

SURFACE TRANSPORTATION BOARD

TRIBAL CONSULTATION SUMMIT

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Transcript of Proceedings
January 16, 2008
at 9:30 a.m.

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PRESENT:

Cathy Glidden, Surface Transportation Board
Randy Withrow, Louis Berger Group
Dave Bibler, Louis Berger Group
Herb Jones, DM&E Railroad
Ian Ritchie, Forest Service
Jim Whitted, Sisseton-Wahpeton Oyate
Alan Stanfill, HDR Engineering
Doug Jackson, HDR Engineering
Melissa Lundberg, HDR Engineering
Curley Youpee, Ft. Peck Assiniboine & Sioux
Elgin Crows Breast, 3 Affiliated Tribes
JoAnn White, Northern Arapaho
Pamela Halverson, Lower Sioux Community
Robert Campbell, Santee Sioux
Erin Salisbury, SWCA
Gary Smith, BLM
Waste'win Young, Standing Rock
Paige Olson, South Dakota State Historic Preservation Office
Charlie Spotted Tail, Rosebud Sioux Tribe
James Kangas, Bureau of Reclamation
Cindy Larom, Bureau of Reclamation
Gary Robinette, Ponca Tribe of Nebraska
Debbie Robinette, Ponca Tribe of Nebraska
Joyce Whiting, Oglala Sioux
Faith Spotted Eagle, Yankton
Sam Allen, Flandreau Santee Sioux
Conrad Fisher, Northern Cheyenne
Dianne Desrosiers, Sisseton-Wahpeton Oyate

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PRESENT (Continued):

William Ambrose Little Ghost, Spirit Lake
Eileen Little Ghost, Spirit Lake
Mike Madson, HDR
Tony Provost, Omaha Tribe
Amen Sheridan, Omaha Tribe
Alice Tratebas, BLM
Scott Jones, Lower Brule
Randy Henke, DM&E
Russell Eagle Bear, Rosebud
Ben Rhodd, Rosebud Sioux
Steve Defender, SRST
Tim Mentz, Sr., SRST
Chase Iron Eyes, Standing Rock
Ron His Horse Is Thunder, SRST
Mario Gonzalez, Rapid City

1 The following proceedings were taken at the
2 Holiday Inn, Board Room, Rapid City, South Dakota, on the
3 16th day of January 2008, commencing at 9:30 a.m.; before
4 Cheri McComsey Wittler, a Registered Professional Reporter,
5 Certified Realtime Reporter, and Notary Public within and for
6 the State of South Dakota.

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1 MS. GLIDDEN: Good morning, everybody. I understand
2 that we're going to start with a prayer this morning again.
3 Ambrose Little Horse (sic).

4 (Mr. Little Ghost says prayer)

5 MS. GLIDDEN: I understand everybody worked really
6 hard last night on the issues that were raised yesterday during
7 the first day. And I really want to thank you for coming up
8 with some point of concern. And I think it's obviously going to
9 take the bulk of the day to go over some of these things.

10 But I was wondering how you all felt about first
11 starting out with a presentation of the website that DM&E -- HDR
12 actually, right, has designed for our use of this project so
13 that we can access information on-line like a lot of the
14 reports, Programmatic Agreement, things like that, of that
15 nature?

16 Is everybody okay with that, if we start out with
17 that?

18 Okay. Troy.

19 MR. MENTZ: Cathy, I have a question then. How long
20 will that take as far as the presentation and whatnot? Because
21 we do have a lot of issues. Some of us may be leaving early.

22 MS. GLIDDEN: Troy, do you have any idea how long it's
23 going to take?

24 MR. KOGEL: My presentation is just eight slides,
25 about 10 minutes of presentation and maybe about another

1 10 minutes for questions if anybody has some.

2 MS. GLIDDEN: I've looked at this website, and it's
3 really impressive because you go in -- I shouldn't probably be
4 talking about it, but you go in with a password, and you can
5 access all of this information on-line. And rather than having
6 to, you know, worry about getting it by mail, it's right there.

7 MR. HERB JONES: Cathy, if I could, so everybody
8 knows, at a couple of meetings we had last year we had folks
9 asking if there might be a more efficient way to get information
10 than having everything mailed. And that's the reason for
11 putting together this website, so that there is a place where
12 you can easily retrieve information.

13 And you'll get the explanation on it all. But this is
14 a product of folks asking for this so that there would be a
15 efficient way for you to see it and to get the information
16 electronically rather than getting everything in huge volumes
17 through the mail. But that's a little background of what you're
18 going to see.

19 MR. EAGLE BEAR: This is Russell. We had some
20 discussions last night, and we never quite finished our
21 discussion. And I think we basically keyed in on the work plan.
22 As you said, it might take us the rest of the day to discuss
23 this. Or, you know, I don't know what your plan is, if you want
24 to have the discussion with us or I know the railroad people
25 probably need to go back and talk to their bosses about our

1 proposal. I don't know, you know.

2 So but as Tim said, some of the people are leaving
3 today, and we want to try to get as much done as we can. Or
4 maybe down the road have another meeting. But we do need to
5 have some -- a time to, if needed, to have some more discussion
6 on ourselves. Because some of the people had to leave last
7 night and got out toward the end of the meeting. So we want to
8 make sure that everybody is, you know, on the same page.

9 MS. GLIDDEN: Well, yeah. I mean, we could postpone
10 this presentation if you think -- if we should move right on.

11 MR. MENTZ: No. If it's 10 minutes -- I guess I
12 raised the question, but if it's only 10 minutes, if everyone
13 agrees, that's fine. Just so we don't take a half-hour or
14 45 minutes.

15 MS. GLIDDEN: Okay.

16 MR. SCOTT JONES: My name is Scott Jones. I'd like to
17 say a few things. I really appreciate Ambrose's prayer. I am
18 thankful that you're asking us to remember our relatives that
19 have gone on. I know that a lot of us are in mourning for our
20 relatives. And I too am at that period with my mother passing
21 some months ago.

22 And I wanted to just acknowledge Cathy Glidden who a
23 couple of days ago lost her aunt. Her auntie passed away. And
24 I just wanted to give you my condolences on behalf of the people
25 I represent, Cathy. Because we have a lot of things that -- how

1 we treat people. I didn't know this yesterday.

2 And I just wanted you to know that I probably would
3 have still said what I said, but I may have said it a little bit
4 differently. You're going through a hard time right now, and I
5 wanted to acknowledge that and just express, you know, that I
6 know what you're going through and so does all the tribal
7 representatives here because we're constantly dealing with a lot
8 of tragic things in Indian Country.

9 And I just wanted you to know that there's no
10 disrespect intended, that when we say what we have to say and
11 how we say it is no reflection of my or probably anyone else's
12 personal feelings toward you or lack of respect for the hard
13 time you're going to be going through in the next several
14 months.

15 MS. GLIDDEN: Thank you.

16 MR. KOGEL: Okay. Over the last several weeks we've
17 been putting together a website for the expansion project. And
18 here's the website. It's www.stbpal06.org.

19 And when you enter that web address into like Internet
20 Explorer and other web browsers it will take you to this page.
21 And it will look like this. It will have a log-in page that
22 will request you to enter user name and password.

23 And if you choose, you can click the Remember Me Next
24 Time box, and that will save your password so you don't have to
25 enter it in the next time you visit the page.

1 So after you've successfully logged on to the website,
2 it will bring you to this page, which is a project overview.
3 And it will just bring up some general information about the
4 project history. And then from this page you can click on any
5 one of these items here, and it will take you to the following
6 pages.

7 Up here in the corner if you've successfully logged
8 on, your user name will appear in that upper corner.

9 And if you were to click on the technical reports, it
10 would bring you to a list of archaeological reports. And
11 they're arranged by the title of the report. And then you click
12 on the title here, and then it will open up subsequent folders.
13 And it will allow you to click on the volume of the report or
14 the set of maps that are associated with that report.

15 And then you'll have a choice of either just opening
16 the report and viewing it, or you can download it and save it to
17 your computer to review later.

18 I believe in the last 24 to 36 hours this will now say
19 archaeological reports. There will be also another item to
20 click on that says architectural reports. So they're now broke
21 down according to archeology or architecture.

22 And then eventually they will --

23 MR. MENTZ: Just a question. Maybe it's not a
24 question. But this is secured; right? Once you get into it, I
25 mean, so everybody's going to be assigned by tribe a user name,

1 or how does that happen?

2 MR. KOGEL: There's the user name and password that
3 will be assigned to all the THPOs or cultural resource
4 specialists.

5 MR. MENTZ: Okay. Who else?

6 MR. KOGEL: There's another slide coming up that
7 reviews some of the security.

8 MR. MENTZ: Okay.

9 MR. KOGEL: Here if you click on the org. chart, this
10 will take you to this particular chart. And you can click on
11 any one of the boxes. For example, the THPO box is highlighted,
12 and it brings up a list of all the names of the people that are
13 from the various THPO offices.

14 If you were to click on the federal agencies, for
15 example, Ian's name would come up. I believe Alice's name is
16 there. Mr. Kangas.

17 I don't have a slide for it, but there's the
18 Programmatic Agreement. You can click on that, and it will take
19 you to the Programmatic Agreement.

20 And then here we start to get into the security a
21 little bit. There is a log that's generated that keeps track of
22 every single person that visits the website and logs on. And it
23 creates this log. It has your user name and then the action,
24 which could be successful log on.

25 For example, on January 10 A. Stanfill viewed a

1 report, and it tells you the IP address of the computer that he
2 used, and then it tells you what he looked at.

3 And then for some of the web security it's user name
4 and password protected.

5 MR. HERB JONES: Troy, just one thing on that. Every
6 user will have their own security? I mean, each user's going to
7 have their own user name and password?

8 MR. KOGEL: Now the user name is the first initial and
9 your last name. Then the password is a randomly generated
10 password that is unique for each and every user.

11 And so also part of the security is every time the
12 site is visited the user name and the action is recorded in this
13 log so that the STB or whichever agency that's responsible for
14 the security can basically check and see what kind of action is
15 taking place on the website.

16 And it captures the IP address of the computer that is
17 being used to log on to the site, the date and time of the
18 activity. And when you're downloading or going to view a report
19 it will ask you to reenter your user name and password just as
20 an added security.

21 And then when you're done to ensure that you're fully
22 logged off of the website I would recommend that you close your
23 web browser.

24 Some of the upcoming additions to the website, a lot
25 of these will probably be within if not by the end of the week,

1 probably early next week. We're hoping to have upload
2 capabilities so that if you're working in the field and you need
3 to get work hours or per diem of some kind to the STB or
4 Louis Berger, that you'll be able to up load a document to them,
5 rather than having to fax it.

6 We're going to have a calendar. You click on a web
7 page. A calendar for the month will come up, and it will have
8 important dates such as upcoming meetings, the review periods
9 for various reports.

10 On the org. chart we're hoping that when you run the
11 curser over an individual's name that we'll have a link to an
12 e-mail address or a phone number, whichever is easiest for the
13 individual, so that you'll be able to easily contact those
14 people.

15 Previous meeting notes I believe is already on the
16 website. I think that went up on Monday.

17 MR. MADSON: For the October meeting?

18 MR. KOGEL: Yes.

19 MR. MADSON: Okay.

20 MR. KOGEL: And basically that's it. If anyone has
21 any questions at all, I'll be happy to answer them.

22 MR. HENKE: How does everybody get their user name and
23 passwords so they can start using the site?

24 MR. KOGEL: The user names and passwords are
25 generated. How they're to be distributed, I would leave that up

1 to probably Randy and David.

2 MR. WITHROW: I think Berger can distribute them.
3 We've got a list going around for you to make sure we've got the
4 right e-mail address for you so that you're named to that list,
5 and we'll make sure that you get assigned a password.

6 I guess one question for people to react to at this
7 point is who needs to be included. I assume we would provide
8 user names and passwords for each tribal chairperson and the
9 THPO officer, unless you have other preferences. If so, I guess
10 just let us know through e-mail, and we'll get people set up,
11 whoever you feel needs access.

12 MR. IRON EYES: I got a question right here. How
13 do -- is there like a point of contact for us to make
14 suggestions or anything like that? Like I'm sure there's a lot
15 of people here at some point in the future they might want to
16 say this site could be improved like this or we want access to
17 this. That's one thing.

18 The second thing, I don't know how we do this, but I
19 would like a case history out there. I know there's an
20 Eighth Circuit Court case that is relevant I guess to our
21 positions, and it would be nice if it was right there so
22 everybody could have the benefit of that knowledge.

23 MR. KOGEL: As far as recommendations for improvements
24 to the website, I would be happy to give everybody here my card
25 and you could send me an e-mail or call me and from there we

1 will do our best to make improvements to the site.

2 MR. IRON EYES: And then one more thing is I know Tim
3 was maybe kind of alluding to it earlier, but maybe he's worried
4 about who's all going to have access as far as security goes to
5 the log-in record. You know, maybe -- is it just STB or is it
6 other THPOs that could be involved with it or that kind of
7 thing?

8 MR. EAGLE BEAR: Or Department of State.

9 MS. GLIDDEN: Well, I think we're just trying to keep
10 it project specific. And, you know, if there's any concerns
11 about -- I mean, it should just pretty much be I would think
12 everyone in this room. I mean, it's going to be pretty limited.
13 But as far as like the Eighth Circuit Court ruling and some of
14 the other information that you may want regarding the history of
15 this particular project, we have a website. And I think we
16 should probably have a link from your -- from this password
17 protected site to our website.

18 MR. KOGEL: That's a good idea.

19 MS. GLIDDEN: So that link would be like just an STB
20 link, and our website is www.stb.dot.gov.

21 MR. IRON EYES: I was on it last night, and I looked
22 all over for it. It was like 33407, the case. I just couldn't
23 find it. I was challenged last night.

24 MS. GLIDDEN: It can be kind of cumbersome to get
25 through, and there's a lot of documents involved in this

1 particular project. What we could do is if you could just let
2 me know which particular documents you're -- you know, you're
3 interested in primarily. Then we can go ahead and have those
4 added on as documents, STB documents, maybe a category for STB
5 documents or something, case documents.

6 But if you want to talk to me later, I can tell you
7 how to get into some of these documents on-line. Like you have
8 to go through filings and decisions, and that's where most of
9 those documents would be. And the ruling would be under
10 decisions. So but I can walk you through that.

11 MR. HENKE: Can we for consistency's sake -- Troy can
12 be very helpful and do things, but I think to be consistent I
13 think everything should go through Louis Berger as far as
14 security, passwords, changes to website so it's all in one
15 place, we don't have people making changes randomly so we can
16 track what decisions were made and why.

17 MR. BIBLER: So if you would just forward all of our
18 suggestions to me and Cathy Glidden, cc Cathy. I'm working with
19 these folks to get things going. Security was one of the
20 biggest issues as well as levels of security and different
21 layers people can access. That's why we have the log.

22 And we can talk about you folks are going to have to
23 create a list of who you would like to have access, and we'll go
24 from there. And we'll keep it limited in that regard.

25 MS. GLIDDEN: Any other questions about the website?

1 Okay. We'll just hand the microphone over to you to
2 talk about the tribal caucus. One of the questions I had is I
3 know you might need more time to caucus.

4 Did you want to spend part of the time today to do
5 that rather than go through all the items that we've got on our
6 agenda? Would that be helpful for you to have more time to
7 caucus today? Anybody? Tim?

8 Any thoughts about that? Scott?

9 MR. SCOTT JONES: I'd defer to the group, but don't
10 you think we should try to get through some of this and we'll
11 determine whether --

12 MR. MENTZ: I think we should get started on
13 discussions pertaining to certain areas that we have concern
14 with, but also that knowing that, you know, we don't have all
15 the time on this day to do it, I think we should just get
16 straight to the working plan that you asked us to review and
17 make some considerations on.

18 And in relation to the discussion that happened last
19 night, maybe that could be kind of fitted in, squeezed somewhere
20 in part of the discussions per -- in other words, each number
21 let's just come up and summarize it if you want. And
22 particularly the things that we had a big concern on. Maybe
23 those types of areas we can identify needs more discussion or
24 whatever.

25 Does anybody want to lead this what we did last night,

1 the tribes? Russell was the person, but he's not in here.

2 Maybe we'll just start with number 13. Is that okay,
3 guys? That's point of concern number 13. This is the MOA
4 issue, but just take a note of it. We'll jump back to it in
5 just a second.

6 I think we're really interested in hearing number 2.
7 And number 2 stems from obviously we need coordination, a
8 conduit, if you will, for tribes to Berger, Louis Berger, who in
9 turn has, I guess, the contact or the chart of all these
10 entities that you're showing here from HDR all the way down to
11 all of your consultants and archeologists that we need a better
12 flow of information, how it's being established.

13 We also want to know how that flow is in relation to
14 what you present to state SHPOs, in relation to identification,
15 determinations.

16 And we feel that will be a lot easier if we had our
17 own point of contact, an individual that would be the catchall,
18 if you will, the individual that's going to be the person that
19 would be the liaison, if you will, of all of these other tribes,
20 that that's where the information's going to get collected by
21 this individual, even establishing it as an office.

22 We're talking duration here. I don't know if it's
23 three years, five years, or what. Maybe we can review that
24 every year, but I think for a minimum we would like to lock it
25 in for three years that this person is going to be the person

1 where all information flows in and out from tribes, from federal
2 agencies, documentation, state SHPOs, also areas where we can
3 start getting at least a structured time line for consultation.
4 Maybe it's going to be quarterly or what. But those are some of
5 the other things we still want to discuss.

6 But the point is we feel that we have to have one
7 tribal person that will be able to bring together the
8 archaeological reports, give them to us, distribute them in a
9 timely manner versus Louis Berger or in this case all of these
10 reports coming from different types of consulting groups. Then
11 they're collected. And they're not uniformly, to some degree,
12 we feel that aren't distributed appropriately.

13 Like right now we just had some documents presented to
14 us. If we had a person that was right there keeping on top of
15 it, we would know in the flow and the time line exactly when
16 stuff are coming in. And the quicker you get it to us the
17 better. And that alleviates a lot of the problems of us not
18 understanding. When we fear consultation's going to happen we
19 rush over here right away to make sure we defend the position of
20 our own tribes. But yet as tribal members here we're saying we
21 need a better process.

22 So we feel that this person should be at least
23 established. This person also should have a person that's going
24 to help them, assist them in the office duties, be it an
25 administrative person. So we'll have an archeologist and

1 administrative person. Kind of like a project manager for the
2 tribes. Am I saying things right here, you guys?

3 Jump in if that's not what I heard last night. Just
4 jump in any time. But we feel that needs to be funded. I don't
5 know how it's going to be funded. Of course, we never really
6 discussed that, whether it's coming from Berger, DM&E. That's
7 something I think we really need to discuss. Is that a
8 possibility I guess?

9 Some of us wanted to hear that before we left today of
10 that type of a process being established. Because obviously you
11 need to have somebody from the tribal side here, especially when
12 you start talking TCPs in the long run here. We're going to
13 have to have a way to have a trust measurement in place. And
14 that's putting one of our person there gathering and compiling
15 our information coming from our tribal monitors and spiritual
16 people.

17 That's why I raised the question earlier and I seen
18 you listing all of these archaeological reports. Now when you
19 start talking about proprietary information -- intellectual
20 property rights came up last night also. How do we protect that
21 information?

22 We just don't want anybody clicking on a website and
23 pulling off all of our sensitive information also. So it's a
24 trust factor, trust mechanism, we want to establish.
25 Establishing these two positions will do it.

