

Tongue River Railroad Environmental Impact Statement

Docket No. FD 30186

National Historic Preservation Act, Section 106 Teleconference

October 20, 2014

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
Catherine Nadals	Office of Environmental Analysis
Ken Blodgett	Office of Environmental Analysis

Other Federal Agencies

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

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

800.2(c) (2) (ii) Indian Tribes, off Tribal Lands

Conrad Fisher	Northern Cheyenne Tribe
Lana Gravatt	Yankton Sioux Tribe
Michael Black Bull	Fort Belknap Indian Community
James Walks Along	Northern Cheyenne Tribe

800.2(c) (3) Representatives of Local Governments

Lisa Axline	Montana Department of Natural Resources and Conservation
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
Barbara Ranf	BNSF

800.2(c) (5) Additional Consulting Parties

Betsy Merritt	National Trust for Historic Preservation
Mike Scott	Sierra Club
Carrie La Seur	Representative for Colstrip Landowners
Alexis Bonogofsky	National Wildlife Federation

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

Clint McRae	Rocker Six Cattle Company Landowner
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ICF International, Third-Party Contractor to the Surface Transportation Board

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

Agenda:

1. Introductions
2. Update on NEPA Process: Ken Blodgett
3. Working Group Summary: Vicki Rutson
4. Stipulations: Rick Starzak
5. Field Work Results: ICF Staff

Vicki Rutson began the call by announcing the passing of Steve Brady, Chairman of the Cultural Committee for the Northern Cheyenne Tribe. Ms. Ruston offered her condolences and prayers to his friends and family and to the Northern Cheyenne tribal members on the call.

Ken Blodgett gave an update on the preparation of the Draft Environmental Impact Statement (EIS). He stated that the resource area chapters of the Draft EIS were in various stages of production and review, and consultation with cooperating agencies was ongoing. He said that three filings had been submitted since the last call and can be viewed on the Board's website at:

[http://www.stb.dot.gov/FILINGS/all.nsf/\(search-199.223.21.100-12930\)?OpenView&Count=5000](http://www.stb.dot.gov/FILINGS/all.nsf/(search-199.223.21.100-12930)?OpenView&Count=5000). Two Board decisions regarding a motion filed by Northern Plains Resource Council (NPRC) and Tongue River Railroad Company's request for an extension of time can also be viewed on the Board's website at: [http://www.stb.dot.gov/decisions/readingroom.nsf/\(search-199.223.21.100-81229\)?OpenView&Count=5000](http://www.stb.dot.gov/decisions/readingroom.nsf/(search-199.223.21.100-81229)?OpenView&Count=5000).

Rick Starzak stated that OEA received a letter from the Advisory Council on Historic Preservation (ACHP) requesting that two additional stipulations be added to define the various roles and responsibilities of consulting agencies and to explain its process for reviewing alternatives. (These were added as

Stipulations I and II.) The ACHP had also requested that the PA better explain the Area of Potential Effects (APE) and the process for identification and evaluation. OEA revised Stipulations III and IV to address the comments.

Ms. Rutson said she had sensed some confusion and frustration among callers and feared that all were not comfortable offering their views. She noted that OEA had received very few comments in response to the PA (either during the calls or in writing). In an effort to move the PA process forward she explained her decision to create a small group of consulting parties to revise the PA. She had felt that a small group could more easily focus on the PA. The group has met twice and OEA would be providing the drafts of the PA to the other consulting parties prior to the monthly calls. Their most recent draft of the PA was attached to the call invitation.

Ms. Rutson asked if it would be helpful to provide an overview of the OEA process for addressing consulting party comments. Carrie La Seur, who represents the Colstrip Landowners group, said that she had submitted written comments to OEA but had not received a response. Ms. Rutson explained that OEA will not be replying to commenters individually; however, the comments would be posted on the Tongue River EIS website and the Board's environmental correspondence tracking (ECT).

Lana Gravatt expressed concern that PA comments were apparently not being addressed by OEA. Ms. Rutson assured Ms. Gravatt that OEA had made numerous changes to the draft PA based on comments from the consulting parties. Ms. Duvall-Gabriel stated that OEA should address the PA comments as the PA was being drafted. After some discussion, Ms. Ruston agreed and stated that OEA would develop a tracking system for comments on the PA including detailing how the comments were being addressed. Ms. Duvall-Gabriel said that she would send OEA examples of how other agencies have managed comments and responses during this process. Ms. Rutson said the examples would be helpful.

