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STB TRIBAL CONSULTATION SUMMIT

TONGUE RIVER RAILROAD PROJECT

DAY 3

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Taken at
Holiday Inn, Rushmore Plaza
Rapid City, South Dakota
June 23, 2011

A P P E A R A N C E S

CATHY GLIDDEN

(Surface Transportation Board)

VICTORIA RUTSON

(Surface Transportation Board)

CONRAD FISHER

(Northern Cheyenne Tribe)

CURLEY YUPEE

(Ft. Peck Assiniboine and Sioux Tribes)

DOUG MELTON

(Bureau of Land Management)

CHARLENE DWIN VAUGHN

(Advisory Council on Historic Preservation)

JIM WINTERS

(Army Corps of Engineers)

JIM WHITTED

(Sisseton-Wahpeton Oyate Sioux)

COLLETTE CHAMBELLAN

(Western Cultural Resources Management)

GILBERT WHITEDIRT

(Cultural Commission for the Northern Cheyenne Tribe)

GORDEENA WHITING

(Northern Arapaho Tribe)

DARLENE CONRAD

(Northern Arapaho Tribe)

DANA DUPRIS

(Cheyenne River Sioux Tribe)

WASTÉ WIN YOUNG

(Standing Rock Sioux Tribe)

ALEC SANDCRANE

(Tribal Councilman for the Northern Cheyenne Tribe)

A P P E A R A N C E S (Continued)

JIM JENKS

(Montana Preservation Alliance)

RUSSELL EAGLE BEAR

(Rosebud Sioux Tribe)

LANA GRAVATT

(Yankton Sioux Tribe)

STEVE BRADY

(Northern Cheyenne Cultural Commission)

JAMES WESTON

(Flandreau Santee Sioux Tribe)

WANDA WELLS

(Crow Creek Sioux Tribe)

DAVID COBURN

(Steptoe and Johnson)

DOUG DAY

(Tongue River Railroad Company)

BEN RHODD

(*Arrived after meeting concluded*)

(Rosebud Sioux Tribe)

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P R O C E E D I N G S

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(Prayer)

MS. GLIDDEN: Curley had approached Cindy about typing in the questions that you had posed yesterday as a post script, so we're going to enter that into the record from yesterday afternoon's session.

MS. RUTSON: Cathy, could you repeat that? I didn't hear that last --

MS. GLIDDEN: I just wanted to mention that Curley, when he was here yesterday, he had approached Cindy and requested that the questions that you should have copies of that were presented by the tribes after the tribal caucus, he wanted that entered into the record, and so Cindy is going to type those into the record as a post script basically to yesterday afternoon's caucus session. I just wanted everyone to know that for the record.

MS. RUTSON: Thank you.

MS. GLIDDEN: So go ahead.

MS. RUTSON: Thank you, Cathy.

Good morning to everyone. I hope you all slept well.

Yesterday afternoon at three o'clock we returned at the tribes' request following the tribal

1 caucus that had taken place yesterday morning and
2 afternoon. When we returned to the meeting, the
3 tribes presented us with a number of questions which
4 we discussed throughout the afternoon.

5 At the end of this discussion, it was clear to
6 me that the tribes were feeling as though
7 consultation needed to occur and continue to occur.
8 They felt very pressured by the September 1st, 2011
9 deadline. They requested, and I have agreed, to
10 obliterate the September 1st, 2011 deadline for
11 signatures for the amended PA.

12 They were also unhappy with the idea of the
13 amended PA, so I have agreed that the amended PA is
14 off the table. We will start with a new PA. There
15 may be some elements of the old PA that are
16 appropriate. That will be developed during
17 consultation.

18 Have I characterized correctly what we agreed
19 to yesterday afternoon?

20 MR. WHITTED: Yes, you have.

21 MS. RUTSON: Thank you very much.

22 We -- after the meeting, Evelyn Kitay,
23 Cathy Glidden and I met with David Coburn and
24 Doug Day; David Coburn, counsel for Tongue River
25 Railroad, and Doug Day with Tongue River Railroad,

1 and we explained to them what the tribes had
2 presented and what we have agreed to.

3 And we are happy to hear comments that you have
4 today, but please understand we're not debating
5 this. This is a *fait accompli*. We're not going to
6 be looking for signatures on an amended PA this
7 afternoon. We're not going to be working on an
8 amended PA. We have a new PA. We no longer have a
9 due date of September 1, 2011.

10 The tribes have expressed interest, a strong
11 desire and a need for additional
12 government-to-government consultation. Some
13 characterized it as a need, not for additional but
14 for an initiation of government-to-government
15 consultation. This could very well involve more, a
16 meeting or meetings in the future.

17 The concern I have is that come October 1st my
18 agency's travel budget is going to be very limited.
19 That is my worry, not anyone else's worry here at
20 the table, but it is a concern for me because I
21 understand consultation by telephone is not
22 desirable. But we have until -- October 1st, we
23 have a travel budget until then, so that gives us
24 some time. So if we do have more, a meeting or
25 meetings, I would be hopeful that we could schedule

1 something before October 1st to ensure that we can
2 physically be here to meet face to face.

3 Now, please --

4 (Telephone interruption.)

5 MR. EAGLE BEAR: Better take that phone away
6 from her.

7 MR. SANDCRANE: Before we start, there's a
8 couple questions that come to mind. When the STB
9 made their decision to approve the railroad, was the
10 tribe's, the Northern Cheyenne Tribe's Class I air
11 status considered, and was our water standards
12 considered?

13 MS. RUTSON: This is going to sound like a very
14 legalistic answer, and if I'm not clear, just stop
15 me, but in our NEPA analysis in the EISs that we
16 prepared, we complied with the Clean Air Act. We
17 looked at the air pollutants that are listed under
18 the Clean Air Act and did an analysis to see if this
19 project, the construction and operation of the
20 railroad would violate any of those standards.

21 We did the same with the Clean Water Act
22 analysis to ensure that water quality would not be
23 degraded as a result of both the construction and
24 the operation of this rail line, the proposed
25 construction, operation of the rail line.

1 Does that answer your question?

2 MR. SANDCRANE: Somewhat.

3 MS. RUTSON: What can I do better?

4 MR. SANDCRANE: Well, I guess, with the coal
5 companies, Colstrip, Decker, Spring Creek, one of
6 the things that they did when our clean -- when our
7 class -- when our reservation was designated Class I
8 air shed, they brought in monitoring sites to
9 monitor the air to make sure these were not
10 violated.

11 I believe there's also a Class I view shed on
12 it also so that they cannot be obstructing the view
13 with the sediments. But right now you can, from
14 where I live I can still see the Rockies. And there
15 are times we can't because of the, Decker is right
16 in that view shed, but on a clear day you can see
17 the Rockies from my house.

18 And these are -- I guess after thinking about
19 it yesterday, last night thinking about it, I was
20 wondering if these have been considered. I guess
21 following the NEPA and stuff, yeah, I guess they
22 must have been.

23 MS. RUTSON: With railroads, typically the
24 pollutants are the particulate matter, dust, the
25 nitrous oxides from the diesel engine and sulfur

1 dioxide from the diesel engines, so those are
2 typically the pollutants we focus our analysis on
3 when we do the air quality analysis under the Clean
4 Air Act.

5 MR. SANDCRANE: And I guess this question is to
6 the railroad: Was this the only route you guys
7 considered?

8 MR. COBURN: You mean the route that --

9 MR. SANDCRANE: To Decker.

10 MR. COBURN: No. As part of the NEPA process,
11 it's required that alternative routes be considered.
12 So going back to Tongue River I, there were, I
13 think, three, maybe four, including the Colstrip
14 route and extending it, that was considered. There
15 were other routes within the Tongue River Valley
16 that were considered, and there was a no-action
17 alternative that was considered, don't build the
18 railroad, which is always part of a NEPA analysis.
19 And each group was considered in terms of its impact
20 on air quality and water and soil, et cetera, all
21 the areas of interest. And it was determined by the
22 board and the EIS that the route that was ultimately
23 decided upon was the preferable route from an
24 environmental point of view. And I think that's
25 well explained in the EISs.

1 Same with Tongue River II, there were a few
2 different routes that were considered, and the Four
3 Mile Creek Alternative, that big U-shaped
4 alternative was among them, and ultimately the board
5 approved that alternative.

6 And then Tongue River III went about changing
7 that decision, in effect, and in Tongue River III
8 there were alternatives that were -- well, in Tongue
9 River III it was a little different because it was a
10 review of a route that had already been approved, so
11 the alternatives that were considered was the one
12 that was ultimately approved of, the western
13 alignment, and the no-action alternative was the
14 Four Mile Creek Alternative because that had been
15 approved.

16 So short answer to your question, yes, at each
17 step alternatives were considered and compared,
18 comparatively.

19 MR. WHITTED: That was in regard just to the
20 NEPA, not to cultural sites, just air and water
21 quality?

22 MR. COBURN: As part of the NEPA analysis you
23 look at a whole range of different things, including
24 impacts to cultural resources. So if you go back to
25 Tongue River I, you will find a discussion of the,

1 of the known prehistoric, archeological and historic
2 sites, including sites of cultural significance to
3 Native Americans that were known based on literature
4 reviews, based on what surveys were done, because
5 there were some surveys that were done where the
6 land was accessible, and there is a comparison of
7 the impacts to those sites of one route versus
8 another route versus another route, so it is there.

9 MR. FISHER: Can I interject here? I think the
10 question is about the, in this case the Northern
11 Cheyenne asserting their standards for air quality
12 and also water quality, so they have their own
13 standards separate from state and national
14 standards, so I think part of the question is did
15 STB consider the standards of the Northern Cheyenne
16 in this whole project?

17 MR. COBURN: Right. And you're probing the
18 limits of my recollection of these long EIS
19 documents, but I do have a recollection of a
20 discussion of the Class I air quality on the
21 Cheyenne Reservation, and I'm sure that that was
22 discussed in the EIS, and I'd be happy, Conrad, to
23 locate that and send, you know, an excerpted PDF of
24 it. You don't want to read tons of pages around it.

25 And, by the way, there are -- I totally agree

1 with what Vickie said that the impacts of railroads
2 on air quality is not, happily not as severe as the
3 impacts of a coal mine. It's a mobile source, so
4 you'd have the emissions from the locomotives.
5 Locomotives are getting cleaner because of EPA
6 standards every year. So even though the
7 locomotives that were emissions levels that were
8 considered back in the '80s when Tongue River I was
9 done, if you would do that, did that same analysis
10 today, it would show, I would suspect, even fewer
11 emissions because the locomotives are just cleaner.

12 And then dust is the other issue, but to
13 address the dust issue, there are mitigation
14 measures. And I know you've got a copy of them.
15 Number 69 through 73 are all here to air quality.

