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SECTION 106 CONSULTING PARTY MEETING

Conducted by: Surface Transportation Board

DAY 1

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

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P R O C E E D I N G S

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

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

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

But I just, again, wanted to thank
11:05:50 all the tribal nations, the participants here today, I see special interest groups that are also present today that have an interest in this very important issue, and I think today's meeting is something that needed to happen. I
11:06:11 always look at it as all the nations coming together again for one purpose. And, again, we are honored that we have our allies, the Sioux nations, different bands of the Sioux Nation coming together. It's unfortunate, because of
11:06:28 the inclement weather, that we weren't able to have all the tribal representatives here. I think there was 13 or 14 tribal nations that were going to join us, and we still might have that via teleconference.

But at this time I think it's an
11:06:43 historic and iconic gathering because of what we are discussing today. And I'd like to at this time turn it over to the Surface Transportation Board, Ms. Catherine Nadals.

MS. CATHERINE NADALS: Thank you,
11:06:58

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

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

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

(Applause.)

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

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

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

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

MS. CATHERINE NADALS: If we could
11:09:01 start with the people on the phone. Can you hear me, the people on the phone? Could we turn the volume up?

While we are waiting, let's go around the room and have everyone at the table
11:09:28 introduce yourself. Tell us who you are and what your interest is in the project.

Start with William Walksalong.

MR. WILLIAM WALKSALONG: Good morning. I'm William Walksalong, Acting
11:09:44 Director for the Natural Resources Department. We have jurisdiction over fish and wildlife and water resources, mainly those two items. We also participate in many EIS processes. Good morning.

MS. CATHERINE NADALS: Good morning.
11:10:01

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

MS. CATHERINE NADALS: Welcome.

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

MR. SHANE FINDLAY: Good morning. My name is Shane Findlay. I'm Assistant Field

11:10:35 Manager for the Miles City BLM's Field Office. And we will be reviewing and cooperating with the Surface Transportation Board EIS. We have received an application for a realty action.

MS. CATHERINE NADALS: Thank you for

11:10:54 being here.

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

MR. JOEL AMES: My name is Joel Ames,

11:11:45 Corps of Engineers.

MR. BEN RHODD: We are kind of wondering why they didn't give us any microphones over here. I'm Ben Rhodd, contract archeologist, Rosebud Sioux Tribe. And we have

11:12:09 a great interest in this area, as has been

stated, and we seek to come here to support our relatives and allies in the protection of those sites of significance to not only, of course, the Cheyenne, but the Lakota, and also our
11:12:45 Arapahoe allies.

I'd like to say a great thank you, first off, for the welcome that you gave to us. We came in through this storm. And the gifting. Following those protocols of culture,
11:13:07 the historicity. So I want to thank the Northern Cheyenne for welcoming us in a good way. Thank you.

MR. RUSSELL EAGLE BEAR:

(Native language greeting.)

11:13:34 I greet each and everyone of you with a handshake from my heart. My name is Russell Eagle Bear. I represent the Rosebud Sioux Tribe as a THPO. But I'm also a representative of the tribal council. I've
11:13:50 been on the council for many years, and I've been a chief for, I don't know, seven, eight years. But I've learned a lot. And over the years I've worked with our Northern Cheyenne on another railroad project that was proposed
11:14:13 years ago, and it went into litigation. Now we

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

I just wanted to say, I want to thank for the prayer and honoring showed this morning. Actually, we were late because we were standing at the boundary of the reservation waiting for Conrad to give us an escort.

(Laughter.)

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

stand against that proposal doing uranium mining exploration. But, unfortunately, the companies that really want to extract this uranium are really hard to work with, and it
11:16:15 just so happened they wanted to do a cultural survey out there, and they tried to bring all the tribes together to do this. And our people at home said, no. Especially the Oglala. We had a meeting here about three weeks ago, and
11:16:37 we said we may even have to go into litigation, the possibility of litigation. But some of the tribes decided to not listen and they went and they are doing cultural surveys, and it's really unfortunate that one of the tribes is
11:17:00 the Northern Cheyenne. And I wish they could have dialogue with us so they understand where we are at and working together. But that's the key of bringing an event here together to create that. So we need to all be on the same
11:17:24 page.

Last week we had another meeting, and we humbly ask our tribal leaders, especially your leadership here in Northern Cheyenne, to pull your people back until we address it in
11:17:38 such a way that we are all sending one voice.

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

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

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

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

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

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

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

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

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

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

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

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

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

Shirley Arrow, you're with the tribal council?

MS. SHIRLEY ARROW: Treaty Council.

MS. CATHERINE NADALS: Yes.

MS. WANDA WELLS: Good morning. My
11:21:38 name is Wanda Wells. (Inaudible). Very beautiful country the Northern Cheyenne has.

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

Thank you. I'm Ben Elk Eagle. I'm
11:22:46 on the tribal council and I represent cultural preservation for people who couldn't make it. I was asked to come and represent and listen as to what we could do to help our tribe, because my grandfather said a long time ago, don't
11:23:20 reject each other, anybody, because in the future we are going to need each other in this situation. Everything is sacred, the hills, the valley, and the air and the water. We believe that. That's what we are talking about
11:23:44 protecting. We need to unite.

(Native language.)

Without our approval, a lot of things have been done. Some of us don't really realize, but we need to do this consultation,
11:24:16 ultimately to get on one page. It's going to

affect our young people, that class that's here today, and I appreciate that. And the drum group that represents the heartbeat of what we believe. The soldiers that were here, like
11:24:38 Fisher said, they are highly recognized. We honor our veterans, and they defend our peace for everybody. I really appreciate that good ceremony and the drums and everybody that's here. I'm really honored to be here.

11:25:00 (Native language.)

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

MR. MATT JONES: Good morning. I'm Matt Jones. I'm with the BNSF Railway, and I
11:25:26 would like to thank President Robinson and Vice President Russell and the Northern Cheyenne Tribal Council for hosting this meeting today. And thank you to all of the other tribal representatives that have traveled to be here.
11:25:38 This is an important process. We are here to listen today. I would volunteer to move to this table so someone can use this microphone for the rest of the day if anyone would like to do that. Thank you.

11:25:55 MR. Derin WARREN: My name is Derin

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

11:26:18

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

11:26:33

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

11:26:49

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

11:27:06

11:27:31

probably isn't going to be resolved here, but I appreciate the Lakota bringing that particular issue to the attention of the Northern Cheyenne Tribe. However, I think it really is something
11:27:47 that our administration should deal with. We've kind of taken a different stance on that, a little different interpretation when it comes to group consultation.

I agree, we need to sit in these
11:28:07 situations and ally ourselves. However, in other circumstances, I think every situation is different, and we feel that we've sort of taken a -- have a little different interpretation of that particular issue. And
11:28:23 that's all I'll say about that. I think we probably should stay focused on this particular issue. But, again, you know, if anybody has any questions on that, I would certainly entertain those, and also with our
11:28:38 administration. It's a very complicated issue on that particular case.

So with that, thank you.

MR. KEN BLODGETT: Hi. My name is Ken Blodgett, and I'm the project manager with
11:28:53 the Surface Transportation Board Office of

Environmental Analysis, and I would just like to thank everybody for coming. I think it's great to see so many people here, and you're going to be hearing from me shortly. So I
11:29:13 won't tell you too much now. But in any case, I'm looking forward to a productive week, and I want to thank the Northern Cheyenne for hosting us in a beautiful building, and really looking forward to a productive week here. Thank you.

11:29:31 MS. CATHERINE NADALS: Thanks. My name is Catherine Nadals, I'm with Surface Transportation Board. I'm assisting the agency in the Section 106 process for this project. I'm also with the Office of Environmental
11:29:50 Analysis.

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

Anybody on the phone? Can you hear
11:30:00 us now.

UNIDENTIFIED SPEAKER: I can hear you.

MS. CATHERINE NADALS: Could you introduce yourself?

11:30:07 MS. DARLENE CONRAD: Can you hear me?

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

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

11:30:31 MS. CATHERINE NADALS: Yes.

MR. DANIELLE GOSSELIN: Danielle Gosselin.

MS. CATHERINE NADALS: Thank you, Danielle. She is also one of the environmental

11:30:41 managers for the Tongue River Railroad.

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

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

11:31:20 MR. STEVE VANCE: Can you hear me?

MS. CATHERINE NADALS: Yes.

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

11:31:48 Thanks for all of you are here. Look forward to a productive time.

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

For the benefit of the court

11:32:02 reporter, anybody who wants to speak on the

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

With that, I'd like to introduce Rick
11:32:20 Starzak, who is with ICF International, working as a contractor, and, also, Alan Summerville, who is the manager for ICF International, third-party contractor, and, also, Colleen Davis, who is also with ICF International. If
11:32:37 you could stand up.

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

MS. ALISA REYNOLDS: Yes, Alisa Reynolds.

11:33:01 MS. CATHERINE NADALS: Alisa Reynolds, she is going to be assisting the ICF with tribal issues. Anybody else who wants to introduce themselves or plans on speaking at this meeting?