1 MR. SCOTT JONES: I'd like to add to what Tim has
2 outlined. As he said, we talked about developing an office
3 within this structure somehow that would provide for data flow
4 and coordination, that they would need professional technical
5 staff, including but not limited to an archeologist, that they
6 would need administrative support like an administrative
7 assistant. And correct me if I'm wrong here on any of this.
8 And they may need other type of administrative support.

9 And as we were looking through the P.A. and the MOA,
10 which of course are both conditions of the project, the EIS, the
11 Final EIS, we talked about how we would meet things like -- and
12 develop things like the tribal monitoring portion, including the
13 construction tribal monitoring portion, and that this office may
14 actually be able to function as an oversight office for the
15 tribal monitoring aspects, both of them.

16 And I kept trying to think of the word last night and
17 what kept coming to my mind was the word -- and this was not
18 discussed in caucus so I'm going to preface what I say but the
19 word that came to my mind was ombudsman, a quasi-ombudsman, a
20 project manager and development coordinator.

21 And ombudsman man because it would kind of handle
22 relations between the structure and bringing the tribes in.
23 Project manager to handle kind of the monitoring and some of the
24 data flow. And a development coordinator because we're talking
25 about developing training programs and employment opportunities

1 for tribes. We're talking about developing protocols as listed,
2 I believe, both in the P.A. and the MOA. And we're talking
3 about things like, as Tim has mentioned, confidential
4 information, intellectual property, and how those things are
5 handled in a respectful way could be developed through this
6 office.

7 And another word I couldn't think of last night and it
8 was invented by the group but I look at this as kind of a
9 prototype, a prototype formal office that tribes can trust,
10 because it's tribal people, that the railroad, the STB and
11 everybody else can trust, ACHP, whoever, because it's filled
12 with professional people, qualified professional people, and
13 that also is informed enough to help develop the various aspects
14 contained in the P.A. and the MOA that are undeveloped.

15 And so things like your cross-cultural training,
16 which, again, we didn't really flesh out last night -- well, I
17 had to step out. Let me preface that by saying I had to step
18 out for 45 minutes or so. But the cross-cultural training, this
19 office -- and, again, this depends on how much you're willing to
20 put into it. And you can see there's TBD -- or, excuse me, the
21 tribal representatives can see there's TBD written on our notes,
22 to be determined, as far as amounts because you were very
23 uncomfortable yesterday with us determining budgets and things.

24 And so that was respected by all of the tribes. And
25 we just ended up -- and I think -- I can't remember but I

1 believe it was Tim who said -- or Russell or somebody said we'll
2 just put to be determined. Because you have pay scales. And I
3 know Tim addressed this last night in the caucus. You have pay
4 scales that probably should be followed in determining what kind
5 of budgets are developed.

6 So in my mind -- and, again, it's going to be opened
7 up, I really support this idea, and I think everybody did
8 because it gives us some formal standing, and it gives us a
9 tangible organization that we can interact with on an ongoing
10 basis, i.e., this office.

11 So I just wanted to add that to what Tim had said.
12 Thanks. And, of course, let me just add that we have to talk
13 about location and things like that as well.

14 MR. WHITTED: One of the concerns with the last
15 archaeological surveys in the Black Hills was the process of how
16 monitors will be paid. This office would be able to facilitate
17 that also. And that would make it a lot easier for
18 Louis Berger.

19 MR. BIBLER: Yeah. We had talked about that, and it's
20 great that you guys have come up with that as a consensus to do
21 that because I agree. That would probably be the easiest way,
22 single point of contact, and we wouldn't have to be doing, you
23 know, 15 invoices on a weekly or biweekly basis. So that's
24 wonderful.

25 MR. WHITTED: Yeah. And the other point too is being

1 able to coordinate the monitors' reports of putting them in one
2 report.

3 MR. BIBLER: Absolutely. Because I know some folks
4 have turned in reports to me and I felt uncomfortable and I
5 asked them about it and they said, oh, no, it's fine. And I'm
6 sure other folks created reports and it went to the THPO office
7 which is fine too. And this way it's a clearinghouse, and you
8 folks have the option of what to share and what not to share.

9 MR. YOUPEE: I think it's a viable solution to get
10 around he said/she said regarding information exchange. And I
11 think it acts as a buffer from DM&E and Berger as well as
12 Surface Transportation before it gets to the tribes and
13 deciphering or defining what that information is and who that
14 information should go to regarding government-to-government
15 relationships.

16 So it is a viable solution to what we see today. And
17 I think that there's mutual benefit to that office from those
18 individuals to provide that exact same information to the
19 agencies involved in this Programmatic Agreement. But, again,
20 it really clearly defines where the tribes want to be in this
21 information exchange. And certainly we can collect information
22 and develop an information infrastructure, somewhat of what you
23 have as a database on-line.

24 I'm reluctant to go on-line with any information
25 because that information can be taken from a lot of other

1 agencies or individuals. And so I don't believe that's the best
2 way of communicating regarding confidentiality. Confidentiality
3 is a big thing for --

4 (Discussion off the record)

5 MR. YOUPEE: I think the solution that we all seek is
6 parity, and I think it's -- I think the solution that we seek is
7 the parity through understanding of what each other is supposed
8 to be doing and their objectives. So we want to have
9 transparency as well that we are all following the same book and
10 we're all seeking the same outcome as a result of that.

11 And so this initiative -- we were asking for
12 initiatives yesterday from DM&E, how they would see that
13 employment stimulus or a benefit package. And that's beyond the
14 cultural involvement of our agency. It's more involved in the
15 economic development of a socio-economic developmental impacts
16 that we have with prosperity in this part of the country
17 involving railroad, coal, and energy. And so it plugs the
18 tribes in as beneficiaries as well.

19 But this office is going to provide a great deal, I
20 think, of definition of tribes. You have multiple tribes here:
21 Shoshone, Arapaho, Cheyenne, Lakota, Dakota, Nakota, Omaha,
22 Maha, and others. And then we have -- we still have the
23 civilized tribes to contend with as well, and they're part of
24 our makeup too. They have some interest.

25 So I think this office can provide a great deal of

1 information for all of those agencies and tribes.

2 MS. GLIDDEN: Sounds like a great idea. Is there any
3 way that you could flesh that out, precisely what the makeup of
4 that particular office would be and positions and what they
5 would be doing and how they would interact, I mean, in terms of
6 a written format that we could then all have access to?

7 Would that be something that we could have as an
8 outcome from this summit?

9 MR. MENTZ: Are you asking to put together like a
10 scope of work, a job description, like that?

11 MS. GLIDDEN: Yeah.

12 MR. MENTZ: I guess we'll do that, but I guess we also
13 need to hear a response from DM&E or whoever it is on the
14 feasibility of that.

15 I guess the question would be what do we have right
16 now that could offset what we just proposed? Maybe that's what
17 we need to ask DM&E.

18 MR. HERB JONES: Well, I think first off I just want
19 to say I think what you're talking about seems like a very
20 logical type of approach to things. Is the better you can
21 coordinate the information and the flow of information and the
22 more there is kind of -- I guess I look at it from like the STB
23 with Cathy being the STB's point person or with the liaison
24 position we have at the DM&E I think to the extent that you can
25 create that kind of a position in the tribal community to

1 interact with, it would be very beneficial to the system for
2 everybody, for organization, for flow, for all of that.

3 I'll just tell you from our perspective I think the
4 things we would want to be able to know is we'd like to be able
5 to see a budget and organizational chart, kind of information
6 qualifications for people who would be serving in any capacities
7 there. And, I mean, we have to have an understanding of what
8 we're getting into.

9 I think some descriptions of responsibilities will be
10 critical. And I think it's one of those things that likely if
11 it gets going will be one of those things where you may find
12 additional responsibility for -- you know, if it works like
13 anticipated, that you might be able to put additional things in
14 there.

15 One of the things you were talking about, for
16 instance, was like the training aspect. Again, it could be
17 coordinated, facilitated through that type of a structure. And
18 I think it would make it more efficient for all parties to have
19 that.

20 I'll just tell you the first thing I have some concern
21 about is how grand of an idea it is and the budget for it I
22 think has to be realistic. And, I mean, in my head I can see
23 something that has, you know, like was described, having a point
24 person and administrative assistants for that. I think that
25 would make some sense. At least it's something we'd want to

1 certainly entertain and look at it and see what we're talking
2 about.

3 And I think the other thing I would say is you may be
4 able to set some kind of a model here for future programs and
5 projects. And if you can put something together here and if the
6 tribes can act in concert to have an entity like that that works
7 for all parties for that point, I can see where -- see the
8 advantages for the long run for everybody.

9 But, again, I think there's some fundamentals we need
10 to go through and make sure those things make sense. And I
11 think what Cathy was saying makes sense to me. We just need to
12 know what we're looking at and how it would improve on what now
13 is really kind of a shotgun approach to this all in my mind.

14 Because what STB has to do, as you all know, is they
15 are now responsible with acting with every single tribe on every
16 single thing, and it's very hard. I've got the to tell you from
17 our perspective it's very hard to conduct that kind of
18 interaction.

19 So to the extent that can be coordinated, organized,
20 done better, more efficiently, I think certainly we would want
21 to entertain that but see some detail to it. I'm not asking for
22 a book on this thing, but I think to have an idea of what it all
23 means and the responsibilities at least initially so we have a
24 good feel for that and can move forward on it. I can see some
25 great advantages to it.

1 MR. SCOTT JONES: I just want to remind you, Herb,
2 that we were asked not to put a budget together. I mean, we had
3 the sense that we weren't supposed to do that. And we -- I
4 appreciate your support for the notion and your understandable
5 reaction to a shotgun approach, but sometimes you catch better
6 birds with a shotgun.

7 And let me just say this as well, that when we
8 developed the P.A. and the MOA and those became conditions of
9 the permit we knew that something like this would have to be
10 developed. Because plain and simple, the trust factor.

11 To build trust and to build professional respect, we
12 knew that there would have to be something like this fleshed out
13 eventually. And I think we don't want to get too specific at
14 this point because you have to admit that -- well, for me anyway
15 I'm reacting to a work plan that I just got January 4. And
16 although I probably had notes stuck somewhere from your previous
17 meetings, I never really looked at it until getting ready for
18 this meeting. So it's kind of new to me in that respect.

19 And the tribes, you know, talked in depth about this.
20 And this is our initial reaction to developing a viable work
21 plan. And, by the way, through a structure that meets several
22 or potentially can meet several criteria that are outlined in
23 the P.A. and the MOA.

24 I mean, things like a unified process under number 7
25 in the MOA for NAGPRA regulations and procedures, that can look

1 at things like an ethno-historic report, ethno -- gathering
2 ethno-botony information and other studies on animals, aquatic
3 plants, et cetera, on looking at what is most pressing right
4 now, which I heard yesterday is the monitoring -- it seems to be
5 the monitoring stuff. That's what I kept hearing -- I could be
6 wrong -- on what's most pressing.

7 But let me just say from what I understood is finding
8 a way to handle the monitoring and dealing with tribal issues
9 with the monitoring and making sure the monitoring was out there
10 doing what it was supposed to do both with construction and
11 otherwise. It potentially can deal with -- in the long run the
12 MOA becomes a management plan which lives, no matter who owns
13 the railroad, for the life of the railroad under the terms of
14 the FEIS and the permit.

15 14 and 15 specifically state that the terms of this
16 MOA will be rolled over into a management plan. And the
17 management plan goes for the life of the railroad as identified
18 in 15.

19 It can deal with things like helping to develop a
20 tribal mediation component, a group task force. And so this is
21 an initial proposal I think, Herb, that as somebody said -- and
22 I'm glad Russell's back because it might have been him, it might
23 have been Tim, that, you know, we may need a little more give
24 and take on this, but we tried to respond to what was asked of
25 us yesterday. And in a big way -- because we were told, you

1 know, no budgets because we don't know what we can do. And how
2 do we fulfill the work plan, and we want you to look at things
3 like cross-cultural training and tribal study.

4 And so we responded to that with the notion of
5 establishing this office that can become a part of the structure
6 of everything that's happening. Thank you.

7 MR. BIBLER: Hang on just a second. They have a door
8 open in the back. That's why you're feeling a draft. They're
9 moving something in, and they were going to turn the heat on
10 here until that door is finally closed. So we're kind of stuck
11 with this right now.

12 I apologize.

13 MS. GLIDDEN: I just wanted to say one thing in
14 response to the idea of this ombudsman, I guess.

15 MR. SCOTT JONES: I'm not sure everybody bought into
16 that. That was just one of the things I envisioned.

17 MS. GLIDDEN: But I guess I'm -- it sounds like a
18 great idea, but I guess I'm thinking, you know, from STB's point
19 of view that we need momentum. And I guess we were kind of
20 hoping that this work plan that we developed is something that
21 could be modified to meet, you know, your needs.

22 And a lot of things that are in the MOA I believe are
23 addressed in this work plan. You know, you had mentioned the
24 ethnographic studies and so on, and that's -- we have that
25 included under our tribal study. And then the grievance

1 procedures. We have that in there.

2 From the STB's point of view in terms of just the
3 logistics of this, one of the big issues is trying to get these
4 reports reviewed and get your feedback on eligibility. And so
5 there's so many of these reports. And if we can develop a
6 process where maybe you would have this office actually be able
7 to review these reports on behalf of all the tribes, it would be
8 unbelievably helpful. I mean, if that's something that is
9 possible.

10 MR. SCOTT JONES: Isn't that what we were saying? Tim
11 and Russell, isn't that what we were saying? We want to
12 organize this office to handle the data flow? That's what we're
13 saying.

14 MS. GLIDDEN: Basically this office would be
15 responding to the reports. It wouldn't have to go through all
16 the tribes.

17 MR. SCOTT JONES: It would coordinate the overall
18 response of all the tribes and where they're at to these
19 reports.

20 MS. GLIDDEN: That would be fantastic.

21 MR. YOUPEE: Yeah. But there's a great deal more than
22 just that --

23 MS. GLIDDEN: I guess I'm just trying to get clarity
24 on that particular issue.

25 MR. YOUPEE: Let me expound on that. This office

1 again will be mutual benefit. And as far as administration
2 operational tasks, handle client complaints. Okay. This would
3 include not only the tribes but everybody else who is plugged
4 into that system.

5 Organize the maintenance schedule, conduct information
6 systems equipment inspection, conduct office facilities
7 inspection, produce information systems operational report,
8 prepare work distribution, implement lost procedures, delegate
9 job functions, recommend assets disposal, verify minutes of
10 meetings, establish information systems equipment maintenance
11 schedule, endorse job schedule, justify departmental expenses,
12 verify office facilities, and inspection. Now this is just the
13 administrative operational task.

14 If you look at administration organization policies
15 and procedures, monitor staff attendance, enforce office
16 regulations, prepare office security and safety procedures,
17 organize information systems security control, enforce security
18 and safety procedures, review security safety procedures, review
19 staff code of conduct.

20 Now one of our main concerns is the confidentiality.
21 Well, that's my main concern. Confidentiality. Because I see a
22 lot of stuff going out on e-mail even from tribes that should be
23 confidential and seem to be putting more personal things in
24 front of professionalism. So I think this would be kind of a
25 clearinghouse for that kind of stuff.

1 We're looking at organized departmental and even
2 recruitment regarding your monitor, regarding your elder
3 participation, and that could be conduct staff interview,
4 conduct elder interview, recruitment, monitor staff recruitment,
5 recommend manpower planning.

6 Recommend manpower planning is something that is
7 necessary when we get in the conflicts of compensation from
8 monitors. I think that, you know, we've gone through enough
9 problems in those areas.

10 Implement departmental recruitment policies and
11 procedures, recommend disciplinary actions, of course, recommend
12 dismissal actions, plan department manpower recruitment.

13 Now this has gone more than just an idea for me. I
14 seen the viability of this last night, and I thought I'd work on
15 it. Organize human relations function. Monitor staff welfare,
16 monitor staff performance, conduct section meeting, perform
17 staff counseling, conduct departmental meetings, review staff
18 performance, and recommend promotions.

19 And organizational departmental budget. Specify
20 departmental needs, prepare section budget, monitor department
21 budget, control department budget, forecast capital expenditures
22 and recruitment, prepare departmental budget and review
23 departmental budget.

24 And, of course, we have manage operations inventory.
25 (Inaudible) with other departments and agencies, advance staff

1 department programs, organize and manage for purchase and
2 special assignments, organize information research and
3 development.

4 So there's a gamut of responsibilities or objectivity
5 that this program or this office would perform. Now this office
6 again will act as a buffer between tribes and DM&E or the
7 Surface Transportation agencies so that information becomes
8 defined, and it becomes more friendly.

9 And if it needs special attention, of course, those
10 persons that are more knowledgeable regarding these laws can be
11 contacted, and there could be a one-on-one before that
12 information comes down to the pipes.

13 What do you mean by this letter, you know? This is
14 what it says to me. Are you sure you want this letter to go
15 out? Stuff like that.

16 But, again, this office is needed. And I think if
17 we're going to continue in good faith to find some model that we
18 can all agree on, that if that's our intentions, then certainly
19 we want to implement this program.

20 MS. GLIDDEN: So just to be clear on this, the current
21 work plan is off the table for the tribes? Is this something
22 that we can work into it or that could be part of it, or are we
23 scrapping this?

24 MR. HENKE: I didn't hear that.

25 MS. GLIDDEN: Okay. So it would be basically -- is

1 there any way that you could go ahead and just -- I think I just
2 feel like I need more clarity on exactly what this office would
3 do. And I have a sense, but if we could have a -- you know,
4 just a clearly -- I don't know how that would work in terms of
5 this work plan. That would be really helpful.

6 MR. YOUPEE: And I think that's not your concern
7 totally. I think that's the benefit of DM&E and how DM&E is
8 going to interact with tribes in the long haul. We can continue
9 to consult with consultants on your behalf, but I think the long
10 haul or the long-term relationship is going to depend on how the
11 tribes and DM&E coordinate that.

12 MR. HERB JONES: One way or the other, I think that
13 again if we can see something that's put down and have a chance
14 to look at it, see what it is, see if there may be different
15 ideas from different folks about what levels you go to on it,
16 what the functions are, I don't know who all the funding would
17 come from on it.

18 From the laundry list we've heard I think some of
19 those things would go beyond the capacity certainly of DM&E, but
20 I don't know who the funding parties might be. But the way I
21 see what you're talking about, and I want to make sure I
22 understand it too, is we have a work plan. We've got -- that we
23 have from STB, but what we're trying to find in my mind from the
24 tribal community is a way to better organize the flow of
25 information and facilitating of activities from the tribes to

1 the tribal interaction and to have an entity there that can
2 coordinate among the tribes as well for information used in both
3 directions from the STB's flow of information as well as from
4 the tribes to the STB -- from the tribes to the STB.

5 And I can see where certainly it's in our interest too
6 to have the most efficient way of doing that. I don't know if
7 everything we talked about is -- you know, I think that's
8 something certainly we would like to look at, see what it looks
9 like in total, look at how it would be budgeted.

10 The one thing I did want to say to Scott too is I
11 think on the budget things, the things we didn't want to get
12 into are things where the potential costs are really unknown,
13 and that was like when you get to mitigation and compensation.
14 We don't know what we need mitigating and compensating for.

15 Here we're talking about administrative and day-to-day
16 type function things. I think we can be realistic and look at
17 that and figure out what kind of budget we might be dealing
18 with. And, quite frankly, that is a part of reality to us.

19 And also I do see some great efficiencies in this type
20 of system certainly we want to entertain and work with the STB
21 on. I hope we make a proposal we can all look at. And I think
22 to the extent that compliments the work plan facilitates this
23 work being done, certainly I wouldn't discourage you from
24 pursuing that and would like to see what that all entails.

