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SECTION 106 CONSULTING PARTY MEETING
Conducted by: Surface Transportation Board
DAY 1

Taken at
Little Wolf Capital Building
Lame Deer, Montana 59043
April 16, 2013

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C O N T E N T S

SPEAKERS:

Mr. Conrad Fisher.....	3	42
Ms. Catherine Nadals.....	5,	19
Mr. Williams Walksalong.....	6	
Ms. Sarah Buckman.....	7	
Ms. Joyce Whiting.....	7	
Mr. Shane Findlay.....	7	
Mr. Doug Melton.....	7,	68
Mr. Joel Ames.....	7	
Mr. Ben Rhodd.....	7,	139
Mr. Russell Eagle Bear.....	8	
Ms. Gail Hubbeling.....	11	
Ms. Lana Gravatt.....	11	
Ms. Shirley Arrow.....	12	
Ms. Wanda Wells.....	13	
Mr. Ben Elk Eagle.....	13	
Mr. Matt Jones.....	14	
Mr. Derin Warren.....	14	
Mr. Emerson Bull Chief.....	15	
Mr. Ken Blodgett.....	16,	26
Ms. Darlene Conrad.....	18	
Ms. Danielle Gosselin.....	18	
Mr. Andrew Wiley.....	18	
Mr. Steve Vance.....	18	
Ms. Alisa Reynolds.....	19	
Mr. Clint McRae.....	55,	105
Mr. Mark Robinson.....	57	
Mr. Richard Starzak.....	58	
Mr. Alan Summerville.....	63	
Mr. Joel Ames.....	68	
Ms. Vanessa Braided Hair.....	71	
Mr. Jay Red Wolf.....	80	
Ms. Lynette Tools.....	95	
Ms. Donna Wilbert.....	97	
Ms. Waste'Win Young.....	98	
Mr. Gilbert Brady.....	114	
Mr. Rufus Spear.....	125	
Mr. David Coburn.....	134	

P R O C E E D I N G S

1
2 MR. CONRAD FISHER: I'm really
3 honored to be the host nation for this 106
4 consultation meeting, and I recognize all my
11:04:12 5 relatives over in Dakota country. Thank you
6 for being here. Wanda, I know you were a
7 little late, and Lana and Gail and Russell and
8 Ben Elk Eagle from Cheyenne River. I know
9 Steve wasn't able to make it. Joyce, from
11:04:34 10 Oglala, I appreciate you being here. I know
11 this is very important for the tribes that are
12 represented here. These folks that come from
13 Dakota country and other areas, Emerson Bull
14 Chief from Crow, they all represent their
11:04:54 15 tribal nations and their tribal historic
16 preservation offices, and I think our tribal
17 president, John Robinson, did a wonderful job
18 in explaining what we do as THPOs, and he
19 explained that to our tribal council a couple
11:05:14 20 days ago. We have a huge responsibility.

21 And we also have Catherine Nadals
22 from the Surface Transportation Board, along
23 with Ken Blodgett, that are here, and as you
24 know, what we are discussing is the Tongue
11:05:34 25 River Railroad. We also have representatives,

1 consultant Richard Starzak and some others,
2 David Coburn, and representatives from various
3 agencies, including the Tongue River Railroad.

4 But I just, again, wanted to thank
5 all the tribal nations, the participants here
6 today, I see special interest groups that are
7 also present today that have an interest in
8 this very important issue, and I think today's
9 meeting is something that needed to happen. I
10 always look at it as all the nations coming
11 together again for one purpose. And, again, we
12 are honored that we have our allies, the Sioux
13 nations, different bands of the Sioux Nation
14 coming together. It's unfortunate, because of
15 the inclement weather, that we weren't able to
16 have all the tribal representatives here. I
17 think there was 13 or 14 tribal nations that
18 were going to join us, and we still might have
19 that via teleconference.

20 But at this time I think it's an
21 historic and iconic gathering because of what
22 we are discussing today. And I'd like to at
23 this time turn it over to the Surface
24 Transportation Board, Ms. Catherine Nadals.

25 MS. CATHERINE NADALS: Thank you,

1 Conrad. Thank you, the Northern Cheyenne
2 Tribe, for this incredible introduction to our
3 meeting and to the honor guard and to the
4 drummers and the singers and the whipper -- I
11:07:24 5 promise I'll be good -- and all of the other
6 ceremonial people that gave us this incredible
7 welcome.

8 I would like to state my appreciation
9 to Rachel Court, from Senator Tester's office,
11:07:46 10 and Jim Corson, from Senator Max Baucus' office.

11 MR. CONRAD FISHER: Would you stand
12 up, please?

13 (Applause.)

14 MS. CATHERINE NADALS: Thank you for
11:08:02 15 all the THPOs and tribal people that were able
16 to get here, even though the weather, we know,
17 is incredible. Russell and Ben, I don't know
18 how you made it.

19 I want to start out -- we have to
11:08:18 20 make sure that we identify all the people that
21 are on the phone that have called in. We have
22 a court reporter here who is going to need to
23 get the names of everybody around the room.
24 And we have to take a little bit of time doing
11:08:32 25 that, because the entire meeting is going to be

1 recorded. So I'm going to hand it over to the
2 court reporter.

3 COURT REPORTER: Since we have the
4 name tags of the people around the table, I
5 think I'll be able to identify you as you
6 speak. You can still introduce yourself, but
7 maybe the people on the phone could take turns
8 and introduce themselves.

9 MS. CATHERINE NADALS: If we could
10 start with the people on the phone. Can you
11 hear me, the people on the phone? Could we
12 turn the volume up?

13 While we are waiting, let's go around
14 the room and have everyone at the table
15 introduce yourself. Tell us who you are and
16 what your interest is in the project.

17 Start with William Walksalong.

18 MR. WILLIAM WALKSALONG: Good
19 morning. I'm William Walksalong, Acting
20 Director for the Natural Resources Department.
21 We have jurisdiction over fish and wildlife and
22 water resources, mainly those two items. We
23 also participate in many EIS processes. Good
24 morning.

25 MS. CATHERINE NADALS: Good morning.

1 MS. SARAH BUCKMAN: Sarah Buckman,
2 National Resources Regulatory Agencies.
3 (Inaudible).

4 MS. CATHERINE NADALS: Welcome.

5 11:10:21 MS. JOYCE WHITING: Good morning.
6 I'm Joyce Whiting with the Oglala of the Tribal
7 Preservation Office.

8 MR. SHANE FINDLAY: Good morning. My
9 name is Shane Findlay. I'm Assistant Field
10 11:10:35 Manager for the Miles City BLM's Field Office.
11 And we will be reviewing and cooperating with
12 the Surface Transportation Board EIS. We have
13 received an application for a realty action.

14 MS. CATHERINE NADALS: Thank you for
15 11:10:54 being here.

16 MR. DOUG MELTON: My name is Doug
17 Melton, District Office of the Bureau of Land
18 Management.

19 MR. JOEL AMES: My name is Joel Ames,
20 11:11:45 Corps of Engineers.

21 MR. BEN RHODD: We are kind of
22 wondering why they didn't give us any
23 microphones over here. I'm Ben Rhodd, contract
24 archeologist, Rosebud Sioux Tribe. And we have
25 11:12:09 a great interest in this area, as has been

1 stated, and we seek to come here to support our
2 relatives and allies in the protection of those
3 sites of significance to not only, of course,
4 the Cheyenne, but the Lakota, and also our
5 Arapahoe allies.

6 I'd like to say a great thank you,
7 first off, for the welcome that you gave to us.
8 We came in through this storm. And the
9 gifting. Following those protocols of culture,
10 the historicity. So I want to thank the
11 Northern Cheyenne for welcoming us in a good
12 way. Thank you.

13 MR. RUSSELL EAGLE BEAR:

14 (Native language greeting.)

15 I greet each and everyone of you
16 with a handshake from my heart. My name is
17 Russell Eagle Bear. I represent the Rosebud
18 Sioux Tribe as a THPO. But I'm also a
19 representative of the tribal council. I've
20 been on the council for many years, and I've
21 been a chief for, I don't know, seven, eight
22 years. But I've learned a lot. And over the
23 years I've worked with our Northern Cheyenne on
24 another railroad project that was proposed
25 years ago, and it went into litigation. Now we

1 are up to a point where we are faced with a
2 shorter version of it today.

3 I just wanted to say, I want to thank
4 for the prayer and honoring showed this
11:14:35 5 morning. Actually, we were late because we
6 were standing at the boundary of the
7 reservation waiting for Conrad to give us an
8 escort.

9 (Laughter.)

11:14:49 10 One of the things that some of the
11 leadership were addressing this morning was
12 working together, and on an occasion like this
13 our tribes coming together and being of one
14 voice. And that's really important to us in
11:15:07 15 Lakota country. Last week I was at a meeting,
16 the Seven Council Fires for the Lakota. And we
17 have issues going on all around us, not just
18 this railroad. But one example, and I'm going
19 to throw it out to the leadership here, the
11:15:27 20 tribal council members and tribal chairman and
21 the vice president that are here, that we do
22 need to work together on all these issues. We
23 have an issue going on in the Sacred Black
24 Hills that is called the Dewey-Burdock Uranium
11:15:46 25 Mine. And all the (inaudible) are taking a

1 stand against that proposal doing uranium
2 mining exploration. But, unfortunately, the
3 companies that really want to extract this
4 uranium are really hard to work with, and it
5 just so happened they wanted to do a cultural
6 survey out there, and they tried to bring all
7 the tribes together to do this. And our people
8 at home said, no. Especially the Oglala. We
9 had a meeting here about three weeks ago, and
10 we said we may even have to go into litigation,
11 the possibility of litigation. But some of the
12 tribes decided to not listen and they went and
13 they are doing cultural surveys, and it's
14 really unfortunate that one of the tribes is
15 the Northern Cheyenne. And I wish they could
16 have dialogue with us so they understand where
17 we are at and working together. But that's the
18 key of bringing an event here together to
19 create that. So we need to all be on the same
20 page.

21 Last week we had another meeting, and
22 we humbly ask our tribal leaders, especially
23 your leadership here in Northern Cheyenne, to
24 pull your people back until we address it in
25 such a way that we are all sending one voice.

1 So I just wanted to relay that to
2 some of the leadership that are here. And we
3 did ask your leadership to come and join us at
4 the meetings, the Seven Council Fire meeting.
11:17:57 5 I wanted to bring that message to you here at
6 the beginning of this. Again, we are waiting
7 on this project and whatever decisions that are
8 made here, as long as we are of one voice, then
9 federal agencies are going to listen and the
11:18:12 10 companies that are proposing are going to
11 listen, but if we are split, then that's the
12 way it's going to be.

13 And I really appreciate all these
14 young people sitting here listening and
11:18:25 15 learning why we have to protect our cultural
16 resources and burial sites of ours.

17 With that, it's a long introduction,
18 but I think that relays this. And we are right
19 by the door, you didn't give us a mic, but you
11:18:49 20 still heard our voice. Thank you.

21 MS. CATHERINE NADALS: Thank you.
22 Thanks for being with us. Gail.

23 MS. GAIL HUBBELING: My name is Gail
24 Hubbeling. We are glad to be here.

11:19:05 25 MS. LANA GRAVATT: I'm Lana Gravatt.

1 I would like to thank Russell for being honest
2 about the issue. And there are a couple more
3 tribes that have participated. It's an honor
4 to be here, and thank you for welcoming us.

11:19:36 5 MS. CATHERINE NADALS: Is there any
6 way we could get a microphone on that side?
7 Conrad?

8 MR. CONRAD FISHER: We are getting
9 some people to come over.

11:19:43 10 MS. CATHERINE NADALS: Fine.

11 MS. SHIRLEY ARROW: Good morning.
12 I'm Shirley Arrow. Excuse me. I'm the great,
13 great, granddaughter of Chief Mother Bear, who
14 signed the 1851 Fort Laramie Treaty. I'm
11:20:15 15 really passionate about our treaty rights. Our
16 treaty rights are very important to the
17 Cheyenne, Sioux, and this railroad. I humbly
18 ask the Cheyenne to think about this uranium
19 mine in the Black Hills. We pulled out of
11:20:54 20 that. Most of the Sioux nations, except for
21 one nation, are involved in the survey.

22 I don't get out. I don't travel.
23 But these issues are really important to me.
24 So I'm here today. Thank you.

11:21:25 25 MS. CATHERINE NADALS: Thank you.

1 Shirley Arrow, you're with the tribal council?

2 MS. SHIRLEY ARROW: Treaty Council.

3 MS. CATHERINE NADALS: Yes.

4 MS. WANDA WELLS: Good morning. My
5 name is Wanda Wells. (Inaudible). Very
6 beautiful country the Northern Cheyenne has.

7 MR. BEN ELK EAGLE: (Native language
8 greeting.)

9 Thank you. I'm Ben Elk Eagle. I'm
10 on the tribal council and I represent cultural
11 preservation for people who couldn't make it.
12 I was asked to come and represent and listen as
13 to what we could do to help our tribe, because
14 my grandfather said a long time ago, don't
15 reject each other, anybody, because in the
16 future we are going to need each other in this
17 situation. Everything is sacred, the hills,
18 the valley, and the air and the water. We
19 believe that. That's what we are talking about
20 protecting. We need to unite.

21 (Native language.)

22 Without our approval, a lot of things
23 have been done. Some of us don't really
24 realize, but we need to do this consultation,
25 ultimately to get on one page. It's going to

1 affect our young people, that class that's here
2 today, and I appreciate that. And the drum
3 group that represents the heartbeat of what we
4 believe. The soldiers that were here, like
5 Fisher said, they are highly recognized. We
6 honor our veterans, and they defend our peace
7 for everybody. I really appreciate that good
8 ceremony and the drums and everybody that's
9 here. I'm really honored to be here.

10 (Native language.)

11 Whatever we learn and whatever we can
12 do to help, I will take it back and share it.

13 MR. MATT JONES: Good morning. I'm
14 Matt Jones. I'm with the BNSF Railway, and I
15 would like to thank President Robinson and Vice
16 President Russell and the Northern Cheyenne
17 Tribal Council for hosting this meeting today.
18 And thank you to all of the other tribal
19 representatives that have traveled to be here.
20 This is an important process. We are here to
21 listen today. I would volunteer to move to
22 this table so someone can use this microphone
23 for the rest of the day if anyone would like to
24 do that. Thank you.

25 MR. Derin WARREN: My name is Derin

1 Warren. I'm also with BNSF. I'm the Manager
2 for Environmental Permitting and Sustainability,
3 and here to learn. I'm also new to BNSF. So
4 I'm learning how you guys do things here.
5 (Inaudible). So far I'm pleased to see how
6 much eagerness there is to work together from
7 the BNSF side and from this side. I'm very
8 pleased to be here.

9 MR. EMERSON BULL CHIEF: Good
10 morning. My name is Emerson Bull Chief. I'm
11 the Crow Tribal Cultural Officer. I want to
12 thank Conrad for hosting this. Pretty good
13 stuff. Thanks, Conrad.

14 MR. CONRAD FISHER: Conrad Fisher,
15 Northern Cheyenne Tribal Preservation Office,
16 representing the Northern Cheyenne Tribe. I
17 appreciate, again, everybody being here.

18 And I do hear the words of our
19 relatives, the Lakota Nation, on their concerns
20 regarding the Dewey-Burdock project. And I
21 know it's a very complicated issue when it
22 comes to that particular 106 project.
23 Certainly, you know, we've talked about that,
24 in many details in many forums with other
25 tribes. And I think it's an issue that

1 probably isn't going to be resolved here, but I
2 appreciate the Lakota bringing that particular
3 issue to the attention of the Northern Cheyenne
4 Tribe. However, I think it really is something
5 that our administration should deal with.

6 We've kind of taken a different stance on that,
7 a little different interpretation when it comes
8 to group consultation.

9 I agree, we need to sit in these
10 situations and ally ourselves. However, in
11 other circumstances, I think every situation is
12 different, and we feel that we've sort of
13 taken a -- have a little different
14 interpretation of that particular issue. And
15 that's all I'll say about that. I think we
16 probably should stay focused on this particular
17 issue. But, again, you know, if anybody has
18 any questions on that, I would certainly
19 entertain those, and also with our
20 administration. It's a very complicated issue
21 on that particular case.

22 So with that, thank you.

23 MR. KEN BLODGETT: Hi. My name is
24 Ken Blodgett, and I'm the project manager with
25 the Surface Transportation Board Office of

1 Environmental Analysis, and I would just like
2 to thank everybody for coming. I think it's
3 great to see so many people here, and you're
4 going to be hearing from me shortly. So I
5 won't tell you too much now. But in any case,
6 I'm looking forward to a productive week, and I
7 want to thank the Northern Cheyenne for hosting
8 us in a beautiful building, and really looking
9 forward to a productive week here. Thank you.

10 MS. CATHERINE NADALS: Thanks. My
11 name is Catherine Nadals, I'm with Surface
12 Transportation Board. I'm assisting the agency
13 in the Section 106 process for this project.
14 I'm also with the Office of Environmental
15 Analysis.

16 Anybody else who plans on speaking
17 during the meeting, if you could introduce
18 yourself.

19 Anybody on the phone? Can you hear
20 us now.

21 UNIDENTIFIED SPEAKER: I can hear
22 you.

23 MS. CATHERINE NADALS: Could you
24 introduce yourself?

25 MS. DARLENE CONRAD: Can you hear me?

1 MS. CATHERINE NADALS: Yes, we can
2 hear you.

3 MS. DARLENE CONRAD: This is Darlene
4 Conrad, the Northern Arapahoe.

11:30:31

5 MS. CATHERINE NADALS: Yes.

6 MR. DANIELLE GOSSELIN: Danielle
7 Gosselin.

11:30:41

8 MS. CATHERINE NADALS: Thank you,
9 Danielle. She is also one of the environmental
10 managers for the Tongue River Railroad.

