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Response to NRC Staff's Request for Input on
a Survey Methodology

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING TO DISCUSS OGLALA SIOUX TRIBE'S
RESPONSE TO NRC STAFF'S REQUEST FOR INPUT ON A
SURVEY METHODOLOGY

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THURSDAY,

JULY 8, 2021

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The meeting convened via Videoconference,
at 11:00 a.m. EDT, Diana Diaz-Toro, Organizer,
presiding.

PRESENT:

DIANA DIAZ-TORO, Project Manager, NMSS/REFS/ERMB,
Organizer

LORRAINE J. BAER, OGC/GCHA/AGCMLE

THOMAS BRINGS, Tribal Historic Preservation Officer,
Oglala Sioux Tribe

TIM MENTZ, SR., Standing Rock Sioux Tribe

ANDREW B. REID, Counsel for the Oglala Sioux Tribe

JERRY D. SPANGLER, Colorado Plateau Archaeological
Alliance, Consultant to the Nuclear Regulatory
Commission

JEAN A. TREFETHEN, Project Manager, NMSS/REFS/ERMB

P R O C E E D I N G S

11:16 a.m.

1
2
3 MS. DIAZ-TORO: So the first thing, yeah,
4 I already welcomed everyone. But I would like to,
5 because this is being recorded and transcribed, I
6 would like to start with the introductions. And we
7 can start with the Oglala Sioux Tribe, Mr. Brings, Mr.
8 Reid, and Mr. Mentz.

9 MR. REID: Tom, why don't you go ahead.

10 MR. BRINGS: Okay. My name's Thomas
11 Brings, I am the Tribal Historic Preservation Officer
12 for the Oglala Sioux Tribe.

13 MR. REID: Tim.

14 MR. MENTZ: Yeah, my name is Tim Mentz,
15 Sr., a member of the Standing Rock Sioux Tribe working
16 with the Oglala Sioux Tribe.

17 MR. REID: And I'm Andrew Reid, I'm
18 Counsel on the Crow Butte litigation for the Oglala
19 Sioux Tribe.

20 MS. DIAZ-TORO: Thank you, everyone, and
21 welcome. And from the Nuclear Regulatory Commission,
22 the NRC, we have -- my name is Diana Diaz-Toro, one of
23 the project managers for this project, the
24 identification of sites of significance to the Oglala
25 Sioux Tribe that could impacted by the license renewal

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1 of the Crow Butte and in situ uranium recovery
2 facility in Crawford, or near Crawford, Nebraska.
3 Thank you.

4 MS. TREFETHEN: I'm Jean Trefethen, I'm
5 also a project manager from the NRC.

6 MR. SPANGLER: I'm Jerry Spangler, I'm the
7 Cultural Resources Contractor to the NRC.

8 MS. BEAR: And good morning, I'm Lorraine
9 Bear, I'm Counsel for the NRC staff in this
10 proceeding.

11 MS. DIAZ-TORO: Thank you, everyone. So
12 first I want to thank the Oglala Sioux Tribe for --
13 and Mr. Tim Mentz for providing its response to the
14 NRC staff's request for input on elements that the NRC
15 staff should consider when developing the survey
16 methodology to identify sites of significance to the
17 Oglala Sioux Tribe.

18 We have reviewed the input that you have
19 provided and have a number of clarifying questions
20 regarding the Tribe's response. We are considering
21 the Tribe's response and input as we develop our
22 survey methodology. And it's for that reason that we
23 scheduled this meeting. The purpose of this meeting
24 is to discuss those we transmitted, those clarifying
25 questions that the NRC staff transmitted last week

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1 with the goal of better understanding your input.

2 As I mentioned, this meeting is being
3 recorded and it's being transcribed. Because the
4 purpose of the meeting is to get clarification on the
5 Tribe's input, we do not believe that there would any
6 sensitive information shared during this meeting.
7 However, the plan is to keep the transcript of this
8 meeting as non-public -- as not publicly available
9 until the Tribe has had the opportunity to review it.

10 Once that has been completed, if there was
11 information that was sensitive that should not be made
12 public, we ask the Tribe to identify that. And then
13 that information can be redacted. And the final
14 transcript of the meeting would serve as the meeting
15 summary and would be publicly available.

16 So I think with that, I think we should
17 just get to the discussions. And we developed a
18 number of questions. They have been, for lack of a
19 better word, consolidated into six different topics.
20 And the first topic is related to the meaning of the
21 word intangible, Mr. Mentz, and we will be -- we will
22 be looking at the methodology that was provided.

23 And so under Phase 2, and I apologize
24 because I thought I had the methodology open and I
25 don't have it open. So if you give me like three

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1 minutes, I can -- or two minutes, I can pull it up.

2 (Pause.)

3 MS. DIAZ-TORO: All right, so where did it
4 open? Oh here we go. So under Phase 2, in the
5 methodology section of the input under Phase 2,
6 there's a description that, and I'm quoting the
7 assessment of the intangible interest of the Lakota
8 Oglala Sioux Tribe, page 4 of this -- of the
9 methodology.

10 And so we were wondering if you could help
11 us understand or better understand what it means when
12 you talk about an intangible interest as used here
13 throughout the document.

14 MR. REID: Okay, I'll start. If you don't
15 mind, Mr. Mentz, I'll start this. Because there's
16 both a legal definition as well as a scientific one.
17 And I'll address what we -- what the Tribe's position
18 is on the legal one, and then Mr. Mentz and Mr. Brings
19 can describe the scientific one, which I guess would
20 be called a scientific one.

21 And it's the Tribe's position that under
22 NEPA, the NRC staff is required in the preparation of
23 its Supplemental EIA, and this is seen in its
24 decisions by the NRC Board and the Commission as well,
25 that NEPA is -- has a slightly different approach, and

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1 substantively different approach to the preparation
2 and the consideration of the interests of the people
3 that are affected by the activities that are being
4 licensed by the NRC.

5 We consider this to basically be a
6 expansion or a new area of how these interests are
7 considered within these kind of projects that affect
8 native people. And we're excited, I should say, that
9 at least to have the opportunity to, from our position
10 once and for all, be able to raise certain issues that
11 have -- that were not really within the scope of a
12 National Historical Preservation Act, Section 106,
13 survey.

14 And I think that was made clear within the
15 -- within both opinions. And the opinions themselves
16 referred to both tangible and intangible data. So I'm
17 giving you the Tribe's position on what should be
18 included in the survey methodology as a matter of law
19 under the National Historic Preservation Act, as well
20 as under NEAP, the National Environmental Policy Act,
21 in considering the interests of the affected parties.

22 So it's our position that, and I take this
23 directly from the opinions of both the Board and that
24 were -- the opinion of the Board that was affirmed by
25 the Commission, is that the so-called intangible

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1 interests that we're talking about are interests that
2 don't fall within a Section 106 survey.

3 It's not something you can physically pick
4 up, it's not tangible, it's not a flint knap or a
5 arrow point or a bone from a grave site. It's not
6 anything like that. It would be -- although they're
7 related. They're related, and I think Mr. Mentz
8 talked about this during the last phone call that we
9 had with the Commission is how they can be related.

10 But they were no longer -- they were
11 previously not considered within the -- within the
12 earlier surveys. So it's our -- we take a broad view
13 of intangible, particularly in regards to native
14 people because of their worldview.

15 They have a worldview that's distinctive
16 and different from that of a European and a Western
17 worldview that's dominant within the United States.
18 And that it's the native worldview that we're talking
19 about that has to be respected here.

20 So there are basically three areas that
21 we've identified in our comments, and I think that
22 they're reflected in the past proceedings. And those
23 are historical, cultural, and spiritual.

24 And by the historical, intangible
25 interests, those would be the interests -- and they're

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1 included somewhat in a Section 106 survey and a
2 description of the Environmental Assessment, and
3 that's the history, doing a review of our history, a
4 documentation and review of the area that's being
5 affected by the licensing.

6 The difference here between what's been
7 done in the past and what's -- what we're proposing
8 being done now with this proposal that was submitted
9 by the Tribe is that the history, the historical
10 survey not be limited to published materials. But
11 that it be recognized that native societies are
12 generally oral and verbal.

13 And that they -- they're not a
14 traditionally a written -- they don't rely on books
15 and written documents to a large extent. And
16 therefore in order to do a proper survey of native
17 interests that are affected, which is required by
18 NEPA, it requires a significant amount of oral
19 interviews in order to discover the historical
20 interests of the affected people to the area.

21 And so that's, you'll see that then in the
22 proposal, is the person conducting the survey would
23 then spend a significant amount of time interviewing
24 those within the native community that have knowledge
25 of the area that is likely, or I would say is more

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1 than likely not to be included within the historical
2 documents that are written.

3 So that's the historical part, and you'll
4 see that there's a provision there. Mr. Mentz is
5 employed to do this, for him to make trips down or to
6 have other people that he employees with him to make
7 trips down to speak to native people.

8 And that that includes, as part of that
9 process because of the nature of how native culture,
10 that a lot of that might have to be conducted within
11 the language of the native people that are affected,
12 in this case Lakota and Dakota. And so you need
13 native language speakers in order to do this survey,
14 and that's part of the proposal as well.

15 MS. DIAZ-TORO: Okay --

16 MR. REID: This is the historical part.
17 The, on the cultural part, that deals with the -- with
18 someone who has knowledge of the Lakota culture. And
19 again, this is somebody who would have personal
20 knowledge, and knowledge that is not necessarily
21 contained within the publications on the culture of
22 the Lakota people and Dakota people. That's tied into
23 the history as well.

24 But there is a present-day culture that
25 transcends from the past experience of native people,

1 particularly on the Pine Ridge Indian Reservation,
2 that is affected by this. And that would include, and
3 I see in the questions, you want some examples.

4 MS. DIAZ-TORO: Yes.

5 MR. REID: So that might include the
6 collecting of medicine or herbs from the site. It
7 might include the nature of ceremonies, how ceremonies
8 are conducted. It might include other parts of the
9 culture and traditions of the Lakota people that would
10 be impacted by the licensing.

11 And then finally on the -- I'm sorry, did
12 you want me to stop on that? Or did you --

13 (Simultaneous speaking.)

14 MS. DIAZ-TORO: No, no --

15 (Simultaneous speaking.)

16 MR. REID: -- if I can. And then I'll
17 shut up and that way you can have your moon launch.
18 Did you want to take each one of these separately, is
19 that what you have in mind?

20 MS. DIAZ-TORO: No, I think that you're --
21 I mean, I have them, I have the questions. Well, I
22 shared them up front. But I can wait just to maybe
23 have some follow-up clarifying questions, if that's
24 okay.

25 MR. REID: Yeah, sure.

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1 MS. DIAZ-TORO: Okay.

2 MR. REID: And then on the spiritual side
3 of it, and that would involve, as everyone is well
4 aware, the native people have a different relationship
5 with nature and the earth than a European or Western
6 relationship. And that involves a situational
7 relationship or something that they relate to the
8 nature and the earth as part of their family, as
9 relatives. And that that's part of their, it's a
10 crucial part of their spiritual understanding.

11 And therefore when we talk about
12 intangible spiritual interests, it would be the way in
13 which the activities might impact the spiritual
14 interests of the Lakota people. And that includes not
15 only their relationship with the earth, but also their
16 relationship with their ancestors that occupied that
17 area before it was taken from them in 1877, and use
18 the area.