25 A lot of the things you say I think make sense. I

1 think, quite frankly, for the tribal community in the future I
2 think it's a pretty good idea to have an organizational
3 structure there that can interact with not just the DM&E project
4 but other projects as well in a coordinated way from the tribal
5 community.

6 I think that would be, quite frankly, to everybody's
7 advantage. I'd like to see how that would be structured
8 financially, exactly what responsibilities STB says would make
9 the most sense for that kind of a structure from their
10 perspective. We too would want to chime in.

11 But certainly again I wouldn't discourage you from
12 doing that, can see some great advantages of pursuing something
13 along those lines. If that's something we can continue to
14 refine -- as you look through the work plan in the coming weeks
15 or months, that's certainly something we would like to certainly
16 look at.

17 MR. BIBLER: Yeah. I have to agree. Sorry. Just let
18 me get this in quick. I think it's a huge leap in the right
19 direction to have a single voice and to be able to communicate.
20 And as far as the budget's concerned, I can help out with that
21 as well, if you want, whoever's creating it, and we can try to
22 get an idea of what you want, that sort of deal. But this is a
23 real positive, positive step in the right direction to get this
24 thing going and get a consensus on it.

25 MS. SPOTTED EAGLE: I guess I'm getting the sense then

1 that we probably need to caucus maybe and talk about some
2 specific issues. But I wanted to make a couple of comments.

3 One I think that the exciting thing about it is
4 developing things that we don't even think about that are
5 unforeseen in developing future working relationships. And I'll
6 use this as an example. When we went out on the River with our
7 monitors we kept our own database, and one of the things that
8 ended up developing is what is called a truthing model.

9 And so the Corps would make these predictive modeling
10 things of saying how much erosion is going to occur on the bank,
11 and they would depend only on the computer. And once we got out
12 there and we did our database, our information was more accurate
13 and more truthful by having physical people out there. And it
14 actually was directly opposite of what the computer predicted
15 with the truthing model.

16 So in a sense what we're doing is developing a
17 truthing model of saying what does it look like when you have
18 successful consultation infused with spiritual and cultural
19 consideration. And so you're developing a template that could
20 be adapted other places.

21 The second thing is in corporate language they call
22 that value-added work because the amount of time they put in --
23 I know I kept him on the line a lot. So in a sense we're
24 helping out infrastructure. So it goes both ways. So I just
25 wanted to make that comment.

1 MS. GLIDDEN: That makes a lot of sense.

2 MS. SPOTTED EAGLE: But I feel the need for a caucus.

3 MR. BIBLER: Thank you.

4 MS. GLIDDEN: Should we give you an opportunity to
5 caucus some more at this point then?

6 MR. SCOTT JONES: Can I just make one more comment?

7 MS. GLIDDEN: Sure.

8 MR. SCOTT JONES: Very briefly. I think that this
9 structure that's -- we're going to be talking about further also
10 provides a mechanism for people like the ones to my right other
11 than Curley.

12 Montana, the SHPOs' office in Wyoming, the SHPO in
13 South Dakota, people like ACHP, the National Trust For Historic
14 Preservation, that they wouldn't be going through, you know,
15 this unending list of who's the representative now, that -- and
16 there are how many other federal agencies here involved?
17 There's seven all together?

18 So, I mean, I think also that that would kind of -- I
19 hate to use the word but streamline the communications
20 interagency-wise as well as between the other partners here,
21 which are the SHPOs and other signatories.

22 And hopefully we'll get the Gray Eagles and the treaty
23 rights people that are invited signatories and the Medicine
24 Wheel Coalition and others, we'd also get them a place that they
25 could get some information as well.

1 That's all I wanted to say.

2 MS. GLIDDEN: Thank you.

3 MR. EAGLE BEAR: I guess we need to caucus on this,
4 but we need to go down the list of the work plan. And maybe
5 when we get out of the caucus or whatever I don't know how the
6 group feels but we had some language that we wanted to clarify
7 and insert into the work plan so that we're all on the same page
8 kind of thing.

9 MS. GLIDDEN: Either way. If you want to do that now
10 or do that later.

11 MR. EAGLE BEAR: What do you guys want to do?

12 MR. YOUPEE: I think we better do it now.

13 MR. EAGLE BEAR: I guess we can caucus first.

14 MR. MENTZ: Could I ask one question before we leave
15 here as far as continuations of these efforts here? Just so I'm
16 clear of walking out of this meeting, it says Tribal
17 Consultation Summit. And are you going to continue to hear this
18 from federal agencies' responsibility? One of them is to
19 initiate consultation.

20 And to me there's an understanding out there between
21 all the federal agencies now that there's certain ways that is
22 working when you start engaging tribes in consultation.

23 And we went through an eye opener with the Department
24 of State here on the Keystone Pipeline. And I'm just wondering,
25 you know, when you came here were you thinking this was

1 Section 106 consultation?

2 MS. GLIDDEN: Yeah. This is all about 106.

3 MR. MENTZ: Okay. So we're not talking about
4 Government to Government. We've heard you say that.

5 MS. GLIDDEN: Government to Government in terms of
6 106.

7 MR. MENTZ: Pardon me?

8 MS. GLIDDEN: In terms of 106.

9 MR. MENTZ: What?

10 MS. GLIDDEN: Government-to-government consultation
11 between Federal Government and federally recognized tribes as is
12 required under Section 106.

13 MR. MENTZ: So in the instance of Paige here, when you
14 sent determination letters from the federal agency's duty to
15 determine effects, you send that over to the State of South
16 Dakota, you mean you engage the Governor also in that -- in
17 relation to what you're doing with me right now? Because you're
18 mixing apples and oranges is what I'm saying.

19 MS. GLIDDEN: All we're doing basically is following
20 the Section 106 -- (Inaudible).

21 I guess I'm just a bit confused by the question.

22 MR. MENTZ: Okay. The question is what do you feel
23 this is consultation in relation to what you're required to do?

24 MS. GLIDDEN: Well I, mean, the consultation process
25 requires that we take into consideration the concerns of

1 federally recognized tribes and that we include tribes in the
2 identification of properties of traditional, religious, and
3 cultural significance and that we consult with federally
4 recognized tribes in terms of the eligibility of these
5 properties, and that we also include tribes in determining how
6 those types of sites will be treated or minimized or avoided and
7 as outlined in the P.A.

8 The Programmatic Agreement was developed at the end of
9 the 106 in a sense -- at the end of the 106 process in 2003. It
10 was the document that was developed as an outcome of the
11 consultation process. And it's now our working document.

12 MR. MENTZ: Let me clarify then. You're mixing it up.
13 You just confuse me when you bring in Government to Government.
14 Clearly 106 says you need to initiate that consultation with
15 interested or affected tribes. You're also engaging the THPO
16 officers.

17 I came in here as a preservation officer for the
18 Standing Rock Sioux Tribe. I didn't come here to engage
19 consultation on also a government-to-government level, what
20 you're talking about. I think our chairman here alluded to that
21 yesterday. When you're going to do that you need to engage the
22 tribal leadership on that level, not my level.

23 MS. GLIDDEN: I'm sorry. We have sent out letters to
24 the chairs of all the tribes, as I understand it. Everything --
25 everything that's been sent to the THPOs has also been sent to

1 the tribal chairs.

2 MR. MENTZ: Okay. But that's not my point, though.
3 Let me just finish by saying I would be here to consult on those
4 documents over there. All the sites, that's part of one of the
5 listings, number 7, site identification. I think that's where
6 we should be at right now. That's what you're doing. You're
7 initiating through the THPO, my level.

8 You're also initiating it through Paige sitting there
9 because of her responsibilities as the SHPO. Right, Paige? You
10 represent that SHPO office right now. You're sitting there
11 listening to us to see what the tribe's input is regarding
12 identification and those areas in there. That's what she'll be
13 doing right now.

14 MS. GLIDDEN: Well, we're at the stage of
15 identification, yeah.

16 MR. MENTZ: So are we going to discuss the reports?

17 MS. GLIDDEN: Today?

18 MR. MENTZ: Yes.

19 MS. GLIDDEN: I guess we could. They're pretty
20 extensive.

21 MR. MENTZ: Were you prepared to come here to discuss
22 those?

23 MS. GLIDDEN: Not to discuss the reports in specific.
24 But to go through a process --

25 MR. MENTZ: Same thing as -- what I'm leery about then

1 is writing my name down to this list that just now went across
2 here. And you're mixing government-to-government concept with
3 the THPOs, which is required. They're required to consult also
4 with the SHPO on determination of effects.

5 MS. GLIDDEN: Right. We're not there yet, at least
6 when it comes to --

7 MR. MENTZ: Again, my understanding then that this
8 whole meeting is not government-to-government consultation. You
9 are initiating a consultation process under Section 106.

10 Am I talking to the choir or -- I mean, do you
11 understand what I'm saying here?

12 MS. GLIDDEN: I understand.

13 MR. MENTZ: 13175 executive order, Government-to
14 Government-consultation coordination versus 106 THPOs, SHPOs?

15 Do you understand what I'm saying?

16 MR. SCOTT JONES: I need to step in here because I'm
17 here on multiple levels.

18 MR. MENTZ: Well, I understand that. But what I'm
19 saying, that's why I'm clarifying what does tribal consultation
20 summit mean?

21 MR. SCOTT JONES: I agree with that. But I'm the
22 point of contact for anything going on with DM&E Railroad first.
23 Secondly, I'm the historic preservation contact for the Lower
24 Brule Sioux Tribe as well as the NAGPRA contact.

25 Now we are here discussing 106. However, there is a

1 record of decision that identified several conditions for the
2 permitting of this project that go outside of 106.

3 Those conditions, some of them listed in the MOA.
4 Some of them listed in other aspects of the record of decision.
5 But they're conditions there are larger than 106. 106 is
6 extremely important. It is one of the things that opened the
7 door.

8 But there's also executive orders out there on tribal
9 collaboration and consultation. Those also are things that open
10 the door. The executive order on tribal consultation and
11 collaboration, which by the way I think the threshold you have
12 met with your communication with the chairman -- the chairman
13 got the same information I've gotten. And I visited with him
14 frequently about this. In fact, I talked to him yesterday.

15 As a point of contact for DM&E, I am here consulting
16 on a government-to-government basis. As a tribal historic
17 preservation point of contact I am here consulting on 106. Now
18 I'm not in the same capacity as Tim and the other THPOs outside
19 of my reservation boundaries. Within my boundaries I am. And
20 so I have to rely more so than them -- they've exerted a greater
21 deal of sovereignty. I have to rely on the SHPO a little more,
22 if I could just finish my discussion.

23 Now we're here, the Lower Brule Sioux Tribe, through
24 my person, we're here looking at all of the 106 issues.
25 However, we're also looking at several other aspects of what

1 this railroad entails, including, you know, what I've been
2 beating up, probably overblown it, is economic possibilities
3 here. And also wildlife possibilities, which goes in many ways
4 outside of the boundaries of Section 106 and go into the
5 Endangered Species Act, which I'm also here at this time wanting
6 to make sure my tribe's interests are protected.

7 I'm also here under the Executive Order of Sacred
8 Sites, which can be related and maybe not totally but through
9 Bulletin 38 to the National Historic Preservation Act.

10 But most importantly, I am here because of the NEPA
11 process. NEPA triggered the whole EIS. It wasn't 106. It was
12 NEPA. The National Environmental Policy Act requires a process
13 of discovery, which at that point my tribe is contacted and said
14 what are your issues? The related law -- the National Historic
15 Preservation Act, which includes 106, 110, and every other part
16 you want to throw in there, Bulletin 38, et cetera, that is part
17 of the involvement of why I'm here.

18 And then you have executive orders, sacred sites,
19 tribal consultation collaboration. There's several. I can't
20 think of them all. Endangered Species Act, the American-Indian
21 Freedom of Religion Act. Part of even why I'm here is the
22 Bald Eagle, the eagle protection -- I can't remember it, but
23 the -- that act, as well as several others, ARPA, Archeological
24 Resources Protection Act.

25 And so the authority of my sitting here does not

1 solely derive from 106. The authority for my sitting here
2 derives from me myself, okay. I'm not a THPO. I'm a cultural
3 preservation person identified by my tribe. But I'm also the
4 point of contact for DM&E consultation unless the chairman and
5 the council come in.

6 So we're dealing on a variety of levels here. And I
7 understand that confusion. It's not been clarified. It has not
8 truly been clarified. But I need to tell you why I'm here and
9 how I'm here. And, of course, a big part of this is 106. 106
10 has got wonderful statutory language that you're required to
11 follow. But there are several other pieces out there that come
12 into play.

13 And so when you say you're only here for 106, I think
14 that's somewhat of a misstatement. You are here because of the
15 conditions in the EIS, a big part of which is the National
16 Historic Preservation Act. But NEPA. NEPA, NEPA, NEPA. Thank
17 you. And the conditions of the court ruling. Thank you,
18 Curley, for that as well.

19 MS. SPOTTED EAGLE: Could I request a tribal caucus?
20 I need to say something to the tribal.

21 MR. MENTZ: Could you still please answer my question?
22 Are you going to initiate 106 consultation with me once you
23 finally review all the reports and we get the reports? It's
24 kind of the cart before the horse.

25 MS. GLIDDEN: Yes.

1 MR. MENTZ: That's what I'm here for, just to clarify
2 my role here. Not government-to-government consultation. That
3 you take up with my chairman.

4 MS. GLIDDEN: Okay.

5 (The proceedings are in recess)

6 MS. GLIDDEN: Thanks for again going into a caucus and
7 coming up with what appears to be a really wonderful idea for
8 having a way to process information efficiently. I was
9 wondering if I could request before we go into this actual scope
10 that you've developed for this group that if we could go into
11 the discussion on the actual work plan and concerns that you may
12 have about that work plan so that we can have that finalized
13 product.

14 The other thing I was thinking just in terms of the
15 group that you are developing, that that could be sort of maybe
16 woven into the work plan and be part of it.

17 Is everyone okay with that if we just start with the
18 work plan? Do you have that on your computer?

19 MR. IRON EYES: Yeah. This should be it.

20 MS. GLIDDEN: Yeah. Okay. I don't know. When is
21 everybody planning to leave? I know that we have scheduled
22 until 4:30. Is pretty much everyone going to be staying that
23 long, or do some of you have to leave early today? Are you
24 going to be here?

25 MR. EAGLE BEAR: There are some people that have to

1 leave, and this is the group that we'll end up with probably at
2 the end of the day.

3 MS. GLIDDEN: One of you want to go through the work
4 plan and maybe, you know, point out places where you think there
5 needs to be adjustments or changes or you have concerns?

6 Who wants the mic?

7 MR. SCOTT JONES: And actually Mr. Iron Eyes has been
8 kind of our unofficial coordinator here in the middle so it
9 might be better if I pass the mic to him. But there was -- I've
10 got to ask a question, and I hope it doesn't muddy the water
11 even if it does.

12 As representing a signatory to the P.A. and ostensibly
13 to the MOA, is the work plan, notwithstanding the question I
14 asked yesterday, Cathy, able to include aspects of the MOA?

15 MS. GLIDDEN: Yes.

16 MR. SCOTT JONES: Okay. Formally.

17 MS. GLIDDEN: We could find a way to formalize it.

18 MR. SCOTT JONES: Okay. Then under B, statutory --
19 or, excuse me, STB regulatory requirements there would need to
20 be a reference made.

21 MS. GLIDDEN: Okay.

22 MR. SCOTT JONES: And I don't know if some of the
23 tribes may object to that. And all the tribes aren't here now.
24 So that's something I think that needs to be floated. And
25 apparently we're going to be floating a draft anyway, Russell

1 and Curley; right? So if that can end up as part of the draft
2 that will be floated, that comment --

3 Because you confined yourself to -- by this work plan
4 you've confined yourself just to 106, 36 Part 800. And I think
5 that that's kind of led to a lot of confusion. But, I mean,
6 it's okay. But I know that if things aren't clarified,
7 sometimes intent gets lost in the actual words that are on
8 paper. So that's the only reason that I brought that up.

9 And with that, I think I'll hand it to this young
10 gentleman who's done such a wonderful job.

11 MR. IRON EYES: Hello. I'll actually pass the mic to
12 Curley and I can facilitate, you know, his going through this up
13 here. Curley has a lot of experience with coming up with these
14 sorts of plans.

15 MR. SCOTT JONES: Well, we're at the work plan; right?

16 MS. GLIDDEN: Yeah. I was just hoping that we could
17 go through the work plan. And, for instance, in a situation
18 like this where you think we need to make reference to the MOA
19 that we go ahead and insert that language in there, and, you
20 know, as we go along we just go ahead and modify it in a way
21 that everybody, you know, feels it should be modified.

22 MR. HERB JONES: Can I just ask, what I was kind of
23 hoping -- close to what you were talking about but I don't know
24 if everything's done there but I can't see what we've got here.

25 Is there a way that we can go through all of your

1 recommendations on here and get a hardcopy of that and we can
2 make changes based on review and feedback from everybody on
3 this?

4 MS. GLIDDEN: How long would it take to go through the
5 document in the manner that I just mentioned?

6 MR. IRON EYES: Well, I don't know that we're even
7 ready for that. Yesterday we only got to about two or three
8 specific language revision recommendations.

9 MS. GLIDDEN: Okay. All right.

10 MR. IRON EYES: So I think what we had planned or what
11 we had hoped to do is be able to take that back individually and
12 then come back, you know, with those proposed revisions and then
13 communicate to you folks.

14 MS. GLIDDEN: All right. That's fine. Curley, you're
15 just going to go over your concerns in a general manner?

16 MR. YOUPEE: Yeah. Actually we've constructed --

17 MS. GLIDDEN: Sounds good.

18 MR. YOUPEE: (Inaudible) Yeah. What we've
19 constructed is an alternative, and we're looking at something
20 that would be more inclusive. Certainly provide information to
21 tribes in a manner that they can understand. We have
22 developed -- I don't have a copy.

23 Do you have another copy of that?

24 MR. IRON EYES: Oh, no, no, no. I do. We got it all
25 the way up to where you and I did work at noon. So just go from

1 that.

2 MR. YOUPEE: We'll start from the top. And again
3 we're trying to build -- what we're hearing is there's some good
4 acceptance to the idea. And so that's what we anticipated
5 anyway, and this would be a mutual benefit thing.

6 So proposed draft of Office of Tribal Involvement.
7 And we'd call this a -- what did we call it, guys?

8 MR. SCOTT JONES: Information services and
9 coordination.

10 MR. YOUPEE: Information systems and coordination.

11 MR. SCOTT JONES: Systems.

12 MR. YOUPEE: Management of information systems and
13 coordination. Okay. Are they going to be afforded? Yeah.
14 There's some there, I guess. And we'll go through line item, I
15 guess, and if you have any need for explanation, I guess we can
16 do our best.

17 Structure. Budget course to administer the program,
18 manage material of information system and coordinator, life of
19 project, organizational chart. Scope of work details.

20 Okay. Scope of work duties include management project
21 information systems and tribal coordination, including but not
22 limited to telecommunications, standard applications, hardware,
23 network infrastructure, and end-user support, to include
24 supervise, develop, and evaluate the performance of assigned
25 personnel, develop long range plans; review and communicate

1 information systems and telecommunications system policies,
2 develop to include plan, organize, control and direct the
3 day-to-day operations of one or more of the information
4 services' primary functions, which include education and
5 administration technology, telecommunications, network support,
6 applications management, and customer support.

7 2, develop and recommend information systems
8 improvement to increase efficiency and security; identify
9 research and analyze problems and execute solutions; establish,
10 coordinate and revise information systems and telecommunications
11 standards.

