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Tribal Consultation Summit 2-13-08

SURFACE TRANSPORTATION BOARD
TRIBAL CONSULTATION SUMMIT

Transcript of Proceedings
February 13, 2008
at 9:25 a.m.

PRESENT:

Cathy Glidden, Surface Transportation Board
Randy Withrow, Louis Berger Group
Dave Bibler, Louis Berger Group
Jim Whitted, Sisseton-Wahpeton Oyate
Doug Jackson, HDR Engineering
Curley Youpee, Ft. Peck, Assiniboine & Sioux
Pamela Halverson, Lower Sioux Community
Erin Salisbury, SWCA
Sam Allen, Flandreau
Diane Desrosiers, Sisseton-Wahpeton Oyate
William Ambrose, Little Ghost, Spirit Lake
Aileen Little Ghost, Spirit Lake
Russell Eagle Bear, Rosebud
Ben Rhodd, Rosebud Sioux
Tim Wentz, Sr., SRST
Chase Iron Eyes, Standing Rock
Brady Grant, Turtle Mountains, North Dakota
Gary Robinette, Ponca Tribe of Nebraska
Dewey Tsonetokoy, Sr., Kiowa Tribe of Oklahoma
Conrad Fisher, Northern Cheyenne
Robert Campbell, Santee Sioux
Herb Jones, DM&E Railroad
Randy Henke, DM&E Railroad
Alan Stanfill, HDR Engineering
Mike Madsen, HDR Engineering
Troy Kogel, HDR Engineering
Kevin V. Schieffer, DM&E Railroad

1 The following proceedings were taken at the
2 Holiday Inn, Sioux Falls, South Dakota, on the 13th day of
3 February 2008, commencing at 9:25 a.m.; before Audrey M.
4 Barbush, a Registered Professional Reporter and Notary
5 Public within and for the State of South Dakota.

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MS. GLIDDEN: We're going to start with a prayer
from Russell.

MR. EAGLE BEAR: I think what we'll do is -- I
know the protocol is, when you sponsor a meeting and
you offer someone to pray, to offer tobacco. Maybe we
can do that at a later time. But I'd like to defer to
my Ieksi, Ambrose, to say a prayer for us.

(Mr. Little Ghost says prayer)

MR. LITTLE GHOST: Excuse me. I'd like to say a
few things. When we pray, we offer tobacco. Tobacco
is one of the things that we use in our ceremonies and

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13 also with all the things that we do. It's a gift from
14 our great spirit, also in turn that we give it back to
15 the spirit for help understanding and also for
16 ceremonies, for prayers, and so that it may all go
17 well.

18 We never pray for ourselves. We pray for our
19 people. Those of us that work in the spiritual way,
20 for one thing, we don't drink, you know, and then also
21 we try to tell the truth. We ask grandfather, help me,
22 because I'm trying to tell the truth and that the truth
23 may be recognized throughout the people with whom we
24 contact.

25 We have a large amount of people that we talk to.
26 We talk to people in marriage counseling, one-to-one, 4

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1 families. Also we talk to very young schools,
2 colleges, whatever. Even traveling, we go a long ways.
3 But those are -- we didn't ask for them. This was
4 given to us through a dream, a way of life. So we try
5 to pass it on to our people so they can have a better
6 life, so they can understand the problems of today, in
7 work, and also to be a good person.

8 A good person nowadays is pretty hard to find. We
9 have people that tell us things and do the other, the
10 other way. Today when I prayed, we hope that it
11 doesn't happen that it goes the other way. Don't
12 talk -- in other words, don't talk with a forked
13 tongue. Talk truthfully and honestly from the heart
14 and mind.

15 We understand when a person is talking to us what
16 kind of person that is. The vibes which a person puts
17 out is what we count as -- it's an old saying, you

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19 know, that some of us have a trace of the sixth sense.
20 We can understand. We can feel. When we go out in the
21 field and start walking, we can feel the vibes of the
22 people that were there a long time ago. There's a
23 sense we feel, a sixth sense. Like we say, they're
24 around us all the time.

25 We call our dimension the sixth sense, and we use
26 it a lot to help people. We use the great spirit -- 5

1 Like I said, there's only one God in this world that's
2 up there. That's the one we pray to. He has all kind
3 of names. He has all kind of different material that
4 people put -- we have our heart and our mind to contact
5 the spirit with honesty. Thank you, and we'll get
6 started, I guess.

7 (Speak native language)

8 MS. GLIDDEN: Thank you, Ambrose, for the
9 beautiful prayer to start the day.

10 All of you have a copy of the -- should have a
11 copy of the agenda, and we're also passing around a
12 sign-in sheet and also the -- basically it's an outline
13 for the way the report review process could

14 hypothetically work within the Office of Tribal
15 Involvement. So we're passing that around as well.

16 If you look at the agenda, for this morning's
17 sessions we were going to talk about the Office of
18 Tribal Involvement, the implementation of a work plan
19 and roles and responsibilities of the surface

20 Transportation Board, the tribes, THPOS, OTI, and DM&E.

21 But I thought before we started in on those agenda
22 items and talking about the Office of Tribal
23 Involvement and the implementation of the work plan

that we would respond to some questions that came up yesterday at the end of the caucus, tribal caucus. And

I've shared copies of those questions with Herb, and he's prepared to go through the questions and respond to them. And I'll chime in, you know, as needed.

He's very familiar with the Eighth Circuit Court order that you all had mentioned, and he really obviously understands this -- the process quite well and has been involved in it for a number of years.

So, Herb, did you want to go through those questions?

MR. JONES: Well, I'll certainly start. I think some of those, Cathy, if I remember, I think there was a letter written to you previously about the third-party --

MS. GLIDDEN: Yeah, let me answer -- actually, let me answer that first question. The first question -- and I'll just go ahead and read them for those of you who don't have copies. It's --

MR. YUPEE: You kind of leave us at a loss. We don't even have a copy of those questions.

MS. GLIDDEN: But you provided us with the questions.

MR. YUPEE: Yes, yes. But I'd like to have something in front of me, tangible.

MS. GLIDDEN: Okay. Can we get someone to make copies?

MR. YUPEE: Plus, you've got the copier. I mean, you guys can make us copies.

MS. SALISBURY: I'll make copies, if I can get a copy.

MR. RHODD: Yesterday we weren't quite finished with our caucus. We basically got kicked out of the room that we were at. So maybe there was still some unfinished comments or discussion that probably was possible, but we had to leave the room quickly, so -- just to let you know, at some point if the tribe delegation decide to go back to that, we want some time.

MS. GLIDDEN: Okay.

MR. YUPEE: I see that you've already started to construct the duties and operation of the OTI. Now, I don't think we collectively had a chance to really brainstorm and develop the logic model. And I've done that so that we can have a guideline or a template for tribes. Can we get this copied as well?

MS. GLIDDEN: Sure. As far as the outline that we have for the report review, it's just, again, a brainstorming process for us to help, you know, to help me, really, as a federal agency to figure out how this would work without undermining the [REDACTED] sovereign-to-sovereign government-to-government

relationship with the tribes, so -- you know, it's just something that we're throwing out there to help, you know, really to help maybe map out how this might work, so -- it's not prescriptive. It's just something that's there for discussion.

So while we're getting these copies made, I thought maybe -- we should probably go around the room and have introductions again. Okay? Starting with Russell.

MR. EAGLE BEAR: Russell Eagle Bear, Rosebud Sioux

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11 Tribe.
 12 MR. RHODD: Ben Rhodd, Consultant, Rosebud Sioux
 13 Tribe.
 14 MR. LITTLE GHOST: Spirit Lake, Sioux Tribe.
 15 MS. LITTLE GHOST: Aileen Little Ghost, Standing
 16 Rock Sioux Tribe.
 17 MR. HENKE: Randy Henke, DM&E Railroad.
 18 MR. JACKSON: Doug Jackson, HDR.
 19 MR. JONES: Herb Jones with the DM&E Railroad,
 20 Tribal Liaison.
 21 MS. GLIDDEN: Okay. You guys need to slow down a
 22 little, I think.
 23 MR. IRON EYES: Chase Iron Eyes, Standing Rock
 24 Sioux Tribe.
 25 MR. WHITTED: Jim Whitted, Sisseton-Wahpeton Oyate
 1 Tribal Historic Preservation Office.
 2 MR. ALLEN: Sam Allen, Flandreau Santee Sioux
 3 Tribe.
 4 MR. CAMPBELL: Robert Campbell, Santee Sioux
 5 Nation.
 6 MS. HALVERSON: Pam Halverson, Lower Sioux THPO
 7 Office.
 8 MR. MENTZ: Tim Mentz, Sr., Tribal Historic
 9 Preservation Officer for the Standing Rock Sioux Tribe.
 10 MR. FISHER: Conrad Fisher, THPO Northern Cheyenne
 11 Tribe.
 12 MR. TSONETOKOY: Dewey Tsonetokoy, Sr., Kiowa
 13 Tribe of Oklahoma.
 14 MR. ROBINETTE: Gary Robinette, Ponca Tribe of
 15 Nebraska.
 16 MR. YUPEE: Curly Youpee, Ft. Peck, Assiniboine,
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17 and Sioux Tribes.
 18 MR. MADSEN: Mike Madsen, HDR Engineering.
 19 MR. WITHROW: Randy Withrow, Louis Berger Group,
 20 third-party contractor to STB.
 21 MS. GLIDDEN: Cathy Glidden, Surface
 22 Transportation Board.
 23 MS. DESROSIER: Dianne Desrosiers,
 24 Sisseton-Wahpeton Oyate Tribal Historic Preservation
 25 Officer.
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 1 MR. GRANT: Brady Grant, Natural Resource
 2 Director, Turtle Mountain Band of Chippewa, North
 3 Dakota.
 4 MR. BIBLER: Dave Bibler, Louis Berger Group,
 5 third-party consultant.
 6 MS. GLIDDEN: Okay. I thought we would also,
 7 just while we're waiting, go through the agenda for the
 8 day.
 9 Again, we've got the morning session, which would
 10 be developing the OTI, implementing the work plan and
 11 roles and responsibilities. We'll have a break between
 12 10:30 and 10:45, and then at 10:45 to 12 we are going
 13 to have an opportunity for the tribes who are
 14 interested in going through the reports for which
 15 comments are due on the 20th of this month. There's
 16 four reports. Erin is here, and Michael, to answer any
 17 questions you may have regarding any of the sites
 18 located in any of the reports, or noted in the reports.
 19 They have maps. They have site forms. They can answer
 20 any questions that you may have to help you with your
 21 review since we do require comments in the near future
 22 on those reports. Page 8

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MR. YOUPEE: What would be the result of those reviews or comments?

MS. GLIDDEN: Well, I mean, you know, as stated in the letters that we sent out and is in the programmatic agreement, that following a 30-day review period, we would -- if we don't get comments from the tribes, then, you know, we don't -- we're assuming based on that that there are no comments from the tribes.

If we do get comments, then we will incorporate those recommendations -- let's say if there's recommendations regarding some of the text or regarding the eligibility of some of the sites noted in the report, we'll go ahead and take that into advisement and perhaps change the eligibility recommendations based on the information.

In the work plan, if this is in fact adopted by you all, we have an extra 30-day time frame for which the tribes that are reviewing the reports may need an extra 30 days to go out in the field to assess the sites in order to determine their eligibility.

So if there's not enough information in the reports, let's say, the extra 30 days would provide for field review of those sites. So --

MR. YOUPEE: Who would make that determination regarding the eligibility?

MS. GLIDDEN: The federal agency makes that determination. So that would be me in consultation with the SHPOs and the tribes, pursuant to the 106

regulations and pursuant to the way the P.A. process is.

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The work plan deviates from the programmatic

agreement. It's not the same process. The work plan allows for an extra 30-day review period. The programmatic agreement doesn't. So the work plan sort of goes further. It goes beyond what the programmatic agreement does as far as providing opportunities for tribes to have input and to participate in field checks and to participate in a TCP survey of the project area that's not spelled out in the P.A.

MR. YOUPEE: But it is spelled out in the MOA.

MS. GLIDDEN: Well, the MOA talks about an ethno-historic report.

MR. YOUPEE: Yeah, but you're not just coming out with this from the goodness of your heart. You're following the letter of the law.

MS. GLIDDEN: I'm just saying that, you know, the programmatic agreement is pretty vague in the way it talks about identification. The work plan just spells it out more clearly.

After the archeological report section, we'll have a lunch from 12 to 1. Where is lunch going to be?

MR. WITHROW: Same place.

MS. GLIDDEN: Same place as yesterday. And then in the afternoon we were going to have some small-group discussions.

Dave Bibler was going to run a discussion on contracting, and then we'll have a discussion on cross-cultural training. Who would like to be part of that cross-cultural training group?

MR. MADSEN: There's a group --

MS. GLIDDEN: There's a group --

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MR. MADSEN: There was a group that was discussed

last time.

MS. GLIDDEN: Okay. So the group that was discussed last time. And then a group on dispute resolution. Do we also have that laid out?

(Mr. Madsen indicates - inaudible)

MS. GLIDDEN: Okay. All right. So maybe over lunch we can talk about who will participate in each of these groups. So --

MR. YOUPEE: What would the rest of us be doing?

MS. GLIDDEN: Whatever you want to do. You could caucus individually or -- I guess I was thinking that since we're a relatively small group, we would all probably participate in one of these groups. But, you know, obviously not -- it's not required. So --

MS. HALVERSON: I have a question.

MS. GLIDDEN: Sure.

MS. HALVERSON: The reports, the archeology reports, Minnesota is not in there. So is Minnesota -- because the railroad is already completed there that you're not going to have any reports on that, or you're just going to drop Minnesota again?

MR. WITTHROW: The Minnesota report has not been completed yet. The consultant Two Pines Resource Group and Environmental Solutions are working together. They haven't completed that report yet, so it's not been sent out for review.

There was a literature search that was prepared for that segment, the Minnesota rehab segment, and that was sent out for everybody's, I guess, review.

There are no recommendations and eligibility

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included in that. It's just a background research. So it doesn't include survey results or anything like that. That report has yet to be prepared, so --

MR. YOUPEE: So these reports, these archeological reports and the lack of archeological report, are those submitted as part of the quarterly report package?

There's quarterly reports that are supposed to be --

MS. GLIDDEN: Are you getting back to the questions that you were asking yesterday?

MR. YOUPEE: No. I'm asking the question now.

I'm not asking a question from yesterday. I'm asking now, is those archeological reports part of the quarterly report?

MS. GLIDDEN: Doug, did you want to answer that?

MR. JACKSON: Yeah. No, they're not. The

quarterly reporting is a condition that we discussed with the STB that has to be involved through the course of the job once we start construction.

The issue is, is that we've got a report on compliance with the conditions. Until we get the process in place, we don't even have -- we can't report compliance until the permits get issued.

For instance, the Corps of Engineers, we submitted an application. When that application comes back, either approved or telling us any additional information, but sooner or later, you know, our intention is it gets approved, it will have conditions attached to that permit that we have to report on a quarterly basis that says how we're complying with those conditions. There's a series of those.

The reports that we're talking about right now are

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22 the archeological reports that have been prepared in
23 compliance with the P.A. and are being issued for
24 review in compliance with the P.A.'s time lines and,
25 you know, basically the framework it lays out for how
that process happens.

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1 MR. YOUPEE: I need that explanation exactly how
2 you said that, I need that in the minutes, and I need a
3 copy of that to my office, because I disagree with
4 that.

5 MS. GLIDDEN: Okay. Got that?

6 Do we have copies yet, or are we still waiting for
7 the copies?

8 MR. WITHROW: We're still waiting.

9 MS. GLIDDEN: Okay. Should we go ahead and start
10 on -- well, I guess in the meantime, I guess, I know
11 that you caucused all day yesterday. Did you have an
12 opportunity to actually caucus on the work plan at all
13 and the Office of Tribal Involvement? Just kind of
14 wondering where you're at with those items, with the
15 actual work plan, if you're comfortable with the way it
16 reads. Of course we had a committee that worked on
17 this last week, with Faith and myself and Russe'll
18 and --

19 MR. EAGLE BEAR: The single guy.

20 MS. GLIDDEN: Huh?

21 MR. EAGLE BEAR: The single guy.

22 MS. GLIDDEN: The single guy? Ben. Yeah.

23 So I just was wondering if we could get some
24 feedback from you on how you feel about the work plan
25 and the Office of Tribal Involvement the way it's been
laid out by the committee.

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2 MR. YOUPEE: If I can, I think that the rest of
3 the group needs to be brought up to speed on what we
4 provided you and Randy yesterday and so that they have
5 a full understanding coming from the tribes'

6 perspective and what you may have told them and what
7 we're involved in, and so if they want to take a shot
8 at that. Russell, Tim, Ben, anybody.

9 MS. GLIDDEN: I guess, you know -- I don't know.
10 I just was wondering if -- are you pretty much on the
11 same wavelength? I mean, aside from the questions that
12 you had yesterday, are you pretty comfortable with the
13 way the work plan, the OTI has been designed and
14 spelled out in the copies that you have? I know that
15 you have these other questions, and we're going to get
16 to those.

17 MR. YOUPEE: Well, let me do what I'm trying to
18 do, and please don't interrupt. The purpose of our
19 caucus yesterday is trying to find the clarity, and I
20 thought we brought that to Cathy in a good way so that
21 she could understand that, and that we needed time --
22 are those mine?

23 (Mr. Youpee receives copies)

24 MR. YOUPEE: That she would have some
25 understanding and provide her and Randy with clarity, 18

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1 and we attempted to do that yesterday.

2 But there was some differences, I guess, on what
3 we were trying to achieve, between Cathy and Randy.
4 Cathy gave him the cutoff sign, and we thought Randy
5 was really grasping what we were trying to offer in
6 terms of trying to find some synergy.

