

*Section 106 Meeting for Tongue River Railroad  
Construction Project*

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*Proceedings  
February 14, 2014*

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5 TONGUE RIVER RAILROAD CONSTRUCTION PROJECT  
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13 TRANSCRIPT OF PROCEEDINGS  
14 HELD ON FEBRUARY 14, 2014  
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21  
22 LOCATION: Crowne Plaza Hotel  
23 Billings, Montana  
24 TIME: 9:25 a.m. to 2:53 p.m.  
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1 PROCEEDINGS  
2 MS. NADALS: Thanks everyone, once again,  
3 for being here. And I think we had a really good  
4 day yesterday and just want to thank you for  
5 everyone that participated and all the things that  
6 you brought to the meeting.  
7 Before we start, we're going to have --  
8 I've asked Erich Longie to give a prayer, and so  
9 he's going to give a prayer right now.  
10 [OPENING PRAYER BY ERICH LONGIE]  
11 MS. NADALS: Thanks for those words of  
12 wisdom as we embark on another day of this  
13 meeting.  
14 I was wondering, I know that there was --  
15 it takes quite a while to go around the room and  
16 introduce ourselves, so I was thinking maybe we  
17 would just have the people on the phone introduce  
18 themselves. So whoever's on the phone, if you  
19 could introduce yourselves.  
20 MR. STARZAK: It's not on mute, so  
21 perhaps --  
22 MS. NADALS: Is anybody on the phone?  
23 MS. COLE: I'm Amy Cole from the National  
24 Trust For Historic Preservation.  
25 MS. NADALS: Amy Cole. Anybody else on

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1 the phone?

2 **MS. MERRITT:** Betsy Merritt, National

3 Trust For Historic Preservation, DC.

4 **MS. NADALS:** Okay. Anybody else on the

5 line?

6 **MS. JIUSTO:** Chere Jiusto from the

7 Montana Preservation Alliance.

8 **MS. NADALS:** Anyone else? Okay, so well

9 thanks so much for joining us, and thanks to

10 everyone who's here. I just want to say that I

11 think we accomplished a lot yesterday, and we're

12 going to begin the meeting by giving a short recap

13 about what we went over yesterday. And as part of

14 that, I just wanted to put in a plug for all of

15 you to ensure that we don't lose a very important

16 objective of ours, which is to have your input in

17 developing an outline for a Programmatic Agreement

18 so that we make sure that we have -- we know who

19 is interested in working with us on developing key

20 points to include in an agreement document.

21 And if you could let us know or let me

22 know or let somebody from the team know if you're

23 interested in working with us, because we want all

24 of your input on drafting that outline as soon as

25 possible.

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1 So with that, thanks again. Welcome

2 everybody. And, Rick.

3 **MR. STARZAK:** Good morning, everyone. I

4 was just sending a message to Charlene Vaughn from

5 the Advisory Council to let her know we're

6 starting in case she can join. Again, they still

7 have a major storm that hit Washington, DC.

8 So on the agenda for this morning, the

9 first item is to kind of recap what we did

10 yesterday about Steps 1 and 2, and I thought maybe

11 I could just go over the flip charts and so that

12 everybody sees what we were -- you know, the

13 thoughts that came up yesterday. And then if you

14 have any additional thoughts that came up last

15 night that you wanted to share, that would be

16 really good.

17 So the first is Step 1, which is blank.

18 So we can revisit that if you want, but Step 1 is

19 really initiation, which we talked about, started

20 in October of 2012, but we also may want to

21 revisit at some point today the list of consulting

22 parties that's in your handout. And so if any of

23 you think of additional consulting parties that

24 may want to be involved, that's something we can

25 talk about. So most of our effort yesterday was

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1 on Step 2. They're not in the sequence that we

2 did them in, but maybe it's better.

3 **MS. DAVIS:** They're numbered with page

4 numbers.

5 **MR. STARZAK:** Oh, thank you, Colleen. So

6 this, I believe, was our first one. So Step 2, as

7 you know, is to identify historic properties,

8 survey all accessible land, involve the tribes in

9 strategic planning, confidentiality, and

10 ethnographic study, more survey, more seasons --

11 Whoops. Try and stay on your feet.

12 Let's see, page 2, let's go here. Colstrip access

13 with tribal representation participation

14 methodology. I believe that was Clint McRae's

15 discussion. Methods for evaluations, depth,

16 extent, that also came out of Clint's discussion.

17 And the team composition, which relates back to,

18 How do we do additional work?"

19 Page 3, tribal involvement, evaluate

20 significance, determine eligibility. Obviously,

21 these are all things that we have not done yet, as

22 we talked about yesterday.

23 We went, did fieldwork, we observed sites

24 in the field, but did not evaluate them for

25 National Register eligibility, so that's still --

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1 that process is something we have to work through

2 together. The NEPA document should state presumed

3 eligibility of sites.

4 **MR. RHODD:** Richard, say that again.

5 Should resume --

6 **MR. STARZAK:** Should state the presumed

7 eligibility. Just because we haven't yet

8 evaluated National Register criteria, the NEPA

9 document should make it clear.

10 Oh, here we are, page 5, a fresh

11 Programmatic Agreement, or PA, build on previous.

12 Okay, build on the previous PA. Tribal

13 involvement in evaluation of sites off licensed

14 alternative. BLM studies.

15 Page 4, reevaluate significance -- no,

16 I'm sorry. I'm sorry. Relative significance.

17 Evaluation, I think that slash means evaluation as

18 part of a PA. Survey equally, difficulty of

19 access, tribal field school, Chris Finley. I'm

20 just reading, as we see, to kind of refresh

21 everybody's mind, some of points we talked about

22 yesterday.

23 This side of the room, these may not be

24 Step 1 and 2.

25 **MS. NADALS:** Rick, those are just

1 statements that were made.  
 2 **MR. STARZAK:** Oh, they're statements.  
 3 **MS. NADALS:** Yeah, you know, concerns  
 4 that I just summarized.  
 5 **MR. STARZAK:** Okay. So in terms of  
 6 recapping Steps 1 and 2 then, let's focus on that  
 7 and see. First of all, other than the things that  
 8 we just talked about, which are all things that we  
 9 have to kind of think through, how do we get Step  
 10 2 completed, were there other ideas that anyone  
 11 came up with last night that should be considered  
 12 as part of this? If we look back at the summary  
 13 of Step 2, determine the APE, we haven't really  
 14 talked about that at all. We've talked a lot  
 15 about identify historic properties, we're in the  
 16 process of consultation, and then involving the  
 17 public, which there's a lot of public involvement  
 18 between what the NEPA process is, our website and  
 19 so forth, but we have not talked -- does anybody  
 20 want to talk about an APE? We've been calling it  
 21 a preliminary APE for when the field crews did  
 22 their work.  
 23 **MS. NADALS:** Yes, maybe, Rick, it would  
 24 be helpful to say what APEs or APEs we're working  
 25 with as part of the surveys you've done?

1 think this back -- this should be a total of  
 2 200 feet on the centerline, the right-of-way. So  
 3 it's a hundred feet.  
 4 **MR. ROBINSON:** It's a hundred feet on  
 5 either side, Rick.  
 6 **MS. NADALS:** Mark, go ahead.  
 7 **MR. STARZAK:** You know how I am with math  
 8 after yesterday, so let's start -- let me just  
 9 draw, and then we'll go. So our track width with  
 10 ballast, 28 feet, then is it a hundred feet from  
 11 centerline, Mark?  
 12 **MR. ROBINSON:** It's a hundred feet on  
 13 either side, yeah, so --  
 14 **MR. STARZAK:** So this would be the  
 15 right-of-way, so I'm going to call this "CL,"  
 16 centerline, and we'll call this "Right-of-Way."  
 17 And right-of-way is basically the land that's  
 18 acquired to build the project. The field crews  
 19 went out an additional 200 feet on either side.  
 20 So yesterday when James was talking about doing  
 21 300-foot swathes, that's like from this point we'd  
 22 have eight field crews -- members, and then this  
 23 would be 300 feet. They would go up a mile or two  
 24 miles, whatever it might be, or where they hit a  
 25 piece of land where they don't have access to,

1 Obviously, that's going to differ from what we  
 2 would define for any licensed alternative.  
 3 **MR. STARZAK:** Right. And as you know,  
 4 the APE is also based on the sensitivity of what  
 5 is out there and also what's being built in that  
 6 vicinity. So it's not like we're doing some  
 7 linear project that looks the same from point --  
 8 from the beginning point to the end point. The  
 9 project can be wider, can be higher, so the APEs  
 10 may have to adjust.  
 11 So let me just show you what we did for  
 12 the fieldwork. I actually have a -- I put a  
 13 little graphic together. Let's just take a very,  
 14 very simple section. So let's say this centerline  
 15 would basically be a single track at a very, very  
 16 normal grade, would be approximately 28 feet wide.  
 17 That's the tracks, the ties, the gravel  
 18 underneath. That can change depending on terrain,  
 19 okay, but let's just take a very basic thing. The  
 20 right-of-way generally is from the center of this  
 21 is 200 feet on either side, right?  
 22 Is that correct, Mark, or is it a hundred  
 23 feet? Mark Robinson, is he here? Make sure I'm  
 24 getting this right. And then what we looked at in  
 25 terms of the field was an additional 200 feet. I

1 then they would turn around and come back  
 2 basically to the starting point.  
 3 And so generally, the field survey  
 4 preliminary APE, if you will, is a total of  
 5 600 feet. Now, if this right-of-way is wider  
 6 because they're going to do a second track or  
 7 because the terrain is -- there's a low so they  
 8 have to do a higher ballast, if you've been down  
 9 to Decker, you can see how high that can get  
 10 sometimes, then the right-of-way flares out. But  
 11 our fieldwork would still go 200 feet beyond that  
 12 flare point. So I could draw it like this.  
 13 So let's say the right-of-way goes from a  
 14 200-foot right-of-way and then they need to do a  
 15 siding, it starts to flare out somehow, so they  
 16 need this for a siding, the field crews would have  
 17 gone 200 feet beyond. So that's our -- what we're  
 18 talking about with a preliminary APE, is simply  
 19 based on where the right-of-way is and then an  
 20 extra 200 feet beyond that.  
 21 So we haven't considered other things,  
 22 but that's what we started with just to say, "How  
 23 do we do the fieldwork? How do we see what could  
 24 possibly be disturbed by the construction and  
 25 equipment or other things that may happen, and

1 also just to have a buffer area of 200 feet?"  
 2 So that's what we've looked at for field  
 3 study, preliminary APE. Are there questions about  
 4 that?

5 **MS. NADALS:** Introduce yourself.

6 **MR. MILLER:** This is Lyle Miller with the  
 7 Yankton Sioux Tribe. The part where you had to  
 8 stop and turn around you don't have access to that  
 9 area right there, how are you going to get access  
 10 to it?

11 **MR. STARZAK:** That would be if -- should  
 12 the Board license an alternative and a particular  
 13 route is selected, then those landowners, the  
 14 railroad would be talking to them about access.  
 15 For the part we're in right now for the NEPA  
 16 phase, we've looked at where we have access to.  
 17 Not getting into the discussion yesterday about  
 18 how many percent, but that's where we did not have  
 19 access, there won't be any access granted until  
 20 there's a license. Does that make sense?

21 **MR. MILLER:** Are you going to force them  
 22 to let you use that in some way or --

23 **MR. STARZAK:** We can't. If a landowner  
 24 has said, "You can't come on our property to do  
 25 cultural resource studies or any resource

1 landowners.

2 If landowners want to negotiate, that's  
 3 fine. If they don't, the railroad then has the  
 4 right legally to go to state court and have the  
 5 land condemned through eminent domain, and that's  
 6 not a process that the Board gets involved in at  
 7 all.

8 **MR. MILLER:** So that little person gets  
 9 stepped on anyway, and you guys -- the little  
 10 person gets stepped on anyway, and the railroad  
 11 goes through yet even if he doesn't want it on his  
 12 land? That's what that process just explained,  
 13 right?

14 **MS. RUTSON:** It's the state's process. I  
 15 don't feel like I can characterize the process  
 16 that isn't the Board's. So it's the State of  
 17 Montana's process.

18 **MR. MILLER:** The rancher was here  
 19 yesterday, Clint, he's willing to let tribal  
 20 people go on his land and do the studies, but if  
 21 we don't do that and it comes to that, where are  
 22 his rights, you know, with this process that you  
 23 call eminent domain?

24 **MS. RUTSON:** And I'm sorry; for the  
 25 people on the phone, I didn't introduce myself.

1 studies," we can't force them.

2 **MR. MILLER:** Then you can't build it  
 3 there, right?

4 **MR. STARZAK:** Well, if there's a license,  
 5 then I think there's other proceedings which  
 6 basically I don't know. I'm not -- I don't want  
 7 to talk -- you know, I'm a Section 106 guy. I  
 8 don't know how all that works. But I would think  
 9 if there's a license, then the railroad would  
 10 start to talk to the landowners to purchase what  
 11 they need.

12 **MS. NADALS:** That's a state process,  
 13 right? Vicki?

14 **MS. RUTSON:** Yep.

15 **MR. MILLER:** And if they don't want to  
 16 sell it, then what?

17 **MS. RUTSON:** Then the land gets condemned  
 18 through eminent domain.

19 **MR. MILLER:** So you pull that -- what is  
 20 that called where --

21 **MS. RUTSON:** It's called eminent domain.  
 22 It's a state process. We don't take anything. We  
 23 simply license or deny or approve with conditions  
 24 the construction and operation of a rail line.  
 25 It's then up to the railroad to negotiate with the

1 Vicki Rutson. Again, I can't comment about the  
 2 state's process. It's not the Board's process.  
 3 It's the state's process. And eminent domain is  
 4 the state's process.

5 So I'm happy to talk about that with  
 6 anybody after the meeting, but understand, it's  
 7 the state's process, not the Board's. The  
 8 Board's -- the decision before the Board is  
 9 whether to approve, deny or --

10 **MR. MILLER:** Or condemn?

11 **MS. RUTSON:** -- or approve with  
 12 conditions the construction and operation of the  
 13 railroad. Condemnation of land is not before us  
 14 at all; it's the state's process.

15 **MR. MILLER:** So what about our process as  
 16 Tribal Historic Preservation people? Do they --  
 17 is there some way that the state will come up with  
 18 something that says, "Well, if they don't want to  
 19 cooperate with us, then we're going to do it  
 20 anyway?"

21 **MS. RUTSON:** The Section 106 and tribal  
 22 consultation process is very much part of what the  
 23 Board is doing. That's why we're here. That's  
 24 why one-third of my entire staff has flown from  
 25 Washington, DC to be here to meet with you, to

1 listen. So please, understand that we're taking  
2 this very seriously.

3 **MR. MILLER:** So are we and me and my  
4 contingent came from the Yankton Sioux Tribe and  
5 as well as a lot of tribal members, we've come a  
6 lot of miles too, and it wasn't Washington, DC  
7 where things don't get done; we're trying to get  
8 things done.

9 **MS. NADALS:** Well, that's encouraging. I  
10 think that that's why we're all here. We want to  
11 make sure that we can move forward. And as far as  
12 tribal participation is concerned, we want to make  
13 sure that if the Board licenses an alternative,  
14 that we have your ideas and concerns about what  
15 sorts of things we need to do in terms of  
16 additional identification, evaluation, and  
17 mitigation, and that we start working on those  
18 concerns as soon as possible so that we can  
19 incorporate whatever things you think we need to  
20 do and develop that into some sort of Programmatic  
21 Agreement or agreement document.

22 So we very much want to work with you to  
23 make sure that your concerns and ideas regarding  
24 evaluation, identification, and mitigation are  
25 incorporated into this process. So we're

1 sites out there, such as burials, other things  
2 that they seen, how might this railroad affect  
3 them places. And for instance, I think it was on  
4 the Anderson Ranch, the landowner very adamant  
5 that there was a burial on this ridge that the  
6 railroad was going to run by there, but they kept  
7 insisting that it's out of the corridor. No,  
8 we've got to go and try to view that there burial  
9 and see how this railroad. You know, I've worked  
10 down at the Dewey Burdock Project, and I'm quite  
11 aware of what train traffic can do when they're  
12 loaded and unloaded. And Curley can vouch for me  
13 on this. About every 15, 20 minutes there was  
14 trains going through there, and it was quite a  
15 traffic. And that there is way down in South  
16 Dakota where there's No Man's Land down in the  
17 country. Down here there was hardly anybody that  
18 lived in that there -- that corridor track. And  
19 we're talking about my good friends, the  
20 landowners around in the Tongue River, and we're  
21 talking about our people that are alongside that  
22 track there. How much is that -- you know, to  
23 them they have a concern for that railroad coming  
24 in and through there. How many times is there  
25 going to be cars going through there, loaded and

1 definitely interested in working with you and  
2 getting things done, even though we work in DC.

3 **MR. WALKSALONG:** My name is James  
4 Walksalong, Northern Cheyenne THPO. We're talking  
5 about APE, Area of Potential Effects. I monitor  
6 all this Tongue River Rail Project for this EIS.  
7 We started from base one, Miles City,  
8 checkerboarded all the way to Sheridan, Decker,  
9 some of the alternative routes, Colstrip, Cow  
10 Creek, and we even took a jog up into where the  
11 terminal where the Backs of White site is  
12 (phonetic), and I could tell you being a monitor,  
13 what my eyes and ears seen and heard. This is --  
14 the whole area is potentially affected. I'm  
15 talking from a tribal, a tribal culture  
16 standpoint. Like he drew -- drew this map here if  
17 we was to find a site such as tepee rings, stone  
18 circles, or whatever, you know, I took it upon  
19 myself to extend further beyond, beyond that  
20 corridor to where we would say, "Is there anything  
21 else beyond this that is tied into this?"

22 And Ben and Hubert and I done that on  
23 several places where we went beyond that there.  
24 And I also told the ICF staffs to take into  
25 consideration landowners that told of existing

1 unloaded? I mean, we're talking about a hundred-  
2 unit train, and they rattle down the roads.

3 I did a survey one time down at the  
4 Fidelity CVM Wells down there, and the big concern  
5 about that was the wildlife, and most notably the  
6 prairie chicken, the sage hens or grouse that  
7 we're talking about. How's that going to affect  
8 the noise and all that, how it's going to affect.

9 Well, we're talking the same thing, and  
10 these tracks that are going to be laid and the  
11 trains that travel on them, you know, they're  
12 going to create the same, if not more, of what I  
13 experienced down in doing the surveys down at  
14 Dewey Burdock. Train traffic is going to be very,  
15 very noisy, I'll tell you that. And --

16 **MS. NADALS:** You make some very good  
17 points, and I think that's exactly the kind of  
18 perspective we need.

19 **MR. WALKSALONG:** That's what APE is  
20 about, the area of potential effect, and we've got  
21 to look at all that.

22 **MS. NADALS:** And that's the kind of  
23 perspective we really need in terms of, you know,  
24 trying to identify areas of potential effects  
25 for -- that we need to look at if the Board

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1 licenses an alternative. So there may be various  
 2 different types of APEs. There could be APEs for  
 3 tribal sites, you know, sites of, say, spiritual  
 4 sites, how the noise might affect those sites. So  
 5 we really need your help to try to identify.  
 6 **MR. WALKSALONG:** We got a burial site on  
 7 a hill ridge and it's 2, 300 feet from that, you  
 8 know. They looked at it back at that time, peace  
 9 and tranquillity and eternal rest where they place  
 10 where they call good resting place. We need to  
 11 look at that.  
 12 **MS. NADALS:** Yeah, and we're happy to  
 13 take into consideration any ideas that you have  
 14 about how far out we need to look for different  
 15 types of resources, you know, visual impacts,  
 16 noise impacts, all that sort of thing that we can  
 17 take into consideration.  
 18 **MR. WALKSALONG:** Exactly. And I'm not  
 19 talking just about the animals too. I'm talking  
 20 about the plant life too. How is that all going  
 21 to affect, you know?  
 22 You know, I used to work at a greenhouse  
 23 when I joined college. I worked at a greenhouse  
 24 and they said, "If you talk to your plants, you're  
 25 going to see it grow a little bit," you know.

Page 22

1 It's just a figure, you know, we got to take all  
 2 that into consideration. You know, this is a big  
 3 undertaking, and we need to sit together as minds  
 4 and figure out how we can best resolve and come to  
 5 a good resolution on this. So that's all I have  
 6 to say.  
 7 **MS. NADALS:** Well, that's helpful, and I  
 8 think that's great. And anymore ideas like that  
 9 that we can have regarding what we need to look at  
 10 in terms of effects.  
 11 **MR. STARZAK:** Catching what -- capture  
 12 what James said before we take the next comments,  
 13 so I just jotted down for the final APE, let's  
 14 say, or for the APE that we'll be developing, we  
 15 should include any sensitive sites outside the  
 16 field survey area. So the field survey area is  
 17 very narrow. It was just really basically set up  
 18 to see what was on the ground near the proposed  
 19 construction area for all the alternatives. That  
 20 would capture these landowner informed sites that  
 21 James was referring to that are outside of where  
 22 we looked, they would include, you know, if there  
 23 was a stone circle. And James said that we went  
 24 out to see if there might be other things related  
 25 to that outside that walking area, so that's what

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1 that's meant to capture. And then we talked about  
 2 noise, visual plant life, and I would add that,  
 3 you know, the height of the railroad is going to  
 4 be a very key thing to look at.  
 5 **MS. NADALS:** Yeah, line of sight.  
 6 **MR. STARZAK:** Line of sight, I'm sorry.  
 7 **MR. VANCE:** (Native language) I say good  
 8 day to everybody. My name is Steve Vance. I am  
 9 the THPO for Cheyenne River Sioux Tribe. I've  
 10 held most of my comments yesterday until caucus  
 11 with other tribes, because that's basically why  
 12 we're all here together. But 106 is tribes with  
 13 federal agencies, so I guess my comments are going  
 14 to be towards STB. And again, I first off want to  
 15 commend and thank the public, the landowner came  
 16 in, addressed his concerns, and the others, the  
 17 local people coming up, the group providing meals.  
 18 It just goes back to a comment that was made, I  
 19 believe by Vicki with Surface Transportation  
 20 Board, that, you know, they are taking in concerns  
 21 of public and sometimes that outweighs the  
 22 environmental and safety issues. And I just  
 23 wanted to know if that was what you said for the  
 24 record? The other day you commented that there  
 25 has been permits, I think two that were denied --

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1 **MS. RUTSON:** This is Vicki.  
 2 **MR. VANCE:** -- over public concerns.  
 3 **MS. RUTSON:** You're exactly right, Steve.  
 4 The Board has denied a couple of cases, and the  
 5 Board or its predecessor agency. Because when the  
 6 Board makes a decision, it weighs whether the  
 7 environmental and safety concerns, and that  
 8 includes the public concerns, outweigh the  
 9 transportation benefits of the project.  
 10 **MR. VANCE:** Thank you. And then going  
 11 back to Conrad here reading the letter from  
 12 Northern Cheyenne that they're going to also let  
 13 the people decide, so I support those, because my  
 14 main concern for Cheyenne River Reservation is  
 15 cumulative effects. All of this is what we call  
 16 as tribal people native land. So there was no  
 17 line specifically drawn around areas. We  
 18 exchanged ceremonies, you know, with each other.  
 19 I commented this in the -- during the caucus. The  
 20 Lakota, or what you call the Sioux, participated  
 21 in what they called the Ghost Dance. And that was  
 22 people traveling all the way to the Paiute to  
 23 bring that back to their area. So we can't sit  
 24 here and say that the effects to these are to just  
 25 individual specific tribes with a line boxed

1 around them. We didn't create those lines. Those  
 2 lines were created, as you will hear, from our  
 3 politicians of broken treaty where, "You will live  
 4 here," and to this day, people assume that that is  
 5 the only concern we should have of that area.  
 6 "Well, this isn't by your reservation, so it  
 7 shouldn't concern you," or -- and I said it  
 8 yesterday about having relatives up here. My  
 9 great grandfather had a wife that was Northern  
 10 Cheyenne, so my ancestors traveled back and forth  
 11 through there.