11:33:13 Okay. Again, I would like to thank you so much for this incredible honor of allowing us to have our meeting here. We know it's truly an important project for the Northern Cheyenne Tribe, and it's just a great
11:33:30 honor to have had this kind of introduction.

Thank you for all of the other tribes that have come and all the other agencies that are participating, and all of you who are here, the drummers, and the high school class, it's
11:33:48 terrific that you're here.

So I'm going to go ahead and get started with my part of the presentation. Again, this is a Section 106 consulting party meetings, Section 106 of the National Historic
11:34:05 Preservation Act. As many of you know, the Surface Transportation Board recently received an application from the applicant regarding the construction of a railroad from Miles City to Ashland and to points beyond that. And so we
11:34:30 have Ken Blodgett and Danielle Gosselin, who is on the phone, who are working as environmental managers working through the NEPA process, as well as our consultants. And my part of this process is to assist through the 106 project,
11:34:50 which we are doing in coordination with the NEPA process. So we are not combining them but we are trying to coordinate them. And so the purpose of this meeting today is to talk about these 106 issues.

11:35:02 I have a number of handouts. We have

the Final Scope of Study, which we should have some more copies, but which basically describes the project, and it also talks about what is going to be studied as far as the Draft
11:35:23 Environmental Impact Statement. We also have some maps of the proposed alternatives, and we have a handout of some information that was provided by the Northern Cheyenne Tribe regarding their concerns. And we have, also, a
11:35:41 handout regarding the coordination of these with NEPA. And, of course, a copy of the agenda.

We also have a copy of the preliminary methodology that we have created
11:36:12 and we intend to discuss today. If you take a look at the agenda, I want to kind of walk you through a little bit, part of the convening, doing the introductions and the purpose, and also propose a few ground rules for the
11:36:32 meeting, just to help the whipper do his job. And then we will have a break, and Ken Blodgett is going to be giving an update on the EIS process and talk about the alternatives. Then in the afternoon after lunch we are going to
11:36:48 have a discussion on the proposed methodology,

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

And then tomorrow we plan on having a
11:37:11 tour of the project area. And we are still kind of working out the details, but we will be discussing those this afternoon. So any of you that intend to participate, please stay at the end of the meeting so we can talk about
11:37:27 logistics. I think the weather is going to hold out. It's a little cold but we'll be fine.

And then on the final day, Thursday, April 18, we are going to talk a little bit
11:37:42 about the field methodology, the results of background research that have been conducted by ICF International, which is basically what was found for all of the alternatives so we can compare those alternatives with the reservation
11:38:05 issues, and, also, proposed field studies we intend to do. And then, of course, that will be modified by our access. That's still a process that we are involved in, trying to get access to different sections of the alternatives.

And then we'll talk about models, a
11:38:22

possible model that we would then produce to gain some sort of idea what might be expected to be found along the alternatives for areas that we don't have access to. And this is
11:38:42 strictly for comparing the alternatives for tribal issues, any of those issues related to historic preservation.

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

11:39:08 Just again, to go over the purpose of this meeting, to provide you some information regarding the proposed undertaking. Again, Ken Blodgett and Rick Starzak and the ICF group in order to explain the project to you and talk
11:39:29 about the alternatives.

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

11:39:38 And we want to see input from tribes regarding properties of religious and cultural significance. This is really critical, because we don't have knowledge about that. It hasn't been written down anywhere. And we need your
11:39:54 help in trying to identify those places for the

alternatives. And, also, for the alternative selected eventually. And discuss how we are going to be coordinating the 106 process with the NEPA process, because we have an ongoing
11:40:12 EIS process as well as this process. I think that handbook in the back, which was produced by CEQ and the Advisory Council, is very helpful in talking about how those two laws are coordinated.

11:40:24 And then, also, to seek input from all of you regarding this methodology that is developed. We think it's a good methodology but it's a draft methodology and we want your input on that.

11:40:36 Next slide. And I did take pictures of the cherry blossoms just last week. And all those little lights, those are photographers. There were about a thousand photographers waiting for the light. It's just a little
11:40:52 aside. But I thought it would show the spring here because it's still kind of cold.

So one of the things we want to do, of course, is define the actual areas of potential effects for different resource types.
11:41:08 Tribal sites, architectural properties, other

historic sites that will go in each of the alternatives. Because we are going to have different areas of potential effects. (Inaudible).

11:41:27 Of course, we need to identify historic properties. Historic properties is a term that the Advisory Council uses. (Inaudible). And landscapes, it's just a term that's used. So it's sort of all-encompassing.

11:41:50 And then, of course, as part of the process, what we need to do after we've identified historic properties, we have to determine if they are eligible because the (inaudible) process accesses really the federal agencies

11:42:08 (inaudible) to access those properties that are eligible for the Natural Register. So we will be needing all of your help in terms of identifying and determining eligibility and necessity (inaudible).

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

And then, of course, you know, this

11:42:35 is a time frame that we are talking about

through the process. We would want it for the actual alternative that the Board eventually approves, we would want to determine what kind of mitigation that we need to do to resolve any
11:42:58 adverse effects that would be impacted by the proposed project.

I know that some of you talked about wanting to have a programmatic agreement. We are at the very beginning stages of the
11:43:16 process, and eventually we would want to develop a programmatic agreement to stipulate what we're going to do and what we need to do in order to address concerns agency concerns, tribal concerns and (inaudible) concerns.

11:43:27 And then we want to work together regarding all of these different things I talked about. We need your input and your help.

With that, I turn to Ken Blodgett,
11:43:41 who is, again, our environmental manager for the NEPA part of the project.

MR. KEN BLODGETT: Again, good morning. My name is Ken Blodgett, and I am pleased to be here with you this morning to
11:44:02 discuss the Surface Transportation Board and

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

So with that said, I will -- I think we've all had a pretty good description of what
11:44:19 we are all here for and the purpose of today's meeting. So, again, I'm looking forward to a productive time in gathering input that will help us move forward in coming up with some methodologies and approaches as we move
11:44:39 forward, not only in the 106 process but in the Environmental Review Process.

A little bit about the Surface Transportation Board. The Surface Transportation Board was established by the
11:44:57 Interstate Commerce Commission Determination Act of 1995. The Surface Transportation Board was established to assume regulatory rail functions that had previously been administered by the Interstate Commerce Commission. The
11:45:16 Surface Transportation Board oversees the regulation of interstate surface transportation, primarily railroads, and has jurisdiction over rail transportation matters, such as rail rates, licensing of new rail
11:45:32 lines, and rail construction projects.

The mission of the Surface Transportation Board is to ensure that competitive, efficient, and safe transportation services are provided to meet the needs of
11:45:47 shippers, serves, and consumers. In all of its decisions the Surface Transportation Board is committed to advancing the national transportation policy goals established by Congress.

11:46:03 The Board consists of three members. It's a nonpartisan, independent federal regulatory body which is organizationally housed within the United States Department of Transportation. Board members serve a term of
11:46:19 five years. They are appointed by the President and confirmed by the Senate. The chairman of the Board is, likewise, designated by the President of the United States.

The Office of Environmental Analysis
11:46:36 of the Surface Transportation Board was established to ensure that the Board and all Board decisions are in compliance with the requirements of the National Environmental Policy Act. The Board's rules implementing the
11:46:55 National Environmental Policy Act can be found

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

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

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

Creek Mine area.

On December 17, 2012, the Tongue River Railroad filed a supplemental application that supersedes the October application in
11:48:38 which it identified its preferred routing for the proposed line as the alternative between Colstrip and the Ashland area.

The Tongue River Railroad's principal purpose for the new rail line is to transport
11:48:58 low sulfur sub-bituminous coal from proposed mine sites in Rosebud and Powder River County, including the proposed mines in the Otter Creek area.

Major elements of the proposed
11:49:13 project would include a single track constructed of continuous welded rail with a 200-foot right-of-way. Tongue River Railroad anticipates 26 round trips per week with 150 car unit coal trains moving approximately 20
11:49:32 million tons of coal annually.

The Surface Transportation Board is the lead agency responsible for preparing an Environmental Impact Statement, which will identify the potential environmental impacts
11:49:47 associated with the proposed action and any

alternatives that are under consideration.

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

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

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

During that comment period we

received over 2500 comments. The Office of Environmental Analysis then revised the Draft Scope of Study and issued a Final Scope of Study on March 22nd, which incorporates all
11:51:28 public comments and concerns received during that scoping comment period. We reviewed and considered all comments when we were preparing the Final Scope of Study. The Final Scope of Study summarizes and addresses the principal
11:51:49 environmental concerns raised by commenters and explains if and how those issues will be addressed in the Environmental Impact Statement.

The Environmental Impact Statement
11:52:01 will analyze and compare the potential environmental impacts of construction and operation of the proposed rail line, a reasonable range of feasible alternative routes, and the no action alternative.

11:52:17 I think there were copies of the Final Scope available, and I think everybody has probably picked one up.