7 But what we wanted to do is look at the decision.
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8 Okay? Because we requested that the last meeting,
9 you'll recall, the conditions, and how those conditions
10 might be met with tribal initiative. Because we had a
11 work plan in front of us that we didn't know if it was
12 meeting compliance or how those things were done,
13 because we had no reports. We don't have an actual
14 plan for MD&E (sic) or STB or SEA or third-party
15 consultants or even the liaison on how we're supposed
16 to interact.

17 Now, there's clash of paradigms here. We have
18 Native American idealisms; we have European idealisms.
19 Now, the thing that we need to do is understand that
20 there's two different people here. As much as it's
21 hard for you to understand that or to grasp that, those
22 are some of the things that we have to overcome in
23 these sessions.

24 Now, I've seen how the process has been so far,
25 and the process have taken shape that you want to do

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1 things for tribal people, you want to construct and
2 model things for tribal people and give them input at
3 certain stages of the process, and it shouldn't work
4 like that. We should be collectively sitting at the
5 table in the morning with MD&E, third-party
6 consultants, and STB in those discussions. It's not
7 about you guys versus us guys. Okay? If we're going
8 to make synergy happen, it has to be in a collective,
9 in a mutual benefit manner.

10 Okay. What we tried to do yesterday is look at
11 the conditions here on the ruling. Okay? And look at
12 the P.A., look at the MOA, and kind of construct some
13 parity with the work plan. That was our intention, so

14 that we would have a better idea and knowledge of the
15 system or process that's in place, and that's very
16 difficult to do. It's very difficult to understand
17 this whole arrangement.

18 Now, what we have decided is that we need
19 additional caucus to finalize what we were trying to
20 establish yesterday. We got cut off, and they run us
21 out of the room. But all in all, the caucusing, tribal
22 caucusing, had a lot of hard work going on there, and
23 it was for mutual benefit. There was no intention --
24 and we were asked a couple of times whether or not we
25 were throwing this out, we don't like it, or what's

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going on there.

1 what we're trying to do is put this program here
2 into a long-term, long-range format that we can
3 continue to use over and over and over, not only in
4 this program but maybe programs down the road,
5 something that would be, I guess, readily available to
6 the tribes and other agencies, including state and
7 federal agencies, but something that would be a model,
8 something that would be a model.

9 Now, if we come into these meetings in an
10 adversarial attitude or a controlling attitude, you
11 know, it's never going to work. And we try to go
12 beyond the compliance to commitment in so many ways, so
13 many ways that we have to explain ourselves.

14 Does anybody else want to add anything?

15 MS. GLIDDEN: I want to add something.

16 MR. YOUPEE: Who?

17 MS. GLIDDEN: Me.

18 I understand what you're saying, and I'm very

20 disappointed because I don't feel as though I've come
 21 in here in an adversarial relationship. I don't feel
 22 that I've ever done that. And this work plan that we
 23 developed was developed with input from tribes in a
 24 committee meeting that we had last week.

25 The work plan goes beyond what was prescribed in 21
 1 the P.A. and the MOA. And remember that we can go back
 2 to that process, because that's really what's minimally
 3 required here. And I've worked personally extremely
 4 hard to try to work with the tribes and come up with
 5 something that I thought is fair and that incorporates
 6 tribal concerns.

7 We've had a lot of different meetings in which
 8 tribes have been invited to come and participate. Some
 9 tribes have come, some haven't. And we've come up with
 10 a document with tribes that spells out a process that I
 11 think is really an excellent document, something that
 12 actually, in my opinion, goes much further than
 13 anything I've ever seen as far as tribal involvement is
 14 concerned. And I think that this is required, given
 15 the size of the project, given the number of tribes
 16 involved.

17 But I think to say that we're coming in here in an
 18 adversarial relationship is unfair and it's not true,
 19 and I hope that you open your hearts to what we're
 20 trying to do, to what I'm trying to do, and that you
 21 don't lose sight of the fact that what we have here is
 22 kind of a profound and, I think, very progressive
 23 document, particularly the Office of Tribal
 24 Involvement, but -- and not lose sight of the fact that
 25 this office has got to be -- has got to be related to
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1 this project for us to expect DM&E to fund this. And 22
 2 if it becomes something else in the future, that's
 3 great. But in the interim, at the very onset it has to
 4 be related to this project, I think, because -- I mean,
 5 DM&E does not have to fund this. They're not required
 6 to fund this. But they're willing to do it. And I
 7 think that, you know -- just please don't view us as
 8 adversaries, because I don't feel like an adversary. I
 9 have never used that term in relationship to you, and I
 10 don't understand why you're using that term in
 11 relationship to me. I don't understand.

12 I'd like to work in a, just as Ambrose had
 13 mentioned, in the spirit of cooperation, without the
 14 forked tongue, in honesty. And that's what I feel I'm
 15 doing. And we're more than willing to answer all these
 16 questions that you had yesterday. But I just hope that
 17 you don't lose sight of how good this document is and
 18 how helpful it's going to be, I think, for the tribes
 19 in the long run.

20 MR. YOUPEE: You see me do some body language
 21 here. And that was purposely. I done that on purpose.
 22 Because that's the way I was treated yesterday when I
 23 was speaking, by Cathy. She showed me great body
 24 language.

25 MS. GLIDDEN: No, I went like this. (Indicating) 23

1 MR. YOUPEE: You did a number of things, and
 2 people seen you as well.

3 MS. GLIDDEN: I went like this. I've told several
 4 people that I went like this. (Indicating)

5 MS. HALVERSON: He has more witnesses than you do,
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Cathy. He has more witnesses than you do.

MR. YOUPEE: And so the body language, you know, whether that comes from institutional arrogance (sic) -- wherever it comes from --

MS. GLIDDEN: It's called frustration.

MR. YOUPEE: Yeah, yeah. And so we have an opportunity to vent our frustration as well.

But all in all, you know, if you don't get it your way, it's not going to go.

MS. GLIDDEN: No. But didn't you hear me?

MR. YOUPEE: I heard you. I heard exactly what you said. But I heard what Randy said as well, and Randy grasped what we were talking about more than you did, but --

There was a tribal member asking for just a small amount of time to continue -- or to finish the caucus. Is that possible?

MS. GLIDDEN: Okay.

MR. JONES: Let me just say, if it would be helpful, I mean, some of these questions that you had

yesterday, I think -- I mean, if we can -- would that help you at all in your caucus to have some kind of answer to those things before you went on?

MR. YOUPEE: No. The caucus extends beyond those questions. We'll finalize it, I guess, and then we can get back to those questions.

MR. JONES: That's fine with me.

(Discussion off the record)

MS. GLIDDEN: I know that a lot of these questions relate to the third-party contracting role, and we actually -- Dianne had sent a letter to STB requesting

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clarity on that role, and we responded in writing to that letter and sent copies to all the tribes and included a copy, I believe, of the MOU outlining the third-party contracting role.

We also have a document online that can be accessed through our web site that spells out the third-party contracting process and the protocols, and I believe that I've -- I think I've included copies of that as well. But I can get you copies of that.

The MOU that we have spells out the different relationships between STB, Louis Berger, and DM&E, and it's a signed document, and it includes enforcement if certain roles and responsibilities aren't complied with. We have that on line.

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We also have a financial disclosure statement which basically assures that there would be no, you know, improprieties in terms of that, in terms of financial dealings. For instance, Berger could not go and work directly for DM&E following this project.

So we do have a process, and it's an established process that the STB has to get third-party contractors on board to assist STB with completing its documentation, in this case to help us with complying with the programmatic agreement. So we have those documents. And in part we sent them out because Dianne had questions about that.

Did everyone receive copies of the letter that we sent to Dianne? Everyone was sent copies, everyone in this room, so --

MR. YOUPEE: Did you do e-mail or hard copy, or how did you do that?

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MR. WITTHORN: Sent it by mail.

MS. GLIDDEN: Did you want to talk about it at all, about the letter? Did you feel as though it clarified the roles and responsibilities?

MS. DESROSIERS: Well, yeah. And also it -- when I had written that letter, my concern was that we -- you weren't attending the meetings with us, and you know that your role is to -- that the tribes consult

with the lead federal, and that was my concern. That was why I sent that letter, because she wasn't in attendance at the meetings, or a couple of the meetings anyway, and I just -- that was a concern to me.

But she did send that and sent a copy of the MOU, and I didn't know if everyone received that, but -- it wasn't a secret. I think I mentioned it to a couple other THPOs, that I had concerns about that, so -- and so that letter kind of clarified that. And you've been here since, so I'm not complaining.

MR. EAGLE BEAR: Yeah, that was an issue back in Minnesota. We had some discussions, and we thought Randy was STB.

MS. DESROSIERS: At that point.

MR. EAGLE BEAR: At that point. And when we came back, later on, and then a week later or two weeks later, everything kicked in, you know, and so we were kind of concerned that something wasn't right. So we -- I think that was when probably Dianne asked for clarification.

MS. GLIDDEN: Okay. All right. Did you want to have some time to caucus now, or do you want --

MR. EAGLE BEAR: Yeah.

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MS. GLIDDEN: Okay.

(A recess is taken)

MS. GLIDDEN: Troy has offered to give a presentation on the web site. He's going to go through every step of it just so that you can -- you're very clear on exactly how to get in here and what this web site has to offer.

MR. KOGEL: Thank you for the opportunity to present to you the update --

MS. GLIDDEN: Can you use your microphone?

MR. KOGEL: Okay. When you enter in the web address --

MS. GLIDDEN: Troy, can I ask you a quick question? There's apparently some concern about the fact that not everybody has gotten their passwords.

MR. BIBLER: Who would that be? Because I have a list in here.

(Discussion off the record)

MS. GLIDDEN: Sorry. Go ahead.

MR. KOGEL: If you don't have a user name or password, talk to Cathy or Dave or Randy. They will get a user name and password generated for you.

But when you enter in the web address to Internet Explorer, it will bring up this web page, and that's where you type in your user name and password, and when you hit logon or login, and it will take you to the overview.

And the changes that we made on this page are the links to the STB web site. When you click on that, it will take you to -- it will take you to the STB web site there. And then we also have it set up to the

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5 DM&E folder. So if you need any information from the
6 environmental impact statements, that will be in the
7 STB/DM&E page.

8 MS. GLIDDEN: It's basically under key cases.
9 Could you go through that, just so they know exactly
10 where that is on the web site, Troy? Maybe make the
11 page big.

12 MR. KOGEL: It's right there in the corner, right
13 where the cursor is up here. These are the two links
14 right here. (Indicating)

15 MS. GLIDDEN: No, I mean on the page, on the STB
16 web page, if you could make that larger, just so they
17 can see what's there.

18 MR. KOGEL: As you scroll down, you get to the
19 bottom, and then that's where the documents are.
20 They're all in PDF format, and so they're downloadable.

21 MS. GLIDDEN: Keep going down. Just show them all
22 the documents that are there.

23 You can see the MOAs there, the programmatic
24 agreement and ID plan, and pretty much everything in
25 the DM&E documents, and the environmental impact

29

1 statement and the supplement, the record of decision,
2 the Eighth Circuit Court decision, everything that you
3 can possibly be curious about or want to have
4 information about is in there. Correspondence between
5 agencies. Pretty much everything. You can see the MOA
6 is there in volume, what is that, eight? It's the
7 entire document basically.

8 MR. KOGEL: The other addition to this page was
9 the log out button. Before we didn't have that, so
10 when you get done using the web site, to log off the

11 web site, you hit that button. You don't have to worry
12 about anyone else coming back to your computer and
13 being able to access any of the information on the web
14 site from your computer.

15 The one page that's seen the most updating since
16 the last meeting is the schedule, and what we've done
17 is we've added a calendar. For example, if you click
18 on February 12th or 13th, it will highlight the
19 corresponding event on the right side of the web page.
20 You can click on, for example, the meetings for
21 March 11th and 12th are already posted, and you can
22 explore those for the rest of the year.

23 MS. GLIDDEN: Troy, can you go back to the report
24 review periods, because that's kind of critical, I
25 think, on the schedule.

0

1 MR. KOGEL: Here we go. If you click on
2 February 20th, which is the end of the report review
3 period, it highlights the report from Augustana, the
4 Burns & Mac report, and then two of the TRC reports
5 done for Wyoming.

6 The next page hasn't seen too many changes. We
7 just added some maps that you can download for your
8 use. For example, if you click on the one on the top,
9 it will show you the PRB project segments. The other
10 three map books are fairly large so they will take a
11 little bit of time to download. So I recommend that if
12 you do download those that you don't navigate away from
13 this -- from the web page.

14 MS. GLIDDEN: Are these those huge map books, the
15 big ones, the long ones?

16 MR. KOGEL: These are 11-by-17 pages, and what
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17 they are is they're like a topo layer, and then it has
18 the alignment with the right-of-way on it.

19 MS. GLIDDEN: So it doesn't actually show

20 archeological sites or anything?

21 MR. KOGEL: No, it doesn't, not at least right

22 now.

23 MS. GLIDDEN: Okay. Okay.

24 MR. KOGEL: Then for the archeological reports,

25 there's been some significant changes to this page. 31

1 The overall layout has changed. For example, we've got
2 the reports with the beginning and ending review
3 period, and then if you want to download one of the
4 reports, you click on the view to report, and then the
5 dropdown menu will show you all the documents within
6 that folder for your review.

7 Then it also has this document, which is a review
8 form that will help you in --

9 MS. GLIDDEN: Can you click on that?

10 MR. KOGEL: Well, we have to download it and then
11 open it. I don't know how much time you want to spend
12 doing that.

13 MS. GLIDDEN: Yeah, a few minutes. I think it's
14 important, because basically what this allows you to do
15 is to provide comments on the form right here online,
16 and that's -- it saves a lot of time.

17 MR. KOGEL: Here's an example of the form for the
18 Burns & Mac report. It shows all the sites that
19 comments are required.

20 One thing that -- one of the upcoming changes to
21 the web site will be hopefully the ability to fill out
22 these documents and then resubmit them to the STB or

23 Louis Berger directly on the web site.

24 MS. GLIDDEN: So we have all the reports that are
25 currently up for review on this web site that can be
0 downloaded? 32

1 MR. KOGEL: That is correct.

2 MS. GLIDDEN: And then you can basically provide
3 your comments with this form?

4 MR. KOGEL: Right, exactly.

5 MS. GLIDDEN: Right there. Okay.

6 MR. JONES: But you can't submit that form back to
7 the STB's web site.

8 MR. KOGEL: Not yet.

9 MS. GLIDDEN: But you could e-mail it, you could
10 e-mail it. You could download it, fill it out, and
11 then e-mail it to me.

12 MR. KOGEL: Then also the next page is
13 architectural reports, and it works the same way as the
14 archeological page.

15 MR. YOUPEE: So who has access to this?

16 MR. KOGEL: Basically it's going to be most of us
17 in this room, if not all of us in this room, and then
18 any -- I guess there would be the Surface
19 Transportation Board -- if you go to the org chart, it
20 will tell you who will have access to the web site.

21 So, for example, if you click on the STB/LBG box
22 at the top, the people listed are the people who have
23 access from those two organizations.

24 If you click on the THPOs, user names and 33
25 passwords for all these folks have been generated and
26 hopefully distributed. And then from Summit and SWCA,

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those last eight, those are contractors, and they do not have access to the web site. But if you're from HDR, state SHPO, DM&E, one of the federal agencies, THPO, or from the Surface Transportation Board or LBG, the people that are listed are the people that have access to the site.

MR. YOUPEE: Have you got any type of tracking?
MR. KOGEL: We do. At the bottom here is a log, and it does keep track of who visits the web site. It does keep track of the login name and the action that was done on the web site, whether a report was downloaded or viewed, the time and date, and then the IP address of the computer that was used to access the web site.

Just also on another security issue, we've just purchased an encryption -- it's called an SSL. It's a secured socket layer. It's an encryption program that secures the connection between the PC and the server that houses the web site. So that's as -- it's as safe as it gets.

To go back to the meetings, if you ever needed to get the minutes from the meeting like last October out in Rapid City or the one last month, you can go and you

can click on these and download the entire transcript from that meeting.

One other quick thing on the organization chart, this envelope next to the names, when you click on it, the e-mail address for that individual will drop down, and if you click on that --

MR. BIBLER: That one is wrong.

MR. KOGEL: When you click on that, it will open

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up Outlook, and their address will be put into the "To" line, and then you can just go ahead and type your message.

Then with the programmatic agreement, that's also on the STB web site, and that hasn't changed. That's the same as it was in January.

MR. YOUPEE: Troy, do you have the same mechanism for tribal organizations as well, with that envelope capability?

MR. KOGEL: We do. I've just started to receive some of the e-mail addresses, and I'm preparing a list, and they will be entered probably within the next week.

MR. YOUPEE: Good deal.

MR. KOGEL: We've already discussed the log. So I think that's pretty much it, unless anyone has any specific questions.

MS. GLIDDEN: Yeah, anybody have any thoughts for additions or anything else that you think would be valuable to have on the web site?

MR. KOGEL: One thing that I did touch on a little bit, we're hoping to have an upload capability. So if you're working out in the field later this spring or summer and you have hours to report or per diem that needs to be reported to Louis Berger that you'll be able to take that document and submit it on the web site and it will go directly to them.

MR. YOUPEE: It will be a form then?

MR. KOGEL: It will be a form, correct.

MR. BIBLER: And as far as passwords, we've sent out letters to, I think, everyone with a password. I think we got one kicked back for one bad e-mail address

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16 we have.

17 If you have other folks at the tribe that you
18 would like to have access -- Sisseton-Wahpeton just
19 asked for Jim Whitted to -- he just requested that.
20 Ben Rhodd asked for one as well. I believe we've
21 already done that. I'll have to resend that to you.

22 But --

23 MR. KOGEL: Yeah, I -- we generated Ben's user
24 name and password on Monday, so --

25 MR. BIBLER: So you'll get that soon. Jim Whitted
will get his. Conrad has already got his. I gave him
his letter now. And so does Dianne.

So if you have other individuals that you would
like to have access to this valuable tool, let us know,
and we'll set that up and get it to you within a few
days generally, so --

It's very valuable. There's a lot of stuff on
here. So far from -- as far as yesterday, I think only
one tribal person has logged on. So please try and use
this as much as possible.

