill coming from, the rock?

14 MS. GLIDDEN: I think that's part of the plan, isn't
15 it?

16 MR. BIBLER: Yeah.

17 MR. WITHROW: Yeah. The P.A. actually includes a
18 provision to look at what they refer to as ancillary areas.
19 Those would be the borrows, the access roads, the sitings, yard
20 areas, things like that.

21 MR. WHITTED: Spoils areas, if there's stuff hauled
22 off site and deposited somewhere.

23 MR. WITHROW: The locations for a lot of those haven't
24 yet been defined. So the focus so far has been on the railroad
25 corridor itself.

1 MR. WHITTED: Okay.

2 MR. WITHROW: But as those new areas get defined and
3 vocalized they'll be subject to the study as well.

4 MS. GLIDDEN: Basically the studies are occurring in
5 kind of a phasing process, as I understand it. Is that right,
6 Mike? Sort of a phase process?

7 MR. MADSON: As information is available right away.

8 MS. GLIDDEN: In terms of what sections are being
9 surveyed and the number of areas that have been looked at.

10 MR. MADSON: It's limited to what we have access to,
11 to perform those surveys. A number of private landowners have
12 not allowed railroads into their property.

13 MR. WHITTED: So how is that going to be resolved? I
14 mean, if they're not allowing you to survey a site or an area,
15 what do you do?

16 MR. BIBLER: Wait until there is a resolution. And
17 then you survey it.

18 MR. WHITTED: Private property or whatever?

19 MR. BIBLER: And if you can't get on, then you go to
20 an alternative source.

21 MS. GLIDDEN: Haven't you gotten some court orders for
22 this to get into the private land?

23 MR. MADSON: Yeah. Herb, do you want to talk a little
24 bit about the private land ownership issues?

25 MR. JONES: Yeah. There's different stages on that,

1 but primarily what David said is right. Until you have access,
2 you can't get on, and when you do have access, you try to get
3 done what you're able to do. And we're still working on access
4 on areas. There's work going on on that front right now in both
5 Wyoming and South Dakota.

6 This is talking new construction -- that's what we're
7 talking about here -- in those areas that there's work going on
8 both in South Dakota and Wyoming on the access front.

9 MS. GLIDDEN: Any other questions or concerns?

10 MS. HUNTER: So on the new construction on private
11 owned property the rail is going through those lands? And those
12 are the ones you can't get access to?

13 MR. JONES: There are lands that we don't have access
14 to yet, yes. There's a condemnation processes that like in
15 Wyoming that are in process right now and could be in -- and in
16 the end you don't know how many -- you know, what areas you
17 might have to condemn, but those are processes that are in place
18 to accomplish that.

19 MS. HUNTER: The only reason I ask that is because
20 there are -- I mean, I know of a person who has private land in
21 South Dakota who has knowledge of native artifacts on the land,
22 but they won't -- they don't know exactly where it's at, but
23 they know there is artifacts on the land. That's why I was
24 asking.

25 MR. JONES: On the alignment you're talking about?

1 MS. HUNTER: I don't know if it's on this land.

2 MS. GLIDDEN: But somebody you'd want to check with
3 maybe?

4 MS. HUNTER: Yeah. Probably have to look through the
5 maps to see if it runs across that. But that's just brought to
6 my mind that if you're condemning somebody's land, they're
7 probably going to be fighting the issue, you know, and not
8 cooperating, and if there's artifacts on their land, then we're
9 in a situation, you know, where how do we identify it?

10 MR. HOTOPP: Those properties will all be surveyed
11 before the railroad actually moves ahead to the point where
12 they're actually doing construction. So it's a hit or miss
13 thing. You've got some that do and some that don't. So you're
14 in and out of properties, and as properties would become
15 available Mike and his crew go back and pick them up. So it's a
16 continuous ongoing process.

17 MS. HUNTER: So those are the surveys that aren't
18 complete then; right?

19 MR. HOTOPP: Yes, ma'am.

20 MR. WITHROW: I was going to suggest maybe Mike as an
21 illustration you could talk about some of the work that was
22 going on in Wyoming. There were some court-ordered access.

23 MR. MADSON: Yeah. I mean, you're right about issues
24 with landowners and them not exactly wanting folks to come on
25 their property.