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

11:52:33 MR. KEN BLODGETT: No. Sorry. I'm

1 going to discuss the alternatives under
2 consideration in the environmental -- that are
3 going to be addressed for further study in the
4 Environmental Impact Statement. The best map
11:52:49 5 to look at would be the Figure 1, which is
6 attached to the Final Scope of Study. It has
7 all the alternatives that I'm going to discuss
8 right now on one page.
9 The first alternative that is going
11:53:00 10 to be considered for more detailed
11 environmental analysis is the Tongue River
12 Alternative. This alternative was Tongue River
13 Railroad's original preferred alignment in
14 their October application before the Board, and
11:53:18 15 would follow the Tongue River from Miles City
16 to two terminus points -- to the two terminus
17 points south of Ashland. It would begin at
18 the existing BNSF rail line between Miles City
19 Fish Hatchery and Spotted Eagle Lake,
11:53:36 20 proceeding south along the west side of the
21 Tongue River and crossing through the U.S.
22 Department of Agriculture's Livestock and Range
23 Research Laboratory.
24 A second alternative that will be
11:53:52 25 considered for detailed analysis in the

environmental review is the Colstrip Alternative. The Colstrip Alternative is Tongue River Railroad's preferred alignment based on its supplemental application which we
11:54:09 received in December. This alternative would extend from the existing BNSF rail line at Colstrip, moving towards Ashland. It would leave the Colstrip area and cross Cow Creek and Rosebud Creek as it heads south and east,
11:54:29 following the Greenleaf Creek Valley to the Rosebud Creek Tongue River divide.

At that point this alternative would descend into the Tongue River Valley and join the Tongue River Alternative at the Tongue
11:54:49 River crossing north of Ashland.

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

about ten miles north of Ashland.

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

There's a few alternatives that came up during the course of the scoping meetings, and we are going to carry these alternatives forward for further analysis as well. These alternatives and variations were largely identified as a result of comments received during scoping. The first one of these would be the Decker 1 Alternative, which is a result of comments received during scoping that we consider moving south from the Ashland area towards Decker. The Decker 1 Alternative is

identical to an alignment between Ashland -- the Ashland area and Decker, which was previously approved by the Surface Transportation Board for construction. It
11:57:06 would generally travel southwest paralleling the Tongue River leaving the Otter Creek area. This alternative would pass through the Wolf Mountain Battlefield National Historic Landmark. At that point it would connect --
11:57:23 well, south of the battlefield it would connect with the BNSF rail line using the Spring Creek railroad spur near Decker.

The Decker 2 Alternative is similar to the Decker 1 Alternative, but we wanted to
11:57:41 look at an alternative that would avoid the Wolf Mountain National Historic Landmark. So the Decker 2 Alternative moves, again, similar to the Decker 1 Alternative, but it would pass to the west of Wolf Mountain Battlefield
11:58:04 National Historic Landmark.

In addition to these alternatives, we are looking at a couple variations that can be used in conjunction with any of the alternatives under consideration. The first
11:58:20 one of these variations is the Ashland East

Variation, which we developed as a result of scoping comments, particularly from the Northern Cheyenne Tribe and others, which requested an alternative which would move as
11:58:37 far away as possible from the eastern reservation boundary and the Tongue River. This variation would connect to the Tongue River Alternative approximately eight-tenths of a mile east of the intersection of Greenleaf
11:58:52 Road and Tongue River Road. At that point it would continue east for approximately three miles before curving to the south, and then generally paralleling the Tongue River. So it would be offset to the east from the Tongue
11:59:08 River, at distances ranging from approximately two to four miles.

Another variation under consideration for further analysis is called the Terminus 1 Variation. Again, this was the variation
11:59:23 developed in an attempt to move the line away from the boundaries of the Northern Cheyenne Reservation and the Tongue River. This variation started approximately 1.8 miles southeast of the proposed Terminus Point 1. At
11:59:42 that point it would travel northeast,

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

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

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

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

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

including transportation systems, safety, energy resources, noise and vibration, esthetics, and environmental justice. With respect to cultural and historic resources, the
12:01:19 Environmental Impact Statement, with the help of everybody here today, identify historic buildings, structures, sites, objects, or districts eligible for listing the National Register of Historic Places within areas of
12:01:37 potential effects, or the preferred route in each alternative.

The Environmental Impact Statement will propose measures to avoid, minimize, or mitigate potentially adverse project-related
12:01:53 impacts to traditional cultural properties, archeological historic properties, cultural and historic properties.

We are beginning the process of gathering the information that we will need for
12:02:07 our EIS and the potential impacts. We have already requested land access from property owners located along each of those alternatives under consideration. We have received a number of positive responses from landowners, and will
12:02:25 continue in our effort to gain as much access

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

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

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

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

the Board will consider the entire environmental record, including all public comments received, the Draft Environmental Impact Statement, the Final Environmental
12:03:58 Impact Statement, and our, the Office of Environmental Analysis', final recommended environmental mitigation. No project-related construction may begin until the Board's final decision has been issued and that decision has
12:04:15 become effective.

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

12:04:29 So before I open the floor to questions, I would also like to put in a plug, for those that haven't already been here, to look at the Tongue River Railroad project-related website, which is tonguerivereis.com.
12:04:46 There's a lot of information there, important documents, and we recently have posted a number of maps there, which will provide more detailed information on the alignment and the alternatives under consideration than you are
12:05:00 able to see from the maps that are attached to

the Final Scope. There are some maps on the website that includes aerial photos with the alternatives depicted on them, as well as a Google Earth map that is pretty useful as far
12:05:17 as determining the location of the alternatives in relation to landmarks and roads and streams. So those are pretty useful tools.

MR. CONRAD FISHER: Before we get into question and answer, I appreciate
12:05:36 everybody being here. We are going to have a feed across the street here at the Boys and Girls Club. For everyone that's in the building, you're welcome to go there. I think we are going to go there as soon as you're done
12:05:50 with your presentation, but just for your information, before we lose anybody else, in addition, we are going to work on the sound system here.

I stayed up all night, I had
12:06:07 promised, I think somebody mentioned, John Robinson, a traditional Cheyenne meal, so I had to keep my promise. I've cooked up some deer meat and elk meat, so I'm keeping my promise in addition to our catering service. There's only
12:06:28 one stipulation, that you eat it. So that's my

stipulation.

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

Now, I would like to entertain any
12:06:41 questions about the Surface Transportation Board and our Environmental Review Process as it relates to the proposed rail construction.

MR. CONRAD FISHER: Can we take a break at this point and have lunch and then
12:06:57 maybe we can answer -- have the questions? Unless there are pressing questions that need to be addressed at this point, we'll --

UNIDENTIFIED SPEAKER: What is the time frame?

12:07:13 MR. KEN BLODGETT: Our target date for issuing the Draft Environmental Impact Statement is late fall, early winter this year. That's a target date.

If you look at our website,
12:07:39 tonguerivereis.com, you can see there's a number of links and various information, including a historic preservation resources that has a lot of useful information and important documents particularly related to the
12:07:56 106 process.

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

12:08:24 MR. KEN BLODGETT: Sure. It will be quick if nobody has any questions.

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

Oh, you have to leave?

12:08:38 MR. KEN BLODGETT: I can be here.

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

MR. KEN BLODGETT: Everybody is

12:08:51 hungry, everybody should eat. Let's eat.

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

MR. KEN BLODGETT: Let's eat.

12:09:05 MR. CONRAD FISHER: What time is it? Is it 12:15? 12:10. Let's try to take one hour and try to be back over here about 1:15. So we welcome everybody to go across there. It will take me a few minutes for my delicacy. So

12:09:30 I'll be over there in about 10 or 15 minutes,

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

(Recess.)

13:33:18 MS. CATHERINE NADALS: Welcome back. I was going to go ahead and allow Ken Blodgett from the Surface Transportation Board to answer questions about the project. However, I just want to -- I'm imposing a few ground rules, and I should have done this earlier behind you, but

13:33:37 just basic things. Allow people to speak one at a time. Be fair to others. All consulting parties have a right to speak about their concerns. Keep the discussion focused on Section 106, if you could, historic tribal

13:33:57 properties. And speak directly into the microphone.

I have moved people around because the sound down there was not that good. So, hopefully, all of you will be able to be heard

13:34:08 now. I will give it to you, Ken.

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

We did the overview of the project, the Board process, the Environmental Review

13:34:30 Process, and we brought out some short details

about the alternatives that will be considered for further analysis in the Board's Environmental Impact Statement. So with that, I was wondering if anybody had questions about
13:34:49 the Board and the Board's process or the Environmental Review Process.

MR. BEN RHODD: I have a question. I'm curious, we've been waiting for quite a while on the alternatives, and this is not
13:35:15 necessarily in the sense of 106 or NEPA review. What it does have, though, is where these alternatives, when was the design finally decided upon on the alternatives? When was that?

13:35:38 MR. KEN BLODGETT: The alignment of the alternatives really came subsequent to the scoping meeting based on engineering, information. You know, at the time of scoping pretty much the door was wide open for any
13:35:52 alternatives, and we wanted suggestions for alternatives.

