

Tongue River Railroad Environmental Impact Statement

Docket No. FD 30186

National Historic Preservation Act, Section 106 Teleconference

June 9, 2014

DRAFT Teleconference 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
Matt McCullor	U.S. Army Corps of Engineers
Erica Jones	U.S. Department of Agriculture, Agricultural Research Station – Stoneville, MS
Mark Petersen	U.S. Department of Agriculture, Agricultural Research Station – Miles City, MT
Doug Melton	Bureau of Land Management – Miles City, MT

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

Steve Vance	Cheyenne River Sioux
Terry Clouthier	Standing Rock Sioux Tribe
Conrad Fisher	Northern Cheyenne Tribe
Steve Brady	Northern Cheyenne Tribe

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	Steptoe and Johnson, Attorney for Applicant
Scott Castleberry	BNSF
Derin Warren	BNSF
Doug Dorsey	Hansen Professional Services, Consultant to Applicant
Jamie Hamm	TranSystems, Consultant to Applicant
Dan Hadley	Mission Engineering, Consultant to Applicant

800.2(c) (5) Additional Consulting Parties

Betsy Merritt	National Trust for Historic Preservation
Amy Cole	National Trust for Historic Preservation
Mike Scott	Sierra Club
Carrie La Seur	Representative for Colstrip Landowners

800.2(d) The Public

Mark Fix	Landowner
Clint McRae	Landowner

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

Beth Kaeding	Northern Plains Resource Council
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ICF International, Third-Party Contractor to the Surface Transportation Board

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

Agenda:

1. Introductions
2. Status of Environmental Impact Statement
3. Discussion of whereas clauses in Programmatic Agreement
4. Status of field surveys

Rick Starzak of ICF International thanked all participants for joining and explained that this teleconference would focus on the whereas clauses of the Programmatic Agreement (PA). After introductions, Ken Blodgett of the Surface Transportation Board's (Board or STB) Office of Environmental Analysis (OEA) gave an update on the Draft Environmental Impact Statement (EIS). The resource area chapters of the Draft EIS are in various stages of production. Consultation with cooperating agencies is ongoing. On May 5, 2014, OEA sent an information request to the Applicant

requesting further information to support the analyses in the EIS. The Applicant responded on May 29, 2014. This can be viewed on the website for the Tongue River Railroad EIS and STB's Environmental Correspondence website. There have been no new formal filings or Board decisions on this docket since the last Section 106 monthly teleconference.

Mr. Starzak gave a brief overview of the contents of a PA, which contains four basic components: whereas clauses, stipulations, signatory pages, and appendices. OEA drafted four pages of whereas clauses and distributed it to all consulting parties prior to the teleconference.

Mike Scott of the Sierra Club, asked if landowners were interviewed as part of the record search conducted. Mr. Scott said this record search was equivalent to a Class I inventory. Alisa Reynolds (ICF) explained that the term Class I was not used but that this was a standard record search in which the team looked at any available local inventories and previous surveys; no landowners were contacted in the process.

Conrad Fisher of the Northern Cheyenne Tribe suggested that the wording of the whereas clause Mr. Scott was referring to be altered slightly. Ms. Reynolds proposed the whereas clause be clarified to say, "STB conducted a *standard* record search" and Mr. Fisher concurred. Ms. Rutson asked Stan Wilmoth, Montana SHPO, if he was comfortable with this wording. Mr. Wilmoth said that he was comfortable with the original wording but was not opposed to refining it. When this subject resurfaced later on, Ms. Nadals explained that there is not a standard record search or an advanced record search. There is simply one methodology for record searches and the word standard is not necessary. Ms. Rutson suggested that the term be included in the definition section of the PA instead of altering the whereas clause. Mr. Fisher agreed to this solution.

Mr. Starzak mentioned that the Identification Plan, which will be in the appendix of the PA, will describe the record search process in more detail as well. Landowner Clint McRae asked when the Identification Plan would be available to consulting parties. Mr. Starzak responded that a concrete timeframe has not been determined for the Identification Plan. Mr. McRae expressed confusion, stating that the Identification Plan has a bearing on the ongoing process. Ms. Rutson explained that, as suggested by the Advisory Council on Historic Properties, OEA would finalize the whereas clauses, move onto the stipulations, and from there progress to the appendices where the Identification Plan will be located.