12 3, hire, supervise, and evaluate assigned staff
13 members; organize and provide training and tools necessary to
14 complete projects and objectives.

15 4, provide technical expertise, knowledge, and long
16 range planning for information systems, including internships,
17 finance, human relations, Internet, and other areas requiring
18 full proficiency of computer hardware, software, and
19 infrastructure procedures and development.

20 5, include, conduct, and attend meetings, resolve
21 ad hoc problems, provide directives and guidance for staff,
22 project personnel, tribes and the public; execute special
23 assignments.

24 6, advise and assist user of computers and information
25 systems; determine and evaluate user needs (computers), develop

1 manuals and other training aides as needed; consistently review
2 and revise processes and procedures based on changing
3 technology.

4 One of the things that we find was necessary in
5 addressing this was some of the agencies' personnel do not know
6 their responsibilities to, say, 106, government-to-government
7 relationships, you know, as it pertains to intertribal
8 relationships. And we can develop programs or manuals,
9 user-friendly manuals, across the board that we can collectively
10 build, and it would be helpful for other agencies doing business
11 with you folks, us, you know, down the road.

12 Okay. Assist educational institutions or interested
13 entities in understanding, executing, and fully utilizing
14 available information systems; coordinate plans to implement new
15 systems or procedures among site, office, and program staff
16 members.

17 Develop technical specifications for outsourcing
18 agreements; meet with vendors and contractors, analyze
19 management contracts, and monitor vendor/contractor progress,
20 and adherence to agreements and specifications.

21 Some of the tribes were interested in providing a
22 mechanism for monitors in this program and giving this office
23 the responsibility to overlook those contracts.

24 Perform, research, and analyze data using computer
25 database, spreadsheet, word processing, presentation, and

1 communication software programs.

2 Confer and work cooperatively with other information
3 service staff, THPO administrators, cultural resource personnel,
4 site or project personnel, state or federal department
5 representatives, and members of the public regarding technical
6 issues, operational factors and costs related to information
7 system decisions.

8 Knowledge and abilities. Problem-solving skills.
9 This person's going to be a semi-super person unless they have
10 staff, okay, because this is a lot of duties for one individual.
11 Okay. Problem-solving skills, methodologies for managing
12 technical change on a proactive basis.

13 Principles and practices of modern information support
14 and telecommunications systems. Computer technology and its
15 application in office automation. Technical expertise on one or
16 more of the following: PC hardware, industry standard software,
17 application development, local area networks (LAN) wide area
18 networks, network operating systems, network cabling
19 technologies, and industry standards and practices.

20 Ability to interpret and apply laws and rules and
21 regulations. A person has to be quasi-legal law -- a lawyer or
22 at least a person that studied the preservation laws.

23 G, supervise and evaluate performance of assigned
24 staff, analyze and resolve critical issues with significant
25 organizational impact, work tactfully and effectively with

1 administrators, employees, and the public, communicate
2 effectively orally and in writing, use commonly available office
3 automation tools such as spreadsheets, databases, word
4 processing, presentation, communications, and main frame access.

5 L, provide technical information and assistance to
6 others concerning the feasibility, acquisition, implementation,
7 and maintenance of information and telecommunications systems
8 and services.

9 M, work independently on complex assignments with
10 little direction. Maintains records, confidentiality, prepares
11 reports; form other duties as assigned.

12 Office location. Time frame. To determine varying
13 levels of consultation and who is here on varying capacities.
14 Executive order. That's --

15 MR. IRON EYES: This is all just other notes that we
16 were --

17 MR. YOUPEE: Yeah. So this is some notes that we were
18 making prior to that.

19 We did develop a duties and task -- did you get that
20 printed out too?

21 MR. IRON EYES: No. No. We don't have that printed
22 out.

23 MR. YOUPEE: I think we should go through that before
24 we start questioning. But I'm going to give this to you because
25 you can see that information on there better than I can.

1 MR. IRON EYES: Yeah. And maybe you should have a mic
2 because whenever I'm talking if you have something to add.

3 I'll go ahead and start reading from what you folks
4 can view on the screen up here. This was a proposed office
5 profile chart for information systems and coordination. You
6 know, this sort of all encompassing office that we want.

7 We'll start with 1, and that's broken down into about
8 eight different duties, sections. So the first is to administer
9 operational tasks. And subsection A in there, handle client
10 complaints. B, organize maintenance schedule. C, conduct
11 information systems equipment inspection. D, produce
12 information systems operation report. E, prepare work
13 distribution. Implement lost procedures. Delegate job
14 functions. Recommend asset disposal. Verify minutes of
15 meetings. Establish information systems. Equipment maintenance
16 schedule. Endorse job schedule. Justify office expenditures.
17 Verify office facilities. And inspection.

18 And I think a lot of this has to do with just, you
19 know, our goal of being accountable to ourselves and to whoever,
20 you know, who have involvement in this.

21 Or duty number 2, administer organizational policies
22 and procedures, monitor staff attendance, enforce office
23 regulation, prepare office security and safety procedures,
24 organize information systems, security control, enforce security
25 and safety procedures, review security and safety procedures,

1 review staff code of conduct.

2 And if you have anything to add at any time just raise
3 your hand. Otherwise, let me know.

4 3, organize office recruitment, conduct staff
5 interviews, staff recruitment, monitor staff recruitment,
6 recommend manpower planning, implement office recruitment
7 policies and procedures, recommend disciplinary action,
8 recommend dismissal action, plan office manpower recruitment.

9 4, organize human regulations function, monitor staff
10 welfare, monitor staff performance, conduct office meetings,
11 perform staff counseling, conduct project meetings with tribes.
12 D, perform staff counseling, conduct project meetings with
13 tribes, review staff performance, recommend staff promotion.

14 5, organize office budget, specify office needs,
15 prepare itemized budget, monitor office budget, control office
16 expenses, forecast capital expenditures and recruitment, prepare
17 office budget, review office budget.

18 Now when you're hearing these things just keep in mind
19 that initially this would start, you know, just for DM&E, but
20 what we're envisioning is sort of a -- you know, an organization
21 that can serve as this hub into the future for any of our needs.
22 So we're trying to keep it general and keep it applicable to all
23 sorts of situations. So just bear that in mind.

24 6, manage operations inventory. Monitor information
25 systems equipment inventory, monitor office facilities

1 inventory, control information systems equipment inventory,
2 prepare inventory report, endorse consumables inventory.

3 7, liaison with other departments and agencies, which
4 would include attending DM&E meetings, coordinate with other
5 DM&E departments, monitor interagency communications to include
6 tribes, monitor relationships with external agencies, attend
7 other DM&E meetings, issue office memoranda, and establish
8 relationships with external agencies.

9 8, design office development programs. Organize staff
10 training, conduct staff training, conduct staff appraisal, and
11 monitor staff training. Develop staff training program. That
12 sounds a little repetitive, but we want them all separate.
13 Implement cross-exposure or cross-cultural interaction and
14 awareness programs so that we can work effectively together.
15 Update staff job descriptions, determine training needs,
16 nominate staff for incentive awards, recommend cross-exposure
17 programs, formulate performance criteria.

18 One thing that we were talking about in caucus is that
19 what we're trying to do here we want it to sort of serve as a
20 prototype. And we think it's a good way to, you know, actually
21 just start on the ground doing the legwork and implementing all
22 of these laws that different agencies and different private
23 parties and tribes have an interest in resolving. So hopefully
24 we can make this work.

25 9, organize office purchases, process information

1 systems product requisition, survey information systems product,
2 compile information systems quotations, recommend information
3 systems product, approve purchase orders, and approve purchase
4 items.

5 Number 10, manage special assignments. Curley or
6 somebody, do you want to talk about what that might entail,
7 these special assignments?

8 I think these were the actual monitors.

9 MR. YOUPEE: Yeah. If we have special assignments --
10 and we were looking at the monitors. We were looking at also
11 elder groups that may need a centralized administrative or
12 administration to provide information services to them.
13 Logistics, accommodations, transportation perhaps, stuff of that
14 nature. But special assignments.

15 Anything else? Anybody else?

16 MR. IRON EYES: Can everybody else see this all right?
17 Okay. I'll just run down the list again.

18 Analyze tribal client needs, develop presentation
19 contents, recommend client needs, implement client needs, set up
20 project committee, conduct business presentations, propose
21 office upgrading plan.

22 MR. YOUPEE: Yes. Let me expound on that now I know
23 where you're coming from.

24 MR. IRON EYES: I knew there was something in there.

25 MR. YOUPEE: We're looking at -- we're looking at an

1 office that would facilitate for all the tribes actually. And
2 that would include tribes in Oklahoma, Nebraska, Wyoming, and
3 every place else.

4 Now as they get plugged in to this operation or
5 project they will certainly contact this office for the
6 information they feel they need to get up to speed as well as
7 what we think we would provide to make sure that the --
8 regarding all the events taken place so far.

9 So it would assist you in that respect. No one's
10 doing that right now. No one's able to do that, okay, as far as
11 nontribal initiative.

12 And so we can provide that service as well. Right now
13 we're acting as a take it or leave it, but we do need tribal
14 participation in this. We need to ride for the long haul and
15 experience all the emotions in this dynamic itself.

16 MR. IRON EYES: I think that's absolutely right. For
17 some of this these are treaty obligations. For others this is
18 just simply the legal definition of trust responsibility.
19 Whatever it is, whatever you want to call it, this is actually
20 putting it into practice, I think.

21 Number 11, rule number 11, organize information
22 systems research and development, analyze information systems
23 market trend, conduct information systems and market survey.
24 This is just to keep our organization, this organization,
25 abreast of any, you know, new developments in either technology

1 or specific industry standards relevant to this field -- to
2 being out in the field.

3 Promote usage of new and developing technologies.

4 And that's about all we got. I don't think -- because
5 we don't know where the money would come from for this. Nor do
6 we have a dollar figure on it yet. So we wanted to keep it
7 broad. We know that -- initially this project involves all of
8 our tribes collectively and other interested parties and
9 specifically with the DM&E Railroad Project.

10 So we know for the first three years or whatever the
11 life of the project is that it would be probably tailored to
12 that. But we want to basically provide for opportunity for our
13 growth beyond that.

14 MS. GLIDDEN: This seems like a really great idea.
15 And I think it's even something that Herb had at one point
16 recommended sort of a pilot sort of project in a sense that
17 would not only assist with coordination for this project but for
18 future projects. And this is just stunning that you were able
19 to get this all together in one meeting.

20 But as far as how this would work with this project
21 and how it would interface with the current flow of work, could
22 you address how that would work?

23 MR. YOUPEE: How it would work with this project and
24 how it would --

25 MS. GLIDDEN: How we would get this going and have

1 that integrated into work that's on going, report reviews and
2 field work and all of that.

3 MR. YOUPEE: First of all, that's the final question.
4 First of all, I think we need to flush out some of the concerns
5 that we've had that brought this project up.

6 MS. GLIDDEN: Okay.

7 MR. YOUPEE: Some of the -- maybe some of the things
8 that we felt were necessary. Some things we felt that weren't
9 being addressed or addressed in our satisfaction as something
10 that we thought would provide mutual benefit again once more.

11 Now this constructing a hypothesis for intertribal
12 relationships is necessary because it's not being done right
13 now. All we have is Caucasians, non-Indian organizational needs
14 being met, and there isn't a place for us to become
15 organizational.

16 We have to react, okay. We have to react
17 continuously, and that really puts us off guard as opposed to
18 becoming proactive and simultaneously promote a workable plan.
19 And so we come up with this office that would provide
20 information systems, technology coordination. Okay.
21 Informations infrastructure.

22 And we told you about this this morning. We didn't
23 have as much to provide for you. You asked for it. We're
24 providing it for you.

25 Okay. Now we can go deep into this as far as

1 budgetary, but I'm not sure all parties would be interested in
2 that. Because we can cut cost as we see it today. But, you
3 know, that's something else that DM&E might want to consider.

4 But all in all we're here to help DM&E, OSM, OST
5 develop a working solution through federal mandate laws, a
6 working solution from court decision and stipulation, a working
7 solution in the relationships between Indian and non-Indian in
8 this region.

9 MS. GLIDDEN: All right. Anybody have anything to add
10 regarding this proposal?

11 MR. HENKE: Chase, can you go back to I think it's
12 item 7 in your list?

13 MR. IRON EYES: This one?

14 MR. HENKE: Yeah. Little trouble reading it.

15 MR. IRON EYES: Okay. How is that?

16 MR. HENKE: Just a few comments. Liaison with other
17 departments and agencies. This is the only place I -- I mean,
18 we talked this morning about a way to pass information back and
19 forth so that we can give information that we make sure gets to
20 all the tribes and then there's a way to get information back.

21 Nowhere in here do I see the STB mentioned. They're
22 obviously the lead agency. Most of this information needs to go
23 back and forth between the STB and others, et cetera.

24 And then if I go to the -- leave that up there because
25 I think that's -- I mean, there's a lot of sections in this that

1 talk about hiring, firing, managing, et cetera. But, again,
2 going back to the scope of what we talked about this morning and
3 where I thought we were headed was a way to on this project get
4 information back and forth in a quicker, faster, more efficient
5 manner that everybody gets it.

6 And I hope I'm not off on that. But, again, there's
7 11 or 13 functions here, and that's the only function where I
8 see the original discussion this morning of making sure we find
9 a method to help enhance this project that -- all of these
10 things can carry on somewhere if this project's long gone. But
11 this is to help this project. And again I say the STB is
12 obviously a very important interface in there or it doesn't work
13 at all.

14 And then leave that up there, Chase. If you go to the
15 proposed draft of the tribal involvement -- and I'm sure this
16 just takes some more editing and other stuff, but again I would
17 think in the first paragraph which would be the purpose or scope
18 of this person or department or organization, it's a hub for
19 reception and dissemination of information as well to the
20 tribes. So nowhere do I see any interface back and forth.

21 What I read there, the purpose of this office is for
22 us to give information so it can be received by the tribes and
23 then at least forwarded out through the tribes. And that seems
24 to be where it ends in that statement.

25 So, again, going back to what we talked about this

1 morning of an organization or a group of people that are sending
2 information out, giving information back so that we can help
3 facilitate this project, and I see it -- at least I believe we
4 talked this morning or at least my impression was and if I'm
5 wrong, somebody tell me I'm wrong, was a two-way communication
6 out of this office. This is very much geared to be a one-way
7 communication.

8 MR. YOUPEE: Yeah. But you're just reading that one
9 bullet. If you --

10 MR. HENKE: Yeah. I understand, Curley. But
11 typically in a job description or a description of scope the
12 very first part talks about what the purpose of this intended
13 group, body, function, report is and what we're trying to
14 achieve as a result of it.

15 So I think -- I said that right up front. I said
16 maybe this just needs to be wordsmithed better, and I say it
17 needs to be more than just a -- the purpose statement needs to
18 be right up front. What are we trying to achieve here with this
19 group of people or this organization? What's it meant to do?

20 And I don't think it was meant to be a one-way
21 communicate. I think it was meant to be -- an ombudsman,
22 liaison, whatever the words I heard earlier, so that we can get
23 out and we can get collated information back. At least that's
24 the way I took it this morning.

25 MR. YOUPEE: Yeah. It is.

1 MS. GLIDDEN: I think also the same thing that you had
2 mentioned about our draft for our plan that we really need to
3 have some time to take a look at this and to see how it will
4 work out with what we're doing.

5 It's a very comprehensive program that you've
6 developed here. And it obviously -- you're intending -- you've
7 developed it in a way that it would be a long-term thing that it
8 would go beyond the length of this project. And that's great.

9 But I think that it's so comprehensive and so involved
10 that I guess we just want to know how it's going to work with,
11 you know, our project right now. Because we have a schedule.
12 We have things that we need to get done. We need to get you out
13 there in the field. We need to get involvement.

14 And I propose that we have a work group, a select
15 group of people from, I don't know, some of the tribes, maybe
16 STB and DM&E, and that we hammer this out in a small group at
17 some point once we've had a chance to look at it and comment on
18 it.

19 MR. YOUPEE: Yeah. We anticipated that as well. And
20 so we selected Russell. We selected Russell. We selected
21 Scott Jones. Who else did we select? Dianne, and Faith.

22 MS. GLIDDEN: Russell, Scott, Faith, Dianne.

23 MR. BIBLER: You going to give that to Jim?

24 MS. DESROSIERS: Jim will be there.

25 MR. YOUPEE: This fellow too will be there.

1 MS. GLIDDEN: Chase, of course.

2 MR. YOUPEE: So we thought that we could flush it out
3 and come up with some workable program.

4 MS. GLIDDEN: Okay. So we might as well go ahead and
5 continue the makeup of this group. And, Herb, who from your
6 group would be involved in this?

7 MR. HERB JONES: You've got us.

8 MS. GLIDDEN: All three of you? Okay.

9 MR. ROBINETTE: Thanks for volunteering.

10 MS. GLIDDEN: Okay. We'll just figure out who -- I
11 guess Dave and Randy will -- at least one of you will
12 participate. Okay. So we have that working group.

13 I think the other thing that beyond this work plan is
14 getting back to our work plan for tribal involvement that we
15 developed.

16 We had a couple of areas where we wanted to develop
17 some working groups outside of this -- or separate working
18 groups. Maybe they could be the same people. I don't know.
19 But specific to the development of the training component.

20 I know that Faith had approached me about training,
21 the cross-cultural training, because she apparently has a great
22 deal of expertise in doing training. And she mentioned a couple
23 of courses that she's taught, the two-day courses. And I think
24 it was Indigenous Science. And the other one was Red Rage, two
25 different courses that she teaches, which sounded great.

1 But I'd like to develop a committee that -- or a group
2 that could talk about -- to get together to deal specifically
3 with the training aspect. I think probably it would be A and B.
4 Because the railroad safety training would be done by DM&E and
5 is pretty straight forward.

6 But anybody -- anybody other than Faith interested in
7 being a part of that work group?

8 MR. MADSON: I would. I would be.

9 MS. GLIDDEN: I mean, Mike Madson.

10 MR. MADSON: Most of the need for that is recognized
11 in the field work that was done and is ongoing and I would take
12 responsibility for.

13 MS. GLIDDEN: Okay. Mike Madson. And then we'd have
14 Faith and who else?

15 MR. MADSON: Ben.

16 MS. GLIDDEN: Okay. Curley and Ben. Okay.

17 MR. IRON EYES: I think you should probably add my
18 name or add the Standing Rock Sioux Tribe. I don't know who
19 would be appearing on our behalf.

20 MS. GLIDDEN: We'll just send this around, you know,
21 and sort of we can go ahead and change things if need be, but
22 just so we have an idea that we've talked about it and, you
23 know, we know that we're going to meet again to talk about these
24 things. Okay.

25 And the other one would be for the dispute resolution.

1 We need a group that would be able to assist with any kind of
2 issues that may come up in the field immediately. You know, I
3 know that there were some problems with the smudging ceremonies
4 and that kind of stuff. I mean, it should be addressed really
5 right of way so that there's no kind of problems like that
6 again.

7 So who would like to be part of that grievance
8 committee?

9 MR. YOUPEE: I think if we develop that, what the
10 options might be on dispute resolution -- (Inaudible).

11 Dispute resolution I think there's got to be remedial
12 action as well, and tribes need to know that there's a
13 beneficial result in doing the dispute resolution. So if we can
14 have a list of criteria possibly, what that may entail.

15 Because dispute resolution just saying that, well, you
16 guys got to stop doing this, I mean, it doesn't stop there.
17 Because there is legal ramifications as well.