12 So there are some other concerns, you  
 13 know, for association, and that's the thing. We  
 14 established the association to what's happening  
 15 here. So first of all, that's what I wanted to  
 16 say, you know, was for the public and for Northern  
 17 Cheyenne, is that we do support their vision,  
 18 because they're the closest to the effects that  
 19 I'm talking about, cumulative effects. Their  
 20 association is going to be sooner and greater than  
 21 ours. Ours is going to be further down the line,  
 22 50 years, 75 years, 100 years down the line,  
 23 what's coming down these bodies of water, what's  
 24 coming down from moving. And my comment of  
 25 cumulative effects is not just this project. In

1 the northern plains here, we have thousands of  
 2 projects that are going on that affect major land  
 3 disturbance, that affect, as I say, natural law,  
 4 land, air, and water.  
 5 We have uranium, we have rare elements,  
 6 we have Keystone XL, gases, we have all these  
 7 things that are happening upwind and upstream from  
 8 our reservation. So that's what I'm saying. You  
 9 know, what happened in the 1800 mining period in  
 10 the Black Hills has caused fish to be deformed in  
 11 the Cheyenne River. The Cheyenne River runs --  
 12 connects to the Missouri River and runs on the  
 13 southern border of our reservation to southern  
 14 Black Hills into Wyoming. So that really runs a  
 15 long ways. But all the other rivers, when I came  
 16 this way, I deliberately came up 212 to look at  
 17 the terrain and to see that whatever happens here  
 18 if dust blows off from the coal into the sides of  
 19 the train tracks, then that will eventually wash  
 20 into these creeks and streams and eventually go --  
 21 and there's other things in there besides what you  
 22 can see. There's minerals that you can't see that  
 23 are contaminants also.  
 24 But I think for the process of what we're  
 25 here, 106, we're still in Step 1. Over the phone

1 conference or teleconference the last time before  
 2 the meeting here, I'd asked when 106 or  
 3 consultation was actually initiated, and Rick was  
 4 the one who mentioned when that was. Because we  
 5 had already asked for this meeting, this face to  
 6 face, to have SHPO sitting here, and that's why  
 7 it's here, because I guess there was an issue with  
 8 him getting out of state to Rapid City. But I,  
 9 you know, thank him for being here to see, you  
 10 know, what our concerns are and to support his  
 11 role, as ours is identical.

12 So I think we're still in Step 1, if you  
 13 look at that four-step process that Rick put up  
 14 there of consultation and then identification.  
 15 And we're just barely into the identification  
 16 part, I feel.

17 **MR. STARZAK:** That's correct.

18 **MR. VANCE:** But yet again, we heard  
 19 comments that kind of disturbed me yesterday was  
 20 31 percent was good faith effort, and I don't  
 21 think so. I mean, we still have, like I said,  
 22 people allowing access for tribes to get in for  
 23 identification. So I think my suggestion is that  
 24 we do a -- the hundred percent identification and  
 25 that be of everything, any alternative that you

1 have figured out or you have on the table. I  
 2 believe I seen like four of them.  
 3 But still, you can't project down the  
 4 line as to reroutes unless you know what's there  
 5 to avoid, to protect. And I mentioned, you know,  
 6 during the meeting that last night or yesterday  
 7 afternoon, that to us it's a different process.  
 8 You know, I don't support phased identification,  
 9 because you don't really know the whole effect of  
 10 the project yet. So as I said, you know, how can  
 11 you protect what you haven't identified yet, when  
 12 that's the next thing after identification is  
 13 nomination and protection measures?  
 14 But again on that eligibility for  
 15 nomination, that's bothered me ever since I've  
 16 came to THPO as to our concerns. We've brought  
 17 this up with almost all of these projects, that we  
 18 feel water is a sacred object, and yet when you  
 19 look at 13007, Sacred Sites, it's not mentioned in  
 20 there. How you going to protect this water when  
 21 we're looking at it as a sacred object?  
 22 So there is changes that need to be  
 23 happening further up that, you know, we won't be  
 24 dealing with here today. But that is our ongoing  
 25 concern, and the protection of that water.

1 We heard it several times in prayers and  
 2 in discussions as to, "If you don't have it,  
 3 you're not going to live." And if you think life  
 4 is sacred, water is sacred.  
 5 So these are the cumulative effects  
 6 that's going to run down all these tributaries,  
 7 creeks, streams, rivers, dams, into the Missouri,  
 8 into the Mississippi, into the atmosphere, coming  
 9 down in snow and rain onto the person further  
 10 down. But like I said, it's not just Tongue  
 11 River. This one is one of others. It's not --  
 12 you have to take that into consideration, that you  
 13 are part of a -- of other agencies that are I feel  
 14 are sometimes catering politicians over the backs  
 15 of local people's concerns.  
 16 And I don't know who it was yesterday  
 17 commented about, "Well, you know, we want recorded  
 18 archeological sites. There's windmills."  
 19 Well, tribes needed water too, but they  
 20 didn't drill and put up a windmill. You know, if  
 21 you can look at a windmill as a historical  
 22 property, what about the flowing water, where you  
 23 got it to use?  
 24 The tribes didn't go and drill a well to  
 25 have access to that water. They walked down to

1 concerns. I am here for our reservation. So I'm  
 2 making these comments as the effects that's going  
 3 to be happening downstream, downwind from all of  
 4 the property, 50, 100 years, 200 years from now.  
 5 Because we can say there's no effect from this  
 6 project within, you know, maybe the years of its  
 7 operation, but what it leaves after it's gone, we  
 8 will still be here. Once people have mined what  
 9 they want out of the land, there's no more, they  
 10 leave. We're still the ones here.  
 11 So I think the other thing too, is to  
 12 being, as I said, I would like to -- I recommend a  
 13 hundred percent survey. And again, I -- I  
 14 appreciate the help that archeologists give tribes  
 15 in surveys, but I would prefer total native  
 16 involvement in the surveys, whether it be a Class  
 17 3 archeological survey that it be conducted by  
 18 native people or whether it be pre-construction  
 19 monitoring by tribal, you know, specialists, or  
 20 construction monitoring by tribal specialists, I  
 21 always say total native involvement. We have  
 22 skilled archeologists who work for our tribes. So  
 23 I would say if there was to be a Class 3 report,  
 24 you know, to do -- as I said it before, you know,  
 25 two birds with one stone. When we are sent Class

1 the natural flowing stream to get that water. So  
 2 that flowing stream is their supply. But yet,  
 3 again, it comes down to that structure that  
 4 somebody built to have water in a different area  
 5 as a historical property, but then what the tribes  
 6 had would not. So that's the ongoing battle with  
 7 eligibility, that a lot of things that we see as  
 8 significant and important and should be eligible  
 9 and protected that tribes have gone on and put it  
 10 on their protection to tribal works.  
 11 And there's comments that I made before  
 12 about maybe it's time we take -- we used to live  
 13 on and put on, you know, world nominations,  
 14 because the United States Government was not  
 15 listening to us. And I can specifically bring one  
 16 up is the Black Hills. Those are sacred to many,  
 17 many tribes, as is Stonehenge or the Pyramids  
 18 or -- but I said I very much doubt they would go  
 19 and put something like that on protection  
 20 measures. The world will. Other countries will  
 21 look at what tribes feel as sacred and  
 22 significant. But we always get back to this  
 23 process that's not in our favor. And we will  
 24 continue, like I said, we keep coming here and,  
 25 you know, chipping away, chipping away at our

1 3 archeological surveys, we review them and look  
 2 at them, we say, "There's a lot of stuff missing."  
 3 So we come back to the table here and say, "We  
 4 want tribal identification." Now, if that was  
 5 done right off the bat, we wouldn't be asking for  
 6 that second survey. Now, to see --  
 7 **MS. NADALS:** Steve, could I interject  
 8 just a couple of comments?  
 9 **MR. VANCE:** Well, let me say one more  
 10 thing here, and then I'll be done. But it comes  
 11 back to the budget again. And as it was stated  
 12 yesterday, that nowhere was there consideration  
 13 for budget for tribes to do the survey. That  
 14 needs to be there.  
 15 So those are my comments from Cheyenne  
 16 River in support with Northern Cheyenne and the  
 17 other tribes.  
 18 **MS. NADALS:** Thank you. I appreciate  
 19 your comments, especially, you know, your specific  
 20 concerns about impacts to water resources. I hear  
 21 that a lot. But I just wanted to make it clear  
 22 that when I was talking about a good faith effort,  
 23 I was talking about the identification effort that  
 24 we've done as part of the NEPA process, not 106,  
 25 and that we would be doing much more survey work,

1 much more intensive survey work, different types  
 2 of studies, you know, and much more -- much  
 3 clearer types of studies that would provide us  
 4 with much more information and enough information  
 5 to make determinations of eligibility. And that  
 6 would be done as part of the re -- or work that  
 7 would be done for the licensed alternative, if the  
 8 Board licenses an alternative.

9 So we're just at the very early stages,  
 10 as you pointed out, of 106 and the NEPA process.  
 11 And so if the Board licenses an alternative, we  
 12 would be doing much, much more than has been done  
 13 to date. Looking at different areas of potential  
 14 effects, looking at different types of resources,  
 15 having tribal surveys, archeological surveys, and  
 16 so we're not there yet. We're not there yet.

17 And one of the reasons we want to develop  
 18 this Programmatic Agreement is to lay out the  
 19 process of what would be done in terms of cultural  
 20 surveys, identification, evaluation, determination  
 21 of areas of potential effect, and so have -- start  
 22 planning, you know.

23 We have somebody who had said something  
 24 about strategic planning. We want do that. We  
 25 want to do some strategic planning now and have

1 hundred percent native involvement in survey  
 2 monitoring, Class 3 surveys.

3 So just so, again, I'm capturing only  
 4 part of what you were discussing, but it's all on  
 5 the court reporter's. These are exactly the kinds  
 6 of things we want to consider, as Cathy was  
 7 saying, as we start to think, "How do we do this  
 8 effort?" A Programmatic Agreement is the typical  
 9 mechanism for doing that, so how do we develop  
 10 that together?

11 So I just wanted to make sure, Steve, was  
 12 there something else we should capture for the  
 13 group on that?

14 **MR. VANCE:** This is Steve Vance, Cheyenne  
 15 River again. Like I said, you know, there's many,  
 16 many projects going on. We have a teleconference  
 17 today; I just got a phone call this morning before  
 18 I walked in here if I was going to be down in  
 19 Rapid City for Keystone XL. So this is where  
 20 we're at here. We're pushed in a corner. I said  
 21 this before, it's like a football game, you know.  
 22 We have these applicants and companies and federal  
 23 agencies coming in here with a football uniform on  
 24 and they gave us a tennis outfit to play with  
 25 them. It felt -- you know, but we've gotten

1 all you involved in doing that strategic planning  
 2 so that we make sure that we do make a good faith  
 3 effort, that we make sure that we make an effort  
 4 that you're all happy about and that you're all in  
 5 agreement on.

6 So what we're doing -- what we've done to  
 7 date is just very preliminary in terms of  
 8 gathering information about historic properties so  
 9 we can compare the alternatives. And we know it's  
 10 nowhere near what we need to do in terms of  
 11 identification or any alternatives actually  
 12 licensed. So we're not there yet, and that's why  
 13 we really hope that we can have your help in  
 14 laying out the strategy for that process in a  
 15 Programmatic Agreement. We think that's critical  
 16 to having your input from the ground up, from here  
 17 up, to figure out exactly what we need to do. So  
 18 anyway, just wanted to make that point.

19 **MR. STARZAK:** So, Steve, just so we've  
 20 tried to capture -- you know, the court reporter's  
 21 captured everything you said, but just to put some  
 22 bullets on the things up here for the APE, we  
 23 added water. Was there anything else we added to  
 24 the APE analysis or -- we already added line of  
 25 sight, and then we added under identification

1 helmets, we've gotten pads, we have the equipment  
 2 now to get out there and to play a pretty fair  
 3 game, but the rules are still not in our favor.

4 So the process to get out there and to  
 5 identify, I don't know how many times  
 6 archeologists have been out there. You know, I've  
 7 heard, you know, planes going by and markers being  
 8 in the ground that ranchers didn't know people  
 9 were on their land. So other people have been in  
 10 there, but where has the tribe had that  
 11 opportunity? That's what I'm saying.

12 If we're going to be involved, these are  
 13 the things that I'm going to be expecting out of  
 14 this, is that we have a hundred percent  
 15 involvement, you know, as equal to third-party  
 16 applicant, you know, archeologists, you know, that  
 17 type -- the tribes be the ones out there, because  
 18 we're the ones that are going to know what it is.  
 19 And I think --

20 **MS. NADALS:** Yeah, Steve.

21 **MR. VANCE:** Nothing against  
 22 archeologists, but I think they have stepped  
 23 forward and commented that we have to count on  
 24 you. We have to count on the tribes to say what  
 25 that stone is, because you know, we were taught

1 Columbus discovered America, and I don't know if  
 2 anybody still believes that today; we never did.  
 3 So like I said, tribes needs to be out  
 4 there. If you're going to talk about a PA, you  
 5 know, if you look at your chart up there, where  
 6 does the PA fall in? You know, you should be  
 7 coming up with other things, scopes of work, or  
 8 other things to develop that phase. And I think  
 9 we're like jumping ahead of things, you know, with  
 10 eligibility, and those things will come down the  
 11 line. But we haven't even done identification,  
 12 and that's where I think we need to go with this.  
 13 So I think I'm just going to stay on that part, is  
 14 that we get to conclude that identification  
 15 phase --

16 **MS. NADALS:** Yeah, and Steve --

17 **MR. VANCE:** -- without saying we're  
 18 already doing good faith or without saying that  
 19 we're going to go into a PA or MOA or whatever. I  
 20 think those things will be developed. But check  
 21 with the tribes, for the ones who are -- and we  
 22 probably won't, most likely won't have, as they  
 23 say, boots on the ground from Cheyenne River. I  
 24 support which tribes are going to be out there  
 25 doing it for the benefit of Cheyenne River not for

1 because the archeologists learned from the tribes  
 2 and the tribes learned from the archeologists. It  
 3 was really a great cross-fertilization of  
 4 knowledge, and I think that's the way things  
 5 should go. So anyway, if Rick, you wanted to add  
 6 something to that?

7 **MR. STARZAK:** Yeah, Steve, just to be  
 8 clear, none of our archeologists did any work  
 9 without Native Americans with our teams. And  
 10 there was some confusion yesterday about  
 11 helicopter surveys. No helicopter surveys were  
 12 done for culture resources work. I think there  
 13 might have been for wildlife and biology, but not  
 14 cultural resources. So I just wanted to convey,  
 15 from the very first day we stepped in the field,  
 16 we were coordinating with tribal members.

17 **MR. VANCE:** Okay. This is Steve again  
 18 from Cheyenne River. But like I said, other  
 19 people -- I didn't say specifically who was in  
 20 there flying, but other people have had the  
 21 opportunity to get in there and to view more than,  
 22 I think, tribes, and maybe in the first proposal  
 23 Keystone had that this didn't happen; that's why  
 24 we're here today.

25 But I understand all the people who are

1 the benefit of themselves. Because like I said,  
 2 it's a unified effort here.

3 **MS. NADALS:** And, Steve, just to make it  
 4 clear, we did have tribes out with us. As you can  
 5 see on the screen, we had a number of tribes that  
 6 participated in the surveys this summer, and we  
 7 had -- we asked all the tribes who were consulting  
 8 with us to participate in the surveys, and we had  
 9 a large response. And the tribes that did  
 10 participate are shown on the screen, and they were  
 11 also paid. And any efforts that will be done in  
 12 the future that would include tribes, tribes would  
 13 also be paid for any participation that they would  
 14 have in helping us identify resources along the  
 15 licensed alternatives. So that's something we  
 16 would definitely do.

17 We understand completely that we need to  
 18 have tribal feet on the ground, that only tribes  
 19 can understand and identify sites that are  
 20 important to tribes; archeologists can't do that.  
 21 And that's precisely why we had a configuration of  
 22 field crews that we had, which is, you know, four  
 23 archeologists and four tribal participants this  
 24 summer. And from what I hear from both the tribes  
 25 and the archeologists, it worked very well,

1 involved, tribes, you know, out there doing the  
 2 identification and how many they were and how  
 3 positive it was. But that's what I'm saying right  
 4 now, is that, you know, we need to get back to  
 5 total identification efforts. Because if you're  
 6 going to talk about, you know, something further  
 7 down the line, that may change the route of your  
 8 plan here, whether, you know, descending off of a  
 9 hill or, you know, incline or crossing a stream  
 10 or, you know, the rancher talked about how he was  
 11 going to be denied access to property and water  
 12 because of what side of the river or that the  
 13 track was going to be, and what they wanted wasn't  
 14 really going to be what was going to be offered to  
 15 them.

16 So I guess, you know, on the other side,  
 17 I'm saying that we need to get back to this --  
 18 once you know the whole area, then you can decide  
 19 about your visual, you know, how far, you know,  
 20 the other effects besides the effects to sacred  
 21 sites. But if you're, you know, looking at one  
 22 area and not another, how can you -- and  
 23 association, you know, I talk about association as  
 24 the tribes. We still practice these ways. It's  
 25 not because these things were sitting there for

1 10,000 years that we don't associate ourselves to  
 2 them. We still do.  
 3 The other thing is that some of these  
 4 sites cross large areas and distance. You know,  
 5 you don't have to be on top of every tower to be  
 6 connected to Devils Tower. You don't have to be,  
 7 you know, touching the sun to pray and to worship  
 8 the sun. So the visual goes further than what  
 9 you're looking at here for a lot of these areas  
 10 out here. I just want to say that part, because  
 11 once we get in there and identify and the tribes  
 12 sit down and evaluate all of this into what  
 13 Surface Transportation Board can look at as for  
 14 protection measures, you don't know what it is  
 15 unless you find it.  
 16 So I think we need to -- and whatever  
 17 kind of document you want to develop before then  
 18 for that type of agreement, I guess that's, you  
 19 know, those ongoing phases of how you're going to  
 20 do that. But like I said, we need to get back to  
 21 identifying what is in that whole valley.  
 22 **MR. STARZAK:** Thank you, Steve. We just,  
 23 again --  
 24 **MS. RUTSON:** Rick, we've got Terry here  
 25 that would like to speak.

1 be other tribes involved since the spur goes up to  
 2 Otter Creek. So you know, I just want to make  
 3 sure that you know that and it's included in the  
 4 comment. Thank you.  
 5 **MR. RHODD:** This is Ben Rhodd, Rosebud  
 6 Sioux Tribe. The encapsulation of Steve's talk  
 7 here has really hit the nail on the head, so to  
 8 speak. It comes down to where we're doing  
 9 identification. I'm in agreement with what  
 10 happened, James can attest to that, when we were  
 11 out in the field, and I have to say, I respect the  
 12 archeologists for stepping away from what we were  
 13 doing. However, I want to bring up about one  
 14 site, just as an example of this.  
 15 What we were talking about going outside  
 16 of the area, James was mentioning earlier, we went  
 17 outside and we looked over at another small  
 18 commentary next to this site that had, I think, if  
 19 I remember correctly, one spiral, three circles,  
 20 another effigy of some nature, about five  
 21 features. Now, that was what was recorded by the  
 22 archeologist. However, as we sat down, took our  
 23 time, not only going over to another area but  
 24 coming back, finding other features, there was  
 25 actually a total of about 17 features there.

1 **MR. STARZAK:** Let me say one thing. We  
 2 added association to the preliminary. Go ahead,  
 3 Terry.  
 4 **MR. CLOUTHIER:** I'll defer to Steve right  
 5 now, and then I'll speak after him.  
 6 **MR. BRADY:** Good morning. My name is  
 7 Steve Brady. Happy Valentine's Day. So you make  
 8 sure you send a selfie to your significant other.  
 9 Conrad will be sending about four or five.  
 10 Anyway, I just wanted to cover a little  
 11 bit about Otter Creek, the proposed mine. And our  
 12 coal is leading the state-owned coal about 550  
 13 million tons and Great Northern Properties about  
 14 770 million tons. And one of the proposed routes  
 15 or spur, if you want to call it, comes off that  
 16 near Ashland up toward Otter Creek, and it's a few  
 17 miles up in there. Then there's a THPO site and  
 18 so forth. Conrad and I have been -- the cultural  
 19 commissioner is the designated tribe along with  
 20 the THPO to handle this. The first proposed  
 21 survey site is approximately about 10,000 acres of  
 22 proposed mine project, and we'll be doing the  
 23 survey there hopefully this summer. We do have a  
 24 Cultural Resource Management Plan that's in place.  
 25 But, the other part to this is that there should

1 That's additional to what we recognized that was  
 2 on the ground. So we didn't say anything. Why?  
 3 Because of the issues that we have with the  
 4 traditional cultural properties as it is written,  
 5 so to speak, and so far, we use in the law. And  
 6 that's another whole separate argument and issue.  
 7 However, we were content on that level at  
 8 that time, particularly for let the archeologists  
 9 do what they could do as far as recognition about  
 10 historic property and being able to place the  
 11 applicable law to its protection. It's not that  
 12 we were not concerned about it; we were, on the  
 13 level of the additional features that were there.  
 14 But we didn't say anything. We sat on  
 15 the ground, had a good smoke, talked it over among  
 16 ourselves. Said, "We will leave that." And I  
 17 think James was saying that later on they would  
 18 have Conrad and others to come out and look at the  
 19 site also. I'm just saying, bringing that as an  
 20 issue here, because it is the identification that  
 21 is the most important at this stage.  
 22 And all your alternatives, all the other  
 23 differing divergent routes, whatever that you're  
 24 going to be doing, we need to survey those.  
 25 That's the reason I was asking for numbers

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1 yesterday. If it's easy to get your head around  
 2 the numbers. So we calculated off of all that you  
 3 had written here, the acreages, we have the  
 4 potential just from the sampling, so to speak,  
 5 that has taken place on those 32 percent, we have  
 6 180 traditional cultural properties, if you want  
 7 to use that term, sacred sites, sites of  
 8 significance, etc. We have 180 of them out there.  
 9 Once those are identified, once they are  
 10 located, then we have the basis by which to create  
 11 what will happen within the context of a PA, and  
 12 from there, to the scope of work.  
 13 We're kind of getting -- but we're  
 14 putting the horse behind the cart here. But I  
 15 don't know where else you want to go with this.  
 16 Trying to figure that out. Or do we want to go  
 17 with the sow first. So you know, we're kind of --  
 18 we're kind of losing our perspective here on as  
 19 far as the process, as far as has been set down by  
 20 the ACHP. We need to think about this.  
 21 And I'm in complete agreement with what  
 22 Steve has been bringing out here. And I know that  
 23 Terry has comments that have to do with the 800  
 24 regs, so just putting that out there. But I do  
 25 want to have it on record that Rosebud supports

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1 the points that have been brought up by Mr. Vance.  
 2 Thank you.  
 3 **MR. CLOUTHIER:** Thanks, Ben. This is  
 4 Terry with Standing Rock Sioux Tribe. I want to  
 5 get back to a comment that Cathy had made in  
 6 regards to identification when she was commenting  
 7 about to Steve in terms of the NEPA identification  
 8 versus the Section 106 identification. Part of  
 9 the problem with this project right off the bat is  
 10 that we're mixing NEPA and Section 106. I said it  
 11 in my opening comments yesterday, that it almost  
 12 always fails, and this is a project where it's  
 13 failing yet again.  
 14 Specifically, and I'll say this slowly  
 15 for the benefit of our court reporter -- I've  
 16 gotten in trouble from them before for speaking  
 17 too fast -- 36 CFR 800.8(c)(1)(ii), Identified --  
 18 I'm sorry, "Identify historic properties and  
 19 assess the effects of the undertaking on such  
 20 properties in a manner consistent with the  
 21 standards and criteria of 36 CFR 800.4 through 5,  
 22 provided that the scope and timing of these steps  
 23 may be phased to reflect the agency official's  
 24 consideration of project alternatives in the NEPA  
 25 process and the effort is commensurate with the

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1 assessment of other environmental factors."  
 2 That doesn't mean that you can just do  
 3 whatever you want in the NEPA process, and this is  
 4 the problem with the federal agency's assumption  
 5 on these. You still have to do your 106 and your  
 6 NEPA identification to be consistent with the 106.  
 7 Now, when we go back to --  
 8 **MS. NADALS:** Terry, just -- what's the  
 9 heading of that section?  
 10 **MR. CLOUTHIER:** That's Coordinating  
 11 800.8.  
 12 **MS. NADALS:** We're actually not following  
 13 that, that part of the 106 regulations. We're  
 14 coordinating 106 with NEPA, but not that -- we're  
 15 not following that exact --  
 16 **MR. CLOUTHIER:** You would need a separate  
 17 agreement that states such, and you have not done  
 18 that with any of the tribes.  
 19 **MS. NADALS:** Yeah, we're not --  
 20 **MR. CLOUTHIER:** You have to follow this  
 21 or you have to have a separate agreement stating  
 22 that you're not doing this.  
 23 **MR. STARZAK:** That's why we're here.  
 24 Exactly, Terry. That's why we're here. We're  
 25 trying to see if -- we're trying to see if

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1 everyone is in agreement in developing the PA.  
 2 **MR. CLOUTHIER:** Okay. I'm going to get  
 3 to that, Richard. I'm sorry to cut you off, but  
 4 since Steve was cut off, I'll do it as well.  
 5 **MR. STARZAK:** Okay, sorry.  
 6 **MR. CLOUTHIER:** Pardon me. 800.4(2),  
 7 "Phased identification and evaluation," there's  
 8 three criteria within here that we really need to  
 9 talk about. You mentioned yesterday that you are  
 10 going with a phased identification and evaluation  
 11 section. It specifies -- I won't even bother  
 12 reading the first part, because that just talks  
 13 about the consideration for land mass and stuff,  
 14 and that's what you guys have.  
 15 Let's get down to the sentence where it  
 16 says, "The agency official may also defer final  
 17 identification."  
 18 "The agency official may also defer final  
 19 identification and evaluation of historic  
 20 properties if it is specifically provided for in a  
 21 MOA executed pursuant to 800.6," or "a  
 22 Programmatic Agreement executed pursuant to  
 23 800.14."  
 24 **MR. STARZAK:** Exactly.  
 25 **MR. CLOUTHIER:** Yesterday I heard and I

1 just heard from Richard talking about, "Do we need  
2 to do a PA," this specifically states, "Yeah, if  
3 you're doing this, you have to do a PA." There's  
4 no choice in that.