11 MR. ANDREW WILEY: This is Andrew
12 Wiley of the Cheyenne Arapahoe Tribe, Oklahoma.

13 MS. CATHERINE NADALS: Great. Thank
14 you for joining us. Anybody else on the phone?

11:31:20

15 MR. STEVE VANCE: Can you hear me?

16 MS. CATHERINE NADALS: Yes.

17 MR. STEVE VANCE: This is Steve
18 Vance. We greet each other traditionally.
19 (Native language greeting.)

11:31:48

20 Thanks for all of you are here. Look
21 forward to a productive time.

22 MS. CATHERINE NADALS: Steve, thanks
23 for joining us. Anybody else on the phone?

11:32:02

24 For the benefit of the court
25 reporter, anybody who wants to speak on the

1 phone, please announce your name before you
2 speak, since we don't have the benefit of
3 seeing you, obviously.

4 With that, I'd like to introduce Rick
5 Starzak, who is with ICF International, working
6 as a contractor, and, also, Alan Summerville,
7 who is the manager for ICF International,
8 third-party contractor, and, also, Colleen
9 Davis, who is also with ICF International. If
10 you could stand up.

11 Our archeologist with ICF, Mark
12 Robinson. Anybody else with ICF?

13 MS. ALISA REYNOLDS: Yes, Alisa
14 Reynolds.

15 MS. CATHERINE NADALS: Alisa
16 Reynolds, she is going to be assisting the ICF
17 with tribal issues. Anybody else who wants to
18 introduce themselves or plans on speaking at
19 this meeting?

20 Okay. Again, I would like to thank
21 you so much for this incredible honor of
22 allowing us to have our meeting here. We know
23 it's truly an important project for the
24 Northern Cheyenne Tribe, and it's just a great
25 honor to have had this kind of introduction.

1 Thank you for all of the other tribes that have
2 come and all the other agencies that are
3 participating, and all of you who are here, the
4 drummers, and the high school class, it's
5 terrific that you're here.

6 So I'm going to go ahead and get
7 started with my part of the presentation.
8 Again, this is a Section 106 consulting party
9 meetings, Section 106 of the National Historic
10 Preservation Act. As many of you know, the
11 Surface Transportation Board recently received
12 an application from the applicant regarding the
13 construction of a railroad from Miles City to
14 Ashland and to points beyond that. And so we
15 have Ken Blodgett and Danielle Gosselin, who is
16 on the phone, who are working as environmental
17 managers working through the NEPA process, as
18 well as our consultants. And my part of this
19 process is to assist through the 106 project,
20 which we are doing in coordination with the
21 NEPA process. So we are not combining them but
22 we are trying to coordinate them. And so the
23 purpose of this meeting today is to talk about
24 these 106 issues.

25 I have a number of handouts. We have

1 the Final Scope of Study, which we should have
2 some more copies, but which basically describes
3 the project, and it also talks about what is
4 going to be studied as far as the Draft
5 Environmental Impact Statement. We also have
6 some maps of the proposed alternatives, and we
7 have a handout of some information that was
8 provided by the Northern Cheyenne Tribe
9 regarding their concerns. And we have, also, a
10 handout regarding the coordination of these
11 with NEPA. And, of course, a copy of the
12 agenda.

13 We also have a copy of the
14 preliminary methodology that we have created
15 and we intend to discuss today. If you take a
16 look at the agenda, I want to kind of walk you
17 through a little bit, part of the convening,
18 doing the introductions and the purpose, and
19 also propose a few ground rules for the
20 meeting, just to help the whipper do his job.
21 And then we will have a break, and Ken Blodgett
22 is going to be giving an update on the EIS
23 process and talk about the alternatives. Then
24 in the afternoon after lunch we are going to
25 have a discussion on the proposed methodology,

1 which is going to be Rick Starzak of ICF, and
2 additional staff from ICF. And then we will
3 have time for a caucus this afternoon.

4 And then tomorrow we plan on having a
5 tour of the project area. And we are still
6 kind of working out the details, but we will be
7 discussing those this afternoon. So any of you
8 that intend to participate, please stay at the
9 end of the meeting so we can talk about
10 logistics. I think the weather is going to
11 hold out. It's a little cold but we'll be
12 fine.

13 And then on the final day, Thursday,
14 April 18, we are going to talk a little bit
15 about the field methodology, the results of
16 background research that have been conducted by
17 ICF International, which is basically what was
18 found for all of the alternatives so we can
19 compare those alternatives with the reservation
20 issues, and, also, proposed field studies we
21 intend to do. And then, of course, that will
22 be modified by our access. That's still a
23 process that we are involved in, trying to get
24 access to different sections of the alternatives.

25 And then we'll talk about models, a

1 possible model that we would then produce to
2 gain some sort of idea what might be expected
3 to be found along the alternatives for areas
4 that we don't have access to. And this is
5 strictly for comparing the alternatives for
6 tribal issues, any of those issues related to
7 historic preservation.

8 Okay. Roman has been kind enough to
9 do my slides. So my first slide.

10 Just again, to go over the purpose of
11 this meeting, to provide you some information
12 regarding the proposed undertaking. Again,
13 Ken Blodgett and Rick Starzak and the ICF group
14 in order to explain the project to you and talk
15 about the alternatives.

16 We also really want to gather input
17 from you regarding this proposed undertaking.
18 Specifically your concerns about the project.
19 We want to know that.

20 And we want to see input from tribes
21 regarding properties of religious and cultural
22 significance. This is really critical, because
23 we don't have knowledge about that. It hasn't
24 been written down anywhere. And we need your
25 help in trying to identify those places for the

1 alternatives. And, also, for the alternative
2 selected eventually. And discuss how we are
3 going to be coordinating the 106 process with
4 the NEPA process, because we have an ongoing
5 EIS process as well as this process. I think
6 that handbook in the back, which was produced
7 by CEQ and the Advisory Council, is very
8 helpful in talking about how those two laws are
9 coordinated.

10 And then, also, to seek input from
11 all of you regarding this methodology that is
12 developed. We think it's a good methodology
13 but it's a draft methodology and we want your
14 input on that.

15 Next slide. And I did take pictures
16 of the cherry blossoms just last week. And all
17 those little lights, those are photographers.
18 There were about a thousand photographers
19 waiting for the light. It's just a little
20 aside. But I thought it would show the spring
21 here because it's still kind of cold.

22 So one of the things we want to do,
23 of course, is define the actual areas of
24 potential effects for different resource types.
25 Tribal sites, architectural properties, other

1 historic sites that will go in each of the
2 alternatives. Because we are going to have
3 different areas of potential effects.

4 (Inaudible).

11:41:27 5 Of course, we need to identify
6 historic properties. Historic properties is a
7 term that the Advisory Council uses.

8 (Inaudible). And landscapes, it's just a term
9 that's used. So it's sort of all-encompassing.

11:41:50 10 And then, of course, as part of the process,
11 what we need to do after we've identified
12 historic properties, we have to determine if
13 they are eligible because the (inaudible)
14 process accesses really the federal agencies
11:42:08 15 (inaudible) to access those properties that are
16 eligible for the Natural Register. So we will
17 be needing all of your help in terms of
18 identifying and determining eligibility and
19 necessity (inaudible).

11:42:17 20 And then determine the nature of the
21 effects. If we do think that there's going to
22 be an effect, the nature of the effect. You
23 know, direct, or indirect.

24 And then, of course, you know, this
11:42:35 25 is a time frame that we are talking about

1 through the process. We would want it for the
2 actual alternative that the Board eventually
3 approves, we would want to determine what kind
4 of mitigation that we need to do to resolve any
5 adverse effects that would be impacted by the
6 proposed project.

7 I know that some of you talked about
8 wanting to have a programmatic agreement. We
9 are at the very beginning stages of the
10 process, and eventually we would want to
11 develop a programmatic agreement to stipulate
12 what we're going to do and what we need to do
13 in order to address concerns agency concerns,
14 tribal concerns and (inaudible) concerns.

15 And then we want to work together
16 regarding all of these different things I
17 talked about. We need your input and your
18 help.

19 With that, I turn to Ken Blodgett,
20 who is, again, our environmental manager for
21 the NEPA part of the project.

22 MR. KEN BLODGETT: Again, good
23 morning. My name is Ken Blodgett, and I am
24 pleased to be here with you this morning to
25 discuss the Surface Transportation Board and

1 the Surface Transportation Board's Office of
2 Environmental Analysis and our review process.

3 So with that said, I will -- I think
4 we've all had a pretty good description of what
5 we are all here for and the purpose of today's
6 meeting. So, again, I'm looking forward to a
7 productive time in gathering input that will
8 help us move forward in coming up with some
9 methodologies and approaches as we move
10 forward, not only in the 106 process but in the
11 Environmental Review Process.

12 A little bit about the Surface
13 Transportation Board. The Surface
14 Transportation Board was established by the
15 Interstate Commerce Commission Determination
16 Act of 1995. The Surface Transportation Board
17 was established to assume regulatory rail
18 functions that had previously been administered
19 by the Interstate Commerce Commission. The
20 Surface Transportation Board oversees the
21 regulation of interstate surface
22 transportation, primarily railroads, and has
23 jurisdiction over rail transportation matters,
24 such as rail rates, licensing of new rail
25 lines, and rail construction projects.

1 The mission of the Surface
2 Transportation Board is to ensure that
3 competitive, efficient, and safe transportation
4 services are provided to meet the needs of
5 shippers, serves, and consumers. In all of its
6 decisions the Surface Transportation Board is
7 committed to advancing the national
8 transportation policy goals established by
9 Congress.

10 The Board consists of three members.
11 It's a nonpartisan, independent federal
12 regulatory body which is organizationally
13 housed within the United States Department of
14 Transportation. Board members serve a term of
15 five years. They are appointed by the
16 President and confirmed by the Senate. The
17 chairman of the Board is, likewise, designated
18 by the President of the United States.

19 The Office of Environmental Analysis
20 of the Surface Transportation Board was
21 established to ensure that the Board and all
22 Board decisions are in compliance with the
23 requirements of the National Environmental
24 Policy Act. The Board's rules implementing the
25 National Environmental Policy Act can be found

1 in the *Code of Federal Regulations*, 49 C.F.R.
2 1105.

3 The Office of Environmental Analysis
4 fulfills its responsibility by providing
11:47:06 5 technical advice to the Board on environmental
6 matters and conducting independent
7 environmental review of railroad actions which
8 require Board approval. The National
9 Environmental Policy Act process is intended to
11:47:26 10 assist the Surface Transportation Board and the
11 public in identifying and assessing the
12 potential environmental impact of a proposed
13 action before the decision on the proposed
14 action is made.

11:47:43 15 The current action before the Board,
16 the reason why we are all here today, is an
17 application by the Tongue River Railroad
18 Company. We received an application on October
19 16, 2012, so the action for the Board is the
11:48:04 20 Tongue River Railroad's proposal to construct
21 and operate, the original application in
22 October, was a 83-mile rail line from Miles
23 City, Montana, to two end points near Ashland,
24 one near the site of the previously planned
11:48:21 25 Montco Mine, and another at the proposed Otter

1 Creek Mine area.

2 On December 17, 2012, the Tongue
3 River Railroad filed a supplemental application
4 that supersedes the October application in
5 which it identified its preferred routing for
6 the proposed line as the alternative between
7 Colstrip and the Ashland area.

8 The Tongue River Railroad's principal
9 purpose for the new rail line is to transport
10 low sulfur sub-bituminous coal from proposed
11 mine sites in Rosebud and Powder River County,
12 including the proposed mines in the Otter Creek
13 area.

14 Major elements of the proposed
15 project would include a single track
16 constructed of continuous welded rail with a
17 200-foot right-of-way. Tongue River Railroad
18 anticipates 26 round trips per week with 150
19 car unit coal trains moving approximately 20
20 million tons of coal annually.

21 The Surface Transportation Board is
22 the lead agency responsible for preparing an
23 Environmental Impact Statement, which will
24 identify the potential environmental impacts
25 associated with the proposed action and any

1 alternatives that are under consideration.

2 There are four cooperating agencies
3 working with the Surface Transportation Board
4 in preparation of the Environmental Impact
5 Statement: The U.S. Army Corps of Engineers,
6 the Bureau of Land Management, the United
7 States Department of Agriculture, and the
8 Montana Department of Natural Resources and
9 Conservation, which is acting as a lead agency
10 for all of the Montana State agencies.

11 These cooperating agencies have
12 decision-making authority independent of the
13 Surface Transportation Board and are agencies
14 from which Tongue River Railroad will obtain
15 separate approvals or permits.

16 On October 22nd, 2012, the Office of
17 Environmental Analysis published a Draft Scope
18 of Study for public review and comments on the
19 proposed project. We then held ten public
20 scoping meetings during the week of November
21 12th in the project area. We held meetings in
22 Lame Deer, Forsyth, Ashland, and Miles City,
23 and the scoping comment period closed on
24 January 11th, 2013.

25 During that comment period we

1 received over 2500 comments. The Office of
2 Environmental Analysis then revised the Draft
3 Scope of Study and issued a Final Scope of
4 Study on March 22nd, which incorporates all
5 public comments and concerns received during
6 that scoping comment period. We reviewed and
7 considered all comments when we were preparing
8 the Final Scope of Study. The Final Scope of
9 Study summarizes and addresses the principal
10 environmental concerns raised by commenters and
11 explains if and how those issues will be
12 addressed in the Environmental Impact
13 Statement.

14 The Environmental Impact Statement
15 will analyze and compare the potential
16 environmental impacts of construction and
17 operation of the proposed rail line, a
18 reasonable range of feasible alternative
19 routes, and the no action alternative.

20 I think there were copies of the
21 Final Scope available, and I think everybody
22 has probably picked one up.

23 MS. LANA GRAVATT: Ken, are you
24 reading from something that we have?

25 MR. KEN BLODGETT: No. Sorry. I'm

1 going to discuss the alternatives under
2 consideration in the environmental -- that are
3 going to be addressed for further study in the
4 Environmental Impact Statement. The best map
11:52:49 5 to look at would be the Figure 1, which is
6 attached to the Final Scope of Study. It has
7 all the alternatives that I'm going to discuss
8 right now on one page.

9 The first alternative that is going
11:53:00 10 to be considered for more detailed
11 environmental analysis is the Tongue River
12 Alternative. This alternative was Tongue River
13 Railroad's original preferred alignment in
14 their October application before the Board, and
11:53:18 15 would follow the Tongue River from Miles City
16 to two terminus points -- to the two terminus
17 points south of Ashland. It would begin at
18 the existing BNSF rail line between Miles City
19 Fish Hatchery and Spotted Eagle Lake,
11:53:36 20 proceeding south along the west side of the
21 Tongue River and crossing through the U.S.
22 Department of Agriculture's Livestock and Range
23 Research Laboratory.

24 A second alternative that will be
11:53:52 25 considered for detailed analysis in the

1 environmental review is the Colstrip
2 Alternative. The Colstrip Alternative is
3 Tongue River Railroad's preferred alignment
4 based on its supplemental application which we
11:54:09 5 received in December. This alternative would
6 extend from the existing BNSF rail line at
7 Colstrip, moving towards Ashland. It would
8 leave the Colstrip area and cross Cow Creek and
9 Rosebud Creek as it heads south and east,
10 following the Greenleaf Creek Valley to the
11 Rosebud Creek Tongue River divide.

12 At that point this alternative would
13 descend into the Tongue River Valley and join
14 the Tongue River Alternative at the Tongue
11:54:29 15 River crossing north of Ashland.

16 The third alternative that will be
17 moved forward for consideration is the Tongue
18 River Road Alternative. This alternative would
19 depart Miles City along the Tongue River
11:55:03 20 Alternative previously discussed and would
21 continue along that alternative alignment to a
22 point just north of Pumpkin Creek. At that
23 point it would cross the Tongue River, turn
24 south, and continue along the east side of the
11:55:19 25 river to rejoin the Tongue River Alternative

1 about ten miles north of Ashland.

2 The Moon Creek Alternative is also an
3 alternative that we previously considered and
4 we will carry forward for more detailed
11:55:35 5 analysis. And this alternative starts at the
6 BNSF main line approximately eight miles
7 southwest of Miles City and runs south and
8 southeast along the east side of Moon Creek.
9 At that point it would descend into the Tongue
10 River Valley and join the Tongue River
11 Alternative about 14 miles south of Miles City.
12 This alternative would also cross to the far
13 southwest corner of the USDA Research
14 Laboratory Lands.

11:56:17 15 There's a few alternatives that came
16 up during the course of the scoping meetings,
17 and we are going to carry these alternatives
18 forward for further analysis as well. These
19 alternatives and variations were largely
11:56:32 20 identified as a result of comments received
21 during scoping. The first one of these would
22 be the Decker 1 Alternative, which is a result
23 of comments received during scoping that we
24 consider moving south from the Ashland area
11:56:50 25 towards Decker. The Decker 1 Alternative is

1 identical to an alignment between Ashland --
2 the Ashland area and Decker, which was
3 previously approved by the Surface
4 Transportation Board for construction. It
5 would generally travel southwest paralleling
6 the Tongue River leaving the Otter Creek area.
7 This alternative would pass through the Wolf
8 Mountain Battlefield National Historic
9 Landmark. At that point it would connect --
10 well, south of the battlefield it would connect
11 with the BNSF rail line using the Spring Creek
12 railroad spur near Decker.

13 The Decker 2 Alternative is similar
14 to the Decker 1 Alternative, but we wanted to
15 look at an alternative that would avoid the
16 Wolf Mountain National Historic Landmark. So
17 the Decker 2 Alternative moves, again, similar
18 to the Decker 1 Alternative, but it would pass
19 to the west of Wolf Mountain Battlefield
20 National Historic Landmark.

