

Tongue River Railroad Environmental Impact Statement

Docket No. FD 30186

National Historic Preservation Act, Section 106 Teleconference

April 14, 2014

DRAFT Meeting Summary

Invitees: Please see meeting agenda for list of invited parties.

Attendees:

800.2(a) Surface Transportation Board, Office of Environmental Analysis, Lead Agency Official

Vicki Rutson	Office of Environmental Analysis
Cathy Nadals	Office of Environmental Analysis
Ken Blodgett	Office of Environmental Analysis

Other Federal Agencies

Mark Petersen	Department of Agriculture, Agriculture Research Station- Miles City, MT
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800.2(b) Advisory Council on Historic Preservation

Najah Duvall-Gabriel	Advisory Council on Historic Preservation
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800.2(c) Consulting Parties

800.2(c) (1) Montana State Historic Preservation Office

Stan Wilmoth	Montana State Historic Preservation Office
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800.2(c) (2) (ii) Indian Tribes, off Tribal Lands

Conrad Fisher	Northern Cheyenne
Roger Killsnight	Northern Cheyenne
Jerry Rowland	Northern Cheyenne
James Walksalong	Northern Cheyenne
Cedric Rowland	Northern Cheyenne
Andrew Wiley	Cheyenne and Arapaho
Steve Vance	Cheyenne River Sioux
Michael Blackwolf	Fort Belknap
Steve Brady	Northern Cheyenne

800.2(c) (3) Representatives of Local Governments

Jean Riley	Montana Department of Transportation
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800.2(c) (4) Applicants for Federal Assistance, Permits, Licenses, or Other Approvals

David Coburn	Step toe & Johnson, Attorney for Applicant
Doug Dorsey	Hansen Professional Services, Consultant to Applicant
Dan Hadley	Mission Engineering, Consultant to Applicant
Jamie Hamm	TranSystems, Consultant to Applicant
Scott Castleberry	BNSF
Barbara Ranf	BNSF

800.2(c) (5) Additional Consulting Parties

Betsy Merritt	National Trust for Historic Preservation
Alexis Bonogofsky	National Wildlife Federation
Mike Scott	Sierra Club

800.4(a) (3) Other Parties Likely to Have Knowledge or Concerns with Historic Properties

Clint McRae	Rocker Six Cattle Company Landowner
Mark Fix	Landowner
Jeanie Alderson	Bones Brothers Ranch

ICF International, Third-Party Contractor to the Surface Transportation Board

Sarah Mello	ICF International
Elizabeth Diller	ICF International
Alan Summerville	ICF International
Rick Starzak	ICF International
Mark Robinson	ICF International
Alisa Reynolds	ICF International

Agenda:

1. Project Updates
2. Additional field work schedule
3. Programmatic Agreement

Vicki Rutson of the Surface Transportation Board’s (Board) Office of Environmental Analysis (OEA) thanked all participants for joining and explained that this meeting would focus on the justification statement for the Programmatic Agreement (PA) that was sent to the consulting parties. After introductions, Ken Blodgett, OEA, provided an update on the National Environmental Policy Act (NEPA) process. He mentioned that the resource area chapters of the Draft Environmental Impact Statement (DEIS) are in progress and cooperating agency consultation is ongoing. On March 13, 2014, OEA

submitted an information request to the applicant. Prior to that there had been no filings or Board decisions since the last Section 106 teleconference. Ken Blodgett informed the teleconference participants that the information request can be viewed on the Tongue River Railroad EIS project website.

Alisa Reynolds, ICF, offered updates on the cultural resources fieldwork schedule. All tribal slots for the first survey period have been filled; these surveys will occur May 12–23, 2014. The second round of surveys will occur June 2–13, 2014. Robin Hoffman, ICF, will be the crew chief for both rotations and will also be attending a pre-survey meeting with landowners predominantly located along the Colstrip Alternative. There will be a few other overlaps in survey crew members and representatives (including James Walksalong, Northern Cheyenne) to make sure there is continuity between survey teams. Each survey team will have 10 days in the field and two days for travel.

Mark Fix, a landowner, expressed concern that 10 days will not be enough time for ICF to complete any surveys. Later in the meeting, Clint McRae, of the Rocker Six Cattle Company, and Conrad Fisher, of the Northern Cheyenne Tribe, voiced the same concern. Vicki Rutson reassured them that the amount of time allotted for the surveys should be sufficient. Alan Summerville added that more time can be spent in the field, if necessary.