1 But last spring the term I think was -- what was it
2 called through the courts? Was it precondemnation? Basically
3 through the Wyoming court system DM&E sought for access to
4 perform a number of surveys and archaeological surveys, which is
5 one, utility surveys, botanical surveys, that sort of thing.

6 MR. JONES: Geotech.

7 MR. MADSON: Geotech. Right. And those were all
8 court-ordered, and we had certain procedures that we're required
9 to follow through the court-ordered steps for notification to
10 the landowner: Minimum number of people on each parcel;
11 requirements for access regarding, you know, couldn't use
12 four-wheel drive vehicles. It's all on foot; a number of
13 different stipulations that were required. And the same is
14 coming in South Dakota.

15 MR. WITHROW: That would be how some of those areas
16 were denied access or eventually surveyed under those kinds of
17 conditions.

18 MR. JONES: Well, it's different in different states
19 too. I mean, you don't have the same laws you work under. You
20 have different procedures wherever you are.

21 MR. MADSON: But it was a successful program in
22 Wyoming because of the notification, working with the landowners
23 in the field, to observe.

24 MR. WITHROW: But John's right. All areas will be
25 investigated before any construction proceeds as required.

1 MS. GLIDDEN: So we're all comfortable, I mean, with
2 the idea of sending out kind of a plan, perhaps, of -- from a
3 method to get your input on the TCPs and send out the reports in
4 advance and then perhaps sometime in maybe early October having
5 a combined meeting with all the tribes?

6 MR. JONES: Cathy, can I ask a question because I just
7 have kind of a --

8 MS. GLIDDEN: I mean I'm just trying to get a sense
9 if -- can I get some feedback on that?

10 MR. JONES: In the practical sense on the report side
11 what are we talking about having people look at?

12 MS. GLIDDEN: Well, I think that Randy had made the
13 suggestion that there was apparently a couple of reports that
14 are ready to be sent out and -- is that correct?

15 MR. WITHROW: There's a literature review that's been
16 done for a section of the existing alignment in Minnesota that
17 is ready to send out for all the signatories to look at and
18 other interested parties.

19 There's also a report on part of the new built section
20 in Wyoming that's ready to be distributed for comment and
21 review. There's also -- well, the University of South Dakota
22 report that was written back in 2000, 2001, which has been
23 updated by the HDR Group using field notes from USD and
24 addressing some deficiencies in their original draft report.
25 And that one is not quite ready to be out, but it's close.

1 There are also several other reports that are in
2 progress, and there's still field work going on. So in some
3 areas those reports may not be completed until later this year.

4 MR. JONES: On the ones that are ready or near ready
5 what are you talking about for volume?

6 MR. WITHROW: Well, the Minnesota literature search is
7 probably about an inch and a half thick in paper. A couple
8 hundred pages probably. The TRC report for Wyoming is probably
9 100 pages, an inch thick. I'm guessing roughly. These are
10 close. USD report, the original draft was a seven-volume
11 report, and it included a lot of appendices and site forms and
12 other kinds of documentation work. The report itself in its
13 most recent version is about 1,000 pages. It's a substantial
14 document. It includes descriptions of every site that was
15 identified during that survey. And there are over 200.

16 MR. JONES: And again that report covers what area?

17 MR. WITHROW: Just the -- part of the new build
18 segment in South Dakota only.

19 MS. HUNTER: We wouldn't be able to get that access to
20 like -- on a PDF e-mail?

21 MR. BIBLER: CD.

22 MS. GLIDDEN: It would be tough on the big one. You
23 could do it by volume maybe.

24 MS. HUNTER: I mean, even an access site that we could
25 just go and review and it would print off if we wanted to.

1 MS. GLIDDEN: That's a good idea.

2 MR. HOTOPP: That's not a bad idea.

3 MS. GLIDDEN: That's not a bad idea at all.

4 MR. WITHROW: No. I think the important thing is to
5 try to get as much of that material, draft report to you in
6 advance as possible before we schedule a group meeting.

7 MS. GLIDDEN: Yeah. Just so that you have the
8 information. You know, how much you want to delve into it will
9 be up to you before the meeting. But at least you'll have it.

10 Does that make sense to you?

11 MR. JONES: Is that access like -- if you did it
12 access like -- I mean, if you did it on a website, is that a way
13 to do it? Does that make sense? Does that work for everybody
14 to be able to do it that way?