5 **MS. NADALS:** That's what we've been  
6 saying. I mean --

7 **MR. CLOUTHIER:** No, I've heard that you  
8 guys were -- you know, "Are we going to consider  
9 to do a PA?"

10 **MS. NADALS:** No, we are doing a PA.

11 **MR. CLOUTHIER:** Well, good. That's the  
12 first time I've heard you say we're definitely  
13 doing the PA.

14 **MS. NADALS:** I don't understand. We  
15 could go back and look at the record, but I've  
16 been saying repeatedly that we want your input on  
17 developing a PA.

18 **MR. CLOUTHIER:** All right, let's go down  
19 more to the sentence that begins with "The  
20 process." Yeah, right there.

21 "The process should establish the likely  
22 presence of historic properties within the area of  
23 potential effects for each alternative or  
24 inaccessible area through background research,  
25 consultation and an appropriate level of field

1 and that would be 36 CFR 800.4(b)(1), "and (c) of  
2 this section."

3 You heard from Mr. McRae yesterday that  
4 he has nine miles worth on his land that needs to  
5 be surveyed. He has agreed to give you access to  
6 it. I'd like to see this thing surveyed if this  
7 is going to be --

8 **MS. NADALS:** Terry, just to be clear, I  
9 mean, I don't know if Vicki wants me to go into  
10 this.

11 **MS. RUTSON:** Just let Terry finish, and  
12 then that's fine.

13 **MS. NADALS:** Because we did have a letter  
14 from McRae saying that we could not access his  
15 property, for the record. But anyway, I'll be  
16 quiet from now on.

17 **MR. CLOUTHIER:** No, it's totally fine,  
18 Cathy, but what I'm getting at now is, you heard  
19 him yesterday specifically say that as long as  
20 there's tribal participation, he's okay with you  
21 being on his land. That falls under that criteria  
22 of that last sentence. The location is now  
23 available, therefore, you must conduct --

24 **MR. SUMMERVILLE:** Alan Summerville.  
25 There's a history behind the area. What Mr. McRae

1 investigation, taking into account the number of  
2 alternatives under consideration, the magnitude of  
3 the undertaking and its likely effects, and the  
4 views of the SHPO/THPO and any other consulting  
5 parties."

6 You heard Ben Rhodd say it and you've  
7 heard Steve Vance say it, that we want a hundred  
8 percent survey. You'll hear me now say it.  
9 Standing Rock Sioux Tribe wants a hundred percent  
10 survey. Is that being considered?

11 **MS. NADALS:** Yes, we'll certainly  
12 consider that. Absolutely, we'll consider that.

13 **MR. STARZAK:** And just --

14 **MR. MILLER:** Lyle Miller with the Yankton  
15 Sioux Tribe. You can also include the Ihanktonwan  
16 (phonetic) people with them.

17 **MS. NADALS:** Okay, great.

18 **MR. STARZAK:** The -- Steve, may I insert,  
19 or do you have more?

20 **MR. CLOUTHIER:** Let's go to the last  
21 sentence here. "As specific aspects or locations  
22 of an alternative are refined or access is gained,  
23 the agency official should proceed with the  
24 identification and evaluation of historic  
25 properties in accordance with paragraphs (b)(1),"

1 was saying before was -- or I should clarify.  
2 There's a letter from a group representing a  
3 series of landowners, including McRae, that said  
4 we have no access. There was nothing specific  
5 about, "but you could have come out last summer if  
6 you have Native Americans with you."

7 So we -- he said it verbally now, and  
8 that's good, but we need a letter from his  
9 attorney clarifying again if their position has  
10 changed.

11 **MR. CLOUTHIER:** Well, I'm not sure how  
12 you want to work that, but from what I heard  
13 yesterday, there's now nine miles that's open for  
14 survey and potentially more based on the other  
15 landowner that I can't remember their name that he  
16 may grant access to some of his land as well. And  
17 that has to be conducted in accordance with  
18 (b)(1). I'm not going to go into all that. I'm  
19 sure Cathy has heard me speak on identification  
20 efforts and good faith effort. I know -- I have a  
21 feeling Bruce may want to speak on that as well,  
22 based on what he's mentioned this morning. So  
23 those are where my considerations and concerns  
24 are, is specifically with the phased  
25 identification. It almost felt like it was being

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1 thrust upon us without our views being considered  
 2 in that, in particular with the hundred percent  
 3 survey. I just feel like it's not coming across  
 4 that we do want a hundred percent survey of this.  
 5 I also, in terms of meeting the  
 6 requirements that are required for NEPA and  
 7 Section 106 and your identification effort, I  
 8 don't feel that the numbers that were presented  
 9 yesterday really meet that standard. I think  
 10 they're still too low, in particular, Tongue  
 11 River, the main Tongue River one at five percent.  
 12 There's no way you've got a good idea of what's  
 13 actually there at five percent in terms of being  
 14 able to establish the cultural history for that  
 15 area for a NEPA document, and there's certainly no  
 16 way it meets Section 106, in my opinion.  
 17 Maybe some of the other numbers are a  
 18 little bit closer to what you need, but they all  
 19 seem to be low to me, and I think, you know,  
 20 undertaking as you get access to or whatever else  
 21 is impeding you getting out there, undertaking  
 22 those as they come up prior to the Draft EIS will  
 23 make it stronger. Because I'll tell you, right  
 24 now if it comes across my desk with these numbers  
 25 on it, I'm going to call you out on it legally

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1 through the NEPA process.  
 2 Additionally, the wildlife surveys done  
 3 through helicopter survey, there's no way that's  
 4 going to be feasible, especially considering the  
 5 huge fire that happened. When was that fire?  
 6 **MR. CONRAD FISHER:** A couple years ago.  
 7 **MR. CLOUTHIER:** And the fact that they  
 8 don't have their habitat anymore. That clearly,  
 9 as the landowner said, needed to wait until it had  
 10 regrown.  
 11 So those are some of the concerns that I  
 12 have with your NEPA document as it stands today.  
 13 But my main concern was with the landowner saying  
 14 you've got nine miles. We need to get that  
 15 surveyed as soon as possible, because it's going  
 16 to strengthen your argument, especially for that  
 17 Colstrip, which is the preferred for the  
 18 applicant, so...  
 19 **MS. NADALS:** Thank you.  
 20 **MR. STARZAK:** David, may I address Terry  
 21 before you start?  
 22 Terry, just to be familiar, so when Clint  
 23 McRae was talking yesterday, we put some bullets  
 24 down about, you know, his property, about, you  
 25 know, tribal going out. We have a hundred percent

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1 survey down. I think we're in concert here that a  
 2 phased identification has to be done. If we're  
 3 going to currently only have access through  
 4 landowner permission to 45 percent of the  
 5 alternatives, we can't trespass. We have to do a  
 6 phased identification. If you look at the part of  
 7 the regulations that are highlighted, which you  
 8 pointed out, "As specific aspects or locations of  
 9 an alternative are refined or access is gained,  
 10 the agency official shall proceed with the  
 11 identification and the evaluation."  
 12 So as we discussed earlier, 55 percent of  
 13 the land is inaccessible to us and probably would  
 14 not be until there is a licensed alternative. And  
 15 if there is -- if that happens, and if there is  
 16 a -- suddenly there is an ability to access the  
 17 property. So I think we're in concert; it's just  
 18 timing. I want everybody to be aware, we can't  
 19 just go out and survey where we do not have  
 20 permission. And Clint McRae reiterated that  
 21 yesterday. So that's fairly new. I mean, okay,  
 22 I'll let you go, David.  
 23 **MR. YOUPEE:** Rick, can I say something?  
 24 Curley Youpee; I'm sorry. The amount of land that  
 25 we have access to and the numbers continue to

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1 shift back and forth of percentages. I think the  
 2 important thing for me is the methodology of the  
 3 actual work on the ground. I understand and I  
 4 understand it yesterday, the phase work part of as  
 5 being a system because we don't have access to  
 6 each and every parcel of land out there. I  
 7 understand that. I understand the importance of  
 8 the PA, so that we can prescribe guidelines in  
 9 order to continue our work in doing the surveys  
 10 and having a final project as well as instituting  
 11 litigation measures that would assist the tribes.  
 12 But my question is, that the Board's  
 13 review of construction applications is governed by  
 14 49 U.S.C. 10901, and as regulations 49 CFR 1150.1  
 15 to 1150.10 and the requirements of NEPA and  
 16 related environmental laws.  
 17 Now, the EIS that I reviewed that went  
 18 way back to Otter Creek and other developments,  
 19 I've never seen cultural resources in respects to  
 20 tribes' involvement described in those. We're not  
 21 talking about cultural resources in terms of  
 22 features in sites. We're talking about cultural  
 23 resources in terms of medicinal plants, natural  
 24 food suppliers, and waterways and springs.  
 25 Now, I haven't seen a document to date

1 that connects the tribes and these cultural  
 2 resources, and I'm hoping to see that in the new  
 3 process here. So can you tell me what we're going  
 4 to do in terms of cultural resources in the NEPA  
 5 document? Because I understand that it's going to  
 6 be two separate documents, the NEPA and the  
 7 Section 106; is that right?  
 8 **MR. STARZAK:** Yes.  
 9 **MR. YOUPEE:** You're saying "yes"; she's  
 10 saying "no."  
 11 **MR. STARZAK:** I'm sorry? The NEPA  
 12 document would summarize what the Section 106  
 13 process revealed. So in other words, the Section  
 14 106 process informs the NEPA document, but we will  
 15 not be using the NEPA document to do consultation  
 16 with the tribes or the SHPO. So I think of it as  
 17 two different processes. The Section 106 results  
 18 in forming the NEPA process, but they're separate.  
 19 **MR. YOUPEE:** Okay, can we ask Vicki why  
 20 she was shaking her head so that I'm not in the  
 21 confusion, state of confusion here?  
 22 **MS. RUTSON:** We're combining NEPA and  
 23 106, except it is our intention, and if I'm not  
 24 being -- oh, I'm sorry; this is Vicki Rutson. And  
 25 I'm not sure I'm going to be responsive, Curley,

1 concerns.  
 2 We're hearing there needs to be a hundred  
 3 percent survey work, and I've already made the  
 4 commitment that we'll take that issue back to  
 5 Washington and I will talk it over with the team.  
 6 I am making no promise today that we're going to  
 7 do that 100 percent survey work of every  
 8 alternative. The promise that I'm making is,  
 9 we'll talk about it and come up with a decision  
 10 that's considered and thoughtful.  
 11 So our hope is that we'll be able to work  
 12 with, be it if there's a group that would like to  
 13 get involved in the nuts and bolts of the PA, we  
 14 would be so thrilled to be able to have a group  
 15 that we can work with on a weekly basis. I  
 16 understand -- I understand the tribes are being  
 17 slammed now with work and projects and agencies.  
 18 I'm sure you've had your fill, and I don't mean to  
 19 add more burden to your already overflowing  
 20 workload.  
 21 What I'm saying is, we would love to have  
 22 the opportunity to work with you as we develop a  
 23 PA that will allow for 100 percent surveying of a  
 24 route, should a route be permitted by the agency.  
 25 So to answer your question, finally,

1 but I've got all these thoughts jumbling around in  
 2 my head, but I'm being so mindful about not  
 3 interrupting, and I think that's -- and listening,  
 4 so now when I have to talk I feel like there's  
 5 this big jumble in here.  
 6 Terry talked about the PA and expressed  
 7 frustration that we haven't mentioned it earlier.  
 8 You were -- Curley, you were at the Rapid City  
 9 meeting, and I remember how outraged the tribes  
 10 were, rightfully so, when we walked in with the PA  
 11 that had been drafted. So we didn't want to make  
 12 that mistake here, so that's why we've been loath  
 13 to talk about the PA.  
 14 But I guess we're talking about it now,  
 15 and you're the one that made the statement that,  
 16 from my way of thinking, was so helpful and so  
 17 critical for everyone. We need to involve the  
 18 tribes from the ground up on the PA. I think when  
 19 Rick said there are two processes, I think that's  
 20 why I was nodding "yes." We're doing a NEPA  
 21 document, and we're doing a PA. We would like to  
 22 do a PA as long as -- I mean, we're going to go  
 23 forward with it. We want to go forward with it  
 24 with your help. We don't want to sit in our damn  
 25 offices and draft it up without hearing your

1 Curley, we're going to -- we would like to put out  
 2 the Draft EIS, the NEPA document. We would like  
 3 to have the draft PA in that document.  
 4 Now, these are bold statements for  
 5 February, but that -- that is where I'm hopeful  
 6 that we can go with your help.  
 7 **MR. YOUPEE:** I -- I am very interested in  
 8 the EIS process once more, and I was hoping to  
 9 find support in the methodology of allowing tribes  
 10 to participate in the process itself of the EIS or  
 11 the environmental review in terms of collecting  
 12 those resources, or rather, listing those  
 13 resources in those areas of concern, incorporating  
 14 those cultural resources being consistent with  
 15 that into the Section 106. That's always been the  
 16 process for me in integrating the documents as  
 17 opposed to integrating the Section 106 into the  
 18 NEPA. That's going to be a new experience for me.  
 19 All and all, we've always had opportunity  
 20 in both documents. But again, this one here, the  
 21 initial EIS we weren't involved in that.  
 22 Actually, it took the State Historical  
 23 Preservation Office to say, "You have to include  
 24 the Fort Peck Tribes because this is part of their  
 25 traditional territories as well."

1 We have no disputes over land at this  
 2 point. We only want the opportunity to survey  
 3 sites that belong to the Sioux and the Assiniboine  
 4 people. We're not into the tug of war of any land  
 5 disputes or construction or development disputes  
 6 at this point, you know. We can't be involved in  
 7 those. We realize these are local things.  
 8 However, the identification of cultural  
 9 resources is what we're -- is what we're trying to  
 10 achieve in the greatest extent. We heard a  
 11 hundred percent survey. That would be nice, but I  
 12 think we would agree to 99.9999 percent of that of  
 13 the survey.  
 14 But all in all, we need to do an  
 15 ethnobotany survey in those areas. We're losing  
 16 medicinal plants at an alarming rate in the state  
 17 of Montana. We have very few places that we  
 18 use -- that we have a Sun Dance plant in the state  
 19 of Montana. It is almost eradicated at this  
 20 point.  
 21 So those are our concerns. Those are our  
 22 immediate concerns regarding cultural resources.  
 23 Thank you.  
 24 **MR. CLOUTHIER:** Can I quickly follow up  
 25 just on one comment that Curley made? Sorry,

1 Standing Rock. For Standing Rock, we prefer to  
 2 see a hundred percent of all of it, not just the  
 3 accessible, but we do understand that if we can't  
 4 get access, we can't survey.  
 5 But with your phased approach that's  
 6 being -- that hopefully it will all be able to be  
 7 surveyed as the phased approach continues and land  
 8 access is given, which is why I brought up those  
 9 points about the law where it states that, so...  
 10 **MR. VANCE:** I guess, this is Steve Vance  
 11 with the Cheyenne River Sioux Tribe, and I concur  
 12 with what Terry said. That's the concern here.  
 13 You know, if we're going to reroute later on down  
 14 the line or we're going to look at an alternative,  
 15 different alternative, we're not going to know  
 16 which way to go. When you do that hundred  
 17 percent, then you have everything there in front  
 18 of you as to which way you can go with minimal  
 19 effects.  
 20 Because as I stated before, avoidance is  
 21 going to be my comment. If there's something  
 22 there and it's significant to tribes, we're going  
 23 to put out there that it should be avoided. But  
 24 that never happens. We see, you know, the  
 25 mitigation measures that completely, you know,

1 David. In terms of the ethnobotany, it also needs  
 2 to be conducted with tribal personnel, in  
 3 particular, that we have plants that we're  
 4 concerned with that wildlife officials may not.  
 5 That was the only comment, and then I'll defer to  
 6 David.  
 7 **MR. COBURN:** Thank you. This is David  
 8 Coburn. I just have really more of a question  
 9 just so the record is clear when we go back and  
 10 read this transcript weeks or months from now.  
 11 Several of the people, Terry, you  
 12 included, talked about a 100 percent survey. And  
 13 I would just like somebody who's suggesting a  
 14 100 percent survey to clarify, are you talking --  
 15 and at the risk of reopening issues we talked  
 16 about yesterday -- are you talking about  
 17 100 percent of all of the land on each  
 18 alternative, or 100 percent of the accessible land  
 19 that is the land as to which landowners have  
 20 allowed access?  
 21 It's not clear to me what it is, and it  
 22 won't be clear to people who are reading the  
 23 transcript who aren't at this meeting, so that's  
 24 why I'm asking. Thank you.  
 25 **MR. CLOUTHIER:** Terry Clouthier with

1 almost we say degrade significant sites.  
 2 And again, with -- I just want to comment  
 3 on what Terry already did, is that on Curley -- on  
 4 the study of plants, tribes have a different  
 5 interpretation of plants than scientists or  
 6 botanists or, you know, even a mold ended up being  
 7 something that was important. Poison ivy, some  
 8 people look at it as a negative plant, but tribes  
 9 have found other uses for it beneficial. So I  
 10 support Curley's comment too, that that needs to  
 11 be conducted.  
 12 **MR. ROUNDSTONE:** Good morning.  
 13 **MR. STARZAK:** Could I just ask Curley?  
 14 **MR. ROUNDSTONE:** No, you can't.  
 15 (Laughter)  
 16 **MR. ROUNDSTONE:** I'm sitting here about  
 17 through eight of you guys talking and arguing with  
 18 each other. Do me a quick favor. Turn to that  
 19 person on your left or your right and shake their  
 20 hand. Give them a smile. You guys are kind of  
 21 getting tense here. It's good to smile.  
 22 You know, native people, they have a  
 23 sense of humor when at their worst. At their  
 24 worst times, there's always humor, and I think  
 25 that has carried us through a lot of war, a lot of

1 famine, and a lot of disheartening.  
 2       Sitting here listening to comments and  
 3 really agree with that ethnobotany study, you  
 4 know. I've always been told that plants have the  
 5 capacity to heal any ailment that we have, even  
 6 cancer. I really believe that. I've always --  
 7 one of the best parts of my job is that I get to  
 8 oversee our buffalo herd, and I always watch which  
 9 plants they eat. There was a time in our history  
 10 where we didn't have a cancer, diabetes, or any of  
 11 these diseases that we carry today, and it was  
 12 because we watched animals eat and we ate what  
 13 they ate. Buffalo don't have cancer. In fact,  
 14 their meat has a natural antigen to cancer.  
 15       But with that said, you know, I wanted to  
 16 bring up a point of impact and trying to -- it  
 17 appears, and I've been following this thing for  
 18 27 years when they brought up coal mining. I just  
 19 wanted to have you folks kind of put yourselves  
 20 ahead a little bit, you know, because it seems  
 21 like to me that there's millions and billions of  
 22 dollars that's going to happen because of this  
 23 thing. And I know, you know, when the old white  
 24 guy sees money, it's going to happen.  
 25       So with that said, you know, some

1 feels good to talk to our natural world, and I  
 2 really believe that spiritual things are part of  
 3 our natural world, part of who we are, all part of  
 4 human. And one of the things that -- I went over  
 5 there with a real high expectation, and there was  
 6 a group of people there, and first thing I noticed  
 7 they were all short, and I knew that they were not  
 8 from the plains tribes. They were from the  
 9 coastal tribes. And they had brought a totem  
 10 pole, and they brought a totem pole to Otter Creek  
 11 where all of this start, and they were very  
 12 humble. They asked our holy people to pray for  
 13 that totem pole and to pray for them people and  
 14 the meaning of what was behind it, because where  
 15 this track is going, and at the end they're going  
 16 to build a port along the coast and where they  
 17 chose the sites for the port is where some  
 18 extensive graves are, graveyard, in fact. They  
 19 were very disheartened because again, you know,  
 20 the railroad or the Department of Transportation  
 21 was going to essentially ignore their -- ignore  
 22 their cries and build this port. And I just  
 23 recently heard last week that it was delayed for  
 24 what is going on.  
 25       But I just wanted to bring that forward,

1 considerations and some impact considerations.  
 2 You know, like myself, I come from the wildlife  
 3 area, as you all know, and I was thinking last  
 4 night, a lot of it's going to happen; we should  
 5 try to work together. You know, in western  
 6 Montana the Flathead Nation, they were involved in  
 7 negotiations with the Department of Transportation  
 8 on a highway that was built through their  
 9 reservation, and one of the things that they had  
 10 done was made animal-friendly roads where the  
 11 animals could go underneath the road, and it was  
 12 natural. It went underneath, and it was natural.  
 13 It was nice dirt floor where the animal felt  
 14 natural when he was crossing it. They had  
 15 overpasses for animals that they could go over the  
 16 highway. And mind you, that 93 was a very, very  
 17 busy highway, and they worked it out. So these  
 18 are some of the considerations that we have to  
 19 think about when this -- if this goes forward.  
 20       The other consideration that I want my  
 21 native brothers and sisters to think about, and  
 22 also, those involved in this, last fall I received  
 23 a call from one of my brother's society, and he  
 24 asked me to come and help him pray. And when  
 25 somebody asks you that, I always feel good. It

1 because what we send down there, you know, it is  
 2 not good for them either, for our brothers down  
 3 there and our sisters down there and on the West  
 4 Coast.  
 5       Impacts. My brother here from the Three  
 6 Affiliated Tribes can tell you the impacts of the  
 7 energy industry very clearly. And then for the  
 8 Department of Transportation, listen, because this  
 9 tribe did not plan nor did they anticipate the  
 10 impacts that would be felt they're feeling today.  
 11       The mentality was the company making  
 12 money, but they didn't think about their workers,  
 13 and they didn't think about the impacts that were  
 14 going to happen as a result of this.  
 15       Roads. Extremely heavy equipment and the  
 16 heavy trucks that go back and forth and  
 17 crisscrossing roads in North Dakota, northeast  
 18 Montana are crumbling because they weren't built  
 19 to handle this kind of traffic.  
 20       Hospitals that were built for small  
 21 communities now are serving triple, four times the  
 22 capacity that they were built for.  
 23       Worst yet, jails are filled beyond  
 24 capacity. Now, they're releasing the lesser  
 25 crimes and holding up the ones that are more

1 serious crimes.

2 Impacts. In Sidney, Montana there was a  
3 teacher out jobbing in the morning enjoying her  
4 fall day, and she was killed. She was kidnapped  
5 and she was killed by two individuals not from our  
6 state.

7 Impacts. Land impacts when you have a  
8 high population and people enter one area, you're  
9 going to see people everywhere. Their Fish and  
10 Game Department are overworked because their lands  
11 are being crisscrossed by non-tribal members  
12 hunting.

13 But the most thing that I wanted to bring  
14 up, you know, is, and from my heart and how I  
15 feel, is that I -- you know, if this happens, I'm  
16 contributing to what's happening on the coast, to  
17 them people, and I'm also stepping on their  
18 graves.