21 In addition to these alternatives, we
22 are looking at a couple variations that can be
23 used in conjunction with any of the
24 alternatives under consideration. The first
25 one of these variations is the Ashland East

1 Variation, which we developed as a result of
2 scoping comments, particularly from the
3 Northern Cheyenne Tribe and others, which
4 requested an alternative which would move as
5 far away as possible from the eastern
6 reservation boundary and the Tongue River.
7 This variation would connect to the Tongue
8 River Alternative approximately eight-tenths of
9 a mile east of the intersection of Greenleaf
10 Road and Tongue River Road. At that point it
11 would continue east for approximately three
12 miles before curving to the south, and then
13 generally paralleling the Tongue River. So it
14 would be offset to the east from the Tongue
15 River, at distances ranging from approximately
16 two to four miles.

17 Another variation under consideration
18 for further analysis is called the Terminus 1
19 Variation. Again, this was the variation
20 developed in an attempt to move the line away
21 from the boundaries of the Northern Cheyenne
22 Reservation and the Tongue River. This
23 variation started approximately 1.8 miles
24 southeast of the proposed Terminus Point 1. At
25 that point it would travel northeast,

1 paralleling the spur leading to Terminus Point
2 1 but before joining the Ashland East
3 Variation.

4 So that's a summary of the
5 alternatives that we will be moving forward
6 with during our Environmental Review Process
7 for consideration and more detailed analysis.

8 Now, that we've put out our Final
9 Scope of Study and we know the alternatives
10 under consideration, the Office of
11 Environmental Analysis will begin moving
12 forward with preparation of the Draft
13 Environmental Impact Statement.

14 The Office of Environmental Analysis
15 is beginning to gather and analyze
16 environmental information and data that will be
17 used to compare the potential environmental
18 effects of the alternative rail alignment and
19 the no action alternative.

20 The Draft Environmental Impact
21 Statement will reflect our independent analysis
22 of the environmental impacts that could result
23 from the construction and operation of the
24 proposed line. The Environmental Impact
25 Statement will cover a wide range of topics,

1 including transportation systems, safety,
2 energy resources, noise and vibration,
3 esthetics, and environmental justice. With
4 respect to cultural and historic resources, the
5 Environmental Impact Statement, with the help
6 of everybody here today, identify historic
7 buildings, structures, sites, objects, or
8 districts eligible for listing the National
9 Register of Historic Places within areas of
10 potential effects, or the preferred route in
11 each alternative.

12 The Environmental Impact Statement
13 will propose measures to avoid, minimize, or
14 mitigate potentially adverse project-related
15 impacts to traditional cultural properties,
16 archeological historic properties, cultural and
17 historic properties.

18 We are beginning the process of
19 gathering the information that we will need for
20 our EIS and the potential impacts. We have
21 already requested land access from property
22 owners located along each of those alternatives
23 under consideration. We have received a number
24 of positive responses from landowners, and will
25 continue in our effort to gain as much access

1 as possible, which will allow for a more
2 complete comparison of the alternatives which
3 are under consideration.

4 Once the necessary environmental
12:02:42 5 information has been collected, and the
6 analysis of the information is complete, the
7 Office of Environmental Analysis will issue a
8 Draft Environmental Impact Statement. The
9 public will have the opportunity to comment on
12:02:58 10 the Draft Environmental Impact Statement during
11 a formal public comment period, which will
12 include a series of public meetings which will
13 be held in the project area.

14 After the Draft Environmental Impact
12:03:14 15 Statement public comment period has come to a
16 close, we will consider all comments received
17 and prepare a Final Environmental Impact
18 Statement. The Final Environmental Impact
19 Statement will present our conclusions and
12:03:30 20 recommendations for mitigating possible
21 environmental effects related to the proposed
22 action before the Board.

23 The Board will then make a final
24 decision on the proposed rail line
12:03:45 25 construction. In making its final decision,

1 the Board will consider the entire
2 environmental record, including all public
3 comments received, the Draft Environmental
4 Impact Statement, the Final Environmental
5 Impact Statement, and our, the Office of
6 Environmental Analysis', final recommended
7 environmental mitigation. No project-related
8 construction may begin until the Board's final
9 decision has been issued and that decision has
10 become effective.

11 So that sort of concludes my overview
12 of the Environmental Review Process and the
13 Surface Transportation Board's review process
14 and where we are.

15 So before I open the floor to
16 questions, I would also like to put in a plug,
17 for those that haven't already been here, to
18 look at the Tongue River Railroad project-
19 related website, which is tonguerivereis.com.
20 There's a lot of information there, important
21 documents, and we recently have posted a number
22 of maps there, which will provide more detailed
23 information on the alignment and the
24 alternatives under consideration than you are
25 able to see from the maps that are attached to

1 the Final Scope. There are some maps on the
2 website that includes aerial photos with the
3 alternatives depicted on them, as well as a
4 Google Earth map that is pretty useful as far
5 as determining the location of the alternatives
6 in relation to landmarks and roads and streams.
7 So those are pretty useful tools.

8 MR. CONRAD FISHER: Before we get
9 into question and answer, I appreciate
10 everybody being here. We are going to have a
11 feed across the street here at the Boys and
12 Girls Club. For everyone that's in the
13 building, you're welcome to go there. I think
14 we are going to go there as soon as you're done
15 with your presentation, but just for your
16 information, before we lose anybody else, in
17 addition, we are going to work on the sound
18 system here.

19 I stayed up all night, I had
20 promised, I think somebody mentioned, John
21 Robinson, a traditional Cheyenne meal, so I had
22 to keep my promise. I've cooked up some deer
23 meat and elk meat, so I'm keeping my promise in
24 addition to our catering service. There's only
25 one stipulation, that you eat it. So that's my

1 stipulation.

2 MR. KEN BLODGETT: Thank you very
3 much. We appreciate that.

4 Now, I would like to entertain any
5 questions about the Surface Transportation
6 Board and our Environmental Review Process as
7 it relates to the proposed rail construction.

8 MR. CONRAD FISHER: Can we take a
9 break at this point and have lunch and then
10 maybe we can answer -- have the questions?
11 Unless there are pressing questions that need
12 to be addressed at this point, we'll --

13 UNIDENTIFIED SPEAKER: What is the
14 time frame?

15 MR. KEN BLODGETT: Our target date
16 for issuing the Draft Environmental Impact
17 Statement is late fall, early winter this year.
18 That's a target date.

19 If you look at our website,
20 tonguerivereis.com, you can see there's a
21 number of links and various information,
22 including a historic preservation resources
23 that has a lot of useful information and
24 important documents particularly related to the
25 106 process.

1 MR. CONRAD FISHER: Let's go ahead
2 and have the question and answer section,
3 because I understand you're going to be leaving
4 here real soon. So if you would go on.

12:08:24

5 MR. KEN BLODGETT: Sure. It will be
6 quick if nobody has any questions.

7 MS. LANA GRAVATT: I do have
8 questions, but I would rather go to lunch first.

9 Oh, you have to leave?

12:08:38

10 MR. KEN BLODGETT: I can be here.

11 MR. CONRAD FISHER: It's totally up
12 to the tribes here. Do you want to go ahead
13 and have the questions or not?

12:08:51

14 MR. KEN BLODGETT: Everybody is
15 hungry, everybody should eat. Let's eat.

16 MR. CONRAD FISHER: I know Russell,
17 he doesn't look right or think right when he
18 doesn't have food.

19 MR. KEN BLODGETT: Let's eat.

12:09:05

20 MR. CONRAD FISHER: What time is it?
21 Is it 12:15? 12:10. Let's try to take one
22 hour and try to be back over here about 1:15.
23 So we welcome everybody to go across there. It
24 will take me a few minutes for my delicacy. So
25 I'll be over there in about 10 or 15 minutes,

12:09:30

1 especially the tribes and the federal agencies,
2 to taste some of my home cooking.

3 (Recess.)

4 MS. CATHERINE NADALS: Welcome back.
5 I was going to go ahead and allow Ken Blodgett
13:33:18 6 from the Surface Transportation Board to answer
7 questions about the project. However, I just
8 want to -- I'm imposing a few ground rules, and
9 I should have done this earlier behind you, but
10 just basic things. Allow people to speak one
13:33:37 11 at a time. Be fair to others. All consulting
12 parties have a right to speak about their
13 concerns. Keep the discussion focused on
14 Section 106, if you could, historic tribal
15 properties. And speak directly into the
13:33:57 16 microphone.

17 I have moved people around because
18 the sound down there was not that good. So,
19 hopefully, all of you will be able to be heard
20 now. I will give it to you, Ken.
13:34:08

21 MR. KEN BLODGETT: Welcome back.
22 Thanks for the great lunch. It was delicious.

23 We did the overview of the project,
24 the Board process, the Environmental Review
13:34:30 25 Process, and we brought out some short details

1 about the alternatives that will be considered
2 for further analysis in the Board's
3 Environmental Impact Statement. So with that,
4 I was wondering if anybody had questions about
5 the Board and the Board's process or the
6 Environmental Review Process.

7 MR. BEN RHODD: I have a question.
8 I'm curious, we've been waiting for quite a
9 while on the alternatives, and this is not
10 necessarily in the sense of 106 or NEPA review.
11 What it does have, though, is where these
12 alternatives, when was the design finally
13 decided upon on the alternatives? When was
14 that?

15 MR. KEN BLODGETT: The alignment of
16 the alternatives really came subsequent to the
17 scoping meeting based on engineering,
18 information. You know, at the time of scoping
19 pretty much the door was wide open for any
20 alternatives, and we wanted suggestions for
21 alternatives.

22 Subsequent to scoping, we were able
23 to use environmental information, engineering
24 information, that has been collected, which is
25 how we came up with the alternatives as they

1 are depicted on the map now. These are the
2 alternatives, these are the center lines for
3 the environmental work that is going to fan out
4 from these lines.

13:36:26 5 MR. BEN RHODD: I guess this is a
6 really a question for Burlington Northern.
7 Where are they at in the acquisition or
8 approaching landowners? I have some questions
9 about that, because as we are looking at these
10 alternatives, we've been in other situations
11 with other projects where access hadn't really
12 been assured or where we could begin to even
13 start to attempt to summarize for ethnographic
14 purposes or oral history purposes, et cetera.
13:36:41 15 So it's making it another -- I know you're
16 looking for -- you're going to look for the
17 alternative that is going to be the most
18 feasible on every level.

19 I guess I was on the website about, I
13:37:07 20 don't know, two months ago, maybe it was the
21 last time I was on, and the map that you had on
22 there was --

23 MR. KEN BLODGETT: Yeah, recently
24 we've put some more detailed maps on there. I
13:37:42 25 think there are some copies available that are

1 on our website. There's an aerial map that
2 shows a lot more detail about where the
3 alternative alignments are.

4 MR. BEN RHODD: Well, what it boils
13:37:59 5 down to, what I'm asking is your landowner, or
6 has the railroad gone out to pursue
7 right-of-way at this point, or preliminary
8 right-of-way or agreements or --

9 MR. KEN BLODGETT: That I'm really
13:38:18 10 not sure. We don't get involved in the
11 acquisition of the land from the property
12 owners. We grant authority, but it's up to the
13 applicant to acquire the land that is necessary.

14 MS. LANA GRAVATT: And how are we to
13:38:40 15 be assured that they aren't going out there
16 trying to get access? How do we know that?

17 MR. KEN BLODGETT: Well, there's a
18 difference between land acquisition for
19 purposes of the rail line construction, but we
13:38:54 20 are undergoing the effort right now to gain
21 access for purposes of environmental study.
22 We, the Surface Transportation Board, we are
23 trying to get property access from every land
24 property owner that owns property on these
13:39:11 25 alternatives so we can go out and do the ground

1 work, the survey work, to collect the
2 information we need to do the analysis that we
3 need to do to present the information in a
4 Draft Environmental Impact Statement. That's
5 the access for the purposes of us to conduct
6 our environmental review.

7 MS. LANA GRAVATT: How many reviews
8 have been done on behalf of STB? I mean,
9 biological reviews.

10 MR. KEN BLODGETT: None of that has
11 been done yet. We have been doing some
12 biological survey work and some on-the-ground
13 work from property owners that have already
14 given us access. It depends -- a lot of it
15 depends on the survey when the survey work
16 needs to be done. (Inaudible) noise impact.

17 MS. LANA GRAVATT: Is your question
18 answered?

19 MR. BEN RHODD: Not really. Well, it
20 does and it doesn't. What I'm also looking at,
21 as I've read what's in the NEPA already, or
22 process -- NEPA process already, okay, you're
23 going out and doing a biological, you're going
24 to do a floral, et cetera, et cetera, studies,
25 wetlands, all this stuff.

1 MR. KEN BLODGETT: Correct.

2 MR. BEN RHODD: How many Northern
3 Cheyenne or Lakotas do you have working with
4 those companies that are doing those?

13:40:57

5 MR. KEN BLODGETT: We are just now
6 beginning the process. But we intend to engage
7 the Northern Cheyenne. We made contact with
8 the Northern Cheyenne tribal members. We have
9 meeting this afternoon with the environmental
10 folks at the Northern Cheyenne Reservation to
11 discuss ways that we can together move forward
12 to address their concerns and incorporate them
13 into the Environmental Review Process. Not
14 just one of six related topics but across the
15 whole range of environmental history.

13:41:13

13:41:29

16 MR. BEN RHODD: I guess what I'm
17 advocating on one level, though, is that the
18 involvement of the Dull Knife College people,
19 traditional people, like our elders that are
20 sitting here in this room, to be a part of
21 those processes -- that process that you're
22 involved in with your contracted third party,
23 and to be able to have our people involved in
24 this.

13:41:47

13:42:07

25 MR. KEN BLODGETT: Sure. We

1 understand that. We hope to be able to do
2 that. And we intend to do that. We haven't
3 had the meeting yet to establish those
4 relationships with those people. But, I mean,
13:42:24 5 we want their input the whole way. When it
6 comes to the 106 surveys, I mean, I'm quite
7 sure that there will be Native American people
8 on the ground with the survey team every step
9 of the way. Of course, many of the areas we
13:42:49 10 haven't really figured out the approaches for
11 even methodologies even how to conduct the
12 studies. So we are --

13 MS. LANA GRAVATT: We don't need to
14 be told how to do that. I see your
15 methodology. I don't agree with a lot of it.
16 It's really biased to the companies. It sounds
17 like you want to take a couple Indians and put
18 them on fire crew and then call it tribal
19 participation. I don't agree with that.

13:43:23 20 MS. CATHERINE NADALS: You know,
21 again, the draft methodology, we wanted to make
22 sure we came to the meeting with something.

23 MS. LANA GRAVATT: I don't agree with
24 modeling.

13:43:35 25 MS. CATHERINE NADALS: The reason we

1 are looking modeling is because we are not
2 going to probably have access for all of the
3 alternatives.

4 MS. LANA GRAVATT: Well, you know,
13:43:42 5 the history of this project, there has been no
6 significant tribal identification effort,
7 whoever the applicants have been. There hasn't
8 been. You know that. So at this point with
9 this applicant, what's your intentions, what
10 are you going to commit? Are you going to
13:44:00 11 commit a hundred percent? You know, is there
12 the consideration, outside of (inaudible). Be
13 willing to commit that they will not only
14 consider even the maximum eligible under that
13:44:18 15 criteria because they are bordering the
16 reservation. (Inaudible). I think is there a
17 little more commitment from the applicant? You
18 keep saying, focus on Section 106 processes,
19 and you keep going to environmental processes
13:44:36 20 in there, too. That's an environmental issue
21 right there.

22 I was going to ask the Corps, where
23 are you on that determination? Have you even
24 started it.

13:44:57 25 MR. JOEL AMES: We haven't even

1 started. We are just finding out what the
2 alternatives are as well. There's no permits
3 that have been applied for. So the Corps
4 couldn't work that process this early on.

13:45:10 5 MS. LANA GRAVATT: Seemed like there
6 was a lot of alternatives that you were talking
7 about. And that's why I asked you, if what you
8 were reading, do we have that? It was quite
9 in depth information which we should have been
10 given. You know, are the tribes going to be
11 allowed to survey all the alternatives? Or
12 just what is accessible?

13 You know, I just really have not seen
14 actual letters from landowners, I just can't
13:45:22 15 think of the word for it, we can get access
16 over here.

17 MS. CATHERINE NADALS: Well, we did
18 send letters, and we followed up with phone
19 calls, and we are still in the process of
13:45:47 20 trying to get access. Probably Alan could talk
21 to that. Some people just don't want to have
22 people on their property because they are
23 really against this project, and on principal
24 they don't didn't want people on the property.
13:46:03 25 So that's a constraint. We have to deal with

1 it in terms of our NEPA alternatives analysis.
2 Now, once we license NEPA alternatives, then we
3 will have -- we'll be able to have access to do
4 more intensive surveys for that particular
5 alternative. So right now we are really trying
6 to compare resources to the different
7 alternatives. And we have that constraint,
8 some people not wanting us to come on their
9 property.

10 MS. LANA GRAVATT: I don't understand
11 how you're going to figure out an alternative
12 when, like you said, there hasn't been
13 sufficient tribal surveys done for this line in
14 any of the alternatives? How would you make
15 that determination without allowing the tribe
16 the opportunity to be on the property?

17 MS. CATHERINE NADALS: We want to
18 have you on the ground. We are going to be
19 actually talking about this. But we absolutely
20 want to have you on the ground, because part of
21 the problem, obviously, there are no records of
22 tribal importance sites. So we don't know. We
23 need to hear your argument.