15 MS. GLIDDEN: Does everyone have Internet access?

16 MR. BIBLER: Our could give them the option of getting
17 the reports. We'd have to come up with a checklist. The USD
18 report is really cumbersome whereas some of the other reports
19 aren't.

20 MS. GLIDDEN: The web-based method is really nice. I
21 don't know if you have that capability or HDR has that
22 capability where you would actually set up a site and people
23 would have a password. Is that possible?

24 MR. MADSON: It's possible. Absolutely.

25 MR. WITHROW: It's called an FTP.

1 MR. WHITTED: I guess when I look at reports like that
2 I don't spend much time looking at the, of course, historic
3 sites that are listed on there. The ones we're interested in
4 are the cultural sites. And if there was a way to eliminate or
5 separate the two, it would be a lot less --

6 MS. GLIDDEN: So maybe we could point out those
7 chapters?

8 MR. MADSON: Could be summarization of those sites as
9 well, specific lists.

10 MR. JONES: Yeah. My only concern is trying to keep
11 something that's at least manageable for what people are looking
12 for so that they're not --

13 MS. GLIDDEN: Sure. I guess my sense is that, you
14 know, just having it available, you know, before the meeting and
15 if we can summarize it to some degree and --

16 MR. JONES: Okay.

17 MR. WITHROW: It would probably be possible for those
18 three reports that I mentioned. There's at least some coverage
19 in each of the three states that are involved; Minnesota,
20 South Dakota, and Wyoming.

21 MR. HOTOPP: Would your website be able accommodate
22 these reports?

23 MS. GLIDDEN: We can put documents -- in fact, we
24 have -- we may have actually some of these documents already up
25 on our website. But it's kind of -- it's kind of slow to

1 download these. I mean, it's --

2 MS. HOSKINSON: Archeology information should not be
3 on a public website. Locational information for archeology
4 sites should not be.

5 MR. WITHROW: That's why FTP.

6 MR. BIBLER: That's what we use now with HDR when we
7 download our sites. You have to have a password to access it.

8 MS. GLIDDEN: And you can do that; right? HDR has the
9 capability.

10 MR. MADSON: We could. Absolutely.

11 MS. HUNTER: I mean, yeah, what I was thinking is I
12 know naturally you'd need a password because I used to deal in
13 benefits and you have to have that password to even access the
14 site.

15 MS. GLIDDEN: We do some documents available on our
16 website, but they deal primarily like with the decisions, some
17 of the background about the project and the approval, that sort
18 of thing.

19 MS. HUNTER: I mean, a specific name couldn't be
20 created just for this --

21 MR. MADSON: We could also ship out CDs. I mean,
22 that's another option so it's secure.

23 MS. GLIDDEN: Would you prefer CDs or the website?

24 MS. HUNTER: Either. Which is easiest?

25 MS. GLIDDEN: Okay.

1 MR. WITHROW: Mike, check me if I'm wrong, but I think
2 in terms of reports that we could probably post for folks to
3 look at would include the two older reports, the Burns &
4 McDonald was on the existing site in South Dakota, the
5 University of South Dakota survey report for the new build in
6 South Dakota, the TRC Mariah report for the new build in
7 Wyoming?

8 MR. MADSON: Yes.

9 MR. WITHROW: And the literature search done by
10 Two Pines from Minnesota?

11 MR. MADSON: Yes.

12 MR. WITHROW: We could do all of those?

13 MR. MADSON: Yes. Might be able to fit another one in
14 there.

15 MR. WITHROW: And maybe another one. Which one are
16 you thinking?

17 MR. MADSON: The second TRC report from Wyoming.

18 MR. WITHROW: Another one from Wyoming? So that would
19 be a lot -- that would be a lot of information.

20 MS. HUNTER: That would cover any questions anybody
21 would ask of me.

22 MR. BIBLER: The Minnesota report's ready to go out as
23 well as, I mean, we have those copies. They're just waiting and
24 the TRC report will go out within the next week as well, the
25 physical report.

