

EI-20413a

*Section 106 Meeting for Tongue River Railroad  
Construction Project*

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*Proceedings  
February 13, 2014*

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Min-U-Script® with Word Index

SECTION 106 CONSULTATION MEETING FOR THE TONGUE RIVER RAILROAD CONSTRUCTION PROJECT

TRANSCRIPT OF PROCEEDINGS HELD ON FEBRUARY 13, 2014

LOCATION: Crowne Plaza Hotel Billings, Montana TIME: 9:19 a.m. to 3:44 p.m.

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12 [ADJOURNED FOR THE DAY]

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1 staff, and we're delighted to be here.

2 A warm welcome and thanks to each and

3 every one of you. I appreciate the time and the

4 trouble and the effort you've taken to join us

5 here today. We have a number of people

6 participating via webinar, so if you hear voices

7 coming, disembodied voices coming out of the

8 speakers, it will be folks from the webinar.

9 A quick word about our speaker system

10 here. If you want to speak, you push the button

11 and a red light will come on, and the speaker will

12 be most effective if you're three to four inches

13 away from the head of the microphone, so keep that

14 in mind. We want to make sure that you will be

15 heard by everyone in the room and by everyone

16 participating via webinar.

17 I think we're so fortunate today. We're

18 fortunate with the warmth and the weather, we're

19 fortunate with -- there's a bit of blue in the sky

20 today, and I feel particularly fortunate that we

21 have such a tremendous turnout. We have, I

22 believe, the ACHP participating via webinar; we

23 will have the Montana SHPO, Stan Wilmoth, with us

24 hopefully before too long; we have 23 tribes

25 today, which I'm so grateful for that; we have

1 PROCEEDINGS

2 MR. STARZAK: This is the Section 106

3 Consultation Meeting for Tongue River Railroad,

4 and I'm going to be beginning the ceremony with

5 the prayer. Cathy, would you like to introduce

6 the --

7 MS. NADALS: Right behind you.

8 MR. STARZAK: Pete Coffey will be --

9 MS. NADALS: No. Conrad; let him

10 announce who's going to give the prayer.

11 MR. CONRAD FISHER: Good morning,

12 everybody. At this time I'd like to introduce one

13 of our society's traditional Northern Cheyenne

14 society members, Mr. Mark Roundstone, to do the

15 invocation. If you could help us, Mark, we'd sure

16 appreciate it. Thank you.

17 [OPENING PRAYER BY MARK ROUNDSTONE]

18 MS. RUTSON: Thank you so much.

19 Good morning, everyone. My name is Vicki

20 Rutson. I'm the Director of the Surface

21 Transportation Board's Office of Environmental

22 Analysis. There are three of us from the office

23 here today: Myself, Cathy Nadals, who many of you

24 have met, and Josh Wayland. So by having three of

25 us here, you have met one-third of our total

1 environmental organizations; we have federal

2 agencies; we have ranchers; landowners; we have

3 the applicant. Thank you for this tremendous

4 level of participation.

5 As I was getting ready for the meeting, I

6 was thinking, these meetings can always be a bit

7 contentious, and probably as that should be, as

8 everyone has a voice and shares their opinions and

9 as we listen.

10 We do, I think, all of us in this room,

11 probably have three things in common: We've all

12 made sacrifices to be here; we've all been working

13 as we've worked on the Tongue River case we've

14 experienced frustration, we've gotten tired, but

15 we've continued to participate and work with

16 determination; and the last point of commonality

17 that I believe we all share is we want to

18 participate in a process that has integrity, and

19 that's my job, to make sure that this process has

20 integrity. And I appreciate all your suggestions

21 and help to allow me to make sure that that

22 happens. So again, thank you for coming, and I'll

23 now turn it over to Cathy Nadals.

24 MS. NADALS: Hi everyone. Thanks so

25 much. I echo what Vicki says about, you know, the

1 large number of you that have come to participate  
2 in all kinds of different weather conditions. I  
3 have to admit, and I'm happy to be here and not  
4 out where I live, because there's about two feet  
5 of snow outside my door, and I never really  
6 expected to come to Montana and have better  
7 weather than out East, so...

8 But thank you everyone. I know that some  
9 of you traveled quite a distance, as much as ten  
10 hours, Terry, you were telling me that it was.  
11 The roads were not that great, so thanks,  
12 everyone, for being here.

13 As part of the introductions, I thought  
14 it would be important to go around the room and  
15 have everyone introduce themselves, and then --  
16 and tell us, you know, who you are, in part for  
17 the court reporter, because she's going to need to  
18 know everyone's name before you speak; that way,  
19 she can make sure that she takes an appropriate  
20 record of everything that you say and knows  
21 exactly who's saying what.

22 But we would start out by -- I'm being  
23 challenged by the microphone distance. Anyway,  
24 everyone go around the room and introduce  
25 themselves and maybe give us a short, if you're

1 fine. So I apologize that we were unable to be  
2 there in person but want you to know that we're  
3 very pleased that STB is having this meeting and  
4 that the turnout and attendance has been as great  
5 as it is.

6 It's important for us to know that all  
7 consulting parties have access to the discussion.  
8 That let's you get out your issues early in the  
9 process and where we can better understand how we  
10 need to focus going forward on specific  
11 preservation concerns.

12 So again, I apologize that we weren't  
13 there in person, but I'll try my best to  
14 participate throughout the meeting today. Thanks.

15 **MS. NADALS:** Thanks, Charlene. Anybody  
16 else on the phone that would like to introduce  
17 themselves?

18 **MS. COLE:** This is Amy Cole from the  
19 National Trust For Historic Preservation in  
20 Denver. And just so you know, my colleague, Betsy  
21 Merritt, and I are sort of tag-teaming these two  
22 days, so one of us is going to try to be on the  
23 phone during the whole meeting. Thanks.

24 **MS. NADALS:** Thank you, Amy. Anybody  
25 else on the phone?

1 interested, a short synopsis of why you're here  
2 and what you hope to get out of the meeting and  
3 any particular concerns you have.

4 Given, of course, that we have a lot of  
5 people that are here, and I thought we would start  
6 with the people on the phone. And for those that  
7 are on the phone that are interested in being also  
8 participating in the webinar, people on the  
9 webinar will need to have another -- another  
10 phone, people on the webinar have to use a  
11 separate phone in order to use the webinar and  
12 hear the meeting. But anyway, could the people on  
13 the phone introduce themselves? Can we start,  
14 just give your name so the court reporter and the  
15 rest of us in the room know who's on the phone.  
16 Anybody on the phone?

17 **MS. VAUGHN:** Can everyone hear me?

18 **MS. NADALS:** Hi, everyone. We're -- we  
19 would like you, the people on the phone, to  
20 introduce themselves. Go ahead.

21 **MS. VAUGHN:** This is Charlene Vaughn from  
22 the ACHP. Can you hear me?

23 **MS. NADALS:** Yes, we can hear you. Can  
24 you hear us okay?

25 **MS. VAUGHN:** Yes, I can. Everything is

1 Okay, it sounds like that's it. I think  
2 we'll start to go around the room then. Maybe  
3 start with Conrad Fisher from the Northern  
4 Cheyenne Tribe. He's right next to my right.

5 **MR. CONRAD FISHER:** Conrad Fisher,  
6 Northern Cheyenne Tribal Historic Preservation  
7 Office. And briefly, we are the closest  
8 geographic tribe to the proposed rail line, and  
9 we've been working with STB and some of the others  
10 in identification of cultural properties with  
11 reference to the routes that are being proposed,  
12 and we're out of Lame Deer, Montana on the  
13 Northern Cheyenne Reservation, and we have a  
14 vested and a compelling interest in this proposed  
15 undertaking because it hits real close to home,  
16 and we want to ensure that we've utilized all the  
17 resources that are available to come to some  
18 resolution on this undertaking. Thank you.

19 **MS. ST. JOHN:** Good morning. Tamara St.  
20 John representing Sisseton-Wahpeton Tribal  
21 Historic Preservation Office.

22 **MR. VANCE:** Good day to everyone. First,  
23 my name is Steve Vance. I'm the Tribal Historic  
24 Preservation Officer for Cheyenne River Sioux  
25 Tribe, and I thank you for that blessing,

1 greeting, and going into the discussions in a  
 2 traditional way; appreciate that.  
 3 I remember in his prayer mentioning the  
 4 elders and kind of why we as tribes sit here;  
 5 we're trying to respect and protect what's been  
 6 here from the past, for what we have in the  
 7 present, and what may be left for the future.  
 8 This is my first time up here in person.  
 9 I've been getting on all the monthly  
 10 teleconferences by phone, and this is what we ask  
 11 for is face to face, so again, I am thankful for  
 12 being here and, you know, looking at, again, the  
 13 comment of past, present, future.  
 14 And the THPOs know this, the tribes know  
 15 this, that there are too many things going on  
 16 right now with extractive industries and projects  
 17 that are direct threatening our existence as  
 18 traditional people. The reason why I'm telling  
 19 you that is I used to send Dana up here, Dana  
 20 Dupris. He's not able to make it; his mother  
 21 passed away. So there again, another elder,  
 22 another elder person has passed on. And Dana  
 23 being one to, you know, understand these things,  
 24 hopefully will carry that on to his children, and  
 25 I think that's why we're here as tribes, to look

1 I'm the Tribal Chair, and at this time I -- this  
 2 is my first meeting, and I just became a Chairman  
 3 last fall, and I need to do a lot of catchup on  
 4 what's going on here. But I'm glad to attend this  
 5 meeting, and I really support our tribe. We --  
 6 we're a tribe that has -- everything we get we  
 7 have to fight for. Our reservation we fought for.  
 8 Our ancestors come from Oklahoma. They  
 9 walked all the way back and they fought. We lost  
 10 a lot of bloodshed during this time. And then  
 11 when we -- our reservation was created by  
 12 executive order. Then when we got that tribe  
 13 settlement from the U.S. Government, we had to pay  
 14 for our reservation at a dollar an acre. So our  
 15 reservation was bought and paid for with blood  
 16 money of the Northern Cheyenne people.  
 17 So with that, I want to have a statement  
 18 read later on by my EDA director, Steve Small.  
 19 Thank you.  
 20 **MR. MILLER:** (Native language) Lyle  
 21 Miller, (Native language) on behalf of the Yankton  
 22 Sioux Tribe, Chairman Robert Flying Hawk and his  
 23 cabinet, I come to give comment on the Tongue  
 24 River Railroad 106 Project.  
 25 There are issues at hand here that we're

1 at what we can preserve.  
 2 A comment was made at one of the meetings  
 3 and it was by Vine Deloria, and a lot of people  
 4 know who Vine is. But it's not an issue of us  
 5 wanting to own the land; it's an issue of tribes  
 6 trying to respect the land.  
 7 And there's a lot of things here. You  
 8 know, my concern is going to be of ongoing  
 9 cumulative effect that what has happened in the  
 10 past couple 2, 300 years to our environment, how  
 11 fast we have lost. Like in that prayer, we're  
 12 thankful for what the earth has given us, the  
 13 sacred water.  
 14 So I guess rounding it up is to  
 15 remembering the past, appreciating what we have  
 16 here presently, and hopefully we can pass  
 17 something on to our smiling grandchildren that's  
 18 better than what we have. Thank you.  
 19 **MR. WILLEY:** I am Andrew Willey. I'm  
 20 a -- I represent the Cheyenne and Arapaho Tribes  
 21 in Oklahoma as a trainee for the Tribal Historic  
 22 Preservation Office, and I am here to learn.  
 23 Thank you.  
 24 **MR. LLEVANDO FISHER:** My name is Llevando  
 25 Fisher. I represent the Northern Cheyenne Tribe.

1 dealing with that the tribal entities that are  
 2 left here on this earth, they need to look at in a  
 3 serious way, so that's why we're here, basically.  
 4 All we can do is protect. We can't own this land.  
 5 We can protect it for our young that are coming.  
 6 That's all I have to say now. Thank you.  
 7 **MR. LONGIE:** Good morning. I represent  
 8 the Spirit Lake Tribe in North Dakota, and I hate  
 9 these morning introductions. I'm a night person,  
 10 and I'm never fully alert until 10 o'clock in the  
 11 morning, but I'll do the best I can.  
 12 I met with the Tribal Council on Monday,  
 13 and two days after I started the job. I kind of  
 14 came into this position inadvertently by a  
 15 relative of mine who's a THPO. Several months ago  
 16 she informed me that Spirit Lake did not have a  
 17 THPO officer. And out of curiosity, I checked it  
 18 out, and I found out that there was a plan that  
 19 was written. So I approached the council and I  
 20 asked them to get involved and see if I could get  
 21 the plan approved, and I did, so they appointed me  
 22 to THPO officer.  
 23 And what I've learned since then really  
 24 interests me in the position. I like history to  
 25 begin with, and I like, you know, I'm all for

1 saving environment, so it seems like I'm in a good  
2 position to do those things.  
3 Last, for the last 20 years, Devils Lake  
4 has been raising -- has been rising and flooding  
5 everything, and the last couple years they've --  
6 to build up the roads they took down several hills  
7 on the south side of the lake on the north side of  
8 the Reservation. They just bulldozed them down  
9 and carried them away and used them for fill.  
10 Now that I know what I know about the  
11 THPO, if I had been the THPO I would have fought  
12 against that because that was, you know, that was  
13 a important part of our land that I think a lot of  
14 our people camped there back in the day. And I  
15 keep driving right by there; the wonderful scenery  
16 is all gone forever. So it's unfortunate that our  
17 tribe never had a THPO office all these years, and  
18 for the time I'm going to be here I'll do my best.  
19 Thank you.  
20 **MS. HEADLEY:** My name is Corinne Headley.  
21 I'm the Northern Arapaho Tribal Historic  
22 Preservation Officer. Many of you probably know  
23 Darlene Conrad, who recently retired, and I've  
24 stepped into the position.  
25 We're from the Wind River Indian

1 Diane Friez. I'm the district manager for the  
2 Bureau of Land Management for eastern Montana,  
3 North and South Dakota, and part of this project  
4 could go through the Miles City Field Office,  
5 which is part of my area, jurisdiction.  
6 **MS. RUTSON:** Vicki Rutson. You already  
7 heard from me.  
8 **MR. CLOUTHIER:** Good morning. Terry  
9 Clouthier, Standing Rock Sioux Tribe tribal  
10 archeologist.  
11 **MR. COFFEY:** Oh, okay. Good morning to  
12 y'all here. I'd like to commend my old boss,  
13 Erich, there for saying something that I always  
14 felt was something that should be said here. I'm  
15 one of those people too, you know. I didn't even  
16 know you had to press the button here; and I  
17 worked in radio for 20 years.  
18 My name is Pete Coffey. I'm with the  
19 Mandan, Hidatsa, Arikara Nation smack dab in the  
20 middle of the Bakken Formation. I bring you  
21 greetings from the madness up there.  
22 **MR. BLACK WOLF:** Good morning. My name  
23 is Michael Black Wolf. I'm the Preservation  
24 Officer for the Gros Ventre and Assiniboine Tribes  
25 at Fort Belknap Reservation, newly hired, so it

1 Reservation in Wyoming, and I know previously we  
2 have assisted the Northern Cheyenne with  
3 identification of the sites, the survey that's  
4 been done. And you'll have to forgive me, since  
5 I'm so new to the position I'm still just catching  
6 up, getting up to speed a little bit on the  
7 project myself, and that's where I stand about  
8 now. Thank you.  
9 **MS. BACKBONE FITCH:** Hello. My name is  
10 Roberta Backbone Fitch. I'm with the Crow Tribe  
11 south of Billings here, probably closest to here  
12 right now. But I'm the Deputy THPO. Normally,  
13 Emerson Bull Chief attends the meetings, but he's  
14 away on a different meeting so I come in his  
15 place. Thank you.  
16 **MR. PETERSEN:** Good morning. My name's  
17 Mark Petersen. I work for the USDA Agricultural  
18 Research Service, and I am the research leader for  
19 Fort Keogh Range & Livestock Research Laboratory,  
20 which is in two alternative paths for the Tongue  
21 River Railroad. Thank you.  
22 **MS. JOHNSON:** Shannon Johnson with the  
23 U.S. Army Corps of Engineers. I am the project  
24 manager for 404 permitting for the railroad.  
25 **MS. FRIEZ:** Good morning, everyone. I'm

1 will be a learning experience for me, and I look  
2 forward to meeting with you guys and getting  
3 on-the-job training. Thanks.  
4 **MR. COBURN:** Good morning. I'm David  
5 Coburn. I'm with Steptoe & Johnson in Washington,  
6 DC. I represent Tongue River Railroad Company,  
7 and I have for almost 20 years on this project.  
8 I -- I'm here with several others who are with  
9 BNSF and its contractors -- I hope I didn't cause  
10 that. So as we go around the room, they'll  
11 introduce themselves. We're here today as the  
12 applicant, obviously. We have a direct interest  
13 in the project, but beyond that, we have an  
14 interest in hearing from all of you, from learning  
15 as we listen, from trying to work together to  
16 accommodate your interests, which we very much  
17 respect, as well as the needs of the railroad.  
18 So we're happy as that process proceeds  
19 to answer your questions. As the applicant, we  
20 obviously know a lot about the project. A lot of  
21 you are new, so we're happy to answer the  
22 questions that those of you, particularly those of  
23 you who are new to the project, might have, and  
24 again, to hopefully at the end of the process find  
25 some understanding as to how we will move forward.

1 Thank you.

2 **MR. NADEAU:** Good morning. I'm Bruce  
3 Nadeau from the Turtle Mountain band of Chippewa,  
4 the Historic Preservation Officer, and I'd like to  
5 thank you for inviting us from our Tribal Council  
6 and Chairman Richard McCloud. We're here to  
7 support Northern Cheyenne and all the tribes,  
8 preserving our cultural resources, and I'm here to  
9 listen and learn today. Thank you.

10 **MR. RHODD:** Good morning. My name is Ben  
11 Rhodd. I'm the -- one of the archeologists for  
12 the Rosebud Sioux Tribe, but I also work in a  
13 consultant capacity for the tribe. I'm here on  
14 behalf of Russell Eagle Bear. He couldn't be here  
15 today because we're dealing with the other issue  
16 of Keystone and they're beginning a meeting in  
17 Rapid City today.

18 I'm glad that Steve Vance mentioned about  
19 the cumulative effects that we're dealing with  
20 here also in addition to our cultural. The number  
21 one thing that is the basis of all of our  
22 arguments on these energy-related projects on the  
23 northern plains is our water. That's the number  
24 one thing that we must protect, through whatever  
25 means that we can. We must look to that because

1 doesn't matter. We all must have that most  
2 important resource and we must seek its  
3 protection. (Native language)

4 **MR. STARZAK:** My name is Rick Starzak  
5 with ICF International, and we're an independent  
6 third-party consultant to the Surface  
7 Transportation Board, so we're basically an  
8 extension of Vicki and Cathy's staff, and I look  
9 forward to listening to you, to hearing you, and  
10 working with you.

11 **MR. SUMMERVILLE:** I'm Alan Summerville  
12 with ICF as well, and I'm the project manager on  
13 the Environmental Impact Statement.

14 **MR. WAYLAND:** Good morning. My name is  
15 Josh Wayland. I'm with the Surface Transportation  
16 Board, Office of Environmental Analysis. I'm  
17 pretty new to the agency and fairly new to this  
18 project as well, so like many of you, this will be  
19 a learning experience for me. I look forward to  
20 listening and learning from all of you.

21 **MS. YOUNG:** Good morning. My name is  
22 Waste'Win Young, and I'm the Tribal Historic  
23 Preservation Officer for the Standing Rock Sioux  
24 Tribe, and I want to greet our Northern Cheyenne  
25 relatives. It's always good to be here.

1 someone else -- I appreciate the prayer said by  
2 our Northern Cheyenne relative. He mentioned  
3 about the children. The children are the ones  
4 that we are to look out for. We have to look  
5 ahead. Our grandfathers and grandmothers did that  
6 for us. We must do so in the same manner and the  
7 same way.

8 But in the end, yes, we have the animals  
9 and we have the birds; those are what make life  
10 beautiful. But water is essential for everyone  
11 and everything. That is our most important  
12 resource. And it's getting less and less on the  
13 northern plains, less and less potable water. So  
14 I wanted to make that statement.

15 And in talking with Russell a little  
16 while ago on the phone, we are -- we keep this in  
17 mind because we were told to by our elders, "Speak  
18 for the water. Speak to it."

19 So I wanted to bring that here on this --  
20 to this table to understand that, yes, we're  
21 protecting cultural resources and heritage and  
22 what we value as a people, but water, that's the  
23 number one thing that we must look to, and that's  
24 for all of us in this room. It doesn't matter  
25 what color your skin is, who you represent, it

1 Last time we were here we went on a site  
2 visit and the meeting was hosted at the Tribal  
3 Council Chambers for the Northern Cheyenne, and we  
4 got to see a lot of the route, the proposed  
5 alternatives, and the history and stories and  
6 sites of significance along the route, and it was  
7 there that I heard the story about Head Chief and  
8 Young -- was it Young?

9 **MR. CONRAD FISHER:** Young Mule.

10 **MS. YOUNG:** Young Mule and Head Chief,  
11 and this was an area that was close to where our  
12 leader, Tatanka-Iyotanka, or Sitting Bull, sun  
13 danced, and it was there that he had the vision of  
14 the soldiers falling upsidedown shortly before the  
15 Battle of Little Bighorn, what America knows as  
16 that and we know as the Battle of Greasy Grass.

17 So it's always good to be here among  
18 relatives and among the other tribes, and it's  
19 important to remember that we have more in common  
20 than we think. It's important for us to stick  
21 together and remember that we're doing this on  
22 behalf of things that -- spiritual elements that a  
23 lot of people don't understand that we still have  
24 a tie to. But thank you for having us.

25 **MR. SMALL:** Good morning. My name is

1 Steve Small. I'm the EDA director for the  
 2 Northern Cheyenne Tribe and am providing support  
 3 to the President. We're glad to be here today and  
 4 just to get to air it out. I know there are both  
 5 sides to every issue, but I hope that we get  
 6 through that today. Thank you.  
 7 **MR. ROUNDSTONE:** Good morning. My name  
 8 is Mark Roundstone. I'm the acting director for  
 9 the Northern Cheyenne Natural Resource. Glad to  
 10 be here. Thank you.  
 11 **MR. WALKSALONG:** (Native language) My  
 12 name is Ho-ba-tha-ha (phonetic). My English name  
 13 is James Walksalong. Glad that everyone has an  
 14 interest in this 106. It borders our homeland,  
 15 and our traditional homeland extends from  
 16 Minnesota all the way down to Texas, the Rocky  
 17 Mountain Front Range of Colorado. It's huge.  
 18 And it's very imperative that all of you  
 19 guys talk in good terms on this 106 of whether  
 20 it's in our best interest. And we're going to  
 21 express that throughout the next couple days, and  
 22 appreciate all you guys attending here.  
 23 My -- I'm a cultural monitor for the  
 24 Northern Cheyenne Tribe, and it's a great honor to  
 25 be among all you people here. Thank you.

1 Nation has never been approached or asked what  
 2 they feel about this Tongue River Railroad or the  
 3 Otter Creek Mine.  
 4 So I'm here to see what is going to be  
 5 talked about here. And we were never allotted  
 6 this land but were given homesteads. There's a  
 7 difference. So all those that are considering  
 8 this proposal, you've got to research it before  
 9 you make a decision. Because we were told to move  
 10 west of the Tongue River, and they only paid the  
 11 homesteaders \$25, the ones that cooperated. And  
 12 the ones that wanted to stay were forced to move.  
 13 Who on God's green earth can be treated like that?  
 14 So the minerals I guess goes with the  
 15 land. Suhtai owned the minerals on that Otter  
 16 Creek area. It wasn't ever decided by the Federal  
 17 Government or anybody, but those minerals were  
 18 taken away when the Suhtai people were forced to  
 19 move from that area.  
 20 We have a lot of archeological,  
 21 ceremonial burial sites over there and a lot of  
 22 people who are ceremonial, very sacred people that  
 23 are buried over there, and in America we need to  
 24 respect those kinds of things.  
 25 And I'm not just here to rattle on. I

1 **MS. SUNLEY:** Hello. My name is Jennifer  
 2 Sunley. I'm with Hanson Professional Services  
 3 representing the Tongue River Railroad.  
 4 **MR. ROBINSON:** Good morning. I'm Mark  
 5 Robinson. I'm a senior archeologist with ICF  
 6 International helping manage the cultural  
 7 resources work for the project.  
 8 **MR. MELTON:** I'm Doug Melton, the lead  
 9 archeologist for the Miles City Field Office in  
 10 southeast Montana.  
 11 **MR. SMITH:** I'm Gary Smith. I'm the  
 12 acting Branch Chief for Social and Cultural  
 13 Resources, Montana State Office.  
 14 **MS. CONNIE MEDICINE BULL:** Good morning.  
 15 My name is Connie Medicine Bull, and I live right  
 16 alongside the Tongue River in Birney, and we've  
 17 resided there for about the fourth generation and  
 18 fifth generation.  
 19 **MR. KENNETH MEDICINE BULL:** You made a  
 20 mistake giving me this mic. I'll keep you guys  
 21 here all day long.  
 22 My name is Kenny Medicine Bull. Make my  
 23 home in beautiful Tongue River Valley, two miles  
 24 east of Birney Village, member of the Suhtai  
 25 Nation, Otter Creek homesteader. And the Suhtai

1 have the right to speak to the public. I went to  
 2 ceremonies, and I just don't say things just to be  
 3 saying things. My children, grandchildren, on  
 4 down the line are going to continue to live there,  
 5 and this coal mine is not going to benefit the  
 6 United States or anybody here. It's only going to  
 7 benefit the Asians, which is their own country  
 8 from here. But we're going to benefit from all  
 9 the pollution that they're going to produce.  
 10 Water, everything is going to be ruined.  
 11 Appalachian over East Coast, they develop all  
 12 kinds of cancers; they don't even know what kind  
 13 of cancer it is sometimes. No cures for that.  
 14 We don't want that, so keep in mind that  
 15 the Suhtai Nation has never been consulted on  
 16 this.  
 17 The Northern Cheyenne Tribe sometimes  
 18 agrees to this proposal, but that's the Northern  
 19 Cheyennes. There's two tribes that live on the  
 20 Northern Cheyenne Reservation: The Cheyenne and  
 21 the Suhtai. The difference is, Cheyenne's under  
 22 Sacred Arrow. Suhtai under Sun Dance and the  
 23 Sacred Hat. People younger than me don't know  
 24 that. But there's a fine line between Cheyenne  
 25 ways and Suhtai ways. "Suhtai," there's no

1 English word for it. Closest we can define it is  
2 "People of the Morning Star."

3 So remember us in your research and  
4 deliberations and decisions. You need to find out  
5 who we are. So like to say about that much, and  
6 like I said, you made a mistake by giving me this  
7 mic.

