

1 I call the state of the TCPs, that can go  
2 with any ethno group. It's not specific to Lakotas.  
3 It could be towards Asian-Americans, Hispanic-  
4 Americans. It's open when you consider it a TCP. But  
5 I think the big difference is the culture and how it's  
6 conducted. That's the biggest difference.

7 CHAIRMAN FROEHLICH: Did the Sioux Tribe  
8 or Lakota come back with a counter proposal to say the  
9 SRI proposal doesn't capture our concerns. To do it  
10 properly, it would take tribal elders, X number, so  
11 many weeks, at such an interval, or a different  
12 approach? Did the tribes come back with a proposal  
13 saying here is what it would take to do it to our  
14 satisfaction and to be a meaningful TCP study?

15 MR. CATCHESENEMY: From what I recall  
16 during that time, and I want to make the record clear,  
17 that my employment with the tribe as a natural  
18 resource director at the time ended in March of 2012.  
19 So from that point until February of this year, 2014,  
20 I was not an employee. So I'm not privy to a lot of  
21 the intricacies that occurred probably via emails or  
22 teleconferences amongst the tribes on the specifics of  
23 the scope of works being resubmitted.

24 CHAIRMAN FROEHLICH: And just so I'm  
25 clear, Mr. Mesteth preceded you as the tribal officer

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1 and then someone who succeeded you after this point in  
2 time when the proposals were sought as an alternative  
3 or as an enhancement to what had already been done?

4 MR. CATCHESEENEMY: We have always, since  
5 our establishment in September of 2009, that's when we  
6 got our Tribal Historic Preservation Office  
7 designation. So we're a fairly new office as far as  
8 NHPA functions that we assume from the state.

9 Mr. Mesteth has been the Tribal Historical  
10 Preservation officer, if I recall, since late 2010  
11 until just recently and then I came in in February.  
12 However, he's not a full-time employee. But we did  
13 have one staff person in the office which is titled  
14 project review officer and that person is no longer  
15 employed there, but she had the ins on the email  
16 communications with the scopes of work.

17 CHAIRMAN FROEHLICH: Okay. To the extent  
18 you remember, the response to the solicitation for  
19 statements of work from the tribes was what? Would  
20 you describe that?

21 MS. YILMA: Yes, so they did come up with  
22 a proposal. The proposal was to have a contractor of  
23 their choice to do the survey and specified the number  
24 of days that it would take them to do it, how much it  
25 would cost, and how long it would take to develop the

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1 report afterwards.

2 CHAIRMAN FROEHLICH: Is that the Kadrmas  
3 Lee Jackson proposal?

4 MS. YILMA: No.

5 CHAIRMAN FROEHLICH: No, okay.

6 MS. YILMA: It was a proposal by the Sioux  
7 Tribe and they recommended Tim Mentz's company. I  
8 don't remember the name of the company, another  
9 tribal entity who does field survey to conduct a field  
10 survey for them. Makoche -- how do you say it?

11 MS. JAMERSON: Makoche Wowapi/Mentz-Wilson  
12 Consultants.

13 MS. YILMA: That was the consultant's name  
14 that they had provided for them to do the TCP survey  
15 on their behalf.

16 CHAIRMAN FROEHLICH: So the tribe did  
17 submit a proposal, whatever, to have a tribal company,  
18 entity, whatever, conduct the kind of survey that they  
19 believed would adequately address the cultural and  
20 historical issues in the area?

21 MS. YILMA: That is correct and I just  
22 want to again clarify that this is the Sioux Tribes  
23 that provided the statement of work. Remember, we had  
24 more than the Sioux Tribes that we were consulting  
25 with. And in the proposal, the proposal that came

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1 back, if I remember correctly, had a significant  
2 amount of time between when they conducted the field  
3 survey and provided us with the information that we  
4 needed for our NEPA and Section 106 compliance.

5 So looking through those statements of  
6 work, our schedule, because by this time we had  
7 already been consulting with the tribes for close to  
8 two years and we haven't agreed on an approach to do  
9 the TCP survey to gather the information we needed for  
10 us to comply with the cultural resources section of  
11 the NEPA and NHPA.

