

**Tongue River Railroad Environmental Impact Statement**

**Docket No. FD 30186**

**National Historic Preservation Act, Section 106 Teleconference**

**May 12, 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**

Shannon Johnson	U.S. Army Corps of Engineers
Chris Jenkins	U.S. Army Corps of Engineers
Matt McCullor	U.S. Army Corps of Engineers
Amy Bontrager	U.S. Department of Agriculture

**800.2(b) Advisory Council on Historic Preservation**

**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**

James Walksalong	Northern Cheyenne
Andrew Wiley	Cheyenne & Arapaho
Steve Vance	Cheyenne River Sioux
Steve Brady	Northern Cheyenne

**800.2(c) (3) Representatives of Local Governments**

Lisa Axline	Montana Department of Natural Resources
Jean Riley	Montana Department of Transportation

**800.2(c) (4) Applicants for Federal assistance, permits, licenses, or other approvals**

David Coburn	Steptoe and Johnson, Attorney for Applicant
Dan Hadley	Mission Engineering, Consultant to Applicant
Scott Castleberry	BNSF
Barbara Ranf	BNSF
Matt Jones	BNSF
Derin Warren	BNSF
Doug Dorsey	Hansen Professional Services, Consultant to Applicant

**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**

Carrie La Seur	Representative for Colstrip Landowners
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**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. Introductions
2. Status of Environmental Impact Statement (EIS)
3. Status of field surveys
4. Discussion of 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 Programmatic Agreement (PA), specifically, the whereas clauses. Other attendees raised additional agenda items: Carrie La Seur, representing the Colstrip landowners, raised the issue of including the Colstrip landowners as a consulting party. Rick Starzak mentioned that Conrad Fisher, Northern Cheyenne, was unable to attend the meeting but requested that the identification process of significant sites be discussed.

After introductions, Ken Blodgett, OEA, gave an update on the National Environmental Policy Act (NEPA) process. The resource area chapters of the Draft Environmental Impact Statement (EIS) are in progress and cooperative agency consultation is ongoing. On May 5, 2014, OEA sent an information request to the applicant requesting further information to assist with analyses in the EIS. This can be viewed on the Tongue River Railroad EIS project website. There have been no new formal filings or Board decisions on this docket since the last Section 106 monthly meeting.

Ms. Rutson mentioned that the Board's goal was to make this EIS as readable as possible and have it complete by late summer. She then opened the floor for any questions about the EIS. Steve Brady, Northern Cheyenne, recommended that Mark Roundstone and Shanny Spang be contacted and kept informed. Ken Blodgett said that OEA had consulted with Ms. Spang and other environmental staff members in the past and OEA will consult with her and Mr. Roundstone again.

Carrie La Seur explained that the Colstrip landowners were concerned about not having input in updating the PA mitigation measures that would affect them. As such, these landowners are interested in being added as a consulting group. Cathy Nadals, OEA, and Ms. Rutson agreed.

Ms. Rutson mentioned that based on the information gathered from the consulting parties during this call, the Board should be able to circulate the draft whereas clauses shortly. She asked that everybody review the whereas clauses so that the consulting parties can discuss them on the next monthly Section 106 conference call.

Rick Starzak, ICF International, gave a brief update on the field surveys. The first ten-day survey period starts May 13, 2014. Steve Brady, Northern Cheyenne, was interested in knowing what areas were going to be covered during this survey period. Alisa Reynolds, ICF International, explained that the more southern portions of access will be the focus of the first survey period and the June surveys will be closer to Colstrip and Miles City. She also noted that this may change as the field surveys progress. Mr. Steve Vance, Cheyenne River Sioux, expressed concern that the Rosebud Sioux is the only Sioux tribe involved in this round of surveys. Andrew Wiley, Cheyenne & Arapaho, then voiced his interest in participating in the rotation beginning on June 2, 2014, if there is an open position for him.

Mr. Starzak explained that the current field surveys consist of a pedestrian walkover of the alternatives. The PA will include an identification plan that will provide detail of any additional survey work if an alternative is selected. Mr. Brady mentioned an issue concerning reservation boundaries due to the 1925 or 1926 Northern Cheyenne Allotment Act. Ms. Rutson said that OEA would review the issue.

Ms. Rutson brought up Conrad Fisher's concern that significant sites identified by tribal representatives were not treated with the same level of significance as archaeological sites determined eligible for listing in the National Register. Ms. Nadals noted that Traditional Cultural Properties (TCPs) were one type of property that the National Register identifies as historic properties eligible for listing on the National Register of Historic Places (National Register). However, other types of sites considered important to tribes may fall through the cracks as the National Register criteria were developed to assess historic buildings and structures, not tribal sites. Stan Wilmoth, Montana SHPO, said that the SHPO office would not dispute any sites that the tribes identified as significant. Mr. Starzak explained that confidentiality

was important in this process and that developing a strategy for tribes to agree on significance can be included in the identification plan of the PA.

Betsy Merritt asked if we were referring to Section 106 or the National Register and Vicki Rutson clarified that we were speaking to the National Register criteria. Mr. Brady voiced that differences in values would lead to differences in mitigation and he stressed that all values must be considered when mitigation measures are being determined. Mr. Starzak noted that input from tribes will be of critical importance when finding that balance and that these concerns can be addressed in the identification plan of the PA.

Mr. Starzak mentioned that the terminology for these historic properties is another issue that needs to be addressed in the PA. Ms. Nadals asked participants if the term “sites of significance” would be acceptable. Mr. Brady wishes to discuss this with other tribal members. Steve Vance, Cheyenne River, spoke about the term “places” being used instead of the term “property”. He also stated that the term should not necessarily stress religious and sacred significance. For the time being, Ms. Nadals proposed sites identified by tribes as significant but not necessarily considered eligible for listing in the National Register be called “sites of significance” but this term will simply be a placeholder and can be deliberated on after consulting with the tribes.

Ms. Rutson noted that, in regard to the whereas clauses of the PA, OEA’s plan is to lightly edit the 2011 PA clauses and send them out to consulting parties for review and feedback. One challenge is that the project has changed since 2011 and some clauses no longer apply. These will be altered to apply to the current project and some new clauses will also be drafted. The 2011 PA only looked at one alignment without including significant field or record surveying. This new PA will address all alternatives but will have conditions specific to each alternative to help guide the process should that alternative be approved. The Identification Plan will be included as an appendix.

Ms. Nadals stated that a draft of the whereas clauses would be sent out shortly and asked for those interested to please provide feedback on them. None of the teleconference participants objected to this plan. Ms. Nadals thanked everyone for taking the time to participate and contribute to this discussion.