8 **MR. MOSCHELLE:** I'm Justin Moschelle, BIA  
9 archeologist, Rocky Mountain Region.

10 **MR. RICHARD WHITECLAY:** (Native language)  
11 Greetings. I welcome you. My Crow name is Plenty  
12 Good. My English name is Richard Whiteclay. I'm  
13 a rancher and a farmer. I utilize my land that I  
14 inherited. I'm also a president for Crows Against  
15 Corruption and Government Waste. It's a coalition  
16 where we want to protect our tribal assets, our  
17 individual land. Also, I wanted to express what  
18 Ben had said about water, water is a valuable  
19 resource. It's our livelihood. You need water to  
20 drink to stay alive. We need our water to not  
21 take it away from us as a Crow Tribe.

22 I have an individual sibling that is  
23 filing a joint against the State of Montana where  
24 they wanted to take water away from us without any  
25 cause. Once that water is gone, our land will be

1 landowners on various proposed Tongue River  
2 Railroad routes, and I'm here to look for ways  
3 that we can work together to protect cultural  
4 sites.

5 **MS. ZABACK:** My name is Maggie Zaback.  
6 I'm also staff with Northern Plains Resource  
7 Council, and same as Svien, I'm also here to  
8 learn.

9 **MS. KAEDING:** Good morning. My name is  
10 Beth Kaeding. I'm a past chair of Northern Plains  
11 Resource Council, and I'm currently on its board.  
12 Northern Plains has fought the Tongue River  
13 Railroad for more than 30 years, and it's because  
14 of our members' commitments and efforts as well as  
15 our legal lawsuits that we have sent this project  
16 back to the starting point and have led to the  
17 reinitiation or the initiation of the Section 106  
18 process and the EIS process, and we are very  
19 pleased to be able to be here today with you.  
20 We're very supportive of this process. Thank you  
21 very much.

22 **MR. MCRAE:** Good morning. My name is  
23 Clint McRae. I'm a member of the Northern Plains  
24 Resource Council, which is an organization who has  
25 dealt with the Tongue River Railroad for 30 years.

1 worthless.

2 Also, my main concern right now is I  
3 own -- I inherit some land by Sarpy Westmoreland  
4 coal site, and they destroyed a buffalo site that  
5 was there over 2000 years ago by one man. I'm  
6 here to represent my siblings sitting in  
7 Westmoreland doesn't need to destroy my land. My  
8 land is right beside Westmoreland coal, and I  
9 don't need the money. I don't need the  
10 desecration to my heritage. I need to be left  
11 alone with my land so I can benefit and live off  
12 my land. (Native language)

13 **MS. REYNOLDS:** And I'm Alisa Reynolds  
14 with ICF, consulting party archeologist on this  
15 project. And myself, along with Mark, manage some  
16 of the fieldwork for this project.

17 **MS. DAVIS:** Good morning. I'm Colleen  
18 Davis. I'm an architectural historian with ICF.

19 **MR. JONES:** Good morning. I'm Matt Jones  
20 of BNSF Railway, and I'm here today on behalf of  
21 the applicant.

22 **MR. NEWMAN:** My name is Svien Newman.  
23 I'm staff with the Northern Plains Resource  
24 Council. We're a conservation and family  
25 agricultural group, and we work with some of the

1 As my dad said, I was a young man when they  
2 started this. I was just a kid when we first  
3 started dealing with the railroad.

4 I'm here today representing also the  
5 Colstrip Alternative Landowner Group, which is a  
6 coalition of landowners from roughly Ashland to  
7 the town of Colstrip. We've organized, pooled our  
8 money, hired an attorney. Approximately nine  
9 miles of the preferred route, which is a Colstrip  
10 Alternative, would cross our place. So I'm  
11 wearing a couple of hats here today, but I'm  
12 encouraged by the amount of people that are here  
13 today. Thank you.

14 **MR. TILLINGER:** Good morning. My name is  
15 Todd Tillinger, and I work for the U.S. Army Corps  
16 of Engineers, Omaha District. There's several  
17 representatives from my agency that are here  
18 today. My job is to represent the district  
19 engineer in terms of the Clean Water Act and the  
20 Rivers and Harbors Act permitting within the State  
21 of Montana.

22 We -- you know, our permit program is  
23 based on a balance of an applicant's needs as well  
24 as protection of the natural environment. I hear  
25 what you're saying about water quality, and I

1 understand the applicant's desire to build the  
 2 project. The Corps of Engineers is organized by  
 3 watershed. Speaking about the importance of  
 4 water, the Omaha District has its origins in the  
 5 Missouri River Basin, and from that, you know,  
 6 everything we do is focused on water and reviewing  
 7 the public interest factors for each project we  
 8 have. You know, we look at the direct impacts,  
 9 the indirect impacts, and the cumulative impacts.  
 10 And when we make a permit decision, adverse  
 11 impacts that can't be avoided need to be offset  
 12 somehow.

13 And so that's just a little bit about our  
 14 permit program. If you have any questions, myself  
 15 or Shannon Johnson, who's at the table, can help  
 16 you with some of that.

17 **MR. AMES:** Good morning, everyone. My  
 18 name is Joel Ames. I'm the tribal liaison for the  
 19 Omaha District Army Corp of Engineers.

20 **MR. YOUPEE:** Good morning. My name is  
 21 Curley Youpee. I'm the Fort Peck Assiniboine and  
 22 Sioux Cultural Resource Department Director. You  
 23 know, it's good to see so many smiling faces here  
 24 today. I think that as we continue in the process  
 25 as we heard, what we -- what we -- what we find in

1 southeastern Montana. We find it to be one of the  
 2 best preserved heritage landscapes in our nation,  
 3 and we hope that that kind of integrity and the  
 4 quality of this place has a chance to be  
 5 considered in light of interests to develop and  
 6 ways to balance our lives and our future.

7 And we mostly work on behalf of people of  
 8 the future in hopes that we leave something for  
 9 them that's equal to what we have today.

10 **MS. BONOGOFSKY:** Morning everyone. My  
 11 name is Alexis Bonogofsky. I work for the  
 12 National Wildlife Federation out of Billings, and  
 13 I come here in a good way, and I hope that we can  
 14 accomplish something.

15 I'm here because I care deeply about the  
 16 Tongue River and the Otter Creek Valley. And to  
 17 put this into perspective, this is our Keystone.  
 18 This is a big deal. The Tongue River Railroad and  
 19 the Otter Creek Coal Mine are inexorably  
 20 connected; they're the same project, and we need  
 21 to consider the impacts not only to the Tongue  
 22 River Valley but to the Otter Creek Valley.  
 23 They're both important, and they both have huge  
 24 value to the people that live there and the people  
 25 that visit there and the people that go there.

1 these negotiations or these consultations with the  
 2 Indian people and the Federal Government industry  
 3 is how we're going to lessen the pain. How we're  
 4 going to lessen the pain of the hurt/loss from  
 5 cultural resources being taken away or destroyed,  
 6 you know, while we're looking at it.

7 And so I think that these -- these  
 8 meetings have a lot of education for us, you know,  
 9 on how we -- how we understand the community  
 10 around us, and I guess that's in order for us to  
 11 continue as Indian people as well. Thank you.

12 **MR. ATCHISON:** Good morning, everyone.  
 13 I'm Jim Atchison with Southeastern Montana  
 14 Development based in Colstrip. We are a regional  
 15 nonprofit economic development group that does  
 16 whatever we can to create economic activity, save  
 17 jobs, and create jobs in the four counties of  
 18 Custer, Rosebud, Powder River, and Treasure.  
 19 Thank you.

20 **MS. JIUSTO:** Good morning. My name is  
 21 Chere Jiusto. I'm the director of the Montana  
 22 Preservation Alliance based in Helena, and I'm  
 23 very honored to be here among this company this  
 24 morning. We've worked for many years on the  
 25 cultural heritage of the Tongue River in

1 And it's really important that we realize that,  
 2 that there's some of us here today that could be,  
 3 you know, hundreds of people come up to these  
 4 meetings in Lame Deer and Ashland and various  
 5 places, and I just want to thank you for coming  
 6 here and all of the people here. We also have  
 7 lunch over at 11:45 in Conference Room 5.

8 **MS. LA SEUR:** My name is Carrie La Seur.  
 9 I am an attorney here in Billings. I represent  
 10 the landowners group along the Colstrip  
 11 Alternative, and I'm also providing legal counsel  
 12 to the Northern Cheyenne Otter Creek Homesteader  
 13 Descendants that Kenny Medicine Bull discussed and  
 14 Vanessa Braided Hair will talk about more this  
 15 morning.

16 **MR. MORKEN:** Good morning, everybody. My  
 17 name is Jeremy Morken. I work for TranSystems  
 18 Corporation out of Kansas City. We represent the  
 19 Tongue River Railroad, and our company is a  
 20 consultant to helping find like maybe the most  
 21 environmentally responsible route. Thank you.

22 **MR. WARREN:** My name is Derin Warren.  
 23 I'm here with Burlington Northern Santa Fe.

24 **MS. KUHL:** Good morning. My name is  
 25 Brooke Kuhl. I'm with BNSF Railway Company.

1 **MR. JENKINS:** Hi. Good morning,  
 2 everyone. My name is Chris Jenkins. I'm with the  
 3 Army Corps of Engineers. I work out of the  
 4 Regulatory Branch, and I'm here to provide  
 5 assistance to Todd and Shannon, who I've never met  
 6 before. Talked to them on the phone. So I'm  
 7 really pleased to be here and do what I can to  
 8 help.

9 **MR. FINLEY:** Good morning. I'm Chris  
 10 Finley. I'm a consultant with the National Park  
 11 Service. I retired from the National Park Service  
 12 in 2012, and I was the Historic Preservation  
 13 Specialist of the Bighorn Battlefield and also the  
 14 Cultural Resource Program Manager for Bighorn  
 15 Canyon National Recreation Area.

16 In light of our consultation meetings in  
 17 2010, we were asked by the tribes if we could help  
 18 them create a training program for their Tribal  
 19 Historic Preservation Offices, and we have done  
 20 that. We have a program that we work with the  
 21 Crow and the Northern Cheyenne, and it's a  
 22 successful program and we are continuing with that  
 23 program and have some opportunities for the tribes  
 24 to participate and we also want to see this  
 25 program grow. So I'm here to talk a little bit

1 the President and the Tribal Council to oversee  
 2 the cultural and historic affairs of the tribe. I  
 3 work closely with our THPO officer, Conrad Fisher,  
 4 and we serve as an advisory to the President and  
 5 the Tribal Council.

6 It's been several years since we've been  
 7 involved, directly involved. Our first contact  
 8 was the expiration of the Programmatic Agreement  
 9 under National Historic Preservation Act in 2010.  
 10 And at the same time, shortly thereafter, I  
 11 believe the Ninth Circuit ordered a new EIS the  
 12 following summer, and we had one of our first  
 13 meetings with Cathy Nadals. And it was Cathy what  
 14 back then?

15 **MS. NADALS:** Glidden.

16 **MR. BRADY:** Glidden back then, and Vicki  
 17 Rutson back in Rapid City. And also shortly  
 18 thereafter there was a change in ownership on the  
 19 Tongue River Railroad, now owned by several  
 20 owners. There -- there is, I believe, a number of  
 21 issues and concerns, complicated legalistic in  
 22 nature.

23 The Northern Cheyenne Tribe, currently  
 24 under executive order, the reservation boundary's  
 25 a billing channel at Tongue River and at the same

1 about what we've done and how we've done it.

2 And there's some people in here that will  
 3 be able to talk to you as well about what we've  
 4 done and how successful we've been with this  
 5 program. So yeah, that's why I'm here.

6 **MS. GORDON:** I'm Cherie Gordon with the  
 7 Burlington Northern Santa Fe Railroad. This is my  
 8 first Section 106 meeting. I'm new in our  
 9 Economic Development Department and have been here  
 10 for just a few months, and I'm just learning about  
 11 Tongue River Railroad and this project. But I've  
 12 been with the railroad for 12 years, and I'm a  
 13 part of a group called the Council of Native  
 14 Americans for American Indians that work for the  
 15 railroad, and just very glad to be here today and  
 16 glad to learn and to hear your voice and thankful.  
 17 Thank you.

18 **MR. GRANT:** Good morning, everyone. My  
 19 name is Brady Grant. I'm the field representative  
 20 on the Tongue River Project on behalf of Turtle  
 21 Mountain band of Chippewa Indians in North Dakota.  
 22 Thank you.

23 **MR. BRADY:** Good morning. My name is  
 24 Steve Brady. I am a member of the Cultural  
 25 Committee, a five-member commission appointed by

1 time the Northern Cheyenne Tribe holds a Federal  
 2 reserved water right on Tongue River. But  
 3 previous to the establishment of the 1890 or 1900  
 4 executive order, the Northern Cheyenne Tribe,  
 5 members of the Northern Cheyenne Tribe, more than  
 6 40 families, lived on the east bank of Tongue  
 7 River up Otter Creek along the east bank of Tongue  
 8 River up to Hanging Woman, what is now White  
 9 Birney. So there was a number of families that  
 10 actually lived out there under the Indian  
 11 Homestead Act. And so that's what's been  
 12 discussed in part here. And again, this is  
 13 previous to the establishment of the 1900  
 14 reservation.

15 And secondly, we gather traditional  
 16 medicines and so forth across the east bank of  
 17 Tongue River and plants and so forth that are  
 18 critically important to our traditional  
 19 ceremonies, so there are a number of things in  
 20 addition to what was mentioned, traditional burial  
 21 sites, unmarked burial sites.

22 And then the other part to this is the  
 23 Wolf Mountains Battlefield that was designated as  
 24 a National Historic Landmark in 2008 by the  
 25 Secretary of Interior. That was the last battle

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1 for the Northern Cheyenne and Crazy Horse against  
 2 Bear's Coat, General Miles, on January 9th of  
 3 1877. It is along Tongue River, about four miles  
 4 south of White Birney, and we're working on the  
 5 interpretation and interpretive kiosk at this  
 6 point for that. We hope to consult the other  
 7 tribes that were involved in that. It was a  
 8 battle that occurred about 30 below, and they  
 9 pretty much didn't have anything left. And  
 10 shortly thereafter, the tribes surrendered and the  
 11 Northern Cheyenne were sent to Oklahoma, and of  
 12 course, Crazy Horse surrendered that spring to  
 13 Fort Robinson and was killed there. So I mean,  
 14 extensive, extensive history. I just wanted to  
 15 share those points with you. I think these and  
 16 many other issues are critically important.  
 17 And then finally, the Northern Cheyenne  
 18 Tribe has a standing resolution at this point, and  
 19 one of the things that the resolution, I believe,  
 20 requests is that there be a full ethnographic  
 21 study of the entire route, proposed route. Thank  
 22 you.  
 23 **MS. NADALS:** Thank you. We've got a few  
 24 more people that just joined.  
 25 **MR. PRETTY ON TOP:** Good morning. My

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1 name is Burton Pretty On Top Senior. Back in the  
 2 Claire Nomee Administration back in the 1990s, I  
 3 was cultural director for that administration.  
 4 Again, the Cedric Black Eagle Administration,  
 5 which ended in 2012, again I was called to a  
 6 director. But during the years that I worked the  
 7 four, five years with Claire Nomee Administration,  
 8 along with the Cedric Black Eagle Administration  
 9 as cultural director, I traveled extensively. I  
 10 am interested with lands that are going to be  
 11 developed, such as the railroad that you guys are  
 12 talking about.  
 13 I know there's so much history that's  
 14 past on from one generation to another. I was  
 15 very fortunate that I was raised by my  
 16 grandfather. My grandfather was about 85, 86  
 17 years old when he passed on in the year 1979.  
 18 Very fortunate that I was raised by him because he  
 19 was a traditional person. He taught me the "dos  
 20 and don'ts" of life. "Do this, do this, do this." I  
 21 Don't do this, don't do this, don't do this." I  
 22 called it the "dos and don'ts" of life.  
 23 The Crow traditional stories, the Crow  
 24 traditional teachings, a lot of those teachings I  
 25 found interesting back in the day after learning

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1 from firsthand from my grandfather that I open the  
 2 Bible. I'm also a Christian, by the way. I open  
 3 up the Bible and I read my grandfather's "dos and  
 4 don'ts" in the Book of Wisdom, the Book of  
 5 Proverbs, the Old Testament. All the traditional  
 6 teachings that he taught me was also I found in  
 7 the New Testament. The Man that was nailed to the  
 8 cross, the traditional teachings to the people  
 9 with parables and all that made sense to me  
 10 because I heard it firsthand from my grandfather.  
 11 Now, the Fort Laramie Treaty of 1851 that  
 12 set aside 38 million acres, the boundaries for  
 13 that Fort Laramie Treaty of 1851 to the east would  
 14 be the Black Hills area, to the west would be West  
 15 Yellowstone today, to the south would be the Wind  
 16 River, takes you halfway into Wyoming, to the  
 17 north the Musselshell leading up to the Missouri.  
 18 So that was our boundaries which covered 38  
 19 million acres.  
 20 So if we go back to the Fort Laramie  
 21 Treaty of 1851, we, the Crow Tribe, is going to  
 22 give the white people, the other tribes, 30 days  
 23 to move out. I'm just teasing. That's a joke.  
 24 You guys can laugh now.  
 25 Chris Finley has the habit of not

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1 laughing when I tell my jokes. I work with Chris  
 2 for a long time. I work with Stan, Stan Wilmoth,  
 3 gentleman from Helena. We designated the Medicine  
 4 Wheel together at Fort Smith area.  
 5 So, I have a lot of interest, that's why  
 6 I'm here. I am no longer the cultural director  
 7 for the Crow Tribe. We have a new administration  
 8 in power. But my love for history, my love for my  
 9 culture and my language, my spirituality is still  
 10 intact in me, and as long as I'm alive, I will get  
 11 involved with issues like this.  
 12 I'm in protection of the land. I'm in  
 13 protection of sacred sites. There are medicine --  
 14 medicine wheels that, through the stories of my  
 15 grandfather that share with this area that you  
 16 guys are talking about, the Tongue River. That's  
 17 going way back in the time before the other plains  
 18 tribes came to that neck of the woods. We were  
 19 here first, the Absaloka. God made us and put us  
 20 here.  
 21 So, with that in mind, Burton Pretty On  
 22 Top Senior, I'm happy to be here and welcome all  
 23 of you here to the Crow Country. (Native  
 24 language)  
 25 **MR. TWO LEGGINS:** Good morning. My name

1 is Hubert Two Leggins. I'm a member of the  
 2 Apsaalooke. I'm a member of the River Crow band.  
 3 Right now I'm currently a board member of the  
 4 Medicine Wheel Alliance. I was a Tribal  
 5 Historical Preservation Officer. I was a Cultural  
 6 Director with Crow Tribe. And I also did a  
 7 project called "Writing Tribal Histories" for the  
 8 Crow Tribe. It was mandated by the Governor of  
 9 Montana, Brian Schweitzer, where we did an  
 10 extensive research on our history of the Crow, and  
 11 we were able to go back to about 3000 BC using  
 12 language techniques and technology. And so we put  
 13 a curriculum together for K through 12, and I was  
 14 director of that project for the Crow.

15 And also, at the time I was employed at  
 16 the Little Big Horn College, and so this area that  
 17 we're talking about, right next -- next to that  
 18 railroad where it's going to be built is where the  
 19 railroad is going to be built is where the first  
 20 Crow camp was. And that camp is in Custer  
 21 National Forest. And that site is called the High  
 22 Walker Site, and it's just north of Ashland,  
 23 Montana. And according to the carbon-14 dating of  
 24 that camp, the style of pottery, and the data that  
 25 they recovered, there was a Sioux and a

1 also, I want to -- I have a lot of information  
 2 that I want to share, but maybe later on I can  
 3 talk for awhile, but I'll close now, I hope.

4 **MR. WILMOTH:** Hello. I'm Stan Wilmoth  
 5 with Montana SHPO office.

6 **MR. FIX:** I'm Mark Fix. I'm a member of  
 7 the Northern Plains Resource Council. I'm also a  
 8 rancher on the Tongue River that will be crossed  
 9 by about three miles of the original approved  
 10 route, and roughly three or maybe a little bit  
 11 more of the route that's called the Moon Creek  
 12 Alternative would also cross me.

13 Shortly after I bought my ranch in 1991,  
 14 the railroad folks came and started threatening me  
 15 with condemnation, and basically, you know, we've  
 16 been fighting with them ever since. And you know,  
 17 since that time they've lost a permit and they've  
 18 gone back to square one. So basically, I'm here  
 19 to promote the No Action Alternative.

20 **MS. NADALS:** Thanks so much, everybody  
 21 here, for introducing yourselves and explaining  
 22 your points of view.

23 We have some people, I think, that may  
 24 have joined the call. Is there any way to get  
 25 access to those people? Can they hear us?

1 Siouan-speaking tribe that came from the Mazorkies  
 2 (phonetic). We separated from the Hidatsa along  
 3 960 AD according to Robert, Robert Hall, the  
 4 information that I got from the language experts.  
 5 He had a language experts that date on the  
 6 separation on that 960 AD.

7 But that first Crow camp was dated around  
 8 1000 to 1100 AD. So it's just close to the  
 9 railroad where it's going to be built, and we have  
 10 a lot of history where we -- Pretty On Top is one  
 11 of my brothers and he mentioned the 1851 Treaty.  
 12 I was selected to go to DC to represent the  
 13 reunion as a Crow. I represented the Crow at that  
 14 reunion like two years ago. And our language is  
 15 descriptive, and what they called the 1851 Treaty  
 16 is Buc-ta-zah (phonetic). Buc-ta-zah is -- it was  
 17 a big cottonwood tree. I was there, and it was  
 18 huge. I guess it was about over 20 men could hold  
 19 hands, and that's how big it was. But I found out  
 20 that fell into the river, and when I went there I  
 21 looked for it. A meeting there that was held, and  
 22 they call it Buc-ta-zah. The Big Cottonwood Tree  
 23 meeting is what they called it.

24 But I'm glad to be here, and I'm here to  
 25 protect and preserve my culture, my history. And

1 Anybody on the phone who hasn't introduced  
 2 themselves, if you could introduce yourself now.  
 3 Okay. I think -- anybody on the phone? This is  
 4 one last chance. Okay.

5 **MS. DAVIS:** Just a reminder to you guys  
 6 on the phone, if you push \*6 to unmute yourself,  
 7 you can participate in the call. But all the  
 8 lines are muted, but you can \*6 anytime to unmute  
 9 yourselves.

10 **MS. BRAIDED HAIR:** (Native language) My  
 11 name is Vanessa Braided Hair. I come here in a  
 12 respectful way, and I ask that my elders and my  
 13 ancestors forgive me for speaking.

14 I'm a member of the Northern Cheyenne  
 15 Tribe and a Northern Cheyenne Homestead  
 16 Descendant. I come from the Nightwalker Family  
 17 who originally homesteaded on Hanging Woman Creek  
 18 east of the Tongue River. My family was forcibly  
 19 removed at the turn of the century and was never  
 20 allowed to return home.

21 I am here to read a statement on behalf  
 22 of the Northern Cheyenne descendants. For the  
 23 record, I do not represent the Northern Cheyenne  
 24 Tribe.

