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SECTION 106 CONSULTING PARTY MEETING  
Conducted by: Surface Transportation Board  
DAY 2

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Taken at  
Little Wolf Capital Building  
Lame Deer, Montana 59043  
April 18, 2013

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## P R O C E E D I N G S

MR. CONRAD FISHER: Good afternoon.

1  
2  
3 I hope everybody had a piece of chicken. Those  
4 of you who weren't able to make it at the feed,  
14:06:18 5 we had some real nice chicken. A good meal.  
6 And I'd like to thank the housing authority for  
7 being able to graciously volunteer some of  
8 their services to make the food possible over  
9 there. So, again, the housing authority did a  
10 wonderful job of providing the chicken there.  
14:06:44 11 And I'm not sure who the caterer was, but it  
12 was a good deal.

13 I appreciate all the THPOs that are  
14 here. I'm glad all the THPOs are here, but  
15 unfortunately, Standing Rock had to go back.  
14:07:05 16 But it was really hit and miss. We wanted to  
17 have a giveaway. (Laughter.) We wanted to  
18 give Hubert away to Standing Rock. When  
19 Standing Rock was here Hubert wasn't here. Now  
14:07:26 20 that Standing Rock is gone Hubert is here. So  
21 we are over that. (Laughter.) So we'd like to  
22 move on and start the meeting.

23 Okay. I think we have all the  
24 parties. I see all the THPOs sitting on one  
14:08:10 25 side. I'm not sure whether we are going to

1 have a visitation or what's going on here.  
2 But, certainly, I'd like to thank everybody for  
3 coming back. And we are going to officially  
4 get the meeting started. And I'd like to --  
14:08:25 5 the tribes had a caucus this morning, and very  
6 productive caucus, and we feel like we had a  
7 lot of information that was given to us in that  
8 short length of time. I apologize personally  
9 for taking up a lot of time. But I think it's  
14:08:51 10 important for the tribes coming together from  
11 far away, considering the weather, to go ahead  
12 and have that little caucus. I know it was  
13 scheduled sometime during the three-day  
14 consultation meeting. However, as we all know,  
14:09:09 15 yesterday was a four day, and that was also  
16 very productive, extremely productive.

17 And at this time I think I will hand  
18 it back over to Cathy from the Surface  
19 Transportation Board.

14:09:30 20 MS. CATHERINE NADALS: Thanks,  
21 Conrad. Anybody on the phone? Anybody call  
22 in? Could you identify yourself if you're on  
23 the phone.

24 MS. CYNTHIA TAUB: Yes. Cynthia Taub  
14:09:44 25 from Steptoe and Johnson for BNSF.

1 MS. CATHERINE NADALS: What's your  
2 name again?

3 MS. CYNTHIA TAUB: I'm having a hard  
4 time hearing all of you. This is Cynthia Taub  
14:09:56 5 from Steptoe and Johnson for BNSF.

6 MS. CATHERINE NADALS: Could you  
7 spell your last name?

8 MS. CYNTHIA TAUB: T-a-u-b.

9 MS. CATHERINE NADALS: Anybody else  
14:10:15 10 on the phone?

11 MS. MARIBETH WUERTZ: Maribeth Wuertz  
12 from USDA-ARS.

13 MS. CATHERINE NADALS: Would you say  
14 your name again?

14:10:24 15 MS. MARIBETH WUERTZ: Maribeth Wuertz  
16 from USDA-ARS.

17 MS. CATHERINE NADALS: Anybody else  
18 on the phone?

19 Conrad, did you want to present us  
14:10:48 20 the results of your caucus? We had on the  
21 schedule that we would have a presentation by  
22 the ICF staff regarding the results of the  
23 background research and a discussion about  
24 field methodology, but if you want to discuss  
14:11:09 25 some of your concerns, we could do that.

1 MR. CONRAD FISHER: Sure. Appreciate  
2 that, Cathy.

3 At this time I think we will hand it  
4 over to Russell Eagle Bear from the Rosebud  
5 Tribe in South Dakota.

6 MR. RUSSELL EAGLE BEAR: We wanted to  
7 develop some points for you as the Surface  
8 Transportation Board. And yesterday we had the  
9 tour by the landowners in that area, and,  
10 unfortunately, we couldn't get on to see some  
11 of the sites physically, but I think one of the  
12 things that kind of stood out for us is that  
13 individual landowners are allowing us to come  
14 in and do TCP studies/archeological. I think  
15 you haven't even issued the permit yet. I  
16 don't even know what your schedule is in terms  
17 of the company coming in and doing their arch  
18 surveys. We don't know that. However, I know  
19 my tribe is interested in setting up a timeline  
20 so that when we come and do those surveys.

21 MS. CATHERINE NADALS: Okay.

22 MR. RUSSELL EAGLE BEAR: And I know  
23 speaking to you yesterday, you kind of wanted  
24 to blend the archeological surveys and TCP  
25 studies together, but at this point we want to

1 do our own. We want to show you agencies and  
2 these companies and what they do, especially  
3 when they send their hired archeologists and  
4 when they come out and do a survey, they miss  
14:13:29 5 so many things. This time we want to put the  
6 horse back before the cart and say let's come  
7 out here and do our surveys, and we'll sit back  
8 and see what they produce somewhere down in the  
9 future. That's going to be my proposal from  
14:13:50 10 Rosebud Sioux Tribe. And we are going to stay  
11 in contact with the landowners, and any  
12 interested landowners, that may allow us to  
13 come in and do surveys. And I think that's  
14 what we want to do.

14:14:09 15 Also, it was mentioned by some of the  
16 local tribal members, that we do a thorough  
17 ethnographic study along with our study. And  
18 so that's going to be a recommendation. We  
19 will do that.

14:14:31 20 You know, you haven't even assigned a  
21 permit yet, so we don't even know where you're  
22 standing financially in terms of the company  
23 paying for expenses, but I know our tribe we  
24 are willing to come in, at our own expense, to  
14:14:49 25 do these surveys.

1 I think that's where we are at today.  
2 I mean, I'm assuming that that's why you called  
3 a Section 106 meeting. I still question the  
4 106 meeting itself. We are at preliminary  
5 stages, planning stages, so I have issues.

6 Now, I have issue, personal issue,  
7 with your contractor in terms of the payment  
8 process. There was a big fiasco. And a lot of  
9 our tribes, we operate on real small budgets  
10 with our THPOs, and when we get to these sites,  
11 especially when you have to travel a  
12 distance -- I'm okay personally, but I know  
13 maybe some of the other tribes may be having  
14 difficulty when it comes from traveling from  
15 one place to the next and returning and coming  
16 back and having to deal with payments and banks  
17 open and trying to cash a check. Heck, we  
18 spent a whole hour here in town yesterday and  
19 we couldn't make any progress. So, hopefully,  
20 in the future that you and your contractor, you  
21 sit down with your contractors and make sure  
22 that they do a lot better job performance in  
23 terms of payments when it comes to this. I  
24 don't like to be treated like a little child.  
25 I'm not a little child any more. I don't want

14:15:25

14:15:59

14:16:13

14:16:30

14:16:49

1 to be led around one day and the next day. So,  
2 hopefully, in the future you get a handle on  
3 that as a federal agency hiring your contractors  
4 in terms of payment.

14:17:10 5 Those are my personal issues that I  
6 have and observations. So I would hope you  
7 take that into some serious considerations for  
8 any future meeting.

9 MS. CATHERINE NADALS: Thanks, Russell.  
14:17:29 10 I apologize for the payment issue. We will  
11 make sure, absolutely certain, that we are more  
12 organized in that fashion in the future.

13 And, yeah, we really are at the very  
14 early stages of the 106 process. So what we  
14:17:45 15 are trying to do is coordinate the NEPA with  
16 the 106, because the NEPA is occurring right  
17 now. So part of the reason we really wanted  
18 your involvement was to help us identify sites  
19 for the alternatives, the alternatives  
14:18:05 20 analysis. Because we need information in order  
21 to prepare alternatives. We only have some  
22 information. The ICF did do a site records  
23 search, but, obviously, there has been very  
24 little work done in this area, and there's not  
14:18:19 25 going to be any information available about

1 sites that tribe finds important. So we really  
2 definitely need to have your input on that so  
3 we can get a really good sense of what cultural  
4 resources we have along each alternative. And  
5 then for the alternatives analysis.

6 And then, of course, once we license  
7 a particular alternative, then we would -- we  
8 are hoping that we would develop a unique PA  
9 for this project that would incorporate all of  
10 the things that we think are necessary that we  
11 need to do in terms of studies and so on for  
12 that alignment, the licensed alignment.

13 Anyway, we wanted your involvement  
14 early on because we think it's really important  
15 to get people, especially tribes, involved  
16 early on, and we need your assistance in  
17 helping us identify sites for the alternatives  
18 analysis.

19 MR. RUSSELL EAGLE BEAR: Yesterday we  
20 had the opportunity to go through one route  
21 that is proposed, not any of the alternative  
22 routes. We haven't had a chance to go and at  
23 least have some kind of input into what the  
24 possibilities are. So, you know, it seems like  
25 -- I know the company, the railroad company,

1 the areas you took us through is probably the  
2 preferred route.

3 MS. CATHERINE NADALS: It's basically  
4 the applicant's, it's their preferred route.  
5 But we haven't determined anything yet.

6 MR. RUSSELL EAGLE BEAR: Right. And  
7 I think that's the key. You know, we have to  
8 come back and really seriously look at the  
9 other alternative routes that are proposed. So  
10 I don't want you to take this as saying, yeah,  
11 we took the natives out there, and this is  
12 going to be the route. No, that's not the  
13 point here today.

14 MS. CATHERINE NADALS: No, I totally  
15 agree. In fact, the original intent was to  
16 have a more inclusive tour, but we realized we  
17 really had kind of a -- didn't have the time.  
18 But, absolutely, we want you on the ground for  
19 all of the access areas that we have; the  
20 alternatives where we have land access. We are  
21 objectively constrained in terms of, you know,  
22 the fact that property owners don't want us on  
23 the property, but this sounds that perhaps they  
24 might be open to have having tribes on the  
25 property. That's something we should look

1 into. Some landowners may have said no to the  
2 STB coming on the property.

3 MR. RUSSELL EAGLE BEAR: Yesterday we  
4 did get an invitation from an individual  
14:21:28 5 landowner. And, certainly, you know, in our  
6 line of work, that's probably one of the very  
7 few that did that out from the get-go. So, you  
8 know, our tribe certainly would like to take  
9 him up on that offer, or any landowner. You  
10 know, yesterday we heard a percentage, that you  
14:21:55 11 already have permission from 33 percent, or  
12 something like that.

13 MS. CATHERINE NADALS: That's right.

14 MR. RUSSELL EAGLE BEAR: And,  
15 certainly, we need to be involved in that  
14:22:11 16 percentage. But we, also, 50-some percent are  
17 still in a negotiating stages, or adamantly  
18 opposed to what's going on, and if we have  
19 access to them, then certainly we'll take them  
14:22:36 20 up on that offer.

21 MS. CATHERINE NADALS: I will see if  
22 I can somehow coordinate that. I have to check  
23 with our contract, and also check with the NEPA  
24 managers on that, because I haven't been  
14:22:51 25 involved in letter writing and that sort of

1 thing. But I'll look into that. In other  
2 words, having you perhaps write your own  
3 letters or make your own contacts with the  
4 landowners.

14:23:07

5 MS. LANA GRAVATT: That would be good.

14:23:28

6 MR. RUSSELL EAGLE BEAR: And,  
7 basically, since there's multiple affected  
8 tribes here, the Northern Cheyenne, we will  
9 probably support whatever they choose to do and  
10 work with them at that level. We had a  
11 discussion about that. We are going to be  
12 involved.