18 MS. GLIDDEN: Well, I think Mike probably could talk
19 to -- about this a lot better than I could because he's actually
20 experienced some of the situations that came up and I guess has
21 dealt with them in the field.

22 But my sense is a place where somebody -- let's say a
23 tribal person's out there doing something and they're upset
24 about what's happening where they could go and have that issue
25 addressed so that everybody is aware of it, that it's not

1 happening in isolation. Or something's happening out in the
2 field that I wasn't aware of until a lot later.

3 So I think that it would be a way for that person to
4 have their issue addressed right away. It wouldn't be anyone
5 necessarily in the field that they'd be working with. It would
6 be somebody who would not -- be sort of independent, you know,
7 have an independence about them. And then they would -- the
8 issue would be discussed. The person would be able to talk
9 about what happened, and then the issue could be resolved, be it
10 that it's an individual situation or something that might happen
11 over a period of time.

12 MR. YOUPEE: I want to answer that by my own
13 experience with part of the project last fall. And I think it
14 was the Blue Bill area where we had individuals that weren't to
15 smudge.

16 Now you have to understand that the sacredness of the
17 spirituality is not restricted by imaginary lines or fence posts
18 or any manmade documents. You've got to understand that if
19 these people feel that they need to smudge, it's what they need
20 to do. And if these are spiritual people practicing their own
21 spirituality, traditionalists, then they're going to do that.
22 They need to do that. There's no way around that.

23 And so that's a critical -- that's a critical thing
24 that we have to contend with.

25 MR. HENKE: One comment to Curley. And I am very

1 sensitive to that. I got involved, discussed that. We talked
2 about our rules, and we found a way around all of that.

3 So I think what they're asking for is a formal process
4 or a little bit more formal process so we know it's taken care
5 of. It's like the drinking incident. But on the smudging thing
6 we are going to run into this again because under our
7 court-ordered access in Wyoming we are not allowed to put a
8 flame on those properties or we can't go on them.

9 So we are going to have to work through this in some
10 way that we can come to a way to go out and work on areas where
11 we are now by the court's orders not to have an open flame.
12 Wherever we can on our property or we could do it on an
13 individual's property or where we had access agreements we found
14 a way around that. But there's 18 properties out there. If we
15 go on those, there's a court order that says we will not.

16 MR. YOUPEE: Even if we're in the vehicle?

17 MR. HENKE: Even if we're in vehicles. If we're on
18 their property -- we can go off their property and do whatever
19 we want. But on their property -- I'll get you the court order.

20 MR. YOUPEE: Define open flame for us.

21 MR. HENKE: Well, I'll have to get the law, and we'll
22 have to get some lawyer to interpret it. I'll get what's in the
23 court order for you.

24 MR. HERB JONES: If I could, the one thing I want to
25 make sure for the record that we're talking about here, in the

1 P.A. if you look at page 13, there is M, which deals with
2 dispute resolution.

3 And I want to make sure that what you're talking about
4 is dispute resolution on, for instance, day-to-day operations
5 things, not that aspect of dispute resolution which there
6 already is a process defined.

7 MS. GLIDDEN: Yeah. I'm talking about day-to-day
8 issues that are going to come up. In a way I see what happened
9 with the field work is it's sort of a trial run. We now know
10 the types of things that are likely to happen in the field.

11 So I'm thinking of a process to deal with issues that
12 are going to come up with in the field so they can be dealt with
13 quickly and effectively. And the committee would talk about
14 things that have already happened and kind of figure out a
15 process for addressing those issues. For instance, the issue
16 that you just brought up.

17 And in addition to that, this committee would be an
18 existing -- it would be an existing hierarchy whereby a person
19 let's say in the field who's upset could have a contact person
20 that they could go to and then if need be, this grievance
21 committee would come together and address the issue.

22 It may be a very simple issue like somebody was
23 drinking the night before. And in that particular case it would
24 just come down to HDR's rules, and it would be dealt with, you
25 know, because they already have a established procedure to deal

1 with that. So that's kind of what I was thinking.

2 Separate from -- you know, this is much more involved
3 and has to do with -- yeah. I mean, it's not what I'm talking
4 about at all. I'm talking about, you know, how to address
5 issues in the field because we're dealing with two different
6 world views and clearly we're going to have some conflict and I
7 think we have to find a way to address those right away so, you
8 know, people can work together.

9 MR. MADSON: I think the great advantage of the Office
10 of Tribal Involvement would be to -- there's a hierarchy there
11 built in to the tribe's own structure to be able to bring that
12 to their superiors and deal with it on the right level to
13 resolve it quickly. That could be a real benefit there.

14 MS. HALVERSON: So when our monitors were in the field
15 and they were one monitor to four arc survey crew. So that
16 would come -- they'd have to bring it in. The monitors would
17 bring it in, and then we'd have to go to this committee or
18 whatever; right?

19 MS. GLIDDEN: I'm sorry. Repeat that.

20 MS. HALVERSON: When our monitors were in the field in
21 Minnesota -- and besides I would like to be on these committees
22 representing the Dakota Tribe from Lower Sioux in Minnesota
23 since there's no other ones here.

24 Our monitors were in the field. There was one monitor
25 to four on the arc or the survey crews. And they were at three

1 different places on these sites.

2 So when they have this happen in the middle of the day
3 how are we going to all come together and resolve this?

4 MS. GLIDDEN: Well, I mean, that's a very good
5 question. I think one of the reasons we need this committee to
6 address exactly how this is going to work, how it's going to be
7 made up, what it's going to do and what the procedure is going
8 to be for, you know, whatever might come up in the field.

9 So I think that's why this is important to have this
10 kind of a committee that gets together within the next week or
11 so maybe or the next couple of weeks to develop -- to address
12 all of these concerns and develop a procedure for addressing
13 those sorts of things.

14 MR. WITHROW: One thing that comes to mind that's
15 occurred to me as Pam was talking about how to deal with these
16 in the field as they come up immediately, one of the things
17 we're trying to do proactively with the training we talked about
18 that will be developed is to do that cross-cultural sensitivity
19 training to hopefully avoid some of those situations from
20 happening in the first place. So hopefully that will work to
21 avoid some of those from happening.

22 Of course, the dispute resolution grievance committee
23 would be there in case other things did occur.

24 MR. EAGLE BEAR: I missed the gist of the conversation
25 here, but they talked about a court order. And I think we need

1 to get our legals involved in this to -- you know, they're
2 sticking to their guns on the judge's ruling.

3 And so where would tribes -- how can tribes get
4 involved in this court order? Do we need to file something in
5 that district to address this open fire? I think there's a
6 misunderstanding of -- and even going back to the individual
7 landowners, if they knew that these tribal representatives were
8 coming on there for a purpose, I bet 90 percent of them will
9 agree to a ceremony being conducted.

10 So, you know, and these guys are sticking to their
11 guns on the law. I mean, that's the way they interpret it. And
12 so how can we as tribes -- I guess this could be a legal
13 issue -- go back into the court? Is there possibilities?

14 And I guess maybe that's research that you can do with
15 Eric Antoine, our tribal attorney, and whoever else wants to get
16 involved. Arapaho. I think it's in your state. And I think
17 that really would be helpful. Because just to clarify it. And,
18 again, getting back on that same page with everybody involved.
19 So I guess that's a legal issue that we will probably address.

20 MR. HENKE: Just to follow up, Russell, what I told
21 Curley is I will have that pulled. I will have our attorneys
22 look at it. I will try to find out what we can and can't do or
23 what they believe we can and can't do, and I'll provide it to
24 you.

25 It's not a secret. We know where we stand. And I'm

1 very sensitive to the issue so -- but we're the one under the
2 order, not you guys, so we've got to try to figure out a way
3 through that.

4 MR. EAGLE BEAR: But it also involves us. You know,
5 when we have monitors out there, it involves us. And, you know,
6 I'm not questioning, you know -- how can our tribes maybe
7 address that back into court? Maybe we need to bring this --
8 how can we -- how can our tribes come in and go back into court
9 to address this issue?

10 Because, like he says, you know, they're pretty
11 sensitive to it, and they're going to stick to what the law
12 tells them. I'm not saying they're withholding any information
13 to us, but, you know, that issue was brought before us, and it
14 was an issue. And we felt really offended. However, we
15 couldn't do anything about it because these guys are standing on
16 that court order. So that is an issue.

17 MS. GLIDDEN: I mean, I think that obviously there's a
18 lot of things that are of concern already and that this
19 grievance committee could and needs to consider. And so my idea
20 of this committee would be a group of people that would become
21 comprised of some of the tribal representatives and then DM&E
22 and HDR and then us to go over exactly these types of things.

23 And, Chase, perhaps your expertise would be really
24 helpful in terms of answering that question regarding, you know,
25 the legal issues.

1 And then I was thinking once the grievance committee
2 formed and addressed a number of issues, then they could develop
3 a process that would then be used in the field. So the
4 committee might not necessarily be the same people that are --
5 you know, that would be part of that process or that hierarchy.

6 MR. IRON EYES: Okay. First, I don't know the answer.
7 But if it is a State Court, and I think we're dealing with
8 Wyoming, depending on what court level the court order was
9 issued at there, that's what would dictate whether or not we
10 have appealable rights under whatever guys of law that we might
11 want to structure that under.

12 But, I mean, I know that it's something that we need
13 to get addressed because it's a very real, I guess -- it is life
14 altering to us. It's part of our paradigm, our world view, that
15 we can't really -- we can't go on to certain sites or do certain
16 things with certain areas, ceremonial areas, because it would
17 have a very real impact for us today.

18 So I know that -- I don't think we're disputing
19 whether or not our beliefs are sincere or whatever. But we're
20 just saying that that's an important thing to us, and we're
21 going to try to get it resolved.

22 And I think one way -- if it is given -- let's just
23 say it is the highest court, the highest court says, no, you
24 guys can't go on in. The fire ban, that's what it is. This is
25 what happened in Colorado while I was down there. We were

1 trying to sweat and had a fire ban, and got shut down.

2 That's what they're standing on, and that's basically
3 what the rule would say in that incidence. We just have to
4 abide by it, or we're sending people out there to break the law
5 or whatever. And there might be some individuals that would do
6 that.

7 But I think one very real workable solution would be
8 that grievance committee. Because that grievance committee
9 could at least hear those concerns and work with both sides of
10 it and if need be, contact the private landowners who may or may
11 not be receptive to our demands. We'll start with Ben and go
12 down.

13 MR. RHODD: This is a very sensitive issue for the
14 native people in this room right now because we have an
15 obligation and a responsibility to that past.

16 We don't know many times when we go in the field what
17 we're going to discover, what we're going to find. If we walk
18 up, just walking along, monitoring what the archeologist is
19 doing and we see something that is part of one of our
20 ceremonies -- you saw those pictures yesterday. The
21 archeologist doesn't have a --

22 I can tell you the archeologist doesn't have a
23 description of what that is, of its meaning. We can describe --
24 as an archeologist we can go out and measure, count the number
25 of stones, map it, surmise what we think it is.

1 But for us who have knowledge of what those features
2 represent, that's scary. Because we know from our spiritual
3 knowledge and belief how dangerous that can be for us.

4 We'll take it to this level. And this is not a
5 reflection on women. But if there's a woman on her time and she
6 comes up on that, she can get hurt. Or hurt somebody else.
7 Somebody else may get hurt right there. You non-Natives don't
8 understand that. We do. We know what the power that such a
9 feature as you were shown in those pictures represents today.
10 It's still here.

11 If we should come up on a burial, for example, that
12 was missed by the archeologist, we don't know who that person
13 was. We don't know who they were in their life. But we don't
14 want something following us home. We have to do something right
15 then and there before we walk away from that place.

16 When we say we don't want something following us, we
17 have -- that just means we don't want it going back and bringing
18 harm to either ourselves, to our loved ones, to even the crew
19 members who are with us, native or non-Native. It doesn't
20 matter then. So this is sensitive.

21 Now if that's not resolved, I'm not sure how we can
22 proceed into the field because I don't want to be faced with
23 that same situation again. You can form the grievance
24 committee, and that's good. On other level, though, we're going
25 to be going into the field very soon. If there is not a process

1 by which we're able to protect ourselves, we as tribes have to
2 figure what we're going to do about our monitors and how to
3 protect them.

4 Maybe it's going to take ceremony. Maybe we'll have
5 to work with it that way first until some process is agreed upon
6 or a court or something. I don't know. But this is pretty deep
7 we call it, what you're talking about now. And I for one, I
8 want protection. I want to be able to protect myself and
9 anybody with me.

10 You talk to other of my colleagues, and what I had to
11 do sometimes to protect them because they got so scared.
12 They're archeologists, and they're non-Native. But they will
13 tell you stories over these years. And they understand, the
14 ones I've worked with.

15 So I just wanted to say that. We can form that
16 committee, but we're going to need something really soon and
17 quick, whether it goes through the court -- back to the court or
18 whatever we have to do. But I for one don't want to be out
19 there without being able to protect myself.

20 Thank you.

21 MR. HERB JONES: The one thing I just wanted to say is
22 I first off understand that any issues that you have on that
23 front -- you're not running into resistance from us on that. I
24 just want to make sure it's understood. When we have these
25 issues that isn't a corporate position or something like that.

1 We are acting -- we cannot violate court orders. That's where
2 we're coming from.

3 To the extent that you can find a legal means to
4 conduct activities, we're not going to discourage you from doing
5 that I mean to say. But that's where we're -- where we're
6 coming from on it.

7 And, again, maybe there are other ways to look at it.
8 I'm the first person to tell you I don't have an appreciation
9 for all that you're dealing with but I do have an appreciation
10 that I don't understand all of that and whatever can be done,
11 you know, we're not discouraging you from pursuing those ways.
12 But, again, we're just in a position we can't violate court
13 orders.

14 And I want you to know too we're dealing with, I
15 think, specific properties here. This isn't going to be
16 something that you're going to face system wide. There will be
17 places, for instance, that we have right now that we have court
18 orders on specific properties that that would apply. That
19 wouldn't be a universal application somehow to what we're doing
20 everywhere. I just wanted to make you aware where we are.

21 There's one thing I wanted to say too on the dispute
22 resolution. I don't know how that process works out, Cathy, in
23 the end. I don't know how a committee -- what their actions
24 mean. I'm assuming its a fairly informal organization, I mean,
25 dealing with informal issues but where the dispute resolution

1 group doesn't have an answer, there's some kind of a
2 recommendation to STB or something like that to make a call on
3 whatever the issue is. But I do think it would have been handy
4 to have a group like that to sound things out on even on an
5 informal basis kind of like we did on this last issue.

6 It ended up being an informal group that got together
7 who were particularly affected by the issue. Took a little
8 time, but we did iron things out ultimately. But I'm assuming
9 that that process would be defined in way that when the
10 committee itself doesn't know what to do there's a
11 recommendation of some kind made to STB or something that can't
12 be resolved.

13 Whatever it is I just want to make sure there is -- in
14 that process of defining the committee there's also a process
15 internal to the committee to say here's how it works and here's
16 what the result of that would be.

17 MR. YOUPEE: I have another comment on that dispute
18 resolution. I think that in this office structure here itself
19 we could put facilitate traditional and cultural ceremonial
20 protocol. To facilitate. And I agree with Mike Madson that we
21 need to take that back to the tribes. Okay.

22 Now this office can facilitate for that. Now we could
23 be a runner to each landowner and ask whether or not it's
24 permissible. Okay. Because we understand court orders more
25 than anybody else. Been affected by court orders more than

1 anybody else here. And so we're not -- we're not saying that
2 we're going to do it anyway, violate our rights or someone
3 else's rights in doing so.

4 But we do want to find a way around it. And I think
5 we can, either through fire suppression mechanisms or contacting
6 the landowners or precontact and see if there is anything that
7 we could do to assure him, her, the landowner, that we're not
8 going to burn down the property.

9 But what I wanted to say as well is that the trains
10 start more fires than Indian people. Just a little humor I want
11 to throw you. Because we see a lot of fires out there started
12 from train activities.

13 But, yeah, this isn't something that is going to put
14 us against a brick wall. There's a mechanism that we can find,
15 sure. But I'm in agreement with Mike Madson again that we need
16 to throw this into -- back at the tribes for their decision.

17 Now if we select an individual or individuals to
18 coordinate with this office in respects to private landowner
19 contacts, you know, that's a mechanism that might work, you
20 know. And then, of course, we need to see the court ruling as
21 well for the specifics in there and definition so we know what
22 parameters we can operate with them.

23 Thank you.

24 MS. GLIDDEN: Can we get Curley and Chase and whoever
25 else wants a copy of that court order?

1 MR. HENKE: Sure. It's a public document. Sure.

2 MS. GLIDDEN: And then I'm curious to know how many --
3 is there just one document, several documents?

4 MR. HENKE: There's orders in four counties involving
5 about 18 properties.

6 MS. GLIDDEN: And were these filed by the property
7 owners because they were concerned or --

8 MR. HENKE: We filed in court to get access to their
9 property to do surveys, all surveys. So legal surveys,
10 biological surveys, 106 surveys, wetlands surveys. So there's a
11 whole protocol. Chase or whoever needs the court document, I've
12 got a copy of it.

13 MS. GLIDDEN: Okay. So is it possible that if there
14 aren't too many landowners, that they could be approached
15 individually? Is that something that -- would they be able
16 to --

17 MR. HENKE: Well, again by the court order when we
18 want to go on the property we have a method where we have to
19 notify them, tell them when we're coming, how long we're going
20 to be there, how many people, how many vehicles. As part of
21 that document we can say we are going to have tribal
22 representatives with and want to do smudging ceremonies. All of
23 those things we can try to do and hopefully get an answer.

24 I would -- I'm not going to tell the tribes not to
25 contact these landowners, but I will say this is the most

1 adamant group of people against this project, and we've had
2 several employees threatened by guns and other things so we are
3 very sensitive to court order. We're also very sensitive to
4 things that are sensitive to you folks. So there's a fine line
5 there I think we've got to walk to get to the right answer. But
6 I think it's doable.

7 MR. YOUPEE: Yeah. But I think there's two ways of
8 looking at that. People look at it in the spiritual sense and
9 look at it in the economic sense as well. And I think those
10 clash all the time.

11 And if we can sensitize individuals to the spiritual
12 understanding for our people, I think that, you know, would -- I
13 think would build relationships, not only for us Native
14 Americans and the landowners but also build relationships with
15 the rail line as well.

16 MR. HENKE: Rather than I think, you know -- I'm not
17 sure what all Cathy's got to get to. Let me get a copy of the
18 court order. I'll get it to whoever wants to see it. I said
19 I'd have our attorneys look at it and see what we can -- we
20 think we can and can't do. Let's maybe use the grievance
21 committee to find a way --

22 MR. BIBLER: Yeah. I think that's what the grievance
23 committee is about is to address these issues and come up with
24 resolutions.

25 MR. EAGLE BEAR: I think also on that -- I guess it's

1 my fault. You know, I heard about this back in Pierre when we
2 ran into the situation, when it was brought to our attention.
3 And I guess, you know, legally we could have addressed it. You
4 know, we should have gave a directive to our lawyers to look
5 into it, do some research, and bring it back.

6 However, with the federal agency sitting there, they
7 have access to the Justice Department. They have -- or you have
8 big resources there, you know, sitting there with you as a
9 federal agency to, you know, do some legal research, maybe even
10 having to go back into court just to address this issue so that
11 we're all on the same page.

12 So I think maybe that's something that -- I can throw
13 that back right on your shoulder too as the lead agency to
14 address and deal with this issue.

15 I'm not here arguing about, you know -- I'm not
16 accusing these guys of holding off that court document. They're
17 the ones that took the people to court and certainly, you know,
18 they paved the way for themselves. And now they need us to come
19 in there to make sure that there's no burial sites and to make
20 sure that -- I know you really want to talk, but let me finish,
21 okay.