Subsequent to scoping, we were able to use environmental information, engineering information, that has been collected, which is
13:36:06 how we came up with the alternatives as they

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

13:36:26 MR. BEN RHODD: I guess this is a really a question for Burlington Northern. Where are they at in the acquisition or approaching landowners? I have some questions about that, because as we are looking at these

13:36:41 alternatives, we've been in other situations with other projects where access hadn't really been assured or where we could begin to even start to attempt to summarize for ethnographic purposes or oral history purposes, et cetera.

13:37:07 So it's making it another -- I know you're looking for -- you're going to look for the alternative that is going to be the most feasible on every level.

I guess I was on the website about, I

13:37:26 don't know, two months ago, maybe it was the last time I was on, and the map that you had on there was --

MR. KEN BLODGETT: Yeah, recently we've put some more detailed maps on there. I

13:37:42 think there are some copies available that are

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

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

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

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

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

work, the survey work, to collect the information we need to do the analysis that we need to do to present the information in a Draft Environmental Impact Statement. That's
13:39:25 the access for the purposes of us to conduct our environmental review.

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

13:39:50 MR. KEN BLODGETT: None of that has been done yet. We have been doing some biological survey work and some on-the-ground work from property owners that have already given us access. It depends -- a lot of it
13:40:11 depends on the survey when the survey work needs to be done. (Inaudible) noise impact.

MS. LANA GRAVATT: Is your question answered?

MR. BEN RHODD: Not really. Well, it
13:40:25 does and it doesn't. What I'm also looking at, as I've read what's in the NEPA already, or process -- NEPA process already, okay, you're going out and doing a biological, you're going to do a floral, et cetera, et cetera, studies,
13:40:44 wetlands, all this stuff.

MR. KEN BLODGETT: Correct.

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

13:40:57 MR. KEN BLODGETT: We are just now beginning the process. But we intend to engage the Northern Cheyenne. We made contact with the Northern Cheyenne tribal members. We have meeting this afternoon with the environmental

13:41:13 folks at the Northern Cheyenne Reservation to discuss ways that we can together move forward to address their concerns and incorporate them into the Environmental Review Process. Not just one of six related topics but across the

13:41:29 whole range of environmental history.

MR. BEN RHODD: I guess what I'm advocating on one level, though, is that the involvement of the Dull Knife College people, traditional people, like our elders that are

13:41:47 sitting here in this room, to be a part of those processes -- that process that you're involved in with your contracted third party, and to be able to have our people involved in this.

13:42:07 MR. KEN BLODGETT: Sure. We

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

MS. LANA GRAVATT: We don't need to be told how to do that. I see your
13:43:06 methodology. I don't agree with a lot of it. It's really biased to the companies. It sounds like you want to take a couple Indians and put them on fire crew and then call it tribal participation. I don't agree with that.

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

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

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

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

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

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

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

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

13:45:10 MS. LANA GRAVATT: Seemed like there was a lot of alternatives that you were talking about. And that's why I asked you, if what you were reading, do we have that? It was quite in depth information which we should have been

13:45:22 given. You know, are the tribes going to be allowed to survey all the alternatives? Or just what is accessible?

You know, I just really have not seen actual letters from landowners, I just can't

13:45:37 think of the word for it, we can get access over here.

MS. CATHERINE NADALS: Well, we did send letters, and we followed up with phone calls, and we are still in the process of

13:45:47 trying to get access. Probably Alan could talk to that. Some people just don't want to have people on their property because they are really against this project, and on principal they don't didn't want people on the property.

13:46:03 So that's a constraint. We have to deal with

it in terms of our NEPA alternatives analysis. Now, once we license NEPA alternatives, then we will have -- we'll be able to have access to do more intensive surveys for that particular
13:46:20 alternative. So right now we are really trying to compare resources to the different alternatives. And we have that constraint, some people not wanting us to come on their property.

13:46:33 MS. LANA GRAVATT: I don't understand how you're going to figure out an alternative when, like you said, there hasn't been sufficient tribal surveys done for this line in any of the alternatives? How would you make
13:46:46 that determination without allowing the tribe the opportunity to be on the property?

MS. CATHERINE NADALS: We want to have you on the ground. We are going to be actually talking about this. But we absolutely
13:46:58 want to have you on the ground, because part of the problem, obviously, there are no records of tribal importance sites. So we don't know. We need to hear your argument.

MS. LANA GRAVATT: If you know the
13:47:14 reason why, the history of this country, it's

not our fault.

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

13:47:24

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

MS. CATHERINE NADALS: Sure.

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

13:47:33

13:47:46

13:47:58

Secondly, I can't speak for all of the alternative routes as a landowner, but I can only talk about the Colstrip Alternative.

13:48:11

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

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

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

MS. LANA GRAVATT: Thank you.

MS. CATHERINE NADALS: Thank you.

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

the time frames?

MR. KEN BLODGETT: Yeah, that's the target date. That doesn't mean anything is going to happen in the fall or the winter. 13:49:22 People ask and they want us to say something. And that's our target. We hope to be able to do all of the survey work and all of the analysis we need to do and be able to put out our Draft Environmental Impact Statement by 13:49:38 late fall, early winter. But that's flexible and subject to change.

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

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

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

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

that are known. Does that answer your question?

MR. RUSSELL EAGLE BEAR: I have a question.

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

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

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

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

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

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

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

MR. RUSSELL EAGLE BEAR: Sometimes agencies and companies kind of put the cart

before the horse and after the fact they come to us as tribes, and they already know it, yet they are asking us to either rubber stamp it or go along with it. What are you doing out
13:53:55 there? What are you actually doing on those lands that you have access to?

MR. KEN BLODGETT: We haven't done very much at all yet. But what we need to do, cultural resources, we'll be doing a lot of
13:54:10 survey work to determine biological resources along the different alternatives. I mean, we are talking wildlife, plants, fish. We need to collect information on what's there so we can do analysis of the information we collect to
13:54:27 present it to the public so we can show what the impacts of the project would be. And we need to be able to compare the different alternatives with each resource area. Biological resources is one. I mean, there is
13:54:44 noise analysis, we'll be doing survey work on the ground in the areas of noise. Wetland work. What we need to do is have people go out there and collect information. We need to have the information collected during the course of
13:55:01 this survey work so that we can then analyze

the information for comparison purposes.

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

MR. RICHARD STARZAK: Not yet. But
13:55:10 that's one of the reasons --

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

MS. CATHERINE NADALS: I thought you meant in the future. We are doing those in the
13:55:23 future, yes. They are going to be done. It's just one resource type that we have to look at as far as comparing the alternatives. Absolutely. That's one of the things that we need to know. We need to know what's there.
13:55:36 And we need your input. We need tribal input.

MR. RUSSELL EAGLE BEAR: Well, shouldn't you approach us first so we can both know at the same time instead of you guys knowing first and then after the fact you show
13:55:50 us what you find?

MR. RICHARD STARZAK: We won't be knowing first. We have not gone out there. We want to see where we get property access and then come up with a schedule and then invite
13:56:03 all the other tribal members to come out when

we have access on particular times. I don't know for some property owners if it's one day only or if some property owners will allow return trips. But we have to work through all
13:56:17 of those logistics. It's like a checkerboard. We don't have property access all along the way. So we have to get to one where we can go safely.

MR. RUSSELL EAGLE BEAR: Okay. We're
13:56:29 being cautious here. I am anyway, as a representative. We have some issues with the (inaudible) railroad when they were coming around the Black Hills into this area. You know, they played with us. Especially when it
13:56:48 came to doing surveys on land, because you don't go there, because we don't have access. Well, you've got to do this. It was like there was no plan. And I want to make sure that we are not in that situation again. I mean,
13:57:08 speaking for the Rosebud Sioux Tribe. I want that to be clear.

MR. STARZAK: That's why we (inaudible). If helps the discussion, we actually have the current property access maps
13:57:18 I could display those on the screen so we could

see.

MR. ALAN SUMMERVILLE: We (inaudible). That will be handling methodology. Right now we are trying to get

13:57:33 questions on the EIS process. And then (inaudible).

MR. BLODGETT: And I can --

MR. RUSSELL EAGLE BEAR: Okay. Now going back to the EIS. You mentioned you are

13:57:42 going to do certain surveys. You mentioned them. Cultural is not one of them. Archeological is not one of them.

MR. KEN BLODGETT: Cultural will be one. Cultural resource is one survey that will

13:57:56 be conducted. It's a large part of what we need access for, but we also need access to do survey work on a number of other issues that we need to collect information for purposes of the environmental review.

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

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

to ask these questions before you left.

MR. CONRAD FISHER: One of the things that our cultural committee chairman, Mr. Steve Brady, wanted us to reemphasize is that we
13:58:46 would like to do a full blown study of that area, and I'm sure under the EIS that would be something to consider in addition to the historically and traditionally plants that are utilized. I'm sure that will be part of the
13:59:11 EIS, but I just wanted to put that on record.

MS. LANA GRAVATT: Considering (inaudible).