MS. HALVERSON: So are you having us log on -- are
you keeping track of who logs on and --

MR. BIBLER: Yes, absolutely.

MS. HALVERSON: -- when and -- are you going to
use this as consultation?

MR. BIBLER: It's more of a convenience for you
folks. So I don't know whether that would be
considered consultation or not.

It's a good way to access reports and respond,
things like that, and follow, get access to documents,
MOA, everything. Even the transcripts for the last

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couple of meetings are already on there, so --

MS. GLIDDEN: No. I mean, it's not consultation.
It's just, again, you know, as David had mentioned, a
way to make this process of information flow easier for
everyone. That's the whole point of it, just to make
it easier.

MS. HALVERSON: But you're keeping records of who
logs in and when they log on.

MS. GLIDDEN: Yeah, the IP --

MR. KOGEL: Yeah, the user names and the IP

addresses are saved in a log as a security precaution.

MS. GLIDDEN: Do you want to explain what the IP
address is? I'm just sort of vaguely aware of it.

MR. KOGEL: IP address is basically, every PC has
a distinct numbered address that's unique to that
computer, and so basically -- where it says, "IP
address," that's generally what it would look like.
That's just a unique characteristic to be able to track
which computer was used to access the web site.

MS. GLIDDEN: So Allen logged in from several
different computers, correct, based on that?

MR. KOGEL: There's two. There's one, the IP that
starts with 10.14.25.49. Then another one that starts
with 66.

Does anyone else have any other questions? Thanks
very much.

MR. YOUPEE: Good job.

MS. GLIDDEN: Thanks so much.

MR. KOGEL: You're welcome.

MS. GLIDDEN: Okay. I guess we'll jump right into
discussing the work plan.

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(Discussion off the record)

MS. GLIDDEN: Chase, is this the work plan that we presented, or is this the work plan with some changes or --

MR. IRON EYES: This is the work plan that you had last worked on and we got through maybe, you know, probably 30 percent of it --

MS. GLIDDEN: 30 percent of it.

MR. IRON EYES: -- recommending changes, additions and stuff, just other, you know, concerns that we had so -- I don't know if we can get Tim, Curley, or Russ to grab a mic and --

MR. EAGLE BEAR: This is the plan that we were working on, Randy, with the proposed changes, and we just went through it and made some amendments in there. These guys can explain it.

MS. GLIDDEN: Do you want to go ahead and explain those? We'll certainly take them under advisement.

MS. HALVERSON: What did you mean by that? What did you mean by that, Cathy?

MS. GLIDDEN: Exactly what I said.

MS. HALVERSON: You'll take them under advisement?

MS. GLIDDEN: We had a committee last week that went through the work plan.

MS. HALVERSON: I know, but you changed some stuff in here since we had that meeting last week. You put some bullets in here that we didn't -- the tribes here that were there last week said, we didn't agree on that.

MS. GLIDDEN: What kind of bullets?

MS. HALVERSON: On page 3. Right, Jim?
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MR. YUPEE: Either you did or you didn't.

MS. GLIDDEN: Those bullets are just bullets from either -- that are either from a programmatic agreement or the MOA. I just inserted bullets from the MOA based on the fact that Scott Jones had said that he wanted that -- those bullets incorporated in there.

MS. HALVERSON: Then what did we meet last week for then if you were going to do this anyway?

MS. GLIDDEN: I'm pretty sure that this was incorporated in when we met.

MR. WHITTED: We talked about last week when we were working on this that this wasn't a final draft, that the other tribes still needed to have their input in it, we were just working on the work plan.

MS. GLIDDEN: I don't recall that. I recall that we had decided that the committee was going to --

MR. WHITTED: Well, we can't speak for all the rest of the tribe.

MR. YUPEE: Cathy, now, in all honesty, I called you on the phone regarding what was going to happen. You told me that the rest of the tribe would have input regarding what has been developed, that they would have final say.

MS. GLIDDEN: Weren't you talking primarily about the Office of Tribal Involvement?

MR. YUPEE: No. I was talking about the work plan.

MS. GLIDDEN: Well, let's go through your concerns, and I'll see if I can address them.

MR. YUPEE: Well, stay honest.

MR. MENTZ: Cathy, I have a question then. If

14 you're saying, "taking under advisement," we're looking
15 at this document, and it's basically highlighting
16 stipulations or conditions under 105, 106, 7 and 8, and
17 we're reading the front page, and when you get to the
18 second page, it says these are based off of ESE or ESA
19 or EAS, whatever that is.

20 MS. DESROSIERS: SEA.

21 MR. MENTZ: -- SEA compliance to the court orders,
22 and 106 and 107 specifically mention the two bullet
23 points that you have on the front here, and it says
24 right there that you're complying.

25 So is this a compliance document that we're trying
41

1 to refine or get consultation where we get input in, or
2 are we talking about a work plan that's sitting in
3 front of us right now that we're going to go through
4 that may or may not include changes that we want
5 included?

6 MS. GLIDDEN: Let's go through the changes.

7 MR. MENTZ: No, I'm just asking because there's no
8 sense in going through it then if you're not going to
9 consider those types of --

10 MS. GLIDDEN: I said I would take it under
11 advisement, which means that I would consider it.

12 MR. MENTZ: Okay. What you're saying, what's your
13 definition of "under advisement"? So it may or may not
14 change?

15 MS. GLIDDEN: I think we should go through the
16 changes.

17 MR. YOUPEE: Are we still a working group? This
18 is a work plan. Are we still a working group?

19 MS. GLIDDEN: Well, we're not the work group for
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20 the work plan. The work group for the work plan
21 consisted of, you know, Russell and Pam and myself and
22 Randy and Dianne --

23 MS. HALVERSON: You're working us against each
24 other from the middle again.

25 MR. MENTZ: Well, let's go through it. 42

1 MS. GLIDDEN: Let's just go through it.

2 MS. DESROSIERS: Yeah, let's just go through it.

3 MR. IRON EYES: So this is --

4 MS. GLIDDEN: So what page are we on? Oh, the
5 front page. Okay.

6 MR. MENTZ: First of all, if you look on A, you
7 have two goals there, completing a field inventory and
8 developing a tribal study, and I think that's what it's
9 saying is you're trying to meet those SEA issues that
10 have been identified through a court ruling.

11 You have -- I'm assuming the Surface
12 Transportation Board's Section on Environmental
13 Analysis came up with this plan. So initially, just to
14 be clear, we never had a part of this, to put this
15 original plan together. I think it was your department
16 that put it together.

17 MS. GLIDDEN: No, that's not true. We worked on
18 this together.

19 MR. MENTZ: No, no, no. Initially. I know, you
20 brought us a plan to work on.

21 MS. GLIDDEN: No, no, no. We worked on the plan
22 last week, and we've been working on it, you know,
23 through a series of e-mails.

24 MR. MENTZ: I know. But you're not listening to
25 what I'm saying. Originally, okay, who put this
Page 34

1 together before the tribes came to work on it. It's
 2 the people up here right on this line. Am I right or
 3 wrong? And all I'm saying is that you have two bullets
 4 here, and up here we're going to propose two more
 5 bullets.

6 MS. GLIDDEN: Okay. Let's go through your
 7 concerns. Let's just do it.

8 MR. MENTZ: Well, I guess I wanted to know where
 9 this came from first.

10 MS. GLIDDEN: We had a committee, and I think
 11 that -- I mean, I'm very unclear about why this is a
 12 question, because last week we had a committee that
 13 met -- can everyone raise their hand who was part of
 14 this committee.

15 MR. MENTZ: Okay. Wait. Now, let me ask this:
 16 Is this part of meeting the stipulations of the court
 17 order?

18 MS. GLIDDEN: This has nothing to do with the
 19 stipulations aside from the fact that we're trying to
 20 implement a process that goes beyond the programmatic
 21 agreement and that incorporates the provisions of the
 22 MOA into one document that lays out a process, a work
 23 plan, to implement --

24 MR. MENTZ: Well, what I'm referencing is on page
 25 2, B, you say, "On February 13, '06, STB issued its 44

1 Decision. Approval of the Project stipulated that DM&E
 2 comply with 147 conditions."

3 That's what's kind of confusing us a little bit.

4 Is this a document that fits some of those stipulations
 5 where you're meeting the requirements?

7 MS. GLIDDEN: Well, I mean, if you keep reading,
 8 it says that, "Four of these conditions were developed
 9 to mitigate the project's potential impacts to cultural
 10 resources. This work plan primarily addresses
 11 compliance with the provisions of Condition 106 and
 12 107."

13 MR. MENTZ: Well, that's what I just asked, and
 14 you said no.

15 MS. GLIDDEN: No what?

16 MR. MENTZ: That it does not meet -- I just said,
 17 are you meeting the stipulations from the court? I
 18 mean, it's just a simple -- it's not unreasonable to
 19 ask.

20 MS. GLIDDEN: Well, yeah, we're meeting these two
 21 conditions.

22 MR. MENTZ: Okay. That's all I asked.

23 MS. GLIDDEN: We're not meeting all 147 conditions
 24 in this document.

25 MR. MENTZ: Okay. There. I wanted to hear that.
 45

1 MS. GLIDDEN: We're not.

2 MR. MENTZ: So this is just meeting a portion of
 3 them, right?

4 MS. GLIDDEN: Absolutely.

5 MR. MENTZ: Okay. Well, how horrible is that to
 6 say?

7 MS. GLIDDEN: I guess I was unclear.

8 MR. MENTZ: Well, that's why I'm unclear too.

9 When you confuse me, then I'm confused to the point
 10 where I've got to ask that question. I'm not trying to
 11 be hard.

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MS. GLIDDEN: Okay.

MR. MENTZ: I'm not trying to pull a hard line here. All I'm saying is, this is -- initially the tribes never put this together is what I'm saying. Right?

We worked on this plan, something that was put in front of us, so -- just, the record should show that. This is not coming from a tribal work group, this plan. It was set in front of us.

MS. GLIDDEN: Yeah, the plan is coming from a work group. Like I said, there were several people here involved in a -- are you talking about this work plan right here? (Indicating)

MR. MENTZ: Let's go forward.

46

MS. GLIDDEN: Well, I just think I need to be clear.

MR. WHITTED: The original work plan you presented in Rapid City, and then we put together the work group to input -- put more input into it from the tribes, and that's what we did last week.

MS. GLIDDEN: Right.

MR. WHITTED: And now the tribes are saying they wanted additional information after reviewing what we put in there.

MS. GLIDDEN: That's fine.

MR. WHITTED: Okay.

MS. GLIDDEN: But I think it's unfair to say that the tribes have not been involved in this work plan and that I've just thrown it on all of your tables.

MR. MENTZ: I didn't say that, Cathy.

MS. GLIDDEN: Okay.

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MR. MENTZ: What I said is, the tribes didn't put this together.

MS. GLIDDEN: Helped to put it together.

MS. DESROSIERS: Initially.

MR. MENTZ: No. Initially. Because you came off a court ruling that you went back and had to --

MS. GLIDDEN: Herb --

MS. DESROSIERS: Yeah, Herb, you're the liaison.

47

Come on.

(Discussion off the record)

MR. JONES: We just need to get back to how this got started. This isn't a product of the court order or anything.

What this was, if everybody will recall, when we met last year in Rapid City, after tribal caucus, there was a document that came out dealing with the tribal study, and that was the document that actually served as the basis for this entire process that we're in today. That's what it was.

We sat down, you guys caucused, Curley presented the plan. STB took that plan back and made revisions to it, talked it over, and they came back with the work plan that everybody saw a month ago, and that meeting a month ago was to be able to sit down, after that had been in circulation for, I don't know, a month or thereabouts anyway, for everybody to look at, and last month we were going to -- at the meeting, again, I think STB was going to, through consultation, visit about what the tribes' view of that work document was, and at that meeting things came up that people said they weren't prepared to finalize anything yet, you had

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24 only gotten halfway through your caucus and not all the
25 way through the document. So they put a working group 48

1 together, which met here last week, to refine that
2 document further, and this is the product of -- this is
3 the final product that started back in whatever that
4 was, September or October, Curley, when you guys had
5 the caucus and came up with that tribal study.

6 MR. YUPEE: But I think we're splitting hairs as
7 far as what is final, and what is in total agreement
8 between tribes.

9 What we're hearing is that tribes' participation
10 happened during this work group and that's it, we had
11 participation, when actually the transcribed concurred
12 with us, the rest of the tribes, that they were going
13 to bring this information back to the other tribes for
14 concurrence or for any amendments that they felt
15 justified.

16 MS. GLIDDEN: Well, we'll --

17 MR. MENTZ: It's misleading when you say that
18 you'll take it under advisement. That's my --

19 MR. YUPEE: Yeah, that --

20 MR. MENTZ: There's no sense in me sitting here
21 today then if you're just going to take it under
22 advisement what we're going to try to assist in the
23 process.

24 MS. HALVERSON: Cathy, you made this final. The
25 tribes that were here at that committee meeting or 49

1 whatever, we were not -- we told you that it was not
2 final, and I remember that before I left here, that we
3 said it was not final.

4 MS. GLIDDEN: Let's go through and see what we
Page 39

5 need to change then.

6 MS. HALVERSON: So it's not a final -- this is not
7 final then, right?

8 MS. GLIDDEN: This is not final.

9 MR. IRON EYES: Okay. In addition to the two
10 goals that were developed last time, the group came up
11 with Nos. 3 and 4 up there. Those are prime concerns.
12 I'll just read them aloud, and that way you can
13 respond.

14 Tribes, we would like to be included -- include
15 tribes, cultural resource reps and THPOs as
16 participants and recipients in the quarterly and annual
17 reporting process. We would just like to be, you know,
18 privy to the same information that's being kicked
19 around.

20 No. 4, we would want -- we would like the STB to
21 be required to initiate meaningful consultation with
22 THPOs, CRRs, and other interested parties prior to the
23 state historic preservation officers' concurrence to
24 all final determinations of archeological reports and
25 TCPs.

0 50

1 MR. MENTZ: Those are two new goals we're adding.

2 MS. GLIDDEN: That's fine.

3 MR. IRON EYES: Any response to that?

4 MS. GLIDDEN: No, I think that's perfectly
5 legitimate. The only thing is, is that I would say
6 that as far as the SHPO concurrence, I guess I'm
7 confused why -- I mean, of course it should be -- I
8 mean, if you want this to be in here, that's fine,
9 but I think we are doing this, and that's already in
10 the work plan. But if you want to put it there, that's
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fine, at the very onset. Herb?

MR. JONES: Yeah, and I'm not going to belabor this, but I think what I'm reading into No. 3 is something that is probably from mitigation condition No. 147 with the quarterly reporting, which really doesn't have anything to do with this -- that's on the 147 mitigation conditions that you do that reporting.

I mean, if additional reporting is necessary -- I don't know, I mean, I just -- I think that there may be some confusion about what mitigation condition 147 requires and who that reporting is to, because that's not -- that's not a condition that's specific to cultural or historical preservation. That's a report to the STB, 147 mitigation conditions, most of which are not relevant to this.

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But whatever. If that's where that's coming from, I'd just note that.

MS. GLIDDEN: Okay.

MR. MENTZ: Do you have a comment on No. 4?

MS. GLIDDEN: Well, I guess I'm confused about the initiation. What have we been doing here? We haven't been consulting?

MR. MENTZ: Shall I respond to that?

MS. GLIDDEN: Sure.

MR. MENTZ: I'm the one that, I guess, initiated that thought in that process, and that's why No. 4 is up there.

The reason we want STB to initiate meaningful consultation is simply because when there is a determination of effects that's going to occur, in other words, all these reports like you're talking

about this afternoon, we're going to go through 1, 2, 3, 4 of these reports, when that occurs, they make a recommendation to you as a federal agency on a determination of effects for what has been, I guess, identified within the archeological reports.

What we're getting caught up with is, at that point when that happens, I mean, that's a specific time line that goes to the federal agency, the lead federal agency. In that portion of that process tribes are not plugged into the final determination of effects.

MS. GLIDDEN: They are.

MR. MENTZ: How?

MS. GLIDDEN: Well, in the work plan.

MR. MENTZ: Well, we're making sure it's going to be there. What we're saying is that prior to the SUPPOS signing off on a determination of effects, a concurrence that we're going to have one more time to talk about those identifications and evaluations, or the lack of evaluations. When you have, "not eligible," we want to go through all of that.

MS. GLIDDEN: Yeah, I mean, that's in the work plan, and that's why we have these sign-off forms and --

MR. MENTZ: That's why it's a goal.

MS. GLIDDEN: -- and so on, but if you want to state that as a goal, that's fine.

MR. MENTZ: I think we need to.

MS. GLIDDEN: Okay.

MR. MENTZ: Because there's a lot of other federal agencies that are watching each one on how they conduct consultation, or meaningful consultation, plus the

23 determination of effects. So that's the reason why we
24 want that in there.

25 MS. GLIDDEN: I think it's fine.

53

1 MR. YUPEE: Checks and balances.

2 MS. GLIDDEN: Okay.

3 MR. IRON EYES: You guys have to help me out in
4 remembering where we suggested revisions.

5 MS. GLIDDEN: So if these are -- if there are
6 minor revisions, we'll just incorporate them. So if
7 you want to just go to the substantive stuff. Anything
8 minor, we can just go ahead and -- go ahead and enter
9 that in.

10 MR. JONES: Could I just request a copy too --

11 MS. GLIDDEN: Absolutely.

12 MR. JONES: Could I get the red-line version so we
13 can see what that is?

14 MS. GLIDDEN: Me too.

15 MR. MENTZ: Maybe that's what we should have did
16 before we did this.

17 MR. MADSEN: So those red lines are yours, Cathy.

18 MS. GLIDDEN: They are? I don't know.

19 MR. IRON EYES: Yeah, the red lines are Cathy's.

20 MS. GLIDDEN: They're mine?

21 MR. MADSEN: And yours are bold, or something like
22 that?

23 (Phone rings)

24 MS. GLIDDEN: So those red lines are mine, right?

25 MR. IRON EYES: Yeah.

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1 MS. GLIDDEN: Basically, just to let you know what
2 I added in, you know, on page 2, I added in some --

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just some language from the section 106 regulations.