24 MS. LANA GRAVATT: If you know the
25 reason why, the history of this country, it's

1 not our fault.

2 MS. CATHERINE NADALS: It's not your
3 fault. But we need your expertise in terms of
4 getting that information. And we do intend to
13:47:24 5 engage tribes in that process.

6 MR. CLINT McRAE: Cathy, could I try
7 to answer that question?

8 MS. CATHERINE NADALS: Sure.

9 MR. CLINT McRAE: My name is Clint
13:47:33 10 McRae. My family and I ranch just north of the
11 Cheyenne Nation on Rosebud Creek. We do have a
12 tour that we will have tomorrow that I will
13 show you. I have talked to some of my
14 landowner neighbors, who do have cultural sites
13:47:46 15 on their place, and you are all welcome to be
16 there. I have talked to many of them from
17 roughly the Colstrip line tying into the
18 railroad tracks all the way to Ashland. I
19 think the tour tomorrow, we need to visit about
13:47:58 20 this a little bit, but there are several 106
21 sites, cultural sites, burial grounds. That
22 type of thing.

23 Secondly, I can't speak for all of
24 the alternative routes as a landowner, but I
13:48:11 25 can only talk about the Colstrip Alternative.

1 But I want to put the invitation out to
2 everybody in this room that the nations
3 involved with the Section 106 are more than
4 welcome. And we will -- I think we have some
13:48:23 5 good sites. Some are known. A lot of them
6 aren't. But this is something that we have a
7 landowner group formed. We have an attorney
8 that is representing us. We are in the early
9 stages of the process here.

13:48:36 10 One of the questions that I wanted to
11 raise today, and I think it's in the back of
12 everybody's mind, we just heard about the
13 process and methodology we haven't figured out
14 yet. But at the same time we heard today that
13:48:47 15 these studies are going to be finished by fall.
16 That's five months. Are all of the studies,
17 the wildlife, wetlands, socioeconomic,
18 cultural, et cetera, going to be finished in
19 five months? That's a real big red flag as a
13:49:03 20 landowner along the route.

21 Partially to answer your question,
22 you are more than welcome.

23 MS. LANA GRAVATT: Thank you.

24 MS. CATHERINE NADALS: Thank you.

13:49:12 25 MS. LANA GRAVATT: Can we talk about

1 the time frames?

2 MR. KEN BLODGETT: Yeah, that's the
3 target date. That doesn't mean anything is
4 going to happen in the fall or the winter.
13:49:22 5 People ask and they want us to say something.
6 And that's our target. We hope to be able to
7 do all of the survey work and all of the
8 analysis we need to do and be able to put out
9 our Draft Environmental Impact Statement by
10 late fall, early winter. But that's flexible
11 and subject to change.

12 MR. EMERSON BULL CHIEF: You said
13 that there's no documentation of any sites or
14 any features. How much involvement have people
15 had so far? Have you done a report with them
13:50:06 16 and are they even here today?

17 MR. MARK ROBINSON: Stan Wilmoth was
18 unable to attend today but (inaudible).

19 MS. CATHERINE NADALS: We can't hear
13:50:16 20 you, Mark. Speak into the microphone.

21 MR. MARK ROBINSON: We've done a
22 records search. We have site records. I think
23 it was cultural properties and sacred
24 properties. We have a report of archeological
13:50:50 25 sites, some are prehistoric and stuff like that

1 that are known. Does that answer your
2 question?

3 MR. RUSSELL EAGLE BEAR: I have a
4 question.

13:51:29 5 You mentioned you had people go
6 wherever they can access. What are they doing?
7 What kind of surveys are being conducted at
8 those sites? And are there any THPOs or
9 tribes notified at this point?

13:51:53 10 MR. RICHARD STARZAK: That's one of
11 the reasons that we wanted to have these
12 meetings was to start to organize how we are
13 going to do this work. So we want to be
14 involved. I've talked to Curley about this,
13:52:04 15 I've talked to Terry, as we have monthly
16 meetings.

17 One of the issues we have is
18 approximately 33 percent of the landowners have
19 given us access to their lands. We now have
13:52:14 20 that mapped. We have that mapped with all of
21 the record search information. We have to work
22 out a time frame when we can get access, safe
23 access, to the site, so we can be accompanied.
24 We have to work out everyone's schedule so they
13:52:30 25 can come in when the landowner is permitting

1 it. So there's a lot of kind of planning that
2 goes into it.

3 One of the reasons we wanted to have
4 this meeting was to try and work through a
13:52:40 5 methodology to get everyone involved, because
6 as Lana pointed out, we can't do TCP surveys.
7 We can get on the land. We can show you here's
8 the edge of this property, we can't go five
9 more feet or we would be on a piece of property
13:52:56 10 that the landowner hasn't given us permission.
11 So we can escort you, we can show you where the
12 center line of the railroad is proposed, and we
13 can do pedestrian surveys, (inaudible) surveys,
14 let you go along for distance. That's what we
15 want to work out today is kind of come to a
16 methodology that we are all comfortable with.
17 So --

18 MR. RUSSELL EAGLE BEAR: But you
19 haven't answered my question. My question is,
13:53:21 20 and you were the one that made the statement,
21 you are accessing land that are open to you.
22 What are you doing there? What, I mean --

23 MR. KEN BLODGETT: Well, there's --

24 MR. RUSSELL EAGLE BEAR: Sometimes
13:53:36 25 agencies and companies kind of put the cart

1 before the horse and after the fact they come
2 to us as tribes, and they already know it, yet
3 they are asking us to either rubber stamp it or
4 go along with it. What are you doing out
5 there? What are you actually doing on those
6 lands that you have access to?

7 MR. KEN BLODGETT: We haven't done
8 very much at all yet. But what we need to do,
9 cultural resources, we'll be doing a lot of
10 survey work to determine biological resources
11 along the different alternatives. I mean, we
12 are talking wildlife, plants, fish. We need to
13 collect information on what's there so we can
14 do analysis of the information we collect to
15 present it to the public so we can show what
16 the impacts of the project would be. And we
17 need to be able to compare the different
18 alternatives with each resource area.

19 Biological resources is one. I mean, there is
20 noise analysis, we'll be doing survey work on
21 the ground in the areas of noise. Wetland
22 work. What we need to do is have people go out
23 there and collect information. We need to have
24 the information collected during the course of
25 this survey work so that we can then analyze

1 the information for comparison purposes.

2 MR. RUSSELL EAGLE BEAR: What about
3 (inaudible) crews?

4 MR. RICHARD STARZAK: Not yet. But
5 that's one of the reasons --

6 MR. RUSSELL EAGLE BEAR: One is
7 shaking their head yes and one is no.

8 MS. CATHERINE NADALS: I thought you
9 meant in the future. We are doing those in the
10 future, yes. They are going to be done. It's
11 just one resource type that we have to look at
12 as far as comparing the alternatives.

13 Absolutely. That's one of the things that we
14 need to know. We need to know what's there.
15 And we need your input. We need tribal input.

16 MR. RUSSELL EAGLE BEAR: Well,
17 shouldn't you approach us first so we can both
18 know at the same time instead of you guys
19 knowing first and then after the fact you show
20 us what you find?

21 MR. RICHARD STARZAK: We won't be
22 knowing first. We have not gone out there. We
23 want to see where we get property access and
24 then come up with a schedule and then invite
25 all the other tribal members to come out when

1 we have access on particular times. I don't
2 know for some property owners if it's one day
3 only or if some property owners will allow
4 return trips. But we have to work through all
5 of those logistics. It's like a checkerboard.
6 We don't have property access all along the
7 way. So we have to get to one where we can go
8 safely.

9 MR. RUSSELL EAGLE BEAR: Okay. We're
10 being cautious here. I am anyway, as a
11 representative. We have some issues with the
12 (inaudible) railroad when they were coming
13 around the Black Hills into this area. You
14 know, they played with us. Especially when it
15 came to doing surveys on land, because you
16 don't go there, because we don't have access.
17 Well, you've got to do this. It was like there
18 was no plan. And I want to make sure that we
19 are not in that situation again. I mean,
20 speaking for the Rosebud Sioux Tribe. I want
21 that to be clear.

22 MR. STARZAK: That's why we
23 (inaudible). If helps the discussion, we
24 actually have the current property access maps
25 I could display those on the screen so we could

1 see.

2 MR. ALAN SUMMERVILLE: We
3 (inaudible). That will be handling
4 methodology. Right now we are trying to get
13:57:33 5 questions on the EIS process. And then
6 (inaudible).

7 MR. BLODGETT: And I can --

8 MR. RUSSELL EAGLE BEAR: Okay. Now
9 going back to the EIS. You mentioned you are
10 going to do certain surveys. You mentioned
13:57:42 11 them. Cultural is not one of them.
12 Archeological is not one of them.

13 MR. KEN BLODGETT: Cultural will be
14 one. Cultural resource is one survey that will
13:57:56 15 be conducted. It's a large part of what we
16 need access for, but we also need access to do
17 survey work on a number of other issues that we
18 need to collect information for purposes of the
19 environmental review.

13:58:11 20 MS. CATHERINE NADALS: The Final
21 Scope of Study goes to every single resource
22 type and different types of resources that we
23 basically need to collect information about for
24 all the alternatives.

13:58:25 25 MR. RUSSELL EAGLE BEAR: I was asked

1 to ask these questions before you left.

2 MR. CONRAD FISHER: One of the things
3 that our cultural committee chairman, Mr. Steve
4 Brady, wanted us to reemphasize is that we
5 would like to do a full blown study of that
6 area, and I'm sure under the EIS that would be
7 something to consider in addition to the
8 historically and traditionally plants that are
9 utilized. I'm sure that will be part of the
10 EIS, but I just wanted to put that on record.

11 MS. LANA GRAVATT: Considering
12 (inaudible).

13 MR. CONRAD FISHER: In addition, I
14 think what should be done is also a TCP study
15 of that corridor, and I know one of the
16 landowners, Clint McRae, has offered to go into
17 his property and do a full blown TCP study of
18 his land just so we can ascertain and document
19 that there are historical and traditional
20 cultural properties in that area. And I think
21 it's a win-win situation for everybody because
22 it would give the tribes an opportunity to be
23 on the ancestral lands and to document what's
24 in that property. But, in addition, I think it
25 would serve as a conduit for all the interested

1 parties that there are important resources in
2 that real estate.

3 MS. LANA GRAVATT: So what is the
4 Northern Cheyenne's (inaudible) alternative, if
5 not doing it at all?

6 MR. CONRAD FISHER: Well, you know,
7 that's something my job is to do cultural
8 research. And I would defer that question to
9 our leadership to see what they would prefer on
10 that. But I do know one thing, that there's a
11 heavy emphasis on protection of cultural
12 resources, and really I think it's really up to
13 the people. During the scoping sessions, I
14 think 99.9 percent, especially here on the
15 reservation regarding the Tongue River
16 Railroad, was against. I don't think we had
17 one comment that was for the Tongue River
18 Railroad at that time.

19 So the people of the Northern
20 Cheyenne, I think, or the reflection of the
21 administration, I think, is about the people on
22 the Northern Cheyenne. And that's all I'll say
23 about that. But that's a good question, and
24 I'll have an answer for you before the end of
25 this week.

1 MS. LANA GRAVATT: Thank you. Yeah,
2 I mean, kind of hard to begin talking about a
3 survey when we really don't have the exact
4 route, all over the place, and not (inaudible)
5 in the tribes, do all of that kind of thing.
6 At the same time, why isn't Otter Creek covered
7 (inaudible) this whole project?

8 MR. KEN BLODGETT: It's included in
9 the entire environmental review because of the
10 track going into Otter Creek was submitted with
11 the railroad's application to the Board.

12 MR. ALAN SUMMERVILLE: There is no
13 federal trigger for it, there is no federal
14 permit that would bring it to the level of EIS
15 with the state (inaudible) NEPA.

16 MS. LANA GRAVATT: I was just
17 wondering if you would do that administratively
18 (inaudible) Otter Creek. It was determined --
19 (inaudible). What does that mean?

20 MR. KEN BLODGETT: I think you're
21 referring to Montana State DEQ may have put out
22 something indicating that their application was
23 insufficient or --

24 MS. LANA GRAVATT: Yeah.

25 MR. ALAN SUMMERVILLE: There was

1 still more information needed for the permit.
2 That was my understanding. So they asked the
3 applicant to provide more information, and then
4 the permit will come back and they will
14:03:37 5 continue the process, as I understand it.
6 (Inaudible).

7 MR. KEN BLODGETT: But they are doing
8 their own environmental review. The State of
9 Montana is doing an environmental review. So
14:03:57 10 (inaudible) saying the application before them
11 was insufficient. We're working closely with
12 them.

13 MS. LANA GRAVATT: The State of
14 Montana and the federal review and there's a
14:04:05 15 state review?

16 MR. KEN BLODGETT: We are doing an
17 environmental review of the rail line and the
18 rail line construction. They are doing the
19 environmental review for the coal mine. And
14:04:18 20 that's what the application is for them is the
21 coal mine operation.

22 MR. CONRAD FISHER: Could I interject
23 here? We got a couple of folks from land
24 permitting agencies. Maybe, Doug, do you know,
14:04:36 25 can you give a little more clarity to what's

1 going on with the Otter Creek Mine as far as
2 their application process and what they are
3 deficient on?

4 MR. DOUG MELTON: I don't know how
14:04:47 5 deficient they are. I don't know if we've
6 heard anything about deficiency. But I know
7 that part of the state process is a little
8 different done under Montana Environmental
9 Policy Act, MEPA, because there is no federal
14:05:06 10 coal involved. There is no federal coal
11 involved in the mine. So it's being handled a
12 different permit process. Part of the federal
13 coal with the state is part of the settlement
14 with the New World Mine. About 2002 when that
14:05:30 15 happened.

16 MR. ALAN SUMMERVILLE: Both EISes
17 will look at each other's project.
18 (Inaudible). It will look at the Otter Creek
19 project as a cumulative action. Look at the
14:05:51 20 potential impacts of the mine in light of
21 potential impacts of the railroad for
22 (inaudible).

23 MS. LANA GRAVATT: So is that going
24 to be two different determinations? Are they
14:06:05 25 going to be one determination for both? How

1 are you going --

2 MR. JOEL AMES: I don't know. Our
3 regulatory folks will have to make a
4 determination on that. I don't have the answer
14:06:19 5 on that right now for you, no.

6 MR. ALAN SUMMERVILLE: I think it may
7 come down there is no actual wetland permit for
8 that tract for the Otter Creek Mine.
9 (Inaudible).

14:06:37 10 MR. JOEL AMES: Yeah.

11 MR. ALAN SUMMERVILLE: If it did, we
12 would probably be -- there would probably be
13 one EIS covering all.

14 MS. LANA GRAVATT: Are you sure about
14:06:45 15 that?

16 MR. ALAN SUMMERVILLE: I'm pretty sure.

17 MS. LANA GRAVATT: So you didn't
18 answer the question, though. All the
19 alternatives, where are we at? Where do we
14:06:56 20 start? What alternatives? Is it just going
21 to be where we can get access, and we cut it up
22 and chop it up checkerboard?

23 I'm just trying to picture, you know,
24 in my mind a route, and how many alternatives
14:07:15 25 you had, and there haven't been any tribal

1 identification efforts.

2 MS. CATHERINE NADALS: We are in the
3 process of trying to organize that. That's why
4 we are here. We want to tell you about the
14:07:29 5 project and we want to have your input.

6 MS. LANA GRAVATT: Well, I'm just
7 asking, with all the alternatives, where do we
8 start? Which alternative do we have? Do we
9 get through all the alternatives? Do you know
14:07:41 10 what I'm saying?

11 MS. CATHERINE NADALS: Right. It
12 really depends on access. We are actually
13 going to be talking about that in the next
14 session. I was hoping we could keep the
14:07:50 15 questions on the EIS process because Ken and
16 Alan actually have a meeting with the other
17 staff here at the tribe to talk about their
18 concerns.

19 Any other questions for Ken and Alan?

14:08:15 20 Okay.

21 MR. KEN BLODGETT: Thank you all for
22 your time. And we'll be seeing you.

23 MS. LANA GRAVATT: (Inaudible) as far
24 as -- you have bunch of conferences all set up.
14:08:34 25 I mean, I wish I (inaudible). I know

1 (inaudible).

2 MS. CATHERINE NADALS: No, we agree,
3 we'll be definitely organized in those meetings
4 in the future.

14:08:53 5 MR. CONRAD FISHER: Are you going to
6 do that early or late?

7 MR. KEN BLODGETT: We won't be here
8 on Thursday. We are going to be in the area
9 doing other environmental work related to the
10 project but not 106. We figure Cathy Glidden
11 is representing the Board here on Thursday and
12 ICF folks as well. So we are trying to have as
13 many meetings as we can on the whole range of
14 topics.

14:09:07 15 MS. CATHERINE NADALS: The Northern
16 Cheyenne Tribe and the Oglala Sioux both
17 expressed to us they would like to consult with
18 us not on the reservation issues, but on an
19 entire school of issues that are under the NEPA
14:09:38 20 umbrella. That's what we are trying to do, the
21 Northern Cheyenne are involved in.

22 MS. VANESSA BRAIDED HAIR: I have a
23 question. My name is Vanessa Braided Hair.
24 And I'll just give everybody a background
14:10:11 25 review. My ancestors were forcibly removed

1 from their original homestead and was told that
2 they could move back after 25 years, and this
3 has not happened. So the Northern Cheyenne
4 Tribe Otter Creek Home Decendents have decided
5 to take action on the issue, and we feel that
6 the Surface Transportation Board needs to
7 answer some questions, which are: Has the
8 Surface Transportation Board addressed the
9 Northern Cheyenne Otter Creek Homestead Claim?