12 And so we looked through the proposal and  
13 compared this with other proposals that other federal  
14 agencies have done for similar type of activities and  
15 determined that the proposal that was submitted by the  
16 tribes' contractor was significantly larger in dollar  
17 amount and also duration than others that we have  
18 seen. And for that reason we -- and significantly  
19 varied from what Powertech provided. For that reason,  
20 we felt it was prudent for us to find another way of  
21 conducting the tribal survey that we needed in order  
22 to make impact assessment.

23 JUDGE COLE: Do you remember the time  
24 involved in their proposal?

25 MS. YILMA: It was over a couple of months

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1 to do the identification and I want to say close to  
2 six months to do the reporting afterwards. I can  
3 check that again and provide that information as well.

4 CHAIRMAN FROEHLICH: Okay, and what we're  
5 comparing here is the proposal from SRI on behalf of  
6 Powertech to the Makoche Wowapi studies. Is that  
7 correct, Ms. Jamerson?

8 MS. YILMA: That's correct.

9 MS. JAMERSON: Yes.

10 CHAIRMAN FROEHLICH: Okay, so that's what  
11 you were looking at. And just so I have the order of  
12 magnitude, the time interval to follow up on Judge  
13 Cole's question for the SRI proposal was how much --  
14 what was the time interval from when the work would  
15 start until you had the reports that you needed for  
16 your NEPA and historic preservation. What was the  
17 time interval for --

18 MS. YILMA: Lynne, do you remember those  
19 specific dates? I don't remember, but it was  
20 significantly larger. It was about six months, if I  
21 recall. By the end of six months, we would have  
22 gotten a report, whereas, we were looking at magnitude  
23 of a month that we would identify historic properties  
24 and do our assessment.

25 CHAIRMAN FROEHLICH: All right, another

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1 parameter, I guess, that goes into this is the cost of  
2 the two proposals.

3 MS. YILMA: That's correct.

4 CHAIRMAN FROEHLICH: Can you compare,  
5 please, for me the cost of the Makoche Wowapi proposal  
6 to the SRI proposal?

7 DR. SEBASTIAN: It was a factor of ten  
8 higher. It was ten times ours.

9 MS. YILMA: The tribes' proposal was close  
10 to \$1 million.

11 CHAIRMAN FROEHLICH: Which one?

12 DR. SEBASTIAN: That was just for the  
13 small part.

14 MS. YILMA: The tribes' proposal was close  
15 to \$1 million. And Powertech's proposal was close to  
16 \$110,000 or \$120,000.

17 CHAIRMAN FROEHLICH: Just to keep this in  
18 perspective for me, the Augustana report, what was  
19 cost and the duration of that study?

20 MS. YILMA: Can I just -- I don't know  
21 those answers. Powertech would have to answer to that  
22 because the Augustana College survey was done before  
23 the application was submitted. But before I go there,  
24 I want to clarify that the statement of work that we  
25 were developing between the tribes, ourselves and SRI

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1 and Powertech was only supposed to be for the areas of  
2 direct impact which is the 250,000 acres as opposed to  
3 the 10,000 acres.

4 CHAIRMAN FROEHLICH: At this stage, you  
5 were talking about the smaller area --

6 MS. YILMA: The smaller area.

7 CHAIRMAN FROEHLICH: And then  
8 subsequently, as I recall, the proposal was to expand  
9 the survey area.

10 MS. YILMA: That's correct. So for the  
11 Augustana College it was 100 percent full survey that  
12 was conducted. So the whole entire 10,000 acres. So  
13 that is also another variation between the two.

14 CHAIRMAN FROEHLICH: Okay. Dr. Hannus, do  
15 you have that information?

16 DR. HANNUS: I knew you were going to ask  
17 that question. I do not. In other words, what  
18 happens here is that we did the Level 3 and then there  
19 were two more years of work that was done. This  
20 exhibit behind me is the 13 volumes that we produced  
21 on the work that we did. So I can get those figures  
22 for you, but I just don't have them. I mean this is  
23 a mixed bag because we were doing subsurface testing  
24 in the intervening years.