25 "Around the year 1881 and over the

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1 following several years after passage of the  
 2 Indian Homestead Act of 1875, certain members of  
 3 Northern Cheyenne Tribe homesteaded in areas along  
 4 Lame Deer Creek, Muddy Creek, Rosebud Creek, along  
 5 both sides of the Tongue River, and on the Otter  
 6 Creek and Hanging Woman Creek located on the east  
 7 side of the river."  
 8 "Northern Cheyenne homesteaders proved up  
 9 their homestead rights under the terms of the Act.  
 10 U.S. military authorities were aware of and played  
 11 a role in the settlement. Historical records show  
 12 that the homesteads on the east side of the Tongue  
 13 River, referred to here as the Otter Creek  
 14 Homesteads, were promised to Northern Cheyenne  
 15 individuals by General Miles of Fort Keogh as  
 16 partial compensation for cessation in hostilities  
 17 and services to the U.S. Army. However, due to  
 18 the circumstances obscured by the long passage of  
 19 time and possible misconduct by the Miles City  
 20 General Land Office, the Federal Government never  
 21 issued formal patents."  
 22 "White settlement in the late 1800s and  
 23 shifting federal policies created a new pressure  
 24 to move the Otter Creek Homesteaders off of their  
 25 protected, agricultural, and grazing lands along

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1 the river bottoms onto the Northern Cheyenne  
 2 Reservation designated in 1884."  
 3 "In 1900 as recorded by U.S. Department  
 4 of Interior Reports and Correspondence and  
 5 Congressional Records, the U.S. Congress directed  
 6 the removal of the Otter Creek Homesteaders using  
 7 coercion, in some cases forced from their claims  
 8 east of the Tongue River to the west side of the  
 9 river with non-negotiated token compensation of  
 10 \$25 dollars per family."  
 11 "The Otter Creek Homesteads will be  
 12 greatly affected by the proposed development of  
 13 the Otter Creek Coal Tracts and Tongue River  
 14 Railroad. A large group of Otter Creek Homestead  
 15 descendants numbering in thousands exist on and  
 16 near the present day Northern Cheyenne  
 17 Reservation. Their claims have never been  
 18 resolved, but in recent years they have sought  
 19 assistance from historians and legal counsel to  
 20 establish the documentary basis for their land  
 21 claims."  
 22 "The February 19th, 2002 settlement  
 23 agreement for the Otter Creek land transfer  
 24 requires approval prior to any construction or  
 25 mining, other written operating plan, including a

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1 program carried out in the consultation with the  
 2 tribe to identify, record, and protect in  
 3 accordance with Northern Cheyenne standards and  
 4 protections all Northern Cheyenne historic,  
 5 cultural, religious, and burial sites on the land  
 6 covered by the lease."  
 7 "No such written operating plan has -- no  
 8 such written operating plan has been submitted or  
 9 approved, and no such study has taken place. The  
 10 Otter Creek Homesteader descendants consider this  
 11 clause a contingency that bars any development of  
 12 the Otter Creek Tracts until it is fulfilled. The  
 13 descendants continue to assert their land rights  
 14 and will not acknowledge the settlement agreement  
 15 as binding upon their tribe until the required  
 16 funding is funded and completed so that legal  
 17 claims may be advanced."  
 18 "The settlement agreement also promises  
 19 specified and adequate federal funding for a  
 20 tribally conducted archival research program  
 21 regarding the original Northern Cheyenne  
 22 Homesteads in the Tongue River Valley."  
 23 "Congress has not yet approved this  
 24 appropriation. It is -- the descendants insist on  
 25 a renewed commitment to securing this

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1 appropriation as a condition for Northern Cheyenne  
 2 participation and any studies to be performed in  
 3 furtherance of the Otter Creek Coal Mining or  
 4 Tongue River Railroad Projects."  
 5 "The descendants will submit a fuller  
 6 statement of their history and claims for  
 7 inclusion in the administrative record." (Native  
 8 language)  
 9 **MS. NADALS:** Okay, is there anybody else  
 10 that has not introduced themselves? Yeah, sure,  
 11 can we have a microphone over here?  
 12 **MR. BRADY:** Just one quick statement  
 13 before we continue. Just wanted to add a little  
 14 bit to Vanessa.  
 15 **MS. NADALS:** Your name?  
 16 **MR. BRADY:** My name is Steve Brady,  
 17 Northern Cheyenne. I just wanted to add a little  
 18 bit to Vanessa's statement there. That's --  
 19 that's an individual claim versus the tribal.  
 20 This is a matter of individual tribal membership  
 21 filing a claim. There are occasions or  
 22 circumstances or situations where individuals have  
 23 been allowed to file claims, and probably one of  
 24 the most recent is the Elouise Cobell case, the  
 25 individual allotments and that lasted from 1887

1 under the General Allotment Act until it's still  
 2 going on today.  
 3 And then more specifically with the  
 4 Northern Cheyenne Tribe, the Northern Cheyenne  
 5 Tribe distinguished between individual Indian  
 6 landowners and the tribal government and the tribe  
 7 as a whole on the Northern Cheyenne -- under the  
 8 Northern Cheyenne vs. Hollowbreast case, U.S.  
 9 Supreme Court decision in 18 -- 1975.  
 10 And then the other one is the Northern  
 11 Cheyenne Tribe, so the 1851 Laramie Treaty Claims,  
 12 and there was an attempt to include the Sand Creek  
 13 massacre, however, the U.S. Claims Commission said  
 14 that the Sand Creek Massacre was an individual  
 15 claim and not a tribal claim.  
 16 So I just wanted to make sure that that  
 17 was made known. Thank you.  
 18 **MS. NADALS:** Okay. Thanks again to  
 19 everybody. One more -- one more, I guess,  
 20 announcement here.  
 21 **MR. STEWART:** Well, I'm not making an  
 22 announcement. I was just introducing myself.  
 23 **MS. NADALS:** Sorry.  
 24 **MR. STEWART:** My name is Senator CJ  
 25 Stewart from the Crow Legislative Branch. I serve

1 I just want to say thank you from the STB. My  
 2 name is Cathy Nadals from the STB.  
 3 For everything that you said today, it's  
 4 clear that a lot of you have deep feelings for  
 5 this area, and we're so pleased that you're all  
 6 able to represent your various concerns. That's  
 7 what the 106 consulting process is about, is to  
 8 have everybody's views incorporated, included as  
 9 we move forward with this process. So it's just  
 10 wonderful that we have all of you here able to  
 11 provide us with your expertise and your views  
 12 about the project area, so thanks.  
 13 In terms of meeting purposes, I'll go  
 14 quickly. Really, it's just to hear from you and  
 15 to know -- to have an understanding of how you  
 16 feel and how you think we should be conducting the  
 17 106 process.  
 18 We have staff from ICF and Vicki, who's a  
 19 director of my office, who are going to provide  
 20 you some background about both the STB and the  
 21 project, what we've done so far.  
 22 We had a wonderful field effort this  
 23 summer in which we had four archeologists and four  
 24 tribal individuals walk along various parts of the  
 25 alternative to identify sites that was really, I

1 as the Infrastructure Chairman that oversees areas  
 2 of transportation as well, and I serve as the  
 3 Natural Resources Chairman for the Crow  
 4 Legislative Branch.  
 5 And you know, the rich history that was  
 6 expressed here concerning the area, as well as the  
 7 Crow tribal history is very important to us, as  
 8 well as the impacts that are going to be made on  
 9 this rail line due to the marketability of our  
 10 product. We have a rail that runs -- a spur that  
 11 runs off the Hysham line that runs into the Sarpy  
 12 Creek home line, and so that's where our concerns  
 13 are at, along with the historical values of this,  
 14 and along with the Treaty, the 1851. And those  
 15 are some of the grounds that are covered.  
 16 And I'm not going to reiterate what the  
 17 gentlemen have said earlier, but as a  
 18 representative of the Crow Tribe, myself, and  
 19 we're looking at -- we're just keeping our ear to  
 20 the ground. We're here. We're letting everybody  
 21 know, and we're looking at the effects, the  
 22 impacts of the marketability of our coal. And so  
 23 with that being said, I thank everybody for  
 24 allowing me to speak. (Native language)  
 25 **MS. NADALS:** Okay. Thanks to everybody.

1 think, cutting edge, and it was very successful.  
 2 And I've talked to William Walksalong  
 3 and --  
 4 **MR. WALKSALONG:** James.  
 5 **MS. NADALS:** Oh, James. I'm sorry.  
 6 James Walksalong, and he has agreed -- he was --  
 7 he participated in every single survey, and he's  
 8 agreed to give his perspective on his experience  
 9 out in the field, and I think that's really  
 10 important to get the perspective of a tribal  
 11 person who's out in the field with the  
 12 archeologists, because I think really that's the  
 13 way to go about it, to have, you know, equal  
 14 perspectives out in the field.  
 15 So what we're going to be -- what we're  
 16 intending to do today is give you some background  
 17 about the STB and also to talk to you about the  
 18 results of the fieldwork this summer.  
 19 And I just want to say that at the last  
 20 meeting that we had in Lame Deer, which you know  
 21 was wonderfully hosted by the Northern Cheyenne  
 22 Tribe, that some of you had said that we should  
 23 begin discussing a Programmatic Agreement, but we  
 24 felt it was very important to provide you with  
 25 background and the results of the fieldwork this

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1 summer before moving, you know, in that direction.  
 2 But we really want to hear from you  
 3 before we even begin the process of developing a  
 4 Programmatic Agreement about what you want to see  
 5 in that agreement document. Rather than providing  
 6 you the draft, we want you to help us create that  
 7 draft, to make sure that any of your concerns are  
 8 included in an agreement document that would --  
 9 that would lay out what we intend to do in the  
 10 future if the Board licenses an alternative.  
 11 Because we haven't been able to do all the  
 12 fieldwork that we could possibly do at this point  
 13 because of landowner issues or because of the  
 14 terrain or other reasons.  
 15 So anyway, I think with that, I'll move  
 16 it over to go ahead and give it to Alan or Rick,  
 17 who's going to talk.  
 18 I just wanted to say one other thing.  
 19 Please give your name before you speak for the  
 20 court reporter, who's doing a fabulous job.  
 21 Anyway, thanks again everybody.  
 22 **MR. STARZAK:** Hi. I'm Rick Starzak, ICF.  
 23 Just quickly, I want to pass on some ground rules  
 24 for the meeting, which all of you have basically  
 25 been following through the introductions, but just

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1 quickly, please allow people to speak one at a  
 2 time. Be fair to others. All consulting parties  
 3 have the right to speak out their concerns. Keep  
 4 the discussion focused on Section 106, if you  
 5 could, historic and tribal properties. Speak  
 6 directly into the microphone so that the people  
 7 that are on the phone can hear and the people in  
 8 the room can hear. The table microphones, just  
 9 push. When the red light comes on, it's live.  
 10 Push the green button.  
 11 For the benefit of the court reporter,  
 12 please state your name each time you speak. And  
 13 if someone was calling into the meeting, please  
 14 defer to that. And then lastly, if you have cell  
 15 phones, please put them on silent. Thank you.  
 16 Vicki.  
 17 **MS. RUTSON:** I'm going to stay seated  
 18 if -- I'm sorry for the people who my back is  
 19 facing you. Just imagine that I'm sharing with  
 20 you as well. I'm sorry about the way we're set up  
 21 here; it's a bit awkward.  
 22 But anyway, very quickly, and not to  
 23 belabor the point, I'd like to talk a little bit  
 24 about my agency. The reason why I'm doing this is  
 25 Charlene Dwin Vaughn from the Advisory Council

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1 suggested it would be helpful probably for  
 2 everyone to hear a little bit about the agency  
 3 because we are obscure, so people might have a  
 4 better idea about what we do, what we can do and  
 5 what we can't do, and what our statute requires us  
 6 to do.  
 7 So I won't -- I won't speak long and I  
 8 will not use a lot of my legal mumbo-jumbo, which  
 9 would send everybody running to the coffee.  
 10 So the Surface Transportation Board, it  
 11 was created in 1996 by the same act of Congress  
 12 that abolished our predecessor agency, the  
 13 Interstate Commerce Commission. When Congress  
 14 created the Surface Transportation Board, it  
 15 created us to be an economic regulator of freight  
 16 railroads for the purpose of ensuring that the  
 17 nation has an economically healthy freight  
 18 railroad network.  
 19 So what does this mean? What do we do?  
 20 First of all, we have three decision makers.  
 21 They're called the board members. They're  
 22 appointed by the President and confirmed by the  
 23 Senate. Right now, because we have a Democratic  
 24 president, we have two Democratic members -- we  
 25 have one vacancy actually in the Democratic seat,

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1 and then we have one Republican member.  
 2 So what do these three board members do?  
 3 What sort of decisions do they make?  
 4 Well, the Surface Transportation Board  
 5 acts and resolves disputes between shippers and  
 6 railroads, and those are usually about rates, how  
 7 much money is being charged. The Board also  
 8 resolves disputes between different railroads.  
 9 And then this is most relevant to what we're  
 10 talking about today; the Board issues licenses for  
 11 rail line abandonments, rail line mergers and  
 12 acquisitions, and rail line constructions.  
 13 What doesn't the Board do?  
 14 We don't provide any funding. We're a  
 15 small agency; 140 of us all in one building in  
 16 Washington. And we don't -- we're not a grant  
 17 agency. We don't develop projects.  
 18 Rather, the Board acts like a court and  
 19 cases are brought to the Board. Most of those  
 20 cases are developed by private businesses like  
 21 railroads.  
 22 And we don't own or manage any property  
 23 or any lands. So there's a lot of things we don't  
 24 do.  
 25 Talking a little bit about rail

1 constructions. Our governing statute, and it is  
 2 not an easy thing to remember, it's called the  
 3 Interstate Commerce Act as Amended by the  
 4 Interstate Commerce Commission Termination Act.  
 5 Just I mean, it's really -- it's not accessible to  
 6 most folk. We do have a website, so if -- I can  
 7 tell you're all dying for more information about  
 8 this, so please feel free to go to www.stb.gov if  
 9 you'd like to delve into the fascinating history  
 10 of the Surface Transportation Board.

11 One important thing is, our statute says  
 12 that the Board must approve construction proposals  
 13 unless the Board finds that the proposal would be  
 14 inconsistent with the public convenience and  
 15 necessity.

16 But notwithstanding this presumption in  
 17 our statute that the Board should approve all rail  
 18 line construction cases, the Board still has broad  
 19 discretion to modify proposals, to impose  
 20 mitigation, to minimize impacts, and in at least a  
 21 couple of cases, the Board has disapproved the  
 22 proposal altogether because in weighing the safety  
 23 and environmental concerns of these rail  
 24 constructions, the Board found that those concerns  
 25 outweighed the transportation benefits.

1 associated with that new environmental work we  
 2 would start a new process for Tongue River I.

3 So, with that, I'll turn it over to Alan,  
 4 who will talk about just a little bit of a summary  
 5 on what we're doing with the new Environmental  
 6 Impact Statement. Alan.

7 **MR. SUMMERVILLE:** Thank you, Vicki. I  
 8 think I'm standing probably between everyone and  
 9 the break, so you'll probably be pleased to know  
 10 that I just have a couple of minutes of recap on  
 11 what we've been doing on the Environmental Impact  
 12 Statement process, what the Office of  
 13 Environmental Analysis is doing, and then a look  
 14 ahead, what are the next steps.

15 So the Office of Environmental Analysis,  
 16 or OEA, started the scoping process for this EIS  
 17 back in October of 2012. Part of that process  
 18 involved issuing a notice of intent to prepare an  
 19 EIS and sending out a notice of scoping meetings.

20 As part of the process, approximately 300  
 21 letters were sent to federal, state, and local  
 22 agencies, over 21 tribes and tribal officials and  
 23 area organizations and business owners. In  
 24 addition, thousands of postcards were sent out to  
 25 residents in the project area. Information was

1 A very quick history of the Tongue River  
 2 Railroad at the Surface Transportation Board and  
 3 our predecessor agency. Basically, the project in  
 4 one form or another has been before the agency  
 5 since the early 1980s. We had Tongue River I, we  
 6 had Tongue River II, we had Tongue River III.  
 7 Then, as Northern Plains mentioned, we were sued  
 8 in Tongue River II and Tongue River III and  
 9 Northern Plains prevailed in some ways, in some  
 10 issues.

11 The Ninth Circuit Court of Appeals in  
 12 December of 2011 affirmed part of Tongue River II  
 13 and III but remanded some environmental issues  
 14 back to the Board to redo.

15 Then, in June of 2012, the Board issued a  
 16 roadmap explaining how the agency would be  
 17 proceeding with the Tongue River cases following  
 18 the remand from the Ninth Circuit. And the Board  
 19 said it would dismiss Tongue River II and III. So  
 20 Tongue River II and III aren't before the agency  
 21 anymore. We're only looking at Tongue River I.

22 And, and this is, I think, very  
 23 important, the Board made it clear that we would  
 24 begin an entirely new Environmental Impact  
 25 Statement, and all the processes that are

1 also sent to an extensive list of media outlets,  
 2 and a project website was established.

3 OEA held ten public scoping meetings to  
 4 take comments on the Draft Scope of Study in  
 5 November of 2012. Many of you were there. That  
 6 also involved taking comment on alternative --  
 7 potential alternative routes and other  
 8 environmental issues. Those meetings were held in  
 9 Lame Deer, Forsyth, Ashland, and Miles City.

10 In addition, four agencies were invited  
 11 and accepted the invitation to become a  
 12 cooperating agency. Those are the United States  
 13 Department of Agriculture, the United States  
 14 Department of -- sorry, Corps of Engineers, the  
 15 Bureau of Land Management, and Montana State  
 16 agencies as represented by the Montana State  
 17 Department of Natural Resource Conservation.

18 The scoping period closed on January --  
 19 in January of 2013. OEA received approximately  
 20 2500 comment submissions and used those comments  
 21 to prepare a Final Scope of Study, which was  
 22 issued in March of 2013. The EIS, based on the  
 23 scoping process, is analyzing the alternatives and  
 24 variations depicted on the maps that you should  
 25 all have in your package of handouts. And those

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1 alternatives include Tongue River; Tongue River  
 2 Road; Colstrip, which is the Applicant Preferred  
 3 Alternative; Moon Creek; Decker; No Action; the  
 4 Ashland East variation; and the Terminus 1  
 5 variation.  
 6 So what has OEA been up to and what's OEA  
 7 been doing since the scoping process ended?  
 8 They developed approaches to the  
 9 analyses, again, with input from the scoping  
 10 process; collected data, which included extensive  
 11 fieldwork; analyzed impacts; and began preparing  
 12 the Draft Environmental Impact Statement.  
 13 Regular conference calls have been held  
 14 with the cooperating agencies. Continued  
 15 consultation has occurred with other agencies, for  
 16 example, U.S. Fish & Wildlife Service, the  
 17 Northern Cheyenne Environmental staff. We have  
 18 also held, as most of you know, monthly Section  
 19 106 conference calls, and updated the website  
 20 periodically.  
 21 So what are the next steps in the  
 22 process?  
 23 The Draft EIS is expected to be published  
 24 in late summer of 2014. OEA will announce the  
 25 completion of the Draft EIS through notice in the

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1 Federal Register and notice to interested parties.  
 2 OEA intends to distribute the Draft EIS  
 3 through hardcopy, CD-ROM, as well as posting it to  
 4 the website so that it's as accessible as possible  
 5 and the public's aware of its availability.  
 6 So that starts a public comment period,  
 7 and as part of that process there will be another  
 8 round of public meetings. And the comments will  
 9 help inform the preparation of the Final  
 10 Environmental Impact statement.  
 11 The Final EIS will also include responses  
 12 to comments received on the Draft EIS, and then  
 13 the three board members will consider the Final  
 14 EIS and all public agency and tribal comments as  
 15 part of a decision making process.  
 16 From that point, they -- the Board then  
 17 moves on to a decision in the case.  
 18 So that's a quick recap and a look  
 19 forward, and back to Cathy.  
 20 **MS. VAUGHN:** This is Charlene Vaughn from  
 21 the ACHP. Included in the Final EIS will be the  
 22 Section 106 Programmatic Agreement, or MOA,  
 23 correct?  
 24 **MR. SUMMERVILLE:** I'm sorry; that it  
 25 would include the draft PA?

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1 **MS. VAUGHN:** Yes.  
 2 **MR. SUMMERVILLE:** Yes.  
 3 **MS. VAUGHN:** Okay.  
 4 **MS. NADALS:** Terry, you have a comment?  
 5 **MR. CLOUTHIER:** Terry Clouthier, Standing  
 6 Rock Sioux Tribe. Just a quick clarification.  
 7 You are intending to integrate your 106 with your  
 8 NEPA document; they're not going to be separate?  
 9 **MR. SUMMERVILLE:** Yes, that's correct.  
 10 And in the next section, Rick will have a chart  
 11 that shows how they fit together.  
 12 **MR. CLOUTHIER:** And final clarification,  
 13 I'm assuming that the tribes will be one of the  
 14 interested parties that you mentioned that we will  
 15 be getting copies on our own to look at for these?  
 16 **MR. SUMMERVILLE:** Yes, definitely.  
 17 **MS. NADALS:** One of the things we're  
 18 going to do today -- or actually, today or  
 19 tomorrow, is to get your input on the elements  
 20 that should be included in that document. We want  
 21 to start.  
 22 **MS. VAUGHN:** So your voices were fading  
 23 in and out. I did not hear the conversation. Can  
 24 someone recap the whole conversation and the  
 25 responses I did not hear?

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1 **MR. SUMMERVILLE:** Yes, this is Alan  
 2 Summerville, and Terry Clouthier was asking is  
 3 NEPA and Section 106 being integrated, and the  
 4 answer is yes, we're integrating that,  
 5 coordinating it.  
 6 **MS. VAUGHN:** Okay.  
 7 **MR. SUMMERVILLE:** And Rick's going --  
 8 Rick Starzak is going to have a chart in the next  
 9 session that shows how that process goes.  
 10 **MS. VAUGHN:** Okay.  
 11 **MR. SUMMERVILLE:** And then he also wanted  
 12 to know about the notification of availability of  
 13 the Draft EIS and receiving copies, and that will  
 14 be a broad distribution, and it will go to the  
 15 tribes.  
 16 **MS. VAUGHN:** Okay. Thank you.  
 17 **MS. NADALS:** Any other comments or  
 18 concerns, or is everybody ready to go to a break?  
 19 So let's do that. Thank you.  
 20 [RECESS - 11:05 A.M. TO 11:40 A.M.]  
 21 **MR. STARZAK:** Thank you, everyone. Hope  
 22 you had a nice break. We're going to start the  
 23 next session. Conrad Fisher from the Northern  
 24 Cheyenne is going to read a statement, so as soon  
 25 as Conrad comes back in, we'll begin.

1 **MR. CONRAD FISHER:** Again, good morning.  
 2 For those of you that were a little late, my name  
 3 is Conrad Fisher. I'm the Tribal Historic  
 4 Preservation Officer for the Northern Cheyenne  
 5 Tribe. Again, it's great to see everybody here.  
 6 I hope you've got your coffee and doughnuts and  
 7 you're on a sugar high; that's always good.  
 8 Someone mentioned that we were in -- we  
 9 had hosted the same meeting over in Lame Deer last  
 10 winter, and we did, and it was a learning lesson  
 11 for me. Traditionally speaking, we had some gift-  
 12 giving exchange, and for some of you that remember  
 13 that, I'm glad we don't have it over there  
 14 anymore, otherwise I'd be trying to make hand  
 15 drums and beadwork and all that. That took quite  
 16 a -- it was quite a chore. So I'm glad we're up  
 17 here in a neutral setting where I don't have to  
 18 worry about that.  
 19 One of the things that has been, I think,  
 20 an issue for everyone is the -- as we follow the  
 21 106 process and also the EIS process, is where  
 22 does the Northern Cheyenne stand on this? And  
 23 certainly, I've been asked that question many  
 24 times, and as a Tribal Preservation Officer,  
 25 that's something that I could -- I couldn't answer

1 Tribe and the Northern Cheyenne people, and he is  
 2 our leader and he carefully considers all the  
 3 things that are going on in Indian Country that  
 4 affect the Northern Cheyenne Tribe. Certainly,  
 5 this is close to home, and so he's got a huge  
 6 responsibility, and he considers all aspects of  
 7 this particular undertaking. So with that, I'd  
 8 like to read a statement by the President of the  
 9 Northern Cheyenne Tribe, Mr. Llevando "Cowboy"  
 10 Fisher. And this is addressed to Chairman Elliot,  
 11 and it says -- first, let me read off the title.  
 12 It says, "To the Surface Transportation Board, c/o  
 13 Chairman Daniel R. Elliot, III, 395 East Street  
 14 Southwest, Washington, DC, 20423, Re: Tongue  
 15 River Railroad, Docket No. FD 30186."  
 16 "Followed by oral comments on  
 17 February 13th, 2014 by President Llevando 'Cowboy'  
 18 Fisher, Northern Cheyenne Tribe Montana. Dear  
 19 Chairman Elliot, On behalf of the Northern  
 20 Cheyenne Tribe, I thank you for conducting a  
 21 Section 106 meeting in Billings, Montana during  
 22 February 13th/14th, 2014 to consider the potential  
 23 Otter Creek Coal Mine, the proposed Tongue River  
 24 Railroad, and the impacts that could have on the  
 25 environment and culturally significant areas for

1 officially. I've got a job to do as a THPO, and  
 2 my job is to ensure that cultural resources are  
 3 being addressed and that federal laws are being  
 4 followed. And certainly, it is a daunting task,  
 5 primarily because I've got my own interpretation  
 6 about the whole undertaking. However, that can't  
 7 deter my responsibilities as a THPO. So I try to  
 8 follow as much as I can to the best of my  
 9 abilities the process of the intent of federal  
 10 laws that are out there.  
 11 With that, our Tribal President, Mr.  
 12 Llevando "Cowboy" Fisher is here today, and also I  
 13 have some representation by our traditional  
 14 society folks, traditional arena, and also other  
 15 interested parties, both for and against this  
 16 project. However, I'd like to read a statement  
 17 from our Tribal President, and I -- kind of  
 18 outlining what he sees as far as this undertaking  
 19 is concerned.  
 20 Again, I want to clarify that I have my  
 21 responsibilities and we had a nice lengthy  
 22 discussion with our Tribal Council about the  
 23 Tongue River Railroad Project, and I think our  
 24 president is well aware of the issues, and I know  
 25 that he is representing the Northern Cheyenne

1 the Northern Cheyenne."  
 2 "We know that Section 106 provides a  
 3 mechanism for avoidance and mitigation of impacts  
 4 to the environment, and we understand the National  
 5 Historic Preservation Act sets out rules requiring  
 6 federal agencies to evaluate impacts to historic  
 7 and cultural heritage where a project might have  
 8 an impact."  
 9 "Section 106 requirements are a  
 10 federal-level -- Section 106 requirements are a  
 11 federal-level compliance issue for industry.  
 12 Compliance is not optional and penalties can be  
 13 significant."  
 14 Let me read that one more time.  
 15 "Compliance is not optional, and penalties can be  
 16 significant. We appreciate the opportunity to  
 17 participate in this process because development of  
 18 the Otter Creek Coal Mine to be served by the  
 19 Tongue River Railroad could also bring many  
 20 employment and financial benefits to the Northern  
 21 Cheyenne people. We join with you in seeking a  
 22 reasonable balance. Federal agencies must make a  
 23 reasonable and good faith effort to identify  
 24 cultural resources and concerns. We have worked  
 25 hard to identify Cheyenne cultural and historic

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1 sites in the impacted area, including  
 2 identification work, background research,  
 3 consultation, oral histories, reviews, interviews,  
 4 sample field investigations, and field surveys."  
 5 "The Northern Cheyenne Cultural  
 6 Commission and Advisory Board has been entrusted  
 7 with this duty by the Northern Cheyenne Tribe.  
 8 They have made a number of recommendations and  
 9 listed several important concerns. In my view, we  
 10 can work together in good faith to find and  
 11 implement solutions that will protect our valuable  
 12 cultural and environmental resources while  
 13 allowing for jobs and income to our very poor  
 14 people."  
 15 "I clarify that the final decisions on  
 16 this matter rest with the Tribal Council, the duly  
 17 elected representatives of the Northern Cheyenne  
 18 people. At this point, the Northern Cheyenne  
 19 Tribal Council has not adopted a position on the  
 20 proposed Tongue River Railroad."  
 21 "The tribe, however" -- "the tribe is,  
 22 however, on record to support the development of  
 23 the Otter Creek Coal Mine supported by the binding  
 24 agreement with the Montana Land Board, a tribal  
 25 referendum in overwhelming support of Otter Creek

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1 and numerous advocates of such development hoping  
 2 for employment. Under my administration, tribal  
 3 members will soon have the opportunity to decide  
 4 upon reservation coal development. Our people  
 5 must decide this matter. While some are strongly  
 6 opposed, many others think we should go this  
 7 route. Spokespersons for both sides have talked  
 8 to me about this matter. Both sides urge a  
 9 referendum vote. 'Let the people decide,' they  
 10 say. As the duly elected tribal president, I feel  
 11 this is the prudent course. We may not all agree,  
 12 but we'll let the majority decide."  
 13 "At one point I was opposed to on-  
 14 reservation coal development but have reconsidered  
 15 considering the bleak financial future facing our  
 16 nation. We as Northern Cheyenne must now explore  
 17 all options for self-sufficiency. My own  
 18 grandson, for example, now makes a very good  
 19 living, a railroad contractor. The tribe cannot  
 20 offer him the same opportunity, so I think about  
 21 my grandchildren."  
 22 "Thus, I have asked the Tribal Council to  
 23 schedule a referendum reservation-wide vote about  
 24 developing our own coal. This will occur in the  
 25 near future. As a leader, it is not my place to

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1 single-handedly decide this matter or declare a  
 2 policy about the Tongue River Railroad."  
 3 "We will wait from our -- and hear from  
 4 our people. If the Northern Cheyenne vote yes by  
 5 a majority for coal development on our  
 6 reservation, we will go strongly in that  
 7 direction. That would require a railroad to move  
 8 our coal and other commodities. If they vote no,  
 9 we will look for other options, though at this  
 10 time I don't know what that will be."  
 11 "Thank you for the opportunity to make  
 12 this statement. I do, however, only speak as the  
 13 President of the Northern Cheyenne Tribe, not for  
 14 all the Northern Cheyenne. We await their  
 15 verdict."  
 16 And again, this is from our current  
 17 Tribal President, Mr. Llevando "Cowboy" Fisher.  
 18 And I will hand this to -- this document to Ms.  
 19 Nadals so that it can be part of the record. And  
 20 I'm not sure if our current president has anything  
 21 else to add, or if that's all he would like for me  
 22 to share?  
 23 **MR. LLEVANDO FISHER:** Well, I'd just like  
 24 to --  
 25 **MR. STARZAK:** Please use the microphone.