Mr. Starzak stated that all fieldwork had been completed. OEA is preparing a letter to the SHPO with the findings and will distribute the results to the consulting parties.

Mr. McRae requested site reports for the properties where entrance agreements were signed. Mr. Starzak said that the site forms were in the process of being completed. Ms. Reynolds added that after OEA completes its review, the SHPO will evaluate them. She offered no specific time frame for their completion and distribution to the landowners.

Mr. McRae asked how burial sites previously identified by landowners were addressed by the survey team. Ms. Reynolds said that site reports were not made for identified sites that fell beyond the Area of Potential Effect (APE). She explained that the survey area included a 200-foot wide buffer zone beyond the right-of-way. She said this was to ensure that areas beyond the actual right-of-way would be surveyed.

Mr. Scott asked if burial sites that were outside the APE would be recorded. Ms. Nadals explained that surveys conducted for the purpose of comparing alternatives have to be the same so that there can be an equal comparison of impacts. She said that the PA would stipulate precisely how burial sites would

be addressed for any alternative approved by the Board. This process would be more comprehensive and would be agreed upon by the consulting parties.

Conrad Fisher said that he and James Walks Along intended to visit identified burial sites to confirm their locations. He said he believed some of the burials were actually within the APE that had been defined for the alternatives analysis.

Ms. Gravatt asked about the following whereas clause in the PA document that was attached to the meeting invitation:

WHEREAS, the effects on historic properties and tribal sites of significance cannot be fully determined prior to any approval of the TRRC project by the STB, and therefore a programmatic agreement (PA) is appropriate pursuant to the Section 106 regulations at 36 CFR § 800.14(b)(1)(ii); and,

Ms. Gravatt said that the clause suggested that the impacts to historic properties and tribal sites of significance would not be determined prior to the Board issuing a decision. Ms. Rutson said that not all impacts would be determined and thus a PA was needed to outline any future steps. She said the need to complete a PA prior to issuing a Board decision was carefully explained in a "PA Justification Statement" previously distributed to consulting parties.

Ms. Duvall-Gabriel noted that once STB makes a decision and concludes their NEPA review, the executed PA would govern the ongoing consultation and lay out the process to be followed for the selected alternative.

Mr. Fisher suggested the above whereas clause be modified to say, "prior to any decision" rather than, "prior to any approval." (Note that the language, "*When effects on historic properties cannot be fully determined prior to approval of an undertaking*" comes directly from 36 CFR § 800.14(b)(1)(ii) under, Use of Programmatic Agreements)

Mr. McRae stated that the Colstrip Landowners are concerned that the word, "cannot" indicates that it is impossible to determine the effect on historic properties though almost 100% of the Colstrip Alternative Landowners have granted access for surveys. Ms. Rutson and Mr. Summerville both explained that, while the access granted by the Colstrip Landowners was greatly appreciated, OEA did not receive full access to the other alternatives and all alternatives must be treated equally.

Ms. Nadals spoke in response to a question raised by Mr. Scott who had sent the STB an email with a 2011 letter from Forrest Mars indicating that the railroad did not intend to build the Decker Alternative, if approved. He expressed confusion about why an alternative was being considered when the Tongue River Railroad Company had no intention of building it. Ms. Rutson explained that, while Tongue River Railroad Company may not want to build the Decker Alternative, the Board is responsible for analyzing a reasonable range of alternatives including the Decker Alternative. She said that surveys have been completed and the Decker Alternative will be included in the Draft EIS as one of the reasonable range of alternatives.

David Coburn explained that, even though Colstrip is the Applicant's preferred alternative, they are not opposed to the Board reviewing other alternatives.

Ms. Duvall-Gabriel said OEA should clarify how it is coordinating the steps outlined in the PA with those in the Section 106 process. Mr. Fisher asked Ms. Duvall-Gabriel if the ACHP had submitted comments to OEA and if they had been distributed to the other consulting parties. Ms. Nadals stated that the ACHP had submitted letters on September 3 and 8, 2014 and that the second letter had been shared by the ACHP with all the consulting parties just prior to last month's Section 106 conference call. Mr. Fisher stated that he did not have a record of the comments. Ms. Nadals said the letters had been posted to the Tongue River website and the Board's ECT website.

Mr. Starzak informed the group that the next Section 106 teleconference would be held on November 10, 2014. Ms. Rutson thanked the participants and ended the teleconference.