1 MS. HUNTER: And those will be out to the chairmans?

2 MR. WITHROW: Well, that's a good question. It's a
3 little bit different, I understand, with each tribe, what their
4 preferences are, who the proper contact person is. Tried to
5 establish that in phone calls with people, but I'm not sure if
6 I've got it right. I mean, in general I think probably the best
7 person to send it to --

8 MS. HUNTER: See, ours just gets forwarded down to --

9 MR. WITHROW: Yeah. It works a little bit differently
10 in my experience with other mailings.

11 MR. TRUDELL: I think the last person you want to send
12 it to is the chairman.

13 MS. GLIDDEN: I got that sense. Once it gets to those
14 it seems to go to some sort of black hole or something.

15 MS. HUNTER: It might sit there a week or two.

16 MR. JONES: It will become historic.

17 MS. GLIDDEN: What about the post office? It seems
18 sometimes it goes to the post office and then it's not delivered
19 or something? Does that happen? That's not really an issue?

20 MR. WITHROW: I guess I would assume that probably the
21 best person to send it to -- I have a list of contacts that have
22 been provided by people I have been able to reach by phone.
23 Oftentimes it will be the NAGPRA coordinator, N-A-G-P-R-A.

24 It's different in a lot of cases, but probably send it
25 to that person with maybe a copy of the letter to the chairman

1 so they know that it's been submitted? Would that be
2 appropriate?

3 MR. BIBLER: I think we have CDs for the Minnesota
4 stuff.

5 MS. GLIDDEN: Okay. So I've got as far as action
6 items basically we need to get information from other agencies
7 that have gone through this process. You had mentioned a number
8 of ones. The DOT, I guess.

9 MR. WHITTED: North Dakota DOT.

10 MS. GLIDDEN: And then there was a name you were going
11 to provide me with.

12 MR. GRANT: Jeannie, J-E-A-N-N-I-E. Bourchert,
13 B-O-U-R-C-H-E-R-T. And I thought I had her business card, but I
14 cannot find it.

15 MS. GLIDDEN: Could you spell the last name again?
16 I'm sorry.

17 MR. GRANT: B-O-U-R-C-H-E-R-T. And I believe this is
18 her cell number: (701) 391-0286.

19 MS. GLIDDEN: She's with --

20 MR. MADSON: North Dakota Department of
21 Transportation.

22 MS. GLIDDEN: So we'll do that. And then we'll send
23 the reports to you I guess soon; right? Via CD or FTP, say.
24 And then we'll develop a draft scope that we'll send around to
25 you for proposed consultation and the three-day meeting, and

1 then we'll have a combined tribal meeting sometime in October.

2 And then we'll distribute copies of all of the notes
3 from all of these meetings to all the tribes. Anything I've
4 missed?

5 MR. WITHROW: The proposed scope that you mentioned,
6 item 3, what specifically are you referring to, what scope of
7 work for --

8 MS. GLIDDEN: Well, a proposed scope that would --
9 following the meetings that would -- like I think you had
10 suggested that would outline some possible ways that we could
11 involve you in identifying sites, and then we would send that
12 around based on the information that we're getting from these
13 meetings.

14 And then we'd all be able to comment on providing --
15 just something we could send around to reach some sort of
16 consensus on how to deal with this process of getting your
17 involvement. And so that's kind of what I was thinking.

18 MR. BIBLER: It would be nice if the tribal -- the big
19 tribal meeting, whether we could break down who's going to go in
20 which section. You guys could determine who would represent
21 each section as a group so that everything could get covered,
22 and everything would be represented as a consensus idea.

23 MS. GLIDDEN: That's something we could put in the
24 draft and still send around.

25 MR. BIBLER: That would be like an action item that

1 would occur at the big meeting.

2 MS. GLIDDEN: Right. A lot of this stuff is obviously
3 going to be draft stuff we send around for review, and at the
4 meeting we'll obviously come to some sort of consensus. Does
5 that make sense?

6 And at the meeting we'll have a review of the reports
7 that you've gotten copies of and, Randy, you had some ideas
8 about how the meetings might be formatted? Three-day meetings
9 in October?

10 MR. WITHROW: Well, yeah. Following some of the
11 suggestions that were made earlier. What I heard, I think, is
12 that the tribal representatives want time to having the benefit
13 of reviewing materials that they have gotten in advance to first
14 caucus with other groups at the meeting, perhaps the first day
15 of a multi-day meeting being devoted to that.