That's what I did there.

where it says, "The section 106 regulations at 36
C.F.R. Part 800 require that STB provide tribes a
reasonable opportunity to identify their concerns about
historic properties, advise on the identification and
evaluation of historic properties, including those of
traditional religious and cultural importance,
articulate their views on the undertaking's effects on
such properties, and participate in the resolution of
adverse effects."

So that's something that I did add in after our
meeting, and I just added that in because it's -- it's
directly from the 106 regulations, and it makes very
clear about what we need to do as far as incorporating
tribal issues and concerns. And I made reference to
the exact provision.

And one of the other things I did after our
meeting was to just include information regarding the
other conditions in terms of -- just to give you an
idea, because I guess you're concerned that I made some
changes, but the other thing I did was just change the
order of the different bullets so that they kind of fit

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more in line with the 106 process.

The bullets basically come either from the
programmatic agreement or the MOA, and I've made
reference to the bullet that deals specifically with
the MOA, because some of the wording in the MOA is a
little different than in the programmatic agreement.

So that's -- that's really the main change that I made.

The other thing is, based on comments from DM&E, I

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10 just made the Office of Tribal Involvement more geared
11 towards the project, because that's kind of what they
12 wanted, since it's going to be based -- their funding
13 of it is going to be based on completing project
14 activities.

15 I also took out some language in the treatment
16 plans because when we had talked during our meeting,
17 that was one of the issues that the tribes wanted to
18 discuss in caucus, the whole treatment plan question,
19 because there was some language in there I think that
20 was unclear. So I just made it very short and made
21 reference just that the treatment plans will be
22 developed. "STB will develop treatment plans in
23 cooperation with DM&E, appropriate federal agencies and
24 SHPO/THPO or officially designated tribal
25 representatives to outline agreed-upon procedures to
26 avoid, minimize, or mitigate adverse effects to

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1 National Register eligible or listed historic
2 properties identified within the project's APE(s).
3 Treatment plans will be developed following the
4 identification and assessment of historic properties,
5 to include both sites identified in archeological
6 reports and those sites identified by tribes as
7 significant."

8 You know, after we had that meeting, I just tried
9 to make the document more, I don't know, just to
10 address the concerns that were brought up during our
11 meeting, and then the comments that DM&E had, so --
12 just as an explanation.

13 Anyway, Chase, do you want to go on? Sorry for
14 interrupting.

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16 MR. IRON EYES: The next suggested change is up
17 there. It's in the dark blue, and that's really as far
18 as we got this morning. I don't really know -- if
19 somebody wants to talk about, you know --

20 MS. GLIDDEN: What page is this?

21 MR. IRON EYES: -- kind of the scope of the
22 two-week time period. Our wish is to extend it to 30
23 days to complete.

24 MR. JONES: Page 4(a).

25 MR. IRON EYES: Page 4(a).

0 MR. MENTZ: Under (b), there's two weeks where 57

1 after we complete the field review; we want that to be
2 30 days instead of two weeks. It stays more consistent
3 with the time lines that you have stated above.

4 MS. DESROSIERS: Because it's 30 days for the
5 above.

6 MR. JONES: Cathy, the reason -- I think you go
7 back to this. The reason for the time line that you
8 have up there in the first place, the two -- I'm
9 assuming here, if we're talking about the two-week
10 period following the 30-day THPO review, and then you
11 have the two weeks where it's our responsibility to get
12 folks back out in the field for those fields, and then
13 two more weeks to get those results back to STB, and
14 what that -- the reason that was done, that's a full 60
15 days from the beginning of the archeo review report to
16 the end of that period. That 60 days is in compliance,
17 is consistent with the P.A., which says the 30 days and
18 then 30 days before it goes to SHPO. So I mean, that's
19 where the 30-day, that's how that was put together to
20 fit into the P.A. time line.

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21 The one that you have up there, the two weeks was
22 to keep that so that you'd have two weeks to get the
23 fieldwork done and then two weeks to get that report to
24 STB prior to going to the SHPO. The SHPO is supposed
25 to be 60 days after you started the review process with
58 the THPOs.

1 MS. GLIDDEN: Well, I guess, I can sort of
2 understand the concern here because -- I mean, so if
3 they're going to be out in the field within -- let's
4 see. How long? It would be two weeks after the normal
5 30-day review period, right?
6

7 MR. JONES: That would be extending -- again, the
8 P.A. says that there's -- the time line in there is 30
9 days for the THPO review. Then that report was to be
10 in to STB, and then STB would have 30 days to get that
11 out to the SHPOs.

12 We, in this process, created another way to add to
13 that report before it goes to the SHPO after the 60
14 days it's in the P.A., and that was -- that's how this
15 was arrived at, two weeks to do the field reviews, two
16 weeks to get the report in that addresses that, and
17 then you stay on line, on target with the P.A., which
18 has the 60-day window.

19 You know, we have to make sure, too, we can get
20 people out there if there is some extenuating
21 circumstance where we're not able to do that, we would
22 understand that. But that is to be compliant with the
23 P.A., the 60 days in the P.A.

24 MS. GLIDDEN: So how soon after they -- let's say
25 tribes wanted to get out in the field would -- I mean, 59

1 how soon would you be able to get them out there? That
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2 would vary.
3 MR. JONES: Well, that's why we've said we'll --
4 again, the art of trying to figure out how you get
5 everything done. But that's why we had these two-week
6 periods after the report goes out, we're going to be,
7 that week, scheduling time in advance of anybody
8 telling us what we need to do so that we can be out
9 there and get those things out there in that two weeks.
10 we're trying to get that done to stay in compliance
11 with the P.A. that says everything should be done in 60
12 days.

13 So it's going to be our job to make sure we get
14 people out there and to do it in a timely way. But
15 that does provide an additional two weeks to get that
16 additional report done if that is necessary. That may
17 not be necessary. But if it is, that's where that came
18 from. And I'm hopeful that we can get that done in
19 that way.

20 Again, if there's an act of God that prevents us
21 from getting out there and doing the work that needs to
22 be done, I can understand that, and you would
23 understand that as well. But, again, to be consistent
24 with the time lines that are already established,
25 that's how we came up with this in the first place, of
60 the additional way of getting out there.

1 MR. YOUPEE: I think that's kind of confusing if
2 you break it down into four weeks or two weeks and two
3 weeks. I think we should leave it at 30 days for the
4 flexibility to get that review done within maybe a
5 three-week period, then having that last week to do the
6 reporting.
7

8 MS. GLIDDEN: Should we just rewrite that to
9 say that we'll have just the 30 days --
10 MR. RHODD: It needs to be rewritten because the
11 way you've got it saying now, it's saying that two
12 weeks we're going to have to have a report in. I mean,
13 that's the basic what's there. So that's the reason we
14 looked at it and said, that's not right.

15 MS. GLIDDEN: Well, we have the -- the thing is,
16 though, we do have that original 30 days that you'll be
17 reviewing the report. So you'd have that 30 days
18 already in which you've reviewed it. And so the
19 presumption would be -- I mean, I would think --

20 I've got this question for you: Supposing they --
21 let's say the tribes get the report, and within that
22 30-day time frame, the initial 30-day time frame,
23 tribes realize that they need to go out there. Can
24 they get out there within that first 30-day time frame
25 and then go ahead and still have these other -- you 61

know, the other 30-day time frame to respond?

MR. JONES: Well, we would make every effort to
accommodate that. It's in our interest to try to help
people get things done because --

MS. GLIDDEN: Okay. Would that work? Because
that way within the initial 30 days you'd be able to
get out in the field and still have the other 30 days.

MR. JONES: Well, I would just say that same
thing. It doesn't necessarily take 30 days for
somebody to let us know that they're going to need to
be out in the field, and to the extent that those
things can be accommodated, I would sure hope we'd
stick with the time line that you've got.

MS. GLIDDEN: Well, we could --

MR. JONES: I'm concerned if you don't stay within
the time line of the P.A., but I think we've got a way
that we can work with people to make that work and
accommodate that extra step that I'd hope we can get
done.

MS. GLIDDEN: I mean, yeah, ultimately you've got
60 days.

MR. RHODD: Well, it's just the way that it's
written.

MS. GLIDDEN: Let's go ahead and rewrite it then.

MR. RHODD: It needs to be rewritten with clarity 62

of what you're implying here, because that two weeks
would put a --

MS. GLIDDEN: Right. Let's go ahead and -- we'll
just go ahead and change that. In the instance
where --

MR. JONES: Well, can I just -- Cathy, can we work
with Ben on that? If there's a way to just -- if
there's a better way to say in the 60 days that the
report will be submitted and the fieldwork done and any
additional reporting can be completed within that 60
days --

MS. GLIDDEN: So it would be 60 days.

MR. JONES: -- but, I mean, however -- I mean, I
understand what you're saying, Ben, and I think there's
some language that would put some flexibility in there
in how that's done.

MR. RHODD: It will and give time to provide
comments.

MR. JONES: Okay.
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20 MS. GLIDDEN: Let's plan on doing that then. Can
21 we just block that out and make --

22 MR. MADSEN: Just take out that clause.

23 MS. GLIDDEN: -- and be ready to change it.

24 MR. MADSEN: Just take out the clause. Maybe just
25 take out the clause.

1 MS. GLIDDEN: Yeah, take the "two weeks" out for
2 sure, but let's figure out --

3 MR. MADSEN: "eligibility of potential TCPs,"
4 period, and then, "each THPO or the cultural resources
5 rep will submit formal comments directly to the STB."

6 MS. GLIDDEN: Yeah, so basically you'll have a
7 total of 60 days.

8 MR. RHODD: Right, right.

9 MS. GLIDDEN: And you can get out there within two
10 weeks if you want.

11 MR. RHODD: Because this is too convoluted. I
12 mean, you're talking almost 44 days and then --

13 MS. GLIDDEN: Take it out.

14 MR. IRON EYES: Take --

15 MS. GLIDDEN: -- the "two weeks" out.

16 (Discussion off the record)

17 MR. MENTZ: I have a question. DM&E, as far as
18 putting on your consultants that are doing the survey
19 itself, archeology surveys, you know, the offset to
20 that is put out the tribal people the same time the
21 archeologists are out there. Because right now what
22 you're doing is that archeology firm, even though
23 there's one or six, are breaking up segments.

24 one may not take a week, one may take three months
25 to do a corridor section that they're required to look
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1 at. But the point is, what I'm saying, whether they
2 have a month, three months, or six months, when it gets
3 to the tribes and the report finally hits on the table,
4 the tribes only have 60 days to react to even include a
5 TCP survey of those areas that they have to walk, or
6 seem significant, versus if you take that out, then I
7 think the tribes need to move at the same time as the
8 archeologists. That's the offset to that.

9 MR. JACKSON: That's what's intended by the work
10 plan. That's what the intention was is to have --

11 MR. MENTZ: Well, that doesn't say that up there
12 right now.

13 MS. GLIDDEN: Look at the -- okay. In (c),
14 "Process for Tribal Participation in New and Ongoing
15 Archeological Fieldwork." That's under (c).

16 MR. MENTZ: No, I understand that. I'm just
17 posing a question to you. Do you understand what I'm
18 saying? Putting the people out there at the same time
19 your field people get out?

20 MR. MADSEN: Yes.

21 MR. MENTZ: That's never been done yet, right?
22 We've never been out there when you have
23 archeologists --

24 MS. GLIDDEN: Yeah, they have.

25 MR. MENTZ: They have.

1 MS. GLIDDEN: We have. And that's part of what
2 (c) says.

3 MR. MENTZ: No, I see that, what's under (c). But
4 I'm saying, in the real world, in the perfect world it
5 doesn't work like that.

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MS. GLIDDEN: Well, it has actually started working like that.

When did the tribes start going out with the field crews? Did you want to talk about that?

MR. MADSEN: In November.

MR. MENTZ: See, that just started.

MR. MADSEN: Ongoing -- I think the commitment here ongoing is to do this.

MS. GLIDDEN: So, yeah, under (c) we have the "Process for Tribal Participation in New and Ongoing Archeological Fieldwork."

(a) and (b) were to address instances in which the tribes have not been out in the field. So that's why there's that extra time to go out and assess those sites. And (c) would be the process for tribal participation in actual archeological fieldwork. So then there would be a blending of input for the reports.

MR. YOUPEE: So do you feel it necessary to put that in the other verbiage too?

MR. MENTZ: Well, I'm just looking at -- either we're going to do one or the other is what I'm looking at. Regardless, we're going to do something out there if we're going to do a TCP survey of those areas that we think we need to have one.

What I'm saying is that we're looking at the whole corridor and not looking at what has been found already. In other words, based off of the archeology reports right now, that's what we're looking at right now, and then you're asking us what areas are significant to us. Right now what I'm saying is that

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what we need to do is probably just totally just put them out in the field at the same time the archeologists are walking the area.

MS. GLIDDEN: We're going to do that. That's what (c) says.

MR. YOUPEE: Do we need to reflect that within that 60 --

MS. GLIDDEN: Well, the reason that we've got this the way it is, is for the archeological reports that have already gone out without tribal input. So the point of (b) is to get tribes to go take a look, let's say, at these four reports. We have all these sites listed, and some of them are listed as being potentially Native American sites. So it would be for

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you to -- okay. Let's say you're looking at the report. Maybe you can't decide whether or not you think it's eligible or not based on what's in there because it's archeologists that provided that information. So that 60-day time frame then would provide you an opportunity to go out in the field and check on specifically those archeological sites so that we can -- I can make definitive National Register eligibility determinations on those archeological sites reported in the reports that have already gone out.

In addition to that, we have a process under (c) whereby the tribes would be going out with the archeologists from here on. Because it's something that didn't happen before, but we're going to -- this process is allowing for that to occur now.

In addition to that, we have the tribal study, and the tribal study includes a TCP survey of the entire

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19 project area so that -- you know, that will be a
20 process outside of the archeological reports altogether
21 where you'd have, you know, crews that would be
22 contracted perhaps by OTI that would go out and
23 specifically be looking at TCPS.

24 Now, there may be some overlap, because, you know,
25 maybe some tribes have already been out in some of
these sections, so -- and we anticipate that's going to
happen, but --

1 All these things are provided for so that there
2 are no holes in tribal involvement and input.

3 MR. MENTZ: So DM&E is willing to, from today on,
4 allow tribes to get out with the archeologist now,
5 starting from this coming field season this year?

6 MS. GLIDDEN: Yeah, that's --

7 MR. MENTZ: You're committing to that? So we're
8 going to be moving at the same time the archeologists
9 are going to be moving?

10 MS. GLIDDEN: Yep.

11 MR. MENTZ: Okay. That was never done before.

12 MS. GLIDDEN: No.

13 MR. YOUPEE: You made the reference to the office
14 as well. Is that a strong commitment? Has that been
15 approved? Because if that isn't, then we'd have to
16 go --

17 MS. GLIDDEN: The Office of Tribal Involvement?

18 MR. YOUPEE: Yeah.

19 MS. GLIDDEN: Doug, did you want to talk to that,
20 or Herb?

21 MR. YOUPEE: Because if that's a reality, that's
22 good. If not, then we have to look at some other
23

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stuff.

MS. HALVERSON: Did we get a commitment letter? 69

MR. JONES: What we said is, again, we want to be
able to find out from the tribes and have a perspective
on where you were coming at on this and make sure we
understood too what the scope of the office is and the
budget for the office, and we have had discussions, and
we are most interested in pursuing this.

We, again, want to make sure we know that we
understand what the scope is, that it's accountable,
that there are ways of knowing that it can be -- that
it's serving the purpose intended and that there are
measurable ways of demonstrating that. And if we can
do that and make a budget that makes sense -- and maybe
that's what you're circulating here.

And, again, I think, from our perspective, it's
one of those things where, if this -- if the office
serves the purpose as everybody has suggested, which is
to, I think, make the process work more efficiently for
everybody, to allow, I think, a better distribution
mechanism for the communications and for the reports,
and it allows a more central processing for all of this
matter, whether it's on the reports or future business,
things like the job opportunities, things like that,
those are things that we think are very helpful and
could be, I think, beneficial to all parties.

The one thing I would say is -- and we talked 70

about this last week, and we discussed this as well,
and that is, I think we have to be able to do it in a
way that's rational, that we can look at it and say,
yes, it's serving the purpose as intended and that you

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5 have measurable ways of knowing that it's accountable.
6 If we are able to stay on target with all of our
7 reporting, if we're able to do those things on budget,
8 with whatever the budget is, and do those kinds of
9 things, then I think we want to try to find a way to
10 make that work.

11 The one thing I would say, too, I think there have
12 to be mechanisms in there to say, if it doesn't work,
13 here's -- or if something happens, the project somehow
14 gets stalled somehow, that there are ways that that
15 financial commitment can be readressed then for those
16 purposes.

17 And so those are things that we need to be able to
18 do. But as far as a final document from us, we were
19 waiting to see, before we could process something to
20 the company as well, where the final output from the
21 tribal community was so that we would have something
22 firm to go to people with. But certainly we think it's
23 in our interest. We think it's in the tribes'
24 interest.

25 I think the one thing -- and we discussed this 71
1 Last week, and I don't want to belabor this either, but
2 it has to be something that makes budget sense to us.
3 I mean, it's got to be something where you look at it
4 and you say, there's a reason for doing this, yes, you
5 have these benefits, but if you didn't do it, what
6 would happen and what would the cost be for not doing
7 this. I think for us it has to be -- it has to make
8 sense mathematically.

9 I will say this: I can see a tremendous benefit
10 to everybody if this does work as envisioned, because I
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11 think it would be a very good model that other projects
12 in the future would -- it would be something they
13 should be looking at too to be able to incorporate the
14 same model for future use.