19 Now, I'm not real sure how modern  
20 Caucasian feels about their ancestors; you know, I  
21 sometimes observe certain things. But to the  
22 native, you know, our ancestors are very  
23 important. We have our generals and our heros,  
24 too. Some of the greatest generals, you know,  
25 Sitting Bull, Red Cloud, Crazy Horse, Two Moons,

1 can't. It's not going to happen.

2 But we as humans, it's our responsibility  
3 to be stewards to our earth, especially now when  
4 we see these effects of global warming. So you  
5 know, just take some of them thoughts into  
6 consideration.

7 I'm a small part of cause in this. I  
8 am -- I drive a car every day to work. You know,  
9 I'm part of that too. But if we can try, you  
10 know, to stop some of these, these impacts, to  
11 work with them, like the safe crossings for  
12 animals, try our best to foresee 20, 30 years in  
13 your meetings.

14 You know, you said you can go back to  
15 your office to talk about this and make the  
16 decision of what is best not only for the company,  
17 but for the people and communities that live  
18 there, you know, consider some of these things,  
19 impacts. Because when you go home, you go into  
20 traffic and go to your house. And you see, when I  
21 go home, I drive through the country and go to my  
22 country house, you know, and I see these impacts  
23 on a daily basis. I work with animals in the  
24 natural world every day, and I see impacts that  
25 are a result of industry. So think about some of

1 Long Life, Little Wolf, Plenty Coups, all these  
2 heros that we have are our ancestors, Chief  
3 Seattle on the coast, and it's their grandchildren  
4 and their brothers and sisters that we are  
5 stepping on. I just wanted to put that thought,  
6 you know, that cause-and-effect kind of thought if  
7 and when we allow this to happen, the impacts that  
8 are going to be felt not only here but where it  
9 ends up.

10 To further that, the carcinogenics of  
11 this coal as it's burned is a huge contributor to  
12 global warming. Been preaching global warming for  
13 20, 30 years now. People are just now starting to  
14 feel it. This is the coldest winter in reported  
15 history. Many days on our calendars here in  
16 Montana where we're supposed to be cold is coldest  
17 time that they've ever recorded in our history.  
18 Things are changing in our environment. And the  
19 when the weather changes, even one or two degrees,  
20 cause and effects, not only in our animal world,  
21 but in our natural world. Continental plates are  
22 shifting result in volcanic activity, earthquakes,  
23 as a result of our change in weather, because  
24 everything is tied together. It's like trying to  
25 stop a flow of stream water with your hands; you

1 these things. And I just wanted to kind of stop  
2 the meeting a little bit, and it kind of seemed  
3 like it was getting tense over surveys, and  
4 concentrate just on our local area. This is going  
5 to have a huge impact not only in southeast  
6 Montana and the state of Montana, but the whole  
7 country.

8 I want to wish each and every one of you  
9 a good day. Thank you.

10 **MR. STARZAK:** Go ahead.

11 **MR. CONRAD FISHER:** Thank you very much,  
12 Mark. Some very excellent points. I know we have  
13 a -- this is the last day, and we're talking about  
14 some critical issues here, and I'm sure there's  
15 going to be more discussion, but I think this is a  
16 good time to regather our thoughts, and maybe we  
17 need to take a little break and come back. I'm  
18 not sure how long the meeting is going to last,  
19 but certainly, I think the tribes have a few  
20 recommendations that they would like to make  
21 toward the latter part of this meeting. So how  
22 many minutes? 15? Let's say 5, because I know  
23 we'll all be back in 15 minutes. How's that?  
24 Okay, we'll try to get started again in  
25 15 minutes.

1 [RECESS - 11:11 A.M. TO 11:34 A.M.]  
 2 **MR. STARZAK:** All right, very good.  
 3 We'll start up again if we want to stick to the  
 4 agenda, and I'm willing to hear from -- yes,  
 5 Conrad, please.  
 6 **MR. CONRAD FISHER:** Conrad Fisher,  
 7 Northern Cheyenne Tribe. I guess one of the  
 8 things, and we've had some good real, I think,  
 9 good dialog, real constructive dialog in terms of  
 10 the process in place, and certainly we have a lot  
 11 of interested parties here today, but I'm curious  
 12 to see if we have the Advisory Council on the  
 13 phone, because it's important for them to  
 14 participate in this undertaking. Somebody  
 15 mentioned yesterday that it was like the Keystone  
 16 over in the -- little further east, Keystone XL,  
 17 and certainly this is just as important as any  
 18 other -- any one of those major undertakings that  
 19 have a Presidential permit. But I think it's also  
 20 key to have the Advisory Council, and at least the  
 21 representative that is participating in these  
 22 discussions, and any other folks that haven't --  
 23 we haven't heard from this morning.  
 24 And again, on the other note is,  
 25 hopefully this afternoon or the latter part of

1 **MR. CONRAD FISHER:** Well, I know that  
 2 they have several in their office, and I would  
 3 strongly recommend that someone from their office  
 4 participate. I think they would add -- I think we  
 5 need ACHP to comment during this time, or a  
 6 representative. I think their -- they have the  
 7 expertise to be able to share some of their  
 8 expertise with the group, and if we have any  
 9 questions, I feel strongly that they should --  
 10 they should participate and answer some of the  
 11 questions that we may have.  
 12 One more note, I know that I've been  
 13 receiving some of the updates with current  
 14 situations, Vicki, with reference to some of the  
 15 ongoing litigation that's going on with reference  
 16 to the Tongue River Railroad, and this is another  
 17 process that you're going through with the tribe.  
 18 Is it -- is it an awkward situation to update us  
 19 with current events in some of the other processes  
 20 that are going on just so that we have a feel  
 21 of -- we're talking about the Tongue River  
 22 Railroad, but I think it's also important that not  
 23 only are we talking about cultural and  
 24 environmental resource issues, but also just a  
 25 general update of the current situation with other

1 this morning that we start looking at the  
 2 recommendations from the tribe, and that might  
 3 take a little bit of time also. But certainly  
 4 ACHP is a very important player in this. I think  
 5 in Rapid City we had commented on having the  
 6 Montana SHPO here, and certainly Stan has been  
 7 very patient being part of this discussion, but  
 8 it's also important to have the ACHP as part of  
 9 this discussion also. So I'm just curious if  
 10 there's anybody that's online?  
 11 **MR. STARZAK:** The phone is off mute. Is  
 12 Charlene or Najah on the line from the Advisory  
 13 Council? Is anybody calling in right now?  
 14 **MS. MERRITT:** This is Betsy Merritt from  
 15 the National Trust For Historic Preservation.  
 16 **MR. STARZAK:** Hi, Betsy. Thank you for  
 17 your patience during the break. So I know  
 18 yesterday Charlene was on during the  
 19 introductions. I don't know how long she was  
 20 involved in the meeting. When we first started  
 21 this morning, I sent an e-mail to her reminding  
 22 her that we were just starting up again at 9:30.  
 23 I just checked my Blackberry, and she did not  
 24 respond. There was a big snowstorm, so I don't  
 25 know if is she's involved today.

1 parties, because we did have other parties that  
 2 testified yesterday.  
 3 **MS. RUTSON:** This is Vicki. Let me make  
 4 sure I understand your question first, Conrad.  
 5 But, Rick, would you mind calling Charlene  
 6 Vaughn's phone number and leave a message saying  
 7 that we've had -- we really need participation  
 8 from ACHP, and is there anyone in her office that  
 9 might be available to join us for the remainder of  
 10 today's meeting and that we -- it's very  
 11 important?  
 12 **MR. STARZAK:** I will, Vicki. I'm  
 13 currently sending an e-mail to Charlene, Najah and  
 14 Reed Nelson with the call-in information. And as  
 15 soon as I send that, I'll call Charlene and  
 16 hopefully --  
 17 **MS. MERRITT:** Was Najah there in person  
 18 yesterday?  
 19 **MS. NADALS:** Who's speaking currently?  
 20 **MS. MERRITT:** Betsy Merritt, National  
 21 Trust. I was going to offer to try to help reach  
 22 Charlene.  
 23 **MS. RUTSON:** This is Vicki, Betsy.  
 24 Yesterday we had Charlene Dwin Vaughn in the  
 25 morning. We did not have the participation of

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1 Najah. The government was closed yesterday and  
 2 the schools were closed, and I believe it just  
 3 caused havoc in Washington.  
 4 **MS. MERRITT:** Yeah, some flights were  
 5 cancelled too.  
 6 **MS. NADALS:** Did you say that you would  
 7 try to contact Charlene?  
 8 **MS. MERRITT:** I'd be happy to do that. I  
 9 have a cell phone number for her. I also just  
 10 spoke with someone else in her office who could  
 11 help try to track her down.  
 12 **MS. NADALS:** Thank you so much. Or  
 13 somebody who could participate, that would be  
 14 wonderful. Thank you.  
 15 **MS. MERRITT:** Yeah, I'll do that.  
 16 **MS. RUTSON:** This is Vicki again. So  
 17 Conrad, just to make sure I understand what you've  
 18 asked. You've mentioned that there are other  
 19 processes going on at the Board regarding this  
 20 case, the Tongue River Railroad case. So I will  
 21 answer that question to the best of my ability.  
 22 **MR. CONRAD FISHER:** Sure.  
 23 **MS. RUTSON:** And fall short, no doubt,  
 24 but let me give it a try. We have something  
 25 that's called a bifurcated process at the Board.

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1 That means we have an office that looks at the  
 2 transportation merits of the proceeding, and that  
 3 is a very formal and legal process. It typically  
 4 involves lawyers, but not always, and it always  
 5 involves formal filings on the record. So if you  
 6 ever want to see what's going on on the merits  
 7 side, the transportation merits of the proceeding,  
 8 you can go to the Board's website and do a search  
 9 under "Filings" for this docket number, FD 30186.  
 10 To repeat that, 30186. And that will show all the  
 11 filings that have come in. And there is, as  
 12 Conrad points out, quite a lively discussion going  
 13 on in these filings right now. The Northern  
 14 Plains Resource Council some time ago filed a  
 15 pleading that said -- argued that there isn't a  
 16 need for this rail line proposal; there isn't the  
 17 need to move coal; there isn't a need for coal in  
 18 the United States. Now, please read the Northern  
 19 Plains Resource Council's pleading. It's much  
 20 more eloquent than what I've just said.  
 21 And then, Tongue River replied and said,  
 22 "Yes, there is a need, and we have all these  
 23 documents that explain the need."  
 24 And then, the Northern Plains Resource  
 25 Council said, "Well, there are other documents

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1 that we believe you have, Tongue River Railroad,  
 2 that we would like to see."  
 3 And that has begun what's in law is  
 4 called a discovery dispute. It means an argument  
 5 about records. So Northern Plains wants the  
 6 ability to discover more information that it  
 7 believes the railroad has. So right now, there's  
 8 a decision that the Board needs to make, and it's  
 9 heard -- it's read pleadings from both Northern  
 10 Plains Resource Council saying that it needs  
 11 permission for these records, and from the  
 12 railroad saying, "It's not necessary to have all  
 13 of this information turned over for various  
 14 reasons."  
 15 So now the Board needs to issue a  
 16 decision on that dispute. And there isn't a  
 17 particular time in which the Board will be doing  
 18 that, because as a court, the Board acts when it  
 19 has made the decision.  
 20 Now, after the Board makes that decision,  
 21 there will be a time period in which Northern  
 22 Plains can file a reply and the railroad can file  
 23 a rebuttal. So that's -- was that the litigation  
 24 that you're talking about, Conrad?  
 25 **MR. CONRAD FISHER:** I don't know. I'm

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1 just wondering if there's -- I know that that  
 2 particular issue has come across on my desk, but  
 3 I'm just wondering if there's any -- this is  
 4 Conrad, Northern Cheyenne -- if there's any  
 5 other -- any other lively discussions, as you've  
 6 put it, going on besides that discovery dispute?  
 7 **MS. RUTSON:** That is the only one. I  
 8 made sure to meet with the attorney who is working  
 9 on the transportation merits. We have a lot of  
 10 folks working on the transportation merits, but I  
 11 spoke to the lead attorney to make sure that I  
 12 knew what the status of the transportation merits  
 13 side is.  
 14 My section, my group, does the  
 15 environmental review, and remember, at the -- when  
 16 the Board makes a decision, and I mentioned the  
 17 two cases in which the agency had decided not to  
 18 approve a construction, the Board weighs the two  
 19 sides. It looks at the environmental issues, and  
 20 that includes safety and 106, government-to-  
 21 government consultation, it includes endangered  
 22 species, water, air, all the full panoply of  
 23 environmental resources.  
 24 So the Board will look at the record  
 25 there, all the information, the public comments,

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1 the transcripts, the Board will weigh and listen  
 2 and absorb that information, and then it will  
 3 balance it against the need for the railroad, the  
 4 transportation merits.  
 5 And then looking at those two areas, the  
 6 Board will issue a decision. Does that make  
 7 sense?  
 8 **MR. CONRAD FISHER:** Yeah. Yeah, it does.  
 9 **MS. RUTSON:** Thank you. I'll hush now.  
 10 **MR. CONRAD FISHER:** I think one of the  
 11 things that I've heard consistently is that, you  
 12 know, we're still not sure exactly -- there's no  
 13 time frame for many of the ongoing processes that  
 14 are going on. You just mentioned that discovery  
 15 dispute, for example, that there's no time frame  
 16 to make a decision on that. However, there is a  
 17 time frame for the Draft EIS, and that would be  
 18 this fall of 2014. Is there an urgency to have  
 19 that draft by the fall of 2014?  
 20 **MS. RUTSON:** This is Vicki. It depends  
 21 on who you ask, Conrad, what that answer would be.  
 22 **MR. CONRAD FISHER:** Well, I think I'm  
 23 asking you.  
 24 **MS. RUTSON:** I guess I do a balance too.  
 25 I'm so mindful that this case in one iteration or

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1 another has been in front of the agency for since  
 2 the early '80s, and I feel I have -- I personally  
 3 feel a duty to bring some type of resolution here.  
 4 I think it's unconscionable that folks have had to  
 5 live with this hanging over their heads. And my  
 6 feeling is, I'm not going to have it hanging  
 7 around over people's heads just for the sake of  
 8 that happening, not on my watch. I believe that  
 9 is cruel to the public that we are serving.  
 10 I'm mindful that there's a lot of issues  
 11 here and that we must listen to what the public is  
 12 telling us. I'm mindful of the interests of the  
 13 railroad. The purpose the agency was created was  
 14 to ensure an economically healthy freight rail  
 15 system in our nation. We have an obligation there  
 16 as well. So I balance all of those things when we  
 17 talk about when we want to get the Draft EIS out.  
 18 We're aiming for late summer. If you don't have a  
 19 deadline, the one thing I've learned, of many  
 20 things, if you don't have a deadline, you're not  
 21 going to make any sort of deadline. So that's  
 22 what we've done here.  
 23 **MR. CONRAD FISHER:** Well, I appreciate  
 24 your comments, Vicki, and I think we all have that  
 25 sense of responsibility to be conscious and to do

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1 things in an ethical and -- ethical way and have a  
 2 moral obligation to -- for everybody, and  
 3 certainly you play a huge role in this whole  
 4 process, and everybody has deadlines, I agree. I  
 5 guess my question is, is the summer of 2014 a  
 6 reasonable date to have a Draft EIS out?  
 7 Yesterday we heard some testimony that it  
 8 might be a little premature to have an EIS out by  
 9 2014 for a number of reasons. And we've discussed  
 10 some issues this morning and also yesterday. So I  
 11 know that's your call. I know where you're coming  
 12 from, but I think the tribes may have a little  
 13 different view of that, that there might be some  
 14 elbow room to maybe reconsider that deadline and  
 15 look at another alternative date to give the  
 16 tribes a little bit more leeway and negotiate a  
 17 time frame where we can address some of the --  
 18 some of the other issues that seem to be really  
 19 pressing to not only the THPOs, but also the  
 20 public in general.  
 21 And I realize, Dave, you're here, and I'm  
 22 sure you have comments on that, but I think it's  
 23 important that -- we also have a huge  
 24 responsibility as THPOs to our tribal  
 25 administration, legislatures, and to our tribal

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1 people, and for Northern Cheyenne this is really  
 2 an iconic event because of the tremendous impacts  
 3 that it's going to have, not only in the near  
 4 future, but also what -- what a lot of -- for the  
 5 health of the reservation and the resources that  
 6 we have and also the -- we've heard many of our  
 7 tribal folks talk about spiritual characteristics  
 8 of the natural resources and how it gives meaning  
 9 to the cultural landscape, and it's a reminder of  
 10 who we are that those -- that's a very special  
 11 place for Indian people and how it leaves an  
 12 imprint and a connection to the land.  
 13 So the 106 process is important and  
 14 should be systematic and consistent, and  
 15 certainly, I know that you're trying to do the  
 16 best that you can. And you know, according to a  
 17 lot of the elders, and I'm talking about Northern  
 18 Cheyenne, that they feel -- they see the -- this  
 19 type of energy development as being shortsighted  
 20 and being foolish and wasteful and ultimately an  
 21 immoral act of the resources.  
 22 So, you know, taking that wisdom and  
 23 looking at this whole, we should maybe look at the  
 24 deadline and it might be a, as they said, a  
 25 foolish, foolish way. Because you know, we're

1 ultimately going to extract coal, and it's going  
 2 to be sent away somewhere. So I'm taking all that  
 3 into consideration, then, in addition to what was  
 4 being said the last couple of days, and I would  
 5 seriously recommend all the things that the tribes  
 6 have said in the past two days about the 106  
 7 process and look at the EIS as maybe somewhat  
 8 premature and maybe give the tribes a little more  
 9 window of opportunity.

10 And again, I --

11 **MS. VAUGHN:** This is Charlene Vaughn,  
 12 excuse me for cutting in, from the ACHP. I  
 13 appreciate what's been said, and I understand your  
 14 perspective, but you also understand the STB as  
 15 the federal agency of record can have a project  
 16 scheduled with the established milestones and per  
 17 our regulation we encourage them to coordinate the  
 18 Section 106 review and the preparation of other  
 19 documents, particularly the Draft EIS. So the  
 20 statement you just made doesn't really give  
 21 clarity on what type of extension is needed to  
 22 coordinate among tribal leaders and also fails to  
 23 say given how you proceed, the cultural and  
 24 natural aspect of the project site, what do you  
 25 think would be the logistics so that the federal

1 agency of record could plan or at least have some  
 2 precise guidance to consider this request. It's  
 3 just kind of open ended.

4 And I don't want STB coming to the ACHP  
 5 talking about project delays or what our  
 6 regulations state in terms of the timing. So if  
 7 we could have more specificity on what you're  
 8 talking about in terms of extending the deadline  
 9 and what would happen within that period that  
 10 would give other consulting parties some clarity  
 11 about the schedule.

12 You had mentioned it would be helpful to  
 13 meet, in particular.

14 **MR. CONRAD FISHER:** Well, I appreciate  
 15 your comment, Charlene, and welcome to the  
 16 meeting. It's good that you're -- I appreciate  
 17 your comments, and well, you know, I could -- I  
 18 could, I guess, clarify some of those issues. It  
 19 would have been nice if you were here this morning  
 20 and we've had some in-depth discussion and we got  
 21 probably 20 or 30 posters up on the walls about  
 22 exactly what we feel should be -- should be  
 23 included in the 106 process and in the EIS process  
 24 as far as why we believe that things might be a  
 25 little premature. But if you want me to talk

1 about them as a matter of record, we could do  
 2 that, Charlene.

3 **MS. VAUGHN:** Having other commitments and  
 4 filling in for staff who couldn't travel here, it  
 5 would be helpful for me to utilize this time  
 6 effectively. And sorry that we didn't have  
 7 representation, but I'd like to hear or at least  
 8 have summarized on the record what it is you're  
 9 envisioning when you say, "We need extensions in  
 10 preparing the EIS and perhaps even going through  
 11 the Section 106 consultation." So I have the  
 12 video cam to look, so I'm reliant upon the folks.

13 **MR. CONRAD FISHER:** Terry, did you want  
 14 to take the lead on the eligibility of sites, and  
 15 then, Ben, you want to talk a little bit about the  
 16 survey, the percentage of surveys that were --  
 17 that were discussed or either one of you and why  
 18 they're so low, and I mean, why we think they're  
 19 so low and why they're inadequate.

20 So we'll try to get you updated here,  
 21 Charlene, and again, appreciate you participating  
 22 in this meeting. And I'll have Terry from  
 23 Standing Rock talk a little bit about eligibility  
 24 and why it's important that we need to identify  
 25 and evaluate maybe, or at least -- I think one of

1 the issues, Charlene, is that all the sites are  
 2 presumed eligible. And we also have Stan Wilmoth  
 3 here from SHPO. So I'll have Terry start off the  
 4 conversation.

5 **MS. VAUGHN:** Okay.

6 **MR. CLOUTHIER:** Thanks, Conrad. I'm  
 7 being put on the spot again. Good morning,  
 8 Charlene. Always good to hear your voice on the  
 9 phone. I went into a pretty long, healthy debate  
 10 yesterday on a number of different topics. One of  
 11 the topics that came up was -- and please,  
 12 Richard, from ICF, step in if I get this wrong --  
 13 the topic of leaving the sites unevaluated and  
 14 leaving them as potentially eligible. We brought  
 15 up that this is sort of a disservice to the sites,  
 16 in particular, the ones that have been identified  
 17 for this project. In particular, I'm going to  
 18 back up to what happened in Williston and North  
 19 Dakota. We had a number of sites that were found  
 20 through a federal project with the  
 21 transportation -- with North Dakota DOT and  
 22 federal highways. Those sites have been  
 23 subsequently destroyed by other federal projects  
 24 or other non-federal projects, and there was no  
 25 assurances that they would be protected past the

1 current federal action. This is the same case  
 2 that's going to be happening here. The sites are  
 3 going to be left unevaluated, and therefore, they  
 4 are potentially eligible until such time as their  
 5 determinations can be made, but there could be no  
 6 assurances that the tribes are going to be  
 7 involved in that determination if it's a non-  
 8 federal action. And I can see from the reaction  
 9 of the court reporter that I'm talking too fast,  
 10 so I'll slow it down a little bit.

11 **MS. VAUGHN:** Okay.

12 **MR. CLOUTHIER:** I specifically, and I  
 13 mentioned this to Stan yesterday, putting him on  
 14 the spot for his opinion. Stan Wilmoth from  
 15 Montana SHPO, I specifically kind of put him on  
 16 the spot for his opinion on this, and he said that  
 17 there couldn't be any guarantees that we would be  
 18 involved in any evaluation if it was a non-federal  
 19 project. This presents concerns for us. I'd like  
 20 to see that they do have some kind of evaluation,  
 21 even if it's just the tribal expertise that does  
 22 the evaluation for these sites.

23 I understand that that might be a little  
 24 daunting concerning that I think there's 180 sites  
 25 that the tribe identified with varying degrees of

1 **MR. STARZAK:** Terry and Charlene, this is  
 2 Rick Starzak. If I can just put a little context  
 3 to that. This discussion came out of doing a  
 4 phased identification, because we're looking at  
 5 multiple alternatives right now, and when we did  
 6 our field analysis in the summer, with OEA's  
 7 archeologists along with tribal members, we were  
 8 very clear that we did not want to disturb, we  
 9 wanted to respect sites, so we were careful to go  
 10 out and record them, but we didn't want to do  
 11 extensive work to those sites to determine  
 12 eligibility at this time.

13 So a lot of Terry's concern is, "Well, if  
 14 there is a licensed alternative and all of these  
 15 other alternatives where sites were identified are  
 16 not evaluated as part of a Programmatic Agreement  
 17 and go through a formal eligibility finding, they  
 18 will have been recorded but not protected but they  
 19 would be --

20 **MS. VAUGHN:** But it seems they --

21 **COURT REPORTER:** Pardon? I didn't  
 22 understand her.

23 **MR. STARZAK:** Charlene, I'm sorry. The  
 24 court reporter -- could you restate that? The  
 25 court reporter couldn't hear you.

1 what's there. So that speaks a little bit to the  
 2 eligibility concerns that we've got for this  
 3 project.

4 **MS. VAUGHN:** Okay.

5 **MR. CLOUTHIER:** And I think that's kind  
 6 of where it's sitting right now. I don't know if  
 7 Ben --

8 **MS. VAUGHN:** What I'm hearing, and I want  
 9 to clarify, the tribe had concerns about an  
 10 assumption that the sites are eligible without  
 11 going through the formal step to making this a  
 12 presumptive eligibility determination, and that  
 13 there will be no documentation or evidence that's  
 14 binding on other parties in the future?