16 But I'll locate the discussion of the Class I
17 air quality because it was referenced in the EIS.

18 The water quality, frankly I just don't have a
19 distinct recollection of what was discussed. I'm
20 sure it was discussed because you wouldn't put
21 together a NEPA document without discussing the
22 water quality that existed, so I'm sure it was
23 discussed. I just don't have a distinct
24 recollection of what was said about the Northern
25 Cheyenne water quality standards. I can tell you

1 this, though, that when we deal with Jim Winters'
2 agency on a 404 permit, we will be talking about
3 water standards and the state standards. And I'm
4 not sure that the Northern Cheyenne standards are
5 going to apply because we're not on the reservation,
6 but I may be wrong.

7 MR. SANDCRANE: But the thing is, our
8 reservation doesn't end at the river's edge. We're
9 at midstream, so we have set our own water standards
10 from the point of the Tongue River that enters the
11 reservation and where it leaves.

12 MR. COBURN: And they're different than the
13 state standards?

14 MR. SANDCRANE: Yes.

15 MR. COBURN: Well, I've been through that
16 before. I've dealt with that situation before. The
17 tribe had its tighter standards, and I know we were
18 obligated to deal with them. And, you know, if the
19 Northern Cheyenne standards apply here, we will
20 recognize --

21 MR. BRADY: Secondly, the Northern Cheyenne,
22 federal reserve water land on the Tongue River.

23 MR. FISHER: So if we're not, if we -- if those
24 issues are a little cloudy, they'll probably become
25 really clear once we start working on this PA.

1 MR. COBURN: That's fine. I guess it's for
2 everybody to decide the extent to which the PA will
3 address things like air and water. My experience
4 with PAs is that you focus on cultural resources in
5 the PA.

6 MS. GRAVATT: Water is a cultural resource to
7 the tribes.

8 MR. COBURN: Understood, water quality.

9 MS. GRAVATT: Water itself.

10 MR. BRADY: First and foremost.

11 MR. WHITTED: I guess that leads to another
12 question. Since '83 have the water and air
13 standards become more stringent? I guess that leads
14 to that question of have they stayed the same?
15 Maybe Jim would know. He deals with water on a
16 daily basis, the corps does.

17 Have the standards gotten more stringent since
18 1983, the air and water quality standards?

19 MR. WINTERS: I appreciate the question, and
20 let me see if I can put it in this context: There
21 are multiple federal laws by multiple federal
22 agencies that apply here. Section 404 of the Clean
23 Water Act is one section of the act in which the
24 Army Corps of Engineers administers.

25 The other section under the Clean Water Act,

1 under the overarching umbrella of the Clean Water
2 Act is administered by the United States
3 Environmental Protection Agency under Section 402 of
4 the Clean Water Act under the NPDES, the National
5 Pollution Discharge Elimination System.

6 Now, what I hear is going on at this point is
7 multiple laws being looked at, and that's the
8 discussion I hear here. The only law that I am
9 authorized to speak about under the Clean Water Act
10 is Section 404.

11 I would indicate, and let me just underscore
12 this for a moment for Mr. Coburn at this point, you
13 have multiple tribes, and they have multiple tribal
14 governments and they have multiple departments
15 within those governments, and some of these tribes
16 even have authorization through the United States
17 Environmental Protection Agency to administer these
18 programs and authorize these.

19 For example, like Section 401 of the Clean
20 Water Act, there are several tribes that have that
21 in the Omaha District, and the same way with
22 Section 402, they can speak for the United States
23 Environmental Protection Agency; they have that
24 authorization. And I'm not at liberty to know
25 exactly which tribes here have that, but I would

1 just advise Mr. Coburn that that is, that's the case
2 here that the tribes have multiple programs within
3 their tribe, and they have them for authorization.
4 So the tribes can set sometimes their own standards
5 for water quality and air quality.

6 And I would just underscore this: What I've
7 found in my travels recently is that tribes tend to
8 have more restrictive aspects, more protection for
9 those environmental issues in terms of water quality
10 and in terms of air quality, and I would just put
11 that on the table at this point.

12 Hope that helps, Jim.

13 MR. WHITTED: Yeah. It doesn't give me the
14 answer I was asking, but maybe that's something we
15 can get more information on, whether the standards
16 have become more stringent since '83.

17 MS. GRAVATT: I don't think so.

18 I know your agency does allow things to go into
19 the water. I mean, the standards are not good. Our
20 standards are probably the best that is out there,
21 Northern Cheyenne's is.

22 MR. WHITTED: Well, it would be nice to know if
23 the national standards have changed. At least I
24 don't have that information.

25 MS. GLIDDEN: Since the '80s?

1 MR. WHITTED: Since '83.

2 MR. COBURN: The EIS that was done in the '80s
3 on Tongue River I was updated in Tongue River III,
4 with the last, the final being issued in 2006, so if
5 there had been a change, it would have been caught.

6 Now, have there been changes to air and water
7 quality standards since 2006, not that I'm aware of.
8 I'm not going to say that in concrete. We can check
9 that, but I don't think so.

10 MR. SANDCRANE: The State of Montana right now
11 is in litigation on trying to change their
12 standards, but they haven't been able to get a
13 consensus on it because each state has a different
14 set of guidelines that they follow, different water
15 standards. And that's the same with the Tongue
16 River because the Tongue River starts, the head
17 waters start in the State of Wyoming, which
18 standards are a lot less stringent than the State of
19 Montana to ours.

20 MR. WHITTED: Is Montana trying to strengthen
21 them?

22 MR. SANDCRANE: Yes.

23 MR. WHITTED: Okay, they are?

24 MR. SANDCRANE: They're trying to bring them
25 down to what we have. Ours is 2 in the Tongue River

1 when it hits our reservation water, and I believe
2 the state's is 3.5, so they're trying to lower
3 theirs to be as strict as ours, but they haven't
4 been able to get it to pass.

5 MR. COBURN: And just to fill out the
6 discussion, there are water quality and
7 water-related mitigation measures among these 92
8 measures. Because the board recognized that with
9 any railroad, again, the impacts on water are not
10 severe with the railroad as they would be with a
11 coal mine or some other type of facility of that
12 nature, but there are some impacts, mostly
13 sedimentation, and there are anti-sedimentation
14 mitigation measures in here.

15 MR. FISHER: I think a lot of that probably is
16 also addressed in the Tongue River I compact that
17 the tribe has with the State of Montana. I know
18 certainly that many tribes are going in that
19 direction through compacts because water is such,
20 really a critical issue, not only for tribes but
21 just in general from one state to another.

22 But at this point I'd like to just give our
23 Tribal Cultural Commission of the Northern Cheyenne
24 Tribe, Chairman Mr. Steven Brady, a couple minutes.
25 I know he's got to leave here real quick, but he

1 just wanted to say a few words and address the group
2 here.

3 Steve?

4 MR. BRADY: (Native language.)

5 My relatives and Lakota people and federal
6 agencies that are here and Tongue River Railroad and
7 other agencies as well, I guess first and foremost,
8 we're here for the Programmatic Agreement, is my
9 understanding; is that correct? And it's under the
10 National Historic Preservation Act, right?

11 MS. DWIN VAUGHN: Correct.

12 MR. BRADY: That's what we're here for and
13 specifically pertaining to cultural historic
14 preservation. And our people, these nations that
15 sit here today with the United States today are the
16 same nations that fought against the United States
17 Government in the 1800s, very same people. It
18 hasn't changed. And we have an extensive cultural
19 history, military history in the Powder River Basin.
20 And right now the Tongue River Railroad is going to
21 pierce right through that heartland of our people,
22 and we defended that to a great extent. Our people
23 gave their lives for that, and we're here to protect
24 those areas as much as possible.

25 And those struggles continue today. They

1 haven't changed. We're up against the same
2 government. We're up against the same measures that
3 were back in the 1800s where there was land
4 grabbing, mineral grabbing, gold seeking or whatever
5 it was. It's still going on today; it's just coal,
6 just oil, just gas. Same thing, same tribes, same
7 people, fourth generation for me. My great
8 grandparents were there. They were hunted
9 extensively by the military and they survived that.
10 If they didn't, I probably wouldn't be here.

11 So, you know, we're going to have a talk, and I
12 think we have essentially a clean slate to start
13 from. And I don't think that Tongue River Railroad
14 should be -- you know, I think they should be glad
15 that we're here at the table finally. You know,
16 we've been out of the process for almost 30 years,
17 all of these tribes.

18 And we've spent a little time here yesterday,
19 the federal agencies for two or three hours. The
20 Tongue River Railroad has spent probably almost 30
21 years with the Surface Transportation Board and
22 Interstate Commerce Commission. So I just want to
23 tell you that so we'll start with a clean slate
24 here.

25 MR. COBURN: Yes.

1 MR. BRADY: There's, I know, a time here where
2 we reminisce and recollect. June 25th is a special
3 time for these tribes here. The United States,
4 President Ulysses Grant sent out extensive military
5 forces to try to wipe us out in 1876. They didn't
6 succeed. General Crook prevailed, and Custer is
7 where we failed. So this is a special time for us.

8 The Crow Tribe, our neighbors today, have
9 annual reenactments. They represent the Northern
10 Cheyenne and the Lakota people, and those
11 reenactments, killing Custer again in Hardin,
12 Montana. The Crow agency, they represent us, but I
13 haven't figured out who the Crow represent in those.
14 They represent the Northern Cheyenne and Lakota, but
15 they don't seem to show who they represent insofar
16 as themselves.

17 But it's a very sacred time for us. But the
18 Crow have turned it into entertainment. Our people
19 gave our lives for that. Finally things have been
20 turned around over there. We have finally found a
21 time and place where our ancestors have finally been
22 given acknowledgment in those areas, and it's a long
23 time turning around. It even took an act of
24 Congress to change the name from Custer Battlefield
25 to Little Big Horn. So it's extensive, a long

1 drawn-out period. I'm sure it will be going on for
2 a long time to come, and I don't think it's going to
3 be any time soon that things are going to be wrapped
4 up.

5 I mean, it's only recent that Rosebud and Wolf
6 Mountains Battlefield were designated a National
7 Historic Landmark. They were almost forgotten
8 about. And you're going to go straight through the
9 middle of one of these battlefields, one of the last
10 battlefields, battle sites that are, people are
11 involved in.

12 30 below, our people didn't have anything to
13 eat and still went into battle against the military,
14 against General Miles, and you're going to go right
15 through the middle of that. Would the Surface
16 Transportation Board approve going through
17 Gettysburg or Shiloh today? Would they approve a
18 railroad going through Gettysburg today, either one
19 of those areas? That's the impact that it has. And
20 I think there has to be some serious consideration.
21 Our old people are still buried and people that died
22 in fighting are still buried in that battle site,
23 and we have yet to work on interpretation and things
24 like that. We want to preserve it. That's our
25 history. That's the history of our people. It's the

1 nation's history, United States' history, that's
2 their history as well. It's your history.