15 But at that, I would just say, we've got -- have a
16 way that it does make sense for us. If it does and if
17 we can have some fine-tuned numbers that we can go to
18 work with, we can have something put together, I think
19 in pretty short order, that tells you that we can
20 commit to that. But we have to have something that we
21 can go to the company with other than some good ideas.
22 So hopefully we can get that.

23 MR. YOUPEE: You have to realize that that's the
24 development process itself. You've seen some of the --
25 some material that we've worked on so far regarding the 72
1 ideas and maybe the outputs and inputs and the outcomes
2 of such an office. And so we started that, but we
3 still need input from DM&E on what they feel is
4 necessary as an outcome of that office too. And we do
5 need feedback regarding the measurables. We need the
6 input for the measurables consistent with what STB
7 might have in mind too.

8 MR. JONES: And, Curley, I think, too, from what
9 we're thinking of -- I mean, the way I would look at
10 it, if the scope -- and I think I mentioned this in
11 Rapid City as well as last week. I think if you draw
12 the scope narrow at first but be open to expanding that
13 as the office, you know, kind of proves its merit, that
14 it shows that it's credible and can get things done and
15 works in an organized way, that you might look at
16 adding additional responsibilities in as that works.
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17 I think the thing first is to make sure it does
18 work and that you don't bite off more than you can chew
19 when you get going, and if those things work and if it
20 proves out as we hope, then I think you look at adding
21 additional responsibilities in there as you can and as
22 people can agree to that.

23 I think the one thing you have to make sure is
24 that there is agreement to whatever you do, that people
25 understand the purpose of doing that, and if you're

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1 going to have a responsibility there, that everybody
2 understands why that responsibility is there.

3 But, again, we're certainly open to that, and
4 hopefully we can come up with something here in fairly
5 short order where we can get that off and moving.

6 MS. GLIDDEN: Chase, so this is about as far as
7 you guys got? Did you want some more time to maybe go
8 through this so we can then incorporate these changes
9 to the final document and then send it around?

10 I guess what you're saying is once we do complete
11 this, we need to send it to the tribes, all the tribes,
12 even the ones that haven't been here, get their input,
13 and then finalize it. Is that kind of where we're at?
14 Russell?

15 MR. EAGLE BEAR: I have a comment or a question.
16 I know we got a good response and kind of danced around
17 the whole issue again, but we do need some kind of
18 commitment, whether it's on paper or -- I think we're
19 kind of being strung along at this point.

20 We're doing our best to develop something here,
21 but we do need some kind of commitment where I can
22 safely go back to the tribe and say DM&E is willing to

23 fund this project and here's the letter. I think
24 that's what we were looking for. But, now, you know,
25 just listening to you again, it's the song and dance
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1 routine.

2 MR. JONES: I'm not a very good singer and I'm a
3 worse dancer so --

4 MR. EAGLE BEAR: Well, I offered to sing for you.

5 MR. JONES: I don't mean to step on anybody's
6 toes, I'll tell you that.

7 But, Russell, just -- I mean, the thing is, we
8 have to have something firm that we can go to the
9 company with, and quite frankly, we have to be able to
10 tell them, here's what we're looking at, here are these
11 positions, here are these specific responsibilities,
12 here's the time line, here's the budget impact, and
13 here's how we would have to be able to structure that,
14 and I didn't think we were in a position to do that.

15 We've had conversations. Again, I've been -- I'm
16 encouraged by what we have, and I think it certainly --
17 we have reason to think that this would serve our
18 benefits as well as the tribal benefits and the STB's.
19 So it is something we need to run through, but --

20 I'm hopeful, and I think if we can get that put
21 together in short order, we'll have that for you,
22 but -- sorry if I'm not dancing well.

23 MS. GLIDDEN: Herb, am I hearing you say if we can
24 get this work plan finalized today, would you be ready
25 to maybe send out a letter of commitment?
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1 MR. JONES: Well, I think we have to know -- I
2 think we have to know what the scope of work is and

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4 know that we have accounted for the administration of
5 that, how that gets taken care of and what that budget
6 would be to do that. I mean, that's the kind of thing
7 we have to be able to put together that makes sense.
8 And I think, too, that is to have -- and we can
9 certainly help with that, and I had talked to you
10 before, we talked to you about having a mission
11 statement that makes sense for everybody to be able to
12 look at that and say, okay -- and properly have the
13 expectations set of that office.

14 And, again, the one thing I think -- a mistake
15 that I think would be bad to make is to have -- to
16 expect more out of the office than what it would have
17 for resources, at least at the beginning. I think
18 you're better off coming up with something that says,
19 here -- you know, here's the immediate need, the
20 processing of reports. If we can do those things
21 through this office, the processing of the reports,
22 here's the staffing needs to get those things done and
23 to facilitate that, that to me is pretty clear. It's
24 something you can say, here's what we think that budget
25 should be and would be for X number of months or a
26 year, or whatever it might be. But there's a way that
27 you can capture that and have something firm to go on,
28 and that's what I'm hopeful we can come up with.

29 But I think we have to know, yes, what that scope
30 of -- again, what's --

31 MR. YOUPEE: That's still song and dance.

32 MS. GLIDDEN: Curley, I spoke to Herb. I mean, I
33 don't --

34 MR. HENKE: I'll be real blunt. We have looked at

35 Tribal Consultation Summit 2-13-08
36 this, and we obviously have our ideas, and as Herb
37 said, we've started to craft a mission statement.
38 We've started to craft a charter. It's not good to
39 give to anybody. I'm not going to give it to anybody
40 today because we only got this done in the last couple
41 days. But I sit here and listen a lot at these
42 meetings, and I hear, it's your plan, it's this plan.
43 So we sit here and listen and want to hear the ideas of
44 the tribes so that when we put something out, it's not
45 DM&E's plan of what we want for an office, it's what we
46 want for this project.

47 So I'm very reluctant to say I will fund something
48 until we know what we're funding. I have no problem --
49 if you meet all those goals and objectives, we'll fund
50 it tomorrow -- maybe, I think. Kevin just walked in
51 and maybe --

(Mr. Schieffer enters)

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1 MR. HENKE: But the question is, is we need your
2 input. I don't want it to be our plan. I don't want
3 it to be DM&E's plan. I want it to be the plan for
4 this project. So whatever input you can give us to
5 say, here's what should go in a mission statement,
6 here's what the roles and responsibilities are, and
7 then we can match it up against what we've got, and
8 then we can make some commitment. But until we have
9 that, that's tough to do, Curley.

10 MR. YOUPEE: Yeah, but we're doing a lot of work
11 for you. I'm thinking that we should do this work
12 together. If we're going to envision and agree upon
13 that this office has merit and it would be of mutual
14 benefit, then we should be doing this together. The

15 construction of this office should be done together
16 with DM&E and the tribes, and I think that there's
17 verbiage in the stipulations or the conditions that
18 there's nothing discouraging DM&E and the tribes from
19 doing just that.

20 But if we're looking at this realistically, and
21 you find merit with it and we've been talking before it
22 for some time now, is that we collectively come
23 together and work in a think tank, work tank, whatever
24 we need to do to look at this realistically and develop
25 something collectively and creatively.

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1 MR. EAGLE BEAR: I have a comment.

2 MR. IRON EYES: Before Russ speaks, I think
3 something simple and achievable that we can -- and I
4 don't think it's too much to ask for, is a one-page
5 letter saying DM&E is willing to fund this office
6 subject to these provisions and our final approval of,
7 you know, whatever you think is important, the budget,
8 measurables, et cetera. That's not that hard to do,
9 and I think that's what Russ might have been referring
10 to earlier.

11 MR. EAGLE BEAR: Exactly. And I think, going back
12 to -- well, today was the first time I hear -- I know
13 we discussed a mission statement last week. We didn't
14 really touch on it, but we started to work on some
15 language. But now I'm hearing we have to have a
16 charter in place, you know.

17 If you guys want a charter, you should have threw
18 that out earlier so that we can concentrate. We've
19 been working on this plan, the work plan, to
20 incorporate this office. But now I'm hearing that, you

21 know, you guys want a charter, you know, and that's
22 something else that we can probably develop, you know,
23 soon. We could have been working on that too.

24 But, you know, it's like -- I don't know. When
25 are we going to have our next meeting? According to

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1 our schedule, we're basically booked until mid-April.
2 You know, we're not only dealing with DM&E. I want to
3 remind you of that. We deal with other agencies, other
4 projects on a daily basis. So we don't work on this
5 project eight hours a day, 40 hours a week like you
6 guys do, or maybe Surface Transportation or the
7 contractors. We, you know, we have to have sufficient
8 time. And it sounds like nothing is going to get
9 resolved today.

10 I'm really -- you know, I put a lot of time and
11 effort into this, and then we get the song and dance,
12 and, you know, I just -- it's repetitious.

13 But either we do something, we get a commitment or
14 not, you know. Well, that way we can go back and move
15 forward. Otherwise, you know, we still have to go back
16 and do other work and think of other things to do with
17 other agencies. So I'm kind of stumped.

18 MS. GLIDDEN: Russell -- well, Herb, is there any
19 way that we could go ahead and go through this document
20 today and agree on a finalized work plan, and then once
21 we all agree on it, that we could then -- that you
22 could perhaps issue a short letter of commitment that
23 would -- that would be with a lot of provisions, you
24 know, and caveats that would just -- at least the
25 tribes could bring back to their tribes to say, okay,

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2 When I looked at the charter, the charter was
3 really just a one-page description of what the office
4 would be, and it was pretty simple. And it seems to me
5 that that would be something that could be finalized
6 pretty quickly. I really think that it's within our
7 capacity to get there today, if everyone is willing to
8 go there.

9 MR. YUPEE: Well, I don't think we should speak
10 through this just for the sake of getting some kind of
11 commitment because that's leverage. I think that we
12 should realistically look at this, and if there's any
13 changes that need to be made that we make those changes
14 and go through this work plan in its entirety, not
15 based on what we have as a carrot in front of us.

16 MS. GLIDDEN: No, I'm saying that we just go
17 through the document. We agree on the -- I mean,

18 you've made some changes which I think are perfectly
19 appropriate. We make those changes, we have our
20 document that everybody agrees on, and then DM&E could
21 provide a letter that would just be a letter of
22 commitment that would -- you know, that would basically
23 say that it would be subject to, you know, a budget
24 that DM&E could agree to, and activities and so on that
25 DM&E could agree to, and then we could send that out

basically to the tribes.

MR. FISHER: Could I say something?

MR. EAGLE BEAR: Go ahead.

MR. FISHER: You know, just listening to DM&E and
some of the things that were said, it sounds like
there's certain requirements that you'd like to see as
far as an office of Tribal Involvement, and maybe we

8 need to have that in writing. Maybe we need to have
9 those stipulations that you mentioned earlier in
10 writing, because we -- we're trying to work on
11 something, but we don't -- we know what we want, and
12 this is all part of cooperation, I think. But in
13 addition, I think we need to know what you folks are
14 wanting within that office of Tribal Involvement.

15 When one of you -- when DM&E was talking, it
16 reminded me of a grant application and having a budget
17 there and objectives and mission, and all those things
18 required in a grant application. So I think part of
19 that may be implicit on exactly what we come up with as
20 a plan to submit to your office. But at the same time
21 I think we need something in writing that says, hey,
22 here's something that we want before we consider
23 funding this particular project.

24 Saying it is one thing, but putting it in writing
25 I think says something else.

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MR. MENTZ: Maybe I can add on also. You know,
we're just talking about getting some fieldwork done,
and it's getting really blown out of -- I don't know
what you would call it. But we're starting to fragment
the original issue that we're talking about, simply
going out in one of two ways, either getting there with
the archeologists when they make the field visits
starting this summer, and that's where (c) is
addressing that issue. What we're being bogged down
with is (b), that there is already four reports. We're
going to have to pick and choose those types of areas
that we say are significant and do a TCP study based
off of some previous report findings that have been

done by various consultants, archeological consultants.

But I guess the point is, is that if there's going to be a commitment, and we keep saying commitment, the commitment would be, first of all -- and I think I've heard that now, that you're willing to commit to fund some TCP activity out there. So I'm assuming that's a given. I mean, we're already talking about that's a given. Hence, there's four reports that we need to do, and that serves as (b), but still, my concern is that, in looking at (c) and looking at not developing an OTI office then, we have to be there then, and we'll have to agree here that we're going to have to be out there

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at the same time the archeologists are going to be out there in relation to (c).

Do you understand what I'm saying? In other words, that should DM&E say no, I don't think those measurables are going to be met, we don't think it's justifiable, because I just heard that from Herb that, you know, you want to see something that -- and make sure it's viable, that he can take to DM&E to sell this idea. What do you have then? How are you going to comply with stipulation 105 and 106, particularly 106 and 107 that you handed out to us that said that you have to do various things, identification and whatnot, applying criteria of affect, you know?

And that's what we're into right now, 800.5. We're into the 800.5 section of the regulations right now, and we're talking about those types of areas that have been identified within those four reports. What we haven't done, though, is walked those areas. We walked a portion of those areas.

So if you can even agree for us to finish what we're doing under (b), or in other words, those four reports that already been walked already, because Mike, I think -- Mike, is that your name?

MR. MADSEN: Yep.

MR. MENTZ: Have those areas under those four that we were supposed to talk about today, those four reports, have all of that been looked at from a tribal perspective?

MR. MADSEN: Not all of it, no.

MR. MENTZ: Not all of it?

MR. MADSEN: No.

MR. MENTZ: How much of a percentage would be looked at, let's say, combining all four reports and all the area, how much of that has been walked?

MR. MADSEN: Actually, those four reports -- correct me if I'm wrong, Erin -- but none of them have had any tribal involvement. The ones -- we had tribal involvement last fall, November, and the evaluations that were done out in Rapid City. These four reports are not those reports, so --

MR. MENTZ: Oh, okay. At least that clears me up.

MS. SALISBURY: One of them, though, was from 1999.

MR. MADSEN: Oh, sure.

MR. MENTZ: Burns & McDonnell?

MR. MADSEN: There you go.

MR. MENTZ: So what I'm saying then, are you willing to at least make a commitment that we need to get these four reports taken care of, where we actually have tribal involvement, not talking about an OIT (sic)

1 office. It looks like we're getting pretty hung up
2 with this OIT (sic) office.

3 I want to fulfill the requirements of not only
4 what's in those court-ordered conditions but also
5 Section 106 in relation to determining if there's TCPS
6 out there in these four corridor report areas.

7 Is that what we're talking about today? Can we at
8 least get a response to that? Forget about the OIT
9 office right now. I mean, if that's going to raise
10 that much heartburn, let's not even talk about it
11 anymore. I don't even want to be a part of that.

12 But what I'm saying is that, are you willing to
13 commit today to doing and completing those surveys?

14 MR. JONES: Tim, those are things that have to be
15 done one way or the other. It doesn't make any
16 difference whether there's an office there or not.

17 That same thing -- that process has to be gone through.

18 MR. MENTZ: I understand that.

19 MR. JONES: So whether there's an office there or
20 not, we're going to have that done. What I would say
21 is, I think that the vision for that office was that it
22 would help facilitate that and make it easier for the
23 tribes for processing that material.

24 MR. MENTZ: I understand that.

25 MR. JONES: If it doesn't do that, we don't want

1 that. I mean, there's no interest in our part in doing
2 that if it doesn't make the process work better. If it
3 does work better, then we'd be interested.

4 The work is going to be done one way or the other.
5 We have the requirements on us whether or not we have

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an office. The office would help facilitate that. If
nobody wants -- if the office isn't what people want,
that's fine. We can go without that. There isn't a
need to do that.

That was an office that I think people envisioned
as a way to make sure that there was a mechanism there,
communications, to make sure that people didn't have
this issue, well, I didn't see the report that came
through when it was sent or whatever. You'd have a
central place where it's all coming out of, and it has
those time lines that we talked about, that everybody
can see it and work with it. But it's going to be
done. We have to comply one way or the other, so -- it
doesn't matter in that regard.

MR. MENTZ: Clarifying what you just said, you
just said the opposite here just a few minutes ago.
You were talking about viability, whether that office
would have the credibility, including the staffing, to
create and generate timely reports. Now, that --
correct me, Herb, if you didn't say that, but that's

what I just heard.

MR. JONES: No, that's exactly -- I mean --

MR. MENTZ: Okay. So then if that's the case, the
question I'm just asking is, are you willing to commit?
Regardless, you're going to have to do it, so commit
today to getting us to get into those four corridor
reports. That's all I'm asking for. I'm not saying
that -- last summer we did some work out there, and I
understand what we did. We had problems with that, and
those are some of the things we still need to talk
about. My point is, is that we want to get out

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there --

MS. GLIDDEN: Tim --

MR. JONES: OTI or not there's no change with how those reports are going to be processed.

MS. GLIDDEN: Absolutely not.

MR. MENTZ: Oh, I thought that was maybe a condition or that was a concern, because now I've got to do a charter, you're talking about chartering this, you're talking about viable --

MS. GLIDDEN: No, there's two different things here. There's the Office of Tribal Involvement, which we felt would, again, based on input from the tribes that this would be a clearinghouse, if you will, for --

MR. MENTZ: I understand that.

MS. GLIDDEN: -- for doing this work, but --

MR. MENTZ: It's what he said earlier is what I had concern about.

MS. GLIDDEN: Well, we have these four reports that we were going to discuss today, and the reason is, is because the 30-day initial time frame under (a), if you will, is just about up. So we had the reports on the agenda so that if there were any questions regarding these reports, we have Erin here and Michael ready to respond to any questions you might have so that you -- if you need to go out in the field and ask for that extra 30 days to do that, we're prepared to do that. DM&E is prepared to get people out there.

MR. MENTZ: Probably not at this point in time right now.

MS. GLIDDEN: At this point in time, yeah.

MR. MENTZ: There's no visibility on the ground.

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MS. GLIDDEN: I mean, if -- you know.