MR. CONRAD FISHER: In addition, I think what should be done is also a TCP study
13:59:30 of that corridor, and I know one of the landowners, Clint McRae, has offered to go into his property and do a full blown TCP study of his land just so we can ascertain and document that there are historical and traditional
13:59:53 cultural properties in that area. And I think it's a win-win situation for everybody because it would give the tribes an opportunity to be on the ancestral lands and to document what's in that property. But, in addition, I think it
14:00:11 would serve as a conduit for all the interested

parties that there are important resources in that real estate.

MS. LANA GRAVATT: So what is the Northern Cheyenne's (inaudible) alternative, if
14:00:29 not doing it at all?

MR. CONRAD FISHER: Well, you know, that's something my job is to do cultural research. And I would defer that question to our leadership to see what they would prefer on
14:00:48 that. But I do know one thing, that there's a heavy emphasis on protection of cultural resources, and really I think it's really up to the people. During the scoping sessions, I think 99.9 percent, especially here on the
14:01:05 reservation regarding the Tongue River Railroad, was against. I don't think we had one comment that was for the Tongue River Railroad at that time.

So the people of the Northern
14:01:19 Cheyenne, I think, or the reflection of the administration, I think, is about the people on the Northern Cheyenne. And that's all I'll say about that. But that's a good question, and I'll have an answer for you before the end of
14:01:35 this week.

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

14:01:54

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

14:02:26

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

14:02:47

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

14:03:10

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

MS. LANA GRAVATT: Yeah.

14:03:27

MR. ALAN SUMMERVILLE: There was

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

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

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

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

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

1 going on with the Otter Creek Mine as far as
2 their application process and what they are
3 deficient on?
4 MR. DOUG MELTON: I don't know how
14:04:47 5 deficient they are. I don't know if we've
6 heard anything about deficiency. But I know
7 that part of the state process is a little
8 different done under Montana Environmental
9 Policy Act, MEPA, because there is no federal
14:05:06 10 coal involved. There is no federal coal
11 involved in the mine. So it's being handled a
12 different permit process. Part of the federal
13 coal with the state is part of the settlement
14 with the New World Mine. About 2002 when that
14:05:30 15 happened.
16 MR. ALAN SUMMERVILLE: Both EISes
17 will look at each other's project.
18 (Inaudible). It will look at the Otter Creek
19 project as a cumulative action. Look at the
14:05:51 20 potential impacts of the mine in light of
21 potential impacts of the railroad for
22 (inaudible).
23 MS. LANA GRAVATT: So is that going
24 to be two different determinations? Are they
14:06:05 25 going to be one determination for both? How

are you going --

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

14:06:19

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

14:06:37

MR. JOEL AMES: Yeah.

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

MS. LANA GRAVATT: Are you sure about that?

14:06:45

MR. ALAN SUMMERVILLE: I'm pretty sure.

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

14:06:56

I'm just trying to picture, you know, in my mind a route, and how many alternatives you had, and there haven't been any tribal

14:07:15

identification efforts.

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

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

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

Any other questions for Ken and Alan?

14:08:15 Okay.

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

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

(inaudible).

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

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

MR. KEN BLODGETT: We won't be here on Thursday. We are going to be in the area doing other environmental work related to the

14:09:07 project but not 106. We figure Cathy Glidden is representing the Board here on Thursday and ICF folks as well. So we are trying to have as many meetings as we can on the whole range of topics.

14:09:38 MS. CATHERINE NADALS: The Northern Cheyenne Tribe and the Oglala Sioux both expressed to us they would like to consult with us not on the reservation issues, but on an entire school of issues that are under the NEPA

14:09:53 umbrella. That's what we are trying to do, the Northern Cheyenne are involved in.

MS. VANESSA BRAIDED HAIR: I have a question. My name is Vanessa Braided Hair. And I'll just give everybody a background

14:10:11 review. My ancestors were forcibly removed

from their original homestead and was told that they could move back after 25 years, and this has not happened. So the Northern Cheyenne Tribe Otter Creek Home Decendents have decided
14:10:30 to take action on the issue, and we feel that the Surface Transportation Board needs to answer some questions, which are: Has the Surface Transportation Board addressed the Northern Cheyenne Otter Creek Homestead Claim?

14:10:46 How will Surface Transportation Board keep the Northern Cheyenne Otter Creek Decendents in the informational loop?

Is the Surface Transportation Board open to have conversation with the Northern
14:11:03 Cheyenne Otter Creek Descendents?

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

MS. CATHERINE NADALS: Okay. Thank
14:11:11 you.

Let's start next with Mr. Starzak, who is acting as our lead for the architectural study (inaudible) methodologies. Again, this is a draft. We wanted to have something on
14:11:50 paper. We definitely will want -- we can make

changes. So go ahead.

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

I would just like that question.

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

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

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

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

14:15:49

So --

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

MR. RICHARD STARZAK: Yes.

14:15:59

MS. LANA GRAVATT: Great.

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

14:16:11

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

14:16:27

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

14:16:44

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

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

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

So, first of all, under NEPA we have to do a comparison of alternatives. So you can't possibly look in great depth at every foot of each alternative. There just isn't
14:18:21 time or budget to do that. But you are able to, hopefully, get enough access to land, do records searches across all of the way, and do enough analysis to have a comparison study so that you can compare each of the alternatives
14:18:38 and decide what are the consequences, which alternative would have the most effect on cultural resources, which would have the least. You should be able to gather that.

With Section 106 there is more that
14:18:54 needs to be done. Consultation with SHPO on historic properties. Unfortunately, SHPO told us they were not able to attend today. But I've had some discussion also with Stan Wilmoth. And regarding a question that came up
14:19:10 earlier about the model, Stan says the model will not work to decide where you do not have to do surveys. The model would only be useful for gaps where you could never get access. So we would never be proposing at this time to do
14:19:26 a model to kind of say where do we do high and

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

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

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

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

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

14:21:15 best interests of the tribe.

MS. LANA GRAVATT: Okay.

MR. EMERSON BULL CHIEF: I concur with that.

MR. RICHARD STARZAK: So stepping

14:21:25 through the differences with 106, the way I interpret the regulations, and it's in more detail than that preliminary draft, we need to consult with the tribes. And we know we cannot do those surveys, we rely entirely on you. And

14:21:45 Stan Wilmoth says the same. He said when he gets a TCP finding, he fixes it. He doesn't try and work against that. So that's support.

Then we have consultation with other parties. It's not just tribal interests, we

14:22:02 have historic sites, we have other parties,

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

14:22:17 Yes, sir.

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

14:22:37 MR. RICHARD STARZAK: That's way above my pay grade how the firm gets chosen, but I can say the Surface Transportation Board has been a client of ours on interesting projects. We had two projects in Alaska in the

14:22:52 last couple of years, which were also constructions of rail lines to mines. And there we had a lot of tribal input.

MR. JAY RED WOMAN: The reason why I ask is because as a tribe, I'm pretty sure a

14:23:10 lot of tribes built it, but to determine the energy, our country doesn't want to depend on foreign energy. Culturally, we are opposed to taking stuff out of the ground, culturally. You probably don't want to hear that.

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

diligence with the surveys culturally, I would encourage so much because the deer, the deer exploitation, deer being dominated, just because this group is involved in digging in
14:23:57 the ground.

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

14:24:17 And then with the landowner, if you are dominating (inaudible), you know, the consideration of the landowners and cooperation with the tribe, our tribal organizations, that really, really do want to protect ancestral
14:24:37 homes.

And I'm just curious, the reason why I ask how you were picked, perhaps you were picked because you dealt with Native American tribes, some sort of success formula you use,
14:24:53 that's why you're chosen, but because it's above your pay, I don't know how you mentioned it, above your pay scale, or whatever, you don't have that power or discretion to answer that, but I wanted to know is that the lack of
14:25:15 being presumptuous on your part. I would

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

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

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

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

facilitate these discussions.

Anyway. Thank you.

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

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

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

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

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

much. We do have staff that are talking to other experts Northern Cheyenne Tribe about those issues, just so you are aware of that. I'd like to give the microphone to Conrad now
14:28:14 for some introductions, late introductions.

MR. CONRAD FISHER: Well, I know because of the weather conditions some of the tribal preservation offices weren't able to make it this morning. I'd like to introduce
14:28:32 Waste'Win Young from the Standing Rock Reservation in South Dakota.

MS. WASTE'WIN YOUNG: Hello.

MR. CONRAD FISHER: Welcome here.

MS. WASTE'WIN YOUNG: North and South
14:28:39 Dakota.

MR. CONRAD FISHER: North and South Dakota, yeah. Their reservation is on both states.

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

MR. RICHARD STARZAK: So this slide is kind of our approach, and maybe this helps address your question. We consider that this is your place. You're the experts, not us. 14:29:35 All we are is -- we have the ability to learn from you, kind of record what we find, and compare alternatives. This is our approach. So if you look -- I didn't go through all of the National Register criteria, but I 14:29:54 underscored the line, places. National Register of Historic places. Academics don't understand the significance of a place. We can kind of look at it, read about it, we can get a sense of it, but you that live here, now or 14:30:10 ancestrally, truly understand what significance is place. You understand history, what your ancestors did here, your traditions, your surroundings, all of those things. We can't begin as professionals to really understand on 14:30:26 the level of someone who has been here. So our philosophy is we are here to learn from you and work with you to identify what is significant together. That's our approach.