10 How will Surface Transportation Board
11 keep the Northern Cheyenne Otter Creek
12 Decendents in the informational loop?

13 Is the Surface Transportation Board
14 open to have conversation with the Northern
15 Cheyenne Otter Creek Descendents?

16 And the Northern Cheyenne Otter Creek
17 Descendents would want access to the baseline
18 data.

19 MS. CATHERINE NADALS: Okay. Thank
20 you.

21 Let's start next with Mr. Starzak,
22 who is acting as our lead for the architectural
23 study (inaudible) methodologies. Again, this
24 is a draft. We wanted to have something on
25 paper. We definitely will want -- we can make

1 changes. So go ahead.

2 MR. BEN ELK EAGLE: Some of our
3 elderly aren't getting too much research before
4 they push everything off on us. I know that
14:12:40 5 from our area. Sometimes they bring it in and
6 we have three weeks, or whatever, to deal with
7 it. And sometimes we don't get to do proper
8 research, or whatever. It seems like we've
9 been pushed into it. We give up our rights,
14:13:02 10 whatever, seems like. Why are they trying to
11 put some alternatives on it? (Inaudible) kind
12 of a (inaudible) question that I have.

13 I would just like that question.

14 MR. RICHARD STARZAK: I think the
15 approach is going to be different this time.
16 You don't know me in this room, but we want to
17 work with you to not put you in that position.
18 From what I understand, there's never been, for
19 the Tongue River project, survey work done.
14:14:06 20 There's never been (inaudible) done. That was
21 one of the first things that we proposed to do.
22 What we want to do is work out something with
23 you. Maybe when we show you these few slides
24 that I put together to help explain how we are
14:14:19 25 thinking of it in different phases, because if

1 we look at all of the alternatives that are
2 being proposed right now and go to where we
3 have property access, we'll be able to get some
4 work done with you where we can go out
5 (inaudible). Remember that when the project is
6 actually, if it's approved, if it's licensed,
7 there will only be one alternative that
8 actually could disturb or damage or adversely
9 affect sites. So we need to do enough analysis
10 to understand the environmental consequence of
11 each alternative.

12 And then when one is licensed, then
13 there is some sort of agreement or memorandum
14 agreement to get one hundred percent access to
15 look at everything and do detailed surveys.
16 But for all of the alternatives we have access,
17 we want to do field surveys with you to
18 understand what's out there. And I don't know
19 the complete mechanism. It really hasn't been
20 done. I know we have just in talking, I don't
21 know if I'm answering your question, I'm trying
22 to get ideas out there so you can see how we
23 are thinking what needs to be done in the next
24 six months to help the Board see the
25 environmental consequences of each alternative,

1 and then set a procedure. We don't even know
2 if the final project would be licensed. But if
3 it is licensed, have a programmatical agreement
4 put in place that allows you to get adequate
5 time to do everything that you need to do.

14:15:49

6 So --

7 MS. LANA GRAVATT: Are you going to
8 invite the tribes?

9 MR. RICHARD STARZAK: Yes.

14:15:59

10 MS. LANA GRAVATT: Great.

11 MR. RICHARD STARZAK: Maybe this
12 will help. Then I want to have a nice open
13 discussion, because we want to learn, we want
14 to do this in a way that everybody is feeling
15 comfortable and if you have input on, not the
16 way it's been done in the past.

14:16:11

17 MS. LANA GRAVATT: I would just
18 caution just to remember that NEPA can't be
19 checked off or whatever until it there has been
20 sufficient identification effort by the tribes.
21 (Inaudible).

14:16:27

22 MR. RICHARD STARZAK: Okay. So
23 first let me just discuss on this first slide
24 what our role is. So you understand, we are
25 STB's independent third-party consultants. We

14:16:44

1 assist them in many different environmental
2 areas. The focus today is on cultural historic
3 properties, Section 106.

4 ICF International, someone asked me a
14:16:58 5 question earlier today, and so I thought, what
6 does the acronym stand for. So I thought I
7 would just explain that in case others of you
8 have questions. The firm was started in 1969
9 Tuskegee airman, an African-American gentleman,
14:17:16 10 after World War II, it was called the
11 Inner-City Fund. What he did was set up,
12 basically, a financial system so they could get
13 loans to build up businesses. That's the
14 origin of our company. Now, we have offices
14:17:30 15 coast to coast. Our headquarters is in
16 Fairfax, Virginia. Alan, that was seated here,
17 is in the Fairfax office. Most of our cultural
18 resources staff are on the west coast in
19 offices from Seattle to San Diego. Our closest
14:17:44 20 office to the project area is Gillette.

21 The staff we introduced earlier
22 today. So I wanted to just describe a little
23 bit the way I see the difference between a NEPA
24 Cultural Resources Alternatives Analysis and
14:18:05 25 Section 106 work.

1 So, first of all, under NEPA we have
2 to do a comparison of alternatives. So you
3 can't possibly look in great depth at every
4 foot of each alternative. There just isn't
5 time or budget to do that. But you are able
6 to, hopefully, get enough access to land, do
7 records searches across all of the way, and do
8 enough analysis to have a comparison study so
9 that you can compare each of the alternatives
10 and decide what are the consequences, which
11 alternative would have the most effect on
12 cultural resources, which would have the least.
13 You should be able to gather that.

14 With Section 106 there is more that
15 needs to be done. Consultation with SHPO on
16 historic properties. Unfortunately, SHPO told
17 us they were not able to attend today. But
18 I've had some discussion also with Stan
19 Wilmoth. And regarding a question that came up
20 earlier about the model, Stan says the model
21 will not work to decide where you do not have
22 to do surveys. The model would only be useful
23 for gaps where you could never get access. So
24 we would never be proposing at this time to do
25 a model to kind of say where do we do high and

1 moderate probability surveys. It has to be
2 everywhere. The way Stan described it was,
3 basically, the model helps you understand
4 resource types that are commonly found, but
14:19:44 5 often the ones that are unique, where you don't
6 expect to find them, are the ones that you get
7 the most information. So I'm paraphrasing.
8 I'm obviously not quoting Stan.

9 At that point we said we can't use a
14:19:57 10 model to decide where we are going to survey
11 and where we are not. So really what
12 (inaudible) is property access, where a
13 property owner will let us go out and walk the
14 center line of the proposed route and fan out
14:20:11 15 and do whatever surveys that can be done,
16 whether they are archeological surveys, TCP
17 surveys, so you have safety and privacy to do
18 what you need to do and do your analysis.

19 When do we do return trips if they
14:20:25 20 are needed? Is that something the property
21 owner would be willing to do? From what Clint
22 just described, any property owners, if they
23 want to provide access independent of us as
24 consultants. If that's safe passage, absolutely,
14:20:38 25 that's fine.

1 MS. LANA GRAVATT: What's the
2 character of the SHPO in Montana? Do you guys
3 have a good relationship? What is their
4 priority?

14:20:51 5 MR. CONRAD FISHER: Yeah, I think
6 SHPO is very cooperative in all instances that
7 I have worked with them. They've been pretty
8 honest. Stan Wilmoth is a good person to work
9 with. I would anticipate he would be in the
10 best interests of the tribe.

11 MS. LANA GRAVATT: Okay.

12 MR. EMERSON BULL CHIEF: I concur
13 with that.

14 MR. RICHARD STARZAK: So stepping
14:21:25 15 through the differences with 106, the way I
16 interpret the regulations, and it's in more
17 detail than that preliminary draft, we need to
18 consult with the tribes. And we know we cannot
19 do those surveys, we rely entirely on you. And
14:21:45 20 Stan Wilmoth says the same. He said when he
21 gets a TCP finding, he fixes it. He doesn't
22 try and work against that. So that's support.

23 Then we have consultation with other
24 parties. It's not just tribal interests, we
14:22:02 25 have historic sites, we have other parties,

1 even the general public, what they may consider
2 significant. So all in of these things you may
3 find a historic ranch; you may find a
4 homestead.

14:22:17 5 Yes, sir.

6 MR. JAY RED WOMAN: I have a
7 question. You're doing consulting work. How
8 were you chosen? How were you chosen? I'm
9 curious. (Inaudible).

14:22:37 10 MR. RICHARD STARZAK: That's way
11 above my pay grade how the firm gets chosen,
12 but I can say the Surface Transportation Board
13 has been a client of ours on interesting
14 projects. We had two projects in Alaska in the
15 last couple of years, which were also
16 constructions of rail lines to mines. And
17 there we had a lot of tribal input.

18 MR. JAY RED WOMAN: The reason why I
19 ask is because as a tribe, I'm pretty sure a
14:23:10 20 lot of tribes built it, but to determine the
21 energy, our country doesn't want to depend on
22 foreign energy. Culturally, we are opposed to
23 taking stuff out of the ground, culturally.
24 You probably don't want to hear that.

14:23:35 25 In terms of the surveys, the due

1 diligence with the surveys culturally, I would
2 encourage so much because the deer, the deer
3 exploitation, deer being dominated, just
4 because this group is involved in digging in
5 the ground.

6 And then the rail -- we have a law, I
7 believe, our tribe, but we have Class 1 air. I
8 don't know if you're aware of that. I am
9 concerned about those issues.

10 And then with the landowner, if you
11 are dominating (inaudible), you know, the
12 consideration of the landowners and cooperation
13 with the tribe, our tribal organizations, that
14 really, really do want to protect ancestral
15 homes.

16 And I'm just curious, the reason why
17 I ask how you were picked, perhaps you were
18 picked because you dealt with Native American
19 tribes, some sort of success formula you use,
20 that's why you're chosen, but because it's
21 above your pay, I don't know how you mentioned
22 it, above your pay scale, or whatever, you
23 don't have that power or discretion to answer
24 that, but I wanted to know is that the lack of
25 being presumptuous on your part. I would

1 encourage and I would really appreciate the
2 (inaudible) to really consider our tribal
3 leaders. And like one gentleman said,
4 sometimes there's only three weeks, something
14:25:35 5 about research, and you probably heard that
6 classic conflict, white man time, Indian time.

7 Well, that diligence is really
8 important, because even in our own history of
9 the tribe, we've been dominated, we've been
14:25:53 10 exploited. We've had to deal with a lot. But
11 we made it through. We are still intact. We
12 are in control of our abilities. We're not
13 checkerboarded like some tribes.

14 But we really care about our water,
14:26:05 15 air, and our land, because we want that land to
16 be healthy. We want that air to be healthy.
17 We want that water to be healthy. And anything
18 that impedes upon that is kind of like that.
19 (Inaudible).

14:26:23 20 Because we don't judge each other in
21 our tribe. We are worried about the
22 generations that are not yet born, they are the
23 ones that are the judges. So all of these
24 actions affect those ones that are not born
14:26:39 25 yet. So I'm really carefully listening how you

1 facilitate these discussions.

2 Anyway. Thank you.

3 MR. RICHARD STARZAK: I understand
4 completely. In terms of why we were chosen, I
14:26:55 5 don't know exactly. We have had a good record
6 on other Surface Transportation Board projects
7 where tribes have been involved. Remember,
8 it's for constructing a railroad. It's not
9 about the mine. In terms of the ground
14:27:09 10 disturbance and introducing a railroad, that
11 would change the terrain. Our job is to
12 analyze how that happens. How that would
13 happen in terms of water and environmental
14 consequences exactly what you just brought up.

14:27:26 15 MR. JAY RED WOMAN: But you
16 understand my concern about emissions.
17 Building a railroad, there's emissions from the
18 engines, the water line, the echo systems.
19 (Inaudible) just be mindful, I guess, is the
14:27:44 20 best thing. Some concerns.

21 MS. CATHERINE NADALS: Would you say
22 your name for the record?

23 MR. JAY RED WOMAN: My name is Jay
24 Red Woman.

14:27:57 25 MS. CATHERINE NADALS: Thank you so

1 much. We do have staff that are talking to
2 other experts Northern Cheyenne Tribe about
3 those issues, just so you are aware of that.
4 I'd like to give the microphone to Conrad now
5 for some introductions, late introductions.

14:28:14 6 MR. CONRAD FISHER: Well, I know
7 because of the weather conditions some of the
8 tribal preservation offices weren't able to
9 make it this morning. I'd like to introduce
10 Waste'Win Young from the Standing Rock
11 Reservation in South Dakota.

12 MS. WASTE'WIN YOUNG: Hello.

13 MR. CONRAD FISHER: Welcome here.

14 MS. WASTE'WIN YOUNG: North and South
15 Dakota.

14:28:39 16 MR. CONRAD FISHER: North and South
17 Dakota, yeah. Their reservation is on both
18 states.

19 And then Wanda Wells. Wanda is from
14:28:51 20 Crow Creek, and that is in South Dakota. So
21 appreciate you taking that risk and driving
22 that dangerous road. I know you folks have a
23 lot of snow there and some of the places were
24 closed. So appreciate your being here this
14:29:08 25 afternoon.

1 MR. RICHARD STARZAK: So this slide
2 is kind of our approach, and maybe this helps
3 address your question. We consider that this
4 is your place. You're the experts, not us.
5 All we are is -- we have the ability to learn
6 from you, kind of record what we find, and
7 compare alternatives. This is our approach.
8 So if you look -- I didn't go through all of
9 the National Register criteria, but I
10 underscored the line, places. National
11 Register of Historic places. Academics don't
12 understand the significance of a place. We can
13 kind of look at it, read about it, we can get a
14 sense of it, but you that live here, now or
15 ancestrally, truly understand what significance
16 is place. You understand history, what your
17 ancestors did here, your traditions, your
18 surroundings, all of those things. We can't
19 begin as professionals to really understand on
20 the level of someone who has been here. So our
21 philosophy is we are here to learn from you and
22 work with you to identify what is significant
23 together. That's our approach.

24 What the purpose of these meetings
25 is, and with the hospitality of the Cheyenne,

1 is that we want to create a working
2 relationship with you. We have to cooperate.

3 The next slide, please. So I tried
4 to summarize this earlier so I won't repeat it
14:30:57 5 all. But, again, think of this as different
6 stages. First with the NEPA document we have
7 to gather enough information doing research,
8 oral history, and basic field survey to
9 understand and to be able to compare the
10 alternatives. When I say basic field survey,
14:31:10 11 that would mean currently we are proposing to
12 do, where we have access, 100 percent
13 pedestrian transect surveys, but not shovel
14 testing. Walk over where the center line is on
15 property we have access to see what's there.
14:31:26

16 Through Section 106 you can see where
17 I put a line of where it differs from NEPA in
18 terms of the stages. For 106 we do
19 consultation, and today is the beginning of
14:31:45 20 (inaudible) circulating methodology, to start
21 to get your feedback at the beginning,
22 identifying historic properties and TCPs. That's
23 it.

24 Once, again, historic properties, our
14:31:58 25 professionals can look at the buildings and

1 apply the National Register criteria; Our
2 professionals can look at archeological sites
3 and analyze; but TCP and the other traditional
4 types of events isn't necessarily limited to
5 tribal traditions. It could be ranching
6 traditions. How we analyze, we have to consult
7 with you. We have to find out what's the
8 significance and where are your most sensitive
9 areas.

10 And then for the NEPA document and
11 Section 106 we would analyze the potential
12 effects of alternatives, and that's the goal of
13 NEPA is to do a fair comparison. But you see I
14 drew a line there. The Section 106 goes
15 further, in that you have an opportunity to
16 resolve adverse effects if an alternative is
17 licensed.

18 Will you move to the next slide.
19 This is Lana's question earlier about property
20 access. This is a summary table. We actually
21 have maps here. If there is time, and people
22 want to look, we can show you where we know.
23 But, currently, we still are awaiting response
24 from more than 50 percent. So we don't know.
25 50 percent of the property we haven't heard

1 back from the landowners. We may at some
2 point, or we may not. Or as Clint suggested,
3 there may be landowners that want to work with
4 tribal members and not necessarily allow all of
5 the environmental consultants to come on their
6 property. But we've heard, yes, from 33
7 percent.

8 Now, as far as I understand, previous
9 Tongue River projects, it was zero percent. We
10 have 33 percent. We can go out on the land and
11 walk the land and do the study.

12 I want to also just emphasize this is
13 the entire pieces of property. So depending on
14 the shape, there may be a lot of area that's
15 far away from the actual center line. We don't
16 know exactly. But this is the best guess that
17 we have right now.

18 Can we go to the next slide.

19 So if there is a licensed
20 alternative, then we would put into effect an
21 MOA or a PA for completing the Section 106.
22 Now, from the transcripts, I understand, there
23 was a PA, but that was based on no field survey
24 at all. In this case there would be a PA after
25 surveys have been done, to some degree on all

1 of the alternatives where we have access. But
2 then the PA would fill in the gaps and
3 completing the work on the selected
4 alternatives, and that is an opportunity to
5 then really delineate boundaries, see if
6 there's a way to avoid, minimize, or mitigate.
7 This is after NEPA. This is a programmatic
8 agreement that compared to the previous one,
9 was not on the basis of having done any work.
10 So we are trying not to do that same thing. We
11 want to do the consultation. We want to do
12 what's right. We want to understand what's
13 important to you.

14 Could we go to the next slide.

15 This is just simply tools. I mean,
16 you have the understanding, but we as a
17 professional firm, do have some tools that we
18 can use that can help. So, for example, I
19 could show later that we had a request on one
20 of the calls about the rivers and streams
21 crossings, and we have mapped that in GIS. We
22 have all the coordinates. We have GIS
23 capability that will help us map. So we have
24 all the property access mapped with GIS.

25 And then we have GPS, so that you're

1 able to go out on a piece of property and using
2 GPS understand where you are and where the
3 center line is proposed to be for that
4 alternative and walk it without -- you know,
5 actually just walk it, even though there won't
6 be any stakes in the ground.

