



EI -18071

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February 9, 2010

Ms. Catherine Glidden
Section of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

RE: STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation
Construction into the Powder River Basin Expansion: Request for Review and Comment on 21
Archaeological Sites

Dear Ms. Glidden:

On January 13, 2010, we received your request for our review and comment on a letter report addressed to the Wyoming State Historic Preservation Officer, detailing the Surface Transportation Board's (STB) National Register of Historic Places (National Register) eligibility determinations for 21 archaeological sites located within the Wyoming section of the Dakota, Minnesota & Eastern Railroad's Powder River Basin Expansion Project Area. Your cover letter notes that certain attachments were not included with the letter report due to confidentiality concerns expressed by tribes. In the absence of this confidential information, we wish to focus our comments, not on the specific eligibility determinations reached for each of the 21 sites, but rather on the findings in general, and the consequences of STB's determinations.

We note that of the 21 sites targeted for evaluation, all are described as stone feature sites. We also note that one site (48CA97) could not be relocated during STB and tribal field visits that were conducted in June and September of 2009, and is considered unevaluated until found and evaluated. Although no definition of "stone feature site" is provided, we assume this refers to archaeological sites that include one or more concentrations of cobbles and angular stone fragments arranged in patterns indicative of deliberate human activity. In the northern Plains, such sites often exhibit stone circles, cairns, rock concentrations or clusters, and stone alignments. They are ubiquitous and may be as much as eight thousand years old.

Of the 20 sites visited by tribal representatives and STB, all are considered eligible under one or more National Register criteria, specifically criteria A, C, and D. All 20 are considered eligible under criterion A for their associations with "broad patterns of Native American history." Three of the 20 sites are considered eligible under criterion C, presumably for their architectural or artistic merits. Nineteen of the 20 sites are also considered eligible under criterion D for the important information they retain based on recommendations from tribes or from archaeologists. Integrity of setting is not discussed.

A typographical error is evident under item B.1 of the letter report, regarding "49CA1528/48CA287." Apparently, this should refer to site 48CA1528/48CA2879/48CA2880.

Under part **C. Site-by-Site National Register Determinations** of the letter report, STB notes that some GPS-based locational information was altered, and that newly recorded features led to changes in site boundaries. STB also notes that at site 48CA211, evidence of “on-going archaeological excavations” was observed.

DM&E wishes to express several concerns, and pose several questions intended to clarify remaining issues and promote communication regarding these findings.

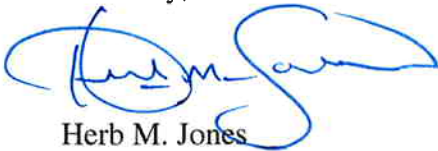
1. DM&E requests revised site forms for incorporation into DM&E’s resource management database to ensure that site information is properly tracked and updated as management (e.g., avoidance, treatment) decisions are reached. DM&E does not request any traditionally or spiritually sensitive or confidential information that might compromise traditional proprietary knowledge regarding traditional religious practices or beliefs.
2. DM&E requests that STB share the GIS and GPS data regarding alterations of previously recorded site boundaries and of newly discovered features. DM&E needs to include this information with all the other site locational information DM&E has gathered for the Project to ensure that DM&E retains a meaningful role in Section 106 consultation with tribes, and can properly propose or consider measures to avoid or treat these properties as consultation proceeds.
3. DM&E wishes to state for the record that the “on-going archaeological excavations” noted at 48CA211 are not attributable to any actions or decisions by DM&E, and that DM&E had no knowledge of such activities until reported by STB after the tribal site visits. Rather, preliminary information obtained by DM&E about this matter indicates that 48CA211 was targeted for archaeological data recovery in 2008, under the terms of a Section 106 agreement that included minimally the SHPO and USDA Forest Service as signatories for purposes of an entirely separate undertaking. If such excavations were intended to adequately mitigate the adverse effects of a separate undertaking, to what extent did the data recovery mitigation affect the integrity of the site under criteria A and D? To what extent will the implementation of that undertaking affect the integrity of the property under criteria A and D?
4. DM&E is unable to ascertain the extent to which STB accounted for the historically recent entry of the consulting tribes to this area of Wyoming. Nor is DM&E able to ascertain whether STB established a period of significance or cultural and historical associations for stone feature sites that qualify under criteria A, C or D. We are aware that some stone feature sites have produced temporally diagnostic artifacts indicative of occupation prior to the consulting tribes’ entry into this region. The anthropological and archaeological records have established that Native Americans express hundreds of differing languages, religions, and cultural systems, and that these have changed through time. Consequently, DM&E believes that clarifications regarding historical and cultural affiliations would help the consulting parties to deliberate about appropriate consideration and treatment of these properties.
5. Similarly, DM&E believes that clarification of the contributing characteristics of these properties would be helpful. For example, is integrity of setting a contributing characteristic that will need to be considered as deliberations proceed regarding appropriate treatment measures?
6. Since STB considers all stone feature sites visited by the tribes to be eligible for the National Register without exception, is it reasonable to extrapolate that STB considers all

stone feature sites within the PRB Expansion Project area to be National Register eligible? If so, are additional tribal field visits necessary to resolve the eligibility of the remaining stone feature sites? If STB considers additional tribal field visits to be necessary, should these visits focus instead on appropriate and feasible treatment options? Would DM&E be provided a role in such visits to convey design and engineering limitations and requirements?

7. What circumstances would preclude a stone feature site from being considered eligible for the National Register? If such circumstances exist among those sites yet to be visited by the tribes, can these be excluded from such visits and their eligibility resolved now, based on existing information?
8. STB postponed eligibility determinations for stone feature sites in Wyoming and South Dakota pending completion of "A Research Context for the Interpretation and Evaluation of Stone Features and Stone Feature Sites" (The Louis Berger Group Inc., April 17, 2009), and tribal visits. Since STB now considers all stone feature sites visited thus far in the PRB Expansion Project area of Wyoming to qualify for the National Register based on tribal recommendations, is it reasonable to extrapolate that all stone feature sites in Wyoming and South Dakota should be considered unevaluated pending tribal visits and recommendations? Will this impose a new standard for recording and evaluating stone feature sites in the two states with implications extending beyond the PRB Expansion Project?
9. If tribal visitations and recommendations are essential for resolving the National Register eligibility of stone feature sites regardless of unmet comment deadlines established under the PA, or imposed in STB's requests for information, please clarify the purpose of the review timeframes established under the PA. Will STB continue to apply these review timeframes flexibly for the review of treatment plans and other support documentation submitted for consulting party review? Will these review timeframes be applied more stringently for some types of documents than for others? DM&E needs to know STB's intent in this matter for project planning and scheduling purposes as we move toward a construction start date.

Please consider these comments and questions as you deliberate with the Wyoming SHPO regarding the National Register eligibility of these sites. We request your response at your earliest convenience.

Sincerely,



Herb M. Jones

U.S. Director, State and Local Government Affairs