What the purpose of these meetings 14:30:39 is, and with the hospitality of the Cheyenne,

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

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

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

Once, again, historic properties, our professionals can look at the buildings and

apply the National Register criteria; Our professionals can look at archeological sites and analyze; but TCP and the other traditional types of events isn't necessarily limited to
14:32:15 tribal traditions. It could be ranching traditions. How we analyze, we have to consult with you. We have to find out what's the significance and where are your most sensitive areas.

14:32:31 And then for the NEPA document and Section 106 we would analyze the potential effects of alternatives, and that's the goal of NEPA is to do a fair comparison. But you see I drew a line there. The Section 106 goes
14:32:45 further, in that you have an opportunity to resolve adverse effects if an alternative is licensed.

Will you move to the next slide. This is Lana's question earlier about property
14:33:00 access. This is a summary table. We actually have maps here. If there is time, and people want to look, we can show you where we know. But, currently, we still are awaiting response from more than 50 percent. So we don't know.
14:33:14 50 percent of the property we haven't heard

back from the landowners. We may at some point, or we may not. Or as Clint suggested, there may be landowners that want to work with tribal members and not necessarily allow all of
14:33:29 the environmental consultants to come on their property. But we've heard, yes, from 33 percent.

Now, as far as I understand, previous Tongue River projects, it was zero percent. We
14:33:42 have 33 percent. We can go out on the land and walk the land and do the study.

I want to also just emphasize this is the entire pieces of property. So depending on the shape, there may be a lot of area that's
14:33:59 far away from the actual center line. We don't know exactly. But this is the best guess that we have right now.

Can we go to the next slide.

So if there is a licensed
14:34:17 alternative, then we would put into effect an MOA or a PA for completing the Section 106. Now, from the transcripts, I understand, there was a PA, but that was based on no field survey at all. In this case there would be a PA after
14:34:35 surveys have been done, to some degree on all

of the alternatives where we have access. But then the PA would fill in the gaps and completing the work on the selected alternatives, and that is an opportunity to
14:34:49 then really delineate boundaries, see if there's a way to avoid, minimize, or mitigate. This is after NEPA. This is a programmatic agreement that compared to the previous one, was not on the basis of having done any work.
14:35:08 So we are trying not to do that same thing. We want to do the consultation. We want to do what's right. We want to understand what's important to you.

Could we go to the next slide.

14:35:20 This is just simply tools. I mean, you have the understanding, but we as a professional firm, do have some tools that we can use that can help. So, for example, I could show later that we had a request on one
14:35:36 of the calls about the rivers and streams crossings, and we have mapped that in GIS. We have all the coordinates. We have GIS capability that will help us map. So we have all the property access mapped with GIS.

14:35:53 And then we have GPS, so that you're

able to go out on a piece of property and using GPS understand where you are and where the center line is proposed to be for that alternative and walk it without -- you know, 14:36:07 actually just walk it, even though there won't be any stakes in the ground.

MS. LANA GRAVATT: I just wanted to, (inaudible) would be requesting every determination of effect on every piece of water 14:36:25 on this project. Every determination, whether it's a wetlands or streams or creeks.

MR. RICHARD STARZAK: And then I put a note of field tablets. We actually have one here that we were going to test out tomorrow 14:36:40 when we take the tour. To see what it displays is the aerial map. It uses the global positioning to show where you are standing in the field. It has the record search information, which, I think, is somewhere 14:36:55 between 5 and 10 percent of the areas that have been surveyed. Those previous sites that have been recorded are also shown on the map, so when you're walking out, you can see where a previous site was identified. We are going to 14:37:06 test it tomorrow. So that might be something

you want to look at.

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

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

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

I'm open to questions.

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

14:39:02

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

14:39:13

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

14:39:33

14:40:00

14:40:27

So I guess this is my curiosity these reports, these EIS reports, do they at all emphasize the cultural aspects? Do they exist -- does the cultural aspect of the EIS, 14:40:50 is that included? Is that universal, or is it usually, with this situation, is it usually, okay, well, we've got to get your attention so you can consider us, consider our position?

MS. CATHERINE NADALS: Can I have 14:41:05 your name again?

MR. JAY RED WOMAN: Jay Red Woman.

MS. CATHERINE NADALS: We have copies of the Final Scope report before. Those are the issues that are going to be studied in 14:41:14 the environmental statement. And one of the issues -- one of the areas we'll be looking is the cultural resources as part of the EIS. And it includes consulting federally recognized tribes to identify properties traditional 14:41:31 (inaudible) tribes. So we definitely are going to be working with the tribe, even with the interim EIS to compare alternatives. We need your expertise.

MR. JAY RED WOMAN: Those are things 14:41:47 with my curiosity. I've perused through a few

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

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

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

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

posted on the Tongue River EIS website. You can actually go to that document, which is quite detailed and provides a lot of background of the Northern Cheyenne and resources of
14:43:30 concerns in this area.

MS. LANA GRAVATT: Will that be over all the EIS, that document?

MS. CATHERINE NADALS: That particular document? Since I'm not really
14:43:41 involved in actually the EIS itself, it might be attached as an attachment, but I can't say that for sure. I don't know. I can't answer that.

Any other questions? Yes.

14:44:05 MS. LYNETTE TWO BULLS: Good afternoon. My name is Lynette Two Bulls, and I represent Yellow Bird, which is a grass roots organization here on the Northern Cheyenne Reservation, along with my husband, Phillip
14:44:21 Whiteman, Jr.. who was not able to be here.

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

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

And the comment that I would like to make, the question, I guess, I have is, after the EIS is done and the findings are done and completed, if the findings say that this is
14:44:55 going to adversely affect the land, environment, and quality of life for the people in this area, then what? Do you have your mind already made up (inaudible) to continue to build the railroad?

14:45:15 MS. CATHERINE NADALS: Again, you know, I'm not really in charge of the EIS process, but I can tell you it's a process, and it involves collecting information, comparing the information with the alternatives, and then
14:45:29 determining which is the least environmentally damaging.

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

14:45:38 MS. CATHERINE NADALS: That's not my decision. That's actually a decision that will be made by the members of the Board of the Surface Transportation Board. So it's not anything that really (inaudible).

14:45:51 MS. LYNETTE TWO BULLS: I would like

to say for the record, we oppose the railroad coming through our ancestral homelands, and we feel that regardless of what that outcome is of the EIS, that the plans are to continue with
14:46:08 the railroad on the least way that you're going to impact it, which will, you know, have a major impact, in our view. For the record, I want to say that. Thank you.

MS. CATHERINE NADALS: Thank you.
14:46:27 Anybody else?

MS. DONNA WILBERT: Hello. My name is Donna Wilbert. One of the things that I just wanted to say, I've heard Conrad say 99.9 percent of the Cheyenne are no for this
14:46:55 project, and it goes back to what Lynette just said, that's my concern, I mean, it's self-explanatory, however you look at it. But, yeah, I mean, it seems like you guys are doing all these things, but regardless what we say,
14:47:14 you guys are going to go ahead and do it. So why bring all this in when you can't even answer the question of what's going to happen next?

MS. CATHERINE NADALS: I can't answer
14:47:25 the question what's going to happen next

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

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

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

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

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

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

And it's not enough, the federal

14:49:45 agencies, when they come to us and they listen, they are there to do their job, it's not personal for them like it is for us, because it is what we have left, it's part of who we are. But we have to utilize the Two Bulls and the

14:50:06 laws that we have, and before you can really think that NEPA could do that, because under the National Environmental Policy Act they have to look at the alternatives, they have to consider the alternatives.

14:50:22 But what we are finding out is that federal agencies aren't doing that. They have one route, and if there's a railroad or pipeline or road already there, they are not going to go full blast and try to advocate on

14:50:38 our behalf, even though they have the trust

1 responsibility to do so. They are going to
2 look on what's feasible. Just like this
3 gentleman said, what's feasible, what saves
4 them money, what saves them time, what keeps
14:50:50 5 the time frame working.
6 As tribes we need our own lawyers, we
7 need our own specialists. I see Dave Coburn
8 here. He's at many of our meetings and he's a
9 lawyer on behalf of the applicant. We
14:51:06 10 (inaudible) Canada to North Dakota, (inaudible)
11 worked on that. So if these guys are coming to
12 help the agencies, they are bringing their
13 best, they know the law. They know why they
14 are coming. And when we come here, where are
14:51:23 15 our native lawyers, where are the NEPA experts,
16 where is the NEPA experts that say, you guys
17 are supposed to look at three viable
18 alternatives, but when they are repeatedly
19 telling us that we don't have access, we have
14:51:38 20 unfortunately time constraints, unfortunately
21 money, you know, they keep telling us that
22 these things.
23 So we need someone to look at the law
24 and say, how much money is that railroad going
14:51:49 25 to be worth, and you're telling us you don't

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

14:52:01 And we need our experts here. We need our tribal people who can advocate and know the law like the back of their heads. Because Section 106, which is very similarly related to NEPA, but under 106 the tribes are

14:52:18 allowed our own experts, our own methodology, how to conduct these surveys. We have our own experts. We don't rely on non-native western science or archeology for those surveys. We all have our own traditional spiritual people.