14:23:46

13 MS. CATHERINE NADALS: Okay. Great.  
14 Yes.

15 MS. WANDA WELLS: Wanda Wells from  
16 Crow Creek Sioux Tribe from South Dakota. I'm  
17 the THPO from our tribe.

14:23:54

18 MS. CATHERINE NADALS: I'm sorry. I  
19 missed your name.

20 MS. WANDA WELLS: Wanda Wells.

21 MS. CATHERINE NADALS: Hi, Wanda.

14:24:08

22 MS. WANDA WELLS: I guess I would  
23 also believe that the tribes should be involved  
24 and do a survey prior to archeologists going  
25 out in the field. It sounded as though to me

1 there was a larger percentage of landowners  
2 willing to let the tribe come in and do surveys  
3 of their land than what you're stating. It  
4 just seems that way. Maybe it was the other  
5 surveyors that they were opposed to having on  
6 their property.

7 MS. CATHERINE NADALS: Well, the BNSF  
8 had their own surveyors out there. They were  
9 HDR. But our contractor is ICF. And,  
10 actually, what we've been doing is simply  
11 sending letters on behalf of, basically, the  
12 Board for their intent to go out and do  
13 surveys. And these are the responses that  
14 we've gotten thus far based on letter writing  
15 and calling. I don't know all the details  
16 behind exactly the letter writing process, but  
17 I know that that was so far what we've gotten  
18 as access.

19 But it may be, you know, if you were  
20 to contact the landowners, you know, that they  
21 might be more open to having tribes come on  
22 their property. I don't know.

23 MS. WANDA WELLS: Well, I guess, what  
24 I'll say, we are not a rich tribe. We don't  
25 have money to come over here and do our

1 surveys. So I don't know what kind of  
2 coordination or arrangements, how far along you  
3 are on doing at that. But we will participate  
4 in any TCP surveys that are conducted in this  
5 area.

6 I have a concern about testing of  
7 sites that the archeologists may find and  
8 consultation with the tribes prior to the  
9 testing of any sites, because of the potential  
10 disturbance to areas.

11 MS. CATHERINE NADALS: Yeah, I just  
12 want to make clear for the alternatives  
13 analysis there isn't going to be any actual  
14 testing. It will be just (inaudible) survey  
15 work. The alternative we actually license we  
16 would then work out all the details of what  
17 would be done for that particular alternative.  
18 That's down the road.

19 MS. WANDA WELLS: Well, I don't know  
20 how OEA will need to evaluate, how they will  
21 evaluate those. I want more information on how  
22 that evaluation is going to --

23 MS. CATHERINE NADALS: Are you  
24 talking about National Register?

25 MS. WANDA WELLS: Evaluation on

1 historical archeological sites.

2 MS. CATHERINE NADALS: Well, we're  
3 going to --

4 MS. WANDA WELLS: Could you be quiet  
5 for a minute?

6 MS. CATHERINE NADALS: I'm just  
7 trying to answer your question.

8 MS. WANDA WELLS: So that's also one  
9 of our concerns.

10 The other thing is on page 9 of this  
11 internal review version, there's a statement at  
12 the very end that says, approach to identify  
13 TCPs will be suggested by the tribes, and it is  
14 expected to be more direct site-specific than  
15 the systematic alternative alignment surveys  
16 described above for the archeologists, for the  
17 historic sites, and so forth.

18 So, I guess, I want some  
19 clarification as to what that language means.  
20 Are we being limited to site-specific areas for  
21 the survey, or are we going to be allowed to  
22 survey one hundred percent of the area to be  
23 impacted?

24 MS. CATHERINE NADALS: You want me to  
25 answer that?

1 MS. WANDA WELLS: Yes.

2 MS. CATHERINE NADALS: I didn't write  
3 that document. Rick, do you want to address a  
4 that?

14:27:49

5 MR. RICHARD STARZAK: Thank you.

14:28:04

6 This is a preliminary draft methodology, and  
7 what we want to do is work through what exactly  
8 is going to be done. This is fairly bare  
9 bones. The original concept, which hasn't been  
10 discussed with everyone that we want to do, was  
11 have the tribal archeologists walk with our  
12 archeologists, and then if they identify  
13 potential TCPs, there would be opportunity for  
14 the tribes to go back and do the full

14:28:22

15 evaluation. I understand what Russell said,  
16 the preferred way is to have tribes go and do  
17 all the surveys do it first. A hundred percent  
18 access where we have property access and any  
19 other property owners that are willing to give  
20 us access, even if they sent letters, wherever  
21 there may be a TCP, that should be looked at.

14:28:39

22 MS. LANA GRAVATT: I think what you  
23 said about the tribal archeologists, the  
24 information that the tribes need to make a  
25 decision is already relevant. They don't need

14:28:59

1 to be out there with your archeologists to know  
2 that. So I don't think -- I somewhat support  
3 what Russell said about the tribes being out  
4 there on their own, and I think that this area  
14:29:17 5 is already proven itself to be an area of great  
6 significance. So, you know, to have to do  
7 that, you suggesting that, I don't think that's  
8 just...

9 I wish you wouldn't have brought this  
10 to the table, because it's -- I don't like it.  
14:29:36 11 It's just geared towards the archeologists and  
12 the prediction models and everything that is  
13 not geared towards tribal surveys. So I just  
14 wanted to make that point.

14:29:56 15 MR. RICHARD STARZAK: I agree.  
16 That's why we presented it was to get  
17 everyone's opinion on what is the appropriate  
18 methodology and how to cooperate. The only  
19 reason that we suggested going out together was  
14:30:08 20 for safety. We know that we have permits,  
21 basically, to enter the property, and we  
22 thought it would be convenient to be able to  
23 contact you as well. That may not be  
24 essential. That was the primary reason.

14:30:24 25 And then the other aspect is that we,

1 and you have, too, it would take the ability to  
2 know where the center line is to be able to  
3 direct where the work is being done and where  
4 the edge of the property, where we do have  
5 access ends and where we don't have access  
6 begins. It's really for coordination. So if  
7 we want to coordinate a different way, that's  
8 why we are here to discuss a methodology that  
9 everybody can agree to.

10 MS. CATHERINE NADALS: Yes. And I  
11 will go back and talk about her concerns and  
12 suggestions. I can't answer all the  
13 recommendations today, because there might be  
14 liability issues I'm unaware of, there might be  
15 some concerns about that. I just don't know.  
16 But I'll find out.

17 MS. LANA GRAVATT: Well, I think at  
18 this point with the open welcome from the  
19 landowners, whatever percentage it is, I would  
20 support Rosebud being out there and Cheyenne  
21 right now as soon as they can get out there to  
22 cover what they can so that when those other  
23 areas become open, then that will be done  
24 already, and I don't believe we need anybody to  
25 facilitate that, as long as we have permission

1 from the actual landowner.

2 MS. CATHERINE NADALS: Yeah, I'm  
3 going to definitely look into it. I just don't  
4 know. Of course, one of the things that we  
14:31:49 5 really have to have, obviously, as part of our  
6 process, is a National Register eligibility  
7 determination. So that would be really  
8 important, even if it's just, you know, a  
9 proposed eligibility for the alternative  
14:32:05 10 analysis. Obviously, it would be different  
11 from the licensed alternative analysis.  
12 Because that's what we have -- I mean, that's  
13 the process.

14 MS. LANA GRAVATT: Well, yeah.

14:32:18 15 MS. CATHERINE NADALS: It's a process  
16 we have to follow.

17 MS. LANA GRAVATT: Well, yeah, kind  
18 of irrelevant. What are you saying, that we  
19 are not going to make this?

14:32:26 20 MS. CATHERINE NADALS: No, I'm not  
21 saying that at all. I'm saying that we would  
22 need that. We need your recommendation.

23 MR. CONRAD FISHER: I think one of  
24 the key issues that we are faced with is that  
14:32:41 25 these are preliminary stages, and there are a

1 number of alternatives that were pointed out  
2 the other day when we first had a meeting about  
3 the alternatives, the rail line alternatives.  
4 And the one that we looked at was the preferred  
5 alternative, the amended.

14:33:03

6 MS. CATHERINE NADALS: The rail line?

7 MR. CONRAD FISHER: Yeah, the rail  
8 line. So there's some concern about  
9 ethnographic studies being done on all the  
10 alternative rail lines. I think that's  
11 something that we need to see. Since we are  
12 still in the preliminary stages, we need to see  
13 ethnographic data, comprehensive ethnographic  
14 recordation, or studies. I know the EIS is  
15 going on and this is 106. 106 is those sites  
16 that are being identified within the corridor.  
17 But, you know, having opened the door that this  
18 is one of the alternatives, then if you follow  
19 the logic, then we are looking at all the  
20 corridors, all the alternatives. So if we are  
21 asking for an ethnographic study of the  
22 preferred alternative, then we should be  
23 looking at ethnographic studies of all the  
24 alternatives that are out there, whether they  
25 are one line going towards Decker or one line

14:33:19

14:33:46

14:34:07

14:34:23

1 from Miles City, I think we need to look at  
2 those, also. So since you brought that up as  
3 being preliminary, I think we need to do that  
4 initially.

14:34:40 5 And as far as the tribal cultural  
6 survey, I think it's needed. I think we need  
7 to have a -- this is something that is going to  
8 benefit everybody, not only the tribe but for  
9 those -- your office, Cathy. But then we run  
10 into the issue of confidentiality. So those  
11 things need to be worked out.

12 Rick, if you're doing that internal  
13 review there, confidentiality among the tribes  
14 is something that we really honor because of  
15 the sanctity of those sites, sacred sites.

14:35:06 16 And we looked at one alternative  
17 yesterday, the preferred alternative, and just  
18 looking at the preferred alternative, we seen  
19 the density of sites that are known by those  
14:35:50 20 that have a close association on a daily basis.  
21 That isn't to say that we don't have an  
22 association with those same sites, but rather  
23 that they have that day-to-day closeness with  
24 it. But we also have an ancestral association  
14:36:14 25 with it. And just because we haven't been able

1 to go in there for a couple of years, couple  
2 hundred years, I should say, doesn't mean that  
3 they are still not valuable to us. If you look  
4 at the cultural landscape, just the landscape  
14:36:31 5 itself, it tells you that we still have that  
6 association, we still feel that that is part of  
7 our ancestral land. Those are important to us,  
8 not just the Northern Cheyenne Nation, but to  
9 those tribes that are present, those that  
14:36:51 10 couldn't make it, they do have an ancestral to  
11 these cultural landscapes.

12 In addition, we had one of the tribal  
13 members that has an Otter Creek settlement  
14 pattern descendents speak to us during the  
15 caucus, and they have a concern about the  
14:37:16 16 settlements within the Otter Creek area. And I  
17 think because the rail line has a spur line  
18 that's going over into the Otter Creek coal  
19 mine, that they feel strongly that they should  
14:37:40 20 be part of this process, and that we, I think  
21 as tribal preservation officers, we agree with  
22 that. It's all part of that idea of looking at  
23 the oral history of that area. So we would  
24 like to recognize the Otter Creek Settlement  
14:38:05 25 Decendents Association to be part of that

1 ethnographic history that we are proposing  
2 today.

3 MS. CATHERINE NADALS: Yeah, I just  
4 wanted to say in response to the question about  
14:38:23 5 the mine, I did talk to Vicky about that, the  
6 Director of the Office of Environmental  
7 Analysis, and she said they are going to be  
8 looking at in the EIS cumulative impacts. And  
9 she also told me a little bit about some of the  
10 comments that were received regarding the  
14:38:44 11 adequacy of the initial application for the  
12 comments and the need that basically that they  
13 are going to have to do more studies probably,  
14 and it may delay the state's environmental  
15 impact statement. We definitely have to look  
14:39:04 16 at that.

17 MR. CONRAD FISHER: Well, I think  
18 there's two separate issues here. One is the  
19 Otter Creek -- proposed Otter Creek open pit  
14:39:15 20 coal mine. That's one issue that I think folks  
21 are looking at as being a separate issue. And  
22 then there's the Tongue River Railroad, the  
23 issue that we are looking at today that we are  
24 here gathered today to discuss.