7 MS. LANA GRAVATT: I just wanted to,
8 (inaudible) would be requesting every
9 determination of effect on every piece of water
10 on this project. Every determination, whether
11 it's a wetlands or streams or creeks.

12 MR. RICHARD STARZAK: And then I put
13 a note of field tablets. We actually have one
14 here that we were going to test out tomorrow
15 when we take the tour. To see what it displays
16 is the aerial map. It uses the global
17 positioning to show where you are standing in
18 the field. It has the record search
19 information, which, I think, is somewhere
20 between 5 and 10 percent of the areas that have
21 been surveyed. Those previous sites that have
22 been recorded are also shown on the map, so
23 when you're walking out, you can see where a
24 previous site was identified. We are going to
25 test it tomorrow. So that might be something

1 you want to look at.

2 My point is not that these tools
3 replace the human understanding, but my point
4 is the tools make it a lot easier to know where
14:37:21 5 you are and where the project is proposed and
6 do the work that needs to be done. And as a
7 professional firm, we can supply the tools and
8 work with you.

9 And I think that's my last slide. So
14:37:35 10 now I hope that I've been able to convey we
11 want to do this differently. And I understand
12 that you've gone through decades on this
13 project and centuries before that of mistrust.
14 I'm trying to come here and work with you in a
14:37:54 15 different way, but I need cooperation. I need
16 for you to trust me so we can talk through and
17 constitute a solution that you'll feel you're
18 able to participate at a level that you haven't
19 before. So that's my plea. I want to work
14:38:13 20 with you.

21 And you don't know me, but I just
22 have to tell you I'm sincere about that, and I
23 can promise you that we would listen, and we
24 are going to work really hard with you. That's
14:38:24 25 all I can promise you. I can't promise magic.

1 I'm open to questions.

2 MR. JAY RED WOMAN: I want to ask
3 another question. The way you are chosen as a
4 firm, you personally have never done this
14:39:02 5 before with tribes? Have you worked with the
6 tribes?

7 MR. RICHARD STARZAK: Not Northern
8 Cheyenne. Worked with the Knik tribe in
9 Alaska, Chippewa Tribe, and the Odawa tribe in
10 Michigan, but I've never worked with the Plains
11 tribes.

12 MR. JAY RED WOMAN: I think what
13 really strikes me through this whole process,
14 and gets my attention, is this whole idea of
15 EIS reports. I'm curious, you say we are among
16 professionals. In any EIS is there any
17 cultural presenting the tribe? Is there always
18 a tribe wanting to say this is how it's going
19 to affect our tribe, our culture. Any EIS
14:40:00 20 study, whatever, is culture, does anybody know,
21 is culture always in there? Is it always in
22 there, you know, or do we have to say, okay,
23 you guys consider us, consider us, but are we
24 in there, because we are truly like an
14:40:27 25 endangered species, our culture.

1 So I guess this is my curiosity these
2 reports, these EIS reports, do they at all
3 emphasize the cultural aspects? Do they
4 exist -- does the cultural aspect of the EIS,
5 is that included? Is that universal, or is it
6 usually, with this situation, is it usually,
7 okay, well, we've got to get your attention so
8 you can consider us, consider our position?

9 MS. CATHERINE NADALS: Can I have
10 your name again?

11 MR. JAY RED WOMAN: Jay Red Woman.

12 MS. CATHERINE NADALS: We have
13 copies of the Final Scope report before. Those
14 are the issues that are going to be studied in
15 the environmental statement. And one of the
16 issues -- one of the areas we'll be looking is
17 the cultural resources as part of the EIS. And
18 it includes consulting federally recognized
19 tribes to identify properties traditional
20 (inaudible) tribes. So we definitely are going
21 to be working with the tribe, even with the
22 interim EIS to compare alternatives. We need
23 your expertise.

24 MR. JAY RED WOMAN: Those are things
25 with my curiosity. I've perused through a few

1 EISes, the one I read was maybe like two, three
2 sentences about the culture. And that totally
3 blew my mind.

4 MS. CATHERINE NADALS: I think it's
5 very important that you make your concerns like
14:42:03 6 you're doing right now. And the Northern
7 Cheyenne makes it clear they have some
8 particular issues that we want to address in
9 the EIS, and then it will be our job to make
10 sure we do that.
14:42:15

11 MR. CONRAD FISHER: Just for your
12 information. Cathy has a couple pages of a
13 comment that my office made during the scoping
14 session of the Tongue River Railroad, basically
15 outlining, in a general sense, some of the
14:42:33 16 sites, the type of sites that we feel are very
17 significant to the Northern Cheyenne. But if
18 you go to the website for the STB regarding the
19 railroad, one of our -- there was a study done
20 by a number of folks here on the Northern
14:42:58 21 Cheyenne, and it goes really in depth into what
22 constitutes cultural resources among the
23 Northern Cheyenne. But the handout is a basic
24 outline of cultural resources.

14:43:15 25 MS. CATHERINE NADALS: And we do have

1 posted on the Tongue River EIS website. You
2 can actually go to that document, which is
3 quite detailed and provides a lot of background
4 of the Northern Cheyenne and resources of
5 concerns in this area.

14:43:30 6 MS. LANA GRAVATT: Will that be over
7 all the EIS, that document?

8 MS. CATHERINE NADALS: That
9 particular document? Since I'm not really
10 involved in actually the EIS itself, it might
11 be attached as an attachment, but I can't say
12 that for sure. I don't know. I can't answer
13 that.

14 Any other questions? Yes.

14:44:05 15 MS. LYNETTE TWO BULLS: Good
16 afternoon. My name is Lynette Two Bulls, and I
17 represent Yellow Bird, which is a grass roots
18 organization here on the Northern Cheyenne
19 Reservation, along with my husband, Phillip
20 Whiteman, Jr.. who was not able to be here.

21 I would like to first knowledge all
22 my relatives in the Lakota in South Dakota.

23 Just to give you a little background,
24 my grandparents (inaudible) and living here for
14:44:39 25 quite some time now.

1 And the comment that I would like to
2 make, the question, I guess, I have is, after
3 the EIS is done and the findings are done and
4 completed, if the findings say that this is
5 going to adversely affect the land, environment,
6 and quality of life for the people in this
7 area, then what? Do you have your mind
8 already made up (inaudible) to continue to
9 build the railroad?

10 MS. CATHERINE NADALS: Again, you
11 know, I'm not really in charge of the EIS
12 process, but I can tell you it's a process, and
13 it involves collecting information, comparing
14 the information with the alternatives, and then
15 determining which is the least environmentally
16 damaging.

17 MS. LYNETTE TWO BULLS: So what
18 you're saying, regardless, you'll continue to
19 build the railroad?

20 MS. CATHERINE NADALS: That's not my
21 decision. That's actually a decision that will
22 be made by the members of the Board of the
23 Surface Transportation Board. So it's not
24 anything that really (inaudible).

25 MS. LYNETTE TWO BULLS: I would like

1 to say for the record, we oppose the railroad
2 coming through our ancestral homelands, and we
3 feel that regardless of what that outcome is of
4 the EIS, that the plans are to continue with
5 the railroad on the least way that you're going
6 to impact it, which will, you know, have a
7 major impact, in our view. For the record, I
8 want to say that. Thank you.

9 MS. CATHERINE NADALS: Thank you.
10 Anybody else?

11 MS. DONNA WILBERT: Hello. My name
12 is Donna Wilbert. One of the things that I
13 just wanted to say, I've heard Conrad say 99.9
14 percent of the Cheyenne are no for this
15 project, and it goes back to what Lynette just
16 said, that's my concern, I mean, it's
17 self-explanatory, however you look at it. But,
18 yeah, I mean, it seems like you guys are doing
19 all these things, but regardless what we say,
20 you guys are going to go ahead and do it. So
21 why bring all this in when you can't even
22 answer the question of what's going to happen
23 next?

24 MS. CATHERINE NADALS: I can't answer
25 the question what's going to happen next

1 because it's a process. And we are just at the
2 early part of the process. We have to collect
3 the information and the data in order to make a
4 comparison. And then the Board, the Surface
14:47:39 5 Transportation Board, ultimately makes the
6 decision about whether or not it's approved or
7 not, or to license one particular alternative.

8 MS. LANA GRAVATT: But it's the
9 process that approves the project. You know,
14:47:52 10 it's the very process. You know, I'm sitting
11 here talking to you in consultation, and to say
12 it doesn't have any effect later on, it does.

13 MS. CATHERINE NADALS: I think the
14 main thing I want to say, absolutely we are
14:48:08 15 concerned about the EIS, and we are going to
16 absolutely incorporate into the information
17 what we are going to include in the
18 environmental statement. And we are not just
19 here to be here. We are here to actually
14:48:24 20 listen to you and to learn and to gain
21 information from you.

22 MS. WASTE'WIN YOUNG: Thank you for
23 welcoming us here, for inviting us here, you
24 Cheyenne people. (Inaudible) but at Standing
14:49:02 25 Rock, on my mom's side (inaudible). We have a

1 really special relationship with the Northern
2 Cheyenne, and last summer we were here for the
3 dedication of your (inaudible) and we presented
4 a tribal flag to your leadership here.

14:49:27 5 So we want to honor that relationship.
6 I want everybody here to know as the
7 preservation office for Standing Rock, we
8 support the Northern Cheyenne.

9 And it's not enough, the federal
14:49:45 10 agencies, when they come to us and they listen,
11 they are there to do their job, it's not
12 personal for them like it is for us, because it
13 is what we have left, it's part of who we are.
14 But we have to utilize the Two Bulls and the
15 laws that we have, and before you can really
14:50:06 16 think that NEPA could do that, because under
17 the National Environmental Policy Act they have
18 to look at the alternatives, they have to
19 consider the alternatives.

14:50:22 20 But what we are finding out is that
21 federal agencies aren't doing that. They have
22 one route, and if there's a railroad or
23 pipeline or road already there, they are not
24 going to go full blast and try to advocate on
14:50:38 25 our behalf, even though they have the trust

1 responsibility to do so. They are going to
2 look on what's feasible. Just like this
3 gentleman said, what's feasible, what saves
4 them money, what saves them time, what keeps
5 the time frame working.

6 As tribes we need our own lawyers, we
7 need our own specialists. I see Dave Coburn
8 here. He's at many of our meetings and he's a
9 lawyer on behalf of the applicant. We
10 (inaudible) Canada to North Dakota, (inaudible)
11 worked on that. So if these guys are coming to
12 help the agencies, they are bringing their
13 best, they know the law. They know why they
14 are coming. And when we come here, where are
15 our native lawyers, where are the NEPA experts,
16 where is the NEPA experts that say, you guys
17 are supposed to look at three viable
18 alternatives, but when they are repeatedly
19 telling us that we don't have access, we have
20 unfortunately time constraints, unfortunately
21 money, you know, they keep telling us that
22 these things.

23 So we need someone to look at the law
24 and say, how much money is that railroad going
25 to be worth, and you're telling us you don't

1 have the money, you're telling us you don't
2 have the time? How much is it worth? That's
3 what runs this country, it's the almighty
4 dollar.

14:52:01 5 And we need our experts here. We
6 need our tribal people who can advocate and
7 know the law like the back of their heads.
8 Because Section 106, which is very similarly
9 related to NEPA, but under 106 the tribes are
10 allowed our own experts, our own methodology,
14:52:18 11 how to conduct these surveys. We have our own
12 experts. We don't rely on non-native western
13 science or archeology for those surveys. We
14 all have our own traditional spiritual people.

14:52:35 15 And our young men from the colleges,
16 young men who are brothers and uncles also who
17 know the spiritual ways that were passed on to
18 them, they need to be out there. And we need
19 to find the sites, we need to protect them.

14:52:50 20 So that's what we do when we deal
21 with 106. We are not NEPA experts. We need
22 the NEPA experts here. And 106 will go to bat
23 for the tribe for our people, but, you know,
24 it's what we can do with 106.

14:53:08 25 A lot of agencies use that word

1 (inaudible), but we are not. We need to
2 develop (inaudible) surveys. We have the
3 methodologies. We have our data how it's
4 processed, how it's stored, confidentiality
14:53:29 5 agreements, programmatic agreements, these are
6 people that we know that we have to learn, but
7 use best what we can. So we back the Northern
8 Cheyenne and advocate for their survey.
9 (Inaudible) Thank you.

14:53:55 10 MR. CONRAD FISHER: I just want to
11 add that, you know, we had this meeting, I
12 think it's been a year and a half, over in
13 Rapid City, and we are the host tribe here, but
14 every tribal preservation office has an equal
14:54:14 15 opportunity and a responsibility, and I
16 appreciate Waste'Win's comments. And I think
17 that's the reason why we are the host tribe
18 here is that we are geographically the closest
19 tribe that's going to be affected by this
14:54:33 20 undertaking, the proposed undertaking, I should
21 say.

22 But equally important, I think, is
23 the fact that other tribes that are gathered
24 here also have a very high stake to what is
14:54:47 25 going on here because this is their ancestral

1 lands, and we want them to feel like they are
2 equal partners in this proposed undertaking.
3 And rightfully so, because we feel this is also
4 your home.

14:55:06 5 So I just wanted to emphasize that,
6 you know, it's a very important piece of
7 property, and some of it is on private and
8 other on public lands. But I think we all as
9 tribes have an interest in this property. So I
14:55:24 10 just wanted to share that with you. As
11 visiting tribes, feel free, we welcome you with
12 as much hospitality as we can. I think Russell
13 said it real well, he welcomes everybody with
14 an open heart handshake. He must have really
14:55:47 15 had to practice that, because I can't repeat
16 it, but he said it right, we want to make you
17 feel like you're at home away from home.

18 MS. CATHERINE NADALS: Getting back
19 to the schedule, I was just wondering on here,
14:56:16 20 we would have an opportunity to have a tribal
21 caucus. But I'm also concerned about talking
22 about the trip tomorrow and the logistics of
23 the tribe.

24 MR. RUSSELL EAGLE BEAR: I have some
14:56:31 25 questions. I'm glad there are some gentlemen

1 that are landowners. There were some
2 statistics on the PowerPoint in terms of them
3 contacting, I think there was a 30-some
4 percent, 50 percent not yet. You know, history
14:56:54 5 would tell us, even if you said no at some
6 point, they are going to come and take over
7 your land. They kind of leave you no choice.
8 And that's why one of my colleagues, Waste'win,
9 was stressing the importance of having our
10 attorneys present at these meetings. I travel
11 with mine sometimes, and I didn't bring him
12 this time because years back I hired Conrad was
13 my attorney, and I might fire him after this
14 week.

14:57:36 15 But, you know, you as landowners are
16 pretty much backed up against the wall in terms
17 of, you know, either you take this or we'll go
18 to the state, we'll have them condemn that land
19 and we'll take it away from you.

14:57:53 20 And that's the history. That's given
21 history of what railroad companies do, or
22 pipelines. You know, they are right in the
23 middle. Keystone XL is a good example.

14:58:15 24 But, you know, at some point I'd like
25 to know, or hear from landowners, and their

1 thoughts. I didn't go to the scoping meetings,
2 and I didn't hear the public comments. But
3 what is the general feeling? I mean, I know
4 you can't speak for everyone, but what is
14:58:36 5 the -- and I'm hearing that Northern Cheyenne
6 are 99.9, is it?

7 MR. CONRAD FISHER: .999.

8 MR. RUSSELL EAGLE BEAR: .999 opposed
9 to this. And I'd like to hear from landowners.
14:58:54 10 And, certainly, you know, we are still allies,
11 and we'll support you on whatever decision the
12 tribes here makes, and we stand with you, and
13 we're going to support you. But what is the
14 landowners, what's the feeling out there, I
14:59:12 15 guess?

16 I know these guys have a structured
17 meeting, it's all recorded, you know, but I'm
18 here to learn and listen, and I'd like to hear
19 more from you, if possible.

14:59:28 20 MR. CLINT McRAE: With permission, I
21 will answer that.

22 MR. RUSSELL EAGLE BEAR: You have my
23 permission.

24 MR. CLINT McRAE: Okay. Again, this
14:59:36 25 is a very good question. I appreciate the

1 opportunity to speak. I did not plan on
2 speaking here today.

3 MS. CATHERINE NADALS: Would you say
4 your name for the record?

14:59:46 5 MR. CLINT McRAE: My name is Clint
6 McRae. We ranch north of the Cheyenne Nation
7 on the Rosebud Creek.

8 A little bit of background. I'm a
9 relative newcomer. My family has only been
14:59:58 10 here 130 years. But the ground we live on is
11 not far from here. Of course, the ancestral
12 grounds that we all inhabit now, to me,
13 personally, is very important. I want to take
14 a step back and talk about why I'm going to do
15 this tour tomorrow.

15:00:12 16 You look around this room, you see
17 petroglyphs and sand rocks. The story on that,
18 that was on my land. It's the only petroglyphs
19 left (inaudible).

15:00:22 20 They were photographed, looked at,
21 and they were destroyed. And I have always had
22 a problem with that. Hopefully, on the tour
23 tomorrow I can show you some of these things
24 that we want to preserve where they are.

15:00:36 25 To answer your question, I am a

1 second generation landowner along the Rosebud
2 that's opposed to the Tongue River Railroad.
3 It was first permitted in 1986, and I think the
4 first time I remember hearing about it, it was
15:00:47 5 1968 or '9. So we have been fighting this
6 thing a long time. I want to make absolutely
7 clear, we are unequivocally opposed to the
8 construction of the Tongue River Railroad. We
9 do not want it.

15:01:00 10 The original 9 miles ran from
11 (inaudible) out of Ashland, went to Miles City.
12 The scoping hearings last November were about
13 that route. After the scoping hearings were
14 done then they changed the route to the
15:01:13 15 Colstrip Alternative and we did not get a
16 chance to comment at scoping. That's one of
17 the reasons why we are extremely frustrated.