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

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

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

(inaudible), but we are not. We need to develop (inaudible) surveys. We have the methodologies. We have our data how it's processed, how it's stored, confidentiality agreements, programmatic agreements, these are people that we know that we have to learn, but use best what we can. So we back the Northern Cheyenne and advocate for their survey. (Inaudible) Thank you.

14:53:29 14:53:55 14:54:14 14:54:33 14:54:47

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

But equally important, I think, is the fact that other tribes that are gathered here also have a very high stake to what is going on here because this is their ancestral

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

14:55:06 So I just wanted to emphasize that, you know, it's a very important piece of property, and some of it is on private and other on public lands. But I think we all as tribes have an interest in this property. So I

14:55:24 just wanted to share that with you. As visiting tribes, feel free, we welcome you with as much hospitality as we can. I think Russell said it real well, he welcomes everybody with an open heart handshake. He must have really

14:55:47 had to practice that, because I can't repeat it, but he said it right, we want to make you feel like you're at home away from home.

MS. CATHERINE NADALS: Getting back to the schedule, I was just wondering on here,

14:56:16 we would have an opportunity to have a tribal caucus. But I'm also concerned about talking about the trip tomorrow and the logistics of the tribe.

MR. RUSSELL EAGLE BEAR: I have some

14:56:31 questions. I'm glad there are some gentlemen

that are landowners. There were some statistics on the PowerPoint in terms of them contacting, I think there was a 30-some percent, 50 percent not yet. You know, history
14:56:54 would tell us, even if you said no at some point, they are going to come and take over your land. They kind of leave you no choice. And that's why one of my colleagues, Waste'win, was stressing the importance of having our
14:57:18 attorneys present at these meetings. I travel with mine sometimes, and I didn't bring him this time because years back I hired Conrad was my attorney, and I might fire him after this week.

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

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

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

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

MR. CONRAD FISHER: .999.

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

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

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

MR. RUSSELL EAGLE BEAR: You have my permission.

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

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

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

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

A little bit of background. I'm a relative newcomer. My family has only been

14:59:58 here 130 years. But the ground we live on is not far from here. Of course, the ancestral grounds that we all inhabit now, to me, personally, is very important. I want to take a step back and talk about why I'm going to do

15:00:12 this tour tomorrow.

You look around this room, you see petroglyphs and sand rocks. The story on that, that was on my land. It's the only petroglyphs left (inaudible).

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

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

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

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

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

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

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

MR. RUSSELL EAGLE BEAR: Thank you.

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

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

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

Yesterday we had gone out and did a prelim of the proposed route, sticking to the public access roads and those roads that were 15:02:38 authorized by the landowners, and we started over at Cow Creek. For those of you that don't know the area, it's about three or four miles south of Colstrip. It's a gravel road. And it goes east to the Rosebud Creek. At that point 15:03:04 we were with Clint on his vehicle, and we made some stops, and the gravel, or the road conditions -- good thing he had a four-wheel drive truck, so we were able to pass through that first segment before we hit the Rosebud 15:03:28 Creek. But from there, for about another 10,

15 miles, it seems to have tapered off, and it wasn't too bad of a road. But I think it passed through, what, maybe 10 sections of your property, if not more, and showed us some of
15:03:48 the sites that were present there and how it's going to impact his operation, because it runs real close and inside within his property in several places.

And that was good to know. It was
15:04:02 very informative just about the impacts and also the cultural resources that were in that area based on what Clint was telling us.

And we went all the way to the Tongue River into Amish territory, and we didn't go
15:04:24 all the way to Ashland, we turned around at that point.

So I know there's been some discussion and controversy as to exactly who can be a participant in the private property
15:04:44 there, and I know that there's been some objection by certain parties about being left out. I know Clint made a statement about who can and can't go on his property.

So at this point there's several, I
15:05:05 think, proposals that we feel might be able to

work. And one of them would be we could take the route that we did the other day, yesterday, and that would start at Cow Creek. But I know that that was -- I'm not sure if a bus could go
15:05:26 through that with the amount of seeps that are in there. And then we can go down the Tongue River public county road.

The other would be to go on that county road that we came out of and hit that
15:05:51 crossroad there before we start going up. Is that Greenleaf? Yeah, Greenleaf. Down to the Tongue River.

Or the other one would be to go to Ashland and Otter Creek and start from there
15:06:07 and go northwest.

But I think one of the primary issues is that the folks that -- it would be an awkward situation for those that cannot go into private property to have to go back around or
15:06:27 stay in that area.

So those are kind of the alternatives. And I told Cathy that I would bring this to the attention of the participating tribes for their input. And I wish we had a map that could
15:06:41 show -- I know some of you probably haven't

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

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

MR. CONRAD FISHER: And, Cathy, maybe

15:07:10 you might want to kind of talk a little bit about who, according to Clint, who you think should be on this property.

MS. CATHERINE NADALS: Yeah. I mean, I can't speak for Clint. Did you want to just

15:07:23 make a statement just for the record about who can participate on your property, the portion of your property?

MR. CLINT McRAE: As I stated earlier, we do have a landowner group, we do

15:07:41 have an attorney that was hired. We discussed this as a group. It wasn't my decision. We decided a couple weeks ago when there was a tour of Otter Creek that the public was going to go on a tour of that area and we were

15:07:54 denied. And I think that kind of set the stage

on what is to come. But I figured with the amount of people here that traveled to see the sites, that the tribal representatives in this room are more than welcome, but it was the
15:08:07 feeling of the group that no one from the Burlington Northern, no one from the Tongue River Railroad, or any of their affiliates, including attorneys, no one from Arch Coal would be allowed on the private land at this
15:08:19 time.

And the reason being, this is extremely critical, is the Tongue River Railroad has not yet been permitted. They do not have a permit. But I think before it even
15:08:32 gets to that stage, we need to look at these sites. So anybody that's associated with the Tongue River Railroad, Burlington Northern, Arch Coal, this includes anybody of the surveyors involved that we've been having
15:08:46 problems with trespassing on our place, on neighbors up and down the river, they are not welcome. But anybody that is at the meeting here today representing the various tribes, we welcome you with open arms.

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

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

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

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

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

15:11:13

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

15:11:29

Did you want to talk about logistics?

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

15:11:43

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

15:12:09

15:12:29

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

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

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

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

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

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

Please correct me if I'm wrong.

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

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

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

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

15:15:48

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

15:16:04

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

15:16:21

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

15:16:36

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

15:17:18

MR. EMERSON BULL CHIEF: I might

bring our cultural director tomorrow.

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

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

All right.

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

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

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

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

15:21:00

Russell, do you have something?

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

15:21:15

15:21:40

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

15:22:02

15:22:28

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

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

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

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

15:24:29 MR. RICHARD STARZAK: I don't want to interrupt, but as I said before, we would rely on the tribes to do the TCP -- we would rely on the tribes to do the TCP surveys. We have no pretension that we can do that. We want to

15:24:42 work together on this. We are an independent third-party contractor, and we want to get the work done well. We need your assistance in all of this.

MR. RUSSELL EAGLE BEAR: And I'm glad

15:24:57 you're saying that. I hope one day I can trust you. But, you know, we've had -- we've worked with third parties. Many of them, I can start throwing names out. I'm not going to do that here today. And they kind of went off in a

15:25:17 different direction each time. So, I guess, you know, time will tell.

MR. RICHARD STARZAK: That's all I can ask is if we can get started and let us go on with you and see what you have. We do have

15:25:33 a wonderful opportunity with 33 percent

property access already. So it gives an opportunity to look at all the issues, whether or not (inaudible) and get some information, in many cases land that you haven't had access to
15:25:51 for over a hundred years. Let's see how we can work it out. I need to learn from you. I don't want to misstep where we are in a situation where we can't cooperate. I want to work with you, I want to learn from you, and
15:26:11 plan this out.

MR. CONRAD FISHER: I think -- I know there's several alternatives, and this is the preferred alternative by those that are proposing this. But I think it would give the
15:26:38 tribes an opportunity, should you choose, now that's on a schedule, but we can change that. I shouldn't say that. But, you know, this is a 106 meeting of THPO. So I'm looking forward to you folks to see what we want to do. But I
15:27:05 think the bottom line is that if it gives the tribes an opportunity to view the cultural landscape, and it would also provide a window of opportunity to be able to access private property in which the landowner has given
15:27:29 permission to the tribe to be able to access

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

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

What Cow Creek provides, by the way, is the idea of where the alignment would hook up to an existing line. But, certainly, we can view that on a map. But I think if we just travel that route tomorrow, you would see the cultural landscape and actually see where some

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

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

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

The Northern Cheyenne Tribe, the

tribe worked really hard to protect (inaudible), and with their land standing relation with the (inaudible) family, through that negotiated a land purchase in which they
15:31:15 made that land purchase, the land that was purchased, they put it into trust. This is something that we might consider working with the landowners to actually purchase land, putting it into trust, that would help block
15:31:28 the railroad. And if you did it collectively, you would have greater chance than one tribe.