14:39:36 25 But on the broader general scale, I

1 think they are intricately intertwined and that  
2 there is a connection, and the rail line  
3 certainly will impact the settlement patterns  
4 of the Northern Cheyenne that were there at one  
5 time. And Ms. Braided Hair did do an excellent  
6 job of relaying some of the atrocities that  
7 occurred when they were moved from the Otter  
8 Creek area into the Tongue River Reservation at  
9 that time, as it was known, and then was  
10 changed to the Northern Cheyenne Reservation.

11 But I think because the railroad line  
12 may adversely impact the settlement pattern, in  
13 other words, the homesteads that the Cheyenne  
14 lay claim to in that area, that there is an  
15 association with the settlement pattern and the  
16 proposed and preferred alternative of the rail  
17 line. So we want to make that as part of the  
18 record that this is very important, those  
19 historic properties of the Northern Cheyenne as  
20 homes in that area, the Otter Creek area, may  
21 be adversely affected, and they will be either  
22 by the railroad or by the proposed Otter Creek  
23 coal mine.

24 MS. CATHERINE NADALS: Okay. Thanks.

25 MS. LANA GRAVATT: Yeah, there are

1 many questions on Otter Creek settlement and  
2 state involvement, you know. I mean, the  
3 history itself, how legal that title is they  
4 actually have right now. Without the truth, I  
14:41:31 5 don't see how your agency can make any  
6 decisions.

7 MS. CATHERINE NADALS: Without the  
8 truth about...

9 MS. LANA GRAVATT: Of the Otter Creek  
14:41:41 10 settlement area.

11 MS. CATHERINE NADALS: As I understand  
12 it --

13 MS. LANA GRAVATT: There seems to be  
14 -- I mean, maybe I'm wrong, but there seems to  
14:41:48 15 be something missing from this picture, from  
16 what we've heard from the Cheyenne. It sounds  
17 to me like that area belongs to the Cheyenne  
18 still. So I don't know. I mean, that's what  
19 it sounds like to me.

14:42:11 20 MR. CONRAD FISHER: Yeah, I think  
21 that would be part of this ethnographic study.  
22 I think it would be really helpful, as Wanda  
23 has mentioned, a lot of our tribes really have  
24 very little funding to be able to do these  
14:42:28 25 types of ethnographic studies. So it's always

1 helpful to get some of that data. If not the  
2 tribes doing it themselves, to have a  
3 consultant do the research. There's plenty of  
4 research. We've done a lot of work here at  
14:42:47 5 home on the settlement patterns of the Northern  
6 Cheyenne. But I think this gives us a window  
7 of opportunity, if they are adversely affected  
8 by a federal undertaking, to have the federal  
9 agency assist us through their contractors and  
10 through the proponent, if we are going to have  
14:43:04 11 a TCP study, and that's what we are asserting  
12 here, that we want somebody to pay for it. It  
13 won't be the tribes.

14 You know, we get inundated by federal  
15 projects like this constantly, and every day  
14:43:26 16 106 requests, there are six or seven that go  
17 through my office every day, and this is just  
18 one 106 request, the Tongue River Railroad. So  
19 if we were to do a TCP study without the help  
14:43:55 20 of whoever is requesting the 106, we'd need a  
21 \$500 million dollar line item to do cultural  
22 studies and cultural surveys. And I think this  
23 is rightfully so, that we want either your  
24 office, Cathy, from your budget, or from the  
14:44:19 25 proponent's budget --

1 MS. CATHERINE NADALS: We have,  
2 basically, no money. So the way it works, the  
3 applicant will basically pay for -- pays the  
4 third-party contractor. They work for us and  
5 they are basically like us, but the applicant  
14:44:39 6 pays for their services, and the applicant will  
7 be the one that will be for your TCP studies,  
8 or for you to conduct the TCP study. The Board  
9 itself doesn't have any funding to for that  
10 sort of thing.

11 MR. CONRAD FISHER: Well, I'm glad  
12 you're saying that on the record, and I'm glad  
13 the proponents are here. I would like to have  
14 somebody raise their hand and say they are  
15 going to pay for this study. That's kind of a  
14:45:08 16 westernized, idealized, put your hand on the  
17 Bible and you swear.

18 MS. CATHERINE NADALS: The way it  
19 works is that we make the determination what we  
20 need in order to comply with NEPA or 106. And  
14:45:24 21 then, you know, based on that need, they would  
22 pay for us to conduct those studies on our  
23 behalf, because you're basically assisting us  
24 with your expertise and making National  
14:45:42 25 Register determinations and going through the

1 process that we need to go through in order to  
2 determine impacts. So that would be the case  
3 for alternative analysis. And, of course, what  
4 we are anticipating doing, much more detailed  
5 work for the licensed alternatives.

14:45:57

6 MR. CONRAD FISHER: Great. Glad to  
7 hear that.

8 Russell.

9 MR. RUSSELL EAGLE BEAR: Yeah, you  
10 mentioned earlier in your comments that HDR is  
11 out there. What is HDR doing out there right  
12 now?

14:46:07

13 MS. CATHERINE NADALS: I don't know  
14 if they are out there now. Did you want to  
15 address that?

14:46:18

16 MR. JAMIE HAMM: Jamie Hamm. HDR is  
17 working for Tongue River Railroad to acquire  
18 rights of entry to do more detailed topographic  
19 studies, just obtaining ground features and  
20 geo-technical information to determine  
21 recommendations related to the cut and fill  
22 slopes for the railroad line, that sort of  
23 thing. So all purely engineering studies.

14:46:52

24 We, also, if available, would like to  
25 look at wetland features and other biological

14:47:07

1 resources, but that's the primary function of  
2 the access. So HDR is just acquiring the work,  
3 and then another firm, survey firm, called  
4 Surve-Tech, is doing the topographic studies  
5 and the Hansen Professional Services is doing  
6 the geo-technical and environmental work.  
7 Again, that's just -- that's completely outside  
8 of the EIS effort.

9 MS. CATHERINE NADALS: Right. So  
10 that's just your engineering studies.

11 MR. JAMIE HAMM: Engineering.

12 MS. CATHERINE NADALS: It's  
13 completely separate and has nothing do with  
14 what the Board is doing. That's their  
15 contractors.

16 Are they out there currently? Are  
17 they still in the process?

18 MR. JAMIE HAMM: The geo-technical  
19 engineers are working on some of the properties  
20 that we have access. We have access to a  
21 decent percentage of the properties that we are  
22 going out and studying.

23 MS. CATHERINE NADALS: Okay.

24 MS. LANA GRAVATT: Can you just go  
25 further and explain a little bit?

1 MR. JAMIE HAMM: Essentially,  
2 geo-technical engineering is a branch of  
3 geology that goes into more engineering  
4 studies, you know, based on how high in the air  
5 the railroad is, how much fill you're going to  
6 have to place underneath it, is it going to  
7 settle, are the slopes going to hold up, issues  
8 of how steep the cuts can be whenever you're in  
9 excavation, pretty general issues like that.  
10 Water, ground water issues, that sort of thing,  
11 just affecting engineering. Nothing  
12 environmental, just geo-technical.

13 MS. LANA GRAVATT: How does that not  
14 affect the environment, though?

15 MR. JAMIE HAMM: Well, environmental,  
16 I was speaking of the EIS essentially. We are  
17 looking at just the engineering recommendations  
18 to determine, you know, cut, sloping, that sort  
19 of thing, just to make sure they don't fail.

20 MS. LANA GRAVATT: You don't make any  
21 environmental comments in that, right? Is that  
22 what you're saying?

23 MR. JAMIE HAMM: Right, just purely  
24 engineering.

25 MS. CATHERINE NADALS: Yeah, they're

1 doing their own studies, and it's separate from  
2 the EIS process where we are doing our studies.

3 MS. LANA GRAVATT: I mean, so they  
4 are not making any environmental comments but  
14:49:16 5 they pretty much have control of digging and  
6 moving --

7 MS. CATHERINE NADALS: No, they are  
8 just doing studies.

9 MS. LANA GRAVATT: Oh, they are just  
14:49:24 10 doing studies.

11 MS. CATHERINE NADALS: They are just  
12 doing studies right now.

13 MS. LANA GRAVATT: Okay.

14 MS. CATHERINE NADALS: That's it.  
15 Just looking -- please tell me if I'm wrong --  
16 just looking at the terrain and the --

17 MR. JAMIE HAMM: Yeah, geo-technical  
18 engineering, essentially a geologist will go  
19 out and look at the ground and see if there are  
14:49:39 20 any soft areas where the rails might settle, or  
21 any rock, that sort of thing, that we've got to  
22 deal with, if we ever do construct the  
23 railroad. And they do that essentially by  
24 having the geologists out there looking, and  
14:49:53 25 also have a drill rig, essentially a truck that

1 drills borings and takes soil just to test for  
2 strength. See if the soil is strong or weak.

3 MS. LANA GRAVATT: How many of those  
4 have you done?

14:50:09 5 MR. JAMIE HAMM: About Forty,  
6 something like that. Not a huge amount. It's  
7 really to get a good feeling for what the line  
8 is going to cost to build and what's it going  
9 to look like from an engineering perspective.

14:50:24 10 MS. CATHERINE NADALS: Are you doing  
11 this for all the alternatives?

12 MR. JAMIE HAMM: A lot of the common  
13 points of the alternatives. We have a lot of  
14 information on the previous preferred  
15 alternative and the Colstrip Alternative.

14:50:33 16 MS. LANA GRAVATT: Then how do you  
17 know you're not drilling right in the middle of  
18 one of our places of reverence, you know, or  
19 archeological. How do you know that you are  
14:50:46 20 not doing that?

21 MS. CATHERINE NADALS: They are  
22 purely looking at it from an engineering  
23 perspective.

24 MS. LANA GRAVATT: Well, I agree with  
14:50:51 25 that. But I'm looking at it from a tribal

1 perspective.

2 MS. CATHERINE NADALS: That's what we  
3 are doing.

14:50:58

4 MS. LANA GRAVATT: Have you already  
5 dug those?

6 MR. JAMIE HAMM: Yeah.

14:51:05

7 MS. LANA GRAVATT: That's what I'm  
8 trying to say. They are already out there  
9 digging, drilling, and nothing has been  
10 reviewed, you know.

11 MS. CATHERINE NADALS: I think that  
12 the borings, as far as I know, are very small.

13 MR. JAMIE HAMM: It's about a six-inch  
14 diameter, or maybe four inches.

14:51:15

15 UNIDENTIFIED SPEAKER: But how big is  
16 your drill rig?

17 MR. JAMIE HAMM: Like a medium-size  
18 truck.

14:51:22

19 UNIDENTIFIED SPEAKER: And the  
20 drivers are out there?

21 MR. JAMIE HAMM: Just on existing  
22 roads. Landowners don't want us driving all  
23 over the place any more than anyone else would.

14:51:29

24 MS. CATHERINE NADALS: So you're  
25 making a point, basically, right off the road.

1 MR. JAMIE HAMM: Correct.

2 MS. CATHERINE NADALS: On the right-  
3 of-way of the road?

14:51:34

4 MR. JAMIE HAMM: Yeah, the public  
5 road, and beyond private access roads wherever  
6 they have a road established.

14:51:47

7 MS. HANK COFFIN: I have a question  
8 for you. What kind of chemical are you putting  
9 into the ground while you are drilling because  
10 you are pulling around a big tank on one of  
11 those trucks?

14:52:02

12 MR. JAMIE HAMM: Yeah, whenever they  
13 encounter rock, in order to drill into rock,  
14 you put water into it. So it's just to make  
15 sure it doesn't overheat.

16 MR. HANK COFFIN: Where are you  
17 getting the water? Coming off the Tongue  
18 River, or good clear quality water, drinkable?