22 We had this issue. You know, I'll tell you if you
23 find a native person walking around in a graveyard drunk,
24 they're going to catch them and throw them in jail. You know,
25 that's how the laws are set up. Now we as native people, we

1 don't know who's buried out there, what's out there or any
2 spiritual item.

3 Yesterday was a good example of some rocks and
4 spiritual items sitting there. We know what they are. But like
5 Ben said, archeologists see that as material things, stones.

6 You know, we need to really be cautious and be clear
7 on -- you know, make sure that we all know what our jobs or our
8 responsibilities are. Whether it's a court order or if it's a
9 spiritual issue, we need to know and understand that
10 responsibility.

11 MR. HENKE: And this isn't being cute or anything, but
12 if this is a problem and we don't find a way around it, the
13 optional way around it is the first court case is in March, and
14 under those court cases we get immediate possession. The second
15 court case is in May and, again, assuming those go the way we
16 would hope they would go, we'll be the proud owners of the right
17 of way on that property by mid-May and then we fall under our
18 rules and then we can accommodate everything we're talking about
19 here.

20 There's a way around this one way or the other, and
21 we will work with the tribes to find a way to address your
22 needs.

23 MR. EAGLE BEAR: I guess I would request your agency
24 or entity to do some legal research for us too. You know, I
25 don't know who you're going to contact but I guess we're on the

1 record and I'll officially request that.

2 MS. GLIDDEN: Yeah. Absolutely. I think I'm going to
3 be part of this grievance committee. And I'd like to work with
4 Chase, I think, since you have the legal background. Maybe we
5 can communicate, start working on this right away, get a copy of
6 that court order, and see what we can do.

7 MR. IRON EYES: Sounds good.

8 (A short recess is taken)

9 MS. GLIDDEN: I think I've gone over everything I
10 really wanted to regarding the work plan. I know that we have a
11 number of action items to address. One is that the tribes will
12 send around a draft of the proposed Office of Tribal Involvement
13 and also will send around a copy of the marked-up version of our
14 draft work plan, and that we're going to have a committee that
15 will develop that tribal group.

16 The other thing is the grievance committee, which I
17 think we need to establish pretty quickly, and a committee for
18 the -- develop the committee for the training.

19 MR. YOUPEE: We were talking earlier on that, on those
20 committees which the office itself could provide tribal
21 participation. Action groups, grievance committees, you know,
22 and take care of that type of business as opposed to appointing
23 a new additional -- individuals would be actually groups
24 responsible for the committees that you've identified.

25 MS. GLIDDEN: Who would that be again?

1 MR. YOUPEE: We really haven't determined, but the
2 groups that you've identified, the committees that you have
3 identified can be incorporated into the office itself and be
4 responsible for those type of functions: Grievance committee,
5 training committee, so forth.

6 MS. GLIDDEN: I guess I'm thinking about, you know, in
7 the immediate future.

8 MR. YOUPEE: We are too.

9 MS. GLIDDEN: Okay. Well, you're on the committee.

10 MR. YOUPEE: We're thinking about the immediate future
11 as fast as we can get this office started as fast as we can get
12 streamlined.

13 MS. GLIDDEN: Okay. Unless there's any other
14 questions about any of the things we've been talking about
15 today, Doug was going to go through some milestones that we
16 would like to meet, if possible, and talk about some future
17 meetings to further discuss the tribal and so on.

18 So I'll give the mic to Doug.

19 MR. JACKSON: Cathy asked if I would just kind of
20 review from a program level, I guess, where we are today, and
21 then some future milestones that we want to get more detail to
22 and get them put out on the website on a calendar.

23 But the first thing I was just going to start with was
24 there are actually five archaeological reports at this point
25 that have been issued to the tribes. They've been sent to the

1 SHPO offices and I believe to the tribal chairs.

2 MR. MADSON: Not to the SHPOs.

3 MR. JACKSON: Excuse me. I take that back. The
4 THPOs. But there was a Minnesota overview report that was
5 issued in August. There was a Wyoming field work report that
6 was issued in September. There's a report on the Huron yard
7 that was issued in September. There's the Burns & McDonnell
8 Report of the South Dakota rehab and the PRC that was issued in
9 November. And then there is an additional report in Wyoming for
10 Wyoming field work that was issued in November.

11 So those reports have already been issued for review.
12 And I think talking with Cathy I think they're looking at maybe
13 possibly Monday of next week as basically starting the 30-day
14 clock on the review period as per the P.A. on those reports that
15 have been issued.

16 There's two other reports that are still in the
17 process with Louis Berger right now that have not been issued,
18 and there's still some back and forth there I think before those
19 get issued.

20 Right now we have a tentative meeting scheduled for
21 February 12 and 13. I think we are going to try and hold that
22 meeting in Sioux Falls if we possibly could. That's on the
23 calendar I think that we set up or we're trying to get that
24 information out. I think there was some information that was
25 sent out with the meeting notices that kind of said if we could

1 reserve the dates for future meetings and I think that was on
2 there.

3 A couple of things that we were hoping to accomplish
4 by then, through the back and forth we had on the work plan
5 right now with the (Inaudible) to it, we'd like to be able to
6 have a complete work plan that could be issued at that meeting.

7 I think Ben or Tim Mentz brought up earlier, you know,
8 the need to discuss some of these reports that have been issued
9 to the tribes. And I think Mike and Erin were going to provide
10 some recommendations to Louis Berger or work with Louis Berger
11 and Cathy to take a couple of those reports and try to focus and
12 block out some of the time for discussions of reports and the
13 findings that are in those reports at that meeting.

14 And then one of the things that I think is a little
15 bit crucial is trying to get the committee or the personnel that
16 are going to work on the training piece of that -- at least have
17 those names finalized and at least maybe have a skeleton or
18 outline of the training materials. And the importance of that
19 is sometime either early March or mid-March we want to be
20 holding our first training session for the field season with the
21 intent that as soon as the weather permits in March, the end of
22 March or so we'd be able to hit the field.

23 And, again, I think, you know, when we originally
24 brought up the whole training aspect it was to deal with some of
25 the issues that came up last fall. So hopefully our training

1 with the rail safety training, cross-cultural training, and even
2 some basic training on what's required of the archeologists as
3 we conduct these surveys would be covered.

4 And I think, Mike, we were thinking maybe a day and a
5 half to a two-day session to cover each of those topics.

6 MR. MADSON: Yeah. It would really depend on the
7 curriculum that we developed in the next month or so, if that's
8 possible. I would suggest we have a meeting soon while we have
9 these ideas -- I don't know if they'll ever be out of our minds
10 but while we're fresh off of this it would be nice to meet and
11 have something ready to present uniformly to the group at the
12 tribal meeting in Sioux Falls.

13 MR. YOUPEE: And I think simultaneously there should
14 be the group that represents the tribal interests in
15 establishing the office itself should be able to meet with their
16 counterparts, at least DM&E, (Inaudible). But you'll probably
17 get those reports anyway regarding the development of that
18 office itself. That way we know that the tribes are
19 participating.

20 MR. MADSON: Yeah. I'd glad to come to Rosebud, or
21 wherever you'd like to have the meeting would be fine.

22 MR. RHODD: I think we need to establish a place and
23 time. Because there's so many issues that we're dealing with
24 that it's not just -- I mean --

25 MR. MADSON: Understood.

1 MR. RHODD: This is one of 13 total.

2 MR. MADSON: Understood.

3 MR. RHODD: So we're trying to -- scheduling and we're
4 going to need to figure out a day, place.

5 MR. JACKSON: We have a few more dates that we wanted
6 to hit, and these dates are basically estimated dates. Mike and
7 I and Erin, trying to recall from memory, and the dates that I'm
8 going to throw out here actually I think when we put out some
9 documentation on these milestone dates it will be with the
10 research done that actually when we get into a series of dates
11 here they're dictated by the time lines that are laid out in the
12 P.A. So if these dates aren't exactly right, bear with me a
13 little bit.

14 But around the first of August with the reports that
15 are done or getting close to being issued I think if you put the
16 time lines together for the review by the tribes and the various
17 federal agency somewhere around the first of August on those
18 reports there needs to be -- the I.D. of the sites needs to be
19 done, and there needs to be discussion about eligibility at that
20 point.

21 We know because of the process that we have right now,
22 access to land and the work that has to get accomplished this
23 summer, there will be ongoing reports or addendums to those
24 reports. And I think the plan is you can get into the detail of
25 the plan that Cathy provided. It anticipates that.

1 One key, though, I think for all of us, as Randy
2 mentioned earlier, right now the plan we're working under to
3 construct the project we don't anticipate being in construction
4 until late if at all in 2008, sometime in January of 2009 before
5 we get into rolling into the full construction schedule.

6 With that, though, that means the treatment plans for
7 eligible sites really needs to be sorted out and be put on the
8 table for discussion sometime in mid-November at the latest of
9 2008. The reason that that's important for Randy and I is that
10 it gives us the ability to take those key sites where the
11 treatment involves field work or whatever it may be and then
12 make sure that we're at least accounting for those in terms of
13 the construction schedule that we're working out with the
14 contractor.

15 We believe where we are today we have the time to work
16 these things out, to phase them in that approach. But that
17 mid-November date's going to be pretty key to make sure whatever
18 work we're getting done in the first year addresses these key
19 sites.

20 MR. GONZALEZ: I have a question for you. In this
21 work plan, tribal development, you have two goals there. You
22 have two goals there. Number one, completion of a field
23 inventory, traditional cultural properties, TCPs located within
24 the project's area of potential effects.

25 Are you attempting to comply with Section 110,

1 National Historic Preservation Act? Is that the inventory
2 required under 110? That's question number one.

3 And question number two is, is that going to be
4 contracted out to anybody? And if so, is that the -- is it
5 DM&E? Are they going to do the contracting, or does that
6 contract come directly from the Surface Transportation Board?

7 Because we run into problems before with this issue
8 with the Missouri River with the Army Corps of Engineers where
9 we were looking at cultural resources on the Missouri River.
10 And the Army Corps -- I think they contracted that out, but the
11 inventory under Section 110 was totally inadequate. It was very
12 superficial.

13 And, you know, we started looking at that and started
14 looking at their archeologists, and they didn't do a very good
15 job. So I think that's really a concern, compliance with
16 Section 110 of the Historic Preservation --

17 And I assume that's what that is, you're trying to
18 comply with 110?

19 MS. GLIDDEN: Well, 110 to the degree that it applies
20 it to our agency. We are not a land managing agency. So most
21 of 110 really applies to inventory of sites on federal lands
22 that are owned by land managing agencies. So to the degree that
23 110 applies to us, which it only marginally does because we
24 don't own any land.

25 What we're doing here is -- I think you mentioned the

1 field inventory. That has to do with our identification of
2 archaeological and tribal sites, historic properties basically
3 within the area of potential effect under 106.

4 MR. GONZALEZ: My question was I was just wondering if
5 goal number one, the completion of a field inventory of
6 traditional cultural properties, TCPs, located within a
7 project's area of potential effects, was that an attempt to
8 comply with Section 110 of the National Historic Preservation
9 Act?

10 And the response, as I understand it, is that it may
11 apply on the federally held lands that the railroad might cross,
12 but this is mostly privately held lands, and 110 only applies to
13 federal lands.

14 So that was the question I had. And it would apply to
15 federal lands. And I guess you're trying to do basically an
16 inventory even across privately owned lands.

17 MS. GLIDDEN: Right. Yeah. This is -- as part of the
18 Section 106 process and our approval of the construction was an
19 undertaking under 106. We're the lead federal agency in terms
20 of complying with the 106 process. And this work plan has come
21 out of a -- well, out of the Programmatic Agreement and I.D.
22 plan that were developed as part of the EIS process for this
23 project, which is a very lengthy process.

24 And then so -- and, of course, a number of us have
25 been meeting over the last series of months, since last year,

1 and have come up with this work plan, you know, through that
2 process. So two primary goals would be then to identify as far
3 as the tribal issues are concerned -- a lot of the archeology
4 has already been done, a lot of archaeological reports have been
5 completed.

6 MR. GONZALEZ: Is this going to be done directly by
7 the agency or outsourcing?

8 MS. GLIDDEN: Yeah. We actually went over a lot of
9 this before, but I'll recap it quickly. But the way our process
10 works is the railroad hires a third-party contractor that works
11 under our direction and control. And that's the Louis Berger
12 Group, which is Randy here and Dave Bibler and their group.

13 And then they oversee all the work that's being done
14 in the -- well, they review all the work that's being done in
15 the field. And HDR has hired its own contractors to do the
16 actual field work. And the lead in that is HDR, and Mike Madson
17 is the -- I don't know if he's in the room anymore, but he's the
18 lead for HDR.

19 And then there's another -- subconsultants that are
20 working in the field under them because it's just such an
21 involved project, a number of different consultants, SWCA,
22 Augustana, all of whom work for DM&E so in a nutshell.

23 Does that answer your question?

24 MR. GONZALEZ: Yeah.

25 MR. YOUPEE: You know, as we start back up with the

1 program and TCP identification we asked for and requested and
2 never received a confidentiality clause that was supposed to be
3 constructed. Nor have we received a mitigation policy. That
4 was going to be developed by the agency too. So that kind of
5 refreshed my memory. We start talking about TCP identification
6 again. How do we address that?

7 MS. GLIDDEN: I know that we didn't really go through
8 the work plan all that much. And I guess during the caucus I
9 guess, as I understand it, most of the attention was placed on
10 developing this Office of Tribal Involvement.

11 But the draft plan does address those issues. If you
12 look at the draft plan, if you have it in front of you, on
13 page 5 we have an area for confidentiality policy. And this is
14 something that we want -- that, you know, we've made reference
15 to the provisions within the National Historic Preservation Act
16 that address this, but we can flush this out more.

17 And, you know, Chase, I don't know if you want to work
18 on that. But we can go ahead and expand on that and include,
19 you know, whatever provisions that you think are needed for this
20 particular project. I mean, and it could be an attachment to
21 this work plan. I mean, if it's --

22 You know, I think that we have these basic provisions
23 in the statutory law, but we can go ahead and add language
24 specific to this project.

25 MR. YOUPEE: (Inaudible).

1 MS. GLIDDEN: Right. We do have it in here.

2 MR. YOUPEE: But we have no policy. We discussed
3 policy. You come back with the statute itself.

4 MS. GLIDDEN: Well, it does say any --

5 MR. YOUPEE: Developed a policy regarding this
6 project. We haven't gone through those dynamics of developing
7 something that we can all agree upon, okay. And we haven't seen
8 the intent or initiative for a mitigation policy. And earlier
9 this morning we heard really that there's going to be some sites
10 that are (Inaudible).

11 MS. GLIDDEN: We actually had a fairly lengthy
12 discussion about this in the morning. I don't know when you --

13 MR. YOUPEE: Yeah. But we haven't come out with that
14 yet. But, again, we've asked for that.

15 MS. GLIDDEN: I think -- yeah. I think that we
16 definitely are going to get there. But I think one of the
17 concerns that was expressed is that we really can't get to
18 mitigation until we do the identification, we know what's out
19 there, we know what's eligible, we can assess, you know, the
20 effects.

21 MR. YOUPEE: Well, that doesn't sit well with tribes
22 because we're not going to tell you what's out there if we know
23 it's going to be destroyed anyway.

24 MS. GLIDDEN: Curley, I think this is something
25 obviously we're going to need to discuss a little more. Maybe

1 you and I can have a conversation about this and develop a
2 confidentiality policy. And obviously there's some issues.

3 One of the things I know that I had thought about
4 early on, and I think I talked to Paige about this, is that one
5 of the ways that we could address sites in the field that you
6 don't want to reveal as being sacred sites is to simply tell us
7 at this -- you know, this area or whatever is important and just
8 tell us, just tell STB. And then --

9 MR. YOUPEE: I'm not sure you're obligated to tell
10 the -- (Inaudible).

11 I was saying that in identifying TCPs and if we had
12 done that, you know, the confidentiality, you know, we're trying
13 to build trust as well. Any relationship, you know, that's
14 the -- that's the more -- we have to build trust. And if we
15 can't do that, then it's very difficult to do anything else.

16 Now in saying that, if we identify sites that have
17 spiritual value for us and we trusted you in that
18 confidentiality clause or policy and something was leaked out
19 and certainly went to the landowner, that value of the landowner
20 property because of historical value is going to --

21 MS. GLIDDEN: Curley, you're not obligated to tell
22 anyone if you don't want to.

23 MR. YOUPEE: Okay. I don't think that's where we were
24 going with this.

25 MR. HERB JONES: I think too there's -- one thing I

1 would just want to remind people too is under the Programmatic
2 Agreement under the D.2.1(I) there is that confidentiality
3 section in there which does deal with -- the one part in
4 particular that I want to just -- that it has in here it says
5 "Shall ensure that shared data including data concerning the
6 precise location and nature of historic properties and
7 properties of religious and cultural significance are protected
8 from public disclosure to the greatest extent possible by law,
9 including conformance with Section 304 of NHPA as amended,"
10 blah-blah-blah.

11 MR. YOUPEE: That's the language. How are you going
12 to do that?

13 MR. HERB JONES: Here's what I was going to say. We
14 have some things too that we're going to have thoughts about the
15 work plan that we will submit to you. And I'm hoping too that
16 the tribes or individuals will submit to you any recommendations
17 that they have on your work plan so that those things can be
18 looked at, reviewed, and considered for whatever you want to do.

19 But I just want to remind you that there is that one
20 section in the P.A. that does deal with that. And the
21 implementation part of that, which is your work plan, we have
22 some thoughts about implementation of things too, which we will
23 offer as well. I think we've had a good dialogue about what
24 most of our concerns are, but anything that would fine tune that
25 we'll let you know.

1 MR. YOUPEE: Maybe you guys can fine tune it because
2 we seem to be doing a lot of work for you guys. You guys are
3 paid consultants. And I think the confidentiality clause is one
4 thing. You know, if you guys can flush that out, as you say,
5 provide some type of policy regarding confidentiality rather
6 than throw it back onto the statute itself or the Programmatic
7 Agreement itself, we need an existing policy how we're going to
8 deal with that, okay.

9 The other concern again is the mitigation policy,
10 process and procedure. That's something that I need as an
11 individual, as a tribal member, as a tribe to recognize that
12 there's -- there's going to be something, a process at least
13 that we can depend on.

14 MR. HERB JONES: Curley, I just want to say too we
15 have an appreciation for what you're asking for there.
16 Yesterday morning remind you when we had a fairly generic
17 conversation I thought about compensation and mitigation there
18 were folks that thought that was very premature to do that. And
19 I think for good reason.

20 I think you can have a preliminary conversation about
21 those things and establish a dialogue on them, which I think we
22 are receptive to doing that. But, again, I think going too far
23 on that part, there are limiting factors including not knowing
24 exactly what we're dealing with in total for identification in
25 the first place.

1 But, again, it's hard to discuss the details of
2 mitigation without knowing the details of impacts. And we don't
3 know that today. But I will say I think that there are
4 conversations that I think are -- we're receptive to that and
5 would like to have conversations at least about those kinds of
6 approaches we talked about yesterday that people have already
7 brought up, you know, different concepts with alternative
8 mitigation, treatment, whatever it might be. We're open to
9 dialogue on that and hope to do so.

10 MR. IRON EYES: I think each side's or each party's
11 concerns can be addressed by this process of proposing
12 alternative language for the work plan, the Memorandum of
13 Agreement, and the associated appendices.