16 And then the second day of the meeting with STB and
17 the project representatives to discuss how they'd like to
18 proceed perhaps with however we refer to it, a tribal survey or
19 a TCP survey or a study, how that might look.

20 And then the third day, I'm not sure, just for general
21 discussion if needed. But the only thing I would suggest in
22 addition to that would be if the tribes were interested is to --
23 we could have some of the survey teams who have been out doing
24 work in different states come and provide a verbal report and
25 presentation on the work that's been done. Not an extended

1 lecture but, you know, a summary of what was done and what was
2 found basically reviewing --

3 MS. HUNTER: I think that would be a good first day
4 too is just meet with the tribes on what has been done to this
5 point and then this is where we need you to help, you know, fill
6 in the blanks.

7 MS. GLIDDEN: Okay.

8 MR. WITHROW: So maybe the first day we need to review
9 with the survey teams what's been done and what's been found.
10 And then time to caucus, and then followed by time to meet with
11 the project personnel, a three-day meeting structured in that
12 way? Okay.

13 MS. GLIDDEN: Any other suggestions for things that we
14 might want to --

15 MR. MADSON: I'd like to suggest that as we move
16 towards a definition of a proposal for this -- a draft proposal
17 for the cultural survey that we have an ongoing dialogue about
18 this.

19 We will be the ones to negotiate access to these
20 areas. We will be the ones to facilitate that access with the
21 private landowners. And that takes time as well. So I would
22 ask that we work towards defining this -- you talked about
23 success that we had in the past getting folks together in the
24 field to represent the interests in doing the survey and doing
25 training and that sort of thing. We need to keep that going and

1 not necessarily wait until that meeting so we have a sense of --

2 MS. GLIDDEN: So we have to do the timing issue.

3 MS. HUNTER: That's where the tribes would need to
4 know what land you're potentially going into so that their
5 representatives could -- I mean, that's probably your first
6 priority is to get an okay on who is going to be on site.

7 MR. BIBLER: Right. Absolutely.

8 MR. MADSON: Even from just a practical standpoint --
9 from a practical standpoint how the logistics would work would
10 be worthwhile to have an ongoing dialogue ahead of that
11 proposal.

12 MS. GLIDDEN: That's a good point. Would one thing be
13 helpful for you, to mark on the map what areas you're interested
14 in? That would probably be helpful for you, wouldn't it?

15 MR. MADSON: I'm even talking about what exactly -- so
16 I understand what your notes would be in the field. Just what
17 some of your methods are, what you're proposing even just in
18 general.

19 MR. WHITTED: That's something you need to discuss
20 when we all get together as the tribes is just --

21 MS. GLIDDEN: Okay.

22 MR. MADSON: I understand.

23 MR. WITHROW: On that third day when we reconvene as a
24 group.

25 MS. GLIDDEN: Well, I was thinking too that would be

1 part of what we would send out would be based on what we've
2 heard we send out something. Everybody would have a chance to
3 comment on and -- and say, no, we don't like this or we like
4 this.

5 MR. JONES: Cathy, one of the things too that we at
6 least touched on as a possibility in Gillette was the
7 possibility of processing the archeo reports and doing some kind
8 of addendum with TCP work and say I don't know where this goes
9 today or the next meeting we have too. But that was one of the
10 notions that was at least discussed was the possibility of doing
11 those as a confidential addendum to the archeo report too.

12 MS. GLIDDEN: Yeah. That was something we were
13 talking about, and it would be good to get your input on what
14 you think of this. As Randy mentioned earlier, we have a
15 structural report, which is an individual report, that goes
16 around for review.

17 And normally you'd only have two reports. You'd have
18 the historical report, and then you'd have the archeo report.
19 But we're thinking what we would do is have the additional
20 report that would deal specifically with the traditional
21 cultural properties.

22 And that way we could send around the archaeological
23 reports earlier for your review, and they would be
24 archaeological reports like the standard reports you will see
25 and you could provide input on those. But then in addition we

1 would have an addendum report that would draw on that and would
2 provide additional information that would be strictly
3 confidential. It wouldn't be -- it would only be shared with
4 the tribes and, you know, with the -- I guess the SHPO and the
5 federal agencies.

6 I mean, does that sound like something that could
7 work? That way we could get the review of the archaeological
8 reports started at an earlier time. Is that what you're
9 thinking, Herb?