14:52:14

19 MR. JAMIE HAMM: It's typically from  
20 hydrants and that sort of thing. Like a fire  
21 hydrant.

22 MR. HANK COFFIN: So it's out of the  
23 Tongue River?

24 MR. JAMIE HAMM: Sure.

14:52:22

25 MR. HANK COFFIN: A lot of us have

1 excellent wells. We just had ours tested and  
2 you drilled but about 200 yards from our well.

3 MR. JAMIE HAMM: Right, drinking  
4 water.

14:52:34 5 MS. CATHERINE NADALS: Sir, could you  
6 identify yourself for the record?

7 MR. HANK COFFIN: What's that?

8 MS. CATHERINE NADALS: Could you  
9 state your name?

14:52:39 10 MR. HANK COFFIN: My name is Hank  
11 Coffin, C-o-f-f-i-n.

12 MS. CATHERINE NADALS: And your name?

13 MS. KITTY COFFIN: Kitty Coffin. I  
14 live in Ashland. I'm a tribal member and  
15 landowner.

16 MS. CATHERINE NADALS: Kitty Coffin.

17 MS. KITTY COFFIN: Kitty.

18 MS. CATHERINE NADALS: Thanks.

19 MR. RUSSELL EAGLE BEAR: So what  
14:53:05 20 we're hearing, just by your answers, is that  
21 you are testing some alternative routes but  
22 your concentration is on the preferred area --

23 MR. JAMIE HAMM: Right --

24 MR. RUSSELL EAGLE BEAR: -- for the  
14:53:23 25 company?

1 MR. JAMIE HAMM: -- for the  
2 engineering side, yes.

3 MS. CATHERINE NADALS: It really  
4 makes no difference to the Board.

14:53:30 5 MR. RUSSELL EAGLE BEAR: Well --

6 MS. CATHERINE NADALS: It's  
7 irrelevant because it's --

8 MR. RUSSELL EAGLE BEAR: -- for us  
9 sitting here, I know they took us on tour of  
10 the preferred route. But at some point, you  
11 know, they are already doing engineer work,  
12 but, you know, we need to get out to those  
13 preferred areas, too, at some point.

14 MS. CATHERINE NADALS: Right.

14:53:54 15 MR. RUSSELL EAGLE BEAR: And --

16 MS. CATHERINE NADALS: We can talk  
17 about schedules. That's one of the things we  
18 can talk about is the schedule.

19 MR. RUSSELL EAGLE BEAR: You know,  
14:54:02 20 this is so obvious what's happening here.

21 MS. CATHERINE NADALS: Nothing has  
22 been decided.

23 MR. RUSSELL EAGLE BEAR: We want to  
24 make sure when we are invited to the next  
14:54:12 25 meeting, that we look at all the alternative

1 sites, and not just concentrate on the  
2 preferred site.

3 MS. CATHERINE NADALS: No, we --

4 MR. RUSSELL EAGLE BEAR: So I just  
5 want for that record, I'm hoping that you take  
6 this and consider it and put it into some kind  
7 of a document with a good answer.

8 MR. JAMIE HAMM: And it's the  
9 railroad's intention to do these studies so  
10 they can determine better what the cost might  
11 be of these preferred alternatives. It's at  
12 their own risk. I mean, it could be that those  
13 alternatives aren't pushed forward and then we  
14 would have to do studies on whatever  
15 alternative it was. We don't disagree. I  
16 mean, that was supposed to be the intent of  
17 yesterday's site visit was to go see all the  
18 alternative. It just so happens --

19 MS. LANA GRAVATT: One alternative.

20 MS. CATHERINE NADALS: Well, it was  
21 never my intention --

22 MR. JAMIE HAMM: That's what I'm  
23 saying. That wasn't our choice.

24 MS. CATHERINE NADALS: No, it wasn't  
25 our choice either. Actually, Conrad had

1 thought this would be a good idea because we  
2 had the McRaes offering up their property to  
3 the 106 people. Because that was unusual, that  
4 we even had access. We just basically took  
5 advantage of the opportunity. But, I mean, our  
6 original intent was actually to drive south  
7 from where we had the hotel, and go up north  
8 and then do the southern routes and then go to  
9 Ashland. So, I mean, it really wasn't -- it's  
10 just sort of the way it happened. But there  
11 was no intention there. There was no specific  
12 intention saying this is the alternative we are  
13 choosing. It hasn't been decided. We are in  
14 the process right now for all the alternatives.

15 And, you know, if the railroad wants  
16 to go out and do their studies for one of their  
17 preferred, but it's at their own risk,  
18 basically, because it is not necessarily the  
19 one that we are going to license.

20 MR. CONRAD FISHER: I know a couple  
21 of my colleagues are planning on leaving real  
22 quick. But I'd like to thank them for coming  
23 over to Cheyenne country. They play a very  
24 important role within their tribe, and,  
25 certainly, they have taken the time. But we

1 appreciate Mr. Russell Eagle Bear from the  
2 Rosebud Sioux Tribe for coming over and  
3 spending these three days here and going out  
4 there and looking at the site. And, also, Mr.  
14:56:41 5 Ben Rhodd, who is the tribal archeologist for  
6 the Rosebud Sioux Tribe. I'm not sure if he  
7 has something he wants to say.

8 MR. RUSSELL EAGLE BEAR: Before he  
9 does, can I make a comment?

14:56:54 10 First of all, I want to thank you for  
11 hosting us and keeping us well fed and occupied.

12 And thanks for the gift of the drum.  
13 We are going to sing our way home.

14 But, you know, you know how you  
15:57:12 15 earn -- how I earned that drum. Only you and I  
16 know that.

17 MR. CONRAD FISHER: We'll keep it  
18 that way. Go ahead.

19 MR. BEN RHODD: Before we go, thank  
14:57:23 20 you, the Northern Cheyenne for the hospitality  
21 and feeding us. We like to eat. Somebody said  
22 something about road kill the first morning,  
23 and I thought, oh, yeah... They were teasing.

24 I do want to make one statement, and  
14:57:49 25 that is about the EIS itself. If you're

1 looking at a, perhaps, permitting date of  
2 September, or, perhaps, October, or November,  
3 that's pushing it. Simply for the reason that  
4 the timing that you're dealing with here, it's  
5 going to force us to have to make some  
6 adjustments, because we have a lot of projects,  
7 and we are going to have probably upwards of  
8 over hundred, 115 of our people in the field on  
9 various projects over the summer and fall.

10 We've got a lot -- we've got the Vantage  
11 pipeline. We've got potentially, if we have  
12 to, we do end up having to deal with Ross  
13 Project in Wyoming. We've got a rare elements  
14 project over by Sundance, Wyoming, et cetera,  
15 et cetera. That's just the tip of the iceberg.

16 But I'm just saying that this EIS,  
17 the previous EIS that you had, I know you're  
18 going to cut and paste a lot of it. You're  
19 going to have to. Because there's no way,  
20 unless you've got a firm that can sit night and  
21 day, to put such a document together again.  
22 There ain't no way. And I know you're paying  
23 that firm probably over about half a million.  
24 I'm just going to throw that out there.

25 When we do our surveys, we want

1 equity down the road. That's what we are  
2 looking for. Equity with the archeological  
3 firms, whether you go with HDR or you go with  
4 one of the other ones, that's what we're  
5 looking at is parity, parity of interest  
6 regarding the historicity of our occupation of  
7 this Northern Plains area. I'm a little upset  
8 so I'm taking some deep breaths here. This is  
9 what it comes down to is simple parity.

10 With regard to our history, to our  
11 culture, there's a word, Lakota, you see.  
12 Respect, or to have great regard for. It's  
13 hard to translate that word. But that's the  
14 gist of it.

15 And this is what's missing. It's  
16 been missing for 500 years. And it's time for  
17 it to change. It's time for it now to begin to  
18 have understanding that our history is not your  
19 history. Our history belongs to us. We are  
20 the caretakers of it. We are the owners of it.

21 I'm an archeologist. Been at it 35  
22 years. Long time. Thousands and thousands of  
23 projects. But my point in saying it on that  
24 level is simple. I've watched my profession  
25 become -- well, a salable commodity. And what

1 we do is different from that now. And what we  
2 are reminding and I'm reminding my own  
3 profession is that it does not own my past. I  
4 do. Now, that's where parity comes in with  
5 regard that it's not the academics, it's not  
6 the archeological firms that were environmental  
7 firms. This is still going to be a sensitive  
8 issue, as was brought up by Conrad. It's about  
9 the intellectual property of our past.

10 Confidentiality.

11 So to help you understand why we are  
12 saying we want a separate survey with parity,  
13 just as the pricing, that's what many, many  
14 corporations, they are willing to pay the  
15 archeological firm \$300,000 or half a million,  
16 a million, but then when we come forward we  
17 say, well, it's going to cost about a hundred  
18 thousand. Oh, I'm sorry, we can't do that.  
19 What are you going to do? We do exactly the  
20 same thing on one level and methodology as the  
21 archeologist does, but that's where the  
22 similarity ends.

23 So I just want to make that statement  
24 to you, and I think this EIS, you're going to  
25 push it and push it and push it, whether it be

1 the geo-tech, whether it be the hydrological,  
2 whatever.

3 I'm not sure which firm -- I mean, I  
4 guess the firm HDR will sell itself, I guess,  
15:04:01 5 and give you some paper that will say, yeah, we  
6 reached this checkoff on the bureaucratic  
7 requirements. I've been a little harsh here,  
8 but I have a right to, because what's at stake  
9 is our history. One thing we hold as stewards  
10 of our homeland, and that's where we are  
15:04:27 11 stepping up to the plate now and sitting at the  
12 table with you.

13 So I just wanted to make those  
14 statements. Like Russell said, we've got to  
15:04:45 15 head back and start in on other projects and  
16 stay with it. It's a 24/7 deal for us. No  
17 time out.

18 (Native language.)

19 MR. CONRAD FISHER: Thank you very  
15:05:11 20 much.

21 Wanda, you had your hand up, didn't  
22 you?

23 MS. CATHERINE NADALS: I just want to  
24 thank you, Russell, for your comments. Thanks  
15:05:21 25 for coming.

1 MS. WANDA WELLS: There was a  
2 statement made by the Surface Transportation  
3 Board consultant that kind of flew over  
4 everybody, but he made the statement once the  
15:05:36 5 identification was done, then we would discuss  
6 determining what is significant. So I want to  
7 say to the Surface Transportation Board, and  
8 ICF, that you are not in a position to  
9 determine what is significant to our tribal  
10 people. I want to make that very clear.

11 UNIDENTIFIED SPEAKER: That's right.

12 MS. WANDA WELLS: I don't think I  
13 should have to have a discussion with you and  
14 STB to determine what's significant to us. So  
15:06:14 15 I just want to caution you to not use that kind  
16 of language. I did catch that. We can  
17 determine the significance of sites and areas  
18 and properties ourselves.

19 MS. CATHERINE NADALS: Yeah, we would  
15:06:33 20 have that expectation, actually, as the Board,  
21 because we have make, the Board, or the federal  
22 agency makes the National Register  
23 determination, and we make those determinations  
24 based on expertise, archeological expertise and  
15:06:48 25 tribal expertise. And we found out from the

1 SHPO that they will accept your National  
2 Register eligibility determinations in this  
3 particular state. That could be very helpful  
4 to us as a federal agency. It's not always the  
15:07:04 5 case, but that is the case where we have SHPO,  
6 it seems to be willing to work with us on that  
7 level.

8 MR. RICHARD STARZAK: Excuse me.  
9 Wanda, if could just address that one moment.  
10 If I said that, I didn't mean that to keep this  
15:07:18 11 information. I presented a slide saying that  
12 we understand this is your place, your  
13 tradition, your history, and we want to learn  
14 from you what is significant. I wasn't trying  
15:07:36 15 to imply that we would determine.