3 And there's other areas. There have been other
4 Environmental Impact Statements. That Powder River
5 EIS in the 1980s, how does that overlay with all of
6 these other EISs with the Tongue River Railroad? I
7 know there was a tremendous amount of cultural and
8 historical information in those EISs on the Powder
9 River with the BLM. Those need to be taken into
10 consideration. There was extensive cultural and
11 historical information.

12 And I don't know how many times you would go
13 back time and time again to these EISs. There was
14 EISs in Coal Bed Methane, extensive. I don't know
15 how many times you can do this, three EISs with
16 Tongue River Railroad, coal EISs. Of course, the
17 Northern Cheyenne Tribes sued Secretary of Interior
18 O'Dell in that EIS and the Interior lost.

19 MS. GLIDDEN: Which EIS was the one that you
20 were just referring to? Coal Bed Methane?

21 MR. BRADY: There was Coal Bed Methane EISs.

22 MS. GLIDDEN: Which project?

23 MR. MELTON: Coal planning EIS done in the
24 1980s.

25 MR. BRADY: Coal Bed Methane.

1 And then the Northern Cheyenne versus O'Dell,
2 Secretary O'Dell where the Interior was, Western
3 Energy was compelled to pay a hundred thousand a
4 year for, what, seven years to the tribe, I think,
5 and the tribe -- or the Interior had to do a
6 supplemental EIS, social, cultural and economic
7 supplement, and there's a significant amount of
8 cultural information in that. And I would encourage
9 the Surface Transportation Board to look at all of
10 these EISs that are overlaid.

11 And the tribe is extremely limited in its
12 resources, and I don't know how many times we can go
13 back to these types of Environmental Impact
14 Statements time and time and time again. Sometimes
15 you have certain information in one EIS and it's not
16 in another EIS. Just -- it's just almost
17 exhausting.

18 But, anyway, I just wanted to share all of
19 those different layers. And I think it's important
20 to look at cultural, historic information,
21 environmental information, certainly for these other
22 tribes to look at as well.

23 Our tribe has been involved in that area for a
24 long time, decades as well, probably just as long as
25 Tongue River Railroad has been there, so I would

1 encourage the Surface Transportation Board to look
2 at that.

3 At any rate, I do have an appointment that I
4 have to get to, so I will have to excuse myself.

5 MR. FISHER: Certainly I think Steve brings up
6 some real salient points, not just this particular
7 railroad, there's been Coal Bed Methane; there's
8 been coal mining. We're surrounded by coal mines.

9 And so the Northern Cheyenne has been in the
10 business of trying to defend that whole area for a
11 long time, and part of it is that, as he mentioned,
12 it's a sacred place to many tribes, not just the
13 Northern Cheyenne. Oftentimes, you know, the
14 western view of protection is to be right in there
15 and preserving this area, but for a lot of the
16 tribes sitting here, the best way is to leave that
17 place alone.

18 From a distance we look at it and we respect
19 and honor that place. So just because we don't go
20 over there and have a, make ourselves known in that
21 area doesn't mean that we don't respect that area.
22 Sometimes those places are sacred that you don't go
23 in that direction.

24 And he's right, exploitation is taking a toll,
25 and this is another battle. And he mentioned all

1 those EISs that are out there, all the research that
2 has been done there, and certainly this is another
3 challenge that we're trying to deal with the best
4 that we know how. And so I just wanted to add that
5 to Steve's comment.

6 MR. COBURN: Can I say just a few words? I'm
7 sorry Steve had to leave because I certainly
8 appreciated his comments and sympathize with his
9 views and with yours, Conrad.

10 We all understand that these are difficult
11 issues and that we're trying the best we can to
12 confront it with economic pressures and the
13 pressures that all of you bring to bear, the
14 pressures that are worth the interests and concerns,
15 very legitimate concerns you will bring to bear.

16 To Steve's point, we're glad we're here at the
17 table and you're all here at the table. We're very
18 glad that we have an opportunity to do our best,
19 because that's all we can do, all of us, to find a
20 resolution, which at the end of the day may not be
21 perfect for any of us but that's the way we proceed.

22 And we, again, are respectful and sympathetic
23 and understand, as understanding as we can be, of
24 the strongly felt views and legitimately felt views
25 that you all have, all of you, about these

1 resources. And we're not here to -- we're not here
2 because we feel they're not important or that we
3 want to ignore them. We're here because we want to
4 do our best to understand your positions and to do
5 our best to address them, and I know the board feels
6 the same way, as do the other agencies.

7 With that said, you know, we're happy to, you
8 know, get into some of the specifics when you're
9 ready and to discuss a Programmatic Agreement that
10 takes into account all of your concerns and takes
11 into account the fact that, at the end of the day
12 it's not something that we can ignore, the fact that
13 there's a lot of coal there and we rely on the coal
14 for these lights.

15 MR. FISHER: We understand that.

16 MR. COBURN: We all do. And maybe a lot of us
17 wish it wasn't that way but it is.

18 MR. FISHER: I understand.

19 MR. COBURN: So we have to balance all of that,
20 so that's what this is all about.

21 MR. EAGLE BEAR: I guess we've sat here and
22 talked about -- we had a healthy discussion here
23 yesterday, and we came to -- I'm hoping there was a
24 consensus that this is what we want, we want to sit
25 down, start maybe developing that process of a new

1 PA with us at the table.

2 And I don't know -- you know, your attorney is
3 representing the railroad. If I'd known that, I
4 would have sent my attorneys up here, too, and you
5 guys could lawyer talk all day long.

6 But, you know, we're here. We're the ones out
7 in the forefront when it comes to cultural
8 resources, and we have agencies that have a
9 responsibility to have oversight, and this is who we
10 communicated with yesterday, and now we need to get
11 into the meat of things.

12 And I don't know if you're a decision maker or
13 not. I don't think you are. You know, you have to
14 report back to your chain of command.

15 MR. COBURN: Right.

16 MR. EAGLE BEAR: So I think pretty much you
17 need to take this message back. You can tell them
18 we brought the tribes to the table, federal agencies
19 willing to go to work. It's going to cost some
20 money to do this work, and if you're really sincere
21 in what you want to do, then we're going to have to
22 come back to the table and sit down and roll up our
23 sleeves and then get some work done, but today, you
24 know, that's the message I'm giving you.

25 MR. COBURN: Yeah.

1 MR. EAGLE BEAR: And, again, if you want to --
2 it would be nice to have a representative from --

3 Are you --

4 MR. COBURN: Yes.

5 MR. DAY: I'm with Tongue River.

6 MR. EAGLE BEAR: Are you a decision maker?

7 MR. DAY: I would report back to
8 Mike Gustafson who was here the other day, and I
9 don't know if you had a chance to meet him.

10 MR. EAGLE BEAR: No, I didn't. I missed your
11 first meeting and your presentation.

12 But the point is: If you guys want us to
13 seriously sit down and work out a new PA, then we're
14 going to have to set up a timeline, time frame.
15 It's not going to happen today, I guarantee you
16 that.

17 MR. DAY: Understand.

18 MR. EAGLE BEAR: But I think we need to work on
19 the specifics and talk about the cost, time frame to
20 bring us together. We're not sitting back there on
21 our reservation just working and waiting for Powder
22 River Railroad to do something. Our work is cut out
23 for us. We're at different meetings with other
24 agencies, with other projects, programs. And so,
25 you know, we need to kind of fit that into our

1 schedule and look at a time frame.

2 You know, somebody mentioned that yesterday,
3 and I'll say it again today, it took 25 years to get
4 to this point, and you expected us to have something
5 back to you in three days. That just don't cut it.
6 And so maybe it'll take us another 25 years to get
7 to the level we want to be at. That's the
8 possibility. So I just want you to know that.

9 If you have any issues with our tribes
10 directly, say it now and we'll hash it out.
11 Otherwise let's get on with -- if you want to get
12 into some lawyer talk, I'll bring my lawyer in.

13 MR. COBURN: I'll avoid lawyers, Russell.

14 MR. EAGLE BEAR: Okay.

15 MR. COBURN: I appreciate your mentioning a
16 timeline. First of all, as far as the September 1
17 deadline goes, I don't want anybody to have the
18 impression that Tongue River Railroad came along and
19 told anybody that this has to be done by
20 September 1. I mean, that was a date that we, the
21 agencies and we agreed to several months ago when
22 the old PA expired thinking that we'd give ourselves
23 something like nine months to discuss a new PA. And
24 I think the board diligently, after that decision
25 was made, started sending out e-mails and materials

1 to all of you and others to get that ball rolling,
2 all leading up to this meeting. And it's clear, I
3 think you've all made it clear that wasn't enough
4 time. And so we have the power and the ability to
5 say, Okay, well, as Vickie did in the beginning of
6 this meeting, let's just throw away the September 1
7 deadline; it's gone.

8 So I don't want you or anybody else to have the
9 impression that we're sitting here saying that this
10 has to be done by September 1, it's written in
11 concrete and the world is going to come to an end if
12 it's not. So nobody intended -- we certainly didn't
13 intend to put undue pressure on anybody to get it
14 done in an unrealistic time frame, and it's turned
15 out to be that that's not enough time, okay, but I
16 do think that we ought to be thinking, as you
17 mentioned, of a timeline. I think we ought to be
18 thinking of a new timeline now that we're here.

19 We're not going to get the PA done today, we
20 know that, but let's think in terms of some
21 realistic time frame for getting it done because we
22 can't agree to 25 years, and I hope you weren't
23 being serious when you suggested 25 years because
24 that's not going to work for us, I can tell you that
25 right now.

1 But we hope we can have a discussion perhaps
2 today or in the very near future about some more
3 realistic time frame that will work. And maybe we
4 can't do that today or maybe we can, but if any of
5 you have ideas about a, you know, a time frame that
6 contemplates the meetings that will be necessary and
7 the rolling-up-of-our-sleeves sessions and Mike and
8 others, why don't we try to see if we can come to
9 some sort of at least broad understanding,
10 recognizing that whatever we come to, you know, we
11 can always have the flexibility to say that okay, we
12 need a little more time.

13 But there does have to be some -- seems to me
14 that there has to be some definition to the process,
15 or else, you know, it will drag out too long. I
16 know as a lawyer, and probably a lot of you, we work
17 best when we're working against deadlines.

18 MR. EAGLE BEAR: And that is lawyer talk now,
19 and you said you're going to stay away from that.

20 MR. FISHER: Curley has a question.

21 MR. YOUPEE: Yeah, I guess first of all I'm
22 interested in your best foot forward, what does that
23 mean? What does that represent, and how do you
24 proceed with that, not as a reaction but as an
25 initiative?