15 **MR. CLOUTHIER:** Correct. That is what  
 16 our concern is. And that is going to be -- the  
 17 presumed eligibility is actually one of the topics  
 18 that Cathy Nadals right now is writing down on the  
 19 board. It's on -- we've got a number of sheets  
 20 around the room to look at. So that was something  
 21 that --

22 **MS. VAUGHN:** I got the gist of it.

23 **MR. CLOUTHIER:** Yeah, and that's what our  
 24 concern is with that one.

25 **MS. VAUGHN:** Okay.

1 **MS. VAUGHN:** I said what I understood  
 2 Terry to say is that his concern was as much on  
 3 evaluation so that there was adequate  
 4 documentation as there was on protection. I heard  
 5 him mention both.

6 **MR. STARZAK:** That's correct, yes.

7 **MR. CLOUTHIER:** And this is Terry with  
 8 Standing Rock yet again, and I'll try to keep the  
 9 speed level down.

10 Richard, for everybody's understanding  
 11 here, given that the tribes have specialized  
 12 expertise, we can evaluate without actually  
 13 disturbing the sites. It's not a requirement,  
 14 like it is for archeology, to punch in holes to  
 15 decide what's there. We do have the knowledge,  
 16 the traditional knowledge, to be able to tell you  
 17 based on what's just on the surface a whole lot of  
 18 the eligibility for that site and how it applies  
 19 to our traditional and cultural practices.

20 **MR. STARZAK:** So one way to think about  
 21 this is, if there is a Programmatic Agreement that  
 22 governs the licensed alternative, could there also  
 23 be a process in place for having tribal members be  
 24 able to complete their analysis on alternatives  
 25 that are not licensed? Am I framing that

1 correctly, Terry?  
 2 **MR. CLOUTHIER:** I'd love to see that in a  
 3 PA where we can get back out to make the  
 4 eligibility determinations to protect those sites  
 5 from future projects when those sites get  
 6 submitted to Stan, when the project gets submitted  
 7 to Stan where there is no federal involvement,  
 8 yes. I'd love to see that included in the PA.

9 **MS. VAUGHN:** And, Rick, would that be  
 10 problematic as a protocol?

11 **MR. STARZAK:** This is something that we  
 12 want to come out of the consultation, and then see  
 13 how we can implement it. The efforts that we've  
 14 had the last couple days are to get everyone's  
 15 views and listen, hear what we have to say, and  
 16 then see, "How do we work this in a mechanism  
 17 that's appropriate?"

18 So I would say, yes, we will take this  
 19 under consideration and work with the tribes to  
 20 come up with a strategy that can be implemented.

21 **MS. VAUGHN:** And just for context, we  
 22 work with tribes all over the country and  
 23 consistent concern that is articulated is that if  
 24 they can see that something can be treated as  
 25 eligible and the project is completed, future

1 evaluation or to agree to a consensus eligibility  
 2 again without any evaluation and documentation,  
 3 because after the project proponent you work with  
 4 leaves the site, there's no documentation that can  
 5 benefit other federal agencies and project  
 6 planning, nor is there typically anything left  
 7 that the tribes can build off of, because they --  
 8 their participation in the evaluation process is  
 9 not recorded.

10 **MR. CONRAD FISHER:** Wonderful.

11 **MS. VAUGHN:** I don't know how to be more  
 12 simpler. That's the gist of it.

13 **MR. CONRAD FISHER:** That's good. I hear  
 14 what you're saying. Thank you.

15 **MR. COBURN:** Can I just -- this is David  
 16 Coburn. Hi, Charlene.

17 **MS. VAUGHN:** Hi.

18 **MR. COBURN:** Just to clarify what we're  
 19 talking about, the Board is looking at several  
 20 alternatives, which are upwards of 80 miles long,  
 21 80 miles long, five or six alternatives that are  
 22 that long, and the Preferred Alternative, which is  
 23 40 miles long.

24 I don't believe -- and the Board has  
 25 looked at other -- in other cases involving other

1 projects, future federal activities even don't  
 2 have the benefit of that documentation because  
 3 it's not really recorded; thus, the federal agency  
 4 of record either needs to make an accommodation to  
 5 do that same identification and evaluation with  
 6 the tribes again, or they assume that there was  
 7 nothing there because it's not documented and take  
 8 great liberties on designing projects which have  
 9 adverse effects right out of the gate. So this is  
 10 not unique to the Northern Plains. I wish it was.  
 11 It's a ubiquitous comment that's made by tribes in  
 12 areas, other jurisdictions, that they typically  
 13 lose when there's consensus agreements about  
 14 eligibility but it's not recorded nor does it  
 15 document their views.

16 **MR. CONRAD FISHER:** Charlene, this is  
 17 Conrad Fisher, Northern Cheyenne. Can you restate  
 18 that statement? Can you restate that in layman's  
 19 terms? I kind of understand what you're saying,  
 20 but can you be a little more clear with it?

21 **MS. VAUGHN:** Yes. The issue that you're  
 22 raising isn't necessarily unique to the Northern  
 23 Plains, in that other tribes in other  
 24 jurisdictions and locales are expressing concern  
 25 about agreeing to avoid sites without the

1 railroad proposals at alternatives for those  
 2 railroad proposals. I'm not aware that the Board  
 3 has ever undertaken eligibility determinations on  
 4 alternative routes on which the railroad will not  
 5 be built. The railroad will only be built on one  
 6 of the alternatives that is being considered.

7 As to that alternative, the proposal on  
 8 the table that we've discussed before you got on  
 9 the line was that there be a Programmatic  
 10 Agreement that would provide for eligibility  
 11 determinations on the route on which the railroad  
 12 is to be built. At that point, the other  
 13 alternatives fall by the wayside; nothing will  
 14 happen on those alternatives in terms of the  
 15 Tongue River Railroad Project.

16 **MS. VAUGHN:** So that means that STB will  
 17 not have information that can inform its analysis  
 18 of alternatives with evidence of what sites within  
 19 an alternative are eligible and which alternative  
 20 could result in the least harm to historic  
 21 properties and cultural sites, because they won't  
 22 have the information; it will be just presumptive  
 23 conclusions?

24 **MR. COBURN:** The -- well, I don't think  
 25 the regulations require that they have more --

1 even as much as they have in this case. The  
2 regulations do not require and there are numerous  
3 cases in which the Board has not undertaken the  
4 kinds of surveys that they've undertaken here, but  
5 putting that aside --

6 **MS. VAUGHN:** So -- go ahead.

7 **MR. COBURN:** That they will have the  
8 information that they gather during these surveys  
9 as well as literature reviews and information  
10 gathered from other sources, they'll be able to  
11 take that information into account, as I  
12 understand what they plan to do, together with  
13 information that they're gathering on biological  
14 impacts and water impacts and air impacts and so  
15 forth, as to each alternative, and then make a  
16 decision as between the alternatives.

17 And then once they make a decision on one  
18 alternative, they will drill down through a PA on  
19 the cultural resources side and develop extensive  
20 information as to --

21 **MS. VAUGHN:** My problem with that summary  
22 is that past cases have not engaged the tribes in  
23 a similar manner and with the similar intensity  
24 that current tribes who understand their role and  
25 place within the Section 106 process are now

1 alternatives have to be considered, there needs to  
2 be some parity in looking at those alternatives,  
3 and the basis for selecting one that has the least  
4 harm to historic properties, if appropriate, needs  
5 to be justified.

6 If we're just going for, "This is the  
7 list or the alignment of these alternatives, and  
8 we're only going to do a literature search," I  
9 take exception to a literature search being  
10 sufficient to identify tribal issues. Tribes  
11 don't really have literature. They have knowledge  
12 with them. Elders walk the sites, earth,  
13 connection. So I don't know how there would then  
14 be parity based on literature searches and a  
15 cursory evaluation to inform what tribes think  
16 about each of those alternatives.

17 That's just the reality I deal with  
18 working with the systems licensing and permitting  
19 projects and the need to have more detailed  
20 information to inform the alternatives analysis  
21 that helps an agency decide a preferred  
22 alternative. We do it with FHWA's and state DOTs,  
23 and we do it with others. So Stan Wilmoth is  
24 there from a SHPO's perspective.

25 SHPOs can't make these decisions about

1 required.

2 The regs. are very clear and specific  
3 that tribes have special expertise in addressing  
4 properties of religious and cultural significance  
5 to them. So a cursory overview of alternatives  
6 that doesn't really provide specific consideration  
7 of their views on the sites that have been --  
8 they've walked the ground, looked at, and opined  
9 on, would make the Section 106 review a little  
10 complicated in that when a preferred alternative  
11 was selected, it's conceivable that consulting  
12 parties, i.e., the Council and tribes, could raise  
13 the issue of whether or not the adverse effects in  
14 particular that are occurring at a preferred site  
15 could have been avoided or minimized if another  
16 alternative had been considered.

17 So I know what has happened, having been  
18 with the Council for decades; I know what has  
19 happened before there was active tribal  
20 involvement with the 92 amendments being  
21 integrated in 2004 regulations; I also know now  
22 that we are constantly asked by agencies how they  
23 should handle alternatives analysis; and our  
24 position is that when an undertaking is defined  
25 and the purpose and need is described and

1 alternatives analysis because they have research  
2 and they are written in European in their approach  
3 to looking at documentation.

4 Tribes have other protocols, other  
5 practices, other principles, and I don't know how  
6 you accommodate that, but the reality is, I don't  
7 know that they could just say "That alternative  
8 won't affect sites," if they haven't gone out  
9 there and made an informed decision using the  
10 tools that they have available.

11 **MS. NADALS:** Hi, Charlene. Thanks so  
12 much for that. This is Cathy Nadals. I don't  
13 know if you -- it's unfortunate you weren't able  
14 to participate in the entirety of the meeting,  
15 but --

16 **MS. VAUGHN:** And I was not able, but I  
17 was on as I could.

18 **MS. NADALS:** But one of the things we  
19 have done is, we've had groups of tribes and  
20 archeologists go out in the field and together do  
21 field surveys of portions of the alternatives  
22 where we had access. We haven't had access for a  
23 large portion of the alternatives. But in areas  
24 where we did have access, we did have field crews  
25 actually go out in the field. We had asked all

1 the tribes that were -- had wanted to be a  
2 consulting party to participate in these field  
3 surveys so we had --

4 **MS. VAUGHN:** I know about that, Cathy. I  
5 think I've gotten the gist of that from --

6 **MS. NADALS:** I just think that that's  
7 important to note for the record, that we did in  
8 fact have and we have been actively seeking tribal  
9 participation in this process. I just thought it  
10 would be important to say that as part of the  
11 record.

12 **MS. VAUGHN:** However, what I heard Terry  
13 say and what I heard, I guess, Conrad allude to  
14 when I got on the phone, is that collecting that  
15 information and not involving the tribes in the  
16 evaluation of such sites is incomplete and is  
17 problematic from a tribal perspective because they  
18 won't have the benefit of the process, the  
19 identification and evaluation that's spelled out  
20 in our regs. So did I get something wrong?

21 **MS. NADALS:** I think --

22 **MS. VAUGHN:** And then what I did hear  
23 David say is that they want to dig down on the  
24 preferred alternatives and do more evaluation,  
25 identification, at that particular time.

1 And in addition, I think that it does a  
2 disservice to the landowner of other alternatives  
3 if we focus on the Preferred Alternative. And as  
4 you mentioned, it could compromise other  
5 alternatives that may have a -- that may minimize  
6 the impacts to cultural resources. And I'll have  
7 Ben say a few words on the discussions that we've  
8 had this morning also. Ben.

9 **MR. RHODD:** Yeah, this is Ben Rhodd,  
10 Rosebud Sioux Tribe. What we're dealing with  
11 here, too, is very factual in actuality, because  
12 as was mentioned, we have numerous placards or  
13 pages up on the wall with a lot of information on  
14 them that has been discussed here, but the factual  
15 is, is that we're dealing with percentages, and  
16 this is my main concern as an archeologist. I  
17 look and say that, okay, if we're doing a Class 1  
18 and that's going to be your determining --  
19 determinant for your decision making as to what is  
20 in those alternatives and/or in the preferred  
21 even, we do have the issue of not being able to  
22 access acreage -- a lot of acreage, and even on  
23 the preferred. So this is my concern about this.

24 We have -- right now there has been  
25 4,465 acres done, and that's with tribal

1 And my point continues to be, we're early  
2 enough in the process planning, the planning of  
3 the project, that if there is the ability to get  
4 more documentation that informs the decision  
5 making about deciding one alternative versus  
6 another, that should occur, and that the ACHP's  
7 policy now that we have active engagement by  
8 tribes, is that you don't present a preferred  
9 alternative only to circle back during  
10 consultation with requests from the Council and  
11 often tribes asking to be more precise about what  
12 affect each alternative had on cultural and  
13 historic properties when you're trying to move  
14 forward with something. It's better to gather  
15 that information during the early stages of the  
16 project analysis and plan.

17 **MR. CONRAD FISHER:** Charlene, this is  
18 Conrad, and thank you for your input. I think  
19 you've made some real excellent points, and I  
20 think that was the basis, and I wanted Ben to, I  
21 think, talk about that parity you were talking  
22 about. But it sounds like you've -- you  
23 understand what we're talking about as far as the  
24 preferred alternatives as opposed to the preferred  
25 alternative.

1 participation. Out of that, we have 35 sites.  
2 Now, in toto, as far as all of the site or acreage  
3 that we may have access to, that is 22,892 acres.  
4 Now, given what has been found within  
5 that 4,465 is 35 sites, but when you extrapolate  
6 from that -- and I'm not -- I'm being very careful  
7 to stay away from saying "predictive model," I'm  
8 not going to go there -- but you have 180 sites.  
9 And that's for clarity for what Terry said  
10 earlier, we don't have 180 sites, but we have the  
11 potential for 180 sites in that 22,892 acres. So  
12 this is a concern to us, to the tribes, because if  
13 we're looking at eligibility down the road of  
14 those sites that are out there, that some may, to  
15 whichever tribe that they are significant to, we  
16 want to make sure that we have those common  
17 protections that are afforded to sites of more  
18 recent historic character and have parity and  
19 equity in this process. So that's my statement.

20 **MS. VAUGHN:** So the SHPO is there. Stan,  
21 can you speak in a microphone?

22 **MR. WILMOTH:** Yes, Charlene. This is  
23 Stan Wilmoth with the Montana SHPO.

24 **MS. VAUGHN:** Okay, hi. So what I'm  
25 hearing is the lack of access will present

1 challenges in making National Register eligibility  
 2 evaluation for several sites of importance to  
 3 tribes. How have you envisioned addressing that,  
 4 since ultimately you have to have access to tribes  
 5 in order to establish that they're National  
 6 Register eligible?

7 **MR. WILMOTH:** I don't think that we have  
 8 actually crossed that line yet at this stage. The  
 9 discussion really has been around whether or not  
 10 enough inventory has been done on the alternatives  
 11 to inform a choice of which alternative would be  
 12 least impacting of cultural resources.

13 And yesterday a couple people, and myself  
 14 included, pointed out that some level of  
 15 evaluation, more evaluation that we have, further  
 16 informs the choice of an alternative, if that's  
 17 why we're doing this early inventory for the -- of  
 18 all of the alternatives.

19 But having said that, what we have so  
 20 far, about 30 percent inventory of all  
 21 alternatives, is unique in Montana. So frankly,  
 22 I've been happy with what's been moving on, but I  
 23 don't think that that's necessarily all that we  
 24 should hope for, especially as you point out, the  
 25 need to be able to document the rationale for

1 alternatives we have a lot of access to. Other  
 2 alternatives we cannot, without landowner  
 3 permission, enter to do even the initial field  
 4 survey. So we have been discussing how to do a  
 5 phased identification, how to coordinate with all  
 6 the tribal participants to complete that work when  
 7 we can get access.

8 So I just wanted everybody to be clear  
 9 that there's timing involved in how to approach  
 10 this, and we're considering everything that's been  
 11 said over the last two days about how to have a  
 12 mechanism to work together to go forward. And  
 13 I'll let Cathy --

14 **MS. VAUGHN:** So if you do a phased  
 15 identification and evaluation process and that  
 16 encompasses then a PA, how do you then get to the  
 17 preferred alternative when the access that's  
 18 needed to evaluate those other alternatives hasn't  
 19 been provided?

20 **MR. STARZAK:** All I can say is that in  
 21 terms of the preferred alternative, ultimately the  
 22 Board makes the decision whether or not a route  
 23 would be constructed. We cannot trespass on  
 24 private property.

25 **MS. RUTSON:** Rick, may I speak?

1 picking out the preferred alternative and showing  
 2 that it has the least harm. We don't -- if we  
 3 don't know, then that will be where we're left  
 4 with at the end, regardless of whether or not we  
 5 have a PA. So, yes, that has been our discussion.

6 **MS. VAUGHN:** My assumption is, it will be  
 7 the source of contention, because people will not  
 8 feel that the decision making process was informed  
 9 and considered all the variables.

10 **MR. WILMOTH:** Yes, I think that's where  
 11 the discussion was kind of rubbing up against the  
 12 hard spot yesterday.

13 **MS. VAUGHN:** So, Rick and Cathy, you  
 14 heard the position of the ACHP. I'm assuming the  
 15 tribes have been as clear about their position on  
 16 needing a more substantial inventory to inform the  
 17 analysis of alternatives. So is there any more  
 18 that we need to say in this regard?

19 **MR. STARZAK:** Yes. Hi, Charlene. This  
 20 is Rick, and I think Cathy wants to speak to you  
 21 as well. Just one thing so that we're all clear.  
 22 We've had discussions for a couple days now. A  
 23 lot of the alternatives cross private property.  
 24 We only have landowner permission for 45 percent  
 25 of the land encompassed by alternatives. Some

1 **MS. VAUGHN:** So I understand what you're  
 2 saying, but you're putting people in an awkward  
 3 situation, "people" meaning tribes, in that they  
 4 have to make concessions and assume things without  
 5 information that would probably serve a major role  
 6 in how they reach the conclusion about the  
 7 preferred alternative.

8 So maybe I'm a linear thinking, but I  
 9 don't hear anybody advancing any creative  
 10 solutions that will get the tribes from Point A to  
 11 Point B to embrace a PA that's based on lack of  
 12 access --

13 **MS. NADALS:** Charlene, this is --

14 **MS. VAUGHN:** -- when it's clear that  
 15 there's only going to be a 45 percent area for  
 16 which they can actually have access to do what  
 17 they do --

18 **MS. NADALS:** Charlene --

19 **MS. VAUGHN:** -- and they aren't  
 20 extrapolating and looking at documentation. They  
 21 walk the earth and have other techniques. So I'm  
 22 just, I'm kind of confused at how to reconcile  
 23 that.

24 **MS. NADALS:** Hi, Charlene. This is Cathy  
 25 Nadals. I guess you know better than I, but the

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1 doesn't the -- don't the regulations understand  
 2 that access may be limited, and that's why the  
 3 phased identification process is in the  
 4 regulations and basically takes into consideration  
 5 the fact that access may not be fully had and that  
 6 there will be multiple alternatives and that's the  
 7 language that's used for justifying a phased  
 8 identification effort?  
 9       And I know that the other issue that came  
 10 up has to do with sites that have been identified  
 11 and not evaluating those and then having other  
 12 projects, especially non-federal projects come up  
 13 and then have those sites just kind of be lost in  
 14 the mix. And I'm just thinking that, you know, in  
 15 terms of a possible solution to that would be to  
 16 assume eligibility on some of those sites or to  
 17 get tribal input on sites that they believe are  
 18 eligible, and that way there will be a record of  
 19 them at the SHPO's office if there are any other  
 20 projects that come in the future that may affect  
 21 those particular sites. So that's just a thought.  
 22       **MS. VAUGHN:** Phased identification and  
 23 evaluation was put in the regulations for linear  
 24 projects that included multiple alternatives as  
 25 well as lack of access. It does not provide

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1 methodology for completing the phased  
 2 identification process. What it says very  
 3 specifically is that "when access is granted." So  
 4 there's the assumption that something's going to  
 5 happen so that you can look at those resources at  
 6 some point in time that you would consider the  
 7 National Register eligibility as well as the  
 8 effects on those sites, and that's what I  
 9 think you're missing.  
 10       **MS. NADALS:** Yeah, and that would be the  
 11 point of developing the Programmatic Agreement,  
 12 which would then lay out the process of the full  
 13 identification along the licensed alternative, if  
 14 an alternative is actually licensed. And so I'm  
 15 assuming that that --  
 16       **MS. VAUGHN:** I hear what you're saying,  
 17 but I think that I also heard the tribe talk about  
 18 the alternatives. So how will this information  
 19 apply to the consideration of alternatives? I  
 20 mean, what are they supposed to build on? They're  
 21 just supposed to deal with that limited portfolio  
 22 that they have and make the assumptions about  
 23 effects on their culture and sites of significance  
 24 based on, you know, a small sample?  
 25       **MR. STARZAK:** Charlene, this is Rick. If

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1 I could jump a possible solution here. Going back  
 2 to Terry's original, you know, comment, we've done  
 3 fieldwork in places where we have property access.  
 4 The evaluation by tribal members hasn't been  
 5 completed there yet. We still will have property  
 6 access for that 45 percent, I believe, unless any  
 7 landowners have since told us that we don't have  
 8 access. So maybe there's a way, with the sites  
 9 that have been identified along the alternatives  
 10 to this point, that more tribal participation for  
 11 evaluation can be done. I just don't know how we  
 12 can do anything on property that we don't have  
 13 access to until it's granted. Does that -- does  
 14 that help?  
 15       **MR. CONRAD FISHER:** Richard, this is  
 16 Conrad Fisher. I'd like to give Stan -- I  
 17 understand, and then Dave, if we could give Stan  
 18 a -- I know he's been trying to get on board, so  
 19 Stan Wilmoth, if you would.  
 20       **MR. WILMOTH:** This is Stan, and I think  
 21 it's good to point out at this stage that Terry  
 22 and lots of other people here recognize that not  
 23 all land was accessible, but he reached to the  
 24 exact same point that you did, Charlene, that as  
 25 access is available, the survey could proceed, and

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1 that's what the tribes are asking for here. And  
 2 we heard from somebody, one of the ranchers,  
 3 yesterday that apparently there hasn't been a  
 4 change in that. So the tribes have asked for  
 5 additional inventory. And I'm leaping to a  
 6 conclusion here, but, Conrad, perhaps that's one  
 7 of the reasons you asked about how firm the date  
 8 for the Draft EIS was, along with some other  
 9 potential important information, like the  
 10 referendum that Cheyenne and what not. So they've  
 11 come at it from a couple of different directions.  
 12       Can we get more inventory as it's  
 13 available, and are we tied to a Draft EIS at late  
 14 summer and early fall that might preclude that as  
 15 it becomes available?  
 16       **MR. CONRAD FISHER:** Thank you, Stan.  
 17 Dave Coburn.  
 18       **MR. COBURN:** Yeah, I just want to make  
 19 two quick points. First of all it seems to me  
 20 that the assessment of alternatives, in light of  
 21 cultural resources of interest to the various  
 22 tribes, is inevitably not going to be a perfect  
 23 process or anything close to it because of the  
 24 lack of access. So there might be some very  
 25 important site of great significance to the

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1 Northern Cheyenne or some other tribe that's on  
 2 land to which the Board and its contractor will  
 3 not have access because the landowner will not  
 4 allow it. That is a fact of life that is not  
 5 going to change, and no additional time is going  
 6 to change it.  
 7 Access, however, complete access,  
 8 100 percent access, just so we're all clear on  
 9 this, because, Charlene, you missed this earlier  
 10 conversation, 100 percent access will be achieved  
 11 with respect to the alternative that the Board  
 12 licenses. It won't be achieved on the other  
 13 alternatives, because if the Board doesn't license  
 14 them, there would be no basis for the railroad to  
 15 achieve that access.  
 16 But the railroad will, by virtue of  
 17 dealing with landowners, achieve 100 percent  
 18 access on the route that's licensed. That's the  
 19 only route on which there will be a disturbance of  
 20 land that would have an impact on cultural  
 21 resources, because that's the route on which the  
 22 railroad would be built. And so if there are any  
 23 sites of importance, they can be addressed in the  
 24 appropriate means spelled out in a Programmatic  
 25 Agreement at that time. But --

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1 **MS. VAUGHN:** But only for the preferred  
 2 alternative.  
 3 **MR. COBURN:** Well, but that's the only  
 4 alternative on which there will be any  
 5 disturbance. The other alternatives will fall by  
 6 the wayside; nothing will happen with respect to  
 7 those.  
 8 **MS. VAUGHN:** So if one of those  
 9 alternatives results in the least harm, the least  
 10 amount of harm to properties of significant  
 11 cultural significance to tribes and it's not the  
 12 preferred alternative, how can they negotiate from  
 13 a vantage point of strength and manner about why  
 14 they are talking about they know based on  
 15 documented evidence isn't the one that is best  
 16 suited for their lands? So I'm confused about  
 17 that.  
 18 **MR. COBURN:** Well, I think -- I don't  
 19 want to speak for the Board; I'll let the Board  
 20 speak for itself, but it seems to me that the  
 21 Board takes lots of issues and impacts into  
 22 account in choosing to license one alternative  
 23 over another. And certainly, one important  
 24 element is impacts to the Native American cultural  
 25 resources, but there are other factors too, right.