19 And including their -- and those interests
20 survived. Their ancestors have not left the area.
21 And their relationship and their obligation to care
22 for that area, which was given to them by the -- by
23 their -- by their Great Spirit, would be the kinds of
24 things that they have an obligation to care for.

25 So what happens on that area, including

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1 the contamination of the area, is something that
2 affects their obligation to care for that area. So
3 we've talked in the past, for example, about perhaps
4 there has to be, as part of the reclamation process
5 that Crow Butte has talked about could continue for
6 another 20 years.

7 There may be cleansing ceremonies, there
8 may be things that have to be done to mitigate the
9 impact on their -- on their -- on the native
10 obligation and on the Lakota obligation to care for
11 them. So it's those kinds of things. I can give you
12 more examples. I'm sure Mr. Brings and Mr. Mentz can
13 give you other examples.

14 But for the spiritual side, for example,
15 there was a discussion during the site visit, and
16 afterwards you'll see it in the notes as site visit,
17 that of establishing an altar at the site and then
18 conducting visits by the spiritual advisors, spiritual
19 leaders in order to both assess the nature of that
20 interest, as well as conduct ceremony to deal with the
21 damage or the harm to that area.

22 So, and Mr. Mentz I think can give you a
23 description of how that would be approached from a
24 scientific standpoint. Because it's -- it involves a
25 broader survey than a 106 survey, and how he would

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1 approach that if he were the contractor. Which, I
2 think it describes the position of the Oglala Sioux
3 Tribe on that.

4 So did you want to do follow-up questions
5 now, or would you like to hear Mentz?

6 MS. DIAZ-TORO: No, I, first I want to
7 thank you for giving some of the -- some of the
8 examples about the historical intangible data, the
9 cultural and spiritual intangible data terms that are
10 referred to in the methodology, specifically on page
11 4. That's, I think more than, you know, the -- we
12 also appreciate the legal perspective.

13 But you know, with -- when it comes to the
14 NRC staff and the contracts, and putting aside the
15 legal perspective, I think that that's -- the examples
16 that you gave us is what we were trying to better
17 understand, just to ensure that we, you know, we're
18 not making any assumptions or we're not
19 misinterpreting any of the terms that you are using
20 and the scope of the input that you provided.

21 I did have one follow-up question --

22 MR. REID: And before you do that I have
23 one other quick comment to make, and I'll make it
24 quick. And that's that the -- there's been 30 years
25 or so of mining activity on the area. And we

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1 understand and we recognize that -- the Oglala Sioux
2 recognize and accepts that the -- that area, the
3 current condition of the area, that's being -- that
4 it's been disturbed.

5 We don't accept that it was legal or that
6 was done in a proper manner. But we accept what we're
7 dealing with is the condition of the area now, today,
8 in 2021. So, we accept that, we accept that the
9 mining pretty much completed there, and that they're
10 in a restoration phase. And certainly the Oglala
11 Sioux Tribe wants to see the area restored as fully as
12 possible.

13 So I think a lot of the proposal is
14 directed not in terms of the mining activities but at
15 the restoration activities, which is something that we
16 hope to be able to contribute to and be able to make
17 sure it's done properly.

18 So that's -- I don't see this as so much
19 -- I guess the point I'm trying to make is I don't see
20 this so much as adversarial at this point, but as
21 something that hopefully that Crow Butte would
22 entertain and that we, something that we can work out
23 in a good way.

24 Thank you.

25 MS. DIAZ-TORO: Thank you. You think --

1 I do want to follow up on what you just commented on
2 or observed, Mr. Reid, and then I'll -- we can go back
3 for the intangible and tangible interests. Because we
4 have a one sort of, I mean, it's not a follow-up
5 question -- well, it is a follow-up question, but it's
6 there.

7 But I also wanted to make -- just to make
8 the observation about the scope of the NRC's NEAP and
9 Section 106 reviews and the scopes are -- the scope is
10 certainly defined by the proposed action or the -- on
11 the undertaking.

12 And that's the proposed license renewal,
13 so the continued operation of the ISR facility and the
14 activities that would be carried through the license
15 renewal terms. And so that also takes into
16 consideration potential future activities that could
17 result in land disturbance and those -- and you
18 mentioned, you know, there's going to be, for example,
19 there's ongoing groundwater restoration.

20 And some of those activities could result
21 in some -- in some activities that -- or some land
22 disturbance activities. But those land disturbance
23 activities are anticipated to be -- to occur in areas
24 that have already been disturbed by the construction
25 and operation of the well fields.

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1 So just wanted to make that observation in
2 light of your -- of your comments. But going back to
3 the intangible, intangible interests, if in the
4 methodology --

5 MR. REID: If I might, just on that one
6 question about -- on the one comment you made on land
7 disturbance, I can give you an example on that. When
8 we were out at the site during the site visit and Mr.
9 Mentz and Mr. Brings were there, Mr. Mentz came on the
10 second visit.

11 But on most of those sites that we --
12 those areas, specific areas that we visited, bone
13 fragments, or at least a lot of them, bone fragments
14 were identified on one specific area that was
15 identified as a grave site was also identified.

16 So at least on those -- some of those
17 areas were disturbed with the bone fragments and
18 evidence of occupation. As part of the restoration,
19 let's say the restoration, for the surface disturbance
20 restoration, let's say they go in and they reseed an
21 area, they recontour it after they pull the wells.

22 That may, the Oglala Sioux Tribe may have
23 a requirement that they go in and perform certain
24 ceremonies, if you understand, to deal with the
25 Tribe's spiritual interest in that area to make sure

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1 that whatever needs are there. It's -- it would be a
2 like a reburial situation, for example, and a
3 cleansing of that area, spiritual cleansing and
4 apology of that area of that might be required.

5 And so that could be integrated within
6 part of that restoration process, for example, that
7 Crow Butte would engage in. And that's something that
8 we could see. But I wanted to throw that out as a
9 specific example.

10 So we're not just talking about going in
11 with bulldozers or whatever and recontouring an area
12 without -- because that activity itself in terms of
13 restoration of the surface may involve an interest of
14 the, spiritual interest of the Lakota people.

15 MS. DIAZ-TORO: Thank you. So going back
16 to the tangible and intangible interests, in the input
17 in the document provided by the Tribe and developed by
18 Mr. Mentz, there are references to sites of tangible
19 interest and sites of intangible interest. And there
20 are also references to tangible and intangible
21 cultural heritage sites.

22 So we wanted to better understand the
23 difference between a tangible site and intangible site
24 and what it -- and if you can share some examples with
25 us, it would be beneficial and appreciated.

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1 MR. REID: Yeah, I just gave you one. Mr.
2 Mentz, maybe you can comment on this, or Tom.

3 MR. MENTZ: This is Tim. Go ahead, Tom,
4 I just -- you can open it up and turn it over to me
5 and I can help address that question.

6 MR. BRINGS: Okay, we were discussing
7 intangible sites, so intangible interests, is that
8 what we're?

9 MR. REID: Yes.

10 MS. DIAZ-TORO: Yeah.

11 MR. BRINGS: Well, so many intangible
12 interests that I know are the spirituality that comes
13 along with the site, you got to consider that. And
14 not only -- not only the site that's been found, but
15 the surrounding area. There will, there'll definitely
16 be things found. But the intangible is the
17 spirituality and the ceremony that goes along with
18 like recovering the sites. You know, it's something
19 that can be grasped.

20 So that's my take on intangible. Tim may
21 have something more to that.

22 MR. MENTZ: Yeah, this is Tim. You know,
23 first of all, you know, in this process of what we're
24 doing here, it's always been -- it's always been
25 generated by an action, what you were describing

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1 earlier, NRC. And it also actually is part of a
2 federal undertaking, a process. So you know, defined
3 to the specific proposed action, you know.

4 For me, when you start saying land
5 disturbance, restoration, or even be prior to that is
6 identification, you're getting involved with the
7 Section 106 process. And I was still unclear, and I
8 may jump back and forth here. Like Dewey-Burdock,
9 that was unclear on if they had gone far enough to
10 satisfy 106, and there's other questions to that.

11 But for the purposes of Crow Butte, I just
12 want to make it clear that I'm working under the
13 process of Section 106 and 36 CFR regulations. So if
14 we're starting to talk about these types of interests,
15 but more importantly these types of resources, whether
16 it's intangible or tangible, it's important to
17 understand that they carry legal weight within the
18 process in relation to how 36 CFR regulations relates
19 to the identification process.

20 Now, we're kind of way beyond that. We
21 haven't identified in this process, so I just want you
22 to understand and make it very clear that we have not
23 identified. So, but we're talking about the types of
24 interests that are out there, as I understand it. And
25 I can address those in relation to your first three

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1 bullets.

2 Those are basically, those types of
3 interests, intangible and tangible, were given to
4 Congress in 1992. Prior to '92, when the 1992
5 amendments came, became authorized by Congress through
6 the National Historic Preservation Act, this
7 discussion of intangible interests was a major player
8 in that. I sat in those committee hearings.

9 So long story short is this is nothing new
10 to us to discuss this. And if you'll see reflected
11 now in the regulations, it does give certain sections
12 that it relates to that. So I just want to make that
13 clear that I'm going to be working through the process
14 with 36 CFR 800.

15 Now, I don't know if that's your
16 understanding or how you're talking about maybe
17 proceeding on this. But I am going to go back to the
18 regulations. And the regulations gives you the,
19 basically the boilerplate footprint of what you're
20 going to be doing out there in relation to how
21 identification is going to occur.

22 Now, when we start talking about
23 assessment of intangible interest, particularly this
24 topic was very sensitive to all the elders, all the
25 spiritual people that are not only on Oglala, but

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1 within all of our treaty territory. Because that
2 treaty -- because we put a pen to paper with the
3 treaty, part of that was also to protect these
4 tangible resources, the stone features mainly.

5 So I'll just use stone features as
6 example. Because it's totally weaved into our
7 spiritual knowledge and our spiritual understanding.
8 And some of that spiritual knowledge we don't talk
9 about. And up on the Hill, prior to 1992, we told
10 Congress that. So they put sections in here that said
11 that the tribes don't have to divulge sensitive
12 information.

13 But in this case where we're talking with
14 Crow Butte, Oglala Sioux Tribe raised the concern of
15 the intangible interest. Why? Because by far the
16 intangible interest is the most important element of
17 a tangible site.

18 In other words, what I'm saying is that
19 spiritual connotation that was placed there when that
20 man went to this place, he didn't pick it because it
21 was a beautiful hill or a certain nice little view of
22 an environmental setting or even to a spiritual
23 environmental cultural view on the land. It was
24 because the spirits took him there.

25 How do you tell that when you study to

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1 assess the site? So there is going to be limits to
2 this, and even to your question, there's a limit to
3 what we can say about this when we say we have to
4 explain to you now the assessment of intangible
5 interest.

6 Right now I'm comfortable since you're
7 saying that we're going to be able to look at this
8 transcript and maybe pull out things or redact some
9 things, then I'm going to go a little further then.
10 I generally -- and we know all will decide on this,
11 that the tribes and THPOs already decided walking into
12 this that there's a limit to it, so here's how far
13 we're going to go. So I got a limit too.

14 So the thing about assessing intangible
15 interests, when you start talking about the Lakota
16 Oglala particularly, this area has a number of
17 individuals tied to those places that are contained
18 adjacent and surrounding Crow Butte.