16 MS. LANA GRAVATT: At the same time,  
17 I think, we are still kind of -- because the  
18 Surface Transportation Board hasn't had, I  
19 don't know, any really history of making  
15:07:57 20 determinations on behalf of the tribes, because  
21 they haven't brought the tribes in to  
22 participate on these. This is a new thing for  
23 them. So if we are giving them areas of sites  
24 of significance and they have no history of  
15:08:13 25 making those determinations, we are left at a

1 situation where, you know, like, when we were  
2 talking about that Nantucket case earlier, they  
3 had the state preservation officer, the tribe,  
4 the public, everybody was in agreement, the  
15:08:29 5 people were in agreement. No, this should not  
6 go to that area, they are places of reverence  
7 for all of us. But it took one man, Secretary  
8 Salazar, to sign off, with no consideration of  
9 the people at all, I'm deeming this in the  
15:08:46 10 national interest, and signed off, and they now  
11 have those windmills in the middle of the --  
12 out in the ocean, you know.

13 So that's what we are up against. So  
14 any agency, even though we may find, you know  
15:09:05 15 -- you know, I always like to make comparisons  
16 to the Bible, because that's the only way  
17 people understand when we make comparisons to,  
18 like, biblical sites. You know, if it were  
19 Mount Sinai, or a place like that, I believe  
15:09:18 20 they would destroy their own sites. I mean,  
21 with the activity that's going on today because  
22 I honestly don't know who is running this  
23 country. Because how can these foreign  
24 countries and companies come in here and  
15:09:33 25 destroy land, extract our resources, without

1 any kind of true environmental process. All  
2 the interests are -- every interest is  
3 connected between archeological, between the  
4 engineering, the exporting, everybody, and  
5 these big projects with the money, Arch Coal,  
6 their interest, they are all connected, you  
7 know. You know, we are fighting the devil  
8 itself.

9 MS. SHIRLEY ARROW: I have a question.

10 MS. CATHERINE NADALS: Would you  
11 state your name?

12 MS. SHIRLEY ARROW: My name is  
13 Shirley Arrow, and I'm from Yankton Sioux.

14 My question is to Mrs. Coffin. I  
15 wanted to ask her, are you a tribal member of  
16 this tribe?

17 MS. KITTY COFFIN: Yes.

18 MS. SHIRLEY ARROW: Is your land  
19 considered tribal ground?

20 MS. KITTY COFFIN: No. It is tribal  
21 ground but it is not part of the reservation.  
22 It is tribal ground. It's right across the  
23 Tongue River where you were.

24 MS. SHIRLEY ARROW: You are still  
25 protected, right?

1 MR. CONRAD FISHER: It's not trust  
2 property.

3 MS. KITTY COFFIN: It's not trust  
4 property.

15:11:00 5 MS. SHIRLEY ARROW: And can you put  
6 it in trust?

7 MR. CONRAD FISHER: Well, if it  
8 becomes trust property, then it's the property  
9 of the tribe.

15:11:09 10 MS. KITTY COFFIN: Then it becomes  
11 property of the tribe, but we own it. Deed it.  
12 We can put it in trust if we choose to, but I  
13 don't choose to do that at this point because  
14 my husband is not a tribal member. And our  
15:11:25 15 tribe has a law, if I pass away, then he would  
16 have to move. And I won't do that to my  
17 husband.

18 MR. CONRAD FISHER: But it still has  
19 relevance, whether or not it's on the  
15:11:42 20 reservation or off the reservation, we would  
21 still apply the same type of protective  
22 measures that we would do whether or not it was  
23 on the reservation because of the ancestral  
24 ties to the Northern Cheyenne.

15:11:58 25 MS. SHIRLEY ARROW: One other thing.

1 Right now in South Dakota, as of January, I  
2 have never left my reservation for anything. I  
3 stay home. I'm a grandmother. A mother. A  
4 wife. At one of our general council meetings,  
5 there was a white farmer, he was, like, about  
6 65 years old, and there was a big oil, what is  
7 it, Keystone pipeline is going to come through  
8 his land. I'm more of an observer, a watcher,  
9 a listener. And he stood up, and he said how  
10 he felt about what the big oil companies, what  
11 the government, was going to do if they didn't  
12 sell it, they were going to do eminent domain,  
13 and he said, I will stand up and die. I will  
14 stand in front of these bulldozers and die  
15 before I let them come on my land. That's how  
16 passionate this rancher was.

17 And I felt with him. In my heart I  
18 felt his grief because Indian people, we've  
19 been going through that all our lives. And we  
20 are treaty tribes. And I'm on the treaty  
21 council. And the government has broken every  
22 single treaty that we've made with them. We  
23 Indians, we have broken none.

24 So I feel for these ranchers here.  
25 And I feel for the Cheyenne, Northern Cheyenne

1 Tribe, with your roads, the trucks are going to  
2 be coming through here. Sure, they might  
3 promise jobs and stuff, but the kind of people  
4 they are going to bring here, the drugs, the  
15:14:24 5 killings. You know, your environment, your  
6 small towns are going to turn into big towns,  
7 have a lot of crime. So I feel for you.

8 And you have a real, real beautiful  
9 land here. Real beautiful. Really a lot of  
10 medicine here, too. I went on that bus and I  
15:14:48 11 got out, it was there, you know. And I come  
12 from a real traditional family. Real  
13 traditional family.

14 So I wanted to tell you from me as an  
15 Indian, that I will come up here and help you  
15:15:13 16 guys, even if it meant to blockade these roads  
17 from these trucks going through your  
18 reservation. No respect. We go to the  
19 ranchers, we ask them, can we pass through here  
15:15:37 20 with the state? No respect for us as people,  
21 as an Indian nation.

22 So, you know, that's what I wanted to  
23 tell our Cheyenne relatives, that we support  
24 you guys.

15:15:54 25 MR. CONRAD FISHER: Thank you. We

1 had a question here.

2 Before you ask your comment or  
3 question, I think Cathy had asked me earlier  
4 about the tour that we had yesterday, why we  
15:16:16 5 picked the preferred alternative.

6 It would have been an ambitious 106  
7 consultation meeting, and, you know, Russell  
8 brought up the idea of 106 being questionable  
9 because of the preliminary stages of this whole  
15:16:36 10 process. And so I think one of the things that  
11 the Surface Transportation Board was trying to  
12 establish is that this is one of many  
13 alternative routes, and that this particular  
14 route was probably easy access.

15:16:56 15 We had a number of variables, also,  
16 that contributed to looking at this route. One  
17 of them was the preferred route. Two, we had  
18 the landowner's consent. You know, in Indian  
19 country, it's very unique to have landowner  
15:17:17 20 cooperation. There's been many types of horror  
21 stories about being shot at by landowners in  
22 other parts of the state and country when  
23 natives actually go out and partake in a tribal  
24 cultural survey.

15:17:38 25 So in this case I think that the

1 landowners knew, and I really appreciate what  
2 Clint McRae had to say yesterday during our  
3 tour, you know, he's a relatively newcomer to  
4 that area. His family has homesteaded that  
5 area for 130 years, but that in terms of  
6 habitation and occupation of this eastern  
7 Montana, that they were relatively newcomers.  
8 You know, he gave credit to the tribes there  
9 that that was their land and that that was  
10 their ancestral land and he was a willing  
11 partner. And we all share the same passion for  
12 the landscape, and that is protection, and how  
13 valuable it is as being pristine, and that they  
14 would like to keep it that way, because that's  
15 where he homesteads. His dad is still part of  
16 it. And, actually, his ancestors, part of  
17 their burial is there. So I think he  
18 understands the importance of this landscape,  
19 this cultural landscape, as most of us do that  
20 are in here. Many things go into what  
21 constitutes the landscape, and I think  
22 spirituality is a huge part of it.

23 And I only say that because I'm  
24 coming to a point here. And that is that we  
25 took all those considerations, we took the

1 preferred alternative, the geographically close  
2 proximity of one of the alternatives to the  
3 tribe, and how practical it would be to take  
4 this route within a reasonable time period, and  
15:19:30 5 that would be one day. If we were to take the  
6 route, let's say, the alternative from Ashland  
7 to Decker, which is one of the alternatives,  
8 that would take more than a day to traverse  
9 that route.

15:19:49 10 So, I think, hopefully, I've answered  
11 what Cathy was saying, that when the question  
12 came up why was this alternative taken, it was  
13 because of all those reasons. We would have  
14 easy access. Because of the weather  
15:20:07 15 conditions, that was also a contributing  
16 variable.

17 And, also, thanks to Mr. McRae, that  
18 he was able to showcase and demonstrate that  
19 cooperation, and, also, look at a taste of the  
15:20:23 20 cultural sites that are within the permit area.  
21 And so we looked at all those things. And,  
22 also, you know, the folks traveling from  
23 Sheridan would have to travel again an hour and  
24 a half just to get back home. All those things  
15:20:40 25 was why we looked at the preferred alternative

1 rather than others. But, certainly, we could  
2 have taken those other routes and, certainly,  
3 we could have consulted with the tribes on what  
4 route they wanted to take. But I would suspect  
5 the tribes would have said, well, we'll look at  
6 the one you think is best for all of us here,  
7 and that's why we took that route.

8 Yes, sir.

9 MR. MATT JONES: If it's okay, I  
10 would like to make a comment. My name is Matt  
11 Jones. I'm with BNSF.

12 First of all, on behalf of the Tongue  
13 River Railroad Company and BNSF, I'd like to  
14 thank the Northern Cheyenne Tribal Council and  
15 you, Conrad, for hosting this meeting.

16 It's very obvious to me and to the  
17 rest of us who are here on behalf of the  
18 applicant how important this is to all of the  
19 consulting tribes, the fact that we have so  
20 many tribes represented and THPOs came all this  
21 way to be here, it's impressive. And I have  
22 worked on a lot of projects here at Northern  
23 Cheyenne in a different capacity, and to see so  
24 many of the tribal council members who were  
25 here on Tuesday, and participating today, and

1 the tribal president and the vice president,  
2 it's really a testament to how seriously the  
3 Northern Cheyenne is taking this matter, and we  
4 appreciate that.

15:22:36 5 The applicant, the BNSF, look forward  
6 to working with you and to all of the  
7 consulting parties through this 106 process.  
8 It's a very important process. It's critical  
9 to the permitting process that's involved here.

15:22:55 10 So, you know, our goal is that the  
11 result is a product that respects your values  
12 and serves your interests, and also, of course,  
13 from our perspective, achieves the objectives  
14 of the project. And we hope that this will be  
15 a collaborative process. We want to be  
16 involved throughout the 106 process. And, you  
17 know, please feel free to contact us directly  
18 and reach out to express concerns or ask  
19 questions whenever those arise. And that goes  
20 to all the consulting parties. Thank you.

15:23:37 21 MR. CONRAD FISHER: I would also like  
22 to thank Kitty and her husband, Mr. Coffin, for  
23 giving us some insight into your case. I think  
24 that was extremely valuable information about  
15:23:55 25 the impacts to your property. Thank you. And

1 thank you for sharing that with us.

2 MS. CATHERINE NADALS: I would like  
3 to thank you as well. That was very generous  
4 of you to allow time to talk about the sites on  
15:24:14 5 your property. We appreciate that. And thanks  
6 for being here.

7 And thank you to you, as well, for  
8 your statement about collaboration. It's very  
9 encouraging.

10 MS. LANA GRAVATT: Especially when  
11 there is no, you know, with the whole project,  
12 there's going to be an adverse effect no matter  
13 what, you know. I don't know if there's a best  
14 case scenario here because of the environmental  
15:24:27 15 effect. Yeah, environmental effects.

16 And I was, you know, talking to  
17 Catherine a little bit about having their  
18 environmental people here. You know, if they  
19 are trying to somehow, you know, include both  
15:25:09 20 processes or people at the table, well, that --  
21 I wouldn't call -- I wouldn't say they were at  
22 the table. They came and read something to us,  
23 which I don't like being read to. If that  
24 document isn't in front of me, you know, I'm  
15:25:24 25 not getting it. So I didn't appreciate that

1 from Ken Blodgett the other day.