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1 **MR. LLEVANDO FISHER:** For 20 years I was  
 2 very opposed to coal development, but 20 years  
 3 later I have changed my mind and that we -- we  
 4 will are a poor tribe, but yet we're the richest  
 5 because of all the coal underneath our  
 6 reservation. And I'd just like to make it known  
 7 that I can't support the railroad right now  
 8 because I'm going to leave that up to my tribal  
 9 membership to vote on that, referendum vote, by  
 10 referendum vote.  
 11 They voted once in '06. They gave the  
 12 people an opportunity to vote for methane  
 13 development or coal development. The people voted  
 14 for coal development in '06, but our tribal  
 15 attorney, Steve Chestnut, stated that it wasn't a  
 16 true referendum vote; it was a vote of confidence.  
 17 But now I want a true referendum vote for  
 18 my tribal membership and give me direction which  
 19 way to go.  
 20 With that, I like to thank you for  
 21 hearing me out and that that's my stand right now.  
 22 Thank you.  
 23 **MR. RHODD:** I want to thank -- this is  
 24 Ben Rhodd, Rosebud Sioux Tribe. I'd like to thank  
 25 both Fishers for their statements in regards to

1 their stand. I do have one question, and that is,  
2 it's very basic, it's how soon will you have a  
3 referendum vote?

4 **MR. LLEVANDO FISHER:** Well, we were  
5 supposed to -- I was hoping to have it on Tribal  
6 Council again the last month, but we had the state  
7 came out. So we can get it on Tribal Council  
8 agenda as soon as possible, and hopefully we can  
9 have a referendum within six months maybe, at the  
10 earliest.

11 **MR. RHODD:** I'm asking that for a very --  
12 for a very real reason, and that's simply that  
13 given the timing that we're up against, and I'm  
14 not sure right now how many of you watch the news,  
15 locally here last night, I did, and there was a  
16 news article that was presented, and it dealt with  
17 the two railroads. And it made a statement in  
18 there about a two-year, potentially two-year  
19 extension going on here locally and within the  
20 state. So just caught that, just happened to  
21 catch it last night, and that's the reason now  
22 that I'm asking for -- I'm wondering how soon this  
23 referendum may happen and that we can work with  
24 what will be the results of that.

25 **MR. STARZAK:** Thank you very much. Rick

1 them. No one knows better how to do those things  
2 than the people who live here now, ancestors have  
3 lived here, and people who have done a lot of  
4 research in the area. So that's why you've all  
5 been invited here and why we rely on the expertise  
6 and knowledge that you can bring to this  
7 discussion. And only with your help can the  
8 federal agency really understand the effects on  
9 historic properties and take into account those  
10 effects.

11 So we're -- if you want to take a look at  
12 the agenda, we're at the portion which is the  
13 Update on Section 106 Process, and there is a  
14 handout that we prepared for you that I hope we  
15 have enough to go around, but it has a cover,  
16 handout for consulting parties, and I'll be  
17 referring to this, and the other ICF staff will be  
18 referring to this handout just to kind of bring  
19 you up to speed on where we are right now.

20 So if you look at the second handout in  
21 the packet, which is the one that's on the screen  
22 now, you'll see a table that shows how the four  
23 steps of the Section 106 process generally relate  
24 to the NEPA process. This table is from a  
25 handbook that came out in March of 2013 that was

1 Starzak, ICF. Thank both Fishers and Mr. Rhodd.  
2 Just wanted to say, the discussion that we just  
3 had is a very important discussion. It's about  
4 the project, and the format of our meeting over  
5 the next two days is to allow discussion in many,  
6 many different ways, but the main focus of our  
7 meeting is Section 106 and historic properties.  
8 So if you want to engage and let everybody have  
9 their say, but at the same time you may find me  
10 trying to steer us back to the reason that  
11 everyone is assembled.

12 So first, I want to welcome everyone to  
13 this consultation meeting. I know some have come  
14 from very long distances, eight, ten-hour drives,  
15 and that really underscores the importance of this  
16 meeting and gathering everybody together in the  
17 room.

18 As you know, the regulations for Section  
19 106 of the National Historic Preservation Act  
20 revolved around the involvement and the quality of  
21 the discussion of all of the consulting parties on  
22 how to inform the federal agency about what  
23 historic properties could be affected, how to  
24 identify them, how to evaluate them, how to assess  
25 effects on them, and how to resolve effects on

1 by the Advisory Council on Historic Preservation  
2 and the Council on Environmental Quality. And all  
3 of you have been given or there's copies here for  
4 background. But it shows how the current thinking  
5 is on how to have these two separate laws work  
6 together.

7 So if you take a look at the second  
8 handout, you'll see the Section 106 process is  
9 basically four steps and how it lines up with the  
10 Environmental Impact Statement. So we're  
11 coordinating the two processes, but it is a  
12 parallel law and it is a separate discussion.

13 If you take a look -- if you take a look  
14 at the next handout, this one shows all the  
15 consulting parties that we've been talking to up  
16 to this point and who's involved, and it's  
17 organized in terms of the way the regulations  
18 categorize everyone. And I just wanted to touch  
19 on that just very briefly so you can see it. It  
20 encompasses a very broad range of groups and  
21 individuals.

22 The first we have the federal agency, as  
23 you met Vicki, Cathy, Josh representing the  
24 Surface Transportation Board, Office of  
25 Environmental Analysis. We have other federal

1 agencies which introduced themselves earlier. The  
 2 Advisory Council on Historic Preservation,  
 3 Charlene Vaughn on the call. The Historic  
 4 Preservation Officer, Stan Wilmoth, is here. We  
 5 have a large number of Indian tribes that have  
 6 been participating and consulting with us from the  
 7 beginning of the process. Representatives of  
 8 local governments. The applicant is a consulting  
 9 party. The applicant is basically the railroad  
 10 company. And then if you look at the additional  
 11 consulting parties at the bottom, you'll see  
 12 several of the individuals who introduced  
 13 themselves today. Mark Fix is here. Chere Justo  
 14 from the Montana Preservation Alliance. Amy Cole  
 15 is on the phone for the National Trust for  
 16 Historic Preservation. Alexis is here from the  
 17 National Wildlife Federation. Vanessa and Mr.  
 18 Medicine Bull here from the Northern Cheyenne  
 19 Otter Creek Descendants. Several individuals  
 20 representing the Northern Plains Resource Council.  
 21 Clint McRae is here from the Rocker Six Cattle  
 22 Company. And the Sierra Club was invited, but  
 23 they were unable to attend today.

24 I just wanted to show you and go through  
 25 that list just so you can see the broad range of

1 can be posted on that website. So even if you're  
 2 not able to attend the monthly call, at any point  
 3 in time you can check in and see where we are and  
 4 what's been done.

5 And then as you all fondly recall the  
 6 Northern Cheyenne Tribe very graciously hosted a  
 7 meeting for the consulting parties back in April  
 8 of 2013. And during those meetings, and in Lame  
 9 Deer, tribal representatives offered some  
 10 suggestions for OEA to consider in developing its  
 11 archeological methods for the project, including  
 12 tribal cultural resource specialists and  
 13 archeologists offered differing expertise in the  
 14 identification of sites of religious and cultural  
 15 significance to tribes. Native American sites  
 16 should be respected. Tribal archeologists should  
 17 have parity with OEA's archeologists. So we  
 18 listened very carefully and considered these  
 19 suggestions that came out of our meetings in Lame  
 20 Deer on the Northern Cheyenne Reservation, and  
 21 they really influenced how we set up our field  
 22 methodology for the summer, for the identification  
 23 of potential historic properties in those -- on  
 24 those lands where we were given access to.

25 The reason I bring this up is just to

1 parties that are engaged in this process. We want  
 2 to be hearing from all of you in the next  
 3 day-and-a-half.

4 So I wanted to just go over a little bit  
 5 about the consultation efforts that we've had on  
 6 this project, because as several of you introduced  
 7 yourself as being new to the process, so I just  
 8 wanted to go back through a little bit of what  
 9 we've done.

10 So back in late 2012, October to  
 11 December, OEA sent initiation letters to initiate  
 12 the Section 106 process to many of the tribes, I  
 13 think there was 21 tribes; the SHPO's office;  
 14 Advisory Council to initiate the process.

15 Ever since February of 2013, we've had a  
 16 monthly call the second Monday of every month,  
 17 which has had very good participation. And in  
 18 terms of consultation, it gives us a regular check  
 19 in to hear your concerns, hear your views. We can  
 20 provide updates on the project, and it's a very  
 21 good communication process.

22 OEA added a Historic Preservation page to  
 23 the Tongue River Railroad EIS website. So any --  
 24 like the court reporter transcripts, anything that  
 25 we develop, which is both available to the public

1 illustrate, we have these consultation meetings,  
 2 we're listening, we're hearing what you have to  
 3 tell us, and then we're working collaboratively to  
 4 implement what we've heard from you. So just a  
 5 little bit. The vast majority of you in this room  
 6 and on the call are very familiar with the term  
 7 "Cultural Resources," which is used in the NEPA  
 8 environmental document. I just wanted to mention  
 9 for those of you who may not be as familiar, we've  
 10 kind of broken "cultural resources" into three  
 11 major categories: Tribal identified resources,  
 12 archeological resources, and built resources.  
 13 They can overlap among the groups, but we're just  
 14 thinking of them in those three categories so that  
 15 we have the right experts evaluating them at the  
 16 right time.

17 And OEA acknowledges that the tribes  
 18 possess special expertise in identifying cultural  
 19 resources with religious and/or cultural  
 20 significance to them. So please keep in mind that  
 21 the cultural resources that we've identified in  
 22 the field so far, which Alisa Reynolds and Mark  
 23 Robinson will be giving you the background next,  
 24 that they've been observed in the field and  
 25 they've been recorded, but we have not applied

1 National Register criteria to them yet.  
 2 The application of the National Register  
 3 criteria in consultation with the SHPO's office  
 4 and tribes is going to be -- and how to do that  
 5 and how to involve everyone is going to be a major  
 6 topic of our discussion over the next two days.  
 7 And now, to explain the process for  
 8 identifying cultural resources and what we found  
 9 together in the field, first will be Mark Robinson  
 10 from ICF, followed by Alisa Reynolds.  
 11 **MR. ROBINSON:** Good morning. I'm just  
 12 going to talk about the record search process and  
 13 what we've discovered. Basically, as most of you  
 14 probably know who are involved in cultural, the  
 15 state maintains a database of sites, surveys and  
 16 reports of information that's been done for past  
 17 projects, for example, the land exchanges that the  
 18 BLM, does things like that. So there are site  
 19 records and reports available and information on  
 20 areas that have been surveyed. So we applied for  
 21 that information last year from the Montana  
 22 Historical Society, the SHPO, and received that  
 23 information. It's organized by township  
 24 section and -- township range and section. So we  
 25 asked for an extensive amount of land.

1 surveys and reports and indicated about a range of  
 2 ten percent of the area had been surveyed  
 3 thoroughly in the past, mostly by the BLM, some by  
 4 the Montana Department of Transportation, some by  
 5 the people down at the Tongue River Reservoir when  
 6 they were improving the dam.  
 7 So that was what we started with on the  
 8 record search results, knowledge of 71 sites that  
 9 were in the preliminary APE.  
 10 Now Alisa is going to talk about the  
 11 fieldwork.  
 12 **MS. REYNOLDS:** Thank you. Hi, this is  
 13 Alisa Reynolds with ICF, and I just wanted -- some  
 14 folks some -- folks know a lot about what went on  
 15 in the field. We have some folks here who were  
 16 involved, others have no idea how we did it. So I  
 17 just wanted to kind of take a step back and talk  
 18 about not just the theory of what we're going to  
 19 do but really how things played out in the field,  
 20 what we found, our basic methodologies, and how it  
 21 went out there.  
 22 As Mark said, we started with the record  
 23 search information, and we uploaded all known site  
 24 information into iPads. It was also overlaid with  
 25 project maps and details of parcels and access,

1 Basically, we took a mile on either side  
 2 of the proposed centerlines of the different  
 3 alternatives, so it's a two-mile-wide strip. Now,  
 4 we call that the study area, but that's not to be  
 5 confused with the preliminary APE, which is the  
 6 actual physical survey area. So we're gathering  
 7 that information for background context and, you  
 8 know, to know what's out there, especially for if  
 9 there's a site right adjacent to the preliminary  
 10 APE, so we can be certain to look and see if it's  
 11 there.  
 12 So the record search results in that two-  
 13 mile-wide stretch, there were 780 sites. I should  
 14 emphasize that of those, 71 were in the  
 15 preliminary APE, 44 archeological sites and 27  
 16 built resources. And as you might imagine, being  
 17 that the records are generated by past projects,  
 18 some of the information is very spotty. Some  
 19 places on private land have never been visited.  
 20 Other places, like on BLM property or Forest  
 21 Service property, have been surveyed and there  
 22 have been sites, so you know, but the record  
 23 search is not at all a complete inventory of  
 24 information out there.  
 25 We also got information on the previous

1 all sorts of things that could get us where we  
 2 wanted to go and let us know where known sites  
 3 were.  
 4 As you've heard, we teamed up with tribal  
 5 representatives and ICF archeologists, so we had  
 6 four of each on four different rotations. We were  
 7 out there in July and August last year, so it was  
 8 pretty hot, pretty rugged. Our crews, all of  
 9 them, everyone did a great job. We, you know --  
 10 and I'd like to say thanks to the, especially to  
 11 the -- not just the tribal representatives who  
 12 were there, but the folks who helped coordinate  
 13 this. This is a busy time of year, we know that,  
 14 to have crews out, and everyone really bent over  
 15 backwards to get folks out in the field, even  
 16 traveled far and make sure we have the right  
 17 people involved.  
 18 So some of those folks are here, and I  
 19 really want to thank them. Andrew Willey was on  
 20 the rotation, Steve Brady, we had Hubert Two  
 21 Leggins is here, Ben Rhodd. A lot folks were busy  
 22 with other projects and made time, and Brady  
 23 Grant. I'm sorry; I misspoke, Brady Grant. And  
 24 James Walksalong from the Northern Cheyenne was on  
 25 all four rotations with us, and this was great.

1 It gave -- it created some continuity for the  
 2 field effort, having tribal people there with our  
 3 staff, you know, it allowed for a lot of learning  
 4 from our staff as well, so it was really helpful  
 5 to have people who were seasoned and knew what  
 6 they were looking for and understood the context  
 7 and really share as much as they could with our  
 8 crew. So we really appreciate that folks reached  
 9 out to do as much as they could.

10 On each rotation we had that information  
 11 on our iPads. We also bought GPS units, because  
 12 iPad's kind of a new-ish technology for using out  
 13 in the field, and so everything was backed up on  
 14 GPS. We had a few little glitches. We didn't  
 15 know that the iPads in extreme heat would kind of  
 16 act up a little bit, so we had to rely on GPS  
 17 occasionally throughout.

18 So our folks, it would be a team of  
 19 eight, the four tribal representatives and the  
 20 four ICF archeologists, would access a point. And  
 21 accessing a point where we had accessibility  
 22 either because of roads or permission to enter,  
 23 was a tricky thing. We already downloaded maps of  
 24 where we could enter and kind of had a game plan,  
 25 but we had to leave one person back at the hotel

1 out there, so feel free to add information or  
 2 pitch in.  
 3 A lot of this was really difficult, you  
 4 know. Occasionally, the hiking was actually over,  
 5 you know, over farmland pretty level, but more  
 6 often than not we hit some really high  
 7 temperatures, steep terrain, not a big surprise, a  
 8 lot of rattle snakes, a bunch of flat tires. So  
 9 you know, things in the field, as some of you know  
 10 who do fieldwork, it never works out exactly like  
 11 you think it's going to.

12 When we found, as we walked, when the  
 13 crews found potential archeological sites and  
 14 those were identified by anybody on our crew, we'd  
 15 stop and record them. And again, as Rick said,  
 16 this wasn't evaluation for the National Register.  
 17 This was simply recording their presence. So it  
 18 would be fairly quick, record the details, the  
 19 extent, you know, the general category of the  
 20 resource.

21 And I'd like to say, you know, everybody  
 22 pitched in to identifying resources. You know,  
 23 everyone's lined up on transect, and no one person  
 24 knows everything or sees everything, so it very  
 25 much was a team effort.

1 room locked away kind of sequestered, and their  
 2 job was just to manage land access, to reach out  
 3 to landowners or ranch managers as applicable and  
 4 kind of keep track of when we could access areas,  
 5 any issues that were coming up.

6 Our field crews generally didn't have  
 7 access to cell. They had cell phones, but they  
 8 didn't have connection. So it was our fifth  
 9 person from ICF who was in the hotel kind of  
 10 managing this process. So it was a little -- it  
 11 was a little bit tricky at times, and just  
 12 balancing how far to drive to access and where to  
 13 start and where to finish.

14 So our folks each morning, basically  
 15 they'd all stay together in a hotel, we'd load up  
 16 in a couple SUVs, and hit the road. Some of those  
 17 drives are pretty extensive to get to their survey  
 18 area.

19 Once there they would access a point and  
 20 walk one side of the rail -- the centerline,  
 21 proposed centerline, and cross over and walk back  
 22 to the vehicles.

23 And feel free, you know, folks, you know,  
 24 Brady, Andrew, James, Hubert, if you, you know,  
 25 this isn't -- this isn't our show. You guys were

1 Those resources were recorded and tabbed  
 2 as well as photographed and all the standards, and  
 3 then we would move on.

4 Oh, yeah, please. So as you can see from  
 5 the results that's in the handout, it's up on the  
 6 screen as well, most -- the vast majority what we  
 7 have recorded here was 187 sites. The vast  
 8 majority were lithic scatters and what we  
 9 categorized as lithic scatters. And we need to  
 10 understand that that doesn't mean that's all there  
 11 is to these resources. You know, we're there  
 12 doing a pretty quick recordation. There's no  
 13 ground disturbance, there's nothing being done to,  
 14 you know, to dig or do further kind of further  
 15 exploration.

16 So we have lithic scatters and lithic  
 17 scatters with other components, and that just --  
 18 that just means we saw some evidence that there  
 19 might be more to it. But this is by no means an  
 20 exhaustive list of what is out there. It's  
 21 grouping things together for a pretty quick  
 22 recording.

23 Some of the things we found are  
 24 historical archeology, quite a few actually. So  
 25 our folks recorded all of those equally, historic

1 fences, other archeological resources, like house  
 2 foundations and things like that.  
 3 And at the end, we compiled all that  
 4 information, brought it back to the office, and  
 5 folks went through all that messy data. You know,  
 6 you have field notes written by hand, GPS, iPad  
 7 data, and we had folks go through that. So that's  
 8 our basic methodology for in-the-field.

9 And I think, James, did you want to -- do  
 10 you want to say anything, James, about any of the  
 11 field effort or --

12 **MR. WALKSALONG:** Yeah. Just like to  
 13 state participants that were on the field survey,  
 14 Andrew, Brady, and the others that were out there,  
 15 this here was a very vast undertaking, we as  
 16 cultural monitors. And we went out there with the  
 17 intent of finding TCPs out there. And mind you,  
 18 this is a corridor that's 300-foot wide and a  
 19 hundred-something-plus miles, and we only covered  
 20 about 42 or 47 miles. That's a total of 97 miles  
 21 down and back.

22 And if you go to your brochure, you'll  
 23 see a map. Most -- most of the sites right from  
 24 the get-go off Fort Keogh was a lot of things that  
 25 were -- we as Cheyennes and the Sioux people had

1 Ranch, and that's in the upper part of the Tongue  
 2 River. It's near the dam, and that has been  
 3 historically known as the crossroads between the  
 4 Indian tribes. They made a pass through there.  
 5 As you all know, that's where the battlefield site  
 6 of the Rosebud Battlefield was, and also the Dull  
 7 Knife Battlefield. Steve mentioned that. There  
 8 was other conflicts in there with intertribal  
 9 warfare. And we came across one of those such  
 10 sites, and we had to do the necessary work there  
 11 to assure that that place is going to be  
 12 protected. And we also did our research in  
 13 stories that was told by our relatives about these  
 14 places. And the stories that you have to hear is  
 15 very traumatic. As a Cheyenne people, we  
 16 encountered a lot of conflicts with the United  
 17 States military. And one such story is when in  
 18 the Battlefield of Dull Knife was when they came  
 19 down on that village -- mind you, there's women  
 20 and children in there, there's old people in  
 21 there, and all they wanted to do was just winter,  
 22 camp for the winter and take care. That's all  
 23 they wanted to do was about surviving. And when  
 24 they came down there to attack that camp, there  
 25 was an old lady that was in one of them. She

1 to gather and report to the U.S. military, and  
 2 they did a census and head count. That's a very  
 3 historic place around that area. And in that area  
 4 we found a lot of, you know, things of camping,  
 5 rifle pits, shell casings, bullets. You know, you  
 6 name it; it was in that area in Fort Keogh.

7 And then thanks to the landowners that  
 8 gave us access to walk through where the corridor  
 9 went through their property. We walked through  
 10 seven ranches, landowners that allowed us through  
 11 there, and they told us that there was things out  
 12 there, they said, stone circles, tepees,  
 13 pictographs. Some of it was outside that  
 14 corridor, but then there was some that was in that  
 15 corridor. And we, as a team, we covered it  
 16 thoroughly. And the conditions out there were  
 17 kind of tough sometimes where you're looking at a  
 18 hundred degrees weather; sometimes, you know,  
 19 you're way out there and you run out of water and  
 20 you're about mile-and-a-half from getting a fresh  
 21 bottle of water; we had to deal with that.

22 But I'd like to thank the landowners, the  
 23 Fix Ranch, the Hertz Ranch, the Anderson Ranch,  
 24 McCleary, Prospect, and the Diamond Cross Ranch.  
 25 Most notable finds were on the Diamond Cross

1 couldn't move out to escape, so she stayed in the  
 2 camp. And she had a beautiful buffalo robe on  
 3 her, and they took that tepee down. This old lady  
 4 was sitting there praying, and they shot her up  
 5 just for that buffalo.

6 Those are the kind of things why this  
 7 valley is so important, the stories that we hear,  
 8 the homesteaders that were there.

9 My friend Kenny here will tell you that  
 10 we had land allotments on that side of the river,  
 11 and that's why it is important. And I understand  
 12 the landowners and, you know, the white ranchers  
 13 out there, they respect that. The Northern --  
 14 that's why the Northern Plains Resources is there.  
 15 They have -- they have a say in this, and it's  
 16 important that we listen to one another and talk  
 17 good and come up with a resolution and resolve a  
 18 conflict, because there is something that's out  
 19 there.

20 I served on the school board for the Lame  
 21 Deer Public Schools eight years, and I was chair  
 22 six years and I was quite aware of that there what  
 23 was going to happen, because it has to do with  
 24 money to support schools. It was then Governor  
 25 Racicot traded off a gold mine that was proposed

1 up here by Gardiner and gave that there Otter  
2 Creek Coal Mine, and that was the start of all  
3 this. And I was aware of it, because Lame Deer  
4 Public Schools borders that Otter Creek, and we're  
5 going to get some money out of it to educate our  
6 children.  
7 But there's, you know, there's years of  
8 conflict and there's a cost to that. And I was  
9 talking with Conrad about the effects of this  
10 railroad. The railroad has always been impacting  
11 not only the Northern Cheyennes but many Indian  
12 tribes throughout this country. That word  
13 "manifest destiny" speaks out loudly. It impacted  
14 us so much that some of us had to be relocated.  
15 Some of us had to be, you know, literally placed  
16 in a place where we did not want to be, hence, the  
17 great epic journey of our Northern Cheyenne people  
18 from Oklahoma. Vast amounts of our sustenance was  
19 taken from us. The buffalo herds, the great  
20 southern herds were nearly put into extinction.  
21 Those are the kinds of things that we've got to  
22 talk about. Those are the kinds of things that we  
23 need to protect in order to sustain our lives on  
24 this earth.  
25 Mark said a beautiful prayer about that.