19 Crow Butte itself has a very not only
20 historical feature and of knowledge, it's a very
21 powerful intangible. And that I'm saying when I say
22 intangible, generally you can from now -- from right
23 now till the end of this conversation, intangible to
24 me is spirituality.

25 That's what we guard. So when we start

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1 saying we're going to start assessing intangible
2 interest, there's going to be a limit to that. And
3 one of the reasons why I'm saying that is because also
4 we have other people on this phone line right now, and
5 one of them is your consultant.

6 And we've found out, and we paid for it in
7 the past, that when we start divulging certain
8 information, yes, there better be some limits on what
9 they can share outside of this discussion right now
10 today. So I'm kind of reluctant to share a lot
11 because he's on this phone. But since he is here
12 today as a consultant, he's going to help you review
13 some of this.

14 I will share what he can, but bearing in
15 mind that the Oglala Sioux Tribe, the other Sioux
16 tribes, and the great plains of Ochethi Sakowin have
17 a problem with people sitting in. Because you know
18 what they do, they take that information and now they
19 start building up their resume and this not, oh, I
20 helped him to do this, oh, we, I helped him do that.
21 So I just don't want to see that. I'm not here to
22 give information so he can build up his resume.

23 Apart from that, assessing the intangible
24 interests, we have done that since 1985. When we
25 started to go out to sites, the only way we can

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1 determine a spiritual determination at a site and what
2 it contains, but more important reason what -- why it
3 was put there. What was the reason, and more
4 importantly, why it continues to be there.

5 We have ways to get that information. We
6 have ways to, and our way -- I don't like the word
7 assessment. We have a word for describing these types
8 of areas. So there, again, there's the limit where
9 we're going to have decide on, Oglala, with the Tribe,
10 the Counsel, the THPO, and other Ocheti Sakowin
11 tribes are going to have to really determine now how
12 they define assessment of intangible interest.

13 Because we have done it, we just never put
14 it in a sense of a document like this where it's in
15 tribe -- in the courts, excuse me, not tribal court
16 but the courts. And we try to keep these types of
17 things out of there. But since we're here at this
18 point and this way, the assessment of intangible
19 interest is us going up to these sites.

20 Once they're identified, there is where
21 the spiritual component of these individual, the
22 spiritual advisors are going to come it. And they've
23 got ways to pull out that information. We've been
24 doing that since '85.

25 I've been, and I say this personally, but

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1 I know other people of Ochethi Sakowin, our tribes, do
2 this out there. We go there and we pray. We go there
3 and we have specific functions and protocols on how to
4 ask for information from the other side. And that's
5 the problem with this is we're sitting here with you
6 individuals that don't know and understand our way of
7 life, let alone our language.

8 When we go to these sites, those spirits
9 come there. They're still there. They never leave.
10 That's their grave, that's their marker, that's their
11 portal. That's where these men go to touch the other
12 side, what we call the Star Nation. They have a, what
13 we call a umbilical cord, that's the best way I can
14 describe it, of coming down and giving us information.

15 But also they are contained within that
16 area, because that's where they got their gifts. So
17 that's going to be the hard part of this and writing
18 this down. Now, we've wrote this down before in other
19 projects, our company. I never go out on a survey
20 without two spiritual advisors. I've never done,
21 since 2009 I have yet to not step out in an area
22 without two spiritual advisors.

23 I appreciate right now that they are
24 Oglalas asking for spiritual advising, because that's
25 what you need. And that's what we talked about. So

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1 that's why they're asking for this. We're going to
2 have to need their spiritual assistance coming from a
3 knowledge base that we hit.

4 Because we were actually, we were jailed
5 for this type of information. Our history shows us,
6 they jailed our spiritual people, our medicine people,
7 put them in insane asylums because they touched the
8 other side. Well, we're going to touch the other side
9 on this. And it's all going to be a question of how
10 we say we're assessing it.

11 Now, let me get to this assessment,
12 because this is really important. So regular
13 archaeology, in 1966, when the National Historic
14 Preservation Act was enacted, it was based off a lot
15 of the amateur archaeologist, archaeology was going
16 full, blooming into what it is and it's even further.
17 But then you had the anthropologists and
18 archaeologists in there and starting to define their
19 methods of how they would look at things, assess
20 things, rather.

21 Well, at that time and coming up into I
22 guess what we'd call assessment on the eligibility,
23 NHPA created the National Register of Historic Places.
24 They also appoint a keeper of the National Register.

25 So what we're talking here and what really

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1 needs to be importantly described, prior to 1992
2 amendments, when we said there is historic properties
3 of religious and cultural significance out there, we
4 know these areas, and we define them. Not the
5 archaeologists or anthropologists or any of the
6 scientific community. We do that, we have that
7 responsibility. Congress agreed with us.

8 So that's why I'm saying that I'm going to
9 follow 36 CFR 800, because it clearly defined an area
10 of boundaries of how far to go and how far we can do
11 certain things. And how far that even the federal
12 agencies can ask questions like you're asking today.

13 Unfortunately this is -- this came out of
14 the court thing, and the Tribe asked for this. And
15 I'm glad they did, because now it's putting us under
16 the responsibility of spirituality, the intangibility
17 of all of us. You carry that. I'm not going to define
18 you what your religion is, your religious beliefs are.
19 Whatever, that's yours. But now you're asking us as
20 native people to do that. And how is it tied to the
21 land.

22 So those two things, we -- that's been our
23 life all these generations, hundreds and hundreds of
24 years. So we can do that. We're the experts in that,
25 if expert's the right word. And the regulation says

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1 that, special expertise. Yes, the tribes do have
2 special expertise. So now we're going to put it to
3 work.

4 So when we say we're going to assess, now
5 comes the criteria, the archaeological criteria for
6 the National Register of Historic Places, how they are
7 nominated to that register. There's breaks down A, B,
8 C, D.

9 Well, the THPOs since 2000 were saying to
10 the federal agencies that hey, if we go to any one of
11 these tangible sites, these historic sites, or rather
12 historic properties as referenced in the regulations,
13 we can meet all four of A, B, C, D.

14 And since 2000, that scared the
15 archaeology community. The archaeologists and the
16 anthropologists says no, they don't know what they're
17 talking about. They don't realize what we have. And
18 we're going to give you a glimpse of that with this
19 survey. So from 2009 to up to today, Makoche, our
20 company, has been taking on spiritual people.

21 We also then create a record out there of
22 certain sites that are very significant, very active,
23 that still we can pull that information on. But we
24 haven't put them in reports. We reference that. And
25 because the regulation says we don't have to divulge

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1 that type of information, there's our limit even in
2 the regulations. And I hope you adhere to that, you
3 recognize that.

4 Because if you're trying to bring in your
5 consultant, he's not even going to be able to come
6 close to what we can provide. He can't get that
7 information because he's not Lakota. He doesn't speak
8 our language. He's never been to ceremony.

9 Right now, him sitting there, and I'm not
10 trying to cut him down, I'm not trying to belittle him
11 or nothing. He's in an academic profession that's
12 based off of certain data that has been researched,
13 written before. We're talking about unwritten law
14 here. That's us, natural law we call it. It's the
15 unwritten aspect of our cultural base know, our
16 worldview that has been -- never been put on paper.

17 So we're going to give you a glimpse of a
18 little bit of that in relation to how this survey's
19 going to be conducted, how we're going to go after the
20 information based off of all those knowledge keepers
21 from the Oglala Sioux Tribe and other Sioux tribes
22 that are aware of who used the Crow Butte site. What
23 types of sites are there.

24 There's different types of site types out
25 there for specific uses that further our longevity

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1 within our, not only our spiritual understanding and
2 knowledge, but our life and essence. They were ones
3 that kept the knowledge, they're knowledge keepers
4 that are on the Oglala Sioux tribes and their people.
5 So they're going to be coming into this.

6 So they're going to start taking this
7 information and then putting it into a workable
8 document for you to understand. The problem with that
9 is are were evaluating under Section 106, under the
10 criteria to be eligible for the National Register of
11 Historic Places.

12 That's what I not -- have not heard from
13 you yet. You have not defined that to me, how you're
14 going to use this information. And you need to do
15 that before this process is over. You need to clearly
16 define how this information is going to be used,
17 regardless of Section 304 of the National Historic
18 Preservation Act, where you withhold this information.

19 The question is how you are going to use
20 it within a federal agency standing. How are you
21 going to share it with other federal agencies? That's
22 another thing.

23 So we got to understand how we're going to
24 proceed with this. Those individuals that are going
25 to be interviewed are going to give historic

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1 information, but on the left side, where the heart is,
2 our left hand, where we use our left hand, we say
3 that's the undocumented natural law and spiritual
4 knowledge that is on the left that we know about that
5 has not been put on a piece of paper.

6 So we're going to -- you got the best of
7 two worlds coming in here as you're sitting here
8 listening to us. You've got the best of two coming
9 together. We're going to put those two together.
10 That's why you have the historic sites.

11 What is a -- National Historic
12 Preservation Act says, historic properties. While in
13 the '92 the amendments, prior to '92 amendments, we
14 lost on that argument. We said no, no, no, those are
15 not historic sites, historic properties because they
16 have a longevity that goes beyond.

17 (Native language spoken.)

18 If you can understand what I'm saying
19 there, then you'll be able to sit in this circle. And
20 I'm assuming your consultant didn't even know what I
21 said, nor you. And I'm not trying to make you feel
22 bad. All I'm saying is when we start talking like
23 that --

24 (Native language spoken.)

25 And even me, for me to say that, you

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1 probably don't know what I said. But I'm referencing
2 what is there, how an intangible resource, the
3 knowledge came from the other side. And for us to say
4 that this site has significance. The question is how
5 do we put that on the National Register.

6 So that's another second point I want to
7 make on clarification. Are we evaluating? Because
8 that's a whole different thing. That's a whole
9 different process, and it's more I guess strict.
10 There is a process in place to meet the four criterias
11 of A, B, C, D in the regulations.

12 But more importantly, we're almost
13 throwing that around loosely in here. We need to
14 really understand that assessment. Does that mean
15 evaluation? You tell me that.

16 Are we evaluating or assessing the
17 intangibles? Because then, when we talk about the
18 tangible resource, the stone feature, that stone ring,
19 that's where they fasted, that's where they got their
20 vision, they got their gift from that area. How do we
21 have a right, how has anybody ever taken that step to
22 take that right from that individual to tell his story
23 of what the spirits gave him?

24 There is no process for that right now for
25 us. So there's going to be a limit on how much we can

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1 share. When our spiritual leaders go to these sites,
2 they get all this wealth of cultural knowledge and
3 spiritual knowledge. We're going to have to be able
4 to make a determination of how much do we say in order
5 for it on your front, for the court to say it's
6 significant.

7 So that's our -- that's our duty, that's
8 our thing that we're going to do here. So that's what
9 I'm saying in relation to assessment and evaluation.
10 I don't know if that's -- I'm sorry --

11 (Simultaneous speaking.)

12 MR. REID: Tim --

13 MS. DIAZ-TORO: Mr. Mentz, it does -- it
14 does help, the explanation. I appreciate the history
15 behind it, I appreciate the openness and the -- for
16 you have shared information. And also to recognize,
17 right, that there are limitations about the
18 information that you can share with federal agencies
19 that will be used to satisfy federal agencies'
20 obligations under NEPA and NHPA.