2 And then, also, and they left. So I  
3 really don't consider them that they  
4 participated in the meeting, because there were  
15:25:39 5 no questions, no back and forth, you know. So,  
6 you know, I plan to write a letter to their  
7 board with that concern, and at the next time  
8 they be at the table to answer questions.

9 For me, and with the tribal  
15:25:58 10 perspective, we don't separate the environment  
11 from the land and everything is not in pieces.  
12 It's a whole picture. So it's hard to talk to  
13 somebody, like, in a setting like this, you  
14 have your engineers and you have your  
15:26:15 15 environmental and then you have your 106 person  
16 over here, and, you know, everybody is taking a  
17 little piece of the picture and discussing it,  
18 but actually it's a whole picture to us. We  
19 are not separating anything. And I just wanted  
15:26:28 20 to make you aware of that.

21 And, also, I was upset they would do  
22 this on their own dime and you cannot let that  
23 happen. I think you should take the first step  
24 forward. I would like to see Rosebud and  
15:26:48 25 Cheyenne get on and do the survey with the

1 landowners that are along the access  
2 right-of-way, the tribal survey. Like I said,  
3 the way that's done, and given everything that  
4 we already know in addition to the tribal  
15:27:07 5 survey and environmental effects, honestly,  
6 there has to be a no build option somewhere in  
7 something, whether it's in the PA. I just want  
8 you to know that. You have to be thinking  
9 about that, too.

15:27:23 10 MR. CONRAD FISHER: Yeah, and that's  
11 a good question, Lana. I'm glad you brought  
12 that up. I'm going to ask Cathy. Is there a  
13 no build alternative?

14 MS. CATHERINE NADALS: I don't  
15:27:33 15 believe that there is. But I really -- I need  
16 to get back to my environmental people and talk  
17 to them about this.

18 Anybody here have that information?  
19 Anybody --

15:27:49 20 MR. JAMIE HAMM: That's one of the  
21 alternatives.

22 MS. CATHERINE NADALS: All right. So  
23 it is one. I haven't been involved in a no  
24 build with the EIS. So I apologize for that.  
15:27:58 25 So there is a no build option.

1 MS. LANA GRAVATT: Great. Thank you.

2 MR. CONRAD FISHER: I think many of  
3 the other THPOs, if you have any other  
4 comments, we'd like to give the opportunity to  
5 the representatives from our tribal  
6 constituents an opportunity to also voice their  
7 opinions, and many elected -- I see you're at  
8 the table. Go ahead.

9 MS. JOYCE WHITING: My name is Joyce  
10 Whiting from the Oglala Sioux Tribe. I would  
11 like to make a couple comments to let you know  
12 that we would like to be involved in the TCP  
13 surveys as well when you take the folks out to  
14 see the sites, we would like to be involved  
15 and to consider us in part of the process. I  
16 think that's really important.

17 And I just wanted to thank Conrad and  
18 our relatives, and Cathy, and Rick, I really  
19 enjoyed the tour yesterday, enjoyed the food,  
20 and meeting all the people, to be able to see  
21 them again, it's really nice. So I want to say  
22 that today. I need to get on the road. Thank  
23 you very much.

24 MR. CONRAD FISHER: Thank you very  
25 much, Joyce, for being here.

1 MS. CATHERINE NADALS: Also, thank  
2 you so much for being here. It's really  
3 important for us to have you here. Have a good  
4 trip. Be safe.

15:30:07 5 MS. ALEXIS BONOGOFISKY: My name is  
6 Alexis Bonogofsky. I'm with the National  
7 Wildlife Federation, and I think it's important  
8 to bring up something that's been happening  
9 along the Tongue River. Helicopters have been  
10 knocking eagles nests out of the trees. I've  
11 heard from numerous people who have called me  
12 to report this. And other raptors. And I  
13 don't know how low the helicopters are flying,  
14 but this is an issue at the U.S. Fish and  
15 Wildlife Service, I've talked to them about it,  
16 and they think whichever contractors or  
17 individuals that are flying helicopters on the  
18 Tongue River, this is happening, and we have  
19 reports of it, and someone needs to do  
20 something about it.

21 MS. CATHERINE NADALS: How low were  
22 these helicopters been seen flying? Are we  
23 certain they are associated where this project?

24 MS. ALEXIS BONOGOFISKY: Yes. We don't  
15:31:17 25 know how many different firms are flying

1 helicopters. I don't know all these details.  
2 But we know that it's been happening.

3 MS. CATHERINE NADALS: Okay. I will  
4 pass that along. Thank you.

15:31:30 5 MS. JENNIE LAFRANIER: I'd like to  
6 comment on that, Cathy.

7 MS. CATHERINE NADALS: Yes.

8 MS. JENNIE LAFRANIER: Just what  
9 Alexis said. One of our councilmen lives on  
10 Tongue River Road, and he mentioned that. He  
11 mentioned there's helicopters flying very close  
12 and coming back and forth in that area. I  
13 don't know what they are -- how close or what  
14 they are doing, you know, to the birds, to the  
15 eagles, but he did have a concern on that. I  
16 know he brought it up to the Council one day.

17 MS. CATHERINE NADALS: Could you  
18 state your name for the record?

19 MS. JENNIE LAFRANIER: I'm sorry. My  
15:32:02 20 name is Jennie Lafranier, Northern Cheyenne  
21 Tribal Council.

22 MS. CATHERINE NADALS: Thank you.  
23 I'll pass along your concerns.

24 MS. LANA GRAVATT: Well, we would  
15:32:14 25 also like to know what agency is doing that.

1 Because --

2 MS. CATHERINE NADALS: Yeah, well --

3 MS. LANA GRAVATT: -- first of all,  
4 it's wrong, and second of all, it's a winter  
15:32:22 5 survey, and that's not good enough.

6 MS. CATHERINE NADALS: I mean, what I  
7 have heard from my agency, they are not flying  
8 that low. But --

9 UNIDENTIFIED SPEAKER: You need to  
10 come to my house at 8 o'clock in the morning.

11 UNIDENTIFIED SPEAKER: And mine,  
12 also.

13 MS. CATHERINE NADALS: I would get  
14 the number of the helicopter and we can find  
15 out if it's associated with this project or  
16 not, because, otherwise, we just would have no  
17 way of knowing. I don't know. I mean, I'll  
18 look into it. I will forward your concerns.

19 MR. CONRAD FISHER: Well, I think  
15:33:11 20 what we'd like to do at this time is to ask the  
21 question, what's next? What do we do next?  
22 I think we've voiced our concerns about exactly  
23 what we want to do. One of the primary issues  
24 is accessibility of the proposed, in this case,  
15:33:40 25 the preferred alternative. That's a start, to

1 start doing the TCP surveys. And I know we've  
2 got the cooperation of 33 percent. And I'm  
3 just going to draw out that number 33 percent.  
4 I'm sure it's not accurate, but 33 percent of  
5 the landowners are willing to have us come on  
6 their property and do this survey.

7 And, of course, the survey is at a  
8 cost. So we are requesting that the proponent  
9 pay for the TCP survey at the request of the  
10 tribes, and at their leisure, which would be  
11 sometime this year.

12 I think the other concern that we  
13 have is the process seems to be really, for  
14 lack of a better term, being expedited. You  
15 know, they want to have this EIS done before  
16 the end of the year, possibly as early as this  
17 fall. So, you know, I'm not sure if we can be  
18 a cooperative entity and get that accomplished  
19 for you, Cathy. I think that's something you  
20 need to revisit with your folks back home. I  
21 think sometimes energy developments -- energy  
22 development people have a wealth of money and  
23 wealth of influence, political influence, and  
24 sometimes this is why they want things speeded  
25 up to the point where we, as my colleague, Ben

1 Rhodd, mentioned, cut and paste, and that  
2 shouldn't be the case. That shouldn't be the  
3 case. I think the Ninth Circuit Court had  
4 issued a ruling, an opinion, and that was that  
5 they need to revisit the EIS during the  
6 earlier -- during an earlier court case.

7 However, I know that the railroad company had  
8 amended their preferred alternative, and it's  
9 taken a whole new route, and that is from  
10 Colstrip, Montana. So I would suspect that an  
11 EIS is warranted for that area. And I know  
12 there's been some archeological inventories  
13 that were done in that area. I'm not sure how  
14 long ago and how comprehensive, that was Class  
15 3, Class 2, Class 1, and that has to be, I  
16 think, considered, if they are going to do an  
17 archeological inventory, a TCP inventory,  
18 tribal cultural property is warranted.

19 And as Russell, from Rosebud Sioux  
20 Tribe, mentioned, you know, that should be  
21 something should take precedence over an  
22 archeological survey. And I agree with him for  
23 a number of reasons. One is that this is a  
24 very, very important undertaking, and that we  
25 consider all the culturally significant sites

1 that are in this area, and that this is going  
2 to affect, have long-term effects, that would  
3 be number two or three, that would have long  
4 term and oftentimes devastating effects to  
5 sites within that corridor and certainly have  
6 long-term consequences for the closest  
7 geographically associated tribe, the Northern  
8 Cheyenne people, in addition to all the  
9 landowners that would be directly impacted by  
10 this development.

11 And we certainly thank the landowners  
12 for their participation, because I think they  
13 are also gatekeepers, and they are also  
14 protectors of those cultural sites that are  
15 still within their property. They have a lot  
16 of history, and I learned a lot of history  
17 yesterday by talking to some of the landowners  
18 about that area. And they've always had a  
19 close -- the landowners have always had a close  
20 association with the Northern Cheyenne. I  
21 mentioned yesterday that even some of the  
22 non-Indian landowners downstream from the  
23 Rosebud were Cheyenne speakers, and were  
24 adopted into the Cheyenne family.

25 So we have a history of having these

1 close ties with our farmers and non-Indian  
2 farmers and ranchers up and down the drainage  
3 near and on the Northern Cheyenne Reservation.  
4 We appreciate them protecting and preserving  
5 those cultural sites. I think today we have a  
6 united front in terms of having partnerships  
7 with our non-Indian colleagues that share the  
8 passion of preserving our cultural landscape.  
9 And, certainly, we want to take that into  
10 consideration when we talk about 106  
11 undertakings.

12 And we'd also like to have the Otter  
13 Creek settlement descendants participate, and I  
14 know that most of the residents on the  
15 reservation were part of that descendants group.  
16 So it's something that we need to consider. I  
17 think they are specializing in this undertaking  
18 in this particular issue that has been a  
19 concern to the Northern Cheyenne tribe for  
20 decades.

21 Again, someone mentioned broken  
22 promises, broken treaties, and that was  
23 certainly one of the broken treaties, or  
24 promises, that we were going to move here and  
25 then go back over there to the Otter Creek

1 area, which never happened. And the reason I  
2 bring it up is that it may be adversely  
3 affected by the rail line going through there  
4 or the Otter Creek open pit coal mine that is  
5 being proposed.

6 And then we want to look at all the  
7 alternatives. If it is in fact that we are  
8 going to do an ethnographic study of one  
9 alternative, then we should be looking at all  
10 the alternatives that are going to be  
11 considered in this undertaking. It's only  
12 fair.

13 I think we talked about parity today,  
14 and we need to have that. If we hire an  
15 archeological firm, you know, if we fail to  
16 consider the Native American, the tribal  
17 archeologists. You know, I've always had  
18 this -- you know, this is America's heritage  
19 now. We want to protect all these sites.  
20 Early on, I think in some instances I think  
21 there's inequality. I mentioned at one time in  
22 Spearfish how oftentimes our tribal sites are  
23 viewed and taken away from us and  
24 reinterpreted, what I term predatory heritage,  
25 and predatory archeology, where we have

1 archeologists interpreting sites for us. Just  
2 like with federal Indian law and policy  
3 imposing rules and regulations on Native  
4 Americans. Imposing, in this case, archeology  
5 imposing their methodology on how to evaluate  
6 and interpret tribal cultural properties.