1 children. I'm just a young man, but I have six  
2 grandchildren. I have eight children, and they're  
3 all going to have children, and I'm going to have  
4 many more grandchildren, and I hope that they can  
5 enjoy what I have enjoyed growing up on our  
6 reservation.  
7 But on this map, this is -- only the  
8 sites that we see on this map is only what we  
9 could cover, and that was the landowners giving us  
10 permission just to cover that.  
11 I was surprised, you know. I thought the  
12 railroad was just going to go through the valley.  
13 I didn't know it affected my friend over there,  
14 the Cow Creek. He talked to me one time about it,  
15 and I referred him to Conrad, "Talk to Conrad.  
16 Maybe we can help you out."  
17 And up the Moon Creek, that's another  
18 alternative route, I didn't know that was going to  
19 be in today. And just south of Miles City and  
20 here just shows one line, but I walked two sides  
21 of that river out of Miles City, two sides. So it  
22 must be we need to really look at this here and  
23 come up with a good solution and a resolution for  
24 this here, how we can best deal for it.  
25 We know that there is a mine to be built

1 I heard the word about the water. Water is  
2 important. How much affect is that, all this  
3 development, going to have with our water? I was  
4 talking to Conrad about it, "Well, when that  
5 railroad comes through there, how much of that  
6 there is going to fall into this Tongue River?"  
7 I mean, yeah, I worked for a coal mine  
8 for seven years. I know all the ins and outs of  
9 that. I know the effects on that.  
10 When I was out there, I was not only  
11 looking for burial sites, not only looking for  
12 effigies, I was also looking at the environment  
13 out there, the springs that once ran or the  
14 springs that are in existence, the plants that are  
15 out there, most notably the wildlife that was out  
16 there, the rapture birds and the birds that fly  
17 out there. How is all that going to affect them?  
18 It's a big broad sense of things here  
19 what we're dealing with, and we need to look at  
20 that, how we're going to affect that. We know  
21 what it done in the past. The railroad has always  
22 impacted everything in our lives, especially from  
23 the Native American, as this place used and  
24 others.  
25 I look out for the well being of my

1 to get it in and out of there. A gentleman asked  
2 me -- they got some t-shirts out there shows a  
3 black line going one way and a clear line another  
4 way. He asked me, "What does that mean?"  
5 I said, "Well, one shows that black.  
6 That must be where the coal is, where they're  
7 going to take it out, and the one that's clear,  
8 that must be where the railroad will -- car  
9 railroad tracks will bring the coal in empty train  
10 cars. The one is full. I think that's how I  
11 understood it," I said.  
12 But yeah, we had a great deal of work  
13 done on this here. Some of it was pretty intense,  
14 but I appreciate all my coworkers, like Hubert,  
15 like Willey, you know, we were out there. All the  
16 people that you see on that list gave their  
17 interpretation of what was out there and go to the  
18 one of the pages there list all the workers that  
19 were out there, and I appreciated the ICF  
20 supporting this and we being out there with them,  
21 and it was a great learning experience for them  
22 and for us. 106 was applied a couple times out  
23 there when we had to utilize that law, and we're  
24 grateful for it giving us all this information.  
25 But, yeah, people saw, our eyes seen, and

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1 there's still a lot to be covered out there, a lot  
 2 of work to be covered.  
 3 I appreciate Curley's sending his  
 4 daughter Diane out there too, you know. All the  
 5 tribes in this area, you know, all have a say in  
 6 this because they once camped on this here valley.  
 7 And so we all collaborated together to come up  
 8 with an interpretation on a lot of this. And  
 9 Brady out there too, you know, come from way up in  
 10 the north country; good to see you.  
 11 But we need to come up with something  
 12 good that we can all agree on, our people,  
 13 everyone can be happy, landowners, us as the  
 14 tribes there. Because we have a big say in this.  
 15 We're the Northern Cheyenne Tribe, and it borders  
 16 us. What impacts is it going to bring? What kind  
 17 peoples are going to be coming to our communities  
 18 on the Ashland or Birney area? That all plays a  
 19 part in all that. It's a big undertaking. It's  
 20 going to affect a lot of many people and bring a  
 21 lot of many people in. We have to prepare for it.  
 22 You know, it's quite an undertaking, so  
 23 I'm glad that this here is going on and everybody  
 24 will have a good positive comment, you know.  
 25 We're dealing with Section 106, and that law is

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1 there for us as Native American tribes to utilize,  
 2 to see that right gets right, you know. We need  
 3 to utilize that. So that's all I have to say.  
 4 **MS. NADALS:** Yes, Terry, go ahead.  
 5 **MR. CLOUTHIER:** I've got a couple of  
 6 questions based on your presentations. In  
 7 particular, there was a comment made that only I  
 8 think they said 42 or 47 miles out of 300 were  
 9 surveyed; is that correct?  
 10 **MS. REYNOLDS:** You know, I don't actually  
 11 know the mileage, but I mean, I think that's what  
 12 James said, but we surveyed about 4500 acres.  
 13 **MR. CLOUTHIER:** Out of essentially how  
 14 many acres?  
 15 **MS. REYNOLDS:** We surveyed about  
 16 30 percent?  
 17 **MR. STARZAK:** 32.  
 18 **MS. REYNOLDS:** 32 percent.  
 19 **MR. STARZAK:** Just to clarify, we had  
 20 access to only about 42 percent, 45 percent of the  
 21 land based on property owner access. So doing  
 22 32 percent is actually very good. But that's part  
 23 of what we want to talk about in the next couple  
 24 days; how do we fill gaps?  
 25 **MS. REYNOLDS:** And I also want -- I'm

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1 sorry, just really quickly. I also wanted to say  
 2 I was just talking to Conrad. The list that you  
 3 have of what we found, it only includes what we  
 4 considered archeological and not tribal identified  
 5 or tribally-sensitive sites.  
 6 Rick actually has, for the tribes later  
 7 today, has maps and lists of what we found that  
 8 would be considered tribal. We didn't keep notes  
 9 on that. We simply kept a point, and so that's  
 10 separate for y'all.  
 11 And I think, Conrad, is there anything  
 12 you wanted to add to that?  
 13 **MR. CONRAD FISHER:** Well, I wanted to  
 14 mention that we had, in partnership with the  
 15 Montana -- State of Montana Burial Board,  
 16 repatriated some remains within the -- on or near  
 17 the corridor. And the reason I wanted to mention  
 18 that was that we had another entity, the State of  
 19 Montana, that was involved in that repatriation,  
 20 because the remains were on private property, and  
 21 that was taken care of.  
 22 So I think it's important to say that,  
 23 because tribal folks did in fact identify human  
 24 remains that were verified by the Montana  
 25 Preservation -- or the Montana Burial Board, and

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1 subsequently, we in turn -- real close to the  
 2 actual location, which weren't initially  
 3 identified by archeologists.  
 4 **MS. RUTSON:** Terry has --  
 5 **MR. CLOUTHIER:** I've still got some  
 6 other. Sorry. Was the only reason that -- that  
 7 42 percent, is that the only reason, was landowner  
 8 access, or was it based on the Class 1 search in  
 9 terms of previous surveyed areas as well?  
 10 **MR. STARZAK:** No, we resurveyed areas if  
 11 there was a previous survey just to confirm what  
 12 was there.  
 13 **MR. CLOUTHIER:** Okay.  
 14 **MR. STARZAK:** There were other cases,  
 15 some parcels, some land may have been landlocked,  
 16 if you will, where we did not have permission to  
 17 enter because it's basically an island within --  
 18 we couldn't get there, so that's another aspect.  
 19 But it was a very, very thorough job.  
 20 **MR. CLOUTHIER:** Yeah. And no, I'm just  
 21 establishing whether there was any previous survey  
 22 issues. And then the follow-up question would be  
 23 whether or not tribal participation on those  
 24 previous surveys. But you've stated that you  
 25 resurveyed all of the previous surveys; --

1 **MR. STARZAK:** Yes.  
 2 **MR. CLOUTHIER:** -- that's correct? Final  
 3 question hopefully, was there any surveys  
 4 conducted by ICF without tribal participation?  
 5 **MR. STARZAK:** Nope, except for the built  
 6 environment, but you know, buildings, structures.  
 7 **MR. CLOUTHIER:** Okay. Thank you.  
 8 **MR. STARZAK:** Thank you very much, James,  
 9 for your words. That was very, very helpful.  
 10 Conrad, thank you so much for your  
 11 insight. If you -- if I could just have three  
 12 minutes of time, then we will have completed our  
 13 presentation and then we can take questions before  
 14 the lunch break.  
 15 **MR. YOUPEE:** I have one more question.  
 16 **MR. STARZAK:** Yes, Curley.  
 17 **MR. YOUPEE:** All this information, it's  
 18 pretty coming freely from all parties. Now, is  
 19 there any measure of confidentiality in this  
 20 process? Because I'm thinking that information is  
 21 coming freely and some of that information I'm not  
 22 sure if we want to, you know, give out. Thank  
 23 you.  
 24 **MR. STARZAK:** Yes, maybe Alisa can  
 25 address as well, but she made the point that those

1 identified 69 through this process.  
 2 And there's a second map, which is really  
 3 based on the results of the built resources  
 4 surveys, and I wanted to point out once again, as  
 5 I mentioned earlier, except for the Miles City  
 6 Main Street Historic District and Wolf Mountains  
 7 Battlefield, those are both listed on the National  
 8 Register, really, hardly any of these have gone  
 9 through a process to be determined eligible for  
 10 the National Register. There may be some on the  
 11 federal lands which have gone through that process  
 12 that we still have the record search information  
 13 from the SHPO's office. So we put a couple of  
 14 footnotes down in the bottom here just so there's  
 15 no mistake. It's part of what we have to talk  
 16 about the next two days; how do we go from simply  
 17 the documentation from the record search and the  
 18 fieldwork and how do we apply National Register  
 19 criteria and who gets involved in that process?  
 20 And so that basically completes the  
 21 information we had to give y'all on what we've  
 22 done. And it's -- we're a little over, and so we  
 23 can either take a lunch break or we can address  
 24 questions that you have now. The forum this  
 25 afternoon is much more open discussion. So all

1 sites on this very, very kind of gross scale map  
 2 are just the archeological sites. Those sites  
 3 that had religious or cultural significance to  
 4 tribes are not located on that map that was shown  
 5 over the table.  
 6 We have made copies, though, of those  
 7 maps in a much greater detail so that instead of a  
 8 one-page map like you see on the screen, there are  
 9 12 pages of maps at a much better scale so that  
 10 when you have a tribal caucus you can pass those  
 11 out and take a look at it. But we were very  
 12 careful to only send the copies of this  
 13 information by certified mail to the THPO.  
 14 They've not been released to the public, and they  
 15 will not be released in the DEIS or in any other  
 16 way.  
 17 So if I could just wrap up the  
 18 discussion. The only other component I wanted to  
 19 mention was the built resources. So these are  
 20 more historic era, if you will, ranches, homestead  
 21 cabins, windmills, irrigation ditches. We had  
 22 architectural historians and historians go out and  
 23 take a look. And I can't remember; Mark, you said  
 24 there were something like 29 in the previous  
 25 records search? And you can see that we

1 right, Cathy? Cathy? Is Cathy gone? I think  
 2 Cathy already went to lunch.  
 3 Vicki, would you like to adjourn for  
 4 lunch then, or would you like to take questions?  
 5 **MS. RUTSON:** Who would like lunch? Raise  
 6 your hands.  
 7 **MR. STARZAK:** All right, then what time  
 8 should we come back if we're a little late  
 9 starting? We're about an hour late. Do you want  
 10 to re-adjourn at, say, 1:30? Does that give  
 11 adequate time?  
 12 **MS. RUTSON:** Let's try. Let's try.  
 13 **MR. STARZAK:** Let's try 1:30 then,  
 14 because I know many of you in the room in the  
 15 introductions only said a portion of what you  
 16 wanted to say.  
 17 **MR. CONRAD FISHER:** Yeah, I think this is  
 18 such an important meeting that we should try to  
 19 start right at 1:30. There's a lot of questions,  
 20 and I know we're having a tribal caucus at, I  
 21 think it's at 3 or 3:30, and there's some very  
 22 important issues I think the tribes need to  
 23 discuss at that time, so let's try to shoot for  
 24 1:30 and come back.  
 25 **MR. STARZAK:** Very good. Can we all

1 plan, then, on being back at 1:30 and start  
 2 promptly at 1:30? Very good. See you then.  
 3 [LUNCH RECESS - 12:41 P.M. TO 1:43 P.M.]  
 4 **MR. CONRAD FISHER:** I'd like to welcome  
 5 all those that are on the telephone. This is  
 6 Conrad Fisher. I've sort of taken the initiative  
 7 since nobody was listening to Richard. I thought  
 8 maybe I would -- I was going to say "commodity  
 9 cheese," but I know there's a lot of folks in here  
 10 that wouldn't know what that means. It's an  
 11 inside joke. So I'll hand it back over to  
 12 Richard.

13 **MR. STARZAK:** Thank you, Conrad. For  
 14 those of you who have called in, we're going to  
 15 put you on mute, but if you want to speak --  
 16 because you're the minority, but if you want to  
 17 speak, I think \*6, if you do that, then we'll hear  
 18 you here in the room, so we won't leave you out  
 19 entirely.

20 Welcome back. This is the way it is in  
 21 my office. Connie is the person who mutes me;  
 22 just experienced that. So welcome back. I wanted  
 23 to -- a number of you have come up and said you  
 24 want to have more time to make some more comments  
 25 this afternoon, which is perfectly fine.

1 what I meant by "gaps." We didn't have access, as  
 2 James explained, to the full length of every  
 3 alternative. But if or should the Board, you  
 4 know, say that a route can be constructed, then  
 5 that's the time that all of that work could be  
 6 done. So I just wanted to explain that, that my  
 7 use of the word "gap," what I meant.

8 Now, what I was hoping to do this  
 9 afternoon, again, keeping it very open for folks  
 10 who have comment, is we've structured four flip  
 11 charts here according to the four steps in Section  
 12 106. And what I wanted to do is, as we start to  
 13 have discussions and get your ideas, we'll try and  
 14 capture that under the appropriate step.

15 So for instance, Steve Brady this morning  
 16 mentioned that we should do a complete  
 17 ethnographic study, so that would fall under Step  
 18 2, Identify and Evaluate, so we'll write that in.

19 Curley Youpee mentioned confidentiality,  
 20 and I think that would probably be on all four,  
 21 but for the most part it would stay under No. 2  
 22 where we're identifying and evaluating historic  
 23 properties, that we want to keep that information  
 24 confidential as appropriate. So that was the  
 25 general idea of how I wanted to help structure our

1 The general plan that we have on the  
 2 agenda is that at 3 o'clock we can adjourn so that  
 3 there can be a tribal caucus and you can use this  
 4 room in secret or private, and so we want to make  
 5 sure that we leave adequate time to do several of  
 6 what we planned this afternoon, but also to give  
 7 time for the tribes to meet and the rest of us can  
 8 adjourn appropriately. But I do recall several of  
 9 you asked to be able to make comments, and that's  
 10 perfectly fine.

11 A couple of things that I wanted to just  
 12 mention, when we had discussions this morning, I  
 13 made a comment about "filling in gaps," and I just  
 14 wanted to explain what that meant. So we were  
 15 able to get to very, very much of the property we  
 16 had access to, but we were not allowed to go on  
 17 certain property to do fieldwork. So I think of  
 18 that in my mind as a "gap." But we can't do  
 19 anything about that. We can't, you know, just go  
 20 on if an owner doesn't give us permission. So  
 21 what I meant is to complete, to fill in those  
 22 gaps, ultimately if the -- should the Board ever  
 23 license any type of a construction, at that point  
 24 there should be access to more of that property  
 25 and then we can complete that work. So that's

1 discussion this afternoon to get your ideas.

2 So with that, I'm telling myself, and  
 3 Conrad actually taught me this, "Rick, you have to  
 4 listen," and so that's what I'm about to do, and  
 5 we'll try and record people's comments.

6 So first, I'll go up and write under Step  
 7 2, "Ethnography" and "Confidentiality," and then  
 8 we'll start to go through for some things.

9 **MR. CONRAD FISHER:** Well, I think we left  
 10 off right before lunch, there might be some --

11 **MR. STARZAK:** Questions? Sure we can  
 12 address that.

13 **MR. CONRAD FISHER:** Questions before we  
 14 get into this phase.

15 **MR. STARZAK:** Absolutely.

16 **MR. CONRAD FISHER:** And since everybody's  
 17 raised their hand at the same time, I guess I'll  
 18 start off. And if -- can you clarify one more  
 19 time what you've just said about the amount of  
 20 acreage that was actually surveyed as opposed to  
 21 the amount that was proposed for survey? I know  
 22 that you mentioned that there was a gap and that  
 23 part of the reason why we had a gap,  
 24 quote/unquote, was that there was not landowner  
 25 permission. I think more importantly is, is in

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1 cases where there wasn't landowner permission, if  
 2 there was a gap, was there rationale for not  
 3 completing those alternatives that had been  
 4 proposed for so many acres and were not met, you  
 5 didn't meet that proposed acreage?  
 6 Because I think it's important to know or  
 7 at least to come to some resolution on why that  
 8 was the case. And I say that because I think it's  
 9 critically important that we complete those  
 10 proposed acreage, acres for a couple of reasons.  
 11 One, it's important to determine the amount of  
 12 sites that are in that area; and two, it's  
 13 important to identify those sites that are  
 14 important to the tribes and to everyone else; and  
 15 lastly, I think so that we know and it would give  
 16 us an overview of the number of sites that are  
 17 within those alternatives.  
 18 I think if we don't, then we're doing a  
 19 disservice to what we said we were going to do,  
 20 and that was that "Here's an amount of acres we  
 21 said we were going to survey, but we didn't reach  
 22 that criteria, so -- or we didn't reach that  
 23 goal."  
 24 So I want to -- I want it clarified for  
 25 the record the amount of acreage that wasn't

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1 surveyed that was supposed to be surveyed. I  
 2 think it's important.  
 3 **MR. STARZAK:** Okay. I'm going to let  
 4 Alisa address some of this, because she has the  
 5 actual figures which can be mind numbing. But let  
 6 me repeat what I said earlier, that more than  
 7 50 percent of what we would call the preliminary  
 8 APE, basically 300 feet on either side, which is  
 9 actually 300 feet outside whatever the proposed  
 10 right-of-way was. It's not always 300. Sometimes  
 11 it would be multiple bands. More than 50 percent  
 12 of that area we were denied access by the current  
 13 landowners, so we -- if we asked permission and  
 14 could not enter, we did not survey the area. So  
 15 that's already more than half of all the land.  
 16 And then I also mentioned there were some  
 17 cases where there might have been a parcel that  
 18 was surrounded by other pieces of land that we did  
 19 not have access to. So without, you know, being  
 20 able to take a helicopter or something, we would  
 21 not be able to get to that parcel. And those are  
 22 some of the main things.  
 23 But let me let Alisa address, because she  
 24 has actual numbers.  
 25 **MR. CONRAD FISHER:** While Alisa is coming

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1 up, and this is after the fact and we all know  
 2 we're 20/20 after the fact, if that were the case,  
 3 then shouldn't there have been a contingency plan  
 4 to include areas that you could access that in  
 5 lieu of not being able to access those lands in  
 6 private -- on private property, were you able to  
 7 look at alternative locations within the  
 8 alternative routes that could be surveyed in place  
 9 of the ones that you didn't have access to? In  
 10 other words, if you have 20 -- or 50 miles of an  
 11 alternative and you only did 3 miles because you  
 12 didn't have access to 10 miles, couldn't you moved  
 13 that 10 miles somewhere within that 50-mile  
 14 alternative and surveyed some of that?  
 15 Because the bottom line is, we're looking  
 16 for a sample of cultural resources within that  
 17 50-mile alternative. Was there a contingency  
 18 plan? Because it creates a situation where,  
 19 again, we're not -- we're not looking at the  
 20 amount of acres that we said we were going to  
 21 survey so that we can -- so that STB can look at  
 22 those surveys as part of their process, EIS  
 23 process.  
 24 So again, I just want to -- I just want  
 25 to make it clear that when we initially had these

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1 four alternative routes, that we said we were  
 2 going to survey this amount of acres but that  
 3 never -- we fell short of that.  
 4 **MR. STARZAK:** Before Alisa gives you the  
 5 actual numbers, keep in mind that we are looking  
 6 at a broad range of alternatives that are  
 7 corridors that cover a large area, and the Section  
 8 106 regulations say that if you have that as a  
 9 case, you can do what's called a phased  
 10 identification. So we focused on where we had  
 11 access to the land that we could work with the  
 12 landowners to get on there and do an adequate  
 13 survey, but we didn't look at ways to, "Well, if  
 14 this landowner wouldn't let us on the land, how  
 15 would we do field surveying?"  
 16 With a phased identification, though, the  
 17 idea is that you get as much done as you can now  
 18 when you have access, and then if the Board  
 19 actually licenses an alternative, then you can go  
 20 and complete that work, so...  
 21 **MR. CONRAD FISHER:** Yeah, I understand  
 22 that, Richard. And I don't know if you understand  
 23 what I'm saying, and that is, that we're cheating  
 24 ourselves by -- if you have four at -- well, let  
 25 me ask you this.

1 In one of the alternatives where you  
 2 didn't reach the goal of the number of acres that  
 3 you said you were going to do, was it because that  
 4 whole route, the landowners said they weren't  
 5 going to allow you into that -- into that  
 6 corridor? Was there no way that you could  
 7 reach -- was it impossible to reach that acreage  
 8 that you said you were going to survey?

9 **MR. STARZAK:** I don't know the specifics,  
 10 but we did receive a letter from a group of  
 11 landowners, primarily on one of the alternatives,  
 12 that said, "You can't enter the property."

13 So with a letter like that, you know, I  
 14 actually called the attorney a couple of times,  
 15 who did not return my calls, to see if, "Well,  
 16 does this limited letter that you sent, what if we  
 17 only want to send out cultural resources experts?"  
 18 My calls were not returned.

19 **MR. CONRAD FISHER:** Okay, I'm still  
 20 not -- I don't think you understand what I'm  
 21 trying to say. All I'm saying is that in one --  
 22 let's pick the Preferred Alternative, which is  
 23 probably 48 miles. Now, in that 48-mile strip,  
 24 did you reach the goal of acreage that you set out  
 25 to accomplish?

1 areas required drives of many, many, many hours  
 2 when they'd already walked many, many, many hours,  
 3 and it was simply too demanding. Does that answer  
 4 your question?

5 **MR. CONRAD FISHER:** I hear what you say,  
 6 Vicki, but if we're going to survey a piece of  
 7 property, we're going to have to survey it. I've  
 8 been on surveys where we've surveyed a number of  
 9 acres, whether they were in North Dakota, Montana,  
 10 South Dakota, in all kinds of weather. So to say  
 11 that, you know, it was exhausting and of course  
 12 they're going to be -- it depends on the type of  
 13 season that you find yourselves in, and I think  
 14 it's important if you're going to survey a certain  
 15 amount of property, and this is such a huge, huge  
 16 undertaking, and there's a high -- there's high  
 17 stakes involved here, and to say, "Well, we didn't  
 18 do it because we were exhausted," to me, isn't a  
 19 valid excuse.

20 I mean, I understand that. I understand  
 21 what you're saying, but there should maybe have  
 22 been some more time to be able to finish those  
 23 surveys, and maybe you are in the future.

24 And I understand what Richard is saying  
 25 about if an alternative is selected, then they'll

1 **MS. RUTSON:** Excuse me, Conrad. I don't  
 2 understand. Our goal was to do as much as we  
 3 could, and when I mean "as much as we could," it  
 4 means without violating the rights of the  
 5 landowners.

6 **MR. CONRAD FISHER:** I understand.

7 **MS. RUTSON:** And without overtaxing the  
 8 team. We weren't going to push the team so hard  
 9 that anyone suffered physical harm. We just could  
 10 not do that. So we didn't start off and say, "We  
 11 will do 100 percent of all five routes." We never  
 12 started with that goal.

13 **MR. CONRAD FISHER:** No, that's not what  
 14 I'm saying.

15 **MS. RUTSON:** Our goal was to do as much  
 16 as we could, and we didn't have acreage amounts in  
 17 mind, like, "We must get all this acreage done."  
 18 No.

19 It's, "We have -- we have access to these  
 20 lands. We'll do as much of this -- these lands as  
 21 we can." And that's what we did.

22 And you ask, did we fail to survey some  
 23 of the areas that we had landowner permission to  
 24 access, and the answer is yes, we did, because the  
 25 teams became exhausted and to access some of these

1 finish that.

2 **MS. RUTSON:** That's not what you're  
 3 saying though. I mean, you're not saying --

4 **MR. CONRAD FISHER:** I'm not saying that.

5 **MS. RUTSON:** I understand.

6 **MR. CONRAD FISHER:** But we're just short  
 7 circuiting the system, because there might be an  
 8 alt -- a better alternative. If there's a route  
 9 that's being picked -- if we don't do the amount  
 10 of acres that we said we were going to do, we  
 11 don't know what's in the -- we want to know as  
 12 much information of that acreage given the  
 13 opportunity, because we may never have another  
 14 chance to do that. That's all I'm saying. And  
 15 that there might be -- we might run into a site  
 16 that's of significance that becomes an NHL status,  
 17 but we don't know unless we find that.

18 I'm just saying that if there's a couple  
 19 more acres we needed to do, we probably should  
 20 have done them. And that's all I'm saying,  
 21 Richard, and I hope you understand what I'm --  
 22 what I'm saying. That's all I'm saying.

23 **MS. REYNOLDS:** And I'm just saying, yeah,  
 24 being out in the field, absolutely, all the land  
 25 that we had access to we did not survey. We

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1 surveyed a very high percentage. But as you know,  
 2 sometimes the realities of being out in the field  
 3 are not just exhaustion, because yeah, those days  
 4 can be long, but it has to do with weather  
 5 conditions and muddy roads and kind of change --  
 6 you know, the person working back in our hotel  
 7 room, I know this isn't entirely pertinent, but  
 8 the person working back in the hotel is trying to  
 9 coordinate where we access and when we go. It  
 10 required us to jump around quite a bit, aside from  
 11 landlocked parcels.

12 So absolutely, yeah, there are areas that  
 13 we didn't get to for sure. But we did survey a  
 14 very high percentage of every alternative that was  
 15 available to us. And I think -- I don't want to  
 16 speak for folks here, but one of the major results  
 17 is that it's all sensitive. There are sites --  
 18 I'm not being flippant about that. There are  
 19 sites throughout each alternative, and we -- there  
 20 were areas that we weren't able to get to, but we  
 21 can be confident that if we're comparing  
 22 alternatives, that those were sensitive areas.

23 So I'll let those guys talk too about  
 24 what that means. But absolutely, there were  
 25 constraints.

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1 The other thing is that, you know, you  
 2 said sampling, and absolutely, this is sampling,  
 3 you know, so both from the accessible parcels and  
 4 within that, so...

5 **MR. CONRAD FISHER:** Yeah, thank you,  
 6 Rich. I didn't want to put you on the spot, and I  
 7 apologize if I get a little abrasive sometimes,  
 8 but these are questions that I need to ask and I  
 9 need clarification on, so I appreciate your  
 10 comments.

11 **MS. RUTSON:** Can we put that idea of  
 12 Conrad's, that request up on one of the flip  
 13 charts? So Conrad has requested that areas that  
 14 we had access from the landowners be surveyed to  
 15 the fullest extent possible; am I --

16 **MR. CONRAD FISHER:** Yes.

17 **MS. RUTSON:** -- capturing that correctly?  
 18 An excellent point, and no need to be apologetic  
 19 at all. You're not abrasive. Everyone -- not a  
 20 bit. We think it's an excellent point.

21 **MR. YOUPEE:** Yeah, can we move the  
 22 conversation this way sometimes?

23 **MS. RUTSON:** Nobody can hear you if you  
 24 don't speak in the mic.

25 **MR. YOUPEE:** I'm hearing what Conrad was

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1 saying, and in my mind, I'm not sure if his  
 2 questions have been answered. You know, in terms  
 3 of who's got the measuring stick regarding your --

4 **UNIDENTIFIED TELEPHONE PARTICIPANT:**  
 5 sorry; can whoever's speaking get closer to the  
 6 phone, because I can't hear anything.

7 **MS. RUTSON:** Three or four inches from  
 8 your mouth.

9 **MR. YOUPEE:** Okay. How about that? Who  
 10 was talking to me just now?

11 **MS. RUTSON:** Somebody who can't hear you.

12 **MR. YOUPEE:** Made me lose my train of  
 13 thought here. Let me try to recoup.

14 Yeah, I'm not sure if Conrad -- what I'm  
 15 hearing Conrad say, because I think what he's  
 16 talking about is the -- is what we heard from the  
 17 opinion of the Court itself is that the Board  
 18 failed to take a requisite hard look at the  
 19 certain material environmental impacts. This is  
 20 the court record opinion.

21 Now, if we're looking at the easiest way  
 22 to get these things done, the easiest path to  
 23 these cultural resources. It's probably the most  
 24 difficult areas is where we have the most  
 25 significant sites, and so I'm not sure -- I guess

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1 what I'm hearing from Conrad, I'm not sure if that  
 2 was his question or is what I gathered from that  
 3 question itself, and who has -- who has the -- is  
 4 the tribes involved in the discussions regarding  
 5 looking at what areas?