21 Because, you know, we have to acknowledge
22 that both statutes have a public component, right,
23 it's public disclosure component. So we are mindful
24 -- so we are mindful of that, of that sensitivity. I
25 appreciated that you -- that you certainly brought it

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1 up.

2 I also -- so I think with that, I think
3 that we did get clarification from you all on the
4 intangible --

5 (Simultaneous speaking.)

6 MR. REID: Well, I don't think so. I need
7 to interject something real quick here with Tim. Tim,
8 the decisions from the Board and the Commission, when
9 they talk about intangible, they talked about those
10 interests that are not -- that do not fall within
11 Section 106. In other words, they don't qualify for
12 listing.

13 And so what we're being asked to identify
14 by these decisions is the interests of the Tribe that
15 are beyond Section 106. So for example, if you find
16 a stone artifact, it has -- the stone itself is
17 intangible, but it carries with it an intangible
18 interest as well. Are you following me?

19 So if you move that stone or you disturb
20 that area, then you're disturbing not only the
21 tangible but also the intangible interests. And you
22 cannot list a spiritual interest as a -- as a -- on
23 the National Register. At least, certainly not very
24 easily. Nor can you do a historical one. But you can
25 list a tangible artifact on the National Register.

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1 And so what we're being asked to do here,
2 and I would ask you to maybe comment a little bit more
3 on that, is that if you're not limited to the Section
4 106 listing, which we're not -- which we aren't here.
5 Under NEPA, we're being asked to identify all of the
6 interests, which the intangible interests are those
7 that don't fall within the Section 106 listing.

8 So for example, you talked about getting
9 information from the other side. You could identify,
10 for example, a sundance area, you know. And in that
11 area, you may not have any tangible evidence that the
12 sundances were conducted there, but you're able to
13 identify that. So then that becomes both a tangible
14 area in terms of the ground itself, but it has --
15 you're identifying it through an intangible interest.

16 And it's that interest that we're being
17 asked to identify here. And when we're talking about
18 intangibles, it's those that don't fall within a
19 Section 106 listing. And we have an opportunity now
20 to talk about those interests of the Tribe in this
21 area.

22 So I just wanted -- I didn't want to leave
23 that there. We're not talking about only those things
24 that can -- that fall within a 106 listing. Or we're
25 beyond that in these decisions.

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1 I think it's clear from the Commission and
2 the Board's decision that we're being -- that we have
3 the opportunity now to identify all the interests, not
4 just those that fall within the Section 106 listing on
5 the Register.

6 Do you get me on that?

7 MR. MENTZ: Yeah, and the reason I -- and
8 I started it and brought up the regulations because in
9 back, I was looking at the documentation that NRC has
10 provided to Mr. Harold Salway, Director of Natural
11 Resources Regulatory Agency for Oglala. On their
12 March 5 letter, they bring up on page 2, evaluation of
13 previously identified sites.

14 So you have brought that up, and that's a
15 Section 106 process. So I was trying to -- I -- and
16 I understand what you're saying, Andy, and I
17 understand what probably what the court has said
18 that's beyond the Section 106 --

19 MR. REID: Yeah, on the 106 evaluation
20 we're asked -- being asked to do both. The court and
21 the Commission said that the 106 survey was
22 insufficient. And then they went on to say that the
23 assessment of the intangibles under -- not under the
24 National Historic Preservation Act but under NEPA was
25 insufficient. And so we're asked -- being asked to do

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1 both.

2 So when we contacted you, we were asking
3 you both to assess, to complete and do a proper 106
4 assessment. But also to expand that into an
5 assessment of the intangibles of interest that would
6 not fall within the -- within 106. So it's both,
7 actually.

8 (Simultaneous speaking.)

9 MR. REID: The other thing I notice, I
10 think -- I think what the NRC is asking us to do here
11 in this first part is they need direction on how you
12 would identify an intangible site. And that's
13 difficult to do. In essence, the entire -- the entire
14 area could be an intangible site.

15 Or it could be an area, for example you
16 talked about a stone, so that's -- that area both has
17 an intangible and a tangible character to it. And so
18 we would identify that both as a tangible site that
19 could be listed under the National Register. But it
20 also has an intangible interest that can be identified
21 under the National Historic Preservation Act as having
22 spiritual value.

23 MS. DIAZ-TORO: Andy, I think it would be
24 good to just come back directly to the questions that
25 we were -- that are based on Mr. Mentz's input. And

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1 I think he was clarifying what the, you know, what the
2 input and his understanding, right, and why he
3 developed his input the way that it was developed.

4 So it would be good maybe to continue to
5 go through the questions and as we go, we can continue
6 to get clarification, right, on the different aspects
7 that the methodology that was proposed by Mr. Mentz
8 and the Tribe included.

9 So the second area or topic that we wanted
10 to get additional clarification, right, is the
11 evaluation of disturbed areas, Mr. Mentz. And
12 throughout the document, as we wrote up in the
13 clarifying questions, there are various references to
14 the examination of disturbed areas.

15 For example, in page 1 and continuing into
16 page 2 of the document, it states that some of the
17 areas that were previously disturbed would be
18 reviewed. But some of those disturbed areas, and I'm
19 going to quote, should be excluded based on the
20 assumptions that areas with considerable previous
21 disturbance by Euro-American land use activities, for
22 example, agricultural cultivation, gravel exploration,
23 construction activities, mining, etc., would have
24 destroyed or diminished the integrity of the sites.

25 So we were looking to better understand or

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1 having a better understanding, good understanding of
2 the plan for the deciding which disturbed areas would
3 we survey. If you could share with us the scope and
4 the plan for making such decisions, which areas, which
5 disturbed areas would be examined.

6 MR. MENTZ: Okay, so the reason -- the
7 reason it's written like that, on page 2, if you
8 notice that, and I, at the time the judge -- I can't
9 remember the judge that was asking all the questions.
10 But he referenced the first paragraph, the top
11 paragraph on page 2 of this methodology that I put
12 together.

13 And in there -- and in there he referenced
14 a couple things, but also that per the contractor's
15 discretion, he brought that up in relation to what
16 you're asking right now. Okay, so here's -- here's a
17 number of scenarios that we got involved with.

18 We have a plowed field, and some,
19 depending on the scope of work and how the federal
20 agencies sit down with the client or the applicant in
21 relation to describing the area of potential effect,
22 some of that includes maybe ag land or disturbed lands
23 or a home site within there. A lot of those may
24 contain or clearing field pile -- piles of rock.

25 Through the process of looking at those,

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1 the own applicant would be saying I need to have them
2 look at it. That's one scenario.

3 The other thing is we always say that,
4 okay, we are looking for bone fragment, we are looking
5 for lithics scattered that could give you a good idea
6 that there's something subsurface. But it was never
7 checked. It was never -- there wasn't even a grid
8 system laid down on a testing component for that to
9 see if there was subsurface material.

10 But my thing about this was when I started
11 looking at Crow Butte and just that area and they're
12 saying, well, it's already previously mined, it
13 doesn't -- it doesn't help me when I'm out there to
14 say that wait now, I'm just going to let that go
15 because that's disturbed.

16 And the reason we quit doing that, and
17 that started right about 2012, where we started to
18 convincing the federal agency that hey, you know, the
19 applicant needs to allow us to get in there. They had
20 little islands where there was a high concentration of
21 rock, but yet all around it maybe there was a ag
22 field, or there's maybe development that went in
23 there. And it still had these little islands of rock
24 area, what they called maybe it was just a rock pile.

25 Those were burials. Those were actual

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1 burials contained within a disturbed area. So by the
2 time we got to 2016, 2017, the THPOs all took a
3 position that yes, there's ag fields in your area of
4 potential effect, but we want to look too. And I'll
5 give you a good example.

6 We did, just a while back here, for the
7 Basin Electric Cooperative transmission line that ran
8 from Beulah, North Dakota, in the central part of
9 North Dakota, it ran diagonal right straight across
10 from east to west. It went all the way to Watford
11 City and straight up north to Watford City to
12 Williston, North Dakota, all the way. And it ended in
13 Tioga.

14 This was a huge transmission line. We did
15 a 300-foot corridor survey on that, 438 miles. In
16 that process, we relocated nine burials that were
17 islands within the corridor that the landowner plowed
18 around. And there's stone rings with burials hooked
19 to them.

20 So then we convinced North Dakota SHPO
21 that hey, these places have to be looked too. Look
22 it, if you're going to take that out, that stone pile
23 out and you disturb human remains, we should have had
24 a understanding that maybe we should have took a look
25 at it.

1 That's why that is contained in here,
2 because regardless, now I've heard and what Mr. Reid
3 say that they went to one area where there was bone
4 fragments.

5 I have yet to see the reports of Bozell
6 and whatever that, the 1980 report --

7 MS. DIAZ-TORO: Pepperl.

8 MR. MENTZ: Yes. I don't know what -- to
9 what extent they did any testing for subsurface
10 deposits. I don't know that because I haven't see it.
11 But my conclusion then sitting here just a little bit
12 while ago and listening to Andy was that they observed
13 undetermined bone scattered in certain areas. That's
14 a red flag. That should be a red flag with any
15 archaeology.

16 The problem with this is -- and these are
17 1980 reports. The 1992 amendments, anything prior to
18 that, for me they're suspect. They just looked the
19 other way mostly, generally. That came in the up and
20 even SAA annual, they had a big annual meeting.

21 And the question was do you look away.
22 And most of the archaeologists said yeah.
23 Undetermined bone, I don't have -- I'm not, I wasn't
24 even asked to pick up the bone to determine what it
25 was, human or animal.

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1 So there's a question of that, and that's
2 what we look for in these areas. Granted, now we're
3 looking at this place here. The vegetation's going to
4 be high. That's why the transects are smaller. So we
5 always shrink smaller. It's just a standard practice
6 of all the THPOs requiring those types of transects
7 should be smaller.

8 Archaeologists anywhere from ten to 15 to
9 20 meters. Who's going to see something in between
10 that? You're missing it. So maybe this is something
11 that happened here where there was a site -- the fact
12 that they've seen some bone, undetermined bone, is a
13 red flag. And that's why we always take a look at
14 those areas.

15 Now, if you don't want us to look at that
16 area, you would put that in your scope of work. You
17 would figure that out with Kameko in relation to
18 access and that process.

19 Because after all, you're the -- you're
20 the federal agency, so you need to make that
21 determination of what fits and what is a requirement.
22 Not only not for the court. If you're saying we're
23 beyond 106, I guess, you know, and that's another
24 question for you in relation to how you comply with
25 the court order.

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1 MS. DIAZ-TORO: Okay, so thank you. So
2 maybe if I'm hearing you correctly, you are, in your
3 proposal, in what you're proposing is that those areas
4 that have been disturbed previously by the
5 construction of the well fields would also be
6 surveyed.

7 MR. MENTZ: Well, and that's the way I --

8 MS. DIAZ-TORO: Okay.

9 MR. MENTZ: You'll see the two places in
10 here why I put that. It'll be at the discretion of
11 the NRC, the Oglala Sioux Tribe, and the contractor,
12 which would be Makoche if we got the project.

13 MS. DIAZ-TORO: And then maybe a follow-up
14 question if I may. Would the -- because you were
15 talking about or mentioning the transects and the
16 length of those transects. So for the disturbed areas
17 that would be surveyed, would the five-meter transects
18 be used?