10 MR. JONES: Well, that was one of the things we were
11 talking about in Gillette is that possibility, that you'd have a
12 confidential addendum to the archeo that would follow that
13 process.

14 MS. GLIDDEN: I mean, it's kind of an unusual process,
15 but we thought that might be a good way of dealing with the
16 whole confidentiality issue. You'd have a further level of
17 confidentiality with the TCP report that would even be higher
18 than the archaeological report. That way we could be addressing
19 the tribal concerns but not have it included in the
20 archaeological stuff.

21 Let me know what you think of that.

22 MS. HUNTER: But where would it be utilized?

23 MS. GLIDDEN: It would basically be used for us in
24 terms of knowing whether or not there's eligible resources out
25 there that are important to you that perhaps haven't been

1 identified as such and how to go about treating those sites and
2 having your involvement and developing a treatment plan for how
3 to deal with those things. And that would be, you know,
4 separate from the archeology or possibly there might be some
5 inter -- some interconnection. Because clearly some of these
6 archaeological sites would probably be in TCPs I would think. I
7 just thought that might be a practical way to handle it and work
8 for you as well.

9 MR. WITHROW: It's probably best a topic for
10 discussion by the tribes to describe what form they think that
11 ought to take and what that looks like. I mean, I don't think
12 we should presume to impose some sort of structure.

13 MS. GLIDDEN: No. I'm not saying that. I'm just
14 offering it up as a possibility because Herb had mentioned it.

15 MR. WITHROW: I guess the point is at some point in
16 the process it calls for evaluating National Register status of
17 properties within the corridor that are being affected by the
18 project. And certainly TCPs need to be taken into account, and
19 some of these TCPs need to be evaluated in terms of whether they
20 are eligible for the National Register and their eligibility
21 status. So there are going to be some issues like that that are
22 going to have to be assessed, but there's going to have to be a
23 dialogue --

24 MS. GLIDDEN: From our point of view if you say it's a
25 TCP, it's eligible. I think that's how we'll handle that.

1 Because I don't have the expertise to determine whether a TCP's
2 a TCP or not. If you say it's a TCP, in my mind it's an
3 eligible resource. I don't think that's a discussion we need to
4 have.

5 MR. WHITTED: I think that's a discussion we need to
6 have present at the next meeting. We can define those lines.
7 There's some areas we just don't care to have on the Register,
8 you know.

9 MS. GLIDDEN: Right.

10 MS. HUNTER: But, see, isn't that what they're talking
11 about that that information would be confidential but yet we
12 would have access to discuss it?

13 MS. GLIDDEN: Right.

14 MR. WHITTED: But once it's on the National
15 Register --

16 MS. GLIDDEN: It wouldn't be on the National Register.

17 MR. HOTOPP: Jim, you can make things eligible for the
18 register without putting them on the Register.

19 MS. GLIDDEN: It's just a management thing where you
20 can say, okay, this is an important site we have to look at and
21 find out how we're going to assess it and so on for treatment
22 purposes so it wouldn't end up on the National Register. It
23 would be confidential information and only be shared with a few
24 people.

25 MS. HUNTER: That would be for us to look at before

1 the meeting.

2 MS. GLIDDEN: It sounds like we've kind of come to
3 some consensus on some of the things that we should do next. I
4 don't know. Are we kind of ready to wrap this up, or how do you
5 think -- maybe with a -- anybody else have anything that they
6 want to add?

7 MS. HUNTER: Well, I just had another question. When
8 you were saying you were going to be going on to new lands and
9 private lands, is that -- in which state?

10 MR. MADSON: South Dakota.

11 MS. HUNTER: So that's active now?

12 MR. MADSON: It is ongoing, yes.

13 MS. HUNTER: So that's where your question came in as
14 to what tribal representation --

15 MR. MADSON: Well, I think we're --

16 MS. HUNTER: I mean, our monitor -- I'm not sure what
17 the terminology is.

18 MR. MADSON: It kind of goes back to what was talked
19 about before in terms of archaeological survey and cultural
20 survey we were talking about complimentary but two different
21 types of surveys; correct? Is that what I'm hearing?