18 I can say from the Colstrip
19 Alternative and the Montco Mine site to the
15:01:26 20 Town of Colstrip, there's roughly 40-some, 35
21 or 40 landowners along the route, and I do not
22 know of one that supports this railroad.

23 I think the percentages on there are
24 skewed. I think it's as good as they can come
15:01:41 25 up with. As an example, I am one who has not

1 allowed access yet. We have 9 miles of that 40
2 miles. That's a little bit skewed. But there's
3 nobody, none of my neighbors support this.

4 MR. RUSSELL EAGLE BEAR: Thank you.

15:02:00 5 MR. CLINT McRAE: And I hope to see
6 you tomorrow on the tour. I think we have some
7 interesting things to show you.

8 MS. CATHERINE NADALS: We can talk a
9 little bit about the logistics.

15:02:18 10 MR. CONRAD FISHER: Thank you, first
11 of all, Clint, for that.

12 Yesterday we had gone out and did a
13 prelim of the proposed route, sticking to the
14 public access roads and those roads that were
15 authorized by the landowners, and we started
16 over at Cow Creek. For those of you that don't
17 know the area, it's about three or four miles
18 south of Colstrip. It's a gravel road. And it
19 goes east to the Rosebud Creek. At that point
15:03:04 20 we were with Clint on his vehicle, and we made
21 some stops, and the gravel, or the road
22 conditions -- good thing he had a four-wheel
23 drive truck, so we were able to pass through
24 that first segment before we hit the Rosebud
15:03:28 25 Creek. But from there, for about another 10,

1 15 miles, it seems to have tapered off, and it
2 wasn't too bad of a road. But I think it
3 passed through, what, maybe 10 sections of your
4 property, if not more, and showed us some of
5 the sites that were present there and how it's
6 going to impact his operation, because it runs
7 real close and inside within his property in
8 several places.

9 And that was good to know. It was
10 very informative just about the impacts and
11 also the cultural resources that were in that
12 area based on what Clint was telling us.

13 And we went all the way to the Tongue
14 River into Amish territory, and we didn't go
15 all the way to Ashland, we turned around at
16 that point.

17 So I know there's been some
18 discussion and controversy as to exactly who
19 can be a participant in the private property
20 there, and I know that there's been some
21 objection by certain parties about being left
22 out. I know Clint made a statement about who
23 can and can't go on his property.

24 So at this point there's several, I
25 think, proposals that we feel might be able to

1 work. And one of them would be we could take
2 the route that we did the other day, yesterday,
3 and that would start at Cow Creek. But I know
4 that that was -- I'm not sure if a bus could go
5 through that with the amount of seeps that are
6 in there. And then we can go down the Tongue
7 River public county road.

8 The other would be to go on that
9 county road that we came out of and hit that
10 crossroad there before we start going up. Is
11 that Greenleaf? Yeah, Greenleaf. Down to the
12 Tongue River.

13 Or the other one would be to go to
14 Ashland and Otter Creek and start from there
15 and go northwest.

16 But I think one of the primary issues
17 is that the folks that -- it would be an
18 awkward situation for those that cannot go into
19 private property to have to go back around or
20 stay in that area.

21 So those are kind of the alternatives.
22 And I told Cathy that I would bring this to the
23 attention of the participating tribes for their
24 input. And I wish we had a map that could
25 show -- I know some of you probably haven't

1 actually been out there. I live here, and I
2 had to go out there to personally see exactly
3 where the route was and drove on that county
4 road.

15:06:59 5 MR. RICHARD STARZAK: There was two
6 detailed map books of all the alternatives in
7 the back. They are colored. They are large.
8 We could flip through that.

15:07:10 9 MR. CONRAD FISHER: And, Cathy, maybe
10 you might want to kind of talk a little bit
11 about who, according to Clint, who you think
12 should be on this property.

15:07:23 13 MS. CATHERINE NADALS: Yeah. I mean,
14 I can't speak for Clint. Did you want to just
15 make a statement just for the record about who
16 can participate on your property, the portion
17 of your property?

15:07:41 18 MR. CLINT McRAE: As I stated
19 earlier, we do have a landowner group, we do
20 have an attorney that was hired. We discussed
21 this as a group. It wasn't my decision. We
22 decided a couple weeks ago when there was a
23 tour of Otter Creek that the public was going
24 to go on a tour of that area and we were
15:07:54 25 denied. And I think that kind of set the stage

1 on what is to come. But I figured with the
2 amount of people here that traveled to see the
3 sites, that the tribal representatives in this
4 room are more than welcome, but it was the
15:08:07 5 feeling of the group that no one from the
6 Burlington Northern, no one from the Tongue
7 River Railroad, or any of their affiliates,
8 including attorneys, no one from Arch Coal
9 would be allowed on the private land at this
10 time.

11 And the reason being, this is
12 extremely critical, is the Tongue River
13 Railroad has not yet been permitted. They do
14 not have a permit. But I think before it even
15:08:19 15 gets to that stage, we need to look at these
16 sites. So anybody that's associated with the
17 Tongue River Railroad, Burlington Northern,
18 Arch Coal, this includes anybody of the
19 surveyors involved that we've been having
15:08:32 20 problems with trespassing on our place, on
21 neighbors up and down the river, they are not
22 welcome. But anybody that is at the meeting
23 here today representing the various tribes, we
24 welcome you with open arms.

15:09:00 25 MR. CONRAD FISHER: I think it would

1 take, if we started from at least the route
2 along the Rosebud Creek, it's about six or
3 seven, eight miles at the most to the Greenleaf
4 turn-off, and then from there it's probably
15:09:18 5 another 15 miles to the Tongue River, and then
6 from there to Ashland, probably another six or
7 seven miles. So that's kind of what we are up
8 against. If we go that way, somewhere in that
9 area, it becomes private, and as Clint
15:09:43 10 mentioned, the tribal folks that are here,
11 those tribal members that are in the audience,
12 that we can fit on there, would be welcome to
13 go there.

14 And so, I guess, again, tribal folks,
15:10:02 15 tribal reps, THPOs, this is something if you
16 want -- if you have any comments on this about
17 what Clint just mentioned, now is a good time.

18 I would personally, as a THPO, you
19 know, I'm not involved with whatever
15:10:28 20 limitations there are, I think my own interest
21 would be that the tribes look at what Clint is
22 saying and maybe stop by a few of the cultural
23 sites that he pointed out and take up his
24 invitation to go on his property and look at
15:10:53 25 some of those sites. That's my only interest.

1 As far as the legal aspects of it,
2 I'm not too concerned with that, because that's
3 really not my concern at this point. It's only
4 the cultural resources that I'm concerned about
5 in that corridor.

6 MS. CATHERINE NADALS: Because that's
7 private property, we don't have any say about
8 that. However, the railroad and the other
9 attorneys and so on who would like to
10 participate in the other part of the tour are
11 welcome, it's just what's on private property
12 (inaudible).

13 Did you want to talk about logistics?

14 MR. RICHARD STARZAK: Well, we've
15 hired a bus for tomorrow, it has 57 seats and a
16 PA, so anyone that wants to talk can talk. I
17 know Conrad will probably talk a lot, so we
18 have that set up.

19 MR. GILBERT BRADY: My name is
20 Gilbert Brady. I was a former THPO for the
21 Cheyenne Tribe, I was involved when this first
22 started, then we first started consulting on
23 the railroad and the Otter Creek Mine. The
24 question, we have a lot of cultural, as Conrad
25 says, we have cultural issues. But, you know,

1 and I think I speak, you know, we are against
2 this, the tribe was against the railroad when I
3 was a THPO, and they still are.

4 Now, I don't know how many years
5 back, but the Congress was debating a law
6 called eminent domain, and that kind of gives
7 the federal agencies the authority to destroy
8 our sites anyway. You know, we have no way of
9 stopping these undertakings from going through,
10 whether it's a railroad, whether it's a
11 pipeline, they use that law. And I've never
12 studied the law. If there's lawyers here, I
13 would like to hear from them, see what the
14 tribes can do to stop, or how they can stop a
15 project from going. You know, I know that you
16 are going to use eventually that eminent
17 domain, because you've done it before. It's
18 nothing we can do. We can define our sites, we
19 can tell you about them, but you're not going
20 to respect them anyway.

21 So I ask, how is eminent domain going
22 to play in this project that you're proposing?

23 MS. CATHERINE NADALS: Again, this is
24 not my area. Eminent domain is really not part
25 of Surface Transportation Board's process. We

1 license the project, and it would be the
2 railroad that would apply for eminent domain, I
3 believe, with the state. Am I wrong?

4 So it's not really -- it's not our
15:14:38 5 process. It's not part of the Surface
6 Transportation Board process. We are a
7 licensing agency. We license the construction
8 and operation of the railroad. As far as
9 eminent domain is concerned, that would happen
10 on the state level and the railroad would have
15:14:50 11 to apply for that.

12 Please correct me if I'm wrong.

13 Anyway, I hope we can get back to the
14 logistics. Rick?

15 MR. RICHARD STARZAK: Just in terms
16 of when the bus will be picking up. What we
17 plan to do is have the drivers start in
18 Sheridan where a number of you are staying at
19 the Hampton Inn, and leave there at 7:30. And
15:15:04 20 then we would drive probably up the Decker Road
21 to the 134 to the 212 and come to Lame Deer by
22 9 o'clock.

23 And those of you that are staying in
24 Colstrip, if you could come to Lame Deer and be
15:15:32 25 here by 9 o'clock, then the plan is to have

1 everybody board the bus here in Lame Deer. So
2 folks will come from Sheridan, the other folks
3 will come from Colstrip and be here at 9 for
4 the tour. The bus fits 57 people. It should
15:15:48 5 be adequate for those that want to go on the
6 trip.

7 MS. CATHERINE NADALS: Do we have
8 room for other members to join the tour after
9 we get through the Colstrip portion of it?

10 MR. RICHARD STARZAK: I mean, we have
11 to see how many come and how much room there is
12 on the bus. I understood BNSF might want to
13 have another vehicle when we get to the McRae's
14 property so they can go somewhere else. So
15:16:04 15 until we know how many want to come on the bus,
16 there's 57 seats.

17 MS. CATHERINE NADALS: Yeah, we
18 probably need to have maybe -- have you all
19 just start sending a piece of paper around and
20 have you let us know if you are planning to
15:16:21 21 participate. Then we'll have a complete list.

22 MR. RICHARD STARZAK: Who is
23 currently planning to come on the bus tour
24 tomorrow?

15:17:18 25 MR. EMERSON BULL CHIEF: I might

1 bring our cultural director tomorrow.

2 MS. CATHERINE NADALS: It looks as
3 though we have plenty of room.

4 MR. RICHARD STARZAK: I spoke a lot,
5 and I guess I feel like I ran off the mouth a
6 little too much there. I wanted to ask a
7 question. How do we kind of combine forces and
8 cooperate so that when we have land access we
9 can have your cultural resources tech people
10 come out, if necessary, on particular places,
11 elders come out, and THPOs come out? If you
12 can think about logistics, how do we make this
13 happen? So many of you are far away. That's
14 what I'd like to kind of get your input on,
15 because we want to assist, we want to
16 cooperate. We don't want to do what's happened
17 before where we run ahead and make findings and
18 ask people to comment. We want to work
19 together. And we know you have a lot of
20 trained staffs. You mentioned Dull Knife
21 College. This would be very good training. So
22 please think about that, and maybe during the
23 tour or after you caucus, let me know so we can
24 start to think about logistics, how do we get
25 out on the land safely and get the work done.

15:17:29

15:17:46

15:18:06

15:18:23

15:18:38

1 All right.

2 MR. JAY RED WOMAN: Jay Red Woman.
3 The gentleman that owns BNSF, Warren Buffett, I
4 think he owns the color blue, the color, and he
15:19:10 5 probably was able to pick up (inaudible). But
6 anyway, this gentleman, Warren Buffett, and all
7 his shareholders, they all gather once a year,
8 and a tribe, a couple of tribes, actually, in
9 Oregon and California border, the river goes
10 through there, they have their salmon run. And
15:19:30 11 one year, about five years ago, approximately,
12 the salmon came down dead. They were dead.
13 And all the tribes that depended upon this,
14 that was their main economy. That was how they
15 sustained their lives. Those are livelihoods.
15:19:54 16 But they didn't know who to talk to. Because
17 the blue green algae killed the salmon that
18 were going down the river was caused from
19 hydroelectric carbons. There were two of them
20 that probably provide electricity for 7,
15:20:15 21 800,000, but none of the electricity was given
22 to communities on the river.

23 Well, a gentleman carved out a canoe,
24 went to the shareholders meeting, but now he's
15:20:36 25 dismantling both hydroelectric plants by the

1 year 2525, I think. So can we invite Warren to
2 our meeting?

3 MS. CATHERINE NADALS: I think he
4 probably has other things to do. Thank you for
5 the comment.

6 Russell, do you have something?

7 MR. RUSSELL EAGLE BEAR: I have a lot
8 to say. First of all, this is a Section 106
9 Tongue River Railroad construction. But
10 (inaudible) determination of what route we are
11 going to take. You haven't even secured a
12 right-of-way for what alternative route you're
13 going to take. It's like putting the cart
14 before the horse, I guess.

15 But just going back to your comment
16 about -- and I'm really -- the first time I've
17 been in this situation where landowners are
18 agreeable for us to come in and look at the
19 land, or at least do a walk over, but one of
20 the things, when we are actually talking about
21 TPC studies, and we've always said, you know,
22 the company would hire the archeologists, some
23 firm that come in once they secure the land,
24 they are going to do the right-of-way. And
25 then after the fact they bring the tribes in to

1 do a TCP study, we do that and a hundred
2 percent of the time we are finding more than
3 archeologists.

4 But at the same token, these
15:22:48 5 archeologists, what they find, they make a
6 report and they file it. And that's exactly
7 what these companies want is that report. Over
8 the years they've kind of suppressed any TCPs
9 they find. I mean, this is the first -- maybe
10 it's the first step in actually going out there
15:23:10 11 and doing a TCP study. I'd like to sit back
12 and then let's turn the professional
13 archeologists out there and see what they find
14 and compare and you can tell what we are
15:23:24 15 talking about. I mean, that's a process.

16 Now, if you want -- I still have
17 issue with this being a Section 106 meeting,
18 because we are not even to that level yet. But
19 it's a start. If we want to have some
15:23:47 20 discussion on how we want to get this started,
21 or how do we approach this, then allow the
22 tribe to go out there and do the TCP study, and
23 we can show you what we've been talking about.
24 You, the companies, the public, we can show
15:24:12 25 you.

1 Is that the direction that this is
2 going? I'm sure you'll probably hear a lot of
3 opposition when we are in this meeting, but I'm
4 getting real curious here now.

15:24:29 5 MR. RICHARD STARZAK: I don't want to
6 interrupt, but as I said before, we would rely
7 on the tribes to do the TCP -- we would rely on
8 the tribes to do the TCP surveys. We have no
9 pretension that we can do that. We want to
15:24:42 10 work together on this. We are an independent
11 third-party contractor, and we want to get the
12 work done well. We need your assistance in all
13 of this.

14 MR. RUSSELL EAGLE BEAR: And I'm glad
15:24:57 15 you're saying that. I hope one day I can trust
16 you. But, you know, we've had -- we've worked
17 with third parties. Many of them, I can start
18 throwing names out. I'm not going to do that
19 here today. And they kind of went off in a
15:25:17 20 different direction each time. So, I guess,
21 you know, time will tell.

22 MR. RICHARD STARZAK: That's all I
23 can ask is if we can get started and let us go
24 on with you and see what you have. We do have
15:25:33 25 a wonderful opportunity with 33 percent

1 property access already. So it gives an
2 opportunity to look at all the issues, whether
3 or not (inaudible) and get some information, in
4 many cases land that you haven't had access to
15:25:51 5 for over a hundred years. Let's see how we can
6 work it out. I need to learn from you. I
7 don't want to misstep where we are in a
8 situation where we can't cooperate. I want to
9 work with you, I want to learn from you, and
10 plan this out.

11 MR. CONRAD FISHER: I think -- I know
12 there's several alternatives, and this is the
13 preferred alternative by those that are
14 proposing this. But I think it would give the
15:26:11 15 tribes an opportunity, should you choose, now
16 that's on a schedule, but we can change that.
17 I shouldn't say that. But, you know, this is a
18 106 meeting of THPO. So I'm looking forward to
19 you folks to see what we want to do. But I
15:27:05 20 think the bottom line is that if it gives the
21 tribes an opportunity to view the cultural
22 landscape, and it would also provide a window
23 of opportunity to be able to access private
24 property in which the landowner has given
15:27:29 25 permission to the tribe to be able to access

1 that property and kind of give you a taste of
2 some of the cultural resources that are there.

3 Now, I know the weather hasn't been
4 very cooperative. It might be a little muddy
15:27:48 5 out there, but at least, should you choose to
6 do that, we could stay on the road and look
7 from the vehicle at some of the sites that are
8 in view. I know that Clint has told us a
9 number of places where there's rock art, burial
15:28:19 10 sites, and they look like a short distance
11 away, but if it's muddy, it might take a little
12 bit of work to get out there. Again, the
13 weather is unpredictable. We don't know if
14 it's going to be windy or snowing or both or
15:28:39 15 sunny. But I think at the minimum, if we
16 traveled a preferred route out there, and I
17 know Clint wanted to start from Cow Creek, I'm
18 just a little concerned about the road
19 conditions.