19 MR. MENTZ: I am proposing that
20 right now to the Oglala Sioux Tribe, and I think it's
21 the Oglala Sioux Tribe's determination on what they
22 would like to see Makoche do a transect. And then
23 they would consult with you --

24 MS. DIAZ-TORO: Could --

25 MR. MENTZ: On that contract -- excuse me,
on that transect with.

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1 MS. DIAZ-TORO: Mm hm. Could you maybe
2 help me understand a little bit better the five-meter
3 transects for those disturbed areas?

4 MR. MENTZ: Well, for the disturbed areas,
5 five meters is basically you're looking -- you're
6 looking 15 feet the left to your right. And if you
7 start seeing fragments, let's say you have lithics out
8 there. Maybe you even have flint. You have chipped
9 flint -- you got worked flint out there in small
10 pieces, but they're scattered, there's over a thousand
11 pieces potentially laying there.

12 You will never see them at a 15-foot
13 glance looking to your left or right, even in
14 disturbed areas. You almost have to shrink it down.
15 The 30-meter or the 15-meter transects just don't
16 work. Archaeologists do that because they miss a lot.

17 Now, maybe that's not answering the
18 question. My point is that we see those things, the
19 red flag goes up. It's up to the federal agency now
20 to determine, oh, do we get a archaeologist back out
21 there to put on test pits there and do a grid system
22 to see if subsurface deposits, or however you're going
23 to decide that.

24 But what is important like that is that
25 when that happens and occurs, should something be seen

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1 within the disturbed areas, it has to be a
2 consultation process then initiated with Oglala Sioux
3 Tribe, NRC, and Kameko.

4 I don't know, I have -- I don't have no
5 documents right now, no survey reports. I don't have
6 nothing yet like that. And I haven't reviewed
7 nothing. So I'm coming into this very cold. So just
8 so you know that.

9 MS. DIAZ-TORO: Thank you, appreciate it.
10 We have provided the Bozell-Pepperl 1987 report
11 previously to the Tribe, so Mr. Reid, maybe you can
12 share that with Mr. Mentz.

13 MR. REID: Yeah, I think that's fine. I
14 think we agreed on our site visit that those documents
15 would go through Harold Salway --

16 MS. DIAZ-TORO: Right.

17 MR. REID: -- and then Harold would make
18 the decision as to who received those documents, and
19 they would all be subject to the execution of the non-
20 disclosure agreement, so.

21 MS. DIAZ-TORO: So, right, so --

22 MR. REID: And I'll contact Mr. Salway and
23 make sure that he gets those things --

24 (Simultaneous speaking.)

25 MS. DIAZ-TORO: So, there is a version

1 that is publicly available. It doesn't include
2 everything, right, because there are certain
3 discussions and information that are non-publicly
4 available, but there is a publicly available version
5 of the 1987 Bozell and Pepperl report, and that can be
6 -- Mr. Reid, you can certainly share that publicly
7 available version with Mr. Mentz, so I --

8 MR. REID: Okay, thank you, and I do
9 believe that the --

10 MS. DIAZ-TORO: Yeah.

11 MR. REID: -- descriptions of those sites,
12 those nine sites, was included in the materials that
13 Mr. Mentz got from us as well.

14 MS. DIAZ-TORO: And then Mr. Mentz, if I
15 may ask you one last question about the disturbed --
16 because I was asking or focusing on the disturbed
17 areas, right, that the methodology, the document that
18 you developed also makes reference to native prairies
19 and that those should be the primary focus of the
20 survey.

21 I think those references are at the bottom
22 of page one, and so could you maybe help us better
23 understand what are you referring to native prairies
24 and which areas is that referring to?

25 MR. MENTZ: What I'm referring there when

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1 we say native prairies is unbroken ground, virgin
2 ground, nothing that has ever had a plow or anything
3 put to it. Now --

4 MS. DIAZ-TORO: Okay.

5 MR. MENTZ: -- granted, there may have
6 been some type of like cutting of hay or whatever, but
7 for the purposes of why I put that there, the unbroken
8 portions of these areas will still retain a certain
9 quality, a certain integrity within a site setting if
10 they're located there.

11 Now, just to be clear, on the broken area,
12 I'm not trying to look for areas where we do see
13 something that still I'm going to make an assessment
14 of integrity.

15 What I'm looking for is evidence that
16 something came up from underneath the subsurface, a
17 plow maybe going down four inches, six inches, that
18 actually pulled something up on the top.

19 That's what I'm looking for. I'm looking
20 for evidence that the possible subsurface burials of
21 our relatives could be contained in these areas, but
22 now they're starting to surface.

23 They're percolating up to the top based
24 off of time. Moisture and time percolates those
25 solids up, and once we start seeing them, then the red

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1 flag will go up and we will give you notification that
2 we are seeing these types of things.

3 Maybe we're going to see a little rock
4 pile that's never been touched, but disturbance all
5 the way around it. I know these, and I was looking at
6 the well setting when I went out to the site visit.
7 They're spaced out so many feet apart.

8 MS. DIAZ-TORO: Yes.

9 MR. MENTZ: But I did not see what was in
10 between them, and I asked the two gentlemen, and Tom
11 Brings can attest to this, this question I asked them.
12 Is there a possibility between those two well sites
13 that somebody could not have driven or disturbed, and
14 he said that is a very good possibility.

15 Now, that's what I understood when I asked
16 that question. So, I said then there is a possibility
17 that some of these areas, when we say that there's a
18 blanket area, there's 40 acres here of blanket area
19 that's been disturbed, is that a true statement then
20 based off of what you said? Well, I don't know. I
21 would have to look.

22 I said and I understand that, and maybe
23 the class one would pick it up, but the important
24 thing is there's been previous surveys done in this
25 area, so those two 1980 archeological reports, did

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1 they pick those up? And he said I don't know. I'll
2 have to see.

3 So, those were questions that were left
4 open over there, but that was my question to him about
5 that possibility. So, that is a possibility. Even
6 you may only find them then when you're starting to do
7 restoration, when you're starting to reclaim it and
8 put it back to its natural.

9 That's when you may run into this, but I'm
10 not sure because there's a lot of vegetation out
11 there.

12 MS. DIAZ-TORO: Okay, thank you, and I
13 think that was helpful, so I appreciate it, Mr. Mentz.
14 So, maybe we could talk a little bit about
15 implementation of a TCP survey as described in the
16 document that you developed.

17 And in the list of field survey personnel
18 on page five, could you please clarify for us which of
19 those personnel would be involved in the field survey
20 and which ones would be involved in the interviews
21 with the elders and historians? And maybe I can pull
22 that up. It's on page five.

23 MR. MENTZ: Yeah, I see that, yes.

24 MS. DIAZ-TORO: Okay.

25 MR. MENTZ: So, and for the purposes of

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1 the document I'm reading, it's what I provided to you
2 for the methodology --

3 MS. DIAZ-TORO: Yes.

4 MR. MENTZ: -- Article 4 services.

5 MS. DIAZ-TORO: Yes.

6 MR. MENTZ: And the heading is Makoche
7 Wowapi will provide technical support personnel
8 working in specific hours to process data to complete
9 the final report, and then it gives a list of the
10 field survey personnel --

11 MS. DIAZ-TORO: Right.

12 MR. MENTZ: -- the field survey
13 supervisor, and the technical support. That would be
14 the three spiritual advisors to the survey. So, at
15 the beginning of this discussion, what I said was I
16 don't go out to any survey -- I have yet to do a
17 survey without spiritual advisors out there.

18 MS. DIAZ-TORO: Okay, so the --

19 MR. MENTZ: So -- oh, go ahead.

20 MS. DIAZ-TORO: No, no, I'm sorry. I
21 apologize. Go ahead.

22 MR. MENTZ: So, then going down, number
23 three is the field crew, the five individuals. Those
24 individuals are going to be the ones that actually are
25 going to do the identification process along with the

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1 field supervisor, and the project manager will also be
2 out there.

3 So, you're going to have actually ten
4 people on that crew that is going to do the entire
5 survey, identification survey of the Crow Butte area.
6 Now --

7 MS. DIAZ-TORO: Okay, so --

8 MR. MENTZ: Oh, go ahead.

9 MS. DIAZ-TORO: Those are the individuals
10 that would be actually, you know, on site conducting
11 the examination, the --

12 MR. MENTZ: Yeah, it --

13 MS. DIAZ-TORO: -- identification?

14 MR. MENTZ: It will be the individuals
15 from one to four that I have listed as the --

16 MS. DIAZ-TORO: Okay.

17 MR. MENTZ: -- field survey personnel.

18 MS. DIAZ-TORO: From one to four, thank
19 you.

20 MR. MENTZ: Yes.

21 MS. DIAZ-TORO: Appreciate it.

22 MR. MENTZ: And the second part of that is
23 the oral history manager who actually is going to
24 compress all of the data, and with two interviewers
25 and a historian, and that historian -- and so I break

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1 that out down below if you --

2 I don't know if you want me to read all of
3 that, but I think you can see all of that, how I kind
4 of broke that out, including I included the processing
5 of the data.

6 There will be two individuals. That
7 geotech person will be off and on out in the field
8 also. He's going to help us establish the grid
9 system. Well, I have yet to see anything in relation
10 to any types of files, shape files on this area, but
11 once we get that --

12 Now, normally if we get a contract like
13 that, then they start throwing all of their layers
14 down, their GIS layers, and all of their data areas of
15 where we got permission and places where we don't have
16 permission.

17 So, those are all input into our GIS
18 system and then we start establishing a grid. And
19 whether it's a block survey or if it's certain areas
20 of three acres here, ten acres here, or whatever, we
21 have to determine how we're going to walk into that
22 area.

23 So, this person that I have listed here,
24 this geotech person, would help us along with the GIS
25 person to create the grid system and how we do our

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1 transects out there. So, we'll be putting lath boards
2 out there to do corridors so that way we know what we
3 will be doing coverage on.

4 Now, this is another question and I don't
5 think, and it's never came up with this in relation to
6 surveys, and I don't know if it's ever came up with
7 the 1980 surveys or the two tribes, I think it was
8 Santee and Crow, on how they did their methodology.

9 I don't know if you went this far with
10 them, with those other two tribes, but my point in
11 this is that, okay, most tribes -- the Standing Rock
12 Sioux Tribe has a 100 percent survey policy.

13 So, in other words, their transects are
14 even stricter. They start with the five, but theirs
15 is basic three meters, nine feet on each side of you,
16 in order for you to fully achieve 100 percent survey
17 coverage of the area of potential effect.

18 That has not come up with that. That's
19 why I put basically what I know and understand all
20 THPOs demand on surveys outside reservation
21 boundaries. It's five meters shrinking to three.

22 Now, if it's further than that, and if
23 you're wanting to propose maybe a ten or 15-meter
24 transect, there's no sense in us being out there.
25 There's no sense in anybody being out there. Now, 15

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1 meters, you know, that's 45 feet. How do you know
2 what's in between the 45 feet?

3 So, the coverage is very important because
4 ultimately it plays into the cost. So, right now,
5 with me not having no information -- I should have had
6 a scope of work in order for me to put this document
7 together. I didn't have that.

8 That scope of work would describe
9 everything you need completed out there because it's
10 NRC and Kameko actually sitting down to discuss the
11 area of potential effect and what you would feel meets
12 Section 106 criteria.

13 Now, the problem with that, or at least
14 I'm seeing a disconnect here is that we're kind of
15 beyond Section 106. That's maybe -- I would look at
16 it right now in digesting all of this. That would
17 apply to the intangibles issue of the elements of the
18 resource.