Mr. McRae mentioned that there may or may not be records on all sites within the 2-mile wide area of the record search. Ms. Rutson explained that it was a record search of known resources or previously recorded sites and that this wording will be added to the whereas clause. Mark Fix, landowner, said that this was simply a literature search and inquired about whether the team intended on talking to tribes about other known sites. Ms. Nadals replied that the tribes were not consulted for the record search but that the tribal representatives participating in the field surveys bring other known sites to the Board's attention at that point. More investigation, including talking to tribal elders, would occur if the Board authorized an alternative.

Mr. McRae mentioned that the 2-mile wide section that was included in the record search was a much larger area than the 200-foot area outside the right-of-way that is being surveyed on the ground. Ms.

Nadals explained that the record search looks at previously recorded sites beyond the right-of-way, but that the field work is more intensive and will therefore be a more restricted analysis. Ms. Reynolds added that the 2-mile record search helps to give context and add breadth to what the team is looking for during the field surveys.

Najah Duvall-Gabriel, ACHP, said that generally, the preferred alternative is chosen prior to engaging 106 consulting parties. Due to the NEPA process and the Section 106 process being coordinated simultaneously, some of the whereas clauses are misleading. It would help if the wording clarified that the Section 106 four-step process was started at the same time as the NEPA process. Ms. Duvall-Gabriel will determine which whereas clauses are confusing, work on revising the language, and share her suggestions with the Board.

Mr. Starzak noted that the last three whereas clauses on the second page were updated to include the tribes and consulting parties involved in the Section 106 process. Betsy Merritt, National Trust for Historic Preservation, noted that two of the whereas clauses say “are concurring parties” and the wording should be changed to “are invited to be concurring parties” since some may choose not to participate.

Ms. Duvall-Gabriel mentioned that BNSF is not listed as a consulting party and wondered if they should be identified since they are, in fact, participating. Ms. Rutson said that BNSF is one of three owners of TRRC. When Ms. Duvall-Gabriel asked if BNSF was representing TRRC in the 106 consulting process, David Coburn (Steptoe and Johnson) explained that the other two owners are monitoring the process but do not need to be included as consulting parties to the PA. For clarity, TRRC will be included in the definitions.

Mr. Starzak mentioned that another change from the 2011 whereas clauses can be found in the one regarding Wolf Mountain Battlefield (second clause on the third page). The Decker alternative was altered to avoid this site, because it was declared a National Historic Landmark. He went on to explain that while the last few clauses on the third page describe what is currently happening and what has already occurred, the Identification Plan will indicate what will be completed if the Board approves an alternative.

Mr. McRae asked for a more detailed explanation of the whereas clause identifying the survey area as the right-of-way along with a 200-foot buffer on either side of each alternative. Mr. Starzak and Ms. Reynolds clarified that the right-of-way is not uniform but regardless of how wide the right-of-way is, at any point along the alternative the survey area will contain a 200-foot buffer on each side.

Mr. Clouthier asked if the terms “phase I” and “phase II” could be included in the definitions because people in the project area use “class” instead of “phase”. Ms. Nadals assured Mr. Clouthier that these terms would be defined clearly in the definition section of the PA. Mr. Fisher asked why the term “class” was not used. Ms. Nadals explained that “class” was used originally but the definitions did not fit with the process and terminology BLM was using as well as “phase” did. As long as the terms are clearly defined there should not be any confusion. Mr. Scott suggested that changing the term may make things smoother. Ms. Nadals and Ms. Reynolds explained that using the term “class” caused confusion

and was harder to follow because the definitions did not work with the ongoing or completed processes. Ms. Nadals asked to postpone the decision until after the definitions are drafted, at which point she believes the phase definitions will be clear. Ms. Rutson mentioned that if anybody is still uncomfortable with that wording they can make it known at that time.