6 And the other thing is, who has the  
 7 measuring stick, whether or not STB or the  
 8 proponents is having the, you know, the greatest  
 9 effort involved?

10 **MR. STARZAK:** Thank you, Curley. I'll  
 11 try to answer your question. I had difficulty  
 12 answering Conrad's question, and maybe someone can  
 13 help. In terms of a measuring stick, we had iPads  
 14 in the fields that had carefully plotted out where  
 15 we had property access to, what the width of the  
 16 right-of-way was, and then there was mention  
 17 earlier that a day or two before we would access a  
 18 property we would have to contact that ranch owner  
 19 and make sure that they would be ready for us to  
 20 come in. So that was all part of the logistics  
 21 that might not have made it in a perfectly  
 22 systematic way, so that if Thursday you planned to  
 23 go to this ranch and that rancher says, "We can't  
 24 let you in today; we're doing A, B, C on the ranch  
 25 and it would be disruptive," then we had to get

1 permission from another rancher who might be hours  
2 away.

3 So maybe I'm oversimplifying. Maybe  
4 Alisa can help, because she kind of ran the  
5 program. But sometimes you plan, but then you  
6 can't execute the plan exactly.

7 So the measuring was very accurate in  
8 terms of what we knew the field survey area was  
9 going to be and what was accomplished.

10 Alisa, do you have anything to add to  
11 that? Am I addressing your question, Curley?

12 **MR. YOUPEE:** Yeah, I think you're -- I  
13 think we're on the same page here with this  
14 information.

15 **MS. NADALS:** I'm wondering if I can add  
16 something. I mean, I totally understand where  
17 you're coming from, Conrad and Curley. It would  
18 be wonderful to be able to do a hundred percent  
19 survey of all the alternatives, but it's just  
20 simply not feasible. And we're working under the  
21 authority of Section 106, which does not require a  
22 hundred percent identification but requires that  
23 we make a good faith effort to identify historic  
24 properties, and that's particularly the case when  
25 you have a large number of alternatives, which we

1 alternative. You know, we'll -- and we want your  
2 input into terms of what kind of studies you want  
3 to do. That's part of the reason we're here, is  
4 because we want from the ground up to have your  
5 ideas about what we need to do for the  
6 alternatives licensed where there could be adverse  
7 effects. It's obvious that there aren't going to  
8 be adverse effects from this project, proposed  
9 project, to all alternatives, but just one, or the  
10 ones that the Board licenses.

11 **MS. RUTSON:** Or maybe none.

12 **MS. NADALS:** Or not at all. Yeah, it  
13 could be that the Board decides that, you know,  
14 they don't want to, you know, approve this  
15 project. So it's just there's a lot of what-ifs.  
16 So anyway...

17 **MR. YOUPEE:** I thank you for that  
18 response. You mentioned that you're looking at  
19 tribal ideas in order to plan the attack as far  
20 as -- as far as doing cultural surveys for tribes  
21 or bringing tribes in to do the cultural surveys.

22 Now, if you're looking for these ideas,  
23 then perhaps tribes could be part of the strategic  
24 planning as to the logistics in what they feel is  
25 more necessary or more important or more

1 do here.

2 And the regulations allow for the final  
3 identification/evaluation be deferred in an  
4 instance where you have a large number of  
5 alternatives that are under consideration, as we  
6 do here. And I think that given the circumstances  
7 and given the huge number of alternatives that we  
8 have and just the vast area and the terrain and  
9 everything else, that we've done a lot of initial  
10 identification given the large number of  
11 alternatives that we're looking at.

12 So we -- we're doing -- what we're doing  
13 is a phased identification and evaluation, so that  
14 we've collected information about the  
15 alternatives. And it's not going to be  
16 everything, Conrad. Unfortunately, just it's not  
17 feasible given the large area. And you're right,  
18 there may be sites out there that maybe -- that we  
19 haven't identified that could be significant, but  
20 the 106 regulations require that we make a good  
21 faith effort to identify historic properties, and  
22 I think that that's what we've done, and that if  
23 the Board licenses an alternative, and we don't  
24 know yet if the Board will do that, then we will  
25 do much more detailed analysis of that particular

1 significant in terms of H -- the Historical  
2 Preservation Act.

3 Now, if we're allowed to be part of the  
4 discussions, to choose what areas, I think -- I  
5 think it would -- it would be a lot better in  
6 accepting what we can't do, okay. We would like a  
7 hundred percent survey. I think everyone would.  
8 But because we have time frames involved, because  
9 we have landowners that won't grant access, we  
10 understand those things. But beyond that, if we  
11 have areas to choose from, please let us do the  
12 choosing regarding surveys of those areas. Thank  
13 you.

14 **MS. RUTSON:** Mr. Longie, I'm sorry; you  
15 had a comment.

16 **MR. LONGIE:** I'm not familiar with --

17 **MS. NADALS:** Speak clearly for the court  
18 reporter.

19 **MR. LONGIE:** I'm sorry. I'm not familiar  
20 with the surveys and all that yet, but just  
21 looking at it from a simple problem solving, if  
22 we're going to survey a certain area of land, I  
23 think the gentleman's concern is, is there a  
24 possibility where we could say we're going to  
25 survey at least 80 percent of the acreage? And if

1 you could say that, I think that would address the  
2 concern right there, or is that possible?

3 **MR. STARZAK:** Excuse me; I don't think  
4 Alisa heard your question. Alisa, I'm sorry to  
5 break up your sidebar with Conrad, but there was a  
6 question asked about if we had been able to attain  
7 80 percent of the area surveyed.

8 **MR. LONGIE:** No, if you make the  
9 assumption or goal, which you said there was no  
10 goal, so what I -- it's simple, to problem solve  
11 the whole thing, is there a way that before you  
12 even start surveying, could you do an estimate  
13 that you can say, "We are going to do at least 40,  
14 50, 60, 70 percent of the acreage," and if you  
15 meet that percentage, fine; if you go over, it's  
16 even better; but if you don't, then we have a  
17 legitimate reason to question you?

18 **MR. STARZAK:** I think the actual  
19 percentages are quite high of where we had access  
20 to. I'll let Alisa address that, because she  
21 knows the numbers and I don't.

22 But I agree with you; we just don't know  
23 until we get out there logistically, but what we  
24 accomplished was quite high.

25 **MR. LONGIE:** Yeah, I'm not, you know,

1 she had somebody in a hotel room, you know, you  
2 know, gauging whether or not they had access to  
3 certain property areas.

4 So it's a very fluid situation in the  
5 field, and it's not always something that you can  
6 just say, "Okay, we're going to do this much," and  
7 you know, there's just -- as an archeologist  
8 myself, I sympathize with what you probably had to  
9 go through out there. And one of the reasons we  
10 wanted to make sure we had tribal participants is  
11 to make sure that we had that perspective when we  
12 were out in the field and that the tribal  
13 perspective also could understand, you know, the  
14 constraints and the challenges that we have out in  
15 the field. So, Alisa, go ahead.

16 **MS. REYNOLDS:** Yeah. No, I mean, yeah, I  
17 see your point, absolutely, because obviously  
18 ahead of time we did look at maps and we did sit  
19 down with Google Earth and kind of come up with,  
20 "Okay, here's how much, you know, we can do in a  
21 day; here's where we're going to go; here's how  
22 it's going to work."

23 And then I know you're hearing this too,  
24 in reality, things change in the field, and  
25 exactly what Cathy said. I know you understand

1 saying that you didn't accomplish -- what you  
2 didn't accomplish was quite high. I'm simply  
3 saying to prevent this type of discussion in the  
4 future, you know, to try to, you know, so we don't  
5 have to discuss it hours and hours, just simply  
6 say -- because you guys know what you guys are  
7 doing, I assume, out there, so based on the  
8 terrain or whatever it is, say, "We think we could  
9 do 50 percent," and then if you don't do it, we  
10 could question it; if you do it, fine; if you do  
11 more than it, then it's even better. That's all  
12 I'm saying. It's simple problem solving.

13 **MS. NADALS:** Just to be supportive of our  
14 ICF staff, sometimes it's really difficult to kind  
15 of make those sorts of plans in advance because  
16 you don't know until you're out in the field, you  
17 know, what the constraints are going to be. You  
18 don't know until you're out in the field if  
19 property owners are going to allow you access to  
20 the land. So some of the things are just  
21 constraints that come upon you when you're  
22 actually out in the field, and you may have  
23 planned to do a certain percentage of survey and  
24 then you find that you can't do that because, you  
25 know, a property owner says, as Alisa was saying,

1 that though.

2 **MR. YOUPEE:** So let me get this fair  
3 then. We have -- we have 32 percent of the  
4 40 percent that we were allowed to survey, is that  
5 clear, or do we have 32 percent of the 100 percent  
6 of the APE?

7 **MS. REYNOLDS:** Oh, yes, I'm sorry,  
8 32 percent of the 100 percent.

9 **MR. YOUPEE:** Now, is that going to be a  
10 hard look -- under the ruling, would that  
11 constitute a hard look under the ruling of the  
12 Court?

13 **MS. REYNOLDS:** Am I getting my numbers  
14 wrong?

15 **MR. STARZAK:** My understanding is we had  
16 less than 50 percent access, but we did 32 percent  
17 of a 100 percent. So if you were to look at  
18 32 percent of, let's say, 45 percent, it would be  
19 quite high.

20 **MR. YOUPEE:** A hundred percent of what?  
21 Let's put it in context. A hundred percent of  
22 what we were allowed?

23 **MR. STARZAK:** Of our field survey area,  
24 which was whatever the proposed right-of-way was,  
25 plus 200 feet on either side, that's what we

1 proposed to do the fieldwork on. So we had the  
2 right-of-way plus a buffer. And so all of that  
3 area was done by the field crews. So if you think  
4 we only had 45 percent but we accomplished --  
5 access, but we accomplished 32 percent, that's 32  
6 of 45 is a very high percentage.

7 Am I losing you? We didn't have a  
8 hundred percent access, so you can't do it from a  
9 hundred percent. You have to do from where we had  
10 access.

11 **MR. YOUPEE:** Okay, so we're not talking  
12 about the hundred percent APE? We're just talking  
13 about a hundred percent of the accessed lands?

14 **MS. RUTSON:** That's correct. That's  
15 correct. But what the comment we're hearing is,  
16 we need to go out there again and try to get as  
17 much of the land where we do have access surveyed.  
18 Keeping in mind, that when we tried to do that  
19 before, there was fire risks, so the landowners  
20 who had granted us access, very wisely said that  
21 we couldn't come out when there was fire risk.  
22 But what you're saying is we need to try again; am  
23 I getting that comment right?

24 **MR. MILLER:** Yeah, I think so.

25 **MS. RUTSON:** Okay. We hear what you're

1 involved, of all the routes, but that of that  
2 45 percent we need to go back and try again to do  
3 more access, more survey work on that 45 percent.  
4 So that's the comment that we've recorded and I  
5 understand it and we will think about it and let  
6 you know.

7 **MR. CLOUTHIER:** Terry Clouthier with the  
8 Standing Rock Sioux Tribe. All these numbers  
9 being thrown around are starting to confuse me.  
10 Let's get down to the nitty-gritty here. And I  
11 think Curley really wants to hear this as well.

12 Are we talking -- you guys had 45 percent  
13 of your access. Now, you did 32 percent of that  
14 45 percent, or 32 percent of a 100 percent of the  
15 45?

16 See, you're getting really confusing on  
17 your numbers here.

18 **MR. STARZAK:** I'm not going to do the  
19 math in my head, but it would be more like  
20 80 percent of the 45 percent. In other words, if  
21 the 45 percent is of 100, we did 32 percent of the  
22 100.

23 So it's -- of the 45 where we had access,  
24 it's closer to like 80 percent. Does that help?  
25 I'm confusing myself now.

1 saying, we understand your position, and we'll go  
2 back and chew it over. What's next?

3 **MR. CONRAD FISHER:** Can you raise your  
4 right hand and say that again?

5 **MS. RUTSON:** Always. Always. You know  
6 me, Conrad. I'm a person of my word. My words  
7 may be a little confused at times, but they're  
8 always meant sincerely.

9 **MR. MILLER:** Lyle Miller with the Yankton  
10 Sioux Tribe. One-third of your initial survey is  
11 done. You're going to leave that, and then you're  
12 going to do the other two-thirds that you have  
13 access to?

14 **MS. RUTSON:** No, I'm not promising. I'm  
15 sorry to interrupt, Mr. Miller. What I'm saying  
16 is, we'll think about it and we'll think about it  
17 carefully. I'm not going to sit here and promise.  
18 I'm going to take it back to Washington, and the  
19 team will chew it over.

20 **MR. MILLER:** That's what the tribes are  
21 asking.

22 **MS. RUTSON:** Yes, that's exactly --  
23 that's what I have recorded as your comment. But  
24 everyone seems to understand that we only have  
25 access to 45 percent of all the right-of-ways

1 **MR. CLOUTHIER:** That's what I'm sitting  
2 here trying to figure out.

3 **MS. NADALS:** What's the ratios? 32 over  
4 45? What's the ratio?

5 **MR. STARZAK:** Yes, the ratio is 32 over  
6 45.

7 **MS. NADALS:** That's all we need to know.

8 **MR. CLOUTHIER:** Okay. Secondary to this,  
9 we're talking phased identification efforts. This  
10 is going to be your additional effort that you're  
11 going to use for your Record of Decision, correct?  
12 And I'm asking this of the federal agency.

13 **MS. RUTSON:** For identification.

14 **MR. CLOUTHIER:** Yeah. You're approaching  
15 this as a phased identification effort, as we just  
16 heard. That means that, is this going to be used  
17 to determine for your Record of Decision for your  
18 EIS, which I assume is coming up this year for the  
19 draft?

20 **MS. RUTSON:** And, Cathy, you're better to  
21 talk about this than I am, so please get ready.

22 **MS. NADALS:** Okay. Could you repeat the  
23 question? I was just looking up the percentages.  
24 We actually surveyed 71 percent of the area that  
25 we had -- I'm sorry. We actually -- we actually

1 surveyed 71 percent of the area we had access to,  
 2 looking at the percentage, so that's a pretty high  
 3 number. You know, that's definitely a good faith  
 4 effort.

5 But, Terry, go ahead. What was your  
 6 question?

7 **MR. CLOUTHIER:** It's a good faith effort  
 8 for the area, and I'm questioning whether it meets  
 9 what would be required for identification for the  
 10 entire project for the APE? That is the question  
 11 that I've got, which relates to my question, for  
 12 the phased identification efforts which you just  
 13 explained, this is your initial effort for that,  
 14 you're going to be issuing your ROD based off of  
 15 this?

16 **MS. NADALS:** The Record of Decision?

17 **MR. CLOUTHIER:** Yes.

18 **MS. NADALS:** The Record of Decision would  
 19 include something that we would like to develop  
 20 with everyone, which is an agreement document that  
 21 would lay out the process and the steps that we  
 22 need to take to complete identification along any  
 23 licensed alternative, and also, to do evaluation,  
 24 and also, to provide mitigation for any adverse  
 25 effects that could result as a consequence of

1 And so once an alternative is licensed,  
 2 or if one is licensed, we will have an agreement  
 3 document that we hope we can have your input on --  
 4 and we really want that and we need it -- to lay  
 5 out the process for the identification, additional  
 6 identification efforts that have to occur and  
 7 evaluation efforts for tribal sites, historic  
 8 sites, archeological sites, landscapes, the whole  
 9 slew of different historic properties that could  
 10 be affected by a project.

11 And we really hope with this meeting that  
 12 we can get your input on that. We don't want to  
 13 just develop a Draft Programmatic Agreement and  
 14 then just send it around for you to look at. We  
 15 want to have you help us develop the initial  
 16 components of that agreement document that's so  
 17 important to us. And so that's kind of really  
 18 what we're hoping. We really want -- we want your  
 19 help. We need your help. Everybody here at this  
 20 table and sitting around, we need your expertise  
 21 to help us develop a process to do this -- the  
 22 additional identification, evaluation, and any  
 23 other studies that you think might be necessary as  
 24 mitigation.

25 So there's just a lot of things that

1 building a railroad.

2 So there's still a lot that has to be  
 3 done in terms of getting input from all of you to  
 4 ensure that we have your concerns included in that  
 5 additional identification that would occur along  
 6 any licensed alternative.

7 So this is just a preliminary step to  
 8 look at the alternatives and compare them as part  
 9 of really the NEPA process. Although it is 106,  
 10 you know, we're really -- what we're doing, we're  
 11 trying -- we collected information with the help  
 12 of tribes to look at, you know, what's out there  
 13 and to compare the different alternatives to help  
 14 us make a decision about which is the appropriate  
 15 alternative from an environmental -- to recommend  
 16 to the Board, you know.

17 And so of course we know that there's so  
 18 much more that needs to be done, because we only  
 19 have access to limited parcels, there's a lot of  
 20 constraints, and so in order to ensure appropriate  
 21 identification is done for any licensed  
 22 alternative, what we need to do is phased  
 23 identification, which means that we can do some  
 24 identification now, but obviously, not nearly the  
 25 identification that we need to do.

1 still need to be done, and we have to -- we have  
 2 to make sure that we accurately lay that out, and  
 3 then that would be attached to the Record of  
 4 Decision. And that's a requirement, you know,  
 5 under 106.

6 **MR. CLOUTHIER:** Yeah, the reason -- I  
 7 understand under NEPA. I'm not a big fan of  
 8 coordinating NEPA and Section 106. I think  
 9 ultimately it usually fails, to be honest with  
 10 you, and we'll see how it goes with this one.

11 I understand the need to characterize the  
 12 cultural environment, and that's kind of where  
 13 you're going with this, from what you're talking  
 14 about. My concern, though, and I'll use this  
 15 project in particular, the Colstrip Alternative is  
 16 the preferred alternative by the applicant, from  
 17 my understanding. How much of that actual  
 18 alternative was actually surveyed? By the looks  
 19 of that map, there's only one small section. The  
 20 rest of it's been previous. And then I guess the  
 21 combined sections where it's the Terminus point is  
 22 not enough for you to issue a Record of Decision  
 23 on based on one half of one percent, let's say, of  
 24 your 32 percent.

25 **MS. NADALS:** It's not ideal, obviously, I

1 mean, if in fact that's the alternative that the  
 2 Board licenses, and we don't know that. Just  
 3 because it's the applicant's preferred doesn't  
 4 mean it's our preferred. So it's not ideal, but  
 5 it really comes down to private -- private owner,  
 6 you know, refusals to allow us access to the  
 7 property. And we've tried really hard to get  
 8 access, and we've been told no. So you know,  
 9 we've done what we can given the fact that we're  
 10 not allowed to do additional surveys along the  
 11 Colstrip Alternative. And again, this is not --  
 12 it may be the applicant's preferred, but it's  
 13 certainly not our preferred. We're comparing all  
 14 the alternatives, and we're looking at all the  
 15 different alternatives based on a number of  
 16 different environmental issues.

17 Vicki, did you want to say something?

18 **MS. RUTSON:** No. Just acknowledging that  
 19 we've got some other folks.

20 **MR. CLOUTHIER:** I'll postpone for now.

21 **MS. NADALS:** Yeah, but thanks for that.

22 **MS. JIUSTO:** Chere Justo, Montana  
 23 Preservation Alliance. And first, I want to  
 24 acknowledge that I think that this fieldwork that  
 25 has been done to date has been fairly

1 boards here, please, team? Asking for more field  
 2 surveys during more field seasons.

3 **MS. JIUSTO:** Thank you. So then I have a  
 4 couple of questions, and you know, with regard to  
 5 this time frame. The last -- on the website I was  
 6 just kind of reviewing before I came to the  
 7 meeting, and there was a letter from Vicki Rutson  
 8 to Tongue River Railroad asking about the  
 9 intentions to move forward with environmental  
 10 review and some of the environmental work being  
 11 deferred into 2014, and I just wondered, there  
 12 wasn't any response to that letter. That was in  
 13 September. What is the response?

14 And I would ask specifically, you  
 15 mentioned a few minutes ago that you would take  
 16 back some ideas and it would be considered, you  
 17 know, but I don't know what the process is for  
 18 doing that consideration. Can you tell us how  
 19 that gets decided, who decides it, what is the  
 20 consultation around that that will evolve into a  
 21 decision about how to proceed from this  
 22 conversation today?

23 **MS. RUTSON:** Thank you, Chere. We have a  
 24 big team in -- well, we have three people working  
 25 on this in my office. That's a big team for a

1 comprehensive in terms of having tribal people out  
 2 in the field and really working hard to get on the  
 3 ground and see, you know, a lot of these routes,  
 4 but I do have some questions.

5 In looking at the map, you know, I kind  
 6 of -- following with a couple of comments that  
 7 were just made, you know, there are really  
 8 extensive sections of these proposed alternatives  
 9 that haven't been looked at at all, and I don't  
 10 know if that's only because of landowner objection  
 11 or because they were added late into the mix and  
 12 so there just hasn't been time. But my comment on  
 13 that would be, you know, we are all aware that  
 14 this is a very large land area with a number of  
 15 alternative routes. And then in light of that,  
 16 knowing that and recognizing that, it seems  
 17 prudent to allow more time to go out and do more  
 18 survey. This is a very large area, and yet really  
 19 only one field season was devoted to field survey.

20 So you know, from a practical standpoint,  
 21 I think that getting back out and doing more work  
 22 with more of these really cross-cultural survey  
 23 teams would be a pretty sound approach. So that's  
 24 one question.

25 **MS. RUTSON:** Could we get that up on the

1 group of ten. And we have our consultants. And  
 2 because this is a case on remand, we have the  
 3 infinite pleasure of working with our General  
 4 Counsel's Office. That's just, you know, that's  
 5 just life.

6 So typically, it's the environmental  
 7 group, the consultants and us get together and  
 8 say, "First of all, let's make sure we understand  
 9 what we heard."

10 Sometimes we wait to get the transcript.  
 11 You know, my little jotting notes aren't always  
 12 what we want. But these boards will be helpful,  
 13 and that's why I want to make dang sure we've got  
 14 people up there making excellent notes. Alisa,  
 15 thank you.

16 So the group goes back and figures out,  
 17 "What have we heard? What are we being asked to  
 18 decide?" And then we'll all chew about it.  
 19 We'll -- sometimes we argue about it. Sometimes  
 20 it takes us a while before we come to some kind of  
 21 consensus. And there's always, you know, "Is this  
 22 a good idea? Is this a bad idea? What can we do?  
 23 What should we do? What is our public obligation  
 24 to do?" So we'll make a decision, and then we  
 25 start to implement it.

1 Does that answer your question? I mean,  
 2 I think we make decisions probably the way a lot  
 3 of you all make decisions. There's something  
 4 that --  
 5 **MS. JIUSTO:** Yes, that's true, but this  
 6 is a formalized 106 process. So knowing how and  
 7 when, you know, the decision will be made about  
 8 how the summer looks and the next field season  
 9 would probably be informative.  
 10 **MS. RUTSON:** Well, we're very cognizant  
 11 of the four steps in 106 and we're bound and  
 12 determined to make sure we comply with all four  
 13 steps.  
 14 And, you know, we've been unfair in  
 15 saying the landowners on Colstrip told us no.  
 16 They didn't tell us no. Mr. McRae said, "Yes, you  
 17 may come onto my property, but only if you do  
 18 multiple seasons of fieldwork, because for all  
 19 these reasons, one field season is inadequate."  
 20 Am I not saying it right? I don't mean  
 21 to. I turn it over to Mr. McRae.  
 22 **MR. COBURN:** Can I just clarify one point  
 23 in responding? This is David Coburn. I'd just  
 24 like to clarify one point so the record is clear.  
 25 You indicated that Vicki Rutson wrote us a letter,

1 proposed budget for this year, was there any  
 2 potential for additional survey work?  
 3 **MR. COBURN:** Probably that question is  
 4 best asked to ICF. In terms of additional  
 5 cultural resource survey work, I don't think so.  
 6 I think we funded -- it was obviously very costly,  
 7 the work that was done last season. I don't think  
 8 there is a proposal that's been given to us to do  
 9 more cultural resource work.  
 10 **MR. SUMMERVILLE:** I can add to that.  
 11 Alan Somerville of ICF. There's no line item in  
 12 the budget for that, because at the time we  
 13 prepared the budget it was -- you know, any  
 14 decision on further fieldwork was off in time.  
 15 There's -- there's a contingency in the  
 16 budget to address activities that come up on any  
 17 EIS that are a little bit hard to predict. And so  
 18 that -- I would leave it at that.  
 19 **MS. RUTSON:** And I'll add and then turn  
 20 it over to Mr. McRae, who's being very patient.  
 21 If we decide to do fieldwork, we'll get the money  
 22 to do the fieldwork; it's that simple. I mean,  
 23 there may be problems and complaints and  
 24 wrestling, I mean, there usually is, but if we  
 25 decide that we need to do more fieldwork, we will

1 and that's correct, concerning the budget, and we  
 2 did respond by approving in full, in full, the  
 3 budget that was proposed to us by ICF for its work  
 4 on the EIS. And right now they have all of the  
 5 authority, the budget authority, that they're  
 6 looking for from the railroad to do the work  
 7 throughout this year. And when it comes to next  
 8 year, we'll provide the authority for next year.  
 9 It's done one year at a time. So just so the  
 10 record is clear on that one point.  
 11 And maybe just for the benefit of several  
 12 of you who are new to the process and may not be  
 13 as familiar as some of us old hands are on the  
 14 alternative routing, but I know it shows only a  
 15 small percentage of the upper part of the Colstrip  
 16 Alignment as having been surveyed, but the  
 17 Colstrip Alignment goes from, essentially,  
 18 Colstrip all the way down to Terminus 1 and  
 19 Terminus 2, so the portion of the -- the common  
 20 portion of the various alternatives was, you know,  
 21 segments of that were also surveyed. And  
 22 that's -- that too is part of the Preferred  
 23 Alignment, just to clarify that point. Thank you.  
 24 **MR. CLOUTHIER:** A follow-up question for  
 25 you, David. Was there any -- from ICF in the

1 do it.  
 2 Mr. McRae, you've been very patient.  
 3 **MR. MCRAE:** Thank you for the opportunity  
 4 to speak. I've been sitting over here biting the  
 5 inside of my cheek for quite a while. Since I got  
 6 to the microphone, there's been a couple other  
 7 things I want to talk about.  
 8 First of all, I want to talk a little bit  
 9 about process. My family and I ranch along  
 10 Rosebud Creek. It's along the Colstrip  
 11 Alternative, which is in the center of the map. I  
 12 think it's also in Figure 1 of your handout. That  
 13 route, when it leaves Tongue River, it runs  
 14 approximately through nine miles of our  
 15 operations, so I'm very familiar with it.  
 16 One of the things that we have done is,  
 17 we have thrown together a group of landowners. We  
 18 pooled our money and hired an attorney.  
 19 And as you well know, there's more  
 20 than -- more than one study that goes into an  
 21 Environmental Impact Statement. We were  
 22 approached -- "we" being the landowners -- by the  
 23 wildlife group, I believe it was last spring, that  
 24 wanted access to our private land to do wildlife  
 25 studies. And this individual was a wildlife