19 But when you're starting to talk about
20 identification, if we don't have nothing to follow and
21 Section 106 requires you to follow the requirements of
22 36 CFR 800, then I guess we're going to be cutting new
23 ground here. That's why I'm saying, you know, Section
24 106 to some degree has to come back into it.

25 That was the same issue with Dewey-

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1 Burdock. Dewey-Burdock said, well, here is the area.
2 Get out there and walk around and find whatever you
3 want. That's not no methodology. That's not no
4 professionalism.

5 This needs that part of a direction from
6 the regulations on how we're going to identify, so
7 that's still never been answered yet by you and I want
8 an answer from that too before the day is over.

9 But to see that these people, these two
10 geo people are going to help us grid it out, will
11 determine that coverage and what's adequate, whatever
12 you think, NRC, you think is the adequate coverage on
13 completing the identification process of this survey.

14 MS. DIAZ-TORO: Thank you. That's clear
15 about who would be conducting or participating in the
16 actual field survey and the actual examination of the
17 ground.

18 And with respect to the roles of the oral,
19 or the individuals that would be conducting the oral
20 history interviews, those are the ones that you
21 identified as number five, number six, and number
22 seven in the list provided --

23 MR. MENTZ: I'm sorry, I just got kicked
24 out, so I've just now come back on. I didn't hear
25 nothing.

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1 (Laughter.)

2 MS. DIAZ-TORO: Oh, no worries. You
3 didn't miss much. I was saying that it is clear --

4 MR. MENTZ: Oh, okay.

5 MS. DIAZ-TORO: -- no, that now it's more
6 clear the individuals that would, you know, the group,
7 the individuals or the positions that would play a
8 role in the actual field survey and the ground
9 examination.

10 And I just wanted to get a little bit
11 further clarification on the roles for the individuals
12 that would be conducting the oral history interviews,
13 and you mentioned or indicated that those individuals
14 or those positions or roles would be number five,
15 number six, and number seven, the oral history
16 manager, the interviewers, and the historians, and
17 those would be individuals separate from those
18 conducting the field survey?

19 MR. MENTZ: Yes, and could I clarify
20 something --

21 MS. DIAZ-TORO: Sure.

22 MR. MENTZ: -- in relation to how it's
23 being conducted? So, this process has been done
24 before, I can say at least six of them that we've done
25 similar to this, and it wasn't really something that

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1 was asked for by the applicant on different projects,
2 but potentially you could have up to all of those
3 individuals, one through seven, on site in the field
4 at one given time.

5 And to clarify that, what I'm saying is
6 that once this survey, the identification survey
7 that's being conducted from the individuals from
8 number one through four on page five on the Article 4
9 services, once they're out in the field and they start
10 finding -- let's say they located individual sites or
11 a group of sites.

12 Those individuals that will be five, six,
13 and seven would, and I would assume because that's the
14 way we've done it, at least that's the way I handled
15 it and had done was they come in right behind us and
16 they start looking and assessing the sites for the
17 intangibles.

18 So, in other words, what I'm saying is
19 that potentially there could be all of those
20 individuals at a given time on one day or a set of
21 days.

22 And then to Mr. Reid's comment that there
23 may be a possibility that Oglala would like to come
24 back and do ceremony at these places, we've always had
25 the ability to be allowed to do that and I'll give you

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1 an example.

2 In 2017, we're up at Whitestone Hill,
3 central North Dakota, a huge battle site. There was
4 a massacre there of all the Dakota and Lakotas up
5 there. Right where the battle site is, right south of
6 that, we did a 20,000 acre block survey of that area
7 and we found a number of sites.

8 Part of when we went into this with the
9 federal agency, which was WAPA, and the client, was
10 that we asked that should we have these individuals
11 come in and they want to take a look at it, our
12 spiritual people and our historians to come in and
13 take a look at these and use the site to get more
14 information, intangible information, would that be
15 allowable.

16 And every one of the six that I got
17 involved with, every one of the applicants or clients
18 said go ahead and do it. Go ahead. We do not want to
19 stop the tribes from going out there and conducting
20 any ceremonies or anything that they need to do or
21 that they have to do. Get out there and do it, so
22 that has been done.

23 So, at times, I had a crew of 15 there,
24 and with the individuals like on five, six, and seven,
25 I had a crew of a total of 22 people conducting those

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1 surveys as we were going.

2 And we were on a time crunch. We had a
3 month and a half to do it. We had 89 pads, wind
4 turbine pads to do. Some of them were hitting right
5 on site.

6 So, we did conduct those types of things
7 and we pulled out that information, and then we used
8 that information to justify the microsite or the
9 removal of the pad. So, that was what was important
10 about this.

11 In this case for here, this is a little
12 different. This is not wind turbine pads. This is
13 just an area of potential effect, that potentially
14 once we find something, these individuals need to come
15 out there and start doing that.

16 So, the survey will still be going,
17 continuing and moving so we can meet the timeline, but
18 also they start doing their assessment of the
19 intangibles and the tangible. I hope that makes
20 sense.

21 MS. DIAZ-TORO: It does, maybe, and I
22 think it sort of flows into some of our next
23 clarifying questions with respect to the timeline and
24 the length of time that's described under Article 2 to
25 complete the survey and --

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1 MR. MENTZ: Hello? Yes.

2 MS. DIAZ-TORO: Yes, and so the document
3 indicates that the total time to complete a final
4 report would be 584 hours and that it would, sorry,
5 the three -- the survey would be completed in three
6 phases over 73 days.

7 So, we were unclear about the reference to
8 the 540, 584 hours, I was switching the numbers, and
9 they don't appear to be an estimate of the total man-
10 hours that would be required to complete this effort.
11 So, is there an opportunity for you to provide an
12 estimate of the total man-hours?

13 MR. MENTZ: I can do that. See, this is
14 all -- okay, so let me just say this for the record
15 again. Without having a scope of work for me to work
16 off of actually to develop an RFP proposal for this --
17 they're generally better locked in numbers that I
18 would place in here.

19 I was just going off of the 3,300 acres,
20 which the judge also said -- he asked that question
21 and I think it was clarified that it's 28, or 87, or
22 something like that.

23 But my point in this is that those 584
24 hours represent eight-hour days that they would be
25 completing from phase one, phase two, and phase three

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1 like that, so that's what was an estimate of hours
2 based off of the three phases that will be out there
3 for 73 days.

4 (Simultaneous speaking.)

5 MR. MENTZ: Does that make sense?

6 MS. DIAZ-TORO: Yes, and would the three
7 phases be performed consecutively over the 73 work
8 days?

9 MR. MENTZ: Well, yeah, and so getting
10 back to what I just said, when we start this survey,
11 from day one, and when we start identifying resources
12 that are historic properties of religious and cultural
13 significance and we start, every day we will be
14 alerting them to what we found.

15 So, every day they'll know what areas and
16 what type of sites because we're going to tell them
17 that, what type of site it's going to be, and they're
18 going to be moving behind us, so that's what I
19 explained.

20 Yes, the surveys will start first. We
21 can't get them out there until we start getting those
22 types of areas and finding, identifying these things
23 that actually are those areas that they need to take
24 a look at.

25 Now, that's just the field work, but on

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1 the other side of this also, they will be also
2 starting the process of getting ready to interview,
3 getting ready to lay out a timeline interview schedule
4 in relation to who they're going to. That all has to
5 be determined by Oglala Sioux Tribe.

6 So, it's kind of premature for me to
7 answer that, but I'm saying for the purposes of the
8 field, we will make them jump back and forth or we
9 will ask them to jump back and forth from doing their
10 interview surveying work of the information that
11 they're going after, the questions, all of that.

12 Oglala, that's going to be their
13 responsibility to develop the questions and how
14 they're going to conduct it, but also we're pulling
15 them back into the field to see, okay, this is the
16 site that the spiritual advisors are going to have to
17 come and take a look at because we think these are
18 important.

19 So, we're going to actually kind of be the
20 thread so to speak, threading the needle so to speak,
21 of those types of areas that are significant, and, of
22 course, it's going to be a time lapse sort of thing
23 where they're jumping back and forth, but I hope that
24 answers your question because, you know, to do this,
25 it's going to take a lot of movement.

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1 So, you know, coming all the way from
2 Oglala out to the field and conducting survey
3 interviews, you know, that's time alone, so just maybe
4 an hour and a half from Crow Butte over to Oglala.
5 That's about like an hour and a half drive, so you're
6 already talking three hours is gone from a day.

7 So, I do know and understand that. Andy
8 said that. He also -- and he brought that up with the
9 judges, that he wants consideration also for these
10 interviewers. People maybe -- I don't know if it's a
11 stipend of how that --

12 It's something that Oglala is going to
13 have to talk about, and we're going to have to talk
14 about that and get back to you on that, but all of
15 that has to be determined by the Oglala Sioux Tribe.

16 MS. DIAZ-TORO: So, Tim, when you were
17 referring today that they would have to come back or
18 that they would have to conduct the survey, could you
19 help me understanding who you were referring to when
20 you used they? I'm not sure if I was -- I want to
21 avoid misinterpreting --

22 MR. MENTZ: Okay, I'm sorry.

23 MS. DIAZ-TORO: -- members, the field
24 crew, or the Oglala Sioux Tribe, or --

25 MR. MENTZ: Well, for the purposes of when

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1 I just said they, I was mentioned numbers five, six,
2 and seven.

3 MS. DIAZ-TORO: Okay.

4 MR. MENTZ: Those individuals would --

5 MS. DIAZ-TORO: Okay, thank you.

6 MR. MENTZ: -- have to be going back and
7 forth, yes.

8 MS. DIAZ-TORO: Thank you. No, thank you.
9 That's -- I just wanted to make sure that we
10 understood it correctly.

11 MR. MENTZ: Well, you need to understand
12 and all of us need to understand that once a site has
13 been identified and we get the word to the five, six,
14 and seven individuals, there's going to have to be a
15 transfer of this information that's going to go back
16 and forth to us from the manager, oral history
17 manager, interviewers, and historians.

18 Because also I see the interview is going
19 as two phases, one for the cultural historic context
20 of Crow Butte itself, and then the precontact, I
21 guess, for lack of a better word, information of the
22 area.

23 But more importantly, now they're going to
24 bring the second component is the site specific, the
25 tangible historic site-specific areas, and some of

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1 these are older. These stone features, some may be
2 way older than precontact. Some may be even
3 prehistoric, but the point is that this is a very old
4 site.

5 This is a very historic site tied to a lot
6 of individuals that fasted there, that prayed there.
7 I mean, by far, you know, the first person who comes
8 up is Crazy Horse. You know, he used this. This is
9 one of his areas.

10 So, that's why I'm saying all of this is
11 going to have to be compressed and there's going to be
12 movement on those two phases.

13 MS. DIAZ-TORO: Understood, and then
14 everything would be completed within those 73 days
15 that are identified in your document?

16 MR. MENTZ: Let me say this just to
17 clarify that. What I gave you was an estimate
18 proposal based off of only the number 3,300 acres.

19 Again, had I had a scope of work that
20 defined and clearly outlined everything that needed to
21 occur within there, I could have gave you something
22 that maybe may not even look like this.