22 MS. GLIDDEN: Yeah.

23 MS. HUNTER: So who has done that to date for you?

24 MR. MADSON: The archaeological survey? A number of
25 contractors that have been mentioned here. Like I said,

1 Augustana College, TRC Mariah, SWCA, University of South Dakota,
2 Two Pines Resource Group. So we're talking about cultural
3 surveys is, like I say, a complimentary but distinct effort.

4 MS. GLIDDEN: You're talking about the tribal survey?

5 MR. MADSON: Yeah. Tribal cultural survey.

6 MS. GLIDDEN: I guess whatever you want to call it.
7 It would deal specifically with the sensitive sites and again
8 allow for a further level of security and confidentiality of
9 that particular information. And that you'd be -- you'd be
10 providing that information obviously.

11 MS. HUNTER: Okay. I guess I'm getting a little
12 confused right here on that. When you're saying survey are you
13 talking physical survey or paper survey?

14 MS. GLIDDEN: Well, that's one of the things that we
15 need to figure out; right?

16 MR. WITHROW: Yeah. Whatever you feel would be
17 necessary to reach --

18 MS. HUNTER: I mean, to date is it a physical survey?

19 MR. MADSON: Physical survey, yes.

20 MS. GLIDDEN: But it could be different for you. I
21 mean the Crow Tribe said they don't need to go out into the
22 field, that they could use these maps and actually sort of
23 circle them and that would be sufficient. But in some cases I
24 would imagine depending on the tribe it may require actual
25 getting out in the field.

1 MR. BIBLER: And that's where you guys got to kind of
2 get together and figure out which sections and who's going to do
3 it.

4 MS. HUNTER: So there could be a survey of the tribal
5 membership who would want a physical survey and there could be
6 tribes that do not need to have the physical survey and then the
7 ones that do want a physical survey amongst themselves could --
8 what's the organization or the person that was used before?

9 MR. WHITTED: Yankton has cultural surveys that they
10 do with the Corps, and the Corps allows them to go out and after
11 an archaeological survey using the information that's gathered
12 there expand on it.

13 MR. BIBLER: That's exactly what we're trying to do
14 here.

15 MS. GLIDDEN: Right.

16 MS. HUNTER: So that would be my suggestion. You
17 know, like you said, if we go back and put a time frame on that
18 and if this tribe would like a physical survey, then they could
19 agree with whoever the personnel --

20 MS. GLIDDEN: Right.

21 MS. HUNTER: -- organization would be. I mean, that
22 would alleviate some of the --

23 MS. GLIDDEN: That would be really helpful, I think.
24 I think that from a logistical point of view and perhaps from
25 Herb's point of view if we could have some idea of what tribes

1 are interested in what areas so there isn't a lot of overlap,
2 you know, get people out there and make sure that all of the
3 corridor's looked at and will be the other.

4 But perhaps, you know, if three of the tribes are
5 interested in one location, perhaps one could go out there and
6 represent --

7 MS. HUNTER: But that would be specifically just for
8 that --

9 MS. GLIDDEN: For that area, yeah.

10 MS. HUNTER: And it wouldn't deal with the P.A.?

11 MS. GLIDDEN: Right. If we could get some handle on
12 that would be really, really helpful logistically; right, Mike?

13 MR. MADSON: Jim, do you have a name at the Corps who
14 said the Corps's been sponsoring this type of survey? Do you
15 have a name they could contact them?

16 MR. WHITTED: Well, the tribes will discuss this first
17 and then make a determination of who they want to represent
18 them. And that's how we've done it in the past. There was
19 actually interested parties, other tribes that wanted to get
20 some firsthand knowledge on these cultural surveys, so they
21 participated. So that's an option too. It could be a learning
22 experience for tribes that aren't currently doing it.

23 MS. GLIDDEN: Okay. I think we've accomplished a lot
24 today. Thank you so much for coming and participating and we
25 know you've come from long distances and it's a hard time of

1 year to participate in something like that and you didn't have
2 much notice so thank you so much.

3 MS. HUNTER: I would just suggest don't have it the
4 last week of October.

5 MS. GLIDDEN: The last week of --

6 MS. HUNTER: Okay. That's the snow time.

7 MS. GLIDDEN: Did someone want to offer a prayer?

8 (Prayer)

9 (The meeting is concluded at 4:12 p.m.)

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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 14th day of August 2007, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 29th day of August 2007.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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