1 MR. COBURN: You've lost me there a bit.

2 MR. YOUPEE: You stated that you were going to
3 put your best foot forward.

4 MR. COBURN: Did I say that?

5 MR. YOUPEE: So I think rather than just
6 hearing words, I want to have some substance behind
7 that, especially coming from an attorney. I think
8 that it's important that I have a clear
9 understanding of what you're talking about, what you
10 mean by that.

11 Because with regard to the archeological sites
12 that will be affected by the project, you know,
13 Montana SHPO took the position that since it was
14 found not eligible during that period, we were kind
15 of overlooked in that process, and you guys went,
16 for one thing, full steam ahead without the
17 consultation of the tribes. You used that as a
18 reason, okay, to exclude tribes. You haven't really
19 stated why tribes are excluded or why
20 administratively these things haven't happened.
21 But, nevertheless, they have happened and tribes
22 need not be considered further and Indian tribes
23 need not be consulted about it because the position
24 was that things weren't found to be eligible, okay,
25 not considering a TCP, not considering the TCP

1 study.

2 Now, when we do TCP studies after archeological
3 studies, my tribe finds a considerable amount of
4 properties, TCP properties beyond what archeologists
5 have found or described over the project, and I
6 think that is, that should be understood.

7 Archeologists aren't trained in TCP identification.
8 I become very concerned when I have to catch up to a
9 project.

10 You know, Congress amended NEPA in 1992, and
11 this statute went out to all agencies, including
12 legal representation of different agencies, as well
13 as project managers and attorneys such as yourself.
14 Now, you've been in litigation, conducted
15 mitigation, and so you have a relationship with
16 tribes, and I'm happy to know that so you're caught
17 up with those statutes, reservation statutes.

18 Tribes have religious significance to areas of
19 the project. I speak on behalf of my tribe. I
20 listen to other concerns. We're probably not
21 included in the economic, socioeconomic impact study
22 that was done; however, my tribe suffers from at
23 least 60, 65 percent unemployment. Tribes are the
24 minority in Montana. They've been displaced. The
25 national unemployment rate, I think it's reaching

1 6 percent. There's great chaos in Washington on how
2 to address those and the creation of more jobs.

3 Detroit suffered from 12, 14 percent
4 unemployment. Factories were built around minority
5 communities. People drove back and forth through
6 these communities every day, inside and out,
7 continued back and forth to their home in the
8 suburbs going through these minority communities to
9 reach the factories. The pollution settled in these
10 communities. The job opportunity was in these
11 communities, but opportunity wasn't given to these
12 communities. There was a reaction to that.
13 Remember that reaction?

14 MR. COBURN: Riots.

15 MR. YOUPEE: Riots and they burnt Detroit.

16 MR. COBURN: Yep.

17 MR. YOUPEE: Now, 6 percent unemployment
18 doesn't affect tribes nationally. We've had
19 anywhere from 60 to 90 percent. Pine Ridge itself
20 at times has 90 percent unemployment. That's
21 directly adjacent to Rapid City. You see Rapid City
22 growing by leaps and bounds.

23 And there's some markers involving tribes.
24 There's growth in Rapid City because of those
25 markers. Those markers are not in Pine Ridge, so

1 it's a controlled market. And maybe it was devised
2 that way, designed that way.

3 Now, the railroad, the coal mine industry will
4 probably create a great deal of employment
5 opportunities. How would you address that in terms
6 of opportunities to other tribes other than the
7 Northern Cheyenne or the Crow Tribe?

8 Now, we were forced out of those areas, but we
9 fought every step of the way, every step of the way
10 in resistance, but we were overcome. You had bigger
11 guns than we had, right? Nevertheless, my tribe's
12 last resistance to reservation life, pleaded and was
13 successful in gaining a reservation in northeast
14 Montana.

15 Montana itself has been stricken economically
16 on the downswing, and we see farm estates going up
17 for sale. In northeast Montana itself it's really
18 in a dire-straight type of situation. We have
19 flooding today. The Corps of Engineers -- as we saw
20 that flooding, we can blame the Corps of Engineers.
21 We feel that water could have been released from
22 February and March. We were getting tons of
23 snowfall, for crying out loud, you know, beyond the
24 normal, and there was no action or reaction to that,
25 and so we get flooded. People are losing

1 livelihoods when we get flooded, so that's
2 compounding the depressed state of the communities.

3 Your best foot forward, how do you offer
4 opportunity to other tribes within this consultation
5 or discussion? How do you offer opportunity to
6 people that have been depressed for a series of
7 years as we saw of that displacement?

8 MR. COBURN: I can't, because I'm not in a
9 position today, without consulting, to discuss any
10 specifics. I think you're right, though, that the
11 railroad will employ some number of people.
12 Railroads don't employ huge numbers of people. They
13 choose what's necessary to run the railroad.

14 Coal mines will certainly employ more people,
15 and I have no authority to speak for the coal mines,
16 different entities. Certainly there will be more
17 economic opportunity for everybody as a result of
18 the development, the economic development that will
19 follow the railroad. I don't think there's any
20 question about that. The EISs discuss it. And, you
21 know, we can perhaps -- we can, you know, talk about
22 how that economic opportunity can be shared fairly
23 among all groups. Although, again, I don't think
24 we're in a position to speak for the --

25 MR. YOUPEE: I'm asking you for your best foot

1 forward. If you're going to feed jargon and you're
2 not going to offer anything, then I don't know what
3 I'm going to offer; I don't know why I'm at this
4 table.

5 The Executive Order 1298 directs federal
6 agencies to avoid disproportionate adverse effects
7 on the environment of low-income groups and minority
8 populations and to consult with such groups in
9 appropriate ways to make sure that they have the
10 opportunity to influence agency decisions. Tribes,
11 both federally recognized and non-recognized are, by
12 definition, minority groups and very often have low
13 incomes. Destroying a site created by their
14 ancestors and not every one else's are arguably
15 disproportionate.

16 There is nothing in any law anywhere that
17 allows a contract archeologist or SHPO to speak for
18 tribes in matters of environmental justice. Now,
19 this was a directive across the board to every
20 federal agency. And I don't know how you've got
21 this. I don't know how ACHP has got this
22 information, but this Executive Order 1298 is the
23 law.

24 MR. COBURN: That's Environmental Justice.

25 MR. YOUPEE: That's Environmental Justice.

1 MR. COBURN: Right, and that was addressed in
2 the EISs, in each of the EISs, and findings were
3 made.

4 MR. YOUPEE: You've seen that; you've addressed
5 that. And how did you address that economically,
6 opportunity?

7 MR. COBURN: Well, the EISs are not ours,
8 they're the board's, and the other cooperating
9 agencies. And all I'm saying is that those issues
10 concerning Environmental Justice were studied to
11 determine if there was an adverse impact on
12 minorities or low-income persons. I don't recall --
13 I don't believe that the EISs found that there was a
14 disproportionate impact.

15 MR. YOUPEE: Victoria, can you help him out
16 then?

17 MS. RUTSON: David is correct, we did the
18 Environmental Justice Analysis and statistical
19 analysis, and we concluded that there wasn't a
20 disproportionate and adverse effect on low income
21 and minority population as a result of the
22 construction and operation of the railroad.

23 MR. YOUPEE: You have an EIS study, and I just
24 heard that there was cultural inventory done with
25 the EIS study. How do you see tribes surviving with

1 65 percent unemployment to 95 percent unemployment?
2 What is in your mind? What is constructed to see
3 tribes -- not just one individual to a small group.
4 We're talking about tribes, a reservation tribe
5 who's not confined to the tribe for subsistence,
6 what do you think that tribe has survived on? Do
7 you think those federal subsidies provide for the
8 life of those tribal members? What is your -- what
9 is your view? What is your informed view on what a
10 tribe is?

11 MR. FISHER: And how did you come to that
12 conclusion that there was no disproportionate
13 adverse effects when, in fact, there was a tribe
14 right next to it that had similar statistics as far
15 as unemployment is concerned?

16 MS. RUTSON: It's a statistical analysis that
17 we do. We start with census data, and we look at
18 the population in the entire project area. We
19 compare it to the population in the entire state,
20 and that's how we make a determination about whether
21 the percentage of low income or minority population
22 are going to be disproportionately adversely affected
23 by the project.

24 MR. YUPEE: That's not a system. That's not a
25 system. You have to study the masses. But how do

1 you get the disproportionate adverse impacts by that
2 study of data?

3 MS. RUTSON: Probably have to ask EPA because
4 they're the ones that came up with the system, and
5 it's been upheld in court, so I suggest we start
6 with that question.

7 MS. GRAVATT: It totally ignores the Northern
8 Cheyenne. Just because the statistics don't show
9 that, whatever you need them to show, the facts are
10 there, and this project will have an impact on them.
11 Why don't you realize what's real instead of just
12 going around so this project can go through?

13 MR. YOUPEE: Do we see a fault in some of this
14 or not? We're going with the data received in the
15 EIS and that's a done deal?

16 MR. COBURN: I think maybe -- I don't have an
17 answer. If there were an answer, we'd all know it.

18 MR. YOUPEE: Create a dialogue.

19 MR. COBURN: Sure. And I think the railroad
20 will bring, will help bring economic development.
21 Economic development will bring jobs, which will
22 bring an improvement economically, one would think,
23 and that this was forecasted in the EIS to the
24 entire area, including the tribes.

25 Without the railroad and without the economic

1 development, if there were no railroad and there
2 were no coal mining and there were no other
3 businesses that will be generated by and be assisted
4 by those economic developments, so if you take all
5 that away and --

6 MR. YOUPEE: Who's taking it away? You're on
7 the wrong track here.

8 MR. COBURN: No, I'm saying if it weren't to
9 happen, if the railroad were not to happen and the
10 coal mining were not to happen, then we'd have
11 status quo.

12 MR. YOUPEE: It's not status quo I'm talking
13 about. I'm talking about socioeconomic impacts.
14 I'm talking about cumulative impacts, time and time
15 and time and time again over and over by each
16 project, okay? There is right ways and there's
17 wrong ways, and so far it has been wrong ways how
18 you include tribes in the discussions, where the
19 benefit goes.

20 MR. COBURN: I think that's something we can
21 talk about. I think that's something we can talk
22 about. I was going to give you a specific proposal
23 today, but I understand your point. And it's an
24 important issue, I understand.

25 MS. DWIN VAUGHN: What I hear Curley saying is

1 that you can't just deal with history and culture
2 without looking at other related factors. And if
3 we're going to have good faith open consultation
4 with the tribes, there needs to be a willingness to
5 look holistically at some issues for which they were
6 not given the opportunity to previously having put
7 on.