23 MS. DIAZ-TORO: Okay.

24 MR. MENTZ: It probably would be more
25 intense, so, just so you understand that. These are

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1 estimates. So, when you say the 78 days or the 584
2 hours, those were hours. They may be less or they may
3 be more --

4 MS. DIAZ-TORO: Okay.

5 MR. MENTZ: -- so, just so you understand
6 that.

7 MS. DIAZ-TORO: Thank you. And when it
8 comes to the draft report, Mr. Mentz, that's also
9 mentioned here under Article number 2, would that
10 draft report be shared with other parties?

11 MR. MENTZ: What I believe I put in there
12 was only Oglala Sioux Tribe, NRC, and I'm thinking
13 that's another discussion, I guess, that Oglala should
14 have in relation to who they want to share this with.

15 We're going to produce it. I think it's
16 important that you individuals decide who should have
17 responsibility to review it. I don't want to start --
18 that's kind of a loaded question you just gave me and
19 I don't want to answer that, but I will say in
20 answering a portion of it is that Oglala Sioux Tribe
21 --

22 I mean, Andy has to sit down with Oglala
23 because there is Section 304 of the National Historic
24 Preservation Act on disclosure, confidentiality, and
25 I think it's important that we understand how this

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1 type of information -- that's why I started off with
2 that.

3 MS. DIAZ-TORO: Okay.

4 MR. MENTZ: I want to be careful who sees
5 this report.

6 MS. DIAZ-TORO: All right, thank you, and
7 it's certainly a consideration, so I appreciate the
8 information. I might have -- so I think that --
9 sorry, I have something in my eye. I apologize.

10 So, maybe we can then sort of focus a
11 little bit more on the scope of the survey, and this
12 sort of follows upon your, the 3,300 acres number that
13 you identified and that you just mentioned. In the
14 description of the phase two of the survey
15 methodology, it refers to the new expansion color-
16 coded blue.

17 So, we did want to take the opportunity to
18 clarify that the proposed action, the continued
19 operation of this facility, does not include any
20 expansion areas, and on the map, that it's being
21 referred to -- and you remember. I don't have the map
22 pulled up right now, but it's the map that has the
23 yellow, and the colors yellow and blue.

24 MR. MENTZ: Yes.

25 MS. DIAZ-TORO: So, the areas -- right,

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1 the areas in yellow have been developed, and so, you
2 know, it's the well fields and associated facility.
3 All well fields and associated facilities have been
4 developed for this facility, and so we're focusing on
5 the continued operation, and so that is the extent of
6 the planned well field.

7 So, the yellow area is the only area where
8 land disturbance activities would be anticipated
9 during the proposed action. The areas in blue have
10 not been disturbed by the licensee's activities, so,
11 by the construction and operation of the well fields,
12 although much of the area has likely been disturbed by
13 other activities, agricultural, et cetera.

14 The licensee is also not planning to
15 conduct land disturbance activities in the blue areas.
16 They've mentioned that previously in other discussions
17 with the board, so I also wanted to provide that
18 clarification.

19 So, there could be other activities that
20 could occur in the blue areas such as grazing and
21 agricultural activities, but those areas are not
22 within the scope of the proposed action, so I just
23 wanted to take the opportunity to clarify that.

24 The other question we had about the scope
25 of the survey was that the document and the contents

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1 of the document that you developed, Mr. Mentz, does
2 not explicitly address whether the tribe want to
3 revisit the sites identified in the 1987 Bozell and
4 Pepperl report.

5 I did hear you previously that that would
6 be a consideration, so I just wanted to confirm that
7 the tribe would want to reexamine those sites as part
8 of the TCP survey. I think I heard you mention that
9 you would, but just to confirm.

10 MR. MENTZ: I definitely would like to,
11 but I'm going to leave that -- that's a discretionary
12 call and I think the Oglala Sioux Tribe THPO Tom could
13 make that determination, and I would actually help
14 recommend that type of review. So, Tom, I mean, we'll
15 leave that with Tom and Oglala Sioux Tribe --

16 MS. DIAZ-TORO: Okay.

17 MR. MENTZ: -- to discuss that. I would
18 like to also say though that because the 1980 reports
19 are prior to the '92 amendments, I think it really
20 warrants a look, and that's my justification for that.

21 I know up in North Dakota now, anything
22 over 20 years old requires a new survey. So, I mean,
23 states are starting to change their outlook.

24 Now, Nebraska may not be like that, but
25 the Standing Rock Sioux Tribe, when they revised their

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1 code in 2015, their Cultural Resource Code Title
2 XXXII, they explicitly say that if the report is 20
3 years old, it has to be resurveyed. They just come
4 straight out and say that.

5 So, I'm just saying that, you know, we
6 should consider that, and I'll talk to Tom about that
7 and the Oglala Sioux Tribe.

8 MS. DIAZ-TORO: Okay, thank you. Our
9 meeting, I wanted to pause for a little bit and just
10 mentioned that our meeting was scheduled from 11:00 to
11 -- 9:00 a.m. to 11:00 a.m. Mountain Time, and we have
12 about -- it's about six minutes to 11:00 a.m. Mountain
13 Time, so I want to be respectful of everyone's time.

14 From the NRC's standpoint, we could go a
15 little bit more, a little bit longer past 11:00 a.m.
16 Mountain Time. I wanted to ask kindly certainly if
17 the tribe, and Mr. Mentz, and Mr. Reid could go a
18 little bit further beyond 11:00 a.m. Eastern.

19 Now, I'm not expecting to go beyond 11:30
20 certainly, so, and if not, that's okay. I just want
21 to be mindful of everyone's time and respectful of it.

22 MR. MENTZ: Tom?

23 (Native language spoken.)

24 MR. BRINGS: Hello.

25 (Native language spoken.)

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1 MR. MENTZ: Mr. Reid, I guess, you know,
2 you call it.

3 MR. REID: I think we're happy to stay on
4 as long as necessary, as long as Mr. Mentz and Mr.
5 Brings can continue. I think it's an important
6 discussion, so, and it avoids having -- I think we can
7 minimize the meetings if we simply continue as long as
8 we can.

9 So, I also noticed there's somebody with
10 an area code of 703 on this conference, and I think
11 that's a Washington, D.C. area code?

12 MS. DIAZ-TORO: It's the court reporter.

13 MR. REID: Oh, it's the court reporter, I
14 see.

15 COURT REPORTER: This is the court
16 reporter.

17 MR. REID: All right, then.

18 MS. DIAZ-TORO: Thank you, Toby.

19 COURT REPORTER: You're welcome.

20 MS. DIAZ-TORO: Thanks. So, Mr. Mentz and
21 Mr. Brings, could we go a little bit longer? Is that
22 an issue for you or --

23 MR. BRINGS: This is Thomas Brings. I'm
24 fine, fine to go on.

25 MS. DIAZ-TORO: Okay.

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1 MR. MENTZ: And I'm okay too. I can stay
2 on a little longer.

3 MS. DIAZ-TORO: Thank you. I appreciate
4 it certainly. I hope we can finish within the next
5 few minutes. So, Mr. Mentz, I would like to go back
6 to the interviews and the scope of those and how they
7 would be carried out.

8 And so for example, under phase two, we
9 were interested in better understanding how many
10 individuals would be interviewed and whether, you
11 know, the scope of the interviews certainly, which you
12 have provided an answer, but would the scope of the
13 interviews also be focused on the specific sites that
14 are identified during phase one for example?

15 And I know that you said that there were
16 estimates provided in your proposal, but it was a
17 little bit unclear to us how many total hours would it
18 take to conduct the interviews?

19 MR. MENTZ: Yeah, just for the -- I'll
20 answer it like this.

21 MS. DIAZ-TORO: Okay.

22 MR. MENTZ: I really think it's important
23 that Oglala determines that themselves, the Oglala
24 Sioux Tribe, and actually in conjunction with Harold
25 and Tom's input.

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1 Now, initially when we were talking about
2 this, I got a rough estimate initially from, I believe
3 -- I can't remember if it was Tom or Harold. I think
4 it was Tom. He gave me some numbers, but he was just
5 kind of like giving an estimate too because they never
6 really sat down to discuss how we would really
7 coordinate this.

8 So, that would be actually the timeline on
9 how we can coordinate from the field work to the
10 interviews because like I said, the interviews, as I
11 understand it based off of what I've heard from Tom
12 and Oglala was that they're going to interview a lot
13 of individuals, or I don't know if it's a lot, sorry.

14 They're going to interview selected
15 individuals that have really important information,
16 significant information about the Crow Butte area
17 itself and its use, and its uses rather, and that's
18 one part, and when we say interviews, I'm assuming
19 that's what we're talking about here.

20 But also the other second component was
21 also the spiritual people not only being involved with
22 that discussion and how those interviews are being put
23 out there.

24 Because they're going to actually probably
25 interview, and I'm assuming because we've done that,

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1 is interviewing other spiritual people on the
2 spiritual intangible components.

3 So, that's going to bring a lot of
4 information out from those two areas of how they're
5 going to approach the people that want to be
6 interviewed, that can give something, and the
7 spiritual side of the interviews there.

8 And then the second part of it though is
9 how we can take them now that we have individuals that
10 will come out to the field, and now we've got these
11 sites.

12 So, we have these sites identified and we
13 need to take them out there, and that's where also Mr.
14 Reid brought up that maybe it would have to be where
15 they may go farther, well, even further, excuse me,
16 and conduct a ceremony out there to get added
17 information, or some of the things that have gaps in
18 the interview where they bring up that they heard
19 about this, or this place has this gift, and you
20 should see this area because there's this significant
21 area, and some of it may not even be a tangible
22 historic property. It could be a cultural landscape
23 part of that area.

24 So, when I said expansion, I was talking
25 about within the area of potential effect and in

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1 relation to how now -- let's say we got the line here.
2 This is where the line ends as far as the survey, but
3 now the site extends maybe 50, 60, 70 feet outside of
4 it, and that expansion, let me clarify, would be them
5 taking and being able to survey outside of that.

6 Now, if that's on somebody's private land
7 and stuff, there is now then we need to consider how
8 we access that, and if they don't give it to us, you
9 know, that's just the way it is. At least that's my
10 experience.

11 But what I said in expansion was if
12 there's sites that are running outside your area of
13 potential effect, we need to decide how we're going to
14 do that, and that should be included in the scope of
15 work. At least that should give us an indicator of
16 how we should address those.

17 Because I do bring up, and I brought it up
18 at the last call was permission. Permission is a big
19 issue to me. Up on the Bakken area, yeah, one site
20 extended out. The land owner was watching us.

21 He filed on Basin Electric, and that was
22 a Basin Electric project, and I'm just showing an
23 example on that one, and they took them to court
24 because we went ten feet into his area that was off
25 limits.

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1 So, that's why it's really important to
2 have these GIS and GPS people involved with this in
3 relation to where is that line, and we set that lath
4 board. Here is the limit, but now we got a situation
5 where the site extends out, so that's the boundary
6 issue.

7 Now, it brings in a bunch of other issues
8 with this, but more importantly now, how they can go
9 and access these areas to complete the interview. I
10 think that's where Oglala is going to have to discuss
11 this. Tom, you can add on if you want on this.
12 That's just my assessment.

13 MR. BRINGS: No, we haven't really decided
14 how many elders we were going to interview, but I know
15 it's going to take at least three days per interview.
16 We have to take the elders out to the site and them
17 looking at the area like as far as --

18 (Native language spoken.)