Ms. Merritt pointed out another edit, indicating that the “49 U.S.C. 470 et seq.” citation for Section 4(f) on page three should be “49 U.S.C 303 et seq.”. Mr. Fisher mentioned that in the third whereas clause on the first page, it should read “... the Moon Creek Alternative, the Decker Alternative, and the No Action Alternative” instead of “... the Moon Creek Alternative, and the Decker Alternative, as well as the No Action Alternative”. Mr. Fisher felt that this wording diminished the No Action Alternative when it should be considered in the same category as the other alternatives. Ms. Rutson agreed and said that the change would be made.

Mr. Fix noted the second whereas clause on the second page and asked about the wording “mitigate adverse effects”. He asked about what happens when the alternative cannot avoid a site. Mr. Starzak mentioned that the wording is generally “avoid, minimize, or mitigate”. Ms. Duvall-Gabriel agreed and added that the PA should provide procedures to deal with all three. She suggested revising the previous clause (first clause on the second page) to clarify that historic properties will be identified at a later date if an alternative is approved and that the PA was developed to defer part of the identification process.

Ms. Merritt advised that the simplest way to address this is to change the wording of that whereas clause to say “avoid, minimize, or mitigate”. Steve Vance, Cheyenne River Sioux, agreed with this revised phrase but was concerned about the steps taken if mitigation could not occur. Mr. Starzak explained that negotiation and consultation would begin again at that point. The stipulations will carefully look at how to consult with tribes and the Montana SHPO to develop the best approaches and make those decisions once sites have been fully identified and evaluated.

Mr. McRae asked if the Section 106 process would start again if the route needed to be moved to avoid a site. Would the team need to survey a wider area if this occurred? Ms. Rutson stated that when the stipulations and identification plan are being drafted, OEA will need to develop a process for instances when moving the right-of-way to avoid a site exceeds the 400-foot buffer area.

Mr. Fisher asked for a better explanation of the clause about Wolf Mountain Battlefield being “indirectly impacted”. Ms. Nadals explained that the Decker alternative was revised to completely avoid the battlefield, going around it to the east. Mr. Starzak mentioned that the other alternatives are not close enough to the battlefield to be included in that whereas clause. Ms. Nadals and Mr. Fisher agreed that it would be helpful to have a reference map of the alternatives when reviewing these whereas clauses.

Ms. Reynolds gave a brief field work update, explaining that the surveys were ongoing. The exact number of resources found has not yet been determined as the raw data has not been analyzed but the surveys are going well and will be completed by June 13, 2014.

Mr. McRae asked Ms. Reynolds when the site reports would be available to landowners. Ms. Reynolds explained that more formal reports will be given to the SHPO and the raw data will have to be cleaned

up before being shared with landowners. Mr. McRae asked for an estimated time and Ms. Rutson responded with a timeframe of 6 weeks to 1 month. Ms. Reynolds added that this 6 week estimate will just be archeological data, nothing tribal specific. Within those 6 weeks, after surveys are complete, a brief, record will be provided. Ms. Nadals stated that this estimated timeframe indicates the data will be available on July 21, 2014. Mr. McRae explained that one of the reasons the landowners want to know the survey results is to be able to construct fencing and make upgrades without risking disturbing unknown sites.

Mr. Fisher mentioned that he and Steve Brady (Northern Cheyenne Tribe) were wondering if any survey work had been done with the proposed Otter Creek Mine or if there were burial sites found on Green Leaf. Ms. Rutson explained that the Board has tried to get information from the Otter Creek Mine developer but has not succeeded as the information is not publically available.

After Ms. Rutson gave a brief overview of the edits made to the whereas clauses during the teleconference, she and Mr. Starzak asked for any additional comments to be emailed no later than June 16, 2014, which is the day that drafting of the stipulations will begin. The next Section 106 teleconference is scheduled for July 14, 2014 and the discussion will focus on the stipulations. Mr. Starzak expressed his gratitude to the participants, declaring that this type of constructive discussion is exactly what he was hoping for. Ms. Rutson thanked the participants and ended the teleconference.