1 biologist, and we were told that they wanted to  
 2 get on as soon as possible to do these studies.  
 3 And we asked them, "When do you think  
 4 these studies will be concluded?"  
 5 And they said, "We want to have an  
 6 extensive study, but we were told that it has to  
 7 be short and sweet and would be done by July or  
 8 August."  
 9 And this was probably in April of last  
 10 year. 50 percent of the Colstrip Alternative  
 11 burned in the Ash Creek fire in 2012. And we  
 12 asked them, "How do you suggest to do a good,  
 13 meaningful survey when it looked like a bomb went  
 14 off over there?" There was no habitat. There was  
 15 no grass. There was no trees. There was no skunk  
 16 brush. It was black ash.  
 17 So we wrote a letter to the Surface  
 18 Transportation Board and said, "We will allow  
 19 access for the wildlife studies on our private  
 20 land along the Colstrip Alternative with the  
 21 caveat that everybody involved, including the  
 22 Surface Transportation Board, ICF, OEA, and  
 23 whoever else was involved, agreed to do a two-year  
 24 study." We were declined.  
 25 They said, "No, we're not going to do

1 standards. I want to be very clear about that.  
 2 We encourage the site visits prior to ICF  
 3 or anybody coming out there. We're more than  
 4 willing to show them to you. These are not what I  
 5 would consider casual sites. I'm going to give  
 6 some examples of what is there.  
 7 The mouth of Greenleaf Creek, which is at  
 8 the confluence of Greenleaf and the Rosebud,  
 9 approximately a quarter to a half a mile away, in  
 10 1874 there was a bogus expedition that was sent by  
 11 Washington, DC down the Yellowstone River and  
 12 across the river into Indian Country hoping that  
 13 they would get attacked so they could -- the  
 14 government could justify bringing in the cavalry,  
 15 and they did. They fought the whole way up the  
 16 Rosebud. A half a mile from the mouth of  
 17 Greenleaf there are rifle pits in the ground, and  
 18 the Sioux were on the hills above them shooting at  
 19 them. There are people that died there. That is  
 20 a battle site. They're buried in sand rocks  
 21 around there. That's major, according to me. And  
 22 these are not my sites. I don't own these sites.  
 23 But the landowners that live there feel very  
 24 strongly that they be protected.  
 25 In the same area, that mouth of

1 that."  
 2 That is separate from the 106, which I'd  
 3 like to talk about next.  
 4 Last spring, and I believe it was in  
 5 April, I was on a tour of the Colstrip  
 6 Alternative. This included Rosebud Creek,  
 7 Greenleaf, Lake Creek, and portions of Tongue  
 8 River to Ashland.  
 9 I made the comment, and I stand by it  
 10 today, that any cultural study that happens on  
 11 private land -- and this is not my decision; it's  
 12 a decision of the landowner group that we have put  
 13 together -- that any Section 106 studies that  
 14 happen on that Colstrip Alternative, we will allow  
 15 access to it -- we said this last spring, and we  
 16 stand by it -- with the caveat that any of those  
 17 Section 106 studies have someone from one of the  
 18 THPO offices involved, whether it's Sioux,  
 19 Cheyenne, Arapaho, Crow, whatever.  
 20 I want to be clear about this. We will  
 21 not allow access for any of these studies if the  
 22 tribal representation it is not there, and the  
 23 reason being is, we don't want those sites  
 24 disturbed if we can help it, but we also want the  
 25 methodology done right and done by tribal

1 Greenleaf, the Native American contingency that  
 2 came up the Rosebud to ultimately the Battle of  
 3 the Bighorn, camped at that same spot on both  
 4 sides of the creek at the mouth of Greenleaf and  
 5 the Rosebud. They also camped there after the  
 6 battle when they were circling back. Went up  
 7 Greenleaf, dropped in Lake Creek, up Tongue River,  
 8 Otter Creek, and up into the Powder River Country.  
 9 That's important. And that runs right through the  
 10 middle of where the Colstrip Alternative is.  
 11 We have burial sites that nobody knows  
 12 about that we can show you. We have vision quest  
 13 sites that are close to the -- close proximity to  
 14 the railroad. Then we have pictographs and rock  
 15 art that we also want to protect.  
 16 I want to be very clear about this. We  
 17 welcome any Native American interests, Sioux  
 18 Cheyenne, Arapaho, Crow. Any other tribes that  
 19 I've failed to mention, I apologize. But we are  
 20 more than willing to show you these sites, but we  
 21 believe that they need to be protected.  
 22 As far as the surveys go, you mentioned  
 23 about how exhausting it was doing these surveys.  
 24 It seems to me that even if the Colstrip  
 25 Alternative was surveyed, that it's an awful lofty

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1 prediction to have the Draft Environmental Impact  
 2 Statement released by the summer of 2014. In a  
 3 perfect world, if you had access to all of these  
 4 routes, I don't think you could get it done. And  
 5 I question if it was done in that time period what  
 6 kind of a quality it would be. So I think you  
 7 need to take a long hard look at the loftiness of  
 8 the draft's release by late summer 2014.  
 9 The last thing I want to talk about is,  
 10 initially when I looked at these cultural sites,  
 11 and it just struck me sitting here today, we're  
 12 just looking what's on the surface of the ground.  
 13 That's just a walk-through. How deep does that  
 14 go? If we don't find a whole lot along those  
 15 routes in that 200-foot right-of-way or the  
 16 two-mile width on either side, if we start putting  
 17 a rail line in there and we wind up with a buffalo  
 18 kill site that was ruined on the Crow Reservation,  
 19 what happens then? I think I know the answer to  
 20 it, and I think that is what we need to avoid.  
 21 So my suggestion is, if we do these  
 22 studies, whether it's wildlife or 106 or whatever,  
 23 that they be done legitimately, they be done  
 24 right, and they be done with the best interest of  
 25 the people involved; that includes the Native

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1 American Nations that are represented here today.  
 2 Thank you.  
 3 (Applause)  
 4 **MR. STARZAK:** So maybe, Alisa, we can put  
 5 down some of Mr. McRae's comments. And please  
 6 help me if I mischaracterize anything. He said  
 7 that we could get access as long as there's tribal  
 8 representation and we're doing the appropriate  
 9 methodology. Is that -- did I characterize that  
 10 correctly? Right, there must be tribal  
 11 participation.  
 12 **MS. NADALS:** So that includes  
 13 consultants?  
 14 **MR. STARZAK:** And the methodology, yes.  
 15 **MS. NADALS:** You'd allow --  
 16 **MR. MCRAE:** I'm sorry; I didn't hear the  
 17 question.  
 18 **MR. STARZAK:** We were trying to  
 19 characterize some of your key points up here, and  
 20 so Alisa's writing "Access."  
 21 **MS. REYNOLDS:** Tribal representatives.  
 22 **MR. STARZAK:** As long as there's tribal  
 23 representatives, we can get access.  
 24 **MR. MCRAE:** Right. This is on the  
 25 Colstrip Alternative. Let me be specific. This

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1 is on the Colstrip Alternative.  
 2 **MR. STARZAK:** So mark that down,  
 3 Colstrip.  
 4 And then second, you were talking about  
 5 there may be resources at depth, which is  
 6 absolutely true. Our initial observations were  
 7 really just on the surface, and so that's also  
 8 part of the evaluation process. So we might want  
 9 to add, you know, "Methods for evaluating depth of  
 10 resources."  
 11 And then maybe for -- and I want to make  
 12 sure I'm capturing, because this is all really  
 13 good. We're trying to work to, you know, find how  
 14 to complete all of this work. And then under  
 15 Resolving Effects, Assessing Effects and Resolving  
 16 Effects, that's where if there is something at  
 17 depth that is discovered, that's when we go into  
 18 the "How do we -- what sort of effect would it be  
 19 and how do we resolve it?"  
 20 So where you gave the example on the Crow  
 21 Reservation a buffalo jump that might not be right  
 22 now visible or if there's depth and suddenly it's  
 23 discovered, that's where we would approach that.  
 24 So these are all really very, very good.  
 25 And I'm sorry if I said something earlier

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1 that, you know, made it seem like you weren't, you  
 2 know, working with us. You know, but this is what  
 3 we want to do, is to try and figure out, "How do  
 4 we get this Section 106 process completed?"  
 5 **MR. MCRAE:** Well, I think, Richard, and  
 6 you I have discussed this before, but one of the  
 7 concerns that I have, and I'm speaking as a  
 8 landowner, is on several occasions I've seen these  
 9 sites, a kill site as a prime example, be  
 10 photographed, documented, and destroyed. And that  
 11 is something that I don't want to see happen.  
 12 And if that means shutting the railroad  
 13 down on a portion of the Colstrip Alternative,  
 14 then so be it. But I don't think these sites  
 15 should be desecrated, I don't think they should be  
 16 run over the top of and the information  
 17 photographed and put into an manila folder and  
 18 stuck in a file cabinet someplace. We need to  
 19 keep these intact.  
 20 **MR. STARZAK:** So I agree. That's part of  
 21 resolution of effects, is that depending on the  
 22 location is there a way to avoid somehow? We look  
 23 at how to avoid, minimize, and only in the last  
 24 instance mitigate. And that's all part of what we  
 25 work through to get everybody in agreement of,

1 "How is that going to be done?"  
2 We work with the SHPO's office, we work  
3 with the tribes, we work with the landowners to  
4 make sure we've got a good process laid out,  
5 because you can't know everything until you look  
6 at depth.

7 **MR. MILLER:** This is Lyle Miller, Yankton  
8 Sioux Tribe. When they're talking about digging  
9 what's underneath the ground and come across  
10 something, then that's where you stop at. That's  
11 the answer you're looking for? You stop and you  
12 either go around or you quit the project. It's  
13 that simple.

14 **MR. STARZAK:** That's exactly the process  
15 that we would talk through, if it's if you find  
16 something you stop. First step is avoid.

17 **MR. MCRAE:** Keep in mind, with the  
18 Colstrip Alternative you've got narrow valleys  
19 you're going up, and it's going to be awfully  
20 difficult to move off to one side. It's not like,  
21 you know, going down Tongue River where you've got  
22 a valley. You've got several ridges and divides  
23 to go across, so you're going to be limited on  
24 where you could move a rail line.

25 **MS. NADALS:** And I apologize if I

1 of a two- or possibly a three-year study, and that  
2 was flat out denied. And we did not allow access  
3 on that land for the wildlife studies because  
4 there was nothing there; it was black; it was  
5 burned. That is separate from the 106.

6 **MR. SUMMERVILLE:** I think the letter  
7 covered all access. It didn't differentiate. It  
8 didn't say -- it didn't set aside 106 and say that  
9 we could access for 106.

10 **MR. MCRAE:** Well, I don't have the letter  
11 in front of me right now; I can't talk about that.

12 **MS. NADALS:** Is there any way that we  
13 could get a letter from you clarifying that we  
14 would have access?

15 **MR. MCRAE:** Yeah, I'll work on that.

16 **MS. NADALS:** That would be great. That's  
17 wonderful.

18 **MR. MCRAE:** But specifically on the 106.

19 **MS. NADALS:** Right, the 106, as long as  
20 we have tribes accompanying the archeologists;  
21 that's wonderful. That's wonderful.

22 **MS. RUTSON:** What else?

23 **MS. NADALS:** Yeah, who's next?

24 **MS. YOUNG:** Waste'Win Young from Standing  
25 Rock. I think that one thing sticking out when

1 mischaracterized, you know, the landowner access  
2 issue earlier. I'm not -- I apologize if I did  
3 that. But I guess what I'm trying to get clear on  
4 is, would you allow our consultants, our third-  
5 party consultants, access onto your property to do  
6 surveys if they were joined by tribes, as we've  
7 done with the other alternatives?

8 **MR. MCRAE:** For the Section 106, yes.

9 **MS. NADALS:** Okay.

10 **MR. MCRAE:** The other studies on the  
11 Environmental Impact Statement are a little bit  
12 different, but the landowners involved in the  
13 Colstrip Alternative Group are not comfortable  
14 letting any access into the Section 106 sites  
15 without the tribal representation being with them.

16 **MR. SUMMERVILLE:** Alan Somerville. Just  
17 to clarify, the letter that your attorney sent to  
18 the Board did say all studies. It said 106, any  
19 kind of field access was denied, unless there  
20 would be, I think, three to five years of surveys.

21 I don't have the letter handy, but it  
22 was, just to be clear, it was across everything  
23 including 106.

24 **MR. MCRAE:** The letter that we wrote  
25 about the wildlife studies was a two-year minimum

1 looking at the map up there is the purple areas  
2 that says "Archeological Survey Area," and this  
3 morning when Vicki was giving the welcome and  
4 introductions about the Ninth Circuit Court of  
5 Appeals, the District Court, how it -- they  
6 remanded in 2011 Tongue River I and II back  
7 because of environmental concerns, then you had in  
8 2012 basically told the applicant that or, you  
9 know, the STB, that to start a new process to  
10 allay the environmental concerns. So for me, it's  
11 really troublesome if you're going to try to  
12 integrate NEPA and 106 when you need -- I mean,  
13 you guys as the federal agency and all of the  
14 stakeholders in this room need as much information  
15 as possible to make a decision. And we all  
16 understand landowner issues, especially the  
17 tribes. We do projects year-round and we know the  
18 difficulties in getting land access. But to me,  
19 it's really troublesome that there was so much not  
20 surveyed, that how can you as a federal agency  
21 look and say, "I can make a decision, a reasonable  
22 decision, based on the data that I have"?

23 I mean, I heard Cathy say "phased  
24 identification" several times. Phased  
25 identification does not mean a good faith effort.

1 We have federal agencies all the time, some of  
 2 them in this room, that that's their motto, "Good  
 3 faith effort. We tried. So, yeah, we took your  
 4 considerations into view, into light of everything  
 5 that has happened, but nice try; we're going to  
 6 proceed."

7 And we -- I just want to ensure that  
 8 that's not going to happen here. Because this is  
 9 too important of a project for us to just say,  
 10 "Nice try. Reasonable effort. Let's, you know,  
 11 proceed."

12 That's all the comments I have.

13 **MS. NADALS:** I think that, you know,  
 14 we're looking at -- right at this -- at this  
 15 juncture where we're talking about comparing  
 16 alternatives and trying to, you know, gather as  
 17 much information as necessary or as possible,  
 18 really, to compare the alternatives and make a  
 19 decision, Vicki being the director, making a  
 20 decision about which alternative is the best one  
 21 to recommend to carry forward.

22 I mentioned the phased identification  
 23 because we have constraints. We don't have a  
 24 hundred percent access. We're doing what we can  
 25 to record what's out there, but we have a lot of

1 resource in and of itself, because so much has  
 2 happened here, and we're sensitive to that. And  
 3 we want to make sure that we move forward  
 4 appropriately with your thoughts and your  
 5 concerns.

6 So no, we haven't had a hundred percent  
 7 identification at this point, but we're at a point  
 8 where we're doing the NEPA now. I mean, as far as  
 9 I know, when I talked to the SHPO, this is the  
 10 first time a federal agency has actually had teams  
 11 of archeologists and tribes go out and survey the  
 12 alternatives. So we really are trying to do the  
 13 right thing here. And Vicki's trying to do the  
 14 right thing. You know, it's not -- you know,  
 15 we're trying to work through this. I mean, you  
 16 know, it's not always easy, you know, for any of  
 17 us, I know, because it's a process. But I think  
 18 that's what's so perfect about this; it's a  
 19 process, you know, and we're not always going to  
 20 agree, but all of us are together trying to come  
 21 to a solution that makes sense. And that's what  
 22 it should be. That's what the 106 process is.

23 So thanks so much for your comments and  
 24 for coming all this distance in the weather that  
 25 you had.

1 different alternatives. We have constraints, and  
 2 so what we're saying is, is that we would do, if  
 3 in fact the Board licenses an alternative, which  
 4 we still don't know, one or two alternatives, we  
 5 would do additional work for that alternative. We  
 6 wouldn't just do, you know, I don't know whatever  
 7 percentage we're doing. We'd actually, you know,  
 8 survey the whole thing and do multiple studies.  
 9 And we would want your input on the types of  
 10 studies to do and, you know, how the team should  
 11 look, what the identification efforts should be,  
 12 how we should evaluate things for National  
 13 Register eligibility.

14 I know, Terry, that was a concern of  
 15 yours, to make sure that -- I know that we do have  
 16 the support of the SHPO and the State that we  
 17 would be able to assume eligibility, you know, if  
 18 you say something's eligible, for us to -- you  
 19 know, that's not the case in other states.

20 So we want -- we want to do more and we  
 21 will do more and we want your input on how to do  
 22 that, and we very much do and do think that having  
 23 your input is just so critical to us. And we know  
 24 how important this whole valley is to you. I  
 25 mean, it's just -- and that you consider it a

1 **MR. STARZAK:** Were there other -- this is  
 2 Rick. If there are other items that you think  
 3 would help fill what your concerns are about  
 4 the -- we've got things like access, tribal  
 5 representation in the surveys, more surveys,  
 6 Conrad's pointing out "Survey all land." Is there  
 7 other things we should be considering to address  
 8 your concern?

9 **MS. NADALS:** I guess in terms of your  
 10 question, are you asking about right now or for  
 11 the licensed alternative?

12 **MR. STARZAK:** Either one. I mean, it's a  
 13 timing thing what can be accomplished in the near  
 14 term and what can be accomplished should a route  
 15 even be approved for construction. We don't know  
 16 that that would happen, but just to get a sense,  
 17 because this is what we our consulting on, what  
 18 needs to be done and in what way.

19 **MS. YOUNG:** I think that a lot of the  
 20 difficulty is in landowner access and issues, and  
 21 that's something that the agency or the applicant  
 22 has to deal with. That's not tribal  
 23 responsibility. And it is true that a lot of the  
 24 projects that tribes work on, the alternatives  
 25 aren't looked at. So in this case, that's

1 definitely a good thing that's being done, that  
 2 the alternatives are being looked at.  
 3 So as far as, you know, what I could  
 4 recommend is the items that are already up there,  
 5 and the history and -- that site visit being out  
 6 here last spring really opened my eyes being  
 7 taught the history and about the battles and  
 8 skirmishes along for the people from our tribe  
 9 that participated, and then to be out there on the  
 10 land with all of the tribes and to actually see  
 11 the sites and the landscape, I think that's  
 12 really, really helpful, because it puts you in a  
 13 position where you have to accept something you  
 14 see with your own eyes. You can't just come from  
 15 the East Coast or West Coast and be making  
 16 decisions that are going to affect the people and  
 17 the people who live here. So that's what's  
 18 important to me, is that the land, you know, just  
 19 reiterate that the land needs to be looked at.  
 20 **MR. STARZAK:** That might go under "Assess  
 21 Effects."  
 22 **MS. JIUSTO:** Excuse me. Are we moving on  
 23 to No. 3? Because I had another question about  
 24 No. 2.  
 25 **MR. STARZAK:** It's not a 1, 2, 3, 4.

1 exactly what we want to focus --  
 2 **MS. JIUSTO:** Because on the phone call  
 3 the other day, somebody did say, you know,  
 4 "There's a lot of sites, it's a very large process  
 5 here, and so the determinations of eligibility  
 6 will not be forthcoming in the near future."  
 7 And I really think it's essential for  
 8 those determinations of eligibility to be part of  
 9 the process sooner than later in order to make an  
 10 informed decision about alternative routes.  
 11 **MS. NADALS:** Just to answer your question  
 12 on that, we have concurrence from the Advisory  
 13 Council and the SHPO's office that because of the  
 14 large area that we're looking at, that we're not  
 15 going to go to the detail of actually determining  
 16 eligibility for the alternatives analysis.  
 17 However, we would definitely do that for any  
 18 licensed alternative, if we in fact license an  
 19 alternative.  
 20 So -- and in the sense that we're  
 21 collecting data, yeah, we're collecting data about  
 22 cultural resources, but are we going to the level  
 23 of actually determining eligibility at this point?  
 24 No. I mean, we're -- yeah, we may be saying that  
 25 we think that the sites are likely eligible and we

1 It's however comments fill the steps. It's up to  
 2 you.  
 3 **MS. JIUSTO:** Well, I mean, I don't want  
 4 to jump the conversation ahead, but I think one of  
 5 the most essential things to talk about with this  
 6 group all assembled is the process of evaluation  
 7 of significance. Because clearly, if you're going  
 8 to make any kind of informed decision about  
 9 alternatives and you have some kind of baseline  
 10 information upon which to predicate that decision,  
 11 evaluation of the significance of the properties  
 12 is essential to being able to include that. And I  
 13 would say, you know, is that going to be addressed  
 14 for the Draft EIS, or will that be a Final EIS  
 15 stage? When will that process have been done and  
 16 what is the process for doing that, considering  
 17 the fact that tribal perspectives have to be  
 18 integrated along with the National Register  
 19 criteria? Thanks.  
 20 **MR. STARZAK:** So I think we would  
 21 characterize that as under "Evaluation."  
 22 **MS. DAVIS:** Yes, I got it.  
 23 **MR. STARZAK:** Oh, very good. That  
 24 process, who's involved in evaluation, timing, you  
 25 know, how do we get the information, that's

1 have input from tribes regarding that question,  
 2 but are we going to that detail at this point? We  
 3 aren't. But however, we will be doing that for  
 4 any alternatives actually licensed, one that would  
 5 actually be subject to any adverse effects, so --  
 6 **MS. JIUSTO:** So, I would point out, then,  
 7 that a choice will be made without the benefit of  
 8 knowing what's significant and what isn't if  
 9 there's no determination of eligibility process  
 10 ahead of making that choice. I do think that's  
 11 true.  
 12 **MS. NADALS:** I think that, you know,  
 13 because we have so many alternatives and we're  
 14 looking at so many different potential licensed  
 15 alternatives, that we simply don't -- we're unable  
 16 to do that. And under 106, we're actually not  
 17 required to do that. And we -- we have consensus  
 18 from the SHPO's office that that's not something  
 19 we would want to do at this stage of the process  
 20 for NEPA. For NEPA.  
 21 I mean, once we actually have licensed an  
 22 alternative or if an alternative is licensed and  
 23 we have an undertaking that's licensed, then in  
 24 that particular case we would in fact look at  
 25 eligibility under the National Register criteria.

1       **MS. JIUSTO:** So in other words, you're  
2 saying you would look at the eligibility after you  
3 license a route? After the route is established,  
4 then you will determine the eligibility of the  
5 sites along the route?  
6       **MS. NADALS:** No, that's not quite what  
7 I'm saying. I'm saying that we would do that kind  
8 of eligibility for any licensed alternative, and  
9 the process by which we would go about id --  
10 further identification and evaluation and  
11 mitigation would be outlined in a Programmatic  
12 Agreement, and that would happen, you know, prior  
13 to licensing, and it's something that we would  
14 want to develop like right now at this point.  
15       **MR. STARZAK:** If I could interject.  
16 Right now, for everything that has been  
17 identified, we're considering eligible at this  
18 point. It hasn't gone through a formal  
19 determination, which would have to go through the  
20 SHPO, tribes, everyone, but for the purposes of  
21 analysis, if we observed something and recorded  
22 it, we're treating it as if it were eligible right  
23 now. So I hope that helps a little bit. But it  
24 has not gone through formal process and probably  
25 wouldn't until more analysis can be done on those

1       **MR. CLOUTHIER:** Yes, if that's the tactic  
2 they're taking, they're being considered eligible  
3 right now.  
4       **MR. CONRAD FISHER:** Stan, did you want to  
5 say something?  
6       **MR. WILMOTH:** This is Stan Wilmoth at the  
7 SHPO, and I would like to reiterate what Cathy  
8 said. If you have a PA, we could agree to defer  
9 that eligibility, but more to the -- more to the  
10 point of Chere's concern, on this handout that you  
11 have, I've lost my -- Handout for Consulting  
12 Parties, and your coordinating with NEPA, NEPA and  
13 106, the second blue box says "Identify historic  
14 properties," and then you've got arrows going over  
15 to the NEPA process. Well, the next blue box is  
16 "Assess effects," and that implies to me that  
17 before there's a Draft EIS, if there's not a PA  
18 that allows an alternative process, we should be  
19 having eligibility determinations formally made  
20 before the Draft EIS.  
21       **MS. DAVIS:** I'm sorry to interrupt. I  
22 just wanted to ask everybody to speak clearly into  
23 the microphone and identify yourselves before you  
24 speak. The folks on the phone are having just a  
25 little bit of difficulty hearing and sometimes

1 sites. Yes, Terry.  
2       **MR. CLOUTHIER:** Richard, can you make  
3 sure that your NEPA document specifies that,  
4 please?  
5       **MR. STARZAK:** Yes.  
6       **MR. CLOUTHIER:** I'd like to see that in  
7 the NEPA document, because otherwise there's a big  
8 difference between saying there's 168 sites that  
9 were unevaluated and just stating that there's 168  
10 sites. Make sure that the statement within that  
11 discussion does state that we are considering  
12 those to be eligible until proper eligibility  
13 determinations are established.  
14       **MR. STARZAK:** Okay. Thanks, Terry. That  
15 would be up under, I guess, No. 2. Thanks.  
16       **MS. NADALS:** What was that again?  
17       **MR. CONRAD FISHER:** So, Terry, would that  
18 also be 106, those that have been recorded that  
19 would also be eligible, right, right now?  
20       **MR. CLOUTHIER:** They'd have to be  
21 considered under 106 evaluation as being  
22 unevaluated for eligibility, and therefore, it's  
23 determined to be --  
24       **MR. CONRAD FISHER:** Eligible. Would they  
25 be eligible right now? This is Conrad Fisher.

1 knowing who is speaking. Thank you.  
2       **MR. STARZAK:** I would just say that the  
3 phased identification and the --  
4       **MR. CONRAD FISHER:** Richard, can you  
5 identify yourself?  
6       **MR. STARZAK:** Oh, I'm sorry. Yes, Rick  
7 Starzak with ICF. That part of the regulations  
8 that allows to phase not only eligibility but  
9 effects analysis, and we've had discussions with  
10 the Advisory Council and your office about doing a  
11 phased identification. We don't have a  
12 Programmatic Agreement yet. Part of the  
13 discussions we hope to develop in the next day or  
14 two is, "Should we do a Programmatic Agreement?  
15 Who gets involved? How do we get that?"  
16       And then that Programmatic Agreement  
17 would be included in a draft, in whatever form it  
18 is, in the DEIS. So this table is just a rough  
19 generalized approach. Does that help?  
20       **MR. WILMOTH:** This is Stan. Yeah, I  
21 understand what you're saying, but that still is  
22 predicated on having an agreement before it, and I  
23 think I've heard here twice that you're looking at  
24 that late this summer, is that right, for a Draft  
25 EIS?