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1 There are lots of factors. And again, the process  
 2 is not perfect because of the lack of access to  
 3 alternatives. It's just not perfect.  
 4 There is information -- the information  
 5 here for Native American issues as well as other  
 6 issues is not perfect, and I think we have to  
 7 accept that or else we will never be able to  
 8 advance a project. So you have to make  
 9 compromises along the line, and your regulations  
 10 recognize that.  
 11 **MS. VAUGHN:** So our regulations are clear  
 12 that 106 is not the only factor that's taken into  
 13 consideration in project planning and determining  
 14 the ultimate public interest value, but it also is  
 15 clear that as much information as is available  
 16 should be taken into account when you talk about  
 17 effects to historic properties. If Alternative X  
 18 is the preferred alternative but Alternative B, C,  
 19 and D clearly would be preferable to the tribes  
 20 because they had the least impact on not only  
 21 their culture but settings and other factors, yes,  
 22 that's just one factor, but that's a fairly  
 23 substantial factor, and from my perspective, it's  
 24 the basis upon which they will negotiate. Other  
 25 factors I heard yesterday concerns about water,

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1 wildlife, other things. I'm sure those are just  
 2 as important, and the EIS will lay those out and  
 3 take those under advisement.  
 4 However, at the end of the day, if you're  
 5 talking about routes that have a deleterious  
 6 effect on the preservation and protection of  
 7 cultural sites and heritage, they should have as  
 8 much information as is appropriate to understand  
 9 why one alternative versus another.  
 10 **MR. COBURN:** Charlene.  
 11 **MS. VAUGHN:** And I'm not hearing how  
 12 that's to be afforded to them, how that will be  
 13 provided.  
 14 **MR. COBURN:** I hear what you're saying.  
 15 I just wanted to make one more point, which is  
 16 that here, in this proceeding, I think the Board  
 17 has done more to respect the ability of the tribes  
 18 to get the information you're referring to and  
 19 more such information has been gathered than I  
 20 think with any other railroad case, because the  
 21 tribes --  
 22 **MS. VAUGHN:** I agree with that, and I  
 23 think that the STB has definitely made some  
 24 paradigm shifts and have totally evolved in their  
 25 ways of approaching 106 and its coordination with

1 NEPA.

2 Having said that, the tribes still need  
3 to be in power to know what sites are being  
4 affected so that they can make an informed  
5 decision.

6 **MR. COBURN:** But the tribes are aware of  
7 what they saw during the surveys that they and the  
8 Board's contractor jointly conducted. So they  
9 have that information, and I think they are able  
10 to evaluate it based on what they gathered, the  
11 information they gathered during the surveys. The  
12 information is there.

13 And I assume that in an appropriate way  
14 the tribes are able to advise the Board of the  
15 significance of what they saw, because they did  
16 identify TCPs on at least some of the routes; I  
17 don't have those details. But you know, it's  
18 there, they have the information, they can offer  
19 their views on it. And the Board's archeologists  
20 and historians can offer their views on the  
21 non-Native American cultural resources that were  
22 identified in those surveys. And I don't think we  
23 have to do eligibility determinations, because  
24 we'd be at that for years, so -- and nothing in  
25 the regulations contemplates that.

1 water, air, species, Section 106 archeological  
2 sites of tribal importance, once we've balanced  
3 all that information, we'll be able to make a  
4 determination on the route that appears to be  
5 least impactful, and it's then that we'll be able  
6 to move forward with a PA on that route. Is that  
7 what -- is that correct?

8 **MS. VAUGHN:** I would agree with that  
9 conclusion.

10 **MS. RUTSON:** Okay. Sorry. I'm turning  
11 it over to Terry.

12 **MR. CLOUTHIER:** I'm glad you brought that  
13 up, Vicki. This is Terry with Standing Rock. It  
14 alludes to some of the comments that Charlene's  
15 been making and some of the comments that Dave had  
16 just made. The problem that we're having, at  
17 least from my prospective, is how is the Board  
18 going to get to that determination that this is  
19 the preferred route? This is where my stopping  
20 point is, where I'm having a lot of issue. In  
21 particular, when you've got for instance, Tongue  
22 River Railroad -- when you've got the Tongue River  
23 Alternative that was only surveyed at 5 percent,  
24 you've got other ones that were surveyed at 20,  
25 others that were surveyed of 30 of the available

1 **MS. VAUGHN:** No, but the regulations are  
2 pretty specific about reasonable and good faith  
3 efforts. So just like the agency has to also make  
4 a decision about what's been a reasonable and good  
5 faith effort, what I hear the tribe saying is they  
6 should inform and go on record of what that means  
7 to them and that should be taken under advisement  
8 by STB. That's the gist of what I'm hearing.  
9 That's what I heard before, that's what we hear  
10 all around the country, and I think that this  
11 project doesn't have any unique attributes that  
12 would make it different.

13 **MS. RUTSON:** Thank you, Charlene. This  
14 is Vicki. And I know everyone is so anxious to  
15 speak, but I would like to speak on behalf of the  
16 agency. I'm not going to promise a decision, but  
17 I am going to promise that we are going to talk  
18 very seriously about this. And I think after two  
19 days, I think I'm finally understanding, I think,  
20 what I'm hearing from the tribes, from the SHPO,  
21 from ACHP, is that this is about alternatives  
22 analysis. And yes, I think -- I think everyone  
23 agrees that it's fine when we have an  
24 environmentally preferred alternative, one that  
25 addresses the least impacting alternative to

1 access. That, to me, is going to be a real  
2 sticking point on you guys determining which is  
3 going to be the preferred alternative. Because we  
4 can always go back and say, "How do you know,  
5 based on the fact that only 5 percent of the  
6 available access for Tongue River that that isn't  
7 the actual preferred alternative because it will  
8 have the least impact to all of the sites?"

9 Regardless of whether it's cultural,  
10 wetlands, water, whatever, whatever criteria the  
11 Board is making in this decision, that's going to  
12 be the go-to where we say, "Look. We still don't  
13 know if that really is the preferred alternative."  
14 That's the Surface Transportation Board to try to  
15 justify whatever they decide is going to be the  
16 preferred alternative, whether it's the Colstrip,  
17 which is what the applicant wants, whether it's  
18 not, which is what some of the landowners want,  
19 you know, those are the alternatives, but I don't  
20 see how the Board is going to meet that criteria  
21 just looking at it from the 106 and cultural  
22 sites, and in particular, with sites of  
23 significance to the tribes. I don't see how  
24 you're going to meet that correctly based on the  
25 amount of information that you have in front of

1 you. And that's why we keep saying there needs to  
 2 be more survey work. That's information you're  
 3 gathering under 36 CFR 800.4, for (b), for (a)(3),  
 4 for (a)(4), pertaining to our rights to consult  
 5 and advise you on identification under 36 CFR  
 6 800.2(c)(2).

7 That's where it stands, and that's the  
 8 statement from Standing Rock, that I don't see how  
 9 you're going to meet that. And I'd like that  
 10 explained. I don't know if we have enough time to  
 11 do it today, as I know a lot of people are leaving  
 12 today. Thank you. I'll pass it over to Charlene.

13 **MS. VAUGHN:** Terry, hello.

14 **MR. CLOUTHIER:** Hello.

15 **MS. VAUGHN:** Can you hear me, Terry?

16 **MR. CLOUTHIER:** Yes, everyone can.

17 **MS. VAUGHN:** Okay. The other -- I agree  
 18 with your commentary, but I have another  
 19 conclusion that can be reached, and that is that  
 20 the tribe advise STB how this role can be  
 21 achieved.

22 (Interruption on phone line)

23 **MR. CLOUTHIER:** Hello, there's someone  
 24 talking on this phone line. You're not on mute.  
 25 We would prefer if you would at the moment, as

1 once again with Standing Rock, and we have had  
 2 statements prior to your involvement on the phone  
 3 that the tribes do prefer a hundred percent survey  
 4 of the area. That has been a statement by  
 5 Standing Rock, Yankton Sioux Tribe, Cheyenne River  
 6 Sioux Tribe, and other tribes. I'm just going  
 7 through my notes on the tribes actually  
 8 specifically stated that. And other tribes have  
 9 nodded in agreement that that should be, without  
 10 publicly stating it.

11 **MS. VAUGHN:** And what I heard Rick say  
 12 and what I heard David Coburn say is that while  
 13 that's laudable goal, it will be virtually  
 14 impossible to achieve given the land access issue.

15 **MR. STARZAK:** Yes, Charlene. This is  
 16 Rick. I just want to clarify what Terry said.  
 17 When they say a hundred percent survey, the target  
 18 would be a hundred percent survey of where we can  
 19 legally enter land; is that correct? Because  
 20 everything else we would not have access to. So  
 21 is that correct? A hundred percent survey of  
 22 where we have access?

23 Yesterday we talked a little about some  
 24 parcels are landlocked, they're surrounded by land  
 25 that we do not have access, so that is not a

1 Charlene Vaughn from ACHP was talking. Thank you.

2 **MS. VAUGHN:** So again, my point was, I  
 3 hear you're putting the onus on STB to figure out  
 4 when and how they reach the threshold of  
 5 acceptable levels of information, but I think that  
 6 that's just one approach to it. I think the  
 7 tribes have had these couple of days to caucus and  
 8 to explore their issues and the thresholds that  
 9 they feel need to be met and can advance or share  
 10 some recommendations to STB for their  
 11 consideration on how this could be achieved and  
 12 how enough information can be collected so they  
 13 can move forward.

14 Because ultimately, as you said, the  
 15 regulations are clear about the role of the tribes  
 16 and engagement of tribes and in the decision  
 17 making, and STB is doing everything possible to  
 18 make sure those requirements are met. To the  
 19 extent we think they're lacking or there's a gap,  
 20 we need to tell STB so they can figure out next  
 21 steps for them. We don't need to leave this to,  
 22 "Did STB get it right this time? Is STB going in  
 23 the right direction?" We can advise them of our  
 24 position.

25 **MR. CLOUTHIER:** Charlene, this is Terry

1 hundred percent if we can't get to those, okay.  
 2 I'll let you speak, Terry. I just want to make  
 3 sure I understand when we consider this that we've  
 4 got it correct.

5 **MR. CLOUTHIER:** So I am kind of laughing,  
 6 because Pete's mentioning exactly what I've been  
 7 mentioning here.

8 Once again, Terry with Standing Rock. In  
 9 terms of the landlocked areas, you've already used  
 10 helicopters for wildlife survey. I've done  
 11 helicopter survey in terms of actually jumping out  
 12 and getting boots on the ground in British  
 13 Columbia continuously, and that's how a lot of  
 14 survey is done there because you can't get access  
 15 to these areas for oil and gas industry in British  
 16 Columbia due to the wetlands that are present and  
 17 you can't survey in the winter.

18 So you already used helicopters once, you  
 19 already set the precedence for that. It's not  
 20 that you can't drop a helicopter into an area if  
 21 you have qualified people to get in and out of the  
 22 helicopter.

23 **MR. STARZAK:** And if the landowner allows  
 24 us to land the helicopter on his land.

25 **MR. CLOUTHIER:** Sure.

1 **MR. STARZAK:** We can't promise that  
 2 unless we talk to the landowner.  
 3 **MR. CLOUTHIER:** True enough. To get to  
 4 the other point of the hundred percent survey, and  
 5 that's the specific reason why you guys are going  
 6 with the phased approach and that's why I  
 7 mentioned prior to Charlene getting on that the  
 8 specific language in there, that pertains to as  
 9 land is available. We would like to continue to  
 10 do the survey work as land becomes available. For  
 11 instance, as you mentioned yesterday, Rick, there  
 12 was one whole alternative where 36 percent was  
 13 available but none was surveyed due to fire  
 14 concerns, so that got a 0 percent survey on that,  
 15 on those lands, even though there was land  
 16 available. And that still hasn't been surveyed  
 17 and it's not a fire danger now to be out there  
 18 once you can see the ground.  
 19 **MR. STARZAK:** Terry, just to clarify,  
 20 that was discussed, I think, at the tribal caucus.  
 21 I don't think we discussed it. And we did -- when  
 22 we planned to enter, the landowner did not give us  
 23 permission because of the fire danger, so just to  
 24 be clear.  
 25 **MR. CONRAD FISHER:** Rick, could I have

1 Anyway, I'm going to excuse myself. Thank you.  
 2 It was good meeting you.  
 3 **MR. CONRAD FISHER:** Thank you, Steve.  
 4 This is Conrad Fisher. I'm going to go ahead and  
 5 assert myself and take over the mic.  
 6 Charlene, thank you for the comments that  
 7 you've made. I think you've clarified a lot of  
 8 the questions that we had this morning, and  
 9 certainly been very engaging in terms of trying to  
 10 say what we're trying to express about parity this  
 11 morning.  
 12 And I hear what David is saying about the  
 13 preferred alternative, but again, I think as  
 14 tribes we're relatively a new player in this  
 15 cultural resource management, and I might go off  
 16 on a little tangent here, but I'm going to get  
 17 back on track. But I want to make the statement  
 18 that, Charlene, that you alluded to about this not  
 19 being a unique situation in terms of the federal  
 20 tribal relations when it comes to cultural  
 21 resource management. And we've -- we've made this  
 22 argument this morning about exactly what you're  
 23 talking about. But we really appreciate you  
 24 emphasizing those points about parity and tribal  
 25 site identification and eligibility. I think

1 Steve Brady say something? He's been standing  
 2 there for a couple hours now.  
 3 **MS. VAUGHN:** Hi, Steve.  
 4 **MR. BRADY:** I'm just basically listening.  
 5 Steve Brady, Northern Cheyenne. Although it was  
 6 some time ago, several decades ago, the Northern  
 7 Cheyenne Tribe filed suit against the Secretary of  
 8 Interior O'Dell and advised him that the EIS and  
 9 the Tongue River coal sales.  
 10 Now, the reason why I wanted to mention  
 11 that is there were a number of elders a couple  
 12 generations back that were interviewed, especially  
 13 along the Tongue River area in Birney Village  
 14 area. If those interviews or that information can  
 15 be made available to the THPOs here, I think it  
 16 would really be good. That was BLM, wasn't it?  
 17 **MR. MELTON:** Doug Melton from BLM. We  
 18 have some of that information. Some of it was  
 19 done as a court order decision, and then I believe  
 20 the Cheyenne also did some as well. So we have  
 21 that information available. We can certainly make  
 22 that available to people.  
 23 **MR. BRADY:** So I just wanted to add that  
 24 to the discussion. There was interviews, I think  
 25 either done by James Boggs or Sherri Deaver.

1 that's what we were looking at.  
 2 And I know, David, that you have your  
 3 interpretation about the preferred alternative as  
 4 opposed to the other alternatives, but I think the  
 5 Surface Transportation Board, Vicki, and others,  
 6 Cathy and Richard, ICF, that you're doing your  
 7 best and you play a role in looking at all aspects  
 8 of this undertaking. And certainly, there's a  
 9 renewed interest in energy development, not only  
 10 with reference to coal, but also coal-bed methane,  
 11 uranium projects, and others. And with the Bakken  
 12 oil fields being so close, I think we're -- we're  
 13 sort of being pushed, pushed to make a stance.  
 14 And this may be a little more philosophical in  
 15 nature, but I think it speaks to the issue of  
 16 cultural resource management. And the tribes are  
 17 asserting what they feel is right in their eyes,  
 18 and that is that we want to take every opportunity  
 19 available to us to ensure that cultural resources  
 20 are addressed. And I understand you'll consider  
 21 those concerns. However, I think this is the  
 22 point that we're trying to make at this meeting,  
 23 is that even though they may be viewed as moot in  
 24 some instances or not applicable, I think to the  
 25 tribes they're certainly real and applicable, even

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1 if it is just one or two acres.  
 2 I've made that statement yesterday about  
 3 reaching -- doing what you say you're going to do.  
 4 And I think Charlene had talked about that, that  
 5 when we say that, you know, you're going to look  
 6 at a certain percentage of acreage, that we should  
 7 try to attain that and looking at this in  
 8 forethought and making sure that there's no  
 9 obstacles in front of you to achieve that goal.  
 10 And I'm -- and maybe I'm not saying it  
 11 right, Charlene, but I thought I heard you say  
 12 that, you know, we -- that we try to look at those  
 13 things in parity when it comes to these  
 14 alternatives and minimizing the impact and looking  
 15 at the alternative that best fits this particular  
 16 undertaking.  
 17 And so I think, Stan, that was something  
 18 that I was alluding to in our -- in our closing  
 19 recommendations, which was going to be sometime  
 20 today, and it all goes back to the draft of the  
 21 EIS. Now, certainly the referendum vote for  
 22 Northern Cheyenne is going to take a few months,  
 23 and I heard our president say that it might take  
 24 six, six months to complete, but that would give  
 25 an idea about the position for Northern Cheyenne.

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1 However, that does -- that shouldn't affect the  
 2 preservation of cultural issues and what we're  
 3 discussing today.  
 4 And all I'm asking is whether or not it's  
 5 reasonable to take a hard look at the EIS and see  
 6 whether or not that can be extended further down  
 7 based on the discussions that -- lively  
 8 discussions that we've had this morning.  
 9 Again, on a side note, there's this huge  
 10 industrial complex that is sort of pushing on all  
 11 the tribes in all directions, even into Canada.  
 12 And I understand the business proposal from the  
 13 rail line, however, I think as native people we  
 14 take a different look at this, and we're in it for  
 15 the long haul. We'll still be here -- we've had  
 16 some excellent points made from traditional people  
 17 that talked about the future generations and the  
 18 peripheral effects and also the peripheral  
 19 developments.  
 20 So in a nutshell, I think that was the  
 21 question that I was posing to you, is making some  
 22 reasonable decision on the EIS. Because in  
 23 other -- in other statements you made there was no  
 24 timelines for responses, no timelines for other  
 25 related undertakings. So -- but you do have a

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1 timeline for this. And I agree with you, we need  
 2 to make a conscious effort for the environment,  
 3 for the people, for everyone in an ethical and  
 4 moral manner, but is the timeline -- should a  
 5 timeline be addressed in this in terms of a summer  
 6 date, you know? That's all I'm saying. I'm sorry  
 7 to muddle here, so I'll quit right there.  
 8 **MR. STARZAK:** While Vicki is considering  
 9 that, I just wanted to make kind of a general  
 10 announcement. We've ordered pizza, which should  
 11 be coming in, so if you're famished for lunch.  
 12 And then also, Pete Coffey, Jr. was nice enough to  
 13 show me that somebody's hotel key was dropped so  
 14 see if you're locked out of your hotel. Thank  
 15 you.  
 16 **MS. VAUGHN:** So I'm sorry to interrupt,  
 17 but this is actually my day off, and Rick e-mailed  
 18 me and suggested that if at all possible I join  
 19 the conversation, so thank you, Rick, for making  
 20 me know that these were important discussions that  
 21 were about to be held. But it's my day off, and I  
 22 made commitments, so I'm going to have to drop  
 23 off. And again, I offer apologies that we were  
 24 not physically present and assure STB that if and  
 25 when they schedule another meeting, I will

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1 personally come out and attend that because I  
 2 think these meetings are so important, building  
 3 the relationship, having the discussions, and the  
 4 side conversations all help us to understand that  
 5 we're trying to do the best we can. And I know  
 6 that the tribes have worked very hard these past  
 7 two days, and I appreciate STB and the railroad  
 8 for facilitating these discussions. So I'll get  
 9 with STB when they're back in DC, and if any of  
 10 the tribes feel that I can be helpful, we can  
 11 arrange a follow-up call at your convenience.  
 12 I'll be in for the rest of the month at least, so  
 13 feel free to call and I'll make myself available  
 14 for that.  
 15 **MR. STARZAK:** Thank you so much,  
 16 Charlene.  
 17 **MS. VAUGHN:** Sure.  
 18 **MR. CONRAD FISHER:** Thank you.  
 19 **MR. STARZAK:** Thank you so much,  
 20 Charlene, for joining in on your day off.  
 21 **MS. VAUGHN:** Okay.  
 22 **MR. CONRAD FISHER:** Thank you.  
 23 **MR. STARZAK:** We really wanted to think  
 24 this through as a group, so your participation was  
 25 extremely helpful.

1 **MS. VAUGHN:** Thank you everybody. Enjoy  
 2 your weekend.  
 3 **MS. NADALS:** Thank you. Bye-bye.  
 4 **MR. STARZAK:** The owner of the key has  
 5 come forward. No, the owner of the key is still  
 6 unknown. So if anybody's locked out...  
 7 **MR. CONRAD FISHER:** Well, pizza sounds  
 8 real good, and I think we should take a little --  
 9 another five-minute break, which means 15 minutes,  
 10 and come back and reach some conclusion on today's  
 11 meeting. How's that sound? Okay.  
 12 [RECESS - 1:06 P.M. TO 1:33 P.M.]  
 13 **MR. STARZAK:** So in the interest of time,  
 14 I'm going to go off the agenda. I'll just mention  
 15 that for Steps 3 and 4, we wrote down all comments  
 16 from everybody that related to Steps 3 and 4 of  
 17 the Section 106 process. But you've heard enough  
 18 from me, and I'm not going to just bore down on  
 19 those. We'll provide them to you later. But it  
 20 was kind of a collective to generate that  
 21 information.  
 22 So now I would like to turn it over and  
 23 go on to hear some recommendations from the  
 24 tribes. And then I wanted to just mention,  
 25 there's a lot of people who have been consulting

1 the boards. And I think looking at that, they  
 2 were unsatisfactory in terms of the amount of  
 3 acreage that was surveyed.  
 4 And we went through a little, I think,  
 5 dilemma as far as what constituted 100 percent and  
 6 the amount of the percentage of land that was  
 7 assessable and -- but we, I think we had a fairly  
 8 decent idea about that during our caucus, and we  
 9 were fortunate enough for Terry from Standing Rock  
 10 to clarify those issues, so we had a mathematician  
 11 that was present that could give us some direction  
 12 on the percentage of acreage that was surveyed.  
 13 So we -- I think that took about 90 percent of our  
 14 total allotted time for our caucus, but we  
 15 managed.  
 16 And again, thank you, Vicki, for being  
 17 here personally. I think -- and Cathy and Rick.  
 18 I think it's these types of meetings that make it  
 19 meaningful in terms of having a good consultation.  
 20 And even though Charlene wasn't here 100 percent  
 21 of the time -- now I'm into percentages now -- she  
 22 still, I think, was crucial in her interpretation  
 23 about site evaluation and being engaged in the  
 24 conversation, and I thought she made some real  
 25 excellent points.