7 That's what it is, predatory archeology. You  
8 eliminate the indigenous people, and you claim  
9 those sites and you reinvent those sites and  
10 then you claim those sites and you reinterpret  
11 them. And I think it's happened in the past.  
12 And we need to try to reassert our identity  
13 with these sites.

14 So that's another recommendation that  
15 if archeologists, if they are going to have  
16 archeology, then we need to have tribal  
17 cultural surveys along with this.

18 I think those are the primary  
19 recommendations. Did I miss any other -- you  
20 want to state your name?

21 MR. TIM LAME WOMAN: My name is Tim  
22 Lame Woman.

23 I just wanted to comment as a tribal  
24 member. I missed the first two days. I  
25 practice in the Tribal Court system and

1 couldn't make it up here.

2 And I would like to thank our  
3 visiting relatives and allies for coming over  
4 and sharing their stories with Conrad, the  
15:44:16 5 people who preserve, trying to preserve, in  
6 today's times our culture and our sacred sites  
7 and so forth.

8 And then I hear Conrad talking about  
9 archeologists again. I was telling my friend  
15:44:34 10 back there, I said, it reminds me of that song,  
11 Here Come The Anthros, or something like that.  
12 I don't know, going to dig up the ancestors'  
13 graves up again or what.

14 But I seen a sign at the crossroad  
15:44:54 15 that says, Save Otter Creek. You know, I'm a  
16 community member and I've worked with our  
17 communities over the years. There was a time  
18 when we had a sign down there, we had a sign up  
19 here back in the 1980s, Save The Cheyenne  
15:45:15 20 Homeland. Then that corporation came over here  
21 and tested for oil and gas.

22 And we didn't see our neighbors  
23 around then. But a handful of us, two Cheyenne  
24 ladies, Wanda Small and Ruby Sook, woke us all  
15:45:43 25 real quick and tried to get us to the front

1 lines and save our Cheyenne homeland. And it  
2 was quite a struggle. A 33-year lease that our  
3 tribal council entered at the time with  
4 Atlantic-Richfield. And we began a struggle to  
5 free ourselves from that agreement.

6 So it took our relatives and allies  
7 from South Dakota, Oglala, a brother of mine  
8 now, he's gone, Russell Means.

9 You know, we talk about saving things  
10 now. I look at it now in today's times, we  
11 need to save our Cheyenne homeland today. We  
12 need to save ourselves from poverty. We need  
13 to save ourselves from injustice. We really  
14 need to save ourselves.

15 And our neighbors, you know, talking  
16 about our neighbors, how they come through the  
17 reservation and say, look how the Cheyenne  
18 live, they're a bunch of drunks, trashing their  
19 yards, and calling us prairie niggers. Things  
20 like that. Racist actions and racist remarks  
21 like that. And we've learned to live with  
22 that. And I think, you know, we need to be  
23 better neighbors to try to help ourselves and  
24 help each other now that we are talking about  
25 this railroad and Otter Creek Mine. We are

1 still going to have hearings in our  
2 communities, hopefully soon, about the Otter  
3 Creek Mine and about the railroad. They were  
4 scheduled to go off to the communities, but  
15:47:49 5 they were postponed because of funerals that  
6 we've been having here.

7 And we talk about preserving sites on  
8 ranchers' lands. It's not much to protect  
9 there. It's been plowed over, you know. I've  
10 been off the reservation. There's a lot of  
15:48:09 11 farmland. Ain't much left of cultural sites  
12 around. What Conrad and his program have found  
13 is good. We could have had many more if our  
14 neighbors didn't plow them over. They've been  
15:48:34 15 destroyed.

16 So that's what I work as a community  
17 working with our people today. You know, we  
18 want to preserve our language, our ceremonies,  
19 and our culture. I'm a descendent of one of  
15:49:01 20 the greatest chiefs. This land meant much to  
21 them. And that's why we rose to the task back  
22 in the '80s against ARCO, we went to the front  
23 lines. And there was an elder that we stood  
24 behind, he's gone now, Charlie White Dirt, he  
15:49:26 25 said this is all -- this land here is all

1 sacred. There weren't many Cheyenne warriors  
2 at that time. Some of them went to work for  
3 ARCO. And today some of them are finally on  
4 the right side.

15:49:49 5 But then some of us got mixed  
6 feelings about development because of the  
7 poverty that exists in our communities, because  
8 of the injustice that continues from our  
9 neighboring towns. Russell once said, you  
10 know, Tim, these towns that they have around  
11 here, they are named after mass murderers of  
12 our people. Sheridan, Miles City, Custer.  
13 They name these towns after those people.  
14 Forsyth. Forsyth was the one that went down to  
15 Wounded Knee there and killed our people. I  
16 see they named the town for him.

15:50:33 17 So I'm tired. I'm an elder now. I'm  
18 tired of poverty, too. I'm tired of  
19 unemployment. Many of us are. We look to our  
20 tribal councils over the years to try to lift  
21 us out of these disparities, our health  
22 disparities. We are a dying nation from  
23 diabetes, alcoholism, drug abuse, you name it,  
24 tuberculosis. And now suicide. Our kids got  
15:51:30 25 nothing to live for, it seem like. You

1 probably heard it a couple days ago, suicides.  
2 Seem like our young people don't have enough to  
3 live for now days around here, because they are  
4 tired of just being tired. Sick of being tired  
5 of nothing to do.

6 So as we talk about these things,  
7 think about the people and the way our people  
8 live on the reservation. It's that way across  
9 South to North Dakota. I've been all over.  
10 How do we -- when are we going to come to our  
11 time to address that? You know, we are at a  
12 crossroads. Some of us, and some of our  
13 people, are going to stand up, and some of us  
14 are probably sitting on the fence on what we're  
15 going to do. Are we going to continue to  
16 defend our homeland or are we going to try to  
17 do something so that we can have healthy  
18 families, so that we can have healthy  
19 communities, so we can begin our walk away from  
20 poverty, away from injustice, away from health  
21 disparities, away from lack of housing. They  
22 are real and they are here.

23 That's what I would like to leave in  
24 your mind as you leave, that it's real here,  
25 too. It's real where you come from. What are

1 we going to do for our communities? Are we  
2 going to continue to see the high crime rate?  
3 It's 2013. We've got to do something. Because  
4 are we going to continue to pass this down? I  
15:53:49 5 have children. They are grown. I'm a  
6 grandfather now, and I'm a great grandfather.  
7 And I'm ashamed of myself. I'm ashamed of my  
8 relatives and some of our people. Why do we  
9 keep passing this down to our children and our  
15:54:09 10 grandchildren to grow up into poverty, to grow  
11 up into nothing? Is that what we are going  
12 continue to do to our people? Think about  
13 that.

14 Or are we going to find ways for them  
15 to have a good road. That's the way our  
15:54:30 16 ancestors taught us, try to do something good  
17 to the ones coming behind us. And we got to go  
18 over that one way or another. We got -- when  
19 were these hearings? When were these hearings  
15:54:56 20 that took place?

21 Someone mentioned that we are a  
22 treaty tribe. We are. But the land that our  
23 neighbors are talking about living on out  
24 there, that was our ancestors' ground one time.  
15:55:11 25 Did we have hearings for them to settle on

1 there? Never. Our treaty lands just kept  
2 being reduced, and now we got 440,000 acres  
3 only from a big old treaty land.

4 And that's what we've been reduced  
5 to. Our treaty lands have been reduced to  
6 nothing. Our treaties are disrespected, never  
7 honored, broken.

8 Nobody asked for these hearings when  
9 they put that Decker Mine over this way.  
10 There's a railroad over there. We didn't have  
11 hearings like this here. You go this way to  
12 Crow, there's a Sarpy Mine over there. There's  
13 a railroad over there. Did we have hearings  
14 over here how those mines and those railroads  
15 are impacting us? No. We go to Colstrip  
16 here. Some of you folks been down there the  
17 last day or so. You seen the mine down there.  
18 You seen the railroad. Did we have hearings  
19 about that? No. This is the first hearing --  
20 not the first hearing, but we are starting to  
21 have hearings.

22 But it's just a matter of fact what's  
23 going to happen. Three-fourths of our -- seem  
24 like we are surrounded by three-fourths of  
25 mines and railroads. This railroad and Otter

1 Creek Mine are just going to close us in to  
2 development. We are going to be surrounded.  
3 And all I'm asking is that our communities, how  
4 are we going to handle this? We have nothing  
15:57:04 5 in our communities the way it is. We have no  
6 community halls; our streets, our housing,  
7 there's nothing. Imagine what's going to  
8 happen then? Nobody's talking about it. And  
9 we have those communities here, the impact. We  
10 talk about the cultural impact, but what about  
15:57:25 11 the community impact? We need to address that  
12 when development comes. Development has  
13 already -- is practically all the way around  
14 us. And this will be the final nail in the  
15:57:47 15 coffin, so to speak.

16 And some of our young guys, I got two  
17 sons and a daughter. Two sons over 20. One  
18 son over 30. My daughter and son-in-law in  
19 their 20s. They have high school diplomas from  
20 our tribal school. Can't find jobs.  
15:58:10

21 Others are in the same situation.  
22 What can they find? Drugs, alcohol. They can  
23 find that. And somehow that's what they end up  
24 with.

15:58:32 25 So I just would like to ask our

1 neighbors, after asking us to save their  
2 ranches and so forth with this railroad, think  
3 about us. We want to save ourselves, too.  
4 We've got nothing. Be better neighbors. Take  
15:58:53 5 some of our young folks and go work on the  
6 ranches and farms. Teach them how to be  
7 farmers and ranchers. Pay them. That's  
8 employment, you know. Come by with one of your  
9 beef. There's only one rancher that I know  
10 that gave beef to the boys and girls club here.  
15:59:10 11 I don't know which one it was. McRae, I  
12 believe, is his name. But he brought four or  
13 five boxes of beef to the boys and girls club  
14 to feed to the youth. That's the only rancher  
15:59:28 15 I know that came to this way. I just want to  
16 ask our neighbors to be that way, to be better  
17 neighbors. We ain't got much. We want things.  
18 We're willing to work for them. So I'd like to  
19 see our neighbors work our young people. We  
15:59:53 20 got no kind of jobs around here. They can work  
21 out there on the farms and ranches. I did when  
22 I was growing up.

23 Work our young people like that.  
24 Bring us beef once in a while. Share a meal  
16:00:13 25 with us. Break bread. Don't drive through

1 here and criticize us and condemn us. We can't  
2 help it. We are trying to find a better way.  
3 And there will be better times and a better  
4 way, because we are all in this together.

16:00:36 5 And I just want to thank Conrad and  
6 the tribal council for preserving our cultural  
7 sites, preserving our heritage and our culture.  
8 We have a proud history as the Cheyenne people.  
9 Our ancestors, one of our tribal leaders, he's  
16:00:57 10 up there on wall, I started working with the  
11 tribal council when he became president, a  
12 cousin of mine, Charlie Rowland. He's up  
13 there. He said, you know, this land, he was  
14 speaking to some people, he told them, he said,  
16:01:19 15 this land came about through a lot of blood,  
16 sweat, and tears. And it seems to me it's  
17 still that way. Seems like we have about four  
18 or five funerals every week here. We are  
19 losing our people. Our cemeteries are filling  
16:01:46 20 up here. We're really in a sad situation. We  
21 want to find work for our people, we want to be  
22 healthy families. I don't want to see my  
23 family go down the road to nothing. I'd like  
24 to see them have families, have kids. I want  
16:02:14 25 more grandkids. I want grandkids to spoil. I

1 want something good for my grandkids. I know  
2 we all do.

3 So let's think about what I said  
4 seriously. And I'm saying it from my heart,  
16:02:34 5 from experience. I'm not saying it to offend  
6 anybody. I'm saying it because it's here. To  
7 our neighbors, to our tribal leaders, to  
8 ourselves. So throw this in the mix, as you  
9 have these meetings up the road. And I think  
10 if we can throw that all together, we cannot  
16:02:56 11 only save Otter Creek, we can save our Cheyenne  
12 homeland and people, too. Thank you.