8 And I was just telling Conrad, while
9 Section 106 of the NHPA is separate and distinct
10 from NEPA, there are Section 106 Programmatic
11 Agreements that reference NEPA actions and put that
12 in mitigation if there's a nexus and linkage. So
13 it's not a stretch. And I think no, we won't say,
14 Give people X number of jobs to compensate for
15 whatever, whatever, but we have done agreements that
16 talk about training, benefits packages that were
17 negotiated by tribal members.

18 MR. YOUPEE: Special opportunity.

19 MS. DWIN VAUGHN: Right.

20 So I think when we talk -- and we have to
21 consult. And I don't think you could make a
22 commitment today, but I think it's essential that
23 every tribal member here hear a willingness to delve
24 into those issues to the extent that they're related
25 to the overall operation of this project. They need

1 to hear that from you.

2 MR. COBURN: Okay.

3 MR. DAY: And I would echo what Mike talked
4 about the other day, Mike Gustafson when he was here
5 two days ago, that we are committed -- that's why
6 we're here -- to working with this group to
7 accomplish hopefully a new Programmatic Agreement,
8 and we're committed to doing that, and I think Mike
9 said that the other day. He might have said it
10 several times, but that's why we're here.

11 I don't have a final vote authority. But when
12 it comes time to have that, we will be able to do
13 that, we'll commit the appropriate resources to
14 facilitate to the extent we can. I think we've done
15 that throughout this process with the ICC and the
16 Surface Transportation Board, and that's why we're
17 here, we're committed, as you are.

18 MR. FISHER: I think Mike said that a million
19 times the other day. I think they were one liners
20 and somebody needed to stop him. But what Curley is
21 talking about I guess really relays something that
22 you folks need to hear.

23 MR. COBURN: Uh-huh.

24 MR. FISHER: You may know superficially. And I
25 think Mike, at one point, said "I'm not one of you,"

1 and that really is a little -- that kind of concerns
2 me because I think it reflects the perspective as
3 when you define us as opposed to you, and that's not
4 what we're here -- we're not here to look at our
5 differences. We're here to look at what
6 commonalities we have, how can we make this work.
7 So it didn't set well to hear Mike in that sense.
8 After all, he's in Montana and he lives in Eastern
9 Montana, and I think deep down in his heart he knows
10 what's going on, but the way it was manifested
11 through his presentation wasn't really I think,
12 didn't sit well with the tribes.

13 Having said that, I think it's important that
14 you understand what Curley and some of the others
15 are saying. And you may know, again, on a
16 superficial level what we're talking about, but
17 you've got to hear it from the tribes. You've got
18 to hear what they have to say so that you leave from
19 here with a sense of having a cultural experience
20 and hearing firsthand from some of the folks that
21 live in these types of environments. And it hits
22 home, it hits home when you hear it from somebody
23 else. When you actually have that lived-in
24 experience, then you begin to understand where we're
25 coming from, maybe not totally but at least when it

1 comes to looking at documents and words.

2 We talked about EISs and all these different
3 documents. There's a stack this high. I get tired
4 of reading these. After awhile words mean nothing.
5 All they are are symbols on a piece of paper. But
6 when you hear it, when you hear those words from
7 those people that actually experience firsthand what
8 goes on in these communities and these sacred
9 landscapes in a certain time, certain setting,
10 certain place, then you begin to understand those
11 things, and I think you're hearing it today. And I
12 hope you hear -- I hope you hear our words, not just
13 read responses. And that's why it's so important to
14 have roundtable discussions like this.

15 We've heard -- you've heard from this group
16 that we need consultation. We need to have
17 roundtable discussions, not telephone conversations.
18 This is where it makes a difference. This is where
19 you make things happen in these types of roundtable
20 discussions.

21 MR. COBURN: I appreciate that, Conrad. You'll
22 get no pushback on those ideas and on those thoughts
23 from me. I think it is very valuable, and I
24 appreciate your words. Words are important, and
25 words of Curley and others as well.

1 MR. YOUPEE: Tell me: How would we proceed
2 then? What would be, in your mind -- conceptualize
3 that, if you would, to include certain expertise at
4 the table. Because we can't continue to channel
5 through you.

6 MR. COBURN: Right.

7 MR. YOUPEE: You're in a legal mode, if you
8 will, and --

9 MR. COBURN: Right.

10 MR. DAY: Our intention, Curley, is to,
11 following this session, given what we've heard and
12 visited about, is to try to sort out, if you will,
13 or identify what expertise is out there. We would
14 probably go through a process of selection based on
15 experience and information and bring that expertise
16 on to the extent that it facilitates this process,
17 to the extent that it helps the process further down
18 in construction or prior to, that that expertise is
19 available, and that's a process that will start to
20 evolve.

21 We have started -- you mentioned the other day
22 or requested the other day cost analysis on some of
23 the alternatives we looked at. That process is
24 underway. We'll hopefully have that information
25 pretty soon. I'm not sure the exact time frame but

1 that's our intentions.

2 MR. YOUPEE: And you folks are the railroad and
3 explained that some of those folks were in that
4 railroad for a series of years, and -- which is
5 good; they have a great expertise.

6 I was in construction. My bible was the Book
7 of Means. And when I bid on a project, it told me
8 exactly what I needed to do for that project from
9 the nail up, every resource, every person I had to
10 hire. And if I could eliminate that person to get a
11 better overhead, then I'm going to do that, but I
12 knew that at the top of my head because that was my
13 bread and butter. Now, you should have someone on
14 staff that can answer those questions readily who's
15 familiar with fair labor standards, the Equal
16 Employment Opportunity.

17 Is this railroad subsidized by federal monies?

18 MS. RUTSON: No.

19 MR. COBURN: No. And right now the railroad
20 has a very thin management structure because it's a
21 railroad on paper only, right? I mean, there is no
22 physical plant. There are no employees, other than
23 Doug and Mike and me, and that's obviously going to
24 change. I mean, as we get into the land acquisition
25 and then the construction, people are going to be

1 hired, and the management staff will become more
2 elaborate and all of those -- and the employment
3 experts and so forth. HR folks will be obtained,
4 and construction will go. But right now you're
5 dealing with a very thin management structure.

6 But what I think -- I think, you know, to
7 advance the ball, the railroad can move on
8 expertise. And Mike will need to be engaged, we
9 recognize that.

10 This meeting that we're at here today, this
11 three-day meeting was planned by the STB. The idea
12 was that we thought -- obviously there was a
13 disconnect which we discussed before, but we thought
14 we would be here to discuss the PA, the amended PA.
15 I shouldn't say those words but the document that
16 had been circulated before the meeting. And on that
17 basis, you know, Doug and I are here thinking that's
18 what we'd be talking about. We recognize that's not
19 what we're talking about.

20 What we're talking about today is a much
21 broader set of views that you're raising, and we're
22 not, you know, we're not prepared to discuss these
23 issues to the depth that you perhaps would like to
24 hear us discuss them because we haven't consulted
25 with Mike. So that's a bit of a -- this is a bit of

1 a disadvantage that we've got sitting here.

2 MS. GLIDDEN: On that note, I was just talking
3 to Conrad. I guess it's already eleven o'clock.
4 We're running a bit out of time, and I'm wondering
5 if we could really start looking at when we could
6 have the next meeting and a possible timeline.

7 Russell, do you have some very good ideas about
8 how we can proceed?

9 MS. RUTSON: Just a minute.

10 Is our court reporter all right? Do you need a
11 break?

12 (Recess taken from 10:59 a.m. to 11:22 a.m.)

13 MS. GLIDDEN: I'm wondering if we could end
14 this with some Agreed Upon Next Steps. And I just
15 wrote down a few things, but this is just obviously
16 kind of based on what I heard people saying.

17 But Russell --

18 MR. EAGLE BEAR: I'd like to make a comment
19 while we have our court reporter here. Yesterday
20 was kind of an historic event where a federal agency
21 kind of tore up a document in front of us. And so I
22 took a picture, and I sent it to Jim's boss. And
23 Jim had a lot of input into this and created that
24 scenario, so I asked for a raise for him from his
25 boss.

1 MR. WHITTED: Like that's going to happen.

2 MR. EAGLE BEAR: And she already e-mailed me
3 back and said she'll put it in the budget, so I
4 said, "I'll make sure it's recorded publicly, too."

5 MS. GLIDDEN: Be sure to send her a copy of the
6 meeting minutes.

7 MR. EAGLE BEAR: I understand that you're
8 anxious to leave here and you have a mud wrestling
9 match this afternoon in Sturgis?

10 MS. GLIDDEN: No. Actually, it's a jello --

11 MR. EAGLE BEAR: Jello?

12 MS. GLIDDEN: Yeah.

13 MR. EAGLE BEAR: How about whipped cream?

14 MS. GLIDDEN: If you're going to roll in
15 something, you'd better taste good, right, rather
16 than mud?

17 MR. EAGLE BEAR: I just wanted to publicly say
18 that for the record.

19 MS. GLIDDEN: Thank you so much for that.

20 You had some ideas, right, about the timeline
21 and on funding?

22 MR. EAGLE BEAR: Yesterday some of our
23 discussion, it was brought up that maybe, for the
24 benefit of some of the tribes who haven't been out
25 to the site, we want to do a visual. So I think for

1 our next meeting place it should be near the area,
2 maybe Sheridan.

3 Or if Conrad has a place that you can put us up
4 at, that would be fine, but --

5 MS. GLIDDEN: Near the Wolf Mountains
6 Battlefield site?

7 MR. EAGLE BEAR: Exactly. And I don't know the
8 timeline. I don't know how long the railroad is
9 going to go back and find some monies. That's their
10 charge. Maybe early fall or, you know, late summer,
11 somewhere in that timeline.

12 MR. COBURN: Sheridan, Wyoming?

13 MR. EAGLE BEAR: That's a suggestion.

14 MS. RUTSON: I would love it if we could do it
15 late summer rather than early fall, only because I'm
16 still fussing about October 1st and I worry about
17 the ability for having money from Congress to
18 travel. So if we could do it before October 1st, I
19 would be very grateful.

20 MR. YOUPEE: What would be the good ideal time
21 for you?

22 MS. RUTSON: Any time before October 1st. And
23 then I know you all are very busy and have many,
24 many commitments, and really it's at your
25 convenience, and we will make it work.

1 MR. YOUPEE: So middle of September, that will
2 be good for you?

3 MS. RUTSON: That would work.

4 MS. GLIDDEN: That's a little late. That would
5 be the latest.

6 MS. DWIN VAUGHN: I think that's a little late
7 for a meaningful consultation.

8 MR. COBURN: Are we talking about one meeting
9 or more than one?

10 MS. GLIDDEN: I mean, we might need a couple.
11 The thing is we're not going to know what our budget
12 is in October, so we do have money until then,
13 though, so we could potentially have time for two
14 meetings between now and then, so if we scheduled
15 the meeting for sooner --

16 MR. YOUPEE: What about August 1st? Then we
17 can all work towards, or work around that.

18 MS. RUTSON: Does anyone know what August 1st
19 is?

20 MS. GRAVATT: It's close to the Rally, but
21 you're -- wherever we're going to stay -- I don't
22 know how far that is from here.