1 parties here that haven't had an opportunity to  
 2 speak, so we want to make sure that if you have  
 3 something important to say that we want to hear  
 4 from you.  
 5 Conrad, would you feel comfortable giving  
 6 some recommendations?  
 7 **MR. CONRAD FISHER:** Well, I'm not sure  
 8 if -- who all left, if anybody's still around. I  
 9 notice people are --  
 10 **MS. NADALS:** I'm here.  
 11 **MR. CONRAD FISHER:** Cathy's here. The  
 12 STB is here. Some of the tribes are present. I  
 13 see some that aren't, and I'm not sure if we  
 14 should begin the process of making  
 15 recommendations. However, I think it's important  
 16 to kind of briefly look at this project and see  
 17 where the tribes are coming from.  
 18 I know we had a caucus last evening.  
 19 Charlene had mentioned the importance of having a  
 20 tribal caucus. And in that caucus, I think we  
 21 discussed a number of things that were being  
 22 addressed today. One of them was the Programmatic  
 23 Agreement and the contents of that. Another was  
 24 the EIS, which we talked about today. And also,  
 25 the percentage of the surveys that were put up on

1 And also, the other parties that were  
 2 here, the special interest groups, Vanessa and  
 3 Alexis and Clint was here and some other folks --  
 4 if I fail to mention your name -- and some of the  
 5 traditional society and ceremonial folks that were  
 6 here, again, from Northern Cheyenne, Mr. Mark  
 7 Roundstone with the natural resources, thank you  
 8 for the prayers and the excellent comments, and  
 9 Steve Brady from our -- who's the chair of our  
 10 Cultural Commission, for participating, and also  
 11 Mr. James Walksalong, the cultural monitor for  
 12 Northern Cheyenne and some of the data that he  
 13 provided for this group. He was the monitor that  
 14 was there throughout the surveying this past  
 15 summer. So you know, he changed from real light  
 16 during the winter to real dark during the summer,  
 17 and he's kind of light again. And same thing with  
 18 Ben. You know, I was making a comment about -- I  
 19 didn't tell him that.  
 20 **MR. RHODD:** Come on now.  
 21 **MR. CONRAD FISHER:** Almost didn't  
 22 recognize him. I thought maybe he just come out  
 23 of prison or something.  
 24 So having said that, I think the tribe  
 25 has, in lieu of Charlene making those statements,

1 I think you've got a fairly decent idea about the  
2 recommendations that we're seeking and that we  
3 want to give to STB.

4 Now, I hear what -- and also, BNSF,  
5 James -- or it never fails I call him James Coburn  
6 all the time. You know, he's going to hit me one  
7 of these days. He's very diplomatic about this,  
8 so thank you for being patient.

9 **MR. COBURN:** It's not a problem, Fred.  
10 (Laughter)

11 **MR. CONRAD FISHER:** Now, let's not start  
12 name calling. One issue's good enough here. No,  
13 thank you, David. I think if we look at the board  
14 around us, that there are a lot of comments.

15 And, Vicki, you've got a lot of work, I  
16 think, ahead of you. And I say this because I  
17 think these things need to be said. You're the --  
18 you're the agency that oversees this -- these  
19 types of permitting projects, and I think you're  
20 seeing it from a cultural perspective. I think  
21 you have to see it. I think you see it from an  
22 extreme position, from one side to the other. And  
23 we're asserting -- again, I've mentioned this  
24 before, that we look at it from a very different  
25 perspective. And we're always fighting these

1 the preferred alternative and the sites as it is  
2 after completion of the surveys that were  
3 conducted in 2013, then I don't think it is enough  
4 and I think the percentages that were put up on  
5 the board reflect that.

6 I think as Native Americans, we're  
7 looking at it to the fullest, trying to satisfy  
8 those quotas. And I know there's another position  
9 on that, but those are the recommendations from  
10 the tribes, that we feel that those percentages  
11 are not satisfactory.

12 And we feel that STB can look at this and  
13 reasonably come to a conclusion that we do have a  
14 strong argument for maybe reconsidering another --  
15 another idea, and that is, that we should be  
16 looking at other surveys to fully satisfy those  
17 numbers. Whether or not we reach 100 percent, I'm  
18 not sure if we can do that with the limited amount  
19 of cooperation from the landowners, but I know  
20 that yesterday Clint McRae had mentioned that  
21 there might be a possibility for the landowners to  
22 reconsider their positions in light of the  
23 testimony and in light of what was discussed  
24 today, and you know, there's always that window of  
25 opportunity and hope that we can achieve a better

1 types of issues. It doesn't matter if it's a  
2 political issue, a cultural issue, an economic  
3 issue. Those things that we as native people, I  
4 think we want to make ourselves known. We might  
5 be less than one percent of one percent of the  
6 total population in the United States, but when it  
7 comes to cultural resources, we're 99.9 percent of  
8 those cultural resources. You know, when we talk  
9 about cultural resources, I think immediately we  
10 think of Native Americans.

11 And so we've got a huge responsibility to  
12 ensure not only the cultural heritage of America,  
13 but also the cultural identity/survival of  
14 indigenous folks of native North America.

15 As you can see, I'm killing time at this  
16 time, but it is something that needs to be said.  
17 I know all of you are thinking of pizza at this  
18 time. But certainly, we want to reemphasize some  
19 of the recommendations that were made earlier.

20 I know that one of them was, again, the  
21 EIS, that it may be realistic to you, but at this  
22 point, I think it's unrealistic to -- at least for  
23 Northern Cheyenne and for the other tribes. And  
24 let me clarify that because of the way it's  
25 structured right now. If you're looking at just

1 alternative than what we currently are looking at  
2 based on the data that was presented as far as the  
3 surveys are concerned.

4 And I think that's been reinforced by  
5 some of the discussions, particularly by Standing  
6 Rock and also Rosebud and certainly the testimony  
7 that has been given by some of our speakers can  
8 attest to the importance of identifying those  
9 sites and giving parity, as Charlene had  
10 mentioned.

11 And so when we look at the overall scope  
12 and scale of this project, it's huge. Again, I  
13 want to say, emphasize that somebody had compared  
14 it to the Keystone XL Project, and it is for  
15 native people. It is an industrial complex that  
16 is certainly infringing on a really pristine area.  
17 And for Northern Cheyenne, we're surrounded by  
18 proposed energy development in all four  
19 directions, and so we've got a responsibility to  
20 try to come to some conclusion on what we want to  
21 do with this. And your office, I think, is in a  
22 position to at least listen to what we have to say  
23 on this route. And of course, cultural resources  
24 are the issue, and we want to make sure that we  
25 have a voice in this undertaking.

1 And any other tribes, please feel free to  
2 jump in, but I wanted to make that initial  
3 comment, Rick, just so we can jump-start the  
4 recommendations by the tribes. Thank you.

5 **MR. RHODD:** Ben Rhodd, Rosebud Sioux  
6 Tribe. This thing has got to get over this time.  
7 I keep trying to turn my head so I can see people,  
8 but got a krink in here.

9 I think the direction that we've had on  
10 this issue has been extensive, and it has been a  
11 bit contentious. However, I think that it really  
12 comes down -- we're coming into where, I guess  
13 what do they call it? Put the pedal to the metal  
14 and see where we can get to pretty quick here.

15 Part of it's going to land in Mr.  
16 Coburn's lap here, because as a representative of  
17 the company, for what we are looking at and have  
18 discussed, and some of it hasn't been here in this  
19 room, a lot of it's on breaks outside actually for  
20 some of us, but the point is, I think we're going  
21 to need another meeting. And I know that that  
22 really has been, at least in the past, has been  
23 kind of contentious for STB and others to be here,  
24 but we need to get the ground rules down on where  
25 we're going to head with this PA. I know that

1 be an ongoing project, so to speak.  
2 And also, with what Conrad has said about  
3 the EIS, how we're going to do this in a short  
4 period of time, or hopefully an extended period of  
5 time. And I know that's going to be a contentious  
6 issue. Just saying that, to be able to look at as  
7 much of the lands. If they go to condemnation,  
8 whatever happens, whatever is going to be the  
9 railroad's position, acquiring access for other  
10 studies, but that -- the native and tribal groups  
11 be involved in every phase of that.

12 So I think that we do need another  
13 meeting, and I would like to suggest sometime in  
14 April, as quickly -- or as quickly as we can,  
15 because I know March is going to be very difficult  
16 for the tribes. We have a number of other  
17 meetings that we're going to have to be a part of,  
18 be traveling, and so I think in April would be  
19 about our best time to be able to it if we can sit  
20 down again and see where we're at, so to speak,  
21 and get the parameters of the PA established.

22 So that's just my suggestion from  
23 Rosebud, and I think there was another one or two  
24 things. I think that's about it. So with that,  
25 thank you.

1 you've got, I don't know how many, 20 or 30, I  
2 think Conrad said. You've got a lot of placards  
3 up here, a lot of pages. And given the timeline  
4 that we're dealing with, I know that there -- I  
5 think we can get a lot done very quickly should we  
6 meet again now that we've come through at least  
7 part of the discussions that have been rather  
8 difficult for us to get our minds around and got  
9 those issues out of the way.

10 I'd like to see, for one thing, at least  
11 from Rosebud's perspective, and I hope it's the  
12 other tribes too, is that a compilation of all  
13 this that you've got here on the -- on these  
14 pages, on the wall, and be able to, in particular,  
15 Mr. Brady's need or suggestion for an ethnobotany  
16 survey. We have an interest from Rosebud on a  
17 study that we're wanting to do trying to get  
18 going. But an ethnobotany study, meaning a study  
19 of the -- again, we're going to say "preferred  
20 right-of-way," don't want to get back into that,  
21 but upon the route, let's just say "route."  
22 That's one thing.

23 Secondly, is that how we're going to  
24 write this PA in a phased approach; that's going  
25 to be -- it as going to be ongoing. It's going to

1 **MS. NADALS:** Anybody else have anything  
2 to add?

3 **MR. VANCE:** Steve Vance, Cheyenne River  
4 Tribe. Again, going back to what I said earlier  
5 with the Surface Transportation Board meeting as a  
6 government-to-government, Cheyenne River kind of  
7 put it out there already as to what we're  
8 supporting here with this.

9 We've concurred verbally with  
10 recommendations from Northern Cheyenne, along with  
11 the other tribes who have also addressed their  
12 concerns. And for this area, you know, I  
13 mentioned that given my personal association to  
14 this area through lineage but also as a tribe, as  
15 they say tribe, we say legion.

16 When I say the word "Lakota," we've all  
17 been given the title of Sioux, which is when I say  
18 "Lakota," you know, it goes broad, real broad.  
19 There's like nine reservations in South and North  
20 Dakota that are titled Sioux, but yet again, as I  
21 talked about, lineage, you know, I have a  
22 relationship with Northern Cheyenne through  
23 marriage with my great grandfather, and this area  
24 that we're discussing is a major route for  
25 ceremony, for travel, cabinets. And like Ben

1 said, a lot of these things we go outside and we  
 2 stand and we talk about the importance of it and  
 3 our association to it. And I think the Board  
 4 really needs to look at that as to the association  
 5 aspect. And we have, of course, the United States  
 6 history that, you know, archeology looks at as  
 7 important, as I mentioned with water wells versus  
 8 a running stream. But cumulative effects of all  
 9 the extractive industries, whether they be small  
 10 or large, have long-term effects globally, and  
 11 that was what was entailed in our culture, was to  
 12 care for this planet, and we continue to do that.  
 13 And as was mentioned earlier, there's not that  
 14 many of them left. If you was to actually look  
 15 into each one of these tribes, some have  
 16 completely lost everything, language, culture.  
 17 The ones that still have access to those people is  
 18 even limited, and I fear the disappearance of  
 19 that. It is a very rich identity to be able to  
 20 speak your language fluently and to go back to  
 21 these sites and take your grandchildren there and  
 22 tell them their history from our side.

23 So our association to this is that of  
 24 culture, and we talk about, and I really don't --  
 25 it limits us to talk about things when we put it

1 coming into deliberating legal documents such as  
 2 treaties that the United States Government has  
 3 admitted themselves that they have violated. And  
 4 through those, they boxed us up into an area to  
 5 say that our only concern is that the box that we  
 6 live in, not outside that. And that's what I'm  
 7 trying to say here, is that there is association  
 8 up there for Cheyenne River Sioux Tribe, and we  
 9 are in support of Northern Cheyenne, very similar  
 10 concerns that are made by the other Lakota tribes  
 11 as a nation.

12 We're talking government-to-government.  
 13 I support other Lakota bands being in that  
 14 discussion when we talk about the Lakota or the  
 15 Great Sioux Nation. Because if we're -- if  
 16 there's a discovery up there and it has to do with  
 17 a (native language) ceremony but we find it, we  
 18 consult with Standing Rock. Because they have a  
 19 little bit closer, but we're still, as a people,  
 20 as a nation, as states do, as states work at a  
 21 national interest, we also sit here and talk about  
 22 these things in our national issues of tribes, and  
 23 that goes on to ally tribes. As one of the elders  
 24 mentioned in caucus, it's good to see the tribes  
 25 align together here, and that's the only way we

1 into a cultural resource, have the interpretation  
 2 of what is sacred that differs throughout this  
 3 room. But natives have always looked at it as  
 4 everything, all of creation.

5 And this society that we live in now,  
 6 America, has -- makes a lot of that and has  
 7 changed a lot of the traditional followings. So  
 8 we have other people who are, let's say,  
 9 association to this project, but it could be on  
 10 the personal or the political or federal  
 11 requirement or a legal requirement. How does that  
 12 balance with people who attach themselves for  
 13 10,000 years or more to these sites?

14 So people who are involved in this just  
 15 for the money, someone said earlier, to look at as  
 16 progress, and I've made comments to my own tribe  
 17 about in different elements traditionally or even  
 18 in the field of education, that there's a fear of  
 19 loss here within the next 50 years. But I said  
 20 that 20 years ago. So it's coming down to the  
 21 very existence of us, cultural, and to say that  
 22 we're not associated to these sites because we  
 23 haven't been to them shouldn't be taken into  
 24 consideration. Because you know, we still have  
 25 the comments from our political people who are

1 can do it, because we've been singled out. We've  
 2 been singled out in a lot of things towards  
 3 acreage or population or, you know, going back to  
 4 what is written in a federal document as to a  
 5 process or a regulation. Is almost always not in  
 6 our favor as tribes.

7 So I support Northern Cheyenne, I support  
 8 the comments from my other allied tribes here, and  
 9 I do commend the people who actually live right  
 10 there and made their comments of their own right  
 11 existence today, family.

12 The access to the acreage like Clint  
 13 said, these things that -- Charlene didn't hear  
 14 these things when she was on the phone. All she  
 15 heard was that access to private property has  
 16 changed. But I mentioned to Vicki that, you know,  
 17 to let Charlene know that there are people like  
 18 Clint out there who said, "We will let the tribes  
 19 in on these properties."

20 And if you would really talk about it,  
 21 spring and fall is better place -- is better times  
 22 to get out there before the grass is chest high.  
 23 We don't know what it will be like here in the  
 24 summer. But the best conditions, you know, it's  
 25 not just go out there when there's no covered

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1 ground either.  
 2 So in the development of this PA, I think  
 3 we need to look at the time frame of when it is  
 4 best feasible for identification of what's on the  
 5 surface. We still don't know what's below, so  
 6 those are the things that will come further down  
 7 the line that need to also be addressed in that PA  
 8 that during the construction phase of it, as to  
 9 when you go do your ceremonial groundbreaking with  
 10 that shovel and you turn something over, you know,  
 11 then it changes again, just as was mentioned by  
 12 the monitors, of finding human remains in the  
 13 original survey. So as things go, things change.  
 14 So going back to Ben, you know, this is something  
 15 that's going to be a phased approach document. As  
 16 you go, things change, reinvestigations.  
 17 I'm still coming back to the eligibility  
 18 part of it. I would like to make sure the right  
 19 people are there to evaluate these sites as to  
 20 their significance. You know, it's just been  
 21 misidentified too many times throughout the years,  
 22 and now the opportunity is here to bring our  
 23 younger people into this understanding what the  
 24 sites were before we lose all our experts.  
 25 So, again, like I said, I'm here in favor

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1 of the tribes as a coalition, as a whole, unified  
 2 effort.  
 3 **MR. CLOUTHIER:** Terry Clouthier with  
 4 Standing Rock. Just I'll keep this really brief,  
 5 as the food has arrived.  
 6 I want to talk a little bit about the  
 7 concern that any kind of evaluation would take  
 8 years. I disagree with that assessment.  
 9 Evaluations don't take years to evaluate for  
 10 eligibility. I was talking with Vicki privately  
 11 about that very same thing during the last break,  
 12 and I'm sure I'll continue that discussion with  
 13 Vicki and Cathy at another time, but I wanted to  
 14 state publicly that it doesn't take years to  
 15 actually do eligibility determinations, at least  
 16 from Standing Rock's perspective. I wanted that  
 17 to be understood.  
 18 So with that, I'll just leave it at that.  
 19 I think I've commented enough on everything that's  
 20 gone on, so I'll leave it at that. Thanks.  
 21 **MR. BLACK WOLF:** Michael Black Wolf, Fort  
 22 Belknap Indian Community. As most of you probably  
 23 noticed, I sat here the better part of the two  
 24 days not saying anything.  
 25 Several reasons. Very new to this

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1 position, and also very new to the situation going  
 2 on here. One of the things I was always told was  
 3 that you've got to be really careful what you say  
 4 and how you say it. It's like I was told the  
 5 example to use is, is like when someone shoots a  
 6 gun, that bullet goes out there, there's no way  
 7 you can retrieve that bullet.  
 8 It's the same thing with the words that  
 9 you say. Once you say something, it's out there,  
 10 particularly for something like this where  
 11 everything is being recorded and documented.  
 12 With that being said, I just sat here and  
 13 listened, listened to all the tribes here. I  
 14 would like to personally thank Curley Youpee from  
 15 Fort Peck. He was the one that brought this to my  
 16 attention at Fort Belknap. I represent two  
 17 distinct tribes there at Fort Belknap, two  
 18 distinct cultures, two distinct languages. The  
 19 Gros Ventre and the Assiniboine people are, as we  
 20 call ourselves, the Aaniiih Nakoda people, and so  
 21 I'm here representing both tribes in support of  
 22 the Northern Cheyenne people, the Sioux tribes,  
 23 the Arapaho people, all of you guys that have  
 24 recent history, Crow people, recent history to  
 25 this area.

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1 I know Mr. Youpee mentioned that the Fort  
 2 Peck people there also have historic ties to this  
 3 area, and the Nakoda people at Fort Belknap are  
 4 essentially the same as one as the Nakoda people  
 5 at Fort Peck. So I'm here representing both  
 6 tribes. So -- and the limited knowledge and  
 7 involvement that I have, the official capacity to  
 8 the statement that I would like to say is that the  
 9 tribes at Fort Belknap, again, are here in full  
 10 support of all the statements that were made by  
 11 all the tribes, and I look forward to working with  
 12 all you tribes on this in the future. Thank you.  
 13 **MR. WILLEY:** Andrew Willey with the  
 14 Cheyenne and Arapaho Tribes THPO. I just want to  
 15 say that I am in full agreement with my Cheyenne  
 16 Brother, Conrad Fisher. He speaks well on behalf  
 17 of the rest of us. And I agree that there needs  
 18 to be more survey work done, and I'll look forward  
 19 to it. Thank you.  
 20 **MR. TWO LEGGINS:** Hubert Two Leggins,  
 21 Crow. I'd like to say a few words. I used to be  
 22 the THPO for the Crow, the cultural director, was  
 23 also a tribal official 1990 to '05, was also a  
 24 (inaudible) resource co-op supervisor for the  
 25 tribe, also a project coordinator for the economic

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1 development of the tribe, and then I have some  
 2 other jobs that, you know, that I have a lot of --  
 3 I did a lot of research on energy, but then I did  
 4 a lot of research on our history.  
 5       And I just want to talk a little bit  
 6 about the railway or the railroad. Crow, where  
 7 we're at right now with our -- some people say  
 8 it's the (inaudible) agency, but it's the fourth  
 9 agency. And the first agency is up in -- over in  
 10 where Curley lives, the River Crow or the Crow,  
 11 they filed a document that states that we were  
 12 caught between the Milk River and the Missouri  
 13 right about where Fort Peck Reservoir is, and the  
 14 second one is over in Livingston, Montana. They  
 15 think that was the first one, but that's the  
 16 second one. And at that time, our chiefs -- our  
 17 chief was Chief Sits in the Middle of the Land,  
 18 who signed -- well, Chief Sits in the Middle of  
 19 the Land is the one that signed the 1851 Treaty  
 20 for us, and that one's the one that was over 38,  
 21 25 million acres. But before that, the 1825  
 22 Treaty was signed by a chief named Long Hair.  
 23 Long Hair, at that time his name was Chi-wah --  
 24 Osh-ka Chi-wah-sta-shay (phonetic). The  
 25 chi-wah-sta-shay (phonetic) is a what we call hair

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1 bows, and they're -- they wear them, the Crows  
 2 wear them. I think Pete probably knows what they  
 3 are. And they're made out of wire, with some  
 4 dentalium shells, and then with some hair pipes  
 5 attached to it and with some feathers. I own  
 6 some. I make them. But that was his name, was  
 7 Chi-wah-sta-shay (phonetic). But he had seen a  
 8 vision where he seen the train coming, and he said  
 9 there's a metal snake with a light on the forehead  
 10 coming. And then he also seen the domestic cow,  
 11 and he said that that one, it was a half -- the  
 12 way he described it is a buffalo, what we call it  
 13 be-jon (phonetic), buffalo we call be-jon. And  
 14 then what he seen was probably like a dairy cow,  
 15 but he said be-jon was buffalo, and ee-gee-lah  
 16 (phonetic), be-jon/ee-gee-lah (phonetic) is what  
 17 he called it, and it's a buffalo horse, buffalo  
 18 painted horse, and that's what he seen too. He  
 19 seen them two coming.  
 20       And then not the first -- not the second  
 21 but the third agency, there's a lot of decisions  
 22 that were made there. The tribe knew that we had  
 23 to change the, like what we call by-esh-diosh-leva  
 24 (phonetic). By-esh-diosh-leva is the ones with  
 25 the yellow eyebrows are coming. And we can't stop

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1 them, and that's the non-Indians. And so at that  
 2 time we made a lot of important decisions that  
 3 things are going to change.  
 4       And then going back to the Livingston, at  
 5 that time the chief always made the decisions with  
 6 consensus of elders and probably pipe carriers and  
 7 the older ones, the older men. And at that time,  
 8 the railroad came and they approached the tribe,  
 9 and at that time is when the chief kind of lost  
 10 his authority, because the railroad came and  
 11 talked to the people and told them they were going  
 12 to give them money, gifts, blankets, and so the  
 13 chief at the time had them kind of vote, I guess,  
 14 and some of them wanted them gifts and some of  
 15 them didn't want that. So at that time is when  
 16 the our chief kind of lost his voice or his  
 17 authority because of the railroad approaching them  
 18 and making them vote. And so from there on, the  
 19 chief kind of lost his authority.  
 20       And so now we have a railroad that goes  
 21 through our reservation but we don't benefit from  
 22 it. A lot of people die. They get hit by the  
 23 train. And one of my brothers got his car got  
 24 stuck on the railroad and he was trying to push it  
 25 but the train came and he ran and the train hit

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1 that car and that car flew and landed on top of  
 2 him and he died. But that's the effects of the  
 3 railroad for our tribe. So I guess really need to  
 4 decide, because we don't benefit from it. But  
 5 right now where we're at, we're -- the gentleman  
 6 was here earlier from the tribe but he didn't say  
 7 his name for my district, but he's a member of the  
 8 coal board, Montana State Coal Board, and he was  
 9 appointed by the chairman to go, and Daines is the  
 10 one that appointed him also, but it's politics.  
 11       And so right now, we're -- we have what's  
 12 called the Cloud Peak Energy that's in Decker, and  
 13 they're going to mine some more coal from our  
 14 land. I'm against it, but there's some  
 15 landowners -- there's some feed land in that area,  
 16 and on that feed land there's a medicine wheel,  
 17 and I'm a board member of the Medicine Wheel  
 18 Alliance. And so that medicine wheel is what I'm  
 19 fighting for. I went up there and looked at it,  
 20 and it's old. We recorded it, but if we don't do  
 21 anything about it, it's going to be destroyed, and  
 22 so that's why I'm here.  
 23       But I did a lot of research and I'm kind  
 24 of like a historian, but I use oral history but I  
 25 also backed it up with technology, so I -- that's

1 a difference from me and the elders back home.  
 2 And so I thought I'd share that with you today,  
 3 and I know I have a lot of things I wanted to say,  
 4 but we're also here -- I'm also here with Chris  
 5 Finley. We hold a field school, and you probably  
 6 heard about it, but there was -- we held a field  
 7 school, and I'll have him talk for a little bit  
 8 too, and -- but you probably all heard about the  
 9 bone bed site that was destroyed on our land, Crow  
 10 Reservation, in 2000, the old site. And there was  
 11 about 2,000-plus buffalo killed there and  
 12 processed. The bones were crushed, the marrow was  
 13 taken, and those artifacts that were laid on top  
 14 of it as offerings and the style of the artifacts  
 15 and -- are 2,000 years old and projectile points  
 16 are Pelican Lake style, period, so it's an old  
 17 site. And at that time, the Crow THPO -- I don't  
 18 know what happened, but he had it destroyed, not  
 19 just by him, some other high officials signed off  
 20 on it. And so that is a world heritage site that  
 21 was destroyed, and the monitor that was monitoring  
 22 it wasn't even an employee of the tribe. He  
 23 didn't have any training. And so if we had a  
 24 certified monitor, that wouldn't have happened.  
 25 And so now we have been having this field