14 Now as far as I know, those are the controlling
15 documents, the MOA. And I think there's two of them right now,
16 two appendices. So I'll do what I can. Because I know that
17 it's a -- you know, everybody's interested in a timely
18 resolution of the language of these documents. So whoever's in
19 this working group we'll make sure that we're in the loop and we
20 maintain contact.

21 MR. EAGLE BEAR: Yesterday when we had our caucus we
22 developed some points. And I know there was a question about
23 Mario and that's -- there was an issue that was brought up
24 yesterday by Conrad Fisher in terms of the language. And as we
25 went through this work plan we were going to address those

1 issues when we came to it so that all parties involved have a
2 clear understanding of what kind of language that we want to
3 insert.

4 And I can't remember. He read a quote off here. Does
5 anybody remember? We had a little discussion on that yesterday.

6 MR. IRON EYES: I think just in Conrad's case he was
7 concerned about number 13 and the MOA about ensuring jobs for
8 Indians -- it wasn't that?

9 MR. EAGLE BEAR: No. When we came -- I was kind of
10 the moderator yesterday so I kind of wrote notes to myself. And
11 I -- you know, I thought that when we came back into session
12 today part of our -- yeah. We were going to go page by page.
13 We didn't quite finish all the way through. We didn't get to
14 the last page.

15 But there was some issues that were brought up and
16 then the points of concerns were developed as we went along.
17 And I thought that's what we were going to insert into this work
18 plan.

19 So going back to Mario's question, this document's not
20 set in stone yet. We're still revising it, and that's where
21 we're at. And when you mentioned Section 110, that kind of sent
22 up some red flags for me all of a sudden because the response
23 wasn't -- well, it kind of created questions in my mind too. So
24 that's something that we need to look back into.

25 But anyway that was a process that we thought we were

1 going to go through today.

2 MS. GLIDDEN: Well, I was hoping that we were going to
3 do that, but the impression that I got earlier in the morning
4 was that you hadn't had an opportunity to really go through the
5 plan in detail and so then -- and so that we wouldn't --

6 MR. EAGLE BEAR: Right. We talk about the tribal
7 study and tribal monitoring, and then the idea -- especially
8 with the tribal study -- is how we develop this position or, you
9 know, the need for a position. So that's why we started
10 discussing today.

11 But that falls into play with -- with the plan.

12 MS. GLIDDEN: Do you want to go over those points now
13 in general?

14 MR. EAGLE BEAR: No. It's your call. You're sitting
15 over there.

16 MS. GLIDDEN: Let's go ahead and go over those points.
17 Let's go through the document and just in general talk about the
18 points of concern.

19 MR. EAGLE BEAR: I'm still interested in that
20 \$2.2 billion.

21 MS. GLIDDEN: I'm interested in it too.

22 MR. YOUPEE: Let me just say this. I'm requesting at
23 least an instrument -- I'm requesting an interim mitigation
24 policy, my tribe. Okay? Because I -- I worked a long time with
25 federal agencies and state agencies, and I know better to

1 trust -- well, we'll get -- we'll develop some when we get to
2 that bridge or something on that respect.

3 No. I think that it's necessary to see something.
4 That's going to happen anyway. I want a policy in place even if
5 it's a generic interim type of policy and we can tear it apart,
6 rebuild it, restructure it, however we want to do it, but I
7 think we need something in place. Because there's things that
8 we destroyed today. Minnesota --

9 MR. EAGLE BEAR: I agree.

10 MR. YOUPEE: So we're not addressing that right now.

11 MR. EAGLE BEAR: And we did have some discussion on
12 the treatment plan, and there are some of us that don't agree
13 with the way it's written. And we were going to discuss that
14 with you today too.

15 MS. GLIDDEN: Okay.

16 MR. EAGLE BEAR: You know, yesterday I brought up the
17 fact that, you know, when you say a treatment to address adverse
18 effects that cannot be avoided, I mean, there's something
19 that -- we have to have some discussion.

20 Yesterday I threw out the \$10 billion scholarship
21 support. You know, I'd rather get 10 billion than a dollar. So
22 that wasn't clear. And then that was my point. And so we just
23 kind of left that blank yesterday.

24 And just following up with what Curley said, you know,
25 maybe that we do need -- we do need an interim mitigation

1 clause.

2 MS. GLIDDEN: Okay. Well, we'll insert that. We'll
3 go ahead and add it to the work plan. Do you want us to do
4 that?

5 I mean, now that you have the draft, do you want to
6 work on that? Do you want to just put in a place holder and we
7 can go ahead and insert the language? Anyway you want to do
8 that's fine.

9 MR. YOUPEE: (Inaudible).

10 MS. GLIDDEN: Okay. All right. Okay. Maybe the task
11 group can work on that. Okay. You want to go through any other
12 aspects of the work plan that you have issues with or concerns
13 about?

14 MR. JACKSON: Cathy, I guess I wanted to -- Herb and I
15 are over here trying to clear things up and make sure we're
16 understanding the way the process is going right now.

17 The STB approved the project and stipulated 147
18 conditions. One of those conditions says we'll follow the P.A.
19 Right now the P.A. is the governing document we're working
20 under. The P.A. -- the P.A. may not have it, but I know the
21 conditions have reference to the MOA.

22 There is a general review of the MOA to make sure that
23 what's in the MOA is in compliance with what we're talking about
24 here. I still think that we're missing somewhat with -- I think
25 Scott brought it up on the MOA is that the focus of this is

1 Section 106 and our cultural process -- the process that we need
2 to get through, get sites identified and keep the process on
3 track.

4 But where we sit today the P.A. gave a basic framework
5 for how that's done or laid out the policies that govern how
6 that's done. The work plan as we saw it, it's the detail, the
7 procedures, it's the forms that are going to be needed to make
8 sure it's actually a working document that governs the way the
9 work is going to be done. But it doesn't deviate or doesn't
10 really change or even supersede the P.A.

11 I think what's been laid out here today that we
12 understood was the Office of Tribal Involvement that has been
13 proposed is really the office that would have responsibility
14 then for implementing the things that are in the work plan in
15 accordance with the P.A.

16 But I think the part that I'm still somewhat confused
17 on is that, you know, discussions as far as mitigation and these
18 other things as we heard yesterday, I think there's, you know,
19 two camps as to whether we think we're there or not to be able
20 to discuss mitigation.

21 But the ongoing work, the field work that's planned
22 for this year, the report, the reviews, unless we get through
23 that process and start addressing those, in accordance with the
24 P.A., we're going to be spinning our wheels for a while I guess
25 in the way these discussions go. And I don't know. I guess

1 that's just what we're pencilling out here.

2 MR. HERB JONES: Well, I just want to say I want to
3 make sure I understand things. I assume that we continue to
4 operate under the existing rules and guidelines until you change
5 it some other way. And if that office -- if you can get the
6 office established and plug that module in, it may alter how
7 things are processed but that until you do that, you don't stop
8 everything until that gets done.

9 I mean, I'm maybe wishful thinking, hope it can be
10 done soon. But if it doesn't happen soon, I'm assuming we're
11 still going to process reports and those kind of things and
12 continue the work.

13 MS. GLIDDEN: Yeah. That's correct. This is a
14 process, and we're in the process. And I think that as of
15 Monday we sent out a number of reports, five reports, and that I
16 guess the tribes have had for a couple of months now? Anybody?

17 Yeah. And we would like to have feedback on those
18 reports within 30 days. We're still going, as far as we're
19 concerned, by the process that we've developed and laid out here
20 in this treatment plan, even though it's a draft plan. Because
21 that allows for that extra 30 days. But obviously it's going to
22 be changing.

23 But until we do have something that's final, we're
24 going to be going by the P.A. And the P.A. does state the
25 30-day review period for the reports. And I think what we're

1 trying to do is be flexible because we know that there's a lot
2 of reports and that the -- it's going to take a lot of effort to
3 go through these.

4 So you're absolutely right. Anyway, thanks.

5 MR. EAGLE BEAR: I had a question about that. Again,
6 the issue of the P.A., the Programmatic Agreement, yesterday we
7 had some discussion about the signatories. And we were told
8 that I don't know how many signatures were on there. Three?
9 And somehow, you know, if the railroad people are going to hold
10 us up to that, the Programmatic Agreement, you know, certainly
11 those three tribes do not represent the voice of all the people
12 involved.

13 And I think that was an issue. So I thought that by
14 developing this work plan eventually it gets into the
15 Programmatic Agreement. Now you're agreeing with them, and now
16 you're bringing me back to square one again.

17 MR. HERB JONES: I just -- Russell, I hope -- I mean,
18 we are bound, again, by the P.A. And so whatever we do -- and
19 I'm assuming whatever STB does is going to have to be consistent
20 with the P.A. and that document is for the signatory or --
21 invited signatories to that document.

22 But for us that has to be the governing document, and
23 it is the one that is imposed on us as well by the STB through
24 their decision and the one, again, that it's been through court
25 and everything else. But, I mean, that's a document that we're

1 bound to.

2 Now the work plan certainly can, I think, provide a
3 means of allowing everything to work in a way that we all agree
4 to, but it all has to be consistent with what the P.A. lays out
5 for us because that's why they spent the year putting the P.A.
6 together in the first place as our blueprint. I don't know if
7 that helps anything. That's my observation.

8 MS. GLIDDEN: Yeah. The point of this work plan is
9 not to replace the P.A., not to amend the P.A., but it's simply
10 to develop a process for getting tribes involved in the field
11 work. That's the point of this work plan.

12 And we've developed a work plan that was based on a
13 plan that was developed in October at the October tribal
14 meeting, and we inserted a number of things that we thought were
15 of concern. And we've tried to mesh what we believe are the
16 goals of the tribes with our statutory requirements under the
17 P.A.

18 This is a draft. And we've developed a procedure that
19 we think would work. I think that one of the things in
20 particular that I've been concerned about is the identification
21 of traditional cultural properties. There's a lot of
22 archaeological work that's already been done. And the tribes
23 haven't been out in the field.

24 We have done archaeological work and we've developed
25 reports but the tribes haven't been out in the field to look at

1 those sites. So I developed the process which is laid out on
2 page 3, A, B, and C, that would take that into consideration.

3 So under A you'd have a process for report reviews
4 without field checks. So let's say it's a report for an area
5 that perhaps you don't have any interest in or it's not an area
6 where you have tribal affiliations or maybe that it's a short
7 report or there's nothing in there that you see really is of
8 concern. And so you would provide your review within 30 days as
9 is stated in the P.A. and then that would be -- that would be
10 included in any drafts that -- in any rewrites that we would do
11 in the report and that would aim us in terms of determining
12 eligibility of the sites.

13 And we have a different process, which is B, and
14 that's for the report reviews with field checks. So if you get
15 the report and in 30 days you've read it and you thought, well,
16 you know, I think I need to go out in the field because I can't
17 really tell what this is from the photograph or there's not
18 enough information or I need to be out there, so we've developed
19 this process for that particular type of scenario.

20 And it can be modified. This is just a way I think
21 that I tried to address the fact that the tribes have not been
22 out in the field and that the tribes may need to be out in the
23 field and yet still, you know, be working under the provisions
24 of the P.A.

25 And then C is the process for tribal participation and

1 new and ongoing archaeological and field work. So that would be
2 the process that would be for, you know, future tribal
3 involvement in areas where the archeologists haven't been out
4 either, you know. So this will be basically following along
5 with the survey teams or be out there on your own, however you
6 want to do it.

7 And we've developed a process. We've put a fair
8 amount of work into this, but if you think it's not perfect or
9 if you think there's another process that would work, okay. But
10 it has to be something that would work within the stipulations
11 outlined in the Programmatic Agreement because that's our
12 guiding document.

13 MR. YOUPEE: Well, I think you have us at a
14 disadvantage because of the court's ruling, and I haven't seen
15 that. Believe me, you have us at a disadvantage because you
16 have the court's ruling regarding those stipulations, and I
17 think it's necessary for the tribes to get a copy of that again,
18 once more. But ideally it's a collective effort that we
19 participate in that working plan.

20 But I think information is necessary, you know, to
21 continue with this so that we have a complete understanding of
22 that court ruling.

23 And I understand there's 147 what do they call it?
24 Components?

25 MS. GLIDDEN: Conditions.

1 MR. YOUPEE: Conditions in that ruling. And I think
2 it's necessary that we get that understanding ourselves.

3 MS. GLIDDEN: Okay.

4 MR. YOUPEE: And then how we define that -- maybe
5 that's necessary for discussion too.

6 MS. GLIDDEN: Okay. You know, again, this work plan,
7 we also have in terms of the identification of the traditional
8 cultural properties, which is the National Register eligibility
9 issue, which we have to address as a federal agency, we have to
10 make sure that we can identify any site that's eligible for the
11 National Register.

12 And then once we do that, we have to look at whether
13 or not we're going to find a way to minimize or avoid the site
14 or mitigate the site.

15 So that's why mitigation perhaps might be premature at
16 this point because there might be other options available to
17 address some of these sites.

18 MR. YOUPEE: Like what, for instance?

19 MS. GLIDDEN: Well, avoidance.

20 MR. YOUPEE: We already seen and heard that there's
21 some sites that will not have avoidance.

22 MS. GLIDDEN: Right. But there might be some
23 situations in which there could be some avoidance; is that
24 correct? And it's not off the table for some areas.

25 MR. HERB JONES: Some of this is probably semantics

1 and everything else, but there are -- again, once we know what
2 we need to be able to look at, you know, we can look at what can
3 be done in any case.

4 One of the issues that we have to deal with as a
5 railroad is the physics of the operation of a railroad. And
6 we've had a little discussion on this, I guess, but if you
7 attempt to move a railroad -- it's not like a road where you can
8 change it and go around something. A move of 10 feet here means
9 that 4 miles back you have to make adjustments to everything to
10 accommodate that rail.

11 Trains don't like curves, and trains don't like
12 grades. I mean, there's nothing you can do about it. It's
13 impossible to operate -- to function properly without taking
14 those things into consideration.

15 Now I would say this: If we know what's out there and
16 there are things that we need to take into consideration, every
17 available means can be taken to adjust things accordingly, but
18 there will inevitably be unavoidable things out there. Don't
19 know where they are, don't know what they are. But the other
20 thing I would say is that doesn't mean there isn't a reasonable
21 way that some of those things could be addressed.

22 For instance, during construction you might have
23 construction people who are aware of the sensitivity of an area
24 and would treat it appropriately. There could be minimum
25 disruption to an area for given reasons. Maybe the railroad

1 itself physically wouldn't be actually going through whatever
2 the given site -- I mean, the track itself wouldn't be going
3 through a particular site.

4 So, I mean, those kind of accommodations can be
5 considered and should be considered. They need to be
6 considered. But to the extent that, yes, you end up with
7 something that is unavoidable, then you have to be able to
8 consider that as well.

9 And I think it's just a reality that those situations
10 will be there. Yes, considerations can be given and every
11 reasonable means given to adjusting, but, again, we have to be,
12 I think, practical in how that would work.

13 MR. YOUPEE: Yeah. And I think being practical is
14 just the point. Being practical in developing a trust between
15 all these agencies, being practical that we have to address what
16 has happened in Minnesota regarding sites they had over there.

17 I mean, there hasn't been anything done in respect to
18 the sites lost in Minnesota. I don't know, Pam, if she wants to
19 address that.

20 MS. HALVERSON: I would like to address that. And
21 then we're going to go back, and we can't change what's happened
22 already. Because in Minnesota my office has been there for
23 almost two years. DM&E never contacted me or Department of
24 Transportation or the archeologists or anyone to come into the
25 field with the archeologist until, you know, the end of the

1 summer -- or the end of the fall.

2 And so I think in your P.A. does it not say that you
3 contact the SHPO for comments and the THPO? So you were not
4 following your P.A. already. So this plan that you're coming up
5 with or that we've come up with and you revised needs to --
6 needs to happen. I mean, the P.A.'s not covering what the
7 tribes need.

8 And these sites that -- we were brought out to four
9 sites. We didn't get to go the whole line, but I was -- I
10 talked to the archeologist, and I told her, I said, I am going
11 to request that no fill be taken from the lands along there.

12 There's designated places for landfill in Minnesota.
13 You get your landfill from there, not along that railroad or
14 from the farmers that surround that area. Because you're
15 digging up our burial mounds. Our burial mounds are underneath
16 your trestles.

17 MS. GLIDDEN: Thanks, Pam. There should be a
18 provision in here and I don't know if there is but can somebody
19 tell me if there's a provision in here for waste and burial
20 sites in the P.A.?

21 Because technically those should be part of the APE.
22 And so if there are waste and burial sites, those have to be
23 included in identification if they haven't been.

24 Is Mike here? Anybody from -- do you want to speak to
25 that, if waste and burial sites are being looked at in terms of

1 the archeology?

2 MS. DESROSIERS: I think at one of the meetings I
3 thought you guys said the borrow sites would be evaluated.

4 MR. HENKE: The P.A. addresses that. I don't know the
5 exact section.

6 MS. GLIDDEN: Erin, would you mind addressing that?

7 MS. SALISBURY: Sure.

8 MS. GLIDDEN: She's in charge of all the
9 archaeological field work.

10 MS. SALISBURY: Are you talking about in the future
11 for future work or the work that's already happened not part of
12 this project?

13 MS. GLIDDEN: Both.

14 MS. SALISBURY: In the future the contractors that
15 will be brought on will have all of their permitting done for
16 the contracting for borrow sites, right? So it won't be done by
17 those of us sitting here, but it will be done prior to
18 construction.

19 MS. GLIDDEN: So there will be archaeological
20 examination of those areas, and the tribes will have an
21 opportunity to go to those areas?

22 MS. SALISBURY: (Nods).

23 MS. GLIDDEN: Okay. All right. Anybody else?

24 We've talked about a lot of things both days, and I
25 think that we've gotten pretty far. I know that there's some

1 concerns, and not everybody agrees on everything, but I think
2 that we're getting there. I really do.

3 And I think everybody's worked really, really hard to
4 get us here. This is not easy. This is a huge project, and
5 there's a lot of issues, a lot of competing interests, and I
6 just want to thank you all for putting in all of this effort.

7 We've got a number of action items for the future.
8 And I don't know if Randy wants -- do you want to go over those?

9 MR. WITHROW: I'll try my best. There are a number of
10 them here, paging through my notes. It kind of jumps around a
11 lot.

12 MS. GLIDDEN: Please jump in if we've missed
13 something.

14 MR. WITHROW: I think you went through a few of these
15 earlier.

16 MS. GLIDDEN: Right.

17 MR. WITHROW: But I think one of the things that we've
18 decided is that the work plan that was submitted for review by
19 everyone is not what it needs to be. There's some changes that
20 need to be made. And we've had some good proposals to add some
21 things, particularly in the -- regarding the Office For Tribal
22 Involvement, which I think should be incorporated into the work
23 plan as well as policies on confidentiality and mitigation
24 policy.

25 I think that effort -- we have a task group assembled

1 to partially address that and flush out the rest of the work
2 plan. I have a list of the people involved here. That task
3 group would include Russell, Scott Jones, Faith Spotted Eagle,
4 Dianne Desrosiers, Chase Iron Eyes, Herb Jones, Doug Jackson,
5 and Randy Henke from DM&E and HDR, and at least one
6 representative from STB, Cathy.

7 I think what would be good -- I mean, we need to move
8 on this part in particular soon and not lose the momentum from
9 this meeting. I guess one thing that we should establish before
10 we adjourn here is perhaps picking a date in the next week or
11 two if possible where it may be convenient for this group to
12 reconvene and work through some of these unfinished items in the
13 work plan.