23 MR. YOUPEE: Sheridan --

24 MR. COBURN: It's a Friday.

25 MS. YOUNG: It's a Monday.

1 MR. SANDCRANE: August 1st is a Monday?

2 MR. YOUPEE: So August 2nd then?

3 MR. COBURN: Yeah, August 2nd is a Tuesday.

4 MR. EAGLE BEAR: I think our first meeting,
5 maybe that morning we could just take some time and
6 go out, physically see what we're dealing with, you
7 know. Probably the day, I would think. So we gotta
8 set a couple days of meeting time, you know.

9 MR. FISHER: I think that first day also
10 probably should include sort of an informational
11 gathering day for the tribes to not only do an
12 on-site visit of the battlefield and maybe go all
13 the way to, just a little ways toward Birney Village
14 right at the corner of the reservation, which is
15 only probably 13 miles away, just to see in context
16 the reservation versus the rail line and then the
17 battlefield, just to give us an idea where the
18 reservation is. You actually step onto the
19 reservation by going across the river and then
20 coming -- and then get a chance to see Birney. Both
21 Alec and I and Gilbert are from that area. We grew
22 up in that area. Gilbert was a latecomer. His
23 mother, my aunt, so Gilbert from a different part of
24 the reservation, brought him down to Lane Deer,
25 forcefully.

1 And then maybe when we come back that same day,
2 by informational, sharing of information is looking
3 at statistics, population, demographics, a little
4 bit of the history of that area, some of the
5 documents that, preponderance of documents that got
6 us to where we are today.

7 And maybe we could also utilize the help of
8 Doug to kind of give you an idea of some of the
9 historical information that he has. I mean, just
10 sort of a day for you -- I know there's a lot of
11 questions about that area. Certainly this might be
12 a day of understanding of the area.

13 MR. COBURN: Conrad, if we moved it to August,
14 because I'm just remembering I have to be in Boston
15 on August 1 on a personal thing, that weekend and
16 that Monday. If we moved this to August 3 and 4 as
17 opposed to 2 and 3, would anybody have a great
18 objection?

19 MR. FISHER: Would you have an objection to not
20 being there for the first day? Because that would
21 be the --

22 MS. GRAVATT: -- informational day for the
23 tribes.

24 MR. FISHER: Yeah, that would be the
25 informational day.

1 MR. COBURN: I'd like to be there for that.

2 MR. FISHER: Well, I just threw it out as a
3 suggestion. It doesn't really matter to me what
4 day, right there real close.

5 MR. WHITTED: Is this going to be a two-day or
6 three-day meeting? We could move it forward one
7 day.

8 MR. FISHER: At least one day for going out in
9 the field.

10 MR. YOUPEE: I think Conrad talked about the
11 different types of information that has been
12 requested throughout this meeting. I think that the
13 State of Montana should be in attendance, too. I
14 think they need the invitation.

15 MS. DWIN VAUGHN: The SHPO?

16 MR. YOUPEE: The SHPO.

17 MR. COBURN: If the meeting is in Sheridan,
18 Wyoming, we're going to run into the same problem --

19 MR. YOUPEE: They can stay up in Birney if they
20 want to. You know, we'll meet them in Birney.

21 MS. GLIDDEN: Why can't we have the meeting in
22 Montana?

23 MR. FISHER: Or Miles City is another place. I
24 understand Doug has a mansion over there.

25 MS. GLIDDEN: I'm not sure where Sheridan is.

1 MR. YOUPEE: Well, Sheridan is right in front
2 of the line.

3 MR. EAGLE BEAR: Yeah, it's close. It's a
4 close drive, and it's along the way to, you know,
5 getting out to Wolf Mountain and beyond.

6 MR. SANDCRANE: From Sheridan to Birney it's
7 56 miles.

8 MS. GLIDDEN: But that is true about the SHPO.

9 MS. RUTSON: And Miles City is small and very
10 far from where we need to go.

11 MR. MELTON: Well, but it's also the terminus
12 of the railroad, so you get the view of the whole
13 Tongue River Valley.

14 MR. EAGLE BEAR: Well, you know, the railroad,
15 I think, remember DM&E put us on a railroad and we
16 went sightseeing.

17 MS. GLIDDEN: There's no railroad. We're going
18 to have to fly on a smoke screen or something.

19 MR. COBURN: Are there motels in Miles City?

20 MR. MELTON: There are, but at that point you
21 might be competing with the pipeline folks for
22 space.

23 MR. FISHER: Ashland actually has a hotel.
24 They're cheap, but --

25 MR. EAGLE BEAR: This is a no-tell motel,

1 right?

2 MS. GLIDDEN: This is going to be interesting.

3 MR. FISHER: But I think what Doug is pointing
4 out is that, you know, you're looking at Miles City
5 as being one of the points, the end points.

6 What did you call it?

7 MR. MELTON: The terminus where the railroad
8 would end up.

9 MS. GLIDDEN: So Miles City instead of
10 Sheridan?

11 MR. FISHER: Logistically Sheridan would be
12 better.

13 MR. EAGLE BEAR: And it's kind of essential we
14 make a determination of dates and then book some
15 rooms, you know, because this is a lot of
16 construction, a lot of movements, tourist season.

17 MS. WELLS: Do they book that far over during
18 the Rally? I think they do, don't they?

19 MR. EAGLE BEAR: You'd have to ask Catherine.
20 She's an expert on the Rally.

21 MR. FISHER: Otherwise have to stay in Birney.
22 We have log houses, one-room log houses, outdoor
23 bathrooms, a river to drink water, lots of dogs,
24 plenty to eat, lots of dogs.

25 MS. GLIDDEN: Turkeys, too.

1 MR. YOUPEE: And bears. Don't feed the bears.

2 MS. RUTSON: The only limitation with Sheridan
3 is the difficulty of the Montana SHPO being able to
4 travel out of state.

5 MR. YOUPEE: We're going to meet those folks in
6 Lame Deer. Conrad is going to facilitate that
7 meeting with SHPO in Lame Deer.

8 MR. FISHER: We could do that.

9 MR. YOUPEE: After our drive through, we'll
10 meet SHPO in Lame Deer.

11 MR. EAGLE BEAR: Conrad will feed us there,
12 too.

13 MR. YOUPEE: And with the hospitality of the
14 Northern Cheyenne folks, I'm sure that we'll get
15 some of that traditional cuisine.

16 MR. FISHER: We've got a councilman right
17 there.

18 MS. RUTSON: All right. So Sheridan August 3,
19 4 and 5?

20 MS. GLIDDEN: I thought it was just the 2nd and
21 3rd. It's up here on the screen.

22 MR. WHITTED: Well, he can't make the 2nd.

23 MR. COBURN: The 3rd and 4th is a lot easier
24 for me, figuring a whole day of travel.

25 MS. RUTSON: I know it's on the screen, but I

1 didn't bring my glasses, so . . .

2 MS. GRAVATT: I think it should be 3, 4 and 5
3 because that's just a long ways for everybody, and I
4 think we need three days. Look at how much --

5 MR. SANDCRANE: Get as much information down as
6 we can.

7 MS. GRAVATT: Yeah, if we're going to meet, we
8 might as well meet as long as we can.

9 MR. YOUPEE: Two and a half anyway.

10 MS. GLIDDEN: So 3, 4 and 5?

11 MR. COBURN: Yeah.

12 MS. GLIDDEN: So we're good with this issue.

13 So, Vickie, what we have here is the next
14 meeting time and location: Near Wolf Mountains
15 Battlefield for a site visit. Sheridan, Wyoming,
16 late summer, August 3 through 5. In the morning
17 we'll visit the site the first day and also look at
18 Birney Village to assess context and history of
19 site. Get input from Doug Day regarding the
20 project. Need to invite the Montana SHPO and will
21 have a meeting with them in the afternoon at Lame
22 Deer. Need to book rooms soon.

23 MR. FISHER: I'd like to invite the ACHP,
24 Charlene, to come out for the site visit also.

25 MS. GLIDDEN: Would you be able to visit?

1 MS. DWIN VAUGHN: I was telling Conrad I just
2 need to see if that would be the ideal meeting or at
3 the time when we're ready to draft a PA.

4 MR. YOUPEE: We don't want to exhaust her
5 resources.

6 MS. GLIDDEN: We can invite you, but maybe
7 we'll leave that out there for now.

8 MS. DWIN VAUGHN: We'll figure it out. I think
9 seeing the area is critical.

10 MS. GLIDDEN: Okay.

11 MR. WHITTED: I think we need to discuss more
12 than one person per tribe. That's a real issue,
13 especially having to drive that distance, and it's
14 always good to have a second person that you can
15 bounce things off of.

16 MR. FISHER: Absolutely.

17 MR. WHITTED: Instead of one person per tribe,
18 two persons would be better.

19 MR. FISHER: And I'll bring my Shaman.
20 Hopefully he'll have his woman problems solved.

21 MR. EAGLE BEAR: I'm going to bring an
22 archeologist, a lawyer for his sake, and then I'll
23 also bring a Shaman.

24 MS. GLIDDEN: What about the jello?

25 MR. EAGLE BEAR: You're on your own there.

1 Whip cream now.

2 This timeline that you have up there is plain
3 and simple. We're going to start the process in
4 August, take our initial step. And we have until
5 August of 2036. That gives us 25 years.

6 MR. WHITTED: The PA will be completed within
7 25 years.

8 MS. RUTSON: If I have to do this for another
9 25 years, I will go out and have a baby. I don't
10 know, but . . .

11 MS. GLIDDEN: One year?

12 MS. GRAVATT: I think a year will do it.
13 What do you guys think, a year?

14 MR. FISHER: To start.

15 MR. WHITTED: I still have an issue with a lack
16 of information as far as cultural resources. That's
17 an issue that I think the tribes need to have some
18 information on. I know we talked with BLM, and it
19 seemed they were open to arch surveys on BLM lands.

20 Wasn't that what you --

21 MR. MELTON: Yeah.

22 MR. WHITTED: And possibly a TCP study. And if
23 tribes can arrange some other landowners they're
24 familiar with that would allow it, possibly I guess
25 that's where we're at with that.