That's just my suggestion to you to think about it, talk about it amongst yourselves and talk with landowners. If you
15:31:44 really believe that something needs to be stopped, sometimes you have to look outside -- at something outside the box.

But those cooperations, they do work. The Northern Cheyenne Tribe is the largest
15:31:58 landowner around the base, but that was the main priority, and they took it upon themselves to initiate working with the local landowners there, and they were able to accomplish something, and they are still working on it.

15:32:14 And so I just wanted to put that out

there for you to consider. Thank you.

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

15:32:37 Also, I think the tribe and the landowners could argue there are public health concerns with this project. I mean, health laws. (Inaudible) focus on that, and I'm trying to realize, you know, why do you have a

15:33:07 tribe and all its people telling you that the tribe can't move, it isn't wanted. And does that, you know, and the landowners, where are the rights of the people here? It's coming down to one person, the government, saying,

15:33:34 well, we've considered it, but we are going to go ahead and do this.

And this is every project. Like, you know, the Dewey-Burdock, you know, (inaudible) we can't do something -- these are land held

15:33:52 (inaudible) if anything happens we are just screwed being there, dying, dying from the poisoned water and air.

You know, the Keystone, it just comes down to simply, what's more important, the

15:34:08 environment or some company making money off of

extracting the resources out of the earth? You know, I think as a tribe, we brought to the table to listen to the determination of the effect on our water, when we don't even have
15:34:26 water rights, you know. We are not considered in the authorized purposes with everybody else along the river. They are so concerned with fish. Hell, we're the endangered species. We are losing our language. It's attempted
15:34:48 genocide on us. And now to consider our position, that's not enough, that we live here, you know, and the Tongue Rivers are there. Is there a lot of water around here? I would argue that the Tongue River, as a source, it
15:35:13 shouldn't be jeopardized.

MR. RUFUS SPEAR: Just to kind of add on to that. I don't know if anybody here is from natural resources, but probably there's a certain percentage of the Tongue River
15:35:26 Railroad, several years ago they got treatment in the state where the water (inaudible) and I would suggest going into their office to talk to them about that particular issue and helping develop that argument further.

15:35:38 MS. CATHERINE NADALS: What was your

name again?

MR. RUFUS SPEAR: Rufus Spear.

MS. CATHERINE NADALS: Our environmental team is doing analysis, they are
15:35:48 meeting with the Northern Cheyenne representatives that are experts on the water issues to get their concerns addressed.

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

15:36:10 All right. Thanks.

(Recess.)

MR. CONRAD FISHER: We'd like to see if we can finish up on your session regarding tomorrow's tour. One of the things that might
16:11:50 be possible, at least for the folks (inaudible), I guess, is a term that I can use, being private property, and I know they want to participate in the overall tour, but as we heard this afternoon, there's concern by the
16:12:24 landowner about access to those interested parties that are apparently in conflict at the moment, and I'm not sure if they are in litigation or anything, but nevertheless, that's not a real concern to me personally.
16:12:46 And the people for the Northern Cheyenne, I

think, again, we like to emphasize that we are most interested in the protection of the cultural resources. But, certainly, we want to have all parties contribute in some shape, 16:13:09 form, or manner into this tour, and I understand some of the folks, representatives from the rail line, would like to participate in tomorrow's tour. And one of the alternatives that came to my attention, we 16:13:35 could take a tour along the Rosebud Creek downstream, and then up east to Greenleaf down towards the Tongue River, that once we get back on the public access and public lands, that they would request that they join the tour 16:13:58 group and be on the bus so that they can participate in the tour to the Otter Creek spur line as a terminus. And that would be something, I think, if there's not legal implications, I don't see a problem with that.

16:14:28 But this is a meeting of all peoples, not just Northern Cheyenne, but certainly with other tribes. And I'd like to see if that's something that we can come to some resolution on before we close shop here tonight.

16:14:49 MS. CATHERINE NADALS: Speaking on

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

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

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

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

MS. CATHERINE NADALS: What about

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

MR. CONRAD FISHER: We plan on having sack lunches tomorrow, and probably a cooler
16:16:53 with water and that sort of thing. But then we had planned on killing a buffalo, and that didn't...it was just a weather statement. You know, if you hunt the buffalo long enough, they get smarter every day where they can't be
16:17:18 found. They disappear.

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

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

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

MS. LANA GRAVATT: Shoot at us?

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

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

take maybe, you know, two or three hours to get from here to Otter Creek and back home. Well, down to Otter Creek and then back home. I would probably think no more than four or five
16:19:56 hours you should be back in Lame Deer if we leave around 9 o'clock. So early afternoon is probably the time. I don't really anticipate getting off and going to cultural sites. I think it's more or less to acquaint ourselves
16:20:18 with certain locations. And also to see the actual proposed rail line and where it's going to go as it relates to private property, the county road, and to the reservation, and to the Tongue River.

16:20:35 MS. LANA GRAVATT: Yeah, that's what I was going to say, that's what I would like to see.

MR. CONRAD FISHER: Yeah. I think it's important. We've got one of our tribal
16:20:48 members from Ashland --

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

MR. CONRAD FISHER: Give that man a mic. Make sure he only talks for 30 seconds.
16:21:05 Because I know once he gets hold of the mic --

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

16:21:38 MR. CONRAD FISHER: Yeah. It's really interesting because that's one of the -- if we look at the battle of the Little Bighorn, that was the route that was an Indian trail that they took quite regularly coming up the

16:22:01 Rosebud Creek, and, of course, that was the path that was chosen by the tribe when they came up that way in 1876. And, also, of course, as we call him, Long Hair, come up that way. The rest is history.

16:22:22 But, certainly, that would be -- it's not a historic trail at this point, but that's something that could be considered a real important historic trail. And also there was some other battles, skirmishes, with the U.S.

16:22:39 soldiers in that area. So it's a pretty interesting location.

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

MR. CONRAD FISHER: You can.

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

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

I want to say in terms of the tour tomorrow, myself, and my more knowledgeable colleagues who are on the bus tomorrow, will be happy to answer questions about why the route was chosen by the engineers, the railroad engineers, to choose the most logical route; why it was chosen to run where you see it on the map, versus where you see it in real life tomorrow, versus someplace else. So we'll be happy to answer those questions. Because sometimes the answers aren't obvious, but there are good answers as to why you put the railroad in one place versus another.

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

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

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

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

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

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

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

MR. DAVID COBURN: Correct.

MS. LANA GRAVATT: Is it crossing a river?

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

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

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

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

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

MS. CATHERINE NADALS: That's why we will have the engineers on the bus so we can

16:26:45 explain.

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

16:26:54 Greenleaf Road and Tongue River Road.

MR. CONRAD FISHER: Yeah.

UNIDENTIFIED SPEAKER: Go ahead.

MS. CATHERINE NADALS: Great. All right. I think we should -- unless anyone has

16:27:11 anything else to say, I just want to call it a

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

Thanks, again, Conrad, for wonderful
16:27:27 hospitality and providing us with this incredible space. I know you are probably very tired.

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

16:27:39 MR. BEN RHODD: You know, as we are winding this down and getting ready to head back to our motels and whatever, you know, one of the things that was brought up earlier today was about our common interest, our common goals
16:28:00 as tribes here on the Northern Plains, associated by culture, custom, and, finally, what we came to treaty. So there's a legality here, too, and I know some tribes have opposed any development in the 1851 area, Treaty of
16:28:34 Fort Laramie. But one thing is much more than that, that commonly bonds us and binds us, and it does also for the non-native in this room. And I wish this man was still here to hear this, the Corps of Engineer man. And that's
16:28:57 water.

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

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

was looking from a traditional point of view and understanding but looking ahead. I'm not throwing this in as a kink into the works or nothing. I'm just sharing that on that level
16:31:25 that we have an interest, it goes hundreds of miles away, because we are looking ahead. We are thinking about our children and their children and their children. But it's something that we all have to remember, even as
16:31:47 we sit and we talk, negotiate, compromise, perhaps, on occasion.

So I just wanted to bring that out, because, like I say, it's getting harder to find, and we are going to suffer if we are not
16:32:09 wise. And I know Lana, a lot of her work with the Corps down on the river and the council and dealing with the Corps of Engineers. We want to make sure at least we stand up and say something, not be crying in the future whenever
16:32:36 it's all done and our children want a good drink of water and we can't get it for them. So think ahead. That's what your elders are doing here are standing up.

So remember that. I just wanted to
16:32:55 share it again for the benefit of those who,

perhaps, have not heard. Thank you.

MS. CATHERINE NADALS: So I think if you have any questions about logistics, please speak to Rick, because he's going to be the one

16:33:27 that's organizing the meeting. So if you have concerns, please speak with him. Thanks again. We'll see you in the morning.

(Adjourned for the day.)