15:28:58 20 What Cow Creek provides, by the way,
21 is the idea of where the alignment would hook
22 up to an existing line. But, certainly, we can
23 view that on a map. But I think if we just
24 travel that route tomorrow, you would see the
15:29:16 25 cultural landscape and actually see where some

1 of the pins that will indicate where the rail
2 line is situated and where the preferred
3 alternative would go. You can't see the whole
4 rail line, but certainly there's many instances
15:29:37 5 where it's real visible adjacent to the county
6 road, rather than look at something on
7 PowerPoint and not see it the way we should be
8 seeing it.

9 I think, again, you know, with the
10 landowner like Clint giving you a go ahead to
11 look into his own personal world and worldview
12 of the cultural sites of things, I think that's
13 good.

14 MR. RUFUS SPEAR: My name is Rufus
15 Spear, I'm a former cultural commissioner for
16 the Cheyenne Tribe. I was slightly aware of
17 this issue when I was on the cultural
18 commission, but given that most people are
19 against this, I just always go back in my mind
15:30:27 20 thinking about different issues, different
21 precedents that have been set, and this is
22 something to think about while you're out
23 touring with the landowners. This is just an
24 example that I was thinking of.

15:30:59 25 The Northern Cheyenne Tribe, the

1 tribe worked really hard to protect
2 (inaudible), and with their land standing
3 relation with the (inaudible) family, through
4 that negotiated a land purchase in which they
5 made that land purchase, the land that was
6 purchased, they put it into trust. This is
7 something that we might consider working with
8 the landowners to actually purchase land,
9 putting it into trust, that would help block
10 the railroad. And if you did it collectively,
11 you would have greater chance than one tribe.

12 That's just my suggestion to you to
13 think about it, talk about it amongst
14 yourselves and talk with landowners. If you
15 really believe that something needs to be
16 stopped, sometimes you have to look outside --
17 at something outside the box.

18 But those cooperations, they do work.
19 The Northern Cheyenne Tribe is the largest
20 landowner around the base, but that was the
21 main priority, and they took it upon themselves
22 to initiate working with the local landowners
23 there, and they were able to accomplish
24 something, and they are still working on it.

25 And so I just wanted to put that out

1 there for you to consider. Thank you.

2 MS. LANA GRAVATT: I think every
3 avenue should be looked at in depth. That's a
4 good idea.

15:32:37 5 Also, I think the tribe and the
6 landowners could argue there are public health
7 concerns with this project. I mean, health
8 laws. (Inaudible) focus on that, and I'm
9 trying to realize, you know, why do you have a
10 tribe and all its people telling you that the
11 tribe can't move, it isn't wanted. And does
12 that, you know, and the landowners, where are
13 the rights of the people here? It's coming
14 down to one person, the government, saying,
15:33:07 15 well, we've considered it, but we are going to
16 go ahead and do this.

17 And this is every project. Like, you
18 know, the Dewey-Burdock, you know, (inaudible)
19 we can't do something -- these are land held
15:33:52 20 (inaudible) if anything happens we are just
21 screwed being there, dying, dying from the
22 poisoned water and air.

23 You know, the Keystone, it just comes
24 down to simply, what's more important, the
15:34:08 25 environment or some company making money off of

1 extracting the resources out of the earth?
2 You know, I think as a tribe, we brought to the
3 table to listen to the determination of the
4 effect on our water, when we don't even have
5 water rights, you know. We are not considered
6 in the authorized purposes with everybody else
7 along the river. They are so concerned with
8 fish. Hell, we're the endangered species. We
9 are losing our language. It's attempted
10 genocide on us. And now to consider our
11 position, that's not enough, that we live here,
12 you know, and the Tongue Rivers are there. Is
13 there a lot of water around here? I would
14 argue that the Tongue River, as a source, it
15 shouldn't be jeopardized.

16 MR. RUFUS SPEAR: Just to kind of add
17 on to that. I don't know if anybody here is
18 from natural resources, but probably there's a
19 certain percentage of the Tongue River
20 Railroad, several years ago they got treatment
21 in the state where the water (inaudible) and I
22 would suggest going into their office to talk
23 to them about that particular issue and helping
24 develop that argument further.

25 MS. CATHERINE NADALS: What was your

1 name again?

2 MR. RUFUS SPEAR: Rufus Spear.

3 MS. CATHERINE NADALS: Our
4 environmental team is doing analysis, they are
5 meeting with the Northern Cheyenne
6 representatives that are experts on the water
7 issues to get their concerns addressed.

8 Let's take a break. Everybody agree
9 with that?

10 All right. Thanks.

11 (Recess.)

12 MR. CONRAD FISHER: We'd like to see
13 if we can finish up on your session regarding
14 tomorrow's tour. One of the things that might
15 be possible, at least for the folks
16 (inaudible), I guess, is a term that I can use,
17 being private property, and I know they want to
18 participate in the overall tour, but as we
19 heard this afternoon, there's concern by the
20 landowner about access to those interested
21 parties that are apparently in conflict at the
22 moment, and I'm not sure if they are in
23 litigation or anything, but nevertheless,
24 that's not a real concern to me personally.
25 And the people for the Northern Cheyenne, I

1 think, again, we like to emphasize that we are
2 most interested in the protection of the
3 cultural resources. But, certainly, we want to
4 have all parties contribute in some shape,
5 form, or manner into this tour, and I
6 understand some of the folks, representatives
7 from the rail line, would like to participate
8 in tomorrow's tour. And one of the
9 alternatives that came to my attention, we
10 could take a tour along the Rosebud Creek
11 downstream, and then up east to Greenleaf down
12 towards the Tongue River, that once we get back
13 on the public access and public lands, that
14 they would request that they join the tour
15 group and be on the bus so that they can
16 participate in the tour to the Otter Creek spur
17 line as a terminus. And that would be
18 something, I think, if there's not legal
19 implications, I don't see a problem with that.

20 But this is a meeting of all peoples,
21 not just Northern Cheyenne, but certainly with
22 other tribes. And I'd like to see if that's
23 something that we can come to some resolution
24 on before we close shop here tonight.

25 MS. CATHERINE NADALS: Speaking on

1 behalf of the Surface Transportation Board, I
2 think it's important that we do allow these
3 participants to participate in the tour because
4 this is a consulting meeting and they are
5 consulting parties. I think it's critical to
6 have them go along. We can't grant access to
7 private property, but I think it's important,
8 if they desire, that they come with us.

9 MS. LANA GRAVATT: You know, I
10 think -- I trust Conrad on that point. I don't
11 have any issues with that.

12 MS. CATHERINE NADALS: Okay. Great.
13 All right. I just wonder if there's anything
14 else that anybody would like to discuss or we
15 should plan on meeting tomorrow. What's the
16 plan for meeting again?

17 MR. RICHARD STARZAK: So the bus will
18 begin at Sheridan at 7:30 and then it will go
19 up to Lame Deer. So those of you who are
20 staying in Colstrip should come to Lame Deer by
21 9 a.m., and then we will pick up at 9 a.m. and
22 start the tour. An hour and a half should be
23 enough, I think. But we drove up from Sheridan
24 in about hour and 20 minutes.

25 MS. CATHERINE NADALS: What about

1 logistics like food and water? Do people --
2 how long are we going to be on tour?

3 MR. CONRAD FISHER: We plan on having
4 sack lunches tomorrow, and probably a cooler
16:16:53 5 with water and that sort of thing. But then we
6 had planned on killing a buffalo, and that
7 didn't...it was just a weather statement. You
8 know, if you hunt the buffalo long enough, they
9 get smarter every day where they can't be
10 found. They disappear.

11 MS. CATHERINE NADALS: Does that mean
12 everyone should bring their own food?

13 MR. CONRAD FISHER: No, no, I think
14 we are going to have sack lunches tomorrow.
16:17:30 15 And the bus, I understand, has a bathroom in
16 there. So Russell and I will sit right next to
17 the bathroom there. We are coffee drinkers.

18 MS. CATHERINE NADALS: We were also
19 told we have to stay along the road and just
16:17:49 20 not -- aside from the McRae property, other
21 places that we need to, or landowners that we
22 haven't talked about, if we get off and get on
23 to their property, they might object to that.

24 MS. LANA GRAVATT: Shoot at us?

16:18:10 25 MS. CATHERINE NADALS: You never

1 know. I think we want to make sure everybody
2 is safe.

3 MS. LANA GRAVATT: It happens.

4 MR. CONRAD FISHER: No, I think the
16:18:17 5 property owners are very willing. I think they
6 are welcoming the tribe coming into their
7 property to identify sites in this case. I
8 think it's important that we look at this open
9 invitation. And I don't think that we need to
16:18:40 10 really all get off any of those sites, just
11 because -- just the weather conditions. But I
12 think if you can look at some of the sites from
13 a distance and have somebody sort of interpret
14 what it is, based on their observation and
16:19:00 15 their family stories about that, and, remember,
16 this is off the reservation, so these families
17 have -- actually, you know, the farmers and
18 ranchers have pretty good stories about what
19 they've been told and their association with
16:19:18 20 Native Americans in those regions. I learned a
21 few things yesterday about some of the cultural
22 sites that are in that area. So that's kind of
23 what I'm thinking is that if we could just --
24 and, again, the reason why I had mentioned a
16:19:36 25 number of miles there, it's probably going to

1 take maybe, you know, two or three hours to get
2 from here to Otter Creek and back home. Well,
3 down to Otter Creek and then back home. I
4 would probably think no more than four or five
5 hours you should be back in Lane Deer if we
6 leave around 9 o'clock. So early afternoon is
7 probably the time. I don't really anticipate
8 getting off and going to cultural sites. I
9 think it's more or less to acquaint ourselves
10 with certain locations. And also to see the
11 actual proposed rail line and where it's going
12 to go as it relates to private property, the
13 county road, and to the reservation, and to the
14 Tongue River.

15 MS. LANA GRAVATT: Yeah, that's what
16 I was going to say, that's what I would like to
17 see.

18 MR. CONRAD FISHER: Yeah. I think
19 it's important. We've got one of our tribal
20 members from Ashland --

21 UNIDENTIFIED SPEAKER: Are you going
22 to go to the bridge down there?

23 MR. CONRAD FISHER: Give that man a
24 mic. Make sure he only talks for 30 seconds.
25 Because I know once he gets hold of the mic --

1 UNIDENTIFIED SPEAKER: Are you going
2 to go down to the creek? He's probably
3 talking down Rosebud Creek and across
4 Greenleaf. A lot of land up over there.

16:21:38 5 MR. CONRAD FISHER: Yeah. It's
6 really interesting because that's one of the --
7 if we look at the battle of the Little Bighorn,
8 that was the route that was an Indian trail
9 that they took quite regularly coming up the
10 Rosebud Creek, and, of course, that was the
16:22:01 11 path that was chosen by the tribe when they
12 came up that way in 1876. And, also, of
13 course, as we call him, Long Hair, come up that
14 way. The rest is history.

16:22:22 15 But, certainly, that would be -- it's
16 not a historic trail at this point, but that's
17 something that could be considered a real
18 important historic trail. And also there was
19 some other battles, skirmishes, with the U.S.
16:22:39 20 soldiers in that area. So it's a pretty
21 interesting location.

22 MS. LANA GRAVATT: Can I wear the
23 T-shirt?

24 MR. CONRAD FISHER: You can.

16:23:08 25 MS. CATHERINE NADALS: David.

1 MR. DAVID COBURN: David Coburn for
2 the Tongue River Railroad.

3 I want to say in terms of the tour
4 tomorrow, myself, and my more knowledgeable
16:23:20 5 colleagues who are on the bus tomorrow, will be
6 happy to answer questions about why the route
7 was chosen by the engineers, the railroad
8 engineers, to choose the most logical route;
9 why it was chosen to run where you see it on
10 the map, versus where you see it in real life
16:23:39 11 tomorrow, versus someplace else. So we'll be
12 happy to answer those questions. Because
13 sometimes the answers aren't obvious, but there
14 are good answers as to why you put the railroad
16:23:55 15 in one place versus another.

16 MS. LANA GRAVATT: Isn't there
17 already a railroad there?

18 MR. DAVID COBURN: No. No. If there
19 was already a railroad, we wouldn't be here.

16:24:16 20 Well, let me give you a better answer
21 than that. There is a railroad that comes
22 down -- the BNSF main line out of Forsyth, and
23 that runs through Miles City, east-west through
24 Miles City. And then there's an existing line
16:24:36 25 called the Colstrip line, Colstrip subdivision,

1 comes down as far as a little south of
2 Colstrip. And what we are talking about is
3 building a rail line from Otter Creek to meet
4 up with that existing Colstrip line. So, yes,
16:24:51 5 there is a railroad, but it only goes as far as
6 Colstrip.

7 MR. CONRAD FISHER: And that rail
8 line that runs past Colstrip in a north-south
9 direction went over to, what was it, Peabody,
16:25:09 10 Peabody Coal at one time, and now it is
11 defunct, and they took that railroad out. But
12 the line is where it would connect to part of
13 that existing line.

14 MR. DAVID COBURN: Line with the
16:25:24 15 Tongue River Railroad as part of the existing
16 line. It's a track that is still in use. It's
17 lightly used. It's not a heavily used line.

18 MR. CONRAD FISHER: Yeah, but it
19 doesn't go across the Highway 39. They've
16:25:38 20 taken that out.

21 MR. DAVID COBURN: Correct.

22 MS. LANA GRAVATT: Is it crossing a
23 river?

24 MR. CONRAD FISHER: The proposed
16:25:49 25 would cross a river.

1 MS. LANA GRAVATT: Are they going to
2 build a line over the river?

3 MS. CATHERINE NADALS: Do you want to
4 ask the engineers that?

16:26:01 5 UNIDENTIFIED SPEAKER: It does. It
6 crosses the river, the Colstrip Alternative,
7 anyway, right by Greenleaf Road and Tongue
8 River Road, we are going to go right by it
9 tomorrow. You'll see it.

16:26:25 10 MR. CONRAD FISHER: It's probably
11 about a mile and a half maybe from the
12 northeast border of the reservation.

13 MS. CATHERINE NADALS: That's why we
14 will have the engineers on the bus so we can
16:26:45 15 explain.

16 UNIDENTIFIED SPEAKER: If you guys
17 are going to go up north to the Rosebud and
18 down Greenleaf Road, you're going to hit the
19 Tongue River Road. Maybe that intersection of
16:26:54 20 Greenleaf Road and Tongue River Road.

21 MR. CONRAD FISHER: Yeah.

22 UNIDENTIFIED SPEAKER: Go ahead.

23 MS. CATHERINE NADALS: Great. All
24 right. I think we should -- unless anyone has
16:27:11 25 anything else to say, I just want to call it a

1 day. I want to thank everyone who have
2 participated so far in this crazy weather. I
3 think tomorrow will be very interesting.

4 Thanks, again, Conrad, for wonderful
5 hospitality and providing us with this
6 incredible space. I know you are probably very
7 tired.

8 MR. CONRAD FISHER: I think Ben
9 wanted to say something.

10 MR. BEN RHODD: You know, as we are
11 winding this down and getting ready to head
12 back to our motels and whatever, you know, one
13 of the things that was brought up earlier today
14 was about our common interest, our common goals
15 as tribes here on the Northern Plains,
16 associated by culture, custom, and, finally,
17 what we came to treaty. So there's a legality
18 here, too, and I know some tribes have opposed
19 any development in the 1851 area, Treaty of
20 Fort Laramie. But one thing is much more than
21 that, that commonly bonds us and binds us, and
22 it does also for the non-native in this room.
23 And I wish this man was still here to hear
24 this, the Corps of Engineer man. And that's
25 water.

1 Water. What happens up here happens
2 to us over there. That's the reason we are at
3 the core, the depth of our concern. Good water
4 is getting hard to find. Difficult. And more
5 so every day. Development is development; yes,
6 it's progress; yes, it's economic growth; yes,
7 it's jobs, but at what price are we willing to
8 pay. Our generations unborn may not have a
9 good drink of water in their lifetime. It may
10 have to go through multiple, multiple
11 distillations simply so it can be drunk. I
12 don't know.

13 I'm just saying for the benefit of
14 our relatives here, perhaps don't understand
15 some of our concerns from over further east,
16 but it's about that water in the end. Yes,
17 we'll take care of the cultural resources as
18 well as we can with what we have as our Two
19 Bulls and the law. But one man, the brother
20 asked this morning, what was that man's name,
21 named Gilbert. (Inaudible). He said something
22 one time at a meeting. He said, you know, when
23 they may take that coal out, what they're
24 doing, it's going to make the water bad. That
25 coal is the filter for those aquifers. Now, he

1 was looking from a traditional point of view
2 and understanding but looking ahead. I'm not
3 throwing this in as a kink into the works or
4 nothing. I'm just sharing that on that level
5 that we have an interest, it goes hundreds of
6 miles away, because we are looking ahead. We
7 are thinking about our children and their
8 children and their children. But it's
9 something that we all have to remember, even as
10 we sit and we talk, negotiate, compromise,
11 perhaps, on occasion.

12 So I just wanted to bring that out,
13 because, like I say, it's getting harder to
14 find, and we are going to suffer if we are not
15 wise. And I know Lana, a lot of her work with
16 the Corps down on the river and the council and
17 dealing with the Corps of Engineers. We want
18 to make sure at least we stand up and say
19 something, not be crying in the future whenever
20 it's all done and our children want a good
21 drink of water and we can't get it for them.
22 So think ahead. That's what your elders are
23 doing here are standing up.

24 So remember that. I just wanted to
25 share it again for the benefit of those who,

1 perhaps, have not heard. Thank you.

2 MS. CATHERINE NADALS: So I think if
3 you have any questions about logistics, please
4 speak to Rick, because he's going to be the one
5 that's organizing the meeting. So if you have
6 concerns, please speak with him. Thanks again.
7 We'll see you in the morning.

8 (Adjourned for the day.)

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