14 MR. GONZALEZ: You know, I noticed talking -- well, in
15 speaking with the Oglala Sioux Tribe's new THPO officer she
16 informed me that the Oglala Sioux Tribe hasn't been actively
17 involved in this process up until now. And there's a reason for
18 that in that the Oglala Sioux Tribe has been involved in
19 litigation in the federal courts.

20 And a lot of this area is -- in the Wyoming portion of
21 this project is the Teton Sioux people's 1851 Treaty area. And
22 the Teton Sioux, of course, included the Oglala Sioux and the
23 Sicangu and Rosebud and the other Sioux Tribes.

24 And then there's an area east of the Missouri River
25 between the James and the Missouri that's also part of the

1 Oglala Sioux Tribe and Teton Sioux Tribe. So aboriginal title
2 area. There's no treaty that was involved in that area.
3 Nevertheless, the tribes still have aboriginal title to that
4 area.

5 I was the attorney for the tribe involved in the
6 litigation of land claims, some of the land claims in the 1980s.
7 And the Teton Sioux Tribes rejected the Indian Claims
8 Commissions awards for the aboriginal title area east of the
9 Missouri River and the Wyoming portion of the Docket 74 area,
10 1851 Treaty area.

11 Nevertheless, what happened was that our claims
12 attorneys without the consent of the tribe and behind the backs
13 of the tribe entered into a stipulation and settled that claim
14 and settled it for \$40 million, gave away \$3.7 million in
15 offsets.

16 And so the tribe still has -- the Oglala Sioux Tribe
17 anyway feels that there's still -- notwithstanding, you know,
18 the court decisions coming out of the federal courts, the tribe
19 still has outstanding land claims to this area because they
20 cannot go along with the fraud being perpetuated on them by the
21 claims attorneys or in the courts for implementing that court
22 settlement.

23 So, you know, everybody should be under actual and
24 constructive notice that the tribe still regards those areas as
25 tribal lands and tribal resources. So it's kind of hard to sit

1 here participating in a process where we know that our natural
2 resources, the coal over there, is still our property and it's
3 going to be ex appropriated by, you know, other people and
4 profited and they're going to get the profits off from it.

5 It's kind of hard to sit here and go along with a
6 process to see a railroad going through our territory without
7 our consent, you know, again, carrying coal, you know, to
8 Wyoming -- our coal to Wyoming.

9 So everybody should be under constructive notice, if
10 not actual notice, that the Oglala Sioux Tribe still has these,
11 you know, outstanding claims against the U.S. Government for
12 these properties.

13 And by the fact that the tribe might be participating
14 in this process here does not necessarily mean that the tribe
15 acquiesces to what's going on on this project.

16 Nevertheless, you know, our THPO is here. I realize
17 that the Surface Transportation Board is here in good faith, and
18 from what I can see here, you know, you're trying your best to
19 comply with the National Historic Preservation Act and NEPA.

20 So I just want to put that -- you know, put that on
21 the record so it's clear on the record. The tribe also has some
22 other concerns on NEPA, not only evaluation impacts on historic
23 and cultural properties but also ecology. And we do have a lot
24 of concerns about a railroad coming adjacent to our reservation
25 carrying coal with, you know, a large amount of uranium content

1 into it that would be blowing down on our reservation.

2 Because the prevailing winds actually come from the
3 northwest. And, you know, these railroad cars, if you ever saw
4 them going through, you know, Gurnsy, (phonetic) Nebraska and
5 that area down there, they're not covered. You know, they're
6 open. The coal's open. And through Edgemont, South Dakota,
7 there's trains that go through there. So a lot of this coal
8 dust does blow when the winds get strong, and it will be blowing
9 onto our reservation. So we have those kind of concerns also,
10 not just cultural resources.

11 In terms of cultural resource concerns, you know, I
12 know that you're doing your best to address all the issues that
13 may arise, but on the other hand it's really hard for us to sign
14 a Programmatic Agreement on cultural resources that, you know,
15 kind of goes contrary to our traditional stand on the land
16 claim. So we've always been caught up with this, you know,
17 issue of trying to participate, protect the lands at the same
18 time, not jeopardize our outstanding claims to the area.

19 And I, you know, followed that other litigation that
20 went to the Eighth Circuit. And, of course, that there, we
21 don't agree with that litigation that occurred on appeal
22 directly from the Surface Transportation Board to the Eighth
23 Circuit Court of Appeals.

24 But the area I'm talking about is a totally different
25 litigation in Wyoming and east of the Missouri River. It wasn't

1 part of the Eighth Circuit Decision that came down, you know,
2 two, three years ago.

3 So thank you.

4 MS. GLIDDEN: Thank you for explaining all of that for
5 the record. I can understand how difficult it must be for you
6 to be here and be a part of this with what's gone on and what
7 you're going through. And, you know, I sympathize with you. I
8 really appreciate that you're here. You've already been very
9 helpful just the time that you've been here. So thank you.

10 Okay. Did you want to continue on with our -- any
11 other comments, I guess?

12 Continue on with the action items then. Okay.

13 MR. WITHROW: I guess we were -- I was talking about
14 the task group for completing the work plan, making more changes
15 to it and trying to finalize it in representation for I guess a
16 meeting we have tentatively scheduled for February 12 and 13 was
17 it?

18 MS. GLIDDEN: Is everyone okay with that date?
19 Anybody have conflicts?

20 MR. WITHROW: I guess maybe we should look at that
21 date first, if that will work for people here. February 12, 13.

22 MR. EAGLE BEAR: Where?

23 MR. WITHROW: I think it was proposed that the meeting
24 be held in Sioux Falls, South Dakota.

25 MS. HALVERSON: I thought it was going to be at

1 Lower Sioux.

2 MS. DESROSIERS: We have a deadline for Keystone for
3 the 11th on some stuff all the tribes need to have in. Just FYI
4 so you guys know that.

5 MR. WITHROW: Anybody have conflicts?

6 MR. EAGLE BEAR: We're still going to continue working
7 with these documents, or are we going to go back to the
8 statement made by the gentleman over here about the P.A.?

9 That kind of bothers me. Because in reality the only
10 person that should be sitting here speaking to you is
11 Scott Jones.

12 MS. GLIDDEN: The only person should be talking to us
13 is Scott Jones because he's the only tribe that's here that
14 signed?

15 MR. EAGLE BEAR: Right.

16 MS. GLIDDEN: I see what you're saying. But as far as
17 the way we've been following the process and we've been
18 including all the tribes even if they haven't signed.

19 MR. EAGLE BEAR: Okay. Are you going to still
20 continue that thought process?

21 MS. GLIDDEN: Yes.

22 MR. EAGLE BEAR: Okay. Eventually I guess we want a
23 clear picture before we sign any kind of documents, and that's
24 where the majority of the tribe is coming from. Even though you
25 guys in the years past met with certain groups and individuals,

1 in some cases they do not speak for the tribe. Here we do. We
2 answer to the tribe.

3 So I guess are we still on the same page then on this?

4 MS. GLIDDEN: In terms of continuing to work on these
5 documents?

6 MR. EAGLE BEAR: Right.

7 MS. GLIDDEN: Yes. The first action item I guess
8 Randy was talking about was this work plan that we submitted
9 that I guess you had some concerns about and that we need to
10 insert some things into the work plan for tribal involvement,
11 January 4, 2008.

12 So the first thing I guess that we would hope is that
13 we could get your feedback and insert the language, place
14 holders for additional things that you think need to be
15 included. I know that Curley had mentioned mitigation package.
16 So that needs to be included.

17 There were some issues, I think, regarding page 3 at
18 the top regarding the treatment for sites that can't be avoided.
19 I think there was some concerns about that language. I think
20 there were concerns that the MOA wasn't addressed here. So that
21 needs to be inserted. And including language having to do with
22 faunal and floral issues, ethno-botanical issues, environmental
23 issues, as they would apply to the MOA.

24 I know there's a stipulation there that addresses that
25 so that we could basically fold in some of the concerns -- or

1 some of the issues of the MOA into this work plan.

2 And then, of course, we have the other document that
3 you produced, which is the proposed draft of Office of Tribal
4 Involvement for THPOs and the CRPs. If we could see that
5 flushed out some more and get that draft sent around so that we
6 can comment on that. And if you can let us know if this is
7 going to be an attachment to the treatment plan or, you know,
8 how this is going to work in with our -- with the process that
9 we've developed here.

10 MR. EAGLE BEAR: I don't think it's going to be
11 attached to the treatment plan because we all question the
12 treatment plan, you know. And so that --

13 MS. GLIDDEN: I'm sorry. Not the treatment plan. The
14 work plan. I'm sorry. So anyway I think that those were just
15 some of the issues I think that I heard regarding the work plan.
16 So if you could just get that -- whatever comments you have, get
17 that to us as soon as possible.

18 MR. WITHROW: I think one possibility, you know,
19 Russell, would be to take advantage of this task group, this
20 work group, to address both of those components, look at this
21 proposal for developing an Office of Tribal Involvement as well
22 as the work plan that STB circulated and we try to get both of
23 those documents in a form that we can come back and present them
24 to the group as a whole during the meeting on the 12th and 13th,
25 if that's the date we agree to.

1 MR. EAGLE BEAR: And then I officially requested
2 involvement of maybe the federal agency contacting the lawyers
3 just to give us some insight, alternatives, and I think Curley
4 asked for interim mitigation. So are you going to respond to
5 that to us officially or --

6 MS. GLIDDEN: I think my sense was that Curley was
7 asking that we include mitigation, a mitigation packet, as part
8 of our work plan. That was my sense. And so we were going to
9 go ahead and put a place holder in there for that.

10 So yeah. I mentioned some of these issues to Chase
11 because I know he's in there typing. And I don't know if you're
12 the one who's going to be making these changes but -- so yeah.

13 MR. IRON EYES: I think Russell has a good point. And
14 we could definitely use a -- if we can get by without having to
15 pay for it, you know, without having to pay the attorneys or
16 whatever who's going to do this legal research out of our
17 pocket, we would prefer that.

18 But we definitely need to know and maybe it should
19 have been spelled out from the beginning the scope of authority
20 or the effects of the Programmatic Agreement in relation to the
21 Memorandum of Agreement and the associated appendices and the
22 working plan.

23 We need to know. Because Russ was worried about
24 whether or not we're just getting face treatment. If the folks
25 here think that the Programmatic Agreement is the governing

1 document, then what is our -- the extent of our involvement?
2 And I think that's his concern.

3 MS. GLIDDEN: Well, the P.A. is the governing document
4 in terms of, you know, what we need to do and what we've agreed
5 to do. But, you know, within that there's a lot of flexibility.
6 And where we're at right now is the brass tax of trying to get
7 the work done out in the field. And so we're open to your
8 involvement in that, and everyone in this room is included.

9 So I don't know if that answers your question. And as
10 far as the research regarding the issues that came up about the
11 smudging and all of that, I have requested a copy of that court
12 order. And I'm assuming, Herb, you were going to send me a copy
13 of it; right? And then perhaps you and I can have a discussion.

14 Also Mario Gonzalez, I don't know if he's still here.
15 He had some good ideas about that. And also Herb had mentioned
16 that one of the ways we can address this is that once
17 condemnation is over and DM&E actually owns the property, then
18 there won't be an issue at that point. So that could be the
19 simplest way to address that.

20 Am I correct in saying that, Herb?

21 MR. HERB JONES: What I would say is yes. I think
22 there's different ways you can look at it and different time
23 frames but, you know -- yes. I think Randy was the one who
24 actually mentioned that, that if there isn't an opportunity here
25 or if that opportunity's restricted for some reason at the point

1 that DM&E has possession of land, that would make it so that we
2 can review those and go back and figure out how to go about
3 getting the survey work done at that juncture.

4 And I just wanted to say I think, again, it wasn't a
5 railroad thing obviously, and I think, if I remember right, I
6 think we had this on a phone call with everybody, I think the
7 judge's order, again, it wasn't pointed at any particular
8 activity. It was open flame I think it was. And primarily it's
9 just a public safety, fire safety issue is what that was based
10 on.

11 But whether or not there's ways to look at that, I
12 don't have any idea. I just know what we're required to
13 follow.

14 MS. HALVERSON: This is for Randy and everyone that
15 I'm requesting that on these committees and these task forces
16 that a tribe from Minnesota be included on there so we're not
17 excluded anymore.

18 MR. EAGLE BEAR: You could take my place.

19 MS. HALVERSON: But I'm not from Rosebud.

20 MR. EAGLE BEAR: I don't know. These guys scare me.

21 MR. WITHROW: They scare me too, Russell. I think
22 what I would like to propose, I guess, is that just in terms of
23 organizing this group, this task group, that we've mentioned --
24 and, Pam, I can add you to that group. I guess the people who
25 are still here include Pam and Dianne, Chase, and Russell.

1 Is there a date within the next two to three weeks
2 that would work for us, I think, if we were to get together for
3 a couple of days to try to work through some of the details of
4 both the Office of Tribal Involvement proposal and the issues in
5 the work plan proposed by STB?

6 MS. DESROSIERS: So the DM&E is tentatively scheduled
7 for the 12th and 13th; right? And we're looking at meeting here
8 the last week, like the 28th or 29th maybe?

9 MR. WITHROW: That would probably work. Or could even
10 be the week of the 4th.

11 MR. EAGLE BEAR: They're having their big treaty
12 meeting over in Pine Ridge, and I think some of us are going to
13 attend that but --

14 MR. IRON EYES: I mean, the only concern I have is the
15 26th and 27th or 27th and 28th, whatever it is, the Tuesday and
16 Wednesday of the last week of February, I'm going to take the
17 South Dakota Bar Exam. So after that, you know, that's what I
18 would prefer personally.

19 MS. GLIDDEN: I can see why.

20 MS. DESROSIERS: We can accommodate him.

21 MR. EAGLE BEAR: How about sometime the first of
22 February, that week, somewhere on that time frame?

23 MS. HALVERSON: I think a conference call might --
24 that might work for all of us. Because traveling in the
25 winter's --

1 MR. EAGLE BEAR: That's fine.

2 MR. HERB JONES: My suggestion, I think that's a good
3 idea, Pam. And if there's something that you can put out for
4 people to look at a couple of days beforehand, then we can all
5 consider it and have a conference call over it, we can do it
6 that way and it would sure make life a lot easier.

7 MR. EAGLE BEAR: I have problems with conference
8 calls because, you know, these guys scare me, and I want to be
9 able to watch them, you know. And, yeah, I'm willing to come to
10 Sioux Falls. But I don't want -- I don't want them and all
11 their lawyers on the same conference call listening in. And,
12 you know, we don't have that luxury.

13 I'd rather just sit down face to face, and if I'm
14 going to get slapped in the face, I want to be able to turn
15 around and slap somebody in the face too.

16 MR. WITHROW: Okay. Well, maybe we can -- the people
17 who are part of this task group, why don't we just convene as a
18 small group once we adjourn here, and we can compare dates and
19 schedules.

20 In addition to that particular work group, there was a
21 work group set up to try to look at the content and scheduling
22 for the training sessions. That group includes Faith Spotted
23 Eagle, Mike Madson from HDR, Curley Youpee, and Ben Rhodd. I
24 might suggest that I guess that group also get together and find
25 a date that they can get together and start thinking about the

1 planning for that training?

2 Let's see. There is a grievance committee as well.
3 And the people that are currently named on that committee, as I
4 understand, as I have it here, Herb Jones from DM&E,
5 Pam Halverson, Mike Madson, Chase Iron Eyes, Ben Rhodd, and
6 Curley Youpee.

7 MS. GLIDDEN: Me too?

8 MR. WITHROW: And Cathy. Okay. I don't know if that
9 group has plans to meet in the near future before our meeting in
10 mid-February. If so, I guess I would leave it to you, Cathy, to
11 coordinate that meeting.

12 Let's see. I guess those were some of the key issues.
13 We will also -- we've got e-mail addresses for everyone. We
14 will circulate passwords to you by e-mail for accessing the
15 website. And, again, if you have some suggestions on input and
16 content for the website, please route them to Dave Bibler at
17 Louis Berger.

18 And I guess also I will probably just start with
19 e-mails to the contacts that I have that information for. I
20 don't think I have e-mails for all the tribal chair persons, for
21 instance. So maybe I'll contact -- send them through you and
22 you can recommend additional persons that need to be provided
23 access to the website and we'll take care of it that way.

24 MR. IRON EYES: Randy, I think it would be helpful if
25 you or Cathy would send out, you know, just kind of what you

1 just ran over, the task force or the committee and their scope,
2 their little mission and who's involved with it.

3 MS. GLIDDEN: Great idea.

4 MS. DESROSIERS: There you go, Randy. Get on that.

5 MR. WITHROW: I have my work cut out for me. I'll get
6 on that right away.

7 MS. GLIDDEN: Do we have e-mails for everybody?

8 MR. WITHROW: Everyone here.

9 MS. GLIDDEN: Everyone here. Okay.

10 MR. EAGLE BEAR: We just bought the railroad for a
11 dollar.

12 MR. IRON EYES: Valuable consideration.

13 MR. WITHROW: So we'll be sending out information
14 about the next meeting, I guess --

15 MR. EAGLE BEAR: Could we note publicly that there was
16 a bribe?

17 MR. WITHROW: So noted.

18 MR. EAGLE BEAR: For the record.

19 MS. DESROSIERS: Russell did not accept the bribe.

20 MR. WITHROW: We'll be sending out information about
21 the next meeting on the 12th and 13th. I guess those dates are
22 open for at least the people here. So we'll go with that.

23 I don't know if there's anything else. Did I miss
24 anything? Am I overlooking things that we also need to be
25 taking care of?

1 MS. GLIDDEN: Sounds like the biggest thing -- the
2 first thing we need to do is send out that e-mail, get that out
3 as soon as possible; right, Randy? Okay.

4 All right. I think we may have come to the end of
5 this meeting unless anybody has anything else to add. Anybody?

6 MR. WITHROW: We'll also be assembling some other
7 information. There's a lot of documents out there that would be
8 helpful for everyone to have copies of. The previous mailing
9 we've sent out copies of the P.A. and the MOA and some copies
10 are here. But we'll make sure that everyone has copies of
11 those.

12 Sounds like there's interest in everyone having copies
13 perhaps of the record of decision with the condition statements
14 so we'll make sure we can get some of those distributed. Copies
15 of the court order that DM&E is working under for land access.
16 And I'm sure I'm overlooking some here at the moment but other
17 items.

18 MS. GLIDDEN: Eighth Circuit.

19 MR. WITHROW: The Eighth Circuit Decision as well.
20 Okay. Okay. And if there are any others, as always, feel free
21 to just e-mail me, and we'll make sure that we get the
22 information you need.

23 We may also look at posting some of these things to
24 this website because I think that that is a good and convenient
25 way to have equal access to it. So we'll probably look at using

1 that resource more and more as time goes on.

2 Any other final comments before we adjourn today?

3 In that case I guess I'd like to ask if Ambrose would
4 like to offer a closing blessing or prayer for us.

5 (Mr. Little Ghost says closing prayer)

6 (The proceedings are concluded)

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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF HUGHES)

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5 I, CHERI MCCOMSEY WITTLER, a Registered Professional
6 Reporter, Certified Realtime Reporter and Notary Public in and
7 for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed shorthand
9 reporter, I took in shorthand the proceedings had in the
10 above-entitled matter on the 16th day of January, 2008, and that
11 the attached is a true and correct transcription of the
12 proceedings so taken.

13 Dated at Pierre, South Dakota this 29th day of
14 January, 2008.

15

16

17

18 _____
19 Cheri McComsey Wittler,
20 Notary Public and
21 Registered Professional Reporter
22 Certified Realtime Reporter

21

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