1 Dave. And we discussed how to do this. And I had  
 2 been working with the Crow Tribe doing field  
 3 schools for high school kids through the college  
 4 stem program. We decided that there was a way to  
 5 modify what I was doing to incorporate the program  
 6 into the THPO program.  
 7 And my background is that my first  
 8 experience with coal mines was in 1973, in  
 9 southwest Wyoming, and I was involved in the Skull  
 10 Point Coal Mine in Kemmerer, Wyoming. And then my  
 11 next experience was Bridger Coal, and my next  
 12 experience was Black Deer Coal, and all of the  
 13 roads and everything that went along with that.  
 14 Then my next experience was the Shute Creek Gas  
 15 Plant for Exxon. And so I've been involved in  
 16 energy development for a long time. And Burdick,  
 17 when I started working with Burdick, he was the  
 18 energy czar for the tribes, and they were working  
 19 on a windmill project, and so I started working  
 20 with him on that. We became good friends. And  
 21 then I discovered that Burdick had been given the  
 22 cultural director's job, and at the same time, I  
 23 met this lady in the Crow Tribe, an elder, and she  
 24 was very respected elder, and she decided that she  
 25 needed a skinny bald-headed white boy for a son,

1 school for seven years, six years, training tribal  
 2 monitors. And I'll just turn the time over to  
 3 Chris Finley so he can -- he's been waiting for  
 4 two days, so (native language). Thank you.  
 5 **MR. FINLEY:** Chris Finley. I'm the  
 6 cultural resource manager, and I introduced myself  
 7 yesterday, cultural resource manager for Bighorn  
 8 Canyon National Recreation Area, and I'm the  
 9 Historic Preservation Officer for the Little  
 10 Bighorn Battlefield. And part of my job is to be  
 11 involved in consultation with the tribes over  
 12 issues we have at the park service. And in 2010  
 13 we conducted a consultation and the tribes made us  
 14 go outside. They had an executive session, and  
 15 the whole Feds. had to go outside and sit for  
 16 almost two hours while they talked about it. And  
 17 they -- when we came back in, they had a list of  
 18 things that they wanted from the National Park  
 19 Service. And the first thing on that list was a  
 20 training program so that the tribal THPO programs  
 21 could have students or monitors that were  
 22 qualified and certified, and so I decided that  
 23 they were going to do that. And I visited with  
 24 the Indian Affairs Office in Denver and in  
 25 Washington, DC. Some of the people here work with

1 so she adopted me. And in the family process,  
 2 that made Burdick my little brother, so I had to  
 3 help take care of him. So we've got a lot of  
 4 years behind us working together and doing  
 5 different things, and Burdick always helped me get  
 6 through some of the processes.  
 7 But over the years, I've watched  
 8 consultation meetings just like this, and years  
 9 ago there was a whole bunch of different faces in  
 10 these chairs representing these tribes. They're  
 11 all gone, and now we have another generation of  
 12 tribal leaders that are in these meetings, and  
 13 pretty soon we're all going to be gone, and so my  
 14 concern is that we provide some way for the young  
 15 people to participate in this program and have a  
 16 voice in this. Because the decisions we make are  
 17 going to impact the young people in the future.  
 18 And one of the ways that this can happen is if the  
 19 young people are given the training and the  
 20 opportunity to participate and become qualified to  
 21 make decisions.  
 22 I heard on the phone today, I heard one  
 23 of my favorite words, and it's -- I wrote it down.  
 24 I've heard this over and over over the years.  
 25 Anyway, what it amounts to is in the past, the

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1 energy companies were able to say, "Well, you  
 2 don't have the expertise or qualifications to make  
 3 these decisions." And they didn't listen to the  
 4 elders, and cultural resources took a beating  
 5 because of that. And as my life changed and I  
 6 went along to different points of involvement  
 7 working with the tribes and protecting the  
 8 cultural resources, I started doing field schools  
 9 and I started doing it with white kids and  
 10 colleges all over the country. So I've been in  
 11 field schools since 1991. And in my background,  
 12 I've learned what the tribes need to know to deal  
 13 with problems like you have right now. And when  
 14 we incorporate that into our program --  
 15 **MS. NADALS:** I need to interrupt you.  
 16 But Vicki Rutson, who's the director of the Office  
 17 of Environmental Analysis, actually needs to leave  
 18 to catch a plane, and I'm wondering if you'd be  
 19 willing to hold off on your comments until she has  
 20 a chance to wrap up? Probably not good timing  
 21 because she just got a mouth full of pizza, but  
 22 I --  
 23 **MS. RUTSON:** Thank you, Cathy. Don't sit  
 24 down, Mr. Finley.  
 25 **MS. NADALS:** We want you to continue. We

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1 just --  
 2 **MS. RUTSON:** I think everybody knows what  
 3 I need to do next. I've made several promises,  
 4 and I've written them down so I don't forget. And  
 5 we will be talking about timing of the EIS, we'll  
 6 be talking about eligibility determinations, we'll  
 7 be talking about additional survey work,  
 8 100 percent of the lands that we have access to,  
 9 we will be pursuing additional access with the  
 10 folks on Colstrip who made commitments or promises  
 11 here, and I wrote down a few other things too.  
 12 We're going to be reaching out to each of you to  
 13 see if you're interested in starting the work on  
 14 the PA. I know we have a lot of work yet to do,  
 15 but we'd be so interested in just getting some  
 16 ideas that we need to incorporate right from the  
 17 ground up. So I'll turn it back to Mr. Finley,  
 18 and I will say thanks to each and every one of  
 19 you. Conrad.  
 20 **MR. CONRAD FISHER:** Vicki, I think just  
 21 to include some of the recommendations, at least  
 22 one of them, is maybe an additional meeting. Ben  
 23 had mentioned -- recommended another meeting, and  
 24 I think it would be a good -- it's a good idea.  
 25 Because if we're going to talk about the PA, we

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1 need to have another round-table discussion on it.  
 2 **MS. RUTSON:** We'll add that into the  
 3 discussions and consideration. Thank you for  
 4 reminding me, Conrad, and I'll ensure that our  
 5 Chairman Elliott gets the letter provided by  
 6 Chairman Fisher of the Northern Cheyenne Tribe.  
 7 I'll make sure that happens as well. Thank you.  
 8 Sorry, Mr. Finley.  
 9 **MR. FINLEY:** Thank you. I'll continue on  
 10 here. I'll try to be a little quicker here. I  
 11 tend to ramble, but this is my passion. And I've  
 12 watched for 40 years. I've watched what happens  
 13 with energy development and its impact on cultural  
 14 resources and the people, and there's a way to  
 15 deal with a lot of these problems.  
 16 There's several places on these papers up  
 17 here that say "tribal participation." There's a  
 18 way to involve the tribes in this whole process,  
 19 not just as tribal monitors, but one of the things  
 20 that happens when energy develops a project like  
 21 this, there will be an impact to cultural  
 22 resources, there's absolutely no way to prevent  
 23 it. And the -- when that happens, there has to be  
 24 a mitigation process, and then there will be  
 25 decisions made on what kind of impact will be

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1 taking place with the cultural resources.  
 2 After that mitigation process, there's  
 3 another process, and it's called data recovery.  
 4 If they're going to destroy a site, they're  
 5 obligated to do certain things to get as much  
 6 information out of those sites as they can before  
 7 they're destroyed. From that point, you go to the  
 8 next process, which is analysis, write up, and  
 9 cataloging and curating these artifacts. Ben  
 10 knows exactly what I'm talking about. We talked  
 11 about these.  
 12 So there's an entire process of things  
 13 that are going to happen, and there's no reason at  
 14 all that the tribes can't participate in every  
 15 single phase of that if we have people that are  
 16 qualified and have the experience to do this. And  
 17 this is one of the things that we've created with  
 18 this field school program we have. And I'm doing  
 19 the field school this summer. I only have money  
 20 for ten days. Last year -- I retired in 2012, and  
 21 the Federal Government decided I didn't need any  
 22 money for my program anymore, so they defunded my  
 23 program. But I got a little bit of that money  
 24 back this year. I'm doing one 10-day in Bighorn  
 25 Canyon, and I have some spots available. I have

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1 five spots available for students to participate  
 2 in this program.  
 3 What this program actually does is, it's  
 4 a certified, nationally recognized field school,  
 5 and we've incorporated Indiana University, St.  
 6 Cloud State University, Memphis State University,  
 7 Utah State University, and the University of  
 8 Wyoming, and the tribal colleges attend this  
 9 program. And we literally -- the students that  
 10 attend this thing are given a scholarship to pay  
 11 for their tuition and field fees to participate in  
 12 this program, and for every 10-day session that  
 13 they do in this program, they get two college  
 14 credits. And if we can do an entire three 10-day  
 15 program, that's 300 hours of field school, but  
 16 it's also six college credits.  
 17 I also have another program that's an  
 18 anthropology internship program, and there's  
 19 college credits for that, and I've literally hired  
 20 tribal members to work for me on projects in this  
 21 internship and they were paid to do this, and  
 22 there's six college credits available for that.  
 23 So if a person can stand me long enough  
 24 to get six college credits for the field school  
 25 and six college credits for the fieldwork, they

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1 are one-third of the way to the requirements for  
 2 an archeological degree in a four-year college.  
 3 And this is recognized. This starts the  
 4 credentials that you need to do this. It also  
 5 introduces some younger people. I'm very pleased  
 6 to see Michael and Andrew, is that --  
 7 **MR. WILLEY:** Yes, sir.  
 8 **MR. FINLEY:** I'm pleased to see some  
 9 younger people here, because this is going to go  
 10 on for a long time, and some of us are not going  
 11 to be here ten years from now. There will be a  
 12 whole bunch of different faces here. And I'm  
 13 hoping to see younger faces, because what we're  
 14 doing right now is going to affect your kids, and  
 15 it's important that we understand that and give  
 16 the young people the opportunity to participate in  
 17 these programs.  
 18 Another thing, they're younger and  
 19 they're tougher than we are, and I go in the field  
 20 and live with these kids and I teach them that  
 21 archeology isn't Indiana Jones sitting in the wall  
 22 camp drinking champagne. It's hot, it's cold,  
 23 it's windy, there's bugs, there's rattlesnakes.  
 24 Everything that you can imagine that's physically  
 25 amusing happens to you in the field, and you have

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1 to be willing to accept that.  
 2 So these are the things that I've been  
 3 doing for years, and I figured out how to help the  
 4 tribes do this and it's available. We need to  
 5 figure out how to expand this for all the tribes  
 6 to participate, and I need your help. But it's an  
 7 option, and it's an option for a lot of the  
 8 different problems that you have written on these  
 9 papers. So does anybody have any questions?  
 10 **MR. CLOUTHIER:** Hi, Chris. Terry with  
 11 Standing Rock. I want to thank you for bringing  
 12 this to everyone's attention. I do have some  
 13 concerns with it, though, in particular, the  
 14 involvement of Kelly Branum. And I'm stating that  
 15 publicly based on the fact that she's used  
 16 Sebastien Lebeau's Ph.D. dissertation, which  
 17 numerous tribes disagree with, to create  
 18 predictive models for our sites. We completely  
 19 disagree with this methodology for predicting  
 20 where tribal sites are. I don't know if that's  
 21 incorporated into your -- into your lessons or  
 22 not.  
 23 Additionally, Standing Rock Sioux Tribe  
 24 does not look at stone circle as tepees, and I  
 25 noticed that that's mentioned within yours as

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1 well. So in terms of whether we would support  
 2 this, I can tell you from my perspective, and I'm  
 3 not speaking from Standing Rock's, but from my  
 4 perspective, I don't based on those two -- based  
 5 on the knowledge that I have pertaining to Sioux  
 6 sites, in particular, stone rings. Thanks.  
 7 **MR. FINLEY:** Well, I appreciate hearing  
 8 that, and I've dealt with bureaucrats for a long  
 9 time, and I dealt with a lot of bureaucrats that  
 10 were young people, graduate students that were  
 11 given all of these responsibilities but they  
 12 weren't given the background or the respect for  
 13 these cultural resources. And Kelly is one of my  
 14 people that I've pushed onto this. She's growing  
 15 and learning, and she needs to listen to what  
 16 you're saying, and believe me, she will.  
 17 **MR. CLOUTHIER:** Terry again. She has.  
 18 She was confronted on this very issue, in fact, by  
 19 myself and by the elders that I worked with at  
 20 Standing Rock in the fall of 2010 when her grad  
 21 students presented a paper or a poster on the work  
 22 that they developed on Sebastien Lebeau's Ph.D.  
 23 **MR. FINLEY:** One of the things that's  
 24 happening now is this program, I was the director  
 25 of this program, but I also did a lot of other

1 things for the National Park Service, so I just  
 2 oversaw what was happening and I didn't get to  
 3 participate like I felt like I should. And now  
 4 that I'm supposedly retired, I will be  
 5 participating in this thing every minute of the  
 6 day.  
 7 And we listen, and one of the things that  
 8 we've done with this program, we can teach the  
 9 kids archeology. We can't teach them the culture;  
 10 that's up to you, and we understand that. And in  
 11 our field school, the training is to bring tribal  
 12 elders in to talk to these students, and it's a  
 13 good thing for the students because they get to  
 14 hear tribal elders from different tribes as well.  
 15 It creates a real interesting mix to do this. And  
 16 we've completed 2011 and 2012 on this. And I had  
 17 a little slide show I wanted to show, but I don't  
 18 think I will. But basically, what we -- I've  
 19 taken enough of your time. But I know what it  
 20 costs to do this. We literally were able to do  
 21 Class 3 inventories, just the survey work now, in  
 22 the park, the first year we did this we had 9  
 23 students and we surveyed 1400 acres and recorded  
 24 over 20 sites. The next year, I incorporated 10  
 25 tribal students and 10 white students from other

1 site for 11 acres to 1 site per hundred acres but  
 2 it never falls below that. It's always in between  
 3 that. But there's places that you literally  
 4 stumble from one site to the other. And it has to  
 5 be dealt with, and we bring the tribes in to help  
 6 us make those decisions.  
 7 Burdick has participated in two years of  
 8 those field programs and been there every step of  
 9 the way for the entire program.  
 10 **MR. STARZAK:** Thank you.  
 11 **MR. FINLEY:** I said there's a way to  
 12 incorporate this into what's going on right here,  
 13 and we're willing to do it. That's it, okay.  
 14 Let's go eat pizza.  
 15 **MR. STARZAK:** Thank you very much, Chris.  
 16 As you may have seen, Vicki Rutson, the director,  
 17 had to leave to get to the airport. Cathy is  
 18 still here, I'm still here, so we wanted to see if  
 19 there are particular questions or comments or  
 20 recommendations that we haven't heard yet while we  
 21 have the court reporter? Any questions about the  
 22 Programmatic Agreement, how we might begin that  
 23 work, or --  
 24 **MR. RHODD:** Ben Rhodd, Rosebud Sioux  
 25 Tribe. One of the issues that was brought up

1 colleges into this program, and we surveyed  
 2 2400 acres and we recorded 22 sites and a huge  
 3 amount of features. And the cost on that was less  
 4 than \$350 an acre for the survey.  
 5 Now, we all realize that that's the  
 6 survey work. There's everything that follows with  
 7 that. The write-on the documentation for the SHPO  
 8 office. And there's some things that you guys  
 9 haven't even resolved with SHPO yet, because some  
 10 of the traditional cultural properties have to  
 11 be -- you guys have to address how that's going to  
 12 be dealt with on this project. And I'm aware of  
 13 that and I've seen this and I know -- I watch what  
 14 happens and I've been involved in this.  
 15 But my job is to teach the kids the  
 16 archeology part of it. Your job is to teach them  
 17 the cultural part of it. But my job also is to  
 18 teach these kids how to deal with the Federal  
 19 Government in the future. So that's about it,  
 20 okay.  
 21 But I appreciate everybody listening to  
 22 me, and I wish I would have had the time to show  
 23 you slides, because what I've dealt with in  
 24 Bighorn Canyon is the cultural resource, and the  
 25 site density in that canyon runs anywhere from 1

1 during our discussion and is very pertinent for  
 2 the future of our negotiations and our -- the  
 3 number of acres that we may be -- that we will  
 4 have access to, is on those lands that may go  
 5 through condemnation and if they go through  
 6 condemnation, the availability for tribes to be  
 7 able to access those also. Usually, I'm just  
 8 saying unusual, call it atypical, whatever, once  
 9 condemnation occurs it's at the last minute, so to  
 10 speak, and in a sense of a project getting  
 11 equipment to the field and etc., etc., there's  
 12 always -- it's rare that it goes to our -- it's  
 13 earlier. But it may work that way. That's great  
 14 if it does. But if it does not, because we're  
 15 dealing with a phased approach to this, we may  
 16 be -- we may be having to -- having field crews  
 17 ready and out in the field very, very quickly. So  
 18 again, it's coming back to the -- whatever's going  
 19 to happen out of this PA, what's going to happen  
 20 with the EIS, and that's -- but one of the  
 21 recommendations from Rosebud is that we have  
 22 access to those lands once they become available,  
 23 and I'm hoping that was a given, so to speak.  
 24 But I want to remind everyone that that's  
 25 an area that we need to look at within the

1 digressions that we have on the PA, MOA and  
 2 somewhat down the road. Thank you.  
 3 **MS. NADALS:** Conrad. Oh, go ahead.  
 4 **MR. CONRAD FISHER:** Conrad, Northern  
 5 Cheyenne. Well, some of the other issues that  
 6 have been discussed with Charlene and Vicki, I  
 7 think she's very clear about and understanding,  
 8 and I know we're talking about the PA and the land  
 9 issue. I don't think that we can do anything  
 10 about that right at this moment.

11 However, I think the PA is something that  
 12 we could discuss a little bit, kind of see what we  
 13 can do while we're still here for some of us that  
 14 have a little more time. And I would maybe just  
 15 give STB and ICF an opportunity to say what they  
 16 envision as far as a framework for this, whether  
 17 or not they foresee a starting point as far as the  
 18 PA is concerned. And by "starting point," I don't  
 19 mean a framework -- I think we all know what goes  
 20 into a PA, but rather, what are some of the --  
 21 some of the key points that we -- that we need to  
 22 consider in this PA? Is it something that -- I  
 23 know in talking to Cathy and Rick, that they want  
 24 the support of the tribes, and it's easier said  
 25 than done because we all -- we all have a lot

1 if we kind of can get these components together  
 2 and run it by you to get your thoughts going. And  
 3 then maybe in April we can dig into it a little  
 4 bit more, and then that would be informed by maybe  
 5 in April we can sit down with the maps, see where  
 6 we need to get a hundred percent access, and start  
 7 to plan that for fieldwork. So just a thought.  
 8 Just a proposal, that we don't have to do all of  
 9 that today, obviously. Cathy.

10 **MS. NADALS:** But then I was also  
 11 thinking, I was also thinking that, you know, we  
 12 could always, you know, take a small break and  
 13 then we could get into a smaller group maybe, and  
 14 then just really hash out some ideas about what  
 15 kinds of items that the tribes would like to see,  
 16 and do that now before -- while we still have  
 17 people here. Because I'm going to be here until  
 18 tomorrow, and it would be really good to know,  
 19 beyond what's on the walls, precisely what sorts  
 20 of things you think would make sense in a PA for  
 21 this project, what kinds of considerations.  
 22 That's just a thought. I don't know. Whatever --  
 23 you know, roll up our sleeves and start, you know,  
 24 start working on it. I'm here until tomorrow.

25 **MR. STARZAK:** If I could make a

1 of -- a lot of work and it takes a little bit of  
 2 time, and so I would like to know how we can  
 3 assist.  
 4 Obviously, we want to be included as  
 5 the -- in terms of the creation of this, but I'm  
 6 not sure exactly how we -- we can incorporate our  
 7 comments into this PA. So it would be nice if you  
 8 could give us an idea about what your thoughts are  
 9 about the PA and the contents and so that we can  
 10 kind of have an idea when we leave here about the  
 11 PA.

12 **MR. STARZAK:** Please, Alan, just let me  
 13 just address something. So I would just say that  
 14 maybe yesterday was kind of the starting point,  
 15 hearing from all of you what needs to be done, how  
 16 to involve the tribes, all of these kind of  
 17 thoughts that we put on the walls. And what I'd  
 18 like to propose is that after the meeting, we look  
 19 at these, we kind of put them together. We  
 20 understand you are all really busy. And after we  
 21 can kind of organize that information in a kind of  
 22 a PA framework, we can distribute it to y'all and  
 23 then start to get some feedback. And I think  
 24 Ben's suggestion, and Conrad repeated, of having a  
 25 meeting in, say, April time frame, might be good

1 suggestion also. Our very faithful court reporter  
 2 has been typing almost uninterrupted for two days.

3 **MR. STARZAK:** She's going to need to  
 4 leave. It might be easier for us to brainstorm if  
 5 we let the court reporter go to her family.

6 **MS. NADALS:** Yeah, that's what I was  
 7 thinking, and then anybody that can stay we can  
 8 hash through more informally.

9 **MR. SUMMERVILLE:** I think she is unable  
 10 to eat pizza and type at the same time.

11 **MS. NADALS:** So we'll say maybe make  
 12 it -- actually, make this the end of the actual  
 13 formal meeting, take a break, and then those of us  
 14 that would like to hash out some ideas about the  
 15 PA can come back and maybe break up the tables or  
 16 put the tables together so we can have a closer  
 17 working group. Does that sound okay? Does that  
 18 make sense?

19 **MR. CONRAD FISHER:** One -- go ahead.

20 **MR. COBURN:** Just one quick offer really,  
 21 for those of you who don't have it, just as a  
 22 point of reference, because I'm not suggesting we  
 23 take it and make it the PA here, because that  
 24 wouldn't be necessarily appropriate.

25 We need to all meet, as the Board and ICF

1 have suggested, to hash through what you would  
 2 like to see in the PA, and we'll have our thoughts  
 3 as well, and there will be others, certainly ACHP  
 4 and the SHPO, and the other federal agencies, so  
 5 there are several parties to the PA. But all that  
 6 said, I have -- I have a copy of the PA from the  
 7 last Tongue River case. If anybody wants to see  
 8 it, just as a point of reference, we can get  
 9 copies made.

10 **MS. NADALS:** Yeah, that would be --  
 11 actually, that's something that Curley had even  
 12 suggested, so I think if you have a copy of that  
 13 we could look at, and you know, just to have  
 14 something to guide us, if you will, not to say at  
 15 all that it's going to look anything like this,  
 16 but just give us some sense of basic framework of  
 17 a PA and how we should insert certain things. I  
 18 think it would be great, David, if you could make  
 19 some copies.

20 **MS. NADALS:** How many people here would  
 21 like copies? Maybe about ten copies, and then  
 22 we'll end the meeting for the court reporter after  
 23 Conrad's words.

24 **MR. CONRAD FISHER:** Yeah, just I think  
 25 for the meeting, I think you may want to ask David

1 **MR. STARZAK:** Thank you so much for  
 2 coming the last two days.

3 **MS. NADALS:** Yeah, for those who are  
 4 leaving, thank you so much.

5 [PROCEEDINGS ADJOURNED AT 2:53 P.M.]  
 6  
 7  
 8  
 9

1 if he can pay for the meeting, because it's all  
 2 contingent upon his ability to tell his superiors  
 3 to see if he can convince them. We'll try to  
 4 twist his arm, and he can twist their arm.

5 But on the other -- the other hook to the  
 6 story is that I think a lot of folks were thinking  
 7 that this meeting was going to end at 1:30 or so,  
 8 and I don't know what time it is, and I'm not sure  
 9 how many are enthused about staying here. You  
 10 know, I'm interested in looking at the other PA,  
 11 and maybe we can come back and just briefly  
 12 discuss it and call it a day. That would work for  
 13 me.

14 **MS. NADALS:** Whatever y'all want. I'm  
 15 perfectly willing to stay here longer, and if you  
 16 just want to take a look at the PA and then maybe  
 17 provide some feedback on it, and have that -- call  
 18 it a day, that's fine with me, too. Is that what  
 19 y'all want to do? Just go ahead with Conrad's  
 20 suggestion? Raise their hands.

21 Yes, okay, that's what we'll do then.  
 22 Take a -- what is it? A 5/15-minute break?

23 **MR. CONRAD FISHER:** Yeah.

24 **MS. NADALS:** All right, and thanks so  
 25 much to our court reporter.

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