13 MS. CATHERINE NADALS: Thank you so  
14 much. I really appreciate the things you've  
15 said, and certainly conveyed to me your concern  
16:03:12 16 for this land and all the problems that are  
17 associated with the community. I just want to  
18 thank you for that.

19 We are going to take a break. And  
16:03:31 20 then I'm going to go over all the points that  
21 we addressed today. And then we'll come back  
22 and review everything that we talked about  
23 today.

24 (Recess.)

16:20:08 25 MR. CONRAD FISHER: At this time I

1 think I will give the floor back to Cathy. But  
2 before I do that, I think there was some good  
3 comments made by the tribal membership, and  
4 just like any place else, I think we have good  
16:20:31 5 neighbors and bad neighbors, it's just -- you  
6 know, it's just like human behavior. Certainly,  
7 you see that evidenced all over the nation. So  
8 I just wanted to make that comment that we do  
9 have good relationships with individual  
16:20:56 10 landowners, and, of course, there is some that  
11 we don't have such a good relationship with,  
12 but that's kind of how human behavior works.

13 So at this point I'll turn it back  
14 over to Cathy.

16:21:12 15 MS. CATHERINE NADALS: Thanks,  
16 Conrad. I'd like to just thank the Northern  
17 Cheyenne Tribe for hosting this meeting and for  
18 providing the food and the ceremonies on the  
19 first day, just incredible.

16:21:33 20 I think your generosity in allowing  
21 us to have the meeting here is really quite  
22 remarkable. Thank you so much for that and  
23 providing the information about the tribe  
24 during that tour. You have a lot of knowledge,  
16:21:59 25 and it was really interesting and very thought

1 provoking to us. So I want to thank you and  
2 thank the tribe for this meeting.

3 And all of you that came, I really  
4 appreciate your being here. I appreciate so  
5 much of your input. It's important to us to  
6 know what your concerns are to form a process.

7 What I wanted to do, it's getting  
8 kind of late, is just go over all the concerns  
9 that you've expressed to me and to the Board  
10 regarding the whole process. I'm just going to  
11 go over those for the record.

12 What I heard was that you want to do  
13 a TCP survey first before the archeologists go  
14 out, you want to have the opportunity to go out  
15 there first. Instead of what the archeologists  
16 normally do, you want to be out there first,  
17 and say, okay, this is what we think, and then  
18 have the archeologists follow after the fact.

19 And you want to make sure that  
20 whatever we give you, you're going to be paid  
21 for because of economic issues and so on. I  
22 know that some of the tribes offered to pay --  
23 offered to come anyway, but we would definitely  
24 want any kind of work that's being done by  
25 tribes to be compensated.

1           And then I heard that there's a sense  
2           that the process is occurring too quickly, and  
3           that you would like to have an ethnographic  
4           study completed, that that's important to you.

16:23:41 5           And on the social concerns expressed  
6           about the confidentiality, and that's one of  
7           the things that I can talk to SHPO about  
8           because it really comes down to the process of  
9           what kind of documentation is SHPO going to  
16:23:58 10          require. We've had issues in the past because  
11          of the requirements that certain forms be  
12          filled out. So we'll have to check with SHPO  
13          on that issue.

14           And, of course, we would honor the  
16:24:10 15          confidentiality from our perspective and make  
16          sure that we do things confidential in the  
17          sense that you want it to be kept. We only  
18          need the information that we need in order to  
19          move forward in the process.

16:24:25 20          And then I also heard that you would  
21          like the Otter Creek decedents group to  
22          participate in the process. So what we need to  
23          do is make sure we have contact information  
24          with them.

16:24:37 25          And then there was a concern about

1 cutting and pasting from the old document and  
2 that we not do that. I don't believe we are  
3 doing that, but it's certainly important that I  
4 pass that along.

16:24:51 5 And you wanted environmental people  
6 at the meeting for the next meeting. Lana, you  
7 mentioned that you wanted to make sure that we  
8 have participants even just by phone that would  
9 be able to answer questions about the  
10 environmental review.

16:25:04 11 And I think you mentioned that you  
12 want a schedule, a firm schedule, that you  
13 could work with. A lot of you are busy and  
14 have other projects to complete.

16:25:19 15 And then there were concerns  
16 expressed about the helicopters. So I will  
17 pass that along.

18 And then BNSF mentioned that they are  
19 interested in close collaboration with the  
16:25:32 20 Northern Cheyenne Tribe and the tribes.

21 And then, I think, Conrad, you had  
22 mentioned parity, the word, parity, that you  
23 wanted to make sure that work done by the tribe  
24 is done on parity with the archeologists.

16:25:50 25 I think that's it. I think I

1 captured everything. If not, let me know. But  
2 I appreciate very much that you caucused and  
3 that you presented us with your concerns, and  
4 we can make sure those concerns are addressed.  
5 And then follow up with continuing to have our  
6 conference calls, and I think we'll probably  
7 need another meeting at some point.

8 MR. CONRAD FISHER: Yes. I think we  
9 do need another meeting. I think it's  
10 imperative that we continue the dialogue. I  
11 think because of the discussion as being  
12 preliminary and the alternatives that you have  
13 to consider, Cathy, I think we do definitely  
14 need to have another meeting somewhere. If  
15 it's here, that would be great. If it's some  
16 other location, that will be wonderful. If we  
17 need to do another field tour on some other  
18 alternatives, then that's also wonderful. But  
19 our concern, I think, that Ben Rhodd brought up  
20 was the EIS that was scheduled to be completed  
21 this year concerns the tribe. And I have a lot  
22 of confidence in Ben and his thoughts about  
23 that process. I think we've worked with Ben  
24 for a long time and he has some good insights  
25 into these things. And he mentioned that,

16:26:12

16:26:36

16:27:02

16:27:24

16:27:53

1 himself, he has a wealth of experience on these  
2 types of issues.

3 So, you know, when we are talking  
4 about an environmental impact statement, I  
16:28:04 5 think that's a whole process in itself. And  
6 certainly I hear the concerns of Tim Lame  
7 Woman, but those, I think, are part of the EIS  
8 in terms of social impacts and also social  
9 justice. So, hopefully, that will be part of  
10 the NEPA process.

11 MS. CATHERINE NADALS: Yeah, I think  
12 that -- I'll check with the environmental  
13 managers, but one of the issues that they would  
14 have to address in the EIS is environmental  
16:28:41 15 justice. I'm quite certain that will be  
16 addressed.

17 And we do have a copy of the scope of  
18 work, or at least we did, the Final Scope. So  
19 if any of you have a copy of that, that should  
16:29:00 20 be one of the issues that should be addressed.

21 MR. CONRAD FISHER: Having said that,  
22 I would like to thank Councilman Fisher from  
23 the Birney District, and also Councilwoman  
24 Lafranier from the Lame Deer District, and  
16:29:12 25 Councilman Sioux from the Lame Deer District,

1 and also all the others, our Tribal President,  
2 John Robinson, and Vice President Winfield  
3 Russell, Jace Killback, and Councilman Donna  
4 Fisher for all participating in one form or  
5 another during the past three days. And also  
6 the interested parties of railroad folks for  
7 being here. And also ICF and yourself, Cathy,  
8 and Joe Fox for being here. And also the  
9 traditional societies, they are a huge part --  
10 they may not be visible in this type of  
11 setting, but certainly they are always present  
12 in one form or another. And we have one  
13 traditional society member, along with James  
14 Walksalong here, and he said a few words. So I  
15 just want to acknowledge that, because we still  
16 have that traditional structure in place. They  
17 are here to observe and to make necessary  
18 comments. They are our traditional law here on  
19 the Northern Cheyenne. We actually had a  
20 whipper, Wally Bearchum, that was here earlier  
21 also.

22 And I would also like to thank my  
23 colleagues, the tribal preservation officers  
24 that were present throughout the three days. I  
25 think they're a valuable asset. And they

1 certainly, as I mentioned earlier, have as much  
2 authority and equal say here. We are only the  
3 host nation, but we welcome their input, and  
4 they are very much a part of this process, the  
5 ancestral ties to the land, so I appreciate all  
6 the THPOs that are here, Lana Gravatt, Wanda  
7 Wells. And you guys will have to slap Cathy,  
8 not me, but I have forgotten your names, if you  
9 could --

10 MS. GAIL HUBBELING: I'm Gail  
11 Hubbeling, Yankton Sioux Tribal Council.

12 MS. SHIRLEY ARROW: Shirley Arrow,  
13 Yankton Sioux Tribe, also.

14 MS. GAIL HUBBELING: And I would like  
15 to thank you, Northern Cheyenne, and Conrad,  
16 for your awesome hospitality for making us feel  
17 so welcome. It was really awesome. I really  
18 do think in these issues we need to form a  
19 coalition of indigenous nations to stand  
20 united. You know, united we stand. I mean,  
21 that's all I can say.

22 MR. CONRAD FISHER: Thank you very  
23 much. Appreciate that.

24 And all the ICF people, Colleen and  
25 the other gal, just everybody, I think it takes

1 this type of setting and discussion to really  
2 come to a resolution. Unfortunately, sometimes  
3 the only resolution is in our highest courts,  
4 and I don't think we want to go that far, but  
5 we want to try to make everything work for  
6 everybody around this table.

7 So I'm going to leave the last  
8 comments, any other THPOs that might want to  
9 say anything?

10 MS. WANDA WELLS: I have a question.  
11 What's the next step? I didn't hear no  
12 response from the railroad company on if they  
13 are interested in cooperating with us to get  
14 the TCP surveys done. And will they discuss  
15 that with Richard and then he'll contact us?  
16 What is the communication stream going to be?

17 MR. CONRAD FISHER: Yeah, I think  
18 that's a good question. And I don't think it's  
19 up to the proponent. I think it's up to Cathy.

20 MS. CATHERINE NADALS: Basically,  
21 it's a decision that the Board would make, and  
22 one of the things that we could do is that in  
23 our next monthly conference call we could have  
24 that as part of our discussion and just put  
25 those things down.

1 MR. CONRAD FISHER: So I'll end with  
2 that. But I'd like to give our tribal  
3 Councilman Cowboy Fisher, any last thoughts?

4 MR. COWBOY FISHER: I'd like to thank  
16:33:58 5 you all for coming. We need to all work  
6 together and work towards the same goal. And  
7 I'd like to thank the landowners for coming  
8 forward and giving their input, and with their  
9 support I think we can accomplish what we are  
10 intending to do. So thank you all for coming.

11 MR. CONRAD FISHER: I'd like to  
12 acknowledge our former Vice President, Mr. Joe  
13 Fox, who also participated in these last  
14 several days. He's a valuable asset to the  
15 tribe. So, thank you, Joe, for being here also.

16 And thank you, Councilman Fisher for  
17 those words. Lana.

18 MS. LANA GRAVATT: I have a question.  
19 I was told the original name is the Morning  
20 Star people; is that true?

21 MR. CONRAD FISHER: Yes. Yeah,  
22 Morning Star.

23 MS. LANA GRAVATT: How do you say  
24 that?

16:34:53 25 MR. CONRAD FISHER: (Native tongue.)

1 MS. LANA GRAVATT: It's beautiful.  
2 So I thank the Morning Star people --

3 MR. CONRAD FISHER: Thank you,  
4 appreciate it.

16:35:08

5 MS. LANA GRAVATT: -- for having us.

6 MS. CATHERINE NADALS: I agree. Thank  
7 you so much. It has been an honor. And it's  
8 been also very illuminating, and we'll make  
9 certain that we incorporate your concerns.

16:35:25

10 And thanks, again, everyone. We'll  
11 see you next time.

12 MR. CONRAD FISHER: Have a safe trip.

13 MS. CATHERINE NADALS: Yes, be safe.

14 (Adjourned.)  
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