MR. BIBLER: I had to step out for a second, but I caught something that there's a little concern. I put in a budget for the tribal monitors or tribal representatives to assist the archeologists, similar to what we did last fall, and that has been submitted to DM&E, and they -- they never said that it wasn't a problem -- or it was a problem, and if the OTI is set

up, that money, that money is sitting there to be transferred to OTI for the tribal reps to assist the archeologists in the fieldwork.

So it's not -- I know you had a concern with no commitment. But there is a commitment there for that, and Berger is sort of a passthrough because we didn't want to show that tribal folks were in direct payroll with the railroad. It just didn't look right. So DM&E gives us the money; we set up the contracts; these folks go out and do the work.

With OTI, that money will be shifted over, and that responsibility will go with that office with our assistance to make it go as smoothly as possible. So I hope that answers some of your questions.

MS. GLIDDEN: Ambrose, did you want to say something?

MR. LITTLE GHOST: No.

MS. LITTLE GHOST: He agrees with everything.

MR. LITTLE GHOST: I cleared my throat.

MS. GLIDDEN: Does anybody have anything else?

MR. JONES: Just a question. Were there any other suggestions on the work plan itself? Was that concluded or --

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MR. IRON EYES: Yeah, that's as far as we got

was --

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MS. GLIDDEN: Do you need more time?

MR. IRON EYES: I don't know how we want to, you know, what's the most efficient use of time that we have left this afternoon, because --

MS. GLIDDEN: Wouldn't it behoove us to have a work plan that we can all agree on coming out at here at least? Wouldn't that be the best thing?

MR. FISHER: I thought we were going down and addressing some of the red lines. That was the last time I --

MS. GLIDDEN: Okay. Should we leave and let you guys finish and then we can finalize this thing? At least we'll have a finalized document.

MR. IRON EYES: I think you should just stay.

MS. GLIDDEN: Okay.

MR. EAGLE BEAR: We have an issue with the work plan. We've already said there's an issue of OT. Okay. And then now we're saying we shouldn't discuss that, but it's still part of the work plan. And so do we delete that for now? Do we -- I mean, to me we're still spinning our wheels.

We can go ahead and finish up. And we didn't really finish up from last week either. We got to the treatment plan. We deleted a lot of that language that was first proposed in Rapid City, and we can bring that

back on the table here so we can have a discussion on it. And then that kind of -- that's the tail end of the work plan itself.

MR. MENTZ: Cathy, for the purposes of standing

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rock being here, the THPO, I was primarily here to consult on the Section 106 activity. That's basically the reports.

Now, I'm relying, and I relied last week on my colleagues that met regarding working on the work plan, and for the -- I guess, for the interest of today and how we want to pursue this -- because I seen today that we were going to discuss the four reports that I have some questions on that I've looked at. But, again, I think it kind of behooves us not to try to even get into that because there's some major discussions that we wanted on particularly some of the areas. And I purposely left my map knowing that today we were probably going to be setting exactly where we're setting, and that's what it is, and we're again putting an agenda item on -- it's on the agenda, we're pushing it off to the side.

And I'm not going to set there and meet individually with them. I want all my colleagues to sit in the same room when we talk about those reports, because it also deals with how we get our people out

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there in relation to, first of all, one, is if those sites that they have said that are not eligible, I would like to take a particular interest --

particularly the ring sites that they have that are not eligible. I have a problem with that.

Secondly, I want to make sure that I understand the eligibility on certain areas that have significant sites there. I want to be a part of that. But, again, I don't think we're going to be able to do that this afternoon.

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11 My purpose in coming here was primarily -- it
12 wasn't to work on this work plan. My colleagues done
13 that already. What we should do is they should print
14 that out and all of us go back with that, and we're
15 going to have to set back again, because I want to go
16 through what they proposed as changes, not to say that
17 they weren't, I guess, reliable or credible, as we're
18 saying, or as words are being thrown around here, but
19 more importantly that I understand, from the tribal
20 perspective, where my colleagues are coming from.

21 Secondly, I don't have time enough to do that --
22 we're not going to go through the 50 pages here by the
23 time 4:30 -- I'm leaving at 4:35 today. So I guess
24 what it's calling for is probably another meeting where
25 we specifically just talk about the archeology.

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1 Part of my responsibility in this THPO is that to
2 engage the federal agency and your contractors on the
3 archeology that's been conducted out there. So that's
4 one.

5 The second one then is identifying those areas
6 where I think we need to go out there and take a look
7 at from an environmental -- maybe it's environmental in
8 relation to an archeological site. Because a lot of
9 the environment has to be there when we have an
10 archeological site.

11 So, again, I'm just throwing that out. I don't
12 think we have time to do the surveys. That's a very
13 important part. I want to make it a part of this
14 record that I still am requesting consultation on those
15 four reports.

16 MS. GLIDDEN: The consultation may not be able to
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17 be my being out there to work with you on this,
18 however, just because I've been out here for two weeks.

19 MR. MENTZ: Well, you do have a deadline of
20 September (sic) 20th. Can I ask now for the record
21 then that you extend that for another 30 days then?

22 MS. GLIDDEN: Well, yeah, you can certainly --

23 MS. DESROSIERS: February 20th.

24 MS. GLIDDEN: You can extend it if you are

25 requesting to go out in the field and take a look at
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1 these sites based on the way the work plan is
2 structured right now.

3 MR. MENTZ: Well, I was assuming -- and maybe I'm
4 assuming wrong then, but what I'm asking is, is today
5 the day that we're going to do the survey reports?

6 MS. GLIDDEN: We originally had it scheduled, but
7 it appears as though --

8 MR. MENTZ: Can we reschedule that?

9 MS. GLIDDEN: The purpose of going through the
10 reports really was to just provide a venue and some
11 people here to assist in that. But the way the process
12 works is, you look at the reports, and you provide your
13 input to STB that either you need to go out and take a
14 look at the site areas listed in the reports, or you
15 provide comments on the reports and the eligibility
16 that's been proposed by the archeologists.

17 So if you need an extra 30 days, then that can be
18 arranged, and you would have an opportunity at that
19 point to go out in the field and look at some of the
20 sites that you believe you need to look at because
21 there's not enough information available in the
22 reports.

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23 We were just making the staff from HDR available
24 today to talk to you if you happened to have any issues
25 or concern about those reports. And I suppose they 95

1 would be potentially available to talk about the
2 reports with you at some other time --

3 MR. MADSEN: Yes.

4 MS. GLIDDEN: -- if you wanted to come out here
5 and meet with them.

6 MR. MENTZ: Well, I guess the important thing is
7 your time line on your comment report.

8 MS. GLIDDEN: Yeah, I mean, if we don't get
9 comments from any of the tribes by the 20th, then we
10 assume a consensus for the eligibility determinations.

11 MR. MENTZ: Well, I'm in disagreement with that.
12 That's why I want to talk -- there's some you have
13 there that they are saying are not eligible that I
14 would look at them and say that they're eligible.

15 MS. GLIDDEN: Then what I just need from you is a
16 letter in response to those reports. You know, include
17 those forms saying that you need to do a field check or
18 you think these are eligible or not eligible, and
19 provide me with a letter with those checkoff lists, and
20 then we'll make arrangements for you to get out in the
21 field and take a look at those sites.

22 And that's what I'm going to need from all the
23 tribes, letters in response, in response to the letters
24 that we sent out with the reports so --

25 MR. MADSEN: And, Tim, depending on how you wanted 96

1 to structure that question-and-answer session, you
2 mentioned your colleagues with you to go through those.

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3 I mean, we'd be happy to do that in the interim time
4 here. We'd be happy to schedule something. I mean,
5 the question is, how many people are there and how you
6 want to have it set up, or as Cathy's requirement, is
7 she required to be there to go through those reports?
8 I mean, we'd be more than happy to meet you.

9 MR. MENTZ: Well, see, the problem we have is we
10 don't have SHPO here who also concurs with the
11 determination. So what I'm saying is that I just want
12 to sit down -- I want to discuss those reports that you
13 have, and if I have to send a letter saying that, oh,
14 yes, I want to get out there, I'm going to have to do
15 that, Cathy. But I was assuming we were going to do
16 all the corridors already off the four reports. Maybe
17 I'm assuming wrong again. We were going to -- Russell,
18 am I wrong? Didn't we walk into this thing that we
19 want that whole corridor surveyed on a TCP?

20 MR. EAGLE BEAR: Exactly.

21 MS. GLIDDEN: We have -- like I said before, we do
22 have a provision within the work plan, the way it's
23 stated right now, if it's something -- again, if this
24 work plan is something that you all want to have -- we
25 can always go back to the programmatic agreement and 97

1 the ID plan, the way that they lay out the process, but
2 the way the work plan is, we do have a process for that
3 where you would -- we'd actually be doing a TCP survey
4 of the entire project area, and that's indicated
5 underneath the tribal study as an alternative
6 mitigation measure.

7 The tribal study says, "This work plan provides
8 for the completion of a stand-alone study, directed by

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the tribes, to assess the traditional cultural value of
the project area as a whole. The tribal study would be
conducted by an independent contractor, or contractors,
acceptable to the participating tribes. Prior to the
initiation of the study, participating tribes would
develop a scope of work, in consultation with STB and
in cooperation with DM&E, to guide the analysis. The
tribal study would rely on ethnographic studies,
ethno-historic sources, archival research, and
interviews with tribal elders as well as a TCP
pedestrian survey of the project area." It's right
there.

So we're talking about really different things.
We have the archeological reports, and they were done
without tribal involvement, and because of that, we've
developed this process in the report reviews for tribes
to go out and take a look at those sites that were

identified by the archeologists. The archeologists may
have said that, you know, a site is eligible in one
case or not eligible, and you may disagree. So this
process will enable you either to not provide any
comments on the report, in which case you're going to
be concurring with the recommendations provided in the
reports, or you're going to ask for an additional 30
days so you can go out and check out those sites and
then provide your recommendations, your eligibility
recommendations.

Once we have your input, at that point we go ahead
and update the reports, and we make the changes, the
appropriate changes, and we send it around for another
30-day round of review. And then after that we send it

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to the SHPO for their input. At that point we'll have
had the archeologists and the tribes weigh in on
eligibility for these archeological reports that have
already been completed. So that's the whole point of
that process.

MR. WHITTED: I guess I had a question. So where
does the tribal study fit in? I mean, are we being
asked to comment on the eligibility of a site before we
do a tribal study?

MS. GLIDDEN: The only reason that we're providing
this extra 30 days is because we've already got these

reports out there that don't have tribal input. So
this is just a -- this is just for you to go out and
take a look at the sites that have been identified by
the archeologists. But you're also going to have an
opportunity to do a survey of the entire project area.

MR. WHITTED: But the site will already have been
determined whether it's eligible or not.

MS. GLIDDEN: No. No. We're not going to
determine eligibility until we get your input on those
sites. That's what the extra 30-day time frame is for,
so you can go out there and take a look at them and
say, we think it is eligible. Let's say the
archeologist says the stone ring isn't eligible, and
you go out there and you say it is eligible.

MR. WHITTED: So that 30-day, that extra 30-day
time period is the tribal study; is that what you're
saying?

MS. GLIDDEN: No. The extra 30-day time frame is
an opportunity to simply go out there and look at those
sites that have been identified in the report. The TCP

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22 study is something entirely different. It would be a

23 study of the entire project area, specifically looking

24 at the TCPs. I mean, the reason we're doing --

25 MR. WHITTED: It's still not clear.

MS. GLIDDEN: Okay. The reason that we're doing 100

1 this is because the archeologists have created these

2 reports based on their world vision, world view of what

3 these sites are. We haven't had tribal input, and we

4 have to have tribal input before we go to the SHPO on

5 these archeological reports. Okay? These are reports

6 that have already been completed, and they haven't --

7 they haven't had tribal input. Do you see what I'm

8 saying?

9 Can anybody else explain this better than me?

10 MR. WHITTED: Yeah, take a shot at it, Mike.

11 MS. DESROSIERS: Come on, Mike.

12 MR. MADSEN: I don't know if I can. You guys know

13 me better than that. I'm going to have Alan speak to

14 this.

15 MR. STANFILL: I'll try to keep it as simple as I

16 can. For the National Register, there are four

17 criteria under which a property may qualify for

18 listing, and they're labeled A, B, C, and D.

19 Criterion D speaks to the scientific information

20 potential of archeological sites, and that's what was

21 of value in these reports by the archeologists. The

22 archeologists call some sites eligible because they

23 qualified under criterion D. Most traditional cultural

24 properties that qualify for listing will qualify under

25 criterion A, and the archeologist did not evaluate them 101

1 under criterion A. So that's what we're looking for

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2 from the tribes is an evaluation of the sites,

3 traditional cultural properties for listing on the

4 National Register under criterion A, because they're

5 associated with broad patterns of history and

6 traditional culture, and the archeologists can't speak

7 to that. Only the tribal members, the members of the

8 traditional communities can speak to whether a place

9 qualifies under criterion A. So that's what's intended

10 for the archeological report reviews.

11 For the tribal study, it's really expanding the

12 concept of the National Register in a couple of ways.

13 It's an opportunity to pick up on places on the ground

14 that are significant to the tribes as traditional

15 cultural properties, but more importantly, it's an

16 opportunity for tribes to study traditional cultural

17 properties along the corridor in a way that enables the

18 tribes to explain in their own words how effects to

19 these properties -- how this project, this construction

20 project will affect the communities that hold these

21 properties valuable.

22 So on the one hand we've got the archeological

23 reports and the subsequent fieldwork that would be

24 conducted in order to identify individual properties on

25 the ground and determine whether each individual 102

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1 property qualifies under criterion A, but then we've

2 got the tribal study that allows the tribes to look at

3 all of these properties as a whole to speak to how

4 effects to these properties will affect the

5 communities, and that's what we really want to get at

6 in terms of being able to talk to the traditional

7 communities about alternative mitigation measures,

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8 speaking to these communities about the things that
9 DM&E can do that will help to address those impacts to
10 that much bigger picture that we're looking for under
11 the tribal study.

12 MR. WHITTET: So the tribal studies will not have
13 any weight on eligibility; is that what you're saying?

14 MR. STANFILL: No. No. The tribal study has a
15 lot of elements built into it, and among them is an
16 opportunity to look at places on the ground, both to
17 determine whether those individual places qualify for
18 listing on the National Register but also to package --
19 those new places that you see on the ground may not
20 have been picked up on the archeological studies in a
21 way that allows the tribes to speak to traditional
22 values and how those values will be affected in terms
23 of community values. Does that help?

24 So there is an element of identification and
25 evaluation in the tribal study, but there's also that

1 same thing going on in the evaluation of these
2 archeological reports. So that information about
3 eligibility is coming from two slightly different
4 sources, and the study allows you to pull it all
5 together to say, we're not just talking about this
6 site, this site, and this site; we're not just talking
7 about how you treat this site as opposed to this site,
8 but rather, how you need to treat the entire population
9 of sites.

10 MR. TSONETOKOV: You're talking about a cultural
11 landscape; is that what you're talking about?

12 MR. STANFILL: In some ways it's like looking at
13 it as a landscape, yeah. It's not just capturing

14 individual properties but rather the related nature of
15 these properties as a whole. Together they form
16 probably types of traditional cultural properties, and
17 when you look at those traditional culture types
18 together, they form that holistic perspective that's
19 similar to a landscape.

20 When you can pull together the big picture as
21 opposed to just trying to deal with each one of them on
22 a site-by-site basis, then you get a much better sense
23 of what those values are that are represented among the
24 population, and so --

MR. TSONETOKOV: The spiritual values.

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1 MR. STANFILL: The spiritual values, yes. So it
2 gives us a way of expanding the discussion from the way
3 the National Register is set up to look at individual
4 sites on its own merits to looking at entire families
5 of sites, entire groups of related values represented
6 among these sites, and I think it gives the tribes a
7 better opportunity to explain the importance of these
8 places on the landscape.

9 MR. TSONETOKOV: I'm involved with a site down
10 in -- I keep referring to this one site all the time
11 because it's kind of a hotbed always to me. It's a
12 place near El Paso. It's called Hueco Tanks. And
13 they're trying to open up that area for oil, oil
14 exploration, but -- even the governor of New Mexico,
15 Richardson, Governor Richardson doesn't want any
16 exploration to be going on down in that area. It's
17 called Otero Mesa in the Cornudas Mountains near Hueco
18 Tanks. But that whole area is associated. They're
19 affiliated with each other culturally and historically,

20 and to have a company go down there and essentially
 21 desecrate that area, it's not -- it just can't happen.

22 So I'm kind of -- I came up here wondering why --
 23 fully expecting some discussion brought up about why
 24 does this railroad have to be? I mean, why does it
 25 have to be constructed in the first place, you know. I
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1 mean, I understand that it's supposed to go up across
 2 reservation lands too, from what I understand. Why is
 3 it being even considered? You know, why aren't the
 4 tribes just saying no to this?

5 I mean, I haven't heard one person in this group
 6 say, no, let's don't do this, you know, don't let
 7 them -- don't allow them to do this. This is sacred
 8 land, you know. This is sacred properties, culturally
 9 and historically. It's a landscape, cultural
 10 landscape, and once you get into that area, that
 11 involves spirituality, you know. And the only people
 12 in this country here who can understand that are
 13 sitting around this area here. Well, we're people of
 14 color, you know. We're the only ones that can
 15 understand that. I don't see too many elders here
 16 but --

17 My chairman wanted to come up here to take part in
 18 this. So I guess essentially what I'm saying is what
 19 he probably would have said. Very outspoken, Chairman
 20 Horse, and he says what he feels, and that's kind of
 21 more or less what I think he -- he would probably say,
 22 and I would concur with what he might have to say about
 23 preserve -- I haven't that much talk about preservation
 24 either, you know. You know, I came up here fully
 25 expecting to hear these words, and here I hear these
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1 words -- one word I hear all the time is "mitigation."
 2 And I think people have heard me talk about that
 3 before. They know how I feel about that. There's one
 4 word that you don't want to hear in these discussions
 5 here today, any consultation that you have with native
 6 people, and that's the word "mitigation." You don't
 7 want to hear that word. You don't want to hear the
 8 term, certainly, "future mitigation," which means in
 9 the future we're going to mess this place up, you know
 10 we're going to tear it up, you know, what are you going
 11 to do about it.