1 **MR. STARZAK:** Right.  
 2 **MR. WILMOTH:** That's a short time frame  
 3 for that to happen, but it also sort of goes past  
 4 what Chere's pointing out is, you can't  
 5 effectively choose between alternatives if you  
 6 don't have any idea the relative significance or  
 7 importance of various places along all those  
 8 routes. I mean, that is an important step in  
 9 evaluating the different alternatives.  
 10 **MS. NADALS:** So you're saying that we  
 11 would need to determine eligibility for all of the  
 12 sites that we've identified along each of the  
 13 alternatives?  
 14 **MR. WILMOTH:** No, I didn't say that. If  
 15 you have a PA that sets that out in some other  
 16 way, that's fine, but I don't know how you can  
 17 effectively evaluate all the alternatives without  
 18 thinking about which sites are important or  
 19 relative significance.  
 20 Part of that in the 106 process in  
 21 everything we've heard this afternoon points out  
 22 weaknesses in the process. It is a process, and  
 23 it doesn't have an alternative. It doesn't say,  
 24 "You can't destroy sites." It doesn't say a lot  
 25 of things. It says "Consult about it."

1 So we intend to do a Programmatic  
 2 Agreement, and we really want everybody's  
 3 participation in developing what the components of  
 4 the Programmatic Agreement should be. Conrad?  
 5 **MR. CONRAD FISHER:** This is Conrad,  
 6 Northern Cheyenne. I'm glad we suggested Billings  
 7 because we've got Stan here and he's making some  
 8 very, I think, important recommendations that are  
 9 relevant to site eligibility and site  
 10 identification, so thank you. Thank you, Stan.  
 11 Also saved him from his boss, so he could  
 12 get out of the office and take a little break down  
 13 here in balmy Billings, Montana.  
 14 Getting back to what Mr. McRae was saying  
 15 about particularly the preferred alternative and  
 16 having accessibility and making sure that we  
 17 continued the traditional cultural property survey  
 18 along with the arche. survey, in terms of doing as  
 19 much as we can. My question is, would that also  
 20 apply to the other alternatives, alternative  
 21 routes?  
 22 The reason I say that is because I think  
 23 it would not only give us a better understanding  
 24 what's in the other alternative routes, but you  
 25 know, we don't want to jeopardize the preferred

1 But in the end, if we really want to  
 2 avoid or minimize important places, we have to  
 3 identify them as such before making a decision.  
 4 If your alternatives for local reroutes and  
 5 avoidance are limited, like Mr. McRae was saying,  
 6 on his property, for example, if you have an oil  
 7 and gas lease, they don't do a hundred percent  
 8 inventory; they may only do a Class 1 inventory to  
 9 see where sites are. Because when a well pad is  
 10 proposed, they'll do the inventory and move the  
 11 well pad somewhere else. Can you do that with the  
 12 railroad section in a narrow valley? So that kind  
 13 of increases the practical need for earlier  
 14 considerations. Throwing that out.  
 15 **MR. STARZAK:** Should we characterize that  
 16 under "Evaluate as early in the process as  
 17 possible"?  
 18 **MS. NADALS:** So you're saying that that  
 19 would be something we probably need to do if we  
 20 don't have a Programmatic Agreement. So I mean,  
 21 one of the things that we were hoping to do was to  
 22 get input from everybody here on development of a  
 23 Programmatic Agreement for this project. We  
 24 desperately want your input on that, as soon as  
 25 possible.

1 alternative, which may not be the one from  
 2 Colstrip to -- I know it's the preferred  
 3 alternative, but I think if we don't get that same  
 4 accessibility to those other alternatives in terms  
 5 of doing as much surveying there, then we're doing  
 6 a disservice. I think we should give equal  
 7 credibility -- equal service to those  
 8 alternatives.  
 9 We've done surveys on all of them, and if  
 10 we're trying to do as much as we can with the  
 11 preferred alternative, then we should look at the  
 12 same service to the other alternatives.  
 13 **MR. FIX:** This is Mark Fix. I can talk a  
 14 little bit to the other routes. It was good to  
 15 see today, you know, all that they found on my  
 16 ranch. I mean, that was pretty good. And we  
 17 realize that, you know, getting boots on the  
 18 ground you find a lot more stuff than you do just  
 19 flying over.  
 20 When I talked to some of the landowners  
 21 on the other routes, some of them were upset  
 22 because ICF came out and was flying -- you know,  
 23 they just flew over with helicopters and did  
 24 stuff, and you know, they were kind of upset with  
 25 that.

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1 I know some of them said they weren't  
 2 willing to allow them to come on because of that.  
 3 You know, they've seen all they -- you know, "They  
 4 flew over and scared my cows," and whatever, you  
 5 know, "did all this stuff, and I don't think I'm  
 6 going to let them on."  
 7 You know, so I'm not sure that you're  
 8 going to get access on some of these others. You  
 9 know, I think you can sweet talk them to be able  
 10 to get on, but I don't -- like said, I don't know  
 11 about what to do about that. But I'm most  
 12 positive, you know, from what they found on my  
 13 place, that if you go on these other lands that  
 14 you're going to find as much or more, you know,  
 15 because the whole Tongue River Valley is laden  
 16 with cultural things, and I'm sure, you know, that  
 17 they'll find a whole lot more.  
 18 **MR. CONRAD FISHER:** Vicki, I guess the  
 19 point I'm making is that if on the preferred  
 20 alternative there are so many -- so much cultural  
 21 sites that are found on there that your shop says,  
 22 "We're not going to have this, we're not going to  
 23 have this route," then what kind of pressure does  
 24 it put on the other alternate routes if we don't  
 25 have the same equality with the alternative

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1 routes? That's all I'm saying.  
 2 I'm not saying don't have -- that you  
 3 can't have the preferred alternative because it's  
 4 close to home, mark. But I'm just saying that if  
 5 we just focus on the preferred alternative and do  
 6 a little more comprehensive survey, and then if  
 7 you say, "Well, the alternative by Mark's place is  
 8 the preferred, and we haven't done anything on his  
 9 property," then it's unfair for the folks that are  
 10 going to be adversely affected on that route also.  
 11 That's all I'm saying.  
 12 **MS. RUTSON:** Understood, Conrad. Thank  
 13 you.  
 14 **MR. RHODD:** This is Ben Rhodd, Rosebud  
 15 Sioux Tribe. I keep hearing this thing. It just  
 16 keeps going round and round in a circle, and it's  
 17 getting a little confusing here. I want to  
 18 congratulate Conrad for getting us on this  
 19 discussion because, boy, it kept us going for a  
 20 while.  
 21 Anyway, my point is, I'm looking at --  
 22 I'm looking at it from a very clinical view, I  
 23 guess you would say. I'm looking at numerics  
 24 here. When you start talking about what the  
 25 descriptions is, whether it will come out and be

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1 Class 1, your research that you do prior to going  
 2 out into the field, or from documented resources  
 3 that have come from a specific amount of land that  
 4 you have had access to, so 32 percent out of 45,  
 5 blah-blah-blah, all this stuff, but those are  
 6 numbers that are concrete.  
 7 When we're looking at an alternative, an  
 8 alternative has to fit with, of course, the  
 9 engineering; that's probably the number one thing  
 10 that will drive the company. What kind of  
 11 elevations are they going to have to deal with?  
 12 What they're going to have to take out, and what  
 13 they're going to have to fill in, blah-blah-blah,  
 14 all that stuff. Those are numbers.  
 15 All I'm saying in that, is that as you're  
 16 looking at what has been done, what are those  
 17 numbers? I don't know. I didn't see it in this  
 18 packet here that was given. But how many sites do  
 19 we have within that 32 percent? How many sites  
 20 are there? That -- and I'm not going to say this  
 21 is a predictive model. I don't even want to go  
 22 there. As an archeologist, I don't do that. I've  
 23 never agreed with it and never will.  
 24 However, I am saying that the numbers  
 25 that you have off your previous accessible lands

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1 that you surveyed become the basis by which you  
 2 may project, you may propose what those  
 3 alternatives are going to have potentially down  
 4 the road, is all I'm saying. And that kind of is  
 5 how much you may be having to deal with in a PA  
 6 down the road.  
 7 We can jump on the PA; that's not a  
 8 problem. We can construct that right here. We  
 9 have numerous forms. I have numerous ones sitting  
 10 right inside this piece of machinery here. But,  
 11 it becomes, what do we do for -- at a future time  
 12 for that preferred alternative or those other  
 13 alternatives that are maybe gradiated? Maybe it's  
 14 A, B, C; maybe it's 1, 2, 3, whatever.  
 15 All I'm saying is that we're kind of  
 16 going in a round-robin argument here, and there's  
 17 not really an answer until we get down to the  
 18 numbers. That's it. So all I'm saying is that,  
 19 what are the numbers that were out there? What  
 20 are we dealing with here? Something that's  
 21 concrete. We can hypothesize and scenario all we  
 22 want, but it isn't going to help us here. I think  
 23 that we need to know those numbers. We need to be  
 24 able to sit in our caucus. I think that's where  
 25 we need to go right now, because otherwise we're

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1 not -- we're not getting anywhere, really. We're  
 2 getting a few things written down, but we need to  
 3 see those numbers, and I'd like to see the map  
 4 that -- Jamie?  
 5 **MS. REYNOLDS:** Alisa.  
 6 **MR. RHODD:** Alisa, sorry.  
 7 **MS. REYNOLDS:** That's all right.  
 8 **MR. RHODD:** I'd like to see the map of  
 9 where these resources are at. What kind of  
 10 topography are we dealing with? I was out on one  
 11 session, so I didn't get to go very many miles,  
 12 but I'd like to see the total of what we've done  
 13 so far. That gives a more clear idea, visual,  
 14 concrete. Thank you.  
 15 **MR. YOUPEE:** How do I get on this thing?  
 16 **MS. RUTSON:** Push the green button.  
 17 **MR. YOUPEE:** Green button, huh. There it  
 18 is. You keep --  
 19 **MS. RUTSON:** State your name.  
 20 **MR. YOUPEE:** Excuse me?  
 21 **MS. RUTSON:** Name.  
 22 **MR. YOUPEE:** Oh, Curley Youpee, Fort  
 23 Peck. Cathy, you keep mentioning the PA, and I  
 24 feel it's important as well to get involved in  
 25 that. However, you know, we're not starting a

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1 new -- we should be spilling over to our last  
 2 episode or experience with the last PA, which  
 3 there was great conflict. And I think if we could  
 4 bring some of those important issues and concerns  
 5 regarding that last PA, I think we can build a  
 6 better one, a fresh one as a result of the  
 7 discussions we had over there in Rapid City.  
 8 So if we can maybe have that document or  
 9 that information as we built that at that meeting,  
 10 I think that would be a good way to start. Thank  
 11 you.  
 12 **MR. CLOUTHIER:** Terry Clouthier, Standing  
 13 Rock Sioux Tribe. I want to go back to the sites  
 14 issue. I'm curious if we're not doing a  
 15 disservice to these sites.  
 16 We ran into some problems on a similar  
 17 situation with the Williston Bypass Project where  
 18 the sites weren't evaluated; they were just  
 19 recorded, and subsequently destroyed by other  
 20 federal projects or other projects in the area  
 21 that didn't have a federal tie. And we weren't  
 22 able to get in to explain why those sites were  
 23 eligible.  
 24 I'm curious what assurances we have, in  
 25 particular from the Montana SHPO and from the

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1 federal agency, that we will be involved in the  
 2 eligibility determinations at a future date,  
 3 especially on the sites that are off of -- off of  
 4 the preferred or licensed application. Stan, can  
 5 you speak to that for SHPO?  
 6 **MR. WILMOTH:** How will we guarantee that  
 7 if we don't have eligibility resolved at this time  
 8 or for this undertaking, how will we ensure that  
 9 all tribes will be involved in the eligibility in  
 10 the future? I don't know that I can guarantee  
 11 that.  
 12 **MR. CLOUTHIER:** That's the point I'm  
 13 trying to make, and that's a huge concern for us,  
 14 especially considering that there were sites found  
 15 that are significant to the tribes.  
 16 **MR. WILMOTH:** I don't know of any way  
 17 that we could guarantee that, even if it were --  
 18 **MS. NADALS:** We can guarantee it by  
 19 outlining it in the Programmatic Agreement.  
 20 **MR. CLOUTHIER:** Pardon me. That's just  
 21 for you, though. What I'm getting at is, you're  
 22 not evaluating the sites on the nonpreferred or  
 23 the non-licensed ones, so those are going to be --  
 24 remain unevaluated, and somebody could propose to  
 25 put an intake going from the river up to their

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1 cattle without knowing those sites are there and  
 2 there's no federal tie, therefore, we can't get  
 3 involved to say, "We need to have that involvement  
 4 to be able to make that determination with Stan.  
 5 It's a huge issue for me. We've already ran into  
 6 this problem --  
 7 **MS. NADALS:** I understand.  
 8 **MR. CLOUTHIER:** -- in other federal  
 9 projects.  
 10 **MS. NADALS:** Yeah, I see your point. But  
 11 I mean, I would think that any federal agency  
 12 would need to do their own survey and that they  
 13 would be privy to the information that we  
 14 collected for those surveys even if we didn't do  
 15 eligibility determinations.  
 16 **MR. CLOUTHIER:** Again, that's a federal  
 17 agency. I'm talking if there isn't a federal  
 18 agency involvement. And we hope that the federal  
 19 agency will talk to us, but Stan's well aware,  
 20 Joel's well aware of some instances where there  
 21 was no discussion with the tribes prior to a  
 22 project being initiated and under construction for  
 23 two months before we ever found out about it. So  
 24 we can't always say that that's going to be the  
 25 case, that there will be federal involvement.

1 MR. WILMOTH: And even if there was a  
2 federal agency, that doesn't mean that I can force  
3 them in some way to.

4 MR. CLOUTHIER: In fact, you usually  
5 get -- sorry to even speak for you, Stan, but I  
6 know from dealing with North Dakota SHPO on these  
7 same issues, they've been yelled at for saying,  
8 "Where's your tribal involvement?"

9 MR. WILMOTH: Right.

10 MR. CLOUTHIER: And it's not your place  
11 as the SHPOs to make sure we're conducting our  
12 tribal involvement.

13 MR. WILMOTH: Best I could say is we  
14 would try to, in the information search about  
15 those places, we could say, you know, "We have  
16 information that this is important to these other  
17 groups," but that's a far cry from guaranteeing  
18 that they will be consulting with you on the  
19 eligibility.

20 MR. CLOUTHIER: And that was the point  
21 that I wanted to make, that I think we might be  
22 doing a disservice to these sites. I think that's  
23 something we need as tribes to talk about during  
24 tribal caucus when we have a moment, so...

25 MR. CONRAD FISHER: Thank you. Thank

1 the document search that you guys did for the  
2 sites.

3 There were -- you said something about  
4 going to the State, I believe, on that document  
5 search, some of the stuff from the -- I'm  
6 wondering if all the information was acquired  
7 from, like, the BLM office?

8 There were, you know, there was some  
9 projects that were done along the Tongue, like for  
10 instance, the Pumpkin Creek Ranch Exchange. When  
11 those federal lands were exchanged with Pumpkin  
12 Creek, some of those lands were along, like, the  
13 Tongue River Road Alternative, for instance, and  
14 BLM, I believe, did cultural work on those lands  
15 and probably have records of the information  
16 that's there.

17 Also, when the Otter Creek lands were  
18 exchanged, there was, you know, federal work was  
19 done there, and they may have done cultural  
20 studies in those areas. Now, were those -- are  
21 those studies available at the State office, or  
22 have you went to the BLM office and got all the  
23 studies that were available through them?

24 MR. ROBINSON: Yeah, this is Mark  
25 Robinson. Yes, we do have those surveys from

1 you, Terry. I have a comment to make, and that's  
2 about the agreement, the PA, and I think this is  
3 something that during the tribal caucus that we  
4 need to seriously look at, is an agreement whether  
5 or not that's something that we should consider  
6 during this -- during this meeting.

7 I've got some -- my own personal opinions  
8 about a PA at this time, whether or not that's  
9 going to work in the best interests of tribal  
10 folks or not, but it's certainly something worth  
11 discussing when we have the tribal caucus. And  
12 I'd like to also have an -- and I can't remember  
13 the gentleman's name there.

14 MR. SUMMERVILLE: Alan.

15 CONRAD FISHER: Alan and Alisa, maybe  
16 during the tribal caucus that they've got some of  
17 the documents in that manila envelope, kind of go  
18 through it before we actually -- just for the  
19 tribal folks, go through it before we actually  
20 have a tribal caucus. Because it will explain  
21 some of the -- some of the sites that have been  
22 recorded on there. Thank you.

23 MR. FIX: This is Mark Fix. I had a  
24 question going back earlier today that maybe you  
25 guys can answer in regard to the document search,

1 Pumpkin Creek, and it tracks what information we  
2 got from both, I'm assuming, the State and the  
3 BLM.

4 MR. ROUNDSTONE: Good afternoon. Mark  
5 Roundstone, Northern Cheyenne Tribe. I just want  
6 to make a comment which reminded me when Mark was  
7 talking about it's his place and the survey, I  
8 believe it was ICF that had conducted the survey  
9 this past summer season.

10 I had received in my office several calls  
11 from homeowners along the Tongue River when they  
12 were conducting their survey of utilizing aircraft  
13 to do the survey and disturbing some very unique  
14 birds to our tribe, specifically the osprey next  
15 to the site.

16 We have a couple eagle pairs that have  
17 decided to stay on the Tongue River Corridor all  
18 year round. I recall a mother who lives on the  
19 Tongue River calling me frantically at a few  
20 minutes after 8 o'clock. The helicopter had  
21 disturbed the eagle site and had literally blew  
22 down the nest of the eagle. I was literally  
23 disturbed about how they went about doing their  
24 survey related to my brother, the eagle or the  
25 hawk, with no remorse.

1 And to me, I think I'm the only person  
 2 within my tribe hired specifically to speak for  
 3 animals. There's no other person within my tribe  
 4 who speaks in protection of our animals. And this  
 5 process is really hard for some of us traditional  
 6 people who have chose to follow that life.

7 Because in our selfishness, we separate  
 8 ourselves from our own ecosystem. We separate  
 9 ourselves from animals and from the ecosystem. I  
 10 don't know why we do that. Maybe it's when we  
 11 attained the right to start claiming property.  
 12 Maybe it's when the time when we started keeping  
 13 track of time. But I know for sure it was the  
 14 time when we started valuing -- placing value on  
 15 money.

16 And all of this, none of you would be  
 17 here if the bottom line wasn't money. The  
 18 traditional Cheyenne always believes that wealth  
 19 is having a family and having a home, and you're  
 20 the wealthiest person.

21 But I just wanted to make that comment of  
 22 how the survey was conducted and support those  
 23 ranchers that don't want these kind of callus  
 24 surveys done on their lands because of what I had  
 25 or my people had observed while these surveys were

1 like that. I said, "Us strong people, we stay in  
 2 the North where that cold wind makes us stronger  
 3 because we have to get up and fight it every day."

4 But I just wanted to make that comment,  
 5 you know, and have you guys stop and evaluate that  
 6 in yourselves, that we are not the only people  
 7 that lives on that land. You know, we have  
 8 millions of different types of species of animals  
 9 that also live life there too that we're going to  
 10 impact.

11 You know, in an area where Clint lives,  
 12 several years ago, there was a world record deer  
 13 taken in that area. We're going to disturb that.  
 14 We're going to take that away, simply because  
 15 we're going to put a railroad there and stop their  
 16 migration route.

17 I know some of you Surface Transportation  
 18 people say, "Oh, they'll just cross that  
 19 railroad."

20 Well, you know, some of them animals,  
 21 they won't cross because they smell that metal,  
 22 they smell that disturbance. It's a boundary for  
 23 them.

24 Think about some of them things when you  
 25 go to bed at night, when you look at your

1 conducted last summer on, I believe, the wildlife  
 2 surveys.

3 I received a call from ICF and sent one  
 4 of my representatives -- of course, I only have  
 5 one in my office -- to accompany a bird survey.  
 6 But I would just like to emphasize, you know, how  
 7 these surveys are conducted and to have respect  
 8 with the other people that live out there. These  
 9 are their homes that you are destroying in this  
 10 attempt to gather and secure your money.

11 You know, us people and us animals, we  
 12 have to live there long after you guys and your  
 13 construction and your coal mine and your railroads  
 14 are gone. We have to live there.

15 My people have come from Oklahoma with  
 16 10,000 United States Army chasing 300 people,  
 17 killing them like animals, because we loved our  
 18 land. This land is the only place where we can  
 19 gather our ceremonial plants, our ceremonial  
 20 items, and we came back to southeastern Montana  
 21 because of that reason, because we loved it.  
 22 Clear water, clean air, food.

23 You know, when this cold came, I heard a  
 24 lot of folks talking about the South and wanting  
 25 to move south. I said, "Go ahead." Weak people

1 children, not when you're in your office and have  
 2 to be directed to do these things. Think about  
 3 the impacts that you're going to have on others  
 4 when you are going to bed.

5 And I like the comment this lady made  
 6 about that when this lawyer here said, "Oh,  
 7 there's no more money. We can't do no more  
 8 surveys."

9 Well, that guy should go back to  
 10 Washington, DC or wherever he's from and stay  
 11 there. You know, he don't belong in this country  
 12 if that's the way he feels. We need to do this  
 13 process regardless of how much money a cultural  
 14 survey is and how many cultural surveys we have to  
 15 do.

16 You know, as native people, most of  
 17 you -- some of you in here are native people. All  
 18 we simply want when you are doing something of  
 19 this nature is to do it right.

20 And I was sitting here thinking, you  
 21 know, when you folks, Caucasian folks, first came  
 22 amongst us, you told us that we needed education  
 23 and we needed to become equal to you, and you  
 24 built these real expensive buildings even for  
 25 yourselves. 40, 60 years later you abandon these

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1 buildings because we started getting sick from the  
 2 mineral or material called asbestos. But at the  
 3 time you were building them, that was the best  
 4 thing you could do, you know.  
 5 So consider some of them things that you  
 6 haven't seen or that you're not -- that you  
 7 haven't had foresight of seeing when some of these  
 8 things come to pass and you start seeing your son  
 9 or your daughter suffer from cancer. Some of  
 10 these minerals that are going to come up from  
 11 Mother Earth.  
 12 My elders always tell me, anything that  
 13 comes from inside Mother Earth is not done  
 14 processing yet, and when you bring it out too  
 15 early, it's poisoned, and eventually it will kill  
 16 you. We're already in that area in our history in  
 17 this time, so be real, real careful when you  
 18 consider some of these things and in your circle  
 19 of talking with tribes and with the Federal  
 20 Government.  
 21 You know, the Northern Cheyenne Tribe,  
 22 the reservation now is almost completely  
 23 surrounded by industry. You know, we have I-90  
 24 running through the Crow Reservation that borders  
 25 our reservation on the western end, and then we

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1 hear in the wind that the Crow Tribe is now going  
 2 to and have negotiated the coal mine just right  
 3 next to our western boundary of Northern Cheyenne  
 4 Reservation, Thompson Creek, headwater to the  
 5 Rosebud Creek. That's going to be a new battle  
 6 because of the Feds, not the reservation.  
 7 So pretty soon, energy industry is going  
 8 to pit native against native, and that is a sad,  
 9 sad thing to see. All because of energy, simple  
 10 money, money that you're going to spend maybe on a  
 11 shirt or something for your children that's going  
 12 to be gone next year.  
 13 So I really, really want to emphasize  
 14 that we think about the others that are going to  
 15 be impacted by what you guys are talking about  
 16 today and the impacts that are going to come 20,  
 17 40, 60 years from now as a result of this.  
 18 I want to wish each and every one of you  
 19 a great afternoon. Thank you for allowing me to  
 20 talk.  
 21 (Applause)  
 22 **MR. CONRAD FISHER:** I know it's close to  
 23 3:30, and I'd like to thank Mark. Mark is our  
 24 Natural Resource Director, and he said some real  
 25 powerful words, and it's true that we're looking

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1 at an industrial complex, not just in Pete. Pete  
 2 is gone right now; I think he's on some kind of a  
 3 break. But Bakken oil fields are a huge, huge,  
 4 industrial complex there, and it's moving  
 5 certainly moving in all directions and permeating  
 6 peripheral areas. But I think what Mark is saying  
 7 is so true, that we're being inundated by energy  
 8 development in Indian Country. And you know, some  
 9 of these sites are prayer sites for Native  
 10 Americans, locations, sacred sites where they go  
 11 fast and have ceremonial activity.  
 12 So you know, I've said this before. You  
 13 know, what's more important today is that, is it  
 14 the right to drill for oil and gas, or the right  
 15 to pray? You know, we seem to be on the short end  
 16 of the stick constantly in an uphill battle.  
 17 But what I wanted to say was that, you  
 18 know, I've had this discussion with ICF about air,  
 19 air surveys, and I didn't think that was a good  
 20 idea, that it was something that I -- I condemn  
 21 because it's not the right thing to do. So quite  
 22 frankly, I'm surprised that if there was any air  
 23 surveys, it was unbeknownst to the Northern  
 24 Cheyenne, if that is the -- if that is the case.  
 25 But so I just want to go on record that

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1 the Northern -- if there was any -- if there was  
 2 any surveys that were conducted by air, that the  
 3 Northern Cheyenne were not involved in those  
 4 surveys. Certainly, we were part of the surveys  
 5 that were conducted by ICF on the four routes,  
 6 including the preferred route, but we were not  
 7 part of the surveys, if there were air surveys, by  
 8 ICF.  
 9 And I think we probably should end this  
 10 discussion, unless there's some other pressing  
 11 issues, and go into a tribal caucus. I know it's  
 12 after 3:30, and we probably should try to do that  
 13 before we start losing the tribal folks. Because  
 14 I tell you, for those of you that aren't familiar  
 15 with Billings and the surrounding area, there's  
 16 three Walmarts within a 20-mile location.  
 17 **MR. RHODD:** I've got to go.  
 18 **MR. CONRAD FISHER:** Or maybe I shouldn't  
 19 have said that. And there's a joke going around  
 20 that for Indian babies their first word they ever  
 21 learn is "Walmart." So I'm not sure if that's  
 22 true or not. Maybe just for Cheyenne. But it was  
 23 a little funnier when somebody told me that.  
 24 Maybe we're all getting a little tired.  
 25 But should we do that? Should we go into

1 a tribal caucus? Is that okay with --

2 **MR. STARZAK:** Of course.

3 **MR. CONRAD FISHER:** -- you folks? Vicki,  
4 is that okay?

5 **MS. RUTSON:** Absolutely, yes.

6 **MR. CONRAD FISHER:** We want to have those  
7 folks that know the information about that yellow  
8 envelope you have, Richard, and then once you  
9 inform us of what's in there, then you're free;  
10 you can go after that.

11 [MEETING ADJOURNED FOR THE DAY AT 3:44 P.M.]

12 \* \* \* \* \*

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