1 MS. GRAVATT: TCP survey before we start with
2 the PA then, right?

3 MR. WHITTED: What land that we can access,
4 yeah.

5 MS. GRAVATT: Is that going to be possible? I
6 mean, it needs to happen.

7 MR. WHITTED: Are you willing to commit to
8 that?

9 MR. YOUPEE: What was the extent of not getting
10 on properties which was explained by Mike?

11 MR. COBURN: It was virtually universal. In
12 other words, it was almost impossible to get on any
13 property.

14 MS. GRAVATT: I think if the landowner knows
15 what we're doing, they will allow it.

16 MS. WELLS: The gentleman that came, do you
17 think he would be able to help coordinate for the
18 tribes to get onto the private land?

19 MR. FISHER: We could -- I could certainly ask
20 him.

21 MR. SANDCRANE: I might be able to contact some
22 of the tribes in the Birney area or the ranchers in
23 Birney areas because I grew up with most of them,
24 and I guess it would be worth a call to see if they
25 would allow me to.

1 MR. FISHER: I think they would be amenable to
2 that if we call them ahead of time.

3 MS. WELLS: Because in other situations what
4 we're finding is that even though the federal or the
5 private companies aren't being welcomed by these
6 farmers and ranchers, the tribes are being welcomed
7 onto their land.

8 MR. FISHER: Well, it's too bad that Russell
9 isn't here because he's a genius when it comes to
10 twisting the arms of farmers and ranchers.

11 MR. DUPRIS: I just want to maybe offer that
12 the family of Crazy Horse has done a lot of research
13 in that area, and they probably visit the whole
14 area, the whole connected battlefields, and I can
15 visit with the family reps from Crazy Horse to see
16 if they have any relationship with any of the
17 ranchers in that area and that might open some
18 doors, too, because if you say "Crazy Horse," people
19 pay attention, you know, and they probably already
20 assessed that area.

21 MS. GRAVATT: Could you bring somebody with
22 you, the family members?

23 MR. DUPRIS: I won't be here, but --

24 MR. COBURN: What is the -- I understand the
25 need to do a TCP study, but what is the need to do

1 it before we have a PA if we build into the PA that
2 doing that study will be part of the PA process? I
3 mean, what do we gain by doing it sooner rather than
4 later, if it's going to be done before construction?

5 MR. WHITTED: Well, the issue that I had is
6 avoidance isn't addressed in this. The route's
7 established, you know, as we're talking. You've
8 given us all the reasons why that the railroad can't
9 be moved, but I think we need, the tribes need that
10 latitude where if there's such a site that needs to
11 be avoided, we need to be able to say that we want
12 you to avoid this site.

13 MR. COBURN: Right. And, Jim, let's back up on
14 that, because I think the board would agree that
15 when we do the studies, the TCP and the other
16 archeological and historic studies that are part of
17 whatever PA we come up with and we discover
18 something that needs, and we're all agreed, that it
19 needs to be avoided, we can move the railroad. We
20 have some latitude to move the railroad a little bit
21 here, a little bit there to do that avoidance.

22 In other words, the board's decision is not
23 written in such a way that you can't make the modest
24 adjustments needed based on what you discover during
25 the studies that you're going to do as part of the

1 PA. Otherwise, frankly, there would be no point in
2 doing the studies; you'd have the information, but
3 if you couldn't avoid, there would just be no point.

4 So I'm not saying we can move it ten miles in
5 one direction or another. I don't think we have
6 that kind of latitude, but we have latitude to move
7 it enough to avoid. So I'm not sure that there's
8 really any advantage to doing these studies sooner
9 rather than at the time we're going to do all the
10 other studies, with tribal monitors and consultants
11 as part of the PA.

12 MS. DWIN VAUGHN: I think that we have to hear
13 the tribes and their needs for information before
14 assuming that modest adjustments can accommodate and
15 address their issues. That's not at all what I
16 heard yesterday. I think their position is and
17 continues to be that any planning or any defined
18 alignment needs to be respective of their culture
19 and heritage. And how can you commit to doing the
20 unknown? Conceptually it's there in the PA that
21 exists now. People are uncomfortable with that,
22 and I didn't hear anybody willing to concede on that
23 point. So unless I misheard, they're saying they
24 need at least baseline information from which to
25 make decisions and agree to your proposals.

1 MR. YOUPEE: You know, we're really discussing
2 PA here, but we're trying to establish an agenda for
3 the next meeting, and so -- we're time set here. I
4 don't know how many minutes --

5 MS. GLIDDEN: That's a good point, Curley. So
6 we can, I don't know, talk about this some more and
7 figure out what we can do.

8 MR. YOUPEE: Second-day meeting discussion.

9 MR. WHITTED: As long as you agree to discuss
10 it at that point.

11 MR. COBURN: Sure.

12 MR. WHITTED: One other point: I don't recall
13 ever doing a Programmatic Agreement without knowing
14 the details about what's out there.

15 MS. GRAVATT: Exactly.

16 MS. GLIDDEN: Okay.

17 MR. FISHER: And we hear what you're saying,
18 but I think when you say "advantage," to whose
19 advantage? And we're just trying to make a point
20 that as part of the negotiation and resolution of
21 this, that this is something that we would like, we
22 would like to have.

23 MS. GLIDDEN: And then a question of tribal
24 funding that came up, any thoughts or ideas about
25 that? Russell brought it up and he's not here.

1 Would you be able to speak on behalf of the
2 railroad that you'd commit to funding these meetings
3 and any additional site visits that's going to be
4 required as part of this year-long PA process?

5 MR. DAY: I think to the extent that we can. I
6 need to put together some type of a proposal based
7 on numbers of people involved and travel distances.
8 And if we'd do something like we did for this
9 setting, I'd need to put together a plan and run it
10 by the management.

11 MS. RUTSON: Doug, just to satisfy my
12 curiosity, how much does something like this cost?
13 Just a ballpark figure is fine.

14 MR. DAY: I'm not sure. We were looking at --

15 MS. DWIN VAUGHN: Are you talking lodging,
16 meeting space, gas and travel? I mean, what's the
17 computation based on?

18 MR. DAY: Right.

19 And I'm going to ballpark -- and I can give
20 good numbers when we're done and we check out and we
21 all head our separate ways, but I'm guessing -- and
22 this isn't including people's time, this is just
23 expenses and mileage and accommodations and so
24 forth. It doesn't take into account legal expenses,
25 engineering participation. I don't have their

1 bills. But maybe 25- to 40,000.

2 MS. DWIN VAUGHN: What did you say?

3 MR. DAY: 25- to 40,000.

4 MS. DWIN VAUGHN: Per meeting?

5 MR. DAY: I'm guessing per meeting.

6 MS. DWIN VAUGHN: You think you'd spent \$25,000
7 on this meeting?

8 MR. DAY: We may have, yeah.

9 MS. DWIN VAUGHN: Wow.

10 MR. FISHER: If you exclude your lawyer and
11 your engineer and -- we're just talking about the
12 tribal --

13 MR. DAY: And I may be way high, but that's
14 kind -- that's what I put together when we started
15 into this.

16 MR. FISHER: You might want to put a budget in
17 there that's a hundred to a hundred and fifty
18 thousand, because that's probably the expense you're
19 looking at if you want to have a PA, a successful
20 PA. I'm just being realistic. I'm not being
21 pessimistic or anything.

22 MS. DWIN VAUGHN: And then you have to remember
23 we're requesting two tribal members now per meeting.

24 MR. WHITTED: Tribes have an investment here as
25 well. We're not including our salaries into what --

1 you know, we don't charge you for that.

2 MR. DAY: I know. I said that, Jim. Just,
3 somebody asked, and that's my best estimate.

4 MS. DWIN VAUGHN: But that's the context, I
5 think, understanding what you estimate this meeting
6 to have cost gives them a way of knowing what a
7 year's consultation would look like.

8 MR. DAY: And I hope I'm high. That was just
9 kind of my ballpark.

10 MR. YOUPEE: As long as we don't confuse
11 reimbursement for travel with compensation,
12 because --

13 MS. DWIN VAUGHN: This is not compensation.

14 MR. SANDCRANE: One of the other things also is
15 having this meeting here right now, the room has
16 just jumped here from Labor Day from \$77 to 121.
17 Like Sheridan, it would be much less than that in
18 rooms.

19 MS. DWIN VAUGHN: Higher?

20 MR. SANDCRANE: Less.

21 MR. YOUPEE: Some of us have our standards.
22 I'm not going to stay in those flea bags over in
23 Ashland.

24 MR. COBURN: Can we -- before we get set in
25 stone on what we're putting down here, if we can

1 revisit the one year to get this done, I just want
2 to put a -- and I'm not going to come up right now
3 with a, with a different date, but if you could just
4 make note of the fact, Cathy, that the one year has
5 to be considered by the railroad in terms of a
6 realistic construction date and that we need to go
7 back and talk about that, and I may come back to you
8 and suggest that, you know, we need to make it a bit
9 shorter. I'm not going to come back and suggest
10 three months. And maybe one year is okay, but --

11 MS. DWIN VAUGHN: Be mindful that everybody
12 sitting around here has looked at a 25-year history
13 of no construction.

14 MR. COBURN: Right, but --

15 MS. DWIN VAUGHN: I hear you, but hear me out
16 and let me finish my thought. So until and unless
17 the court cases are concluded and everybody here has
18 some sense of what that litigation results in, I
19 think that we're not being overly broad in saying a
20 year. When 25 years have gone by with nothing, I
21 cannot imagine a circumstance where the court
22 decision is reached and you all are out in the field
23 a month later. The history of this project doesn't
24 support that. That's the best way to put it.

25 MR. COBURN: That's a fair point, but let me

1 just say so you're aware and others are aware, I
2 think probably most of you are aware that what
3 didn't happen over the last 25 years has now
4 happened, which is that the State of Montana has
5 worked toward leasing the Otter Creek tracts.

6 MS. DWIN VAUGHN: Okay.

7 MR. COBURN: And now, unlike the situation even
8 about six months ago, but now things are moving in
9 the direction of that coal being available for
10 mining. And, in fact, a mining -- permits are going
11 to be filed pretty soon. There are already
12 preliminary permits that have been filed with the
13 state to get permission to mine there.

14 And so the situation is changing quickly in a
15 way that suggests that the railroad, you know, what
16 we couldn't have said five, ten, 20 years ago but
17 it's happening now, so I think things are going to
18 start moving at a much faster pace.

19 MS. GRAVATT: But also remember now you have to
20 consult with the tribes now.

21 MR. COBURN: Absolutely, and that's what we're
22 talking about here. And I'm not saying we're
23 putting shovels in there tomorrow or anything close
24 to it, but I just am a little -- I'm just trying to
25 be a little cautious here because Mike is not here,

1 and I just want to be sure that a year is --

2 MS. DWIN VAUGHN: But in all fairness to
3 everybody here in keeping with the effort for
4 transparency, if the Otter Creek has brought to bear
5 some different circumstances, those should be
6 codified and made available to everybody here,
7 because I wasn't talking to Conrad about that being
8 imminent because I didn't understand that, and I
9 don't know that everybody else understands.