12 Well, I don't know what to do about it except
 13 maybe try to educate the non-natives about what these
 14 places mean to you -- or to us. These places are a
 15 national treasure, you know, and we're not taking care
 16 of them. There are a lot of places like this in
 17 America that deserve to be preserved because of what
 18 they mean to the native people, and I've said this it
 19 seems like dozens of times before, because these places
 20 contain the essence of who we are as a people, native
 21 people.

22 I get my identity from what is called a tower.
 23 (Speaks native language) means standing on a rock. And
 24 for someone to climb on that sacred site is
 25 desecration. And who knows along this corridor where
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1 this railroad is proposed to be constructed, you know,
 2 you're going to run -- that's future mitigation right
 3 there to me, in my way of thinking. So you're going
 4 to -- you're kind of -- we're all seeming to take
 5 things here for granted.

I've been hearing the dialogue here today, and it's -- I'm surprised, you know. These terms, these words have been spoken several times today. But words that I've been wanting to hear people talk about today hasn't been -- hasn't come up, so --

I don't know if I should even be here today. I'm glad I came. I saw some good friends here: Tim and Dewey, Cheatum & Howe here, and some of the other people that I've seen. I'm glad to see these people again. So I'm just grateful to come up here and participate, but -- I'm up here to try and respect -- to try and represent my Kiowa people, because we used to live up here a long time ago. We lived in this area, and then we migrated south, so -- but our people still have that oral traditions of this place, South Dakota, Wyoming, Montana, and we still revere these places because they're part of our oral traditions, you know.

We still have names that we still carry today that have continued along in our tribal history; there are people that carry these names even today that come from this area. So that's how -- that's how we respect and we cherish our oral traditions that are associated with this area.

But here we are, and we're talking about mitigation and future mitigation and -- I really don't think that fits my criteria of preservation, anyway. I just thank you for this time to say what I have to say here so --

(Speak native language)

MS. GLIDDEN: Thank you so much for speaking up

and providing us with your comments. I was wondering if you all wanted to take a quick break, maybe 15 minutes. Does that sound all right?

(A short recess is taken)

MS. GLIDDEN: Okay, everyone. I guess we're going to get started again. I wanted to introduce Kevin Schieffer. He's the president of the DM&E Railroad, and I think that he wanted to maybe say a few words to everybody.

MR. SCHIEFFER: Thank you. I just want to say hello to everybody, first of all. And I sat here for an hour or so earlier listening. I think that's probably the most important thing I can do. I am certainly happy to answer any questions.

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But I do want everyone to know that we are committed to this process. We're committed to the project but also to this process in making it work. We want to do this the right way. I've had a lot of experience in my career working with tribal governments and different organizations, including working for the federal government, and especially in this project over the last 10 years, we've done a lot of consultation, both the kind that's technically required by the law, but I think we have tried, and will continue to try, to go above and beyond that to work with anyone who wants to work with us, to make opportunities, to just do it the right way.

We're not interested in pushing anything through or skirting around the edges. We want to build a project. We want to do it correctly. We want to do it respectful of all of the different interests out there.

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19 It is a big project. It's a complicated project. It's
20 impossible to build a project of this magnitude without
21 having impacts, we realize that.

22 And I've been out on the alignment with tribal
23 chairmen, with tribal elders, with many of the tribal
24 experts, and I do understand there are impacts, some of
25 them very significant, and we want to work with you as
best as we can to avoid those we can and responsibly 110

1 address those that simply can't be avoided. And from
2 that perspective, we just very much want to work with
3 you.

4 I've listened carefully to the last hour or two,
5 and I guess, from our perspective, we've been at this
6 project for a long time. We do need to make progress
7 on it. We're happy to go above and beyond the minimal
8 requirements and work with you. We think the more
9 input we can get, direct input and involvement, not
10 just input but involvement from the tribes, the better.
11 And it would probably be much more efficient at the end
12 of the day. But we just need to figure out a way to
13 make sure that the thing will progress in a forward
14 fashion.

15 I think it was Russell who made the comment
16 earlier, I can't remember for sure, but said something
17 very profound about, I think we all need to recognize a
18 perspective here. You're involved in this eight hours
19 here and eight hours there, and we're involved in it 40
20 or 80 hours a week, and we tend to lose perspective, I
21 think going both directions. And I don't know, on our
22 team, it is -- it is just important, I think, to have a
23 process that we can keep going in a straight line. And

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25 over the course of 10 years -- this is a perspective;
0 it has nothing to do specifically with tribal 111
1 consultation, but we've gone around and around on a lot
2 of different things, and the progress of this project
3 is kind of spiraling forward, not going in a straight
4 line forward. And we're trying to straighten that out
5 as much as we can.

6 I guess I see this as an opportunity for us, by
7 working together, we can move not just the project
8 forward but, I think, advance the interests that we're
9 here to protect today by working together, and that's
10 what we want to do, so --

11 I guess that's just sort of a general theoretical
12 observation. Herb and Randy and Doug and others have
13 talked to me about these funding issues, and we're
14 perfectly happy to do that as long as we know what the
15 end result is. I have to get justification for this
16 funding too, and the first question I'm asked is, what
17 comes out of that, and we need to have a process in
18 place that I can say, if we do this, that will be the
19 result. And right now I think, without some sort of
20 commitment, we can't make a funding commitment into a
21 dark hole or into something that's uncertain. And to
22 the extent -- and that's just to give you a perspective
23 on this end. And to the extent we understand your
24 concerns and perspectives and can address them, happy
25 to shape that any way we can as long as we can figure 112

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1 out a way to move the thing forward, because at the end
2 of the day that is what we're about and what we've been
3 about for about nine years too many, from our
4 perspective.

5 So hopefully we're coming close to the end of this
6 process and look forward to working with you to get to
7 a successful conclusion.

8 I'd be happy to answer any questions, but I'm
9 mainly here to listen, as I said before.

10 MR. FISHER: I just had a real brief comment on
11 that. I think it's so true that what Russell had
12 mentioned about, you know, not being full-time workers
13 on this particular project. I mean, this is one of
14 many, many projects that THPOs and those in cultural
15 resource areas do on a daily basis, so --

16 These are times and situations where we see each
17 other like this are probably the most productive times
18 that we can come to some resolution on some of the
19 issues that are in front of us. Otherwise, when we
20 leave, we're so bogged down with many other issues and
21 trying to put out fires and that sort of thing that it
22 really makes it hard to try to have a meaningful
23 meeting among the Tribal Historic Preservation
24 officers.

25 So I think -- that's the point I want to make is 113

1 that when we say we need another meeting, that those
2 are probably real good opportunities to try to come up
3 with a resolution on some of these issues that we face.
4 And like Tim was saying today, you know, wanting to
5 look at the archeology reports and that sort of thing,
6 I mean, you know, that might require another meeting
7 somewhere.

8 But if you want to have a real good relationship
9 and try to come up with some meaningful resolution or
10 resolutions that -- it takes a lot of time. You know,
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11 I had to travel nine hours to get here on my vehicle,
12 through wind, snow, ice, the whole works, highway
13 patrol, you know, the list goes on and on, dodging sand
14 trucks and that sort of thing.

15 So it requires a lot of time and energy, and
16 sometimes that's the way we have to look at it. If you
17 want to have real good meetings, they take time. And I
18 hope that you understand and take that into
19 consideration, that when we say we think we require
20 another meeting that we're just not saying we want
21 another meeting, you know. I'm not traveling nine
22 hours just to look at the countryside, you know. I
23 think I can see the Black Hills from here. It's
24 beautiful country.

25 But when I get here, I do -- I think we produce 114

1 documents, we produce language, we address issues,
2 long-term issues, current issues, all those things.
3 And so when we say, you know, we only have a -- this
4 time is quality time, really valuable time to sit for
5 two days.

6 After this, you know, we may communicate via
7 e-mail or something, but that just does not give it as
8 much credit as we do sitting around the table like
9 this, whether it's here or Rapid City or Pierre or any
10 place else.

11 So I just wanted to add that and respond to some
12 of the comments that you had.

13 MR. SCHIEFFER: Fair enough.

14 MS. GLIDDEN: Anybody else have any comments?

15 MR. YOUPEE: I just want to say to the president
16 or CEO or whoever they name you or title you --
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MR. SCHIEFFER: Chief cook and bottle washer.

MR. YOUNG: I just want to say that you are working with a number of sovereign on this project. Collectively we've worked very hard in considering people unique in their own way, not with the same language, not with the same traditions or customs even, but the humanity and the ability and tact to come together for the sake of common goodness and for the sake of synergy between DM&E, STB, and the conditions

that were listed, in trying to match a workable plan and having something else besides compliance to meet, possibly commitment to foster in terms of an office that would provide services to your department, agency, the STB, individual tribes, in a manner that would provide interpretation, okay, that would provide honesty, that would be straightforward to tribal entities and something that they can respect. So a buffer zone, perhaps, this office can function as, accumulating information from the other agencies, providing that information, and a thought pattern that tribes could understand.

As an outcome of all these meetings, as an outcome we have constructed something besides all the consultations that we've been involved in, besides all the discussions and head pounding, that we have this as a result, and we're not asking for dependency as far as an office. Because you do in fact have the last say regarding if funding is going to be provided to that office. You know, you have strings. You have processes. You will have the final say. But as far as a viable solution concerning consensus of tribes, you

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have this. You have this. It's at your disposal right now. You don't always have this, but tribes are providing that. And that's -- that would be the end result. That would be the end result.

But, again, we're not looking at dependency. We can create this office in terms of a self-sufficient model, eventually working itself out of that dependency, or that funding avenue and creating a business arm, sector of that charter to seek funding from other entities.

MR. SCHIEFFER: Well, that is something I would like to do. That is something we want to do. This isn't to me a question about having the last say. This is a question of respect and consensus, and to make this thing work the way I think everybody around this table wants it to work, it shouldn't be an issue of who gets the last say in anything. It's how do we do this the right way.

I think we're perfectly willing to fund that office, that program. I don't have unlimited resource, and I am spending other people's money, and I do have to demonstrate, though, that when we do it that -- you know, the first question I'm going to get is the first one that I give to these guys when they make the proposal to me is, what comes out of that process, what's the deliverable, and that's what I've got to answer to at the end of the day.

And I think, from my perspective, this is something we very much want to do. The only thing I think we need is to be able to justify it, to have some

3 sort of process in place, and I don't know if there's a
4 particular part of that that's a hang-up. I've
5 listened closely in the last couple hours, and I don't
6 know if there's a particular detail where there's a
7 specific hang-up here. I've been listening, and I
8 haven't heard it, and I don't know if there is. There
9 must be. I just am not sure what it is.
10 Is there a particular process that we've asked as
11 a condition of the funding, or is this still conceptual
12 in the discussion stage? And I ask that to anybody,
13 but I see Herb --

14 MR. EAGLE BEAR: I'll respond after Herb.

15 MR. SCHIEFFER: Okay. Good.

16 MR. JONES: Well, Russell, if you want to go
17 first, feel free. Please do.

18 MR. EAGLE BEAR: No, I want to hear you again, in
19 front of your boss.

20 MR. JONES: Russell accuses me of singing and
21 dancing on this so --

22 What I will say on this --

23 MR. SCHIEFFER: He does every day, on every issue.

24 MS. HALVERSON: Oh, there's where it comes from.

25 MR. SCHIEFFER: That was a joke, for the record.
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1 MR. JONES: Thanks a lot, boss. No, I think -- I
2 do think we have come to an understanding at least
3 about the roles and responsibilities. I think the
4 difference is there's -- we don't have a defined scope
5 that I think addresses the things yet that we have been
6 talking about. And I think -- what I have suggested,
7 Kevin, is that we try to put something together that
8 initially addresses what are the project's most

9 pressing needs, and that is the processing of reports
10 and distribution of information and that process.

11 There are other items that certainly can be added
12 to that list, that list of items to work on in the
13 office. But my suggestion has been that we do it in a
14 way that says, demonstrate ability to deliver on that
15 and then look at expanding it to include other
16 responsibilities down the road once that has been
17 demonstrated.

18 We have talked about an office that I think the
19 range has been from a very large office to an office, I
20 think, that we have discussed most recently would be a
21 director with a couple of staff people. I think that's
22 something that makes sense to us, to be able to do
23 something like that. It's something that we would
24 propose. But, again, we have not been able to figure
25 out for sure, I mean, what those exact costs would be
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1 for that and the funding period, whether it be for a
2 quarter or annual, how it would work out, how the
3 payment structure would work for that. But I think we
4 are relatively close on that too.

5 So I think it's a matter of sitting down, and I
6 think we can do that. I think if that makes sense to
7 the parties, I think we can sit down and come to a
8 conclusion on that. But Russell might have some other
9 thoughts on that, so I'll keep my comments short.

10 MR. SCHIEFFER: That raises a number of questions
11 with me, but I think I'm going to let Russell go first.

12 MR. EAGLE BEAR: I guess what I have to say will
13 probably create a lot more questions in your mind.
14 It's always good to see somebody in charge to speak

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16 directly. We've been dealing with the federal agency
17 and its third-party contractors and of course DM&E. We
18 have a large group of people that can pull our
19 resources together to develop something, and I think we
20 have been. When we first mentioned the concept of an
21 office to help expedite the process of reports, you
22 know, that was an issue, helping our tribes respond --
23 you know, we have a February 20th deadline that we all
24 have to go back and scramble to meet that deadline now.
25 You know, we spent two days here. Maybe that's what we
should have been doing, but --

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1 When it comes to -- you know, we initially threw
2 the idea out, and we had a reception from your people,
3 and they thought it was a good idea, so we started to
4 develop a plan. We had a meeting in Rapid City, and
5 then we did a committee follow-up meeting here in
6 Sioux Falls last week to kind of finish the -- finalize
7 the product. So we're spending some time. And then
8 your people come here, and then they kind of agitate,
9 well, maybe not the group here, but they certainly step
10 on my toes when they start making comments -- or even
11 last week, you know, sometimes we're reminded that,
12 well, you know, we're funding this, you know, so --
13 that was a stickler last week for me when that issue
14 was brought up.

15 This morning we heard from our federal agency
16 telling us that, well, you know, DM&E is here and they
17 don't really have to fund you guys, they don't have to
18 do anything, in that sense. So then that kind of sends
19 up red flags for me.

20 I was hoping that we were getting into a good

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22 dialogue. It's always been -- for me, you know, coming
23 to these meetings with DM&E, we kind of do it in a
24 joking way, but sometimes some of the comments and
25 statements that are made, you know, they kind of step
on my toes.

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1 You know, we're at the table here right now trying
2 to work out something that is viable for all of us, but
3 then so we said, well, we need a commitment, you know,
4 we need some kind of commitment, you know. I spent two
5 days last week, I could have been doing something else
6 at home, and I come again this week for two more days.
7 We're trying to finish a product. Hopefully we were
8 going to have a budget together and present it to you
9 today. Now we find out that your people are going to
10 require us to have a charter. That's the first thing I
11 heard earlier when Herb was talking, some criteria.

12 And somehow it seemed like there's these words
13 that are coming out there's like a lot of mistrust.
14 Even you alluded to that when you say -- when you
15 mention that you didn't want to fund anything that --
16 you know, you mentioned a dark hole or the uncertainty.
17 When you start saying those things to me, you're

18 saying, all the work you've done thus far is
19 meaningless because it's in a dark hole and there's
20 uncertainty, you know. And I don't see it that way,
21 you know. We busted our ass trying to get something
22 together, trying to work out a solution, a resolution.

23 We can go back, we can probably go to our tribal
24 leaders, our tribal councils, and we can probably
25 suggest that we fight you all the way, you know. You
can maybe end up working on this for another 11 years.

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2 But we're starting a process today, and we're also
3 almost at the brink of solution, resolution. But today
4 we kind of heard other things and, you know, we
5 decided, hey, we might need to go back to plan B here.
6 But these are things that I'm observing coming here.

7 I had a complaint about your tribal liaison, you
8 know. Under those stipulations there's certain things
9 that person is supposed to be doing, and up until when,
10 I don't know when they're going to start implementing
11 -- when you're going to start implementing those
12 stipulations that you guys really stick on, that
13 court-ordered stipulations.

14 I submitted a verbal complaint to the federal
15 agency. I can probably do that in a letter to you. I
16 don't know how good that -- you know, what good that
17 will do. But, yeah, we just -- it's been rough up to
18 this point. And I'm glad that we get to voice our
19 thoughts to you. I can say a lot more. I really want
20 to tell on Herb and Randy sitting next to you, but I'll
21 save that for another day.

22 I notice Cathy is raising her hand over here, and
23 she's running the show here so I've got to turn this
24 mic over to her, but -- those are my concerns, and you
25 did make some statements here that I just wrote down

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1 that -- again, you're pushing us back down to, you
2 know, this uncertainty, you know, when all we're trying
3 to do is work with you. You know, we are mandated by
4 some of our traditional people to -- they don't want
5 this, you know. They don't want the railroad coming to
6 the sacred Black Hills. They are opposed to it. But
7 we're mandated by federal law to help -- or at least to

8 make sure that all cultural property, all burial sites
9 are protected, and that's our job, and we're doing our
10 best to do that, you know.

11 The gentleman from the Kiowa asked us, you know,
12 why none of this was ever mentioned. But, no, right
13 from day one, right from day one we've been talking.
14 we've been saying these things. Now we have to --
15 because there's a federal agency involved, we have to
16 jump through those hoops, we have to follow those laws
17 that are in place to make sure that you are in
18 compliance, and so that's our charge.

19 But here we're trying to do a solution, you know.
20 It's just like, you know, dangling that carrot and then
21 stepping back and then we have to go look for it again
22 and then stepping back, you know. I don't want to play
23 those games. Either you come out and say something
24 that you'll do it or send us home so that we can adjust
25 accordingly to our plans. And I guess that's what we

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were asking for from yesterday and today. Thank you.