25 DR. REDMOND: Judge?

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1 CHAIRMAN FROEHLICH: Yes, Dr. Redmond?

2 DR. REDMOND: Can I clear up something on  
3 the TCP? It's an analogy.

4 CHAIRMAN FROEHLICH: Okay, sure.

5 DR. REDMOND: When I was doing TCPs for  
6 the Forest Service, I was working with some elders and  
7 one of them I had taken up to a site and his comment  
8 was very simple. He said, "Okay, fine. You've got a  
9 site. Where is the rest of it?" And his meaning was  
10 you've got where the people lived. Now where did they  
11 do their living? Where did they get -- where did the  
12 women collect their food? Where did the men collect  
13 their materials that they lived with? Where did they  
14 process their food? Where did they do their  
15 ceremonies? Where did they do these things? Those  
16 are the TCPs.

17 JUDGE COLE: Where did they bury them?

18 DR. REDMOND: Where did they bury them?

19 CHAIRMAN FROEHLICH: Dr. Redmond, you have  
20 conducted these TCP studies for other agencies?

21 DR. REDMOND: Yes.

22 CHAIRMAN FROEHLICH: You have.

23 DR. REDMOND: And that is a vast area  
24 around a simple site.

25 CHAIRMAN FROEHLICH: And your cost to

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1 prepare such a study, would that be closer to the SRI  
2 proposal or to the --

3 DR. REDMOND: Closer to the tribes'.

4 CHAIRMAN FROEHLICH: To the tribes'  
5 proposal.

6 DR. REDMOND: Yes. And that's the  
7 problem. It's an order of magnitude over looking a  
8 simple site. And that's the problem. It balloons  
9 because you're not simply looking at a spot. You're  
10 looking at a living. You're looking at a living  
11 environment.

12 Like my brother Wilmer said, "This is a  
13 living environment. It's across the hills."

14 CHAIRMAN FROEHLICH: Thank you. Ms.  
15 Yilma, did you want --

16 MS. YILMA: Yes, I wanted to -- first of  
17 all, I wanted to clarify what we had said originally.  
18 There were six tribes at the initial face-to-face  
19 meeting and I do have the names of those tribes. It's  
20 Ogala Sioux, Standing Rock Sioux, Flandreau Santee  
21 Sioux, Sisseton Wahpeton, Cheyenne River Sioux and  
22 Rosebud Sioux.

23 CHAIRMAN FROEHLICH: And this was the  
24 meeting where the discussion was held about an  
25 expanded or subsequent survey that would take into

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1 consideration TCP type of issues?

2 MS. YILMA: That's correct. And then to  
3 follow up with the costs analogies, we do have NRC  
4 Exhibit NRC-071 which is a letter from State  
5 Department Keystone Pipeline Project and where they  
6 provided various tribal entities to come out and  
7 identify a TCP survey as an open site approach without  
8 specifically doing a restrictive methodology for about  
9 \$100,000.

10 CHAIRMAN FROEHLICH: Thank you. I know  
11 it's slightly after noon. Dr. Cole also reminded me  
12 of the time. So I think this might be a convenient  
13 time for us to take a lunch, our luncheon break after  
14 which we will resume with Panel 1. May I suggest we  
15 take about an hour and 10 minutes and resume here at  
16 1:15. We'll pick it up from there.

17 MR. PARSONS: Your Honor, if I may  
18 briefly, Jeff Parsons over here. Just so the parties  
19 can plan a little bit, would the Board have an idea of  
20 whether we're likely to get into the next panel today?  
21 I don't want to put you on the spot, but it might help  
22 for the parties to do some planning in that regard.

23 CHAIRMAN FROEHLICH: I think we'll have  
24 questions for most of the afternoon for Panel 1, I  
25 believe, if I factor in time for any follow up from

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