10 MR. COBURN: Okay. I'd be happy to -- what
11 more can we say about that?

12 MS. RUTSON: I believe one year is very
13 reasonable. I feel comfortable with it. I'm
14 sensing that the tribes are reasonably comfortable
15 with it. I'm sensing David is being a good lawyer,
16 as he always is. And Charlene is exactly right, the
17 whole world may turn on its head depending on what
18 happens with this court case.

19 MS. DWIN VAUGHN: Exactly.

20 MS. RUTSON: So for now let's -- we all say
21 it's important to work towards a target.

22 MR. YOUPEE: That's a targeted date.

23 MS. RUTSON: Let's work on that target.

24 MR. WHITTED: But it's hard for tribes to
25 commit and say, In one year this is going to be

1 done. It's very hard for us to do that.

2 MS. RUTSON: It's hard for the agency, too.

3 MR. WHITTED: A single PA has taken five years.
4 Depends on the cooperation of everybody at this
5 table.

6 MS. GRAVATT: And it depends on that court
7 case. Because really when I asked the question the
8 other day, you said it was over agricultural
9 arguments, but what you didn't say was it was
10 actually the ranchers and farmers of the area,
11 right, whose livelihoods are going to be disturbed
12 and who are in opposition of this; is that right?

13 MR. COBURN: It's the Northern Plains Resource
14 Council, which has, I'm sure, a lot of ranchers, and
15 it's the UTU Union, Native Action, City of Forsyth
16 and one rancher, Mark Fix. And the issues they've
17 raised concern cumulative impacts of the railroad,
18 together with Coal Bed Methane wells and coal
19 mining, the sufficiency of whether the board did
20 enough in-depth wildlife studies. And those are the
21 big issues. There are a lot of other issues.

22 MR. FISHER: Because of the time frame that we
23 have here, I think --

24 MS. GLIDDEN: Are we good on these three
25 points?

1 MR. FISHER: I think we should just -- this is
2 what the tribes want. And you can go back over and
3 plead your case of less than a year, but as far as
4 the tribes are concerned, this is what we're going
5 by. And should we come to a, you know, a wall at
6 the next meeting, then we'll deal with it at that
7 time, but right now we're just trying to come up
8 with some broad perspectives on how this is going to
9 go, so I would leave it at that.

10 MS. GLIDDEN: So good with the three points
11 that we've agreed on --

12 MS. GRAVATT: Yes.

13 MS. GLIDDEN: -- regarding the timeline for PA
14 completion?

15 MS. DWIN VAUGHN: Can you summarize?

16 MS. GLIDDEN: Timeline for PA completion:
17 Begin with meeting August 3, 2011 and then will try
18 to complete the PA within one year of that date.
19 (This is contingent on David Coburn's discussion
20 with Mike regarding the construction date; project
21 is quite fluid right now). Charlene Dwin Vaughn
22 believes one year is reasonable given the long
23 history of this project. Victoria Rutson agrees.
24 Jim Whitted requested that a TCP survey be completed
25 on accessible land before the PA is executed. Not

1 certain if this is possible as much of land is
2 privately owned. Tribes will look into this.
3 Dana Dupris will speak with relatives of Crazy Horse
4 who have much history about the area. David Coburn
5 wondered why TCP study could not be built into PA as
6 adjustments can be made to the alignment approved by
7 the STB. Tribes need details about what's out
8 there.

9 2. Tribal funding: Doug Day from TRRC said
10 that he will agree to funding tribal expenses based
11 on numbers of people involved and travel distances,
12 et cetera, for additional meetings needed to
13 complete the tribal consultation for the PA. Doug
14 says that he needs to get a plan for approval by
15 management, but meetings are very expensive. Tribes
16 requested that two people per tribe be funded to
17 attend meetings for the purpose of working on the
18 PA.

19 MS. DWIN VAUGHN: Okay, I have a problem with
20 the way 2 is characterized. The meetings may be
21 expensive, but --

22 THE COURT REPORTER: One moment, please.

23 (Brief pause)

24 MS. GLIDDEN: Next meeting time and location:
25 Near Wolf Mountains Battlefield for a site visit.

1 Sheridan, Wyoming looks like a good spot. Late
2 summer is best for the STB. August 3 through 5
3 appears to be good for all. In morning will visit
4 the site first day and also look at Birney Village
5 to assess context and history of site. Will get
6 input from Doug Day regarding the project. Need to
7 invite the Montana SHPO and will have a meeting with
8 them in the afternoon at Lame Deer. Advisory
9 Council may attend. Need to book rooms soon. Jim
10 Whitted requested that two tribal representatives be
11 allowed to attend.

12 MR. WHITTED: From each tribe.

13 MS. GLIDDEN: Okay, from each tribe.

14 MS. DWIN VAUGHN: The expense part I want to
15 get back to. I think that's very subjective until
16 we get numbers from the tribes.

17 And here's the reality we're dealing with,
18 Doug: It might be expensive, but if they're asking
19 for face-to-face consultation and meetings, it's a
20 critical element of moving forward. So when you put
21 "expensive," that's subjective to me. It's
22 subjective, and it's saying that that might inform
23 whether or not you do this, and that's not
24 negotiable.

25 So take out "very expensive," Cathy.

1 MS. GLIDDEN: Well, he did say it.

2 MS. DWIN VAUGHN: Whether he said it or not, I
3 don't think the council feels it's relevant. You're
4 putting words in our mouths and we're not saying --

5 MS. GLIDDEN: Actually, Charlene, all I did was
6 summarize what people said.

7 MS. RUTSON: We're at a good place, like, now,
8 so let's leave it like this.

9 MR. YOUPEE: Number 3, I think that the Army
10 Corps, as well as the BLM need to be in attendance
11 as well.

12 MR. COBURN: And the Montana SHPO.

13 MR. YOUPEE: And the Montana SHPO. And we're
14 going to meet at Lame Deer. Northern Cheyenne is
15 going to facilitate that meeting with the Montana
16 SHPO so we can make it happen.

17 MS. GRAVATT: What is the problem? He doesn't
18 have funding to come?

19 MR. MELTON: He can't travel out of state.

20 MS. GRAVATT: Because he doesn't have funding
21 or --

22 MS. DWIN VAUGHN: Not permitted.

23 MS. GRAVATT: Not permitted? Wow, that's --

24 MS. RUTSON: We'll ask Christine Whitacre from
25 the National Historic Commission to attend as well.

1 MS. DWIN VAUGHN: Park Service.

2 MS. RUTSON: Park Service.

3 MR. WHITTED: Thank you. I was going to
4 recommend that.

5 MS. GRAVATT: Park Service definitely. I can't
6 wait to hear from them.

7 MR. YOUPEE: Do we have it done?

8 MS. GLIDDEN: Yeah, I think so.

9 MS. RUTSON: Wonderful.

10 MS. GLIDDEN: Army Corps of Engineers and BLM?

11 MS. RUTSON: And Park Service.

12 Thank you so very much. I really feel like I
13 have had the opportunity to consider, discuss and
14 seek your viewpoints and I hope they've been open.
15 And I look forward to being able to continue this
16 process.

17 I thank you for all your effort and your time
18 and your expertise and your willingness to be here
19 with us. Thank you.

20 MR. COBURN: I'll add my thanks for the
21 railroad as well. We appreciate, particularly
22 appreciate today's session, which I found very
23 useful for us, and I think this was productive.

24 One question, there was a call scheduled for
25 Monday. Is that still on?

1 MS. RUTSON: Yes, still going forward with the
2 call on Monday, June 27th, at one o'clock eastern.

3 Does everybody have the call-in number and the
4 pass code?

5 Cathy, do you have it reasonably -- can you
6 read it out?

7 MS. GLIDDEN: I don't have it right in front of
8 me. If I can get on the Internet, I can.

9 MS. GRAVATT: I got it.

10 MS. RUTSON: Do you mind reading it?

11 MS. GRAVATT: The teleconference number is
12 1-877-336-1829.

13 MS. RUTSON: And the pass code number?

14 MS. GRAVATT: Access code is 4773570.

15 Do you want me to read that again?

16 MR. WHITTED: Yeah.

17 MS. GRAVATT: Teleconference number
18 1-877-336-1829. Access code is 4773570. And it'll
19 be 12:00 p.m. central on June 27th.

20 MS. DWIN VAUGHN: So you all will present this
21 information during the call?

22 MS. RUTSON: Exactly, Charlene.

23 MS. GLIDDEN: Curley, can you e-mail this to
24 me?

25 MR. YOUPEE: I'll e-mail it to you, Friday,

1 tomorrow.

2 MS. GLIDDEN: Thanks.

3 MS. GRAVATT: Can we get copies of this before
4 we leave?

5 MS. GLIDDEN: I don't know. Where can we print
6 this out?

7 MS. CHAMBELLAN: If you put it on a stick --

8 MR. COBURN: If you can e-mail --

9 MR. YOUPEE: I could e-mail this to you when I
10 get up to my room. Let me do that. I got a lot of
11 information on that.

12 MS. GLIDDEN: I was going to copy everything on
13 your computer, so I'm glad you stopped me. I want
14 images of him in a wrestling match.

15 MR. YOUPEE: Just the applications I have on
16 there.

17 MS. RUTSON: Does this conclude the formal
18 record?

19 MS. WELLS: No. I have one more question. The
20 United Transportation Union, you're saying that
21 their claims in court are the same as the Natives'?

22 MR. COBURN: No -- well, the United
23 Transportation Union, Native Action and the City of
24 Forsyth have filed a joint brief, and so those three
25 parties, separate from Northern Plains Resource

1 Council, have made the same arguments. And I'd be
2 happy to send you a copy of the brief. If you'd
3 give me your contact information, I can get you
4 their briefs and you can read it yourself rather
5 than hear it from me.

6 MS. RUTSON: Does that conclude the formal
7 record?

8 Thank you to our court reporter. Well done.
9 (Closing Prayer.)

10 * * * * *

11 (The proceedings concluded at 12:15 p.m.,
12 June 23, 2011.)
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1 STATE OF SOUTH DAKOTA)
2) ss.
3 COUNTY OF PENNINGTON)
4

5 I, CINDY K. PFINGSTON, hereby certify that
6 the foregoing pages numbered from 307 to 388, inclusive,
7 constitute a full, true and accurate record of the
8 proceedings had in the above matter, all done to the best
9 of my skill and ability.

10 DATED this 11th day of July, 2011.
11

12 _____
13 CINDY K. PFINGSTON
14 Registered Professional Reporter
15

16
17 My commission expires:
18 February 4, 2016
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