MS. GLIDDEN: Russell, thank you very much.

Russell is really right. We have spent a lot of time
and energy, all of us, trying to get a plan together
that would work, to incorporate tribal concerns, and I
would hate to see that this work plan would get
derailed. I mean, it would be such a disappointment
after all of everybody's hard work, coming nine hours
from Montana and all these different places.

I don't feel as though we're really that far off
from where we need to be. I think we have this work
plan, and we have -- we have some incorporated changes
that Chase is going to get us, right?

MR. IRON EYES: Yeah.

MS. GLIDDEN: What we'll do is we'll go ahead and incorporate those, send this around for another round of review to the tribes, to all the tribes to get input, and then in the meantime I guess we have to -- Herb, did you want to talk on -- Herb has basically said that he would write a letter of commitment that would be attached to a draft charter that would be sent around with the draft. And, you know, if the tribes approve of the final draft and if they have comments and want to make changes to the draft charter --

When I looked at the charter that we have right now, it just really was -- it's an outline of -- a very short outline of what the Office of Tribal Involvement would look like, and it's very much like the last two pages of the work plan, or the last two or three pages. It's not really -- it's a job description basically, or a mission statement.

So I really think that we're close. We'll go ahead and incorporate those things. I think that maybe, you know, since we don't have a whole lot of time today and it's been kind of a difficult meeting that we'll end early and that we'll go ahead and give you an opportunity to go back so that we can incorporate any other changes that you have, and then we'll move on. And I think at that point -- I mean, unless I'm wrong, Kevin, that you'd provide your buy-in for this.

MR. SCHIEFFER: I think from our perspective that's absolutely right. And I want to just make sure Russell and everybody else here understands, my

comments aren't based on mistrust or trying to push anybody down or meaning any disrespect whatsoever.

Any time -- this has nothing to do with who is involved on the other end. Any time someone makes a proposal for new funding, we have to go through fundamentally the same process, and that's in any

business decision we make. Whether it is somebody wants to replace a rail out on the railroad or whether it's an engineering issue or archeology issue and tribal issues such as we're talking about today. Somebody makes a proposal. The first question is -- they know what the questions are before I ask them because I ask it literally dozens of times a week as proposals are brought up.

Before I can commit somebody else's money, there needs to be clarity. I can't just say, oh, I'm going to spend X thousand dollars and not have a deliverable for them at the end of the day. I need to be able to justify to them, before they allow me to draw on that, I need to justify what the deliverables are.

I just want to emphasize that had nothing to do with a concern about a mistrust with anybody. That's just a process that we go through in any new funding effort. I think, from our perspective, we don't want to dictate terms either. If it is something that we can come to some kind of consensus, a mutual, respectful understanding of what ought to come out of that process, then that would be great. I don't think we need any more than that. We just need to know that, here's what it is. Otherwise, I'm -- when I talk about dark holes, it's just knowing how much am I committing

1 and where is the beginning, where is the end of the
2 process.

3 And you can't answer all of those questions up
4 front, I understand, or contemplate every detail, but
5 you need a process and an outline so -- I just want to
6 emphasize that. It was certainly nothing but absolute
7 respect for you. We want to do this, but we just need
8 to have a plan that we can make it work.

9 MS. GLIDDEN: Now, Kevin, I'm just wondering, is
10 there any way that you could -- I mean, this is just --
11 I'm throwing this out there, that you could provide a
12 letter of commitment that would just be contingent on
13 having a charter and a budget and a final work plan?
14 Is that something that you could do?

15 MR. SCHIEFFER: I would think -- that's what you
16 were talking about, wasn't it, Herb, before, when I was
17 listening? So I think the answer to that is yes.

18 MS. GLIDDEN: So we've got --

19 MR. EAGLE BEAR: He did mention a charter, but he
20 said he wasn't going to share that with us, but
21 apparently he shared it with you. These are some of
22 the things that, you know -- you know, for us on a
23 tribal level, when we're talking about a charter, who
24 do we charter? Are you guys requiring chartering with
25 the State of South Dakota, State of Montana, State of

1 North Dakota? Or do we go to our respective tribes and
2 charter within our tribal organization? I mean, those
3 are issues that we have to discuss before we even make
4 a final decision.

5 So, I mean -- he did mention -- your man here,

Herb, mentioned that earlier. He mentioned something
7 else too, but -- I couldn't remember what it was, but
8 he did mention a charter, but he said he wasn't going
9 to pass that around until --

10 MS. GLIDDEN: I took a look at an early draft that
11 wasn't completed. But the only reason I brought it up
12 is just because when I looked at it, it was very
13 simple. It was just a basic description of what this
14 office would look like.

15 When I had looked at it, Kevin hadn't had an
16 opportunity to provide comments and neither had Randy.
17 So I just was -- the only reason I brought it up is
18 because, just to show it's a very simple document that
19 could probably, you know, be completed pretty quickly.
20 I just don't -- in other words, I didn't think it was
21 something that at all would stop this process.

22 MR. JONES: If I could, Cathy, too, I think we're
23 making this more probably complex than it is. I don't
24 think I ever used the word "charter", because I think
25 what I said today was "mission statement" type of

1 thing. I don't know -- but I mean, it's a pretty
2 simple thing.

3 What we need to be able to do is define
4 responsibilities, how the office -- the measurables for
5 the office, what it's expected to do and how you know
6 that it's accomplishing that and a budget. And I
7 understand that there is something that's been, I
8 think -- I was talking to Jim just now, I think that
9 there is something that at least Randy has too, Randy
10 withdrew had maybe asked for them too, a document that
11 gives us something to work from.

I think we can come up with something. We want to be able to give it to you, show you what we've got on this thing and demonstrate, you know, be able to show you what level of commitment and how that would all work in whatever that document is. I hate calling it a charter. Charter sounds to me like something you have to file some place. I mean, this is something, I think -- it's a document among these parties here. It's an understanding of what the purpose of that office is and who is going to work there and what they're going to do and how we're going to know they got it done.

I think it's a lot simpler than -- at least in my mind. I don't think I used the word charter. If I did, it was not intended. I don't think I did.

MS. GLIDDEN: And as far as a budget is concerned, I mean, I know that during our committee, we did actually, you know, work on a draft budget, and so I got the impression that maybe there was some sort of consensus between what we had come up with and what DM&E had been looking at for a potential budget. So it seems to me that we're pretty close on that arena as well. I really think we're close here, I really do, and if DM&E can provide that letter of commitment, I mean, how would everyone feel about that? Pam?

MS. HALVERSON: Kevin, I'd like to ask you a question. I'm Lower Sioux THPO officer from Morton, Minnesota. I needed to ask you a question. I need to leave here.

What are your plans for Minnesota? I mean, the railroad is already there, and there's -- you know,

you've done a few improvements and stuff. But what are you going to do with the tribes and what's happened there? I mean, how are you going to deal with this? I mean, are we just going to be left out again? Is Minnesota tribes going to be left out?

MR. SCHIEFFER: First of all, we look to -- just philosophically I approach this as -- when you say, what are we going to do, I look to the federal

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agencies, the documents, the guidance we get from the consultants to say, here's what you're required to do by law. And that's kind of the baseline, obviously. I am perfectly happy to go above and beyond that. Sometimes I struggle with how to. You know, we all have -- one thing I learned is, the three years as a U.S. Attorney, and I spent a lot of time traveling the state, to all the reservations, just learning how incredibly much I did not know, and listening and just trying to understand.

I'm wide open to any suggestions anybody has regardless of what's required by the law, I mean, to go above and beyond that. Obviously we're going to do that.

So to answer your question, in the first instance I look to the consultants and the federal agencies to answer that in terms of to make sure we're doing everything we're supposed to be doing. But if there are other opportunities, I am perfectly happy to talk to folks, either individually or collectively, and look for those. I have done that a lot in this case already, in the last 10 years, and we've had some very productive discussions. But kind of going back to what

Russell was talking about earlier, when it's one day here and one day there and then we're doing different

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things and there's turnover in our organization and turnover in federal and consultants and tribal groups, you spend a lot of time redoing, which is exactly what you need to do.

But in Minnesota you're right, the track is there today, but that doesn't mean there aren't opportunities there. We've talked with different tribes about, obviously, some of the cultural issues. We spent a couple of days on the railroad traveling up and down the right-of-way. Most of that was in South Dakota, happy to do it in Minnesota. I learned a lot about what's there in our existing right-of-way, and things that we could be doing.

We've done things like that. We've also talked about things like just economic development type things, service jobs, things of that nature, that aren't specific to the issue at hand of cultural resources, but we don't limit it to that.

So I guess the real answer to your question is, on the technical things, we look to the consultants, obviously, to direct us. But beyond that, I look to a dialogue. I look to communication. Whether it's with a group or with individual tribes. Whatever works. And from my perspective, once you get past the requirements, which we want to make sure we do, it's

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kind of an open slate, or a clean slate in terms of what else we could build on top of that.

We're looking for opportunities to do something unique, different, better, whatever you want to call

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it. So I guess the other half of the question I would turn back to you. What can we do? What should we be doing? We're looking for ideas. I think that's part of what the consultation process is about.

MS. HALVERSON: Well, it's really hard to come here to these meetings when we've worked so hard on these plans -- on this plan, and we gave DM&E and the federal agent a month to work on, to look over the plan when we first gave it to them in Rapid City, so then we get a few weeks, and then we have to hurry up and come up with a committee to meet, and then when we come to this meeting, the federal agent has redone the plan and added what she thinks. So it's really not -- we're really not, you know, getting the input together. So we do it all as a group and then come here and not accomplish nothing in two days, and that's what's happened this -- I mean, this meeting, we haven't really accomplished anything, except getting to meet you. Otherwise, we really haven't accomplished anything in this meeting.

So I don't know. I don't have time to come to

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these meetings because we have other projects besides DM&E, and when we come to the meetings and nothing gets -- you know, we can't even get a letter of commitment from you saying that you're going to follow through with this office if we come up with a proposal or -- you know, so we haven't accomplished anything really in two days except meeting with you and getting a few things done in the plan, which was this morning, three parts of it. I mean --

MR. SCHIEFFER: In terms of what was delivered

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11 before, obviously I can't speak for the federal
12 government, but I've been involved in quite a few of
13 the tribal consultation meetings relating to this
14 project over the years. And, again, it just goes back
15 to the nature of the beast. So this is by far, from my
16 first involvement -- Herb, maybe I'll let you address
17 the issue of the documents from our perspective because
18 I'm not --

19 In my experience, though, the give-and-take with
20 the documents going back and forth, that's a fairly
21 necessary part of the process. I don't know that --
22 and in terms of being prepared to deliver a letter, I
23 think we've addressed that. We're happy to do it, as
24 long as we know where that's going.

25 MR. JONES: Pam, I don't want to mischaracterize
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1 anything either. I just think -- I mean, it is a work
2 in progress, and sometimes it is slow. But, again,
3 this was -- today was the third meeting we've had, I
4 think, really on the work plan. I think we had the
5 tribal caucus product that came out, the first draft
6 that came out on the work plan; the working group last
7 week that worked on it; and today. Actually it's kind
8 of four meetings that have been held on it.

9 And I thought today obviously was to resolve the
10 work plan. I understand there are additional thoughts.
11 I think those are going to be incorporated into it. I
12 think hopefully that gives us a document we can go from
13 here working with.

14 But it isn't -- it has been kind of glacial pace
15 at times. I'll agree. And part of that, too, is
16 trying to keep everybody on the same page. That's why
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17 we had the extra round of meetings last week where we
18 tried to get the working group to work on some of this
19 material as well. But I think we're close. I hope we
20 are. And I think, you know, certainly we intend to
21 keep pushing forward on this and working with all of
22 you and with the STB to make this happen and do it in a
23 constructive way. And I said that last week too.

24 I think sometimes there's an atmosphere of an
25 adversarial-type relationship here, and we don't
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1 certainly regard this as being that. I thought, you
2 know, as I said last week at the meeting, after you
3 have the EIS and have the decision and the mitigation
4 conditions that you have, I think it's our job to try
5 to work together as very best we can to make sure that
6 we do it and that we do it right. And understand that
7 we're working with 33 or 35 federally recognized tribes
8 in trying to get that done. And so it isn't an easy
9 process, but we're getting there.

10 And as far as the office, the office commitment, I
11 think we're very close on that front. I think
12 hopefully we can get something to STB on that and get
13 that circulated to you. So, I guess -- I know you
14 don't think a lot of progress was made today. I hope
15 that it results in the finalization of that plan, and I
16 think that that will be another, hopefully, positive
17 milestone for us.

18 MR. IRON EYES: Before we go on any further I
19 guess I wanted to introduce myself. My name is Chase
20 Iron Eyes, and I represent -- I'm the delegated
21 representative of the Standing Rock Sioux Tribe, one of
22 those sovereign entities that's a federally recognized
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23 tribe. And it is our position, it's the position of
24 the Standing Rock Sioux Tribe that consultation takes
25 place on two levels as mandated by the NHPA and 137

1 executive orders, and one of those levels is with the
2 respective THPOs or cultural resource representatives,
3 and the other is on a government-to-government basis
4 with the governmental entity.

5 And we -- I gave Cathy, you know, as
6 representative of the Surface Transportation Board, a
7 document stating our position, and we would like to
8 know if you plan to either contact our chairman, Ron
9 His Horse Is Thunder, or the executive director of the
10 Great Plains Tribal Chairman's Association to try to
11 initiate this government-to-government consultation.

12 A lot of times, practically speaking, it will
13 probably be the respective THPOs and CRRs that are
14 designated or delegated as the government

15 representative. But I think that, you know, I would --
16 it's our position that we would like to see that happen
17 to sort of foster a true government-to-government
18 consultation effort, and also, I would like to say,
19 required signatories to the P.A., but it's probably --
20 I don't know if it's that, you know -- if it's
21 required, but -- we all got to sign the P.A. The
22 elected governmental bodies have to sign the P.A.,
23 so -- thank you.

24 MS. GLIDDEN: Okay. All right, Chase. Thank you.
25 Thanks everyone. I think we're probably all ready to 138
1 kind of disband. I guess this has been a couple of
2 really difficult days, but I thank you all for your

hard work.

4 we're going to go ahead and take the current
5 document that we have and incorporate the comments that
6 you had, and then we'll send it around for review. In
7 the meantime, we're going to develop a letter of
8 commitment, which will be sent around, from Kevin,
9 correct?

(Mr. Schieffer indicates)

11 MS. GLIDDEN: With the proviso that certain things
12 need to be completed, including a mission statement and
13 a budget, and we can either propose a budget and
14 propose a mission statement or allow you to provide
15 that, however you want to do it.

16 MR. EAGLE BEAR: We've already done that.

17 MS. GLIDDEN: Okay.

18 MR. EAGLE BEAR: You know, when we worked last
19 week --

20 MS. GLIDDEN: Right.

21 MR. EAGLE BEAR: -- we developed a mission
22 statement. You guys talked about budget, so we
23 developed a budget.

24 MS. GLIDDEN: Okay.

25 MR. EAGLE BEAR: You know, and then now they're 139
1 throwing out earlier, you know, the charter, and that's
2 a stickler.

3 MS. GLIDDEN: Okay. Can we --

4 MR. EAGLE BEAR: Can I make one comment? I want
5 to thank you for coming. This is my first time to see
6 a president of a railroad coming to a meeting. In the
7 past I probably missed you at meetings or I wasn't at
8 the meetings. But I plan on being here for a while, so

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10 down the road we'll still be dealing with each other.
11 And I think it's good that you come, because certainly,
12 attitudes and languages change when you're around by
13 your representatives, and I think maybe in the future
14 if we are going to have a meaningful meeting to
15 finalize things, I think you should be here so that,
16 that we can get the dialogue going. I mean, it's just
17 good that you were here. Things kind of changed a
18 little. Even the language changed a little bit from
19 the previous statements. And we can go back to this
20 recorder here and justify some of the things that were
21 said, you know, but -- all in all I want to thank you
22 for coming here and visiting with us because I think
23 you're the key.

24 MR. SCHIEFFER: Well, thank you for that. I look
25 forward to working with everyone, whether it's
individually or in group meetings, wherever we can. I
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1 have complete confidence in our team. We've been at
2 this a long time. It probably goes back to what you
3 were talking earlier, people that live and breathe and
4 work this thing 80 hours a week, it's as hard from that
5 end as it is from the eight hours here and all the
6 different kinds of projects like this that you have
7 going on elsewhere, and I think we just need to bridge
8 that a little bit, and hopefully we can, and hopefully
9 we can make some progress.

10 MR. EAGLE BEAR: And thank you for providing our
11 meals and whatever you guys pay for because we don't
12 want that thrown in our faces later on by one of your
13 representatives too. It happened in the past, so I
14 don't want --

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16 MR. SCHIEFFER: Okay.

17 MR. EAGLE BEAR: I don't want to go there, though.
18 MR. SCHIEFFER: All right. We won't. That's
19 good.

20 MR. BIBLER: We're planning on a meeting every
21 month for a while, and we were thinking about having
22 the next meeting in Pierre, and if we can get the OTI
23 set up, we could probably possibly visit that facility.
24 So keep that in mind. We'll get a hold of you later,
25 give you the definite information on that.

(Discussion off the record)

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1 MS. GLIDDEN: Okay, everyone. Thanks again. Have
2 a good trip. Safe travels.

(The proceedings are in recess at 5:00 p.m.)

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1 STATE OF SOUTH DAKOTA)
2 : CERTIFICATE
3 COUNTY OF MINNEHAHA)

4 I, Audrey M. Barbush, a Registered Professional
5 Reporter and Notary Public in the above-named County and
6 State do hereby certify that the above-entitled proceedings
7 were reported by me and that the foregoing pages 3-141,
8 inclusive, are a true and correct transcript of my stenotype
9 notes.

10 In testimony whereof, I have hereto affixed my
11 signature this 18th day of February 2008.

Audrey M. Barbush

Commission Expires: 3/8/2011