Steve Vance, of the Cheyenne River Sioux Tribe, voiced concern that the Rosebud Sioux Tribe was the only Sioux tribe participating in surveys. He suggested that since there are many differences among Sioux tribes, there should be more than one Sioux tribe represented. Ms. Nadals explained that other Sioux tribes had been invited but had previously committed to work on other projects closer to home during the time frames slated for the upcoming surveys.

Vicki Rutson informed the Colstrip landowners on the call that OEA was busy trying to arrange the landowner meeting previously discussed. Survey work for these landowners' properties would occur during the second survey timeframe, June 2–13, 2014.

Conrad Fisher, of the Northern Cheyenne Tribe, asked what percentage of land would be surveyed. Vicki Rutson stated that, while OEA has a target percentage in mind, she could not state the current percentage since additional landowners may still grant access.

Jeanie Alderson, Bones Brothers Ranch, mentioned that the survey team may be getting more access than they currently have.

Mark Fix asked ICF why his neighbors had received letters requesting access before he did. Elizabeth Diller, ICF, said she was unsure why Mr. Fix's letter was not delivered at the same time but would look into it and respond to him personally.

Vicki Rutson explained that drafting a justification statement for the PA was an action item resulting from last month's teleconference and was based on a suggestion from Charlene Vaughn of the Advisory Council on Historic Preservation (ACHP). Vicki Rutson briefly described the proposed project and the

supplemental proposal filed in December 2012 altering the applicant's preferred route to the Colstrip Alternative.

She stated that the Section 106 regulations require the completion of a four-step process usually completed in consecutive order. The steps are as follows: consultation, identifying and evaluating, assessing affects, and resolving affects. Vicki Rutson explained that, alternatively, a phased approach can be used in cases such as this project where there are multiple alternatives spanning many miles and access to land is limited.

The word "defer" caused some concerns among some participants. However, Vicki Rutson explained that the term just means certain parts of the Section 106 process would need to be delayed until OEA has full access to all the potentially impacted property. She explained that some landowners have prohibited them from conducting cultural resources surveys on their property. She stated that OEA cannot survey land to which it has not been granted access. In the event the Board approves an alternative, the applicant would gain full access to properties that would be needed for the project through negotiation or eminent domain. She stated that once full access to all properties was gained, the terms of the PA would kick in including 1000% survey of the areas of potential effect (both direct and indirect), full National Register evaluation of potentially impacted sites, and mitigation measures.

Najah Duvall-Gabriel, ACHP, did not see the reason for delaying the evaluation of properties if enough information was available to determine eligibility. Alisa Reynolds explained that the evaluation of sites would require excavation and most tribes were opposed to this. There was also not sufficient time to excavate all identified sites due to the sheer magnitude of the project area. Tribal sites were assumed eligible.

Vicki Ruston stated that, with 10 alternatives adding up to more than 200 miles, only preliminary surveys can be done before the Board makes its decision. Betsy Merritt, National Trust for Historic Preservation, wanted to know how OEA will take into account the eligibility of historic and cultural resources and how it intended to address impacts to historic landscapes. Rick Starzak mentioned the historic landscapes that had already been identified in the area.

Ms. Duvall-Gabriel stated that it would be helpful if consulting parties could be updated on the status of land access for each alternative. Clint McRae did not have a problem with this personally, but stated that the distribution of such information would need to be decided by the entire landowner group and that some landowners might object to making this information publically available. Ms. Duvall-Gabriel said she understands the landowners' concerns but said such information would help the consulting parties better determine where the gaps have been created by lack of access.

Steve Vance brought up the issue of significant waterways that were once major transportation routes for tribes. He compared them to scenic highways throughout the United States and felt that they might be overlooked by OEA. Catherine Nadals said that the PA can consider important waterways including their identification, evaluation and mitigation.

Mr. McRae then questioned Victoria Rutson regarding the construction of access roads to the ROW, noting that private property would likely be needed if such access roads were constructed. Vicki Rutson stated that the need for access roads would only be known once detailed engineering for any licensed route was completed. Mr. McRae went on to ask about whether the railroad would have the power to condemn property needed for any access roads. David Coburn, Steptoe & Johnson, pointed out that the railroad does not intend to use eminent domain to access any needed land; rather, it would negotiate with each landowner for the use of any private property.

Jeanie Alderson, Bones Brothers Ranch, stated that more openness from TRRC regarding the likely destination of future coal shipments would help the process.

Steve Vance requested information regarding sites or traditional cultural properties that were identified last year. Alisa Reynolds stated this information was shared with the tribes in Billings and mailed to them before that, but would ensure Mr. Vance gets copies.

Vicki Rutson summarized the action items from the teleconference. She said that OEA would send out a lightly edited PA for review. Participants were thanked for their time, energy, and input.