19 MR. BRINGS: They'll remember things when
20 they go out to the site.

21 MR. MENTZ: Right.

22 MR. BRINGS: So, it's not going to take
23 like half an hour to do each interview. It's going to
24 take days.

25 MR. MENTZ: And that's the intangible

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1 component that I understand that you're trying to
2 address, because that's what I heard with the judges
3 is you wanted clarification on the intangible.

4 Well, Tom just explained it to you. It's
5 not a ten-minute sit-down session. It's going to be
6 comprehensive, so just so you understand that.

7 MS. DIAZ-TORO: Okay, thank you. So, with
8 respect to the transcript of the interviews under
9 phase three, would -- well, it differentiates between
10 the entire transcript and then it indicates that the
11 condensed report would be included in the final
12 report.

13 We just wanted to understand whether the
14 entire transcript would be provided to the NRC staff
15 in English or would the NRC staff only receive the
16 condensed report in English?

17 MR. MENTZ: Again, I think that would be
18 in consultation with Mr. Reid and Oglala Sioux Tribe
19 because that's their information. So, now we're
20 talking intellectual property rights and the right to
21 control that information, so I think that's really a
22 question that belongs to the Oglala Sioux Tribe.

23 That's why that word condensed, they want
24 to put whatever, the field notes and all of those
25 types of sensitive information into this. That's

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1 going to be their call, but just bearing in mind that
2 this document is probably going to be some degree
3 shared with the public.

4 So, that's why I put that in there. So,
5 that's something, just to leave it with Oglala Sioux
6 Tribe. I will follow their lead on what they want to
7 determine with that.

8 MS. DIAZ-TORO: Okay, thank you.

9 MR. MENTZ: And just for clarity also,
10 this came up at the last survey that we did at
11 Whitestone Battlefield where all of these cultural
12 sites, these spiritual sites were, and part of the
13 process, what the THPOs and the elders asked me was
14 put in some information in there in the overall report
15 on star knowledge and how it's tied into all the
16 surface resources, the stone features that are
17 identified.

18 So, it was their decision to do that, and
19 I normally probably would say no because that's very
20 sensitive information, but what I did was -- and I
21 wrote that portion in the report and I gave it back to
22 the THPOs and the elders, and then they did cut out
23 some things that they did not want in there in order
24 for us to publish it, to put it in the final.

25 So, and I'm just giving you that example

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1 because there was some very sensitive information,
2 particularly with certain star constellations that
3 were contained on the ground there that I actually
4 referenced and gave a little cultural spiritual
5 knowledge about what I understood of those, and some
6 of that, they cut out.

7 So, that's why I'm saying, for to justify
8 what I'm saying. I would leave that up to Oglala to
9 decide with Andy.

10 MS. DIAZ-TORO: Okay, thank you. Before
11 I move to the questions that we had about the final
12 report, Mr. Mentz, on page five of the document, it
13 states that the rates will be the fee schedule of the
14 Makoche Wowapi. Is there an opportunity for you to
15 provide this fee schedule to us?

16 MR. MENTZ: I would only do that if I know
17 I have a contract. That's proprietary information, so
18 we don't do that on no project, so, but it can be
19 given to you once, you know, we got the go-ahead to,
20 I guess, go into a contractual agreement.

21 MS. DIAZ-TORO: Okay, understood, thank
22 you. And we do understand that it is proprietary
23 information, and that information, if provided, if you
24 choose to provide it to the NRC now, it would be
25 protected.

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1 It would be considered sensitive and
2 protected. It's proprietary and would not be made
3 publicly available, so I just wanted to make that
4 clarification as well.

5 And maybe just a follow-up question about
6 man-hours, and maybe if you could help us understand
7 what you mean by man-hours just to make sure that I'm
8 understanding you correctly?

9 MR. MENTZ: Okay, where are you looking at
10 or what did you say? I didn't catch it. You broke up
11 a bit there.

12 MS. DIAZ-TORO: I'm sorry. So, in our --
13 let me see if I go back. Let me scroll. Just hold on
14 one second. So, I'm just going back to our questions
15 about the effort, the level of effort if I might call
16 it that way, right.

17 You mentioned or you identified the 548
18 hours, 584 hours, sorry. I keep switching the last
19 two numbers, 584 hours, and we had noted that that
20 didn't seem to be the total man-hours that would be
21 required.

22 And you did explain that that was an
23 estimate, and it was specifically for a specific
24 purpose, and that it didn't reflect man-hours, so I
25 just wanted to clarify that when we say man-hours,

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1 that it's the same as what you understood or what you
2 define as man-hours.

3 MR. MENTZ: Yeah, the man-hours is the
4 eight-hour day.

5 MS. DIAZ-TORO: Right, the eight-hour day,
6 okay.

7 MR. MENTZ: Yeah, it's the eight-hour day.

8 MS. DIAZ-TORO: Perfect, thank you. And
9 so I think the last topic that we had clarifying
10 questions about was the scope of the final report, and
11 so one of the questions was about what would be
12 included in the final report and whether the tribes'
13 recommendation on eligibility to the National Register
14 of Historic Places, including evaluation of the
15 integrity of the sites that would be identified, the
16 evaluation of adverse effects, and the recommendations
17 of avoidance and mitigation measures, would be
18 included as part of that final report that would be
19 developed per your proposal?

20 MR. MENTZ: Yeah, and I do address it
21 somewhat, but then again, see, a lot of that
22 information would have been contained specifically in
23 the scope of work of what you wanted.

24 Now, in saying that, I will say this
25 though, that in order for us to do that type of

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1 completion, we need to understand that, you know,
2 we're going to compress all of the data and we're
3 going to put this component.

4 And I was unclear on that, whether you
5 wanted to include in the final report also the
6 interview portion of this in relation to how it would
7 interface or it would get put into the final report,
8 this oral history, or for the lack of a better word.

9 And that's something that, again, Oglala,
10 we're going to have to talk about. Is this report
11 going to be separate from the field identification
12 report, the final report?

13 Because I think it's important to
14 understand that because -- and that's why I couldn't
15 come up with anything else other than condensed, that
16 maybe there's a shrinkage of some of that information
17 that would be contained in the final report.

18 But for me to say right now how would it
19 be on record since you got this recorded, I would have
20 to discuss that with Oglala. I just don't want to
21 make statements on here that I can't fulfill.

22 In other words, just to be clear, I'm
23 coming into this blind. Again, I want to state that.
24 I'm coming into this blind. I haven't seen none of
25 the reports, previous reports, archeological reports.

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1 I haven't seen the tribes' reports, those two tribes
2 that did that.

3 But my question then was then do you want
4 us to evaluate based off of your March 5 letter? You
5 do bring that up on page two. You say evaluation of
6 previously identified sites.

7 The site survey would also include the
8 tribes' evaluation of tribal sites identified during
9 the 1980 Bozell and Pepperl survey conducted by the
10 licensee contractor.

11 Now, my question, if there's unevaluated
12 sites that are listed in those reports, are those the
13 ones that you want us to go back and look, or is this
14 contract or this process going to also do two things
15 now?

16 One, you're going to go out and identify
17 the area of potential effect, and secondly, that will
18 probably add another phase to it, is go back to the
19 existing identified sites that were listed previously
20 by Bozell and Pepperl and the two tribes, and do you
21 want us to actually evaluate them?

22 Because I don't know if anybody's ever
23 been involved with that that's listening right now,
24 maybe Mr. Spangler. Maybe he can chime in right now.
25 That's a little lengthy. You've got to justify how

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1 it's going to meet one of the four criteria under the
2 regulations to be eligible.

3 MR. SPANGLER: Mr. Mentz, Jerry Spangler
4 here. I think I can address her questions a little
5 bit here. On the nine locations that were identified
6 within the licensed area in 1982 and 1987, all but two
7 of them were evaluated at the time as not significant
8 and not eligible.

9 Two of them are eligible, and I think the
10 purpose for this question is do you want the
11 opportunity to revisit these sites to reevaluate
12 whether those determinations of not eligible were --

13 MR. MENTZ: I'm sorry. I just lost you.
14 I lost you when you said something for the purpose and
15 then -- I keep jumping in and out, sorry.

16 MR. SPANGLER: Not a problem. I think
17 what we were wanting to get at here with this question
18 was is there -- do you have an interest or does the
19 tribe have an interest to go back onto these sites
20 that were already determined to be not eligible and
21 reevaluate them from your perspective for a
22 reconsideration of that eligibility determination?

23 MR. MENTZ: So, what you're asking is we
24 will go revisit the site and see if we agree with the
25 determination that was made at that time, not stepping

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1 into a full evaluation for nomination?

2 MR. SPANGLER: I would not disagree with
3 that assessment. What I would clarify is if you
4 revisited those sites, you might very well identify
5 resources on that site or around that site that were
6 not identified in 1982 or 1987 that might make them
7 eligible for the National Register, and we can submit
8 a request to the Nebraska SHPO for a redetermination.

9 MR. MENTZ: Okay, so, and that was one of
10 the things that, if you notice in what I submitted to
11 you, was I asked a question of, and you have it there
12 on your second bullet, Nebraska SHPO Site Forms or TCP
13 forms.

14 I didn't know if Nebraska had a TCP form.
15 North Dakota does and I think South Dakota does also
16 in the SHPO office for sites off the reservation or
17 federal lands, but what I'm hearing from you is then
18 what we'll do, if we include this, what we'll do is
19 just update the existing site form for that site?

20 MR. SPANGLER: I'm trying to determine if
21 that's something you would like to do, whether that
22 would be of value to the tribes.

23 What we have is, you know, over 30 years
24 ago, you know, some white archeologists made a
25 determination that they weren't eligible, and would it

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1 be of value for the tribe to revisit that issue from
2 your own perspectives?

3 MR. MENTZ: Yeah, I think it would be.
4 Everything changed after 1992, so, yeah, that's why we
5 say that anything over 20 years, they need to be
6 resurveyed.

7 We would definitely agree with that, but
8 let me say this for the record also, that I will take
9 that question back, or, Tom, you know that question.
10 Write that down and we will discuss that because I'm
11 assuming that we will. Just for the purposes of right
12 now, I would say we definitely would like to go back
13 and see those.

14 MR. SPANGLER: And to just further answer
15 your question, the Nebraska SHPO does not have a TCP
16 site form, and if you have a preferred form that you
17 like to use, whether it's South Dakota or North
18 Dakota, could you provide that to us as a point of
19 reference?

20 MR. MENTZ: Yeah, I can do that. I think
21 it's just been updated, the North Dakota one. It's
22 very -- it's a lot better. I will get that to you.
23 I've got one in the files here, a copy of one, a blank
24 one, and I will forward that on over to Andy Reid, Mr.
25 Reid, and then maybe Mr. Reid can get that to you all.

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1 MS. DIAZ-TORO: Thank you.

2 MR. SPANGLER: Thank you very much.

3 MS. DIAZ-TORO: So, Mr. Mentz, we only
4 have two additional questions that we wanted to
5 clarify.

6 One was with respect to the reference that
7 is made under Article 3 to an intangible spirit
8 evaluation report, and we were wondering if that
9 intangible spirit evaluation would be based on the
10 information obtained during the execution of the phase
11 two, of the oral history interviews, and if not, then
12 what it would be based on?

13 MR. MENTZ: Well, and I guess I don't want
14 to answer your question with a question, but that was
15 why I was wondering that and we had never really --
16 I'm sorry. We never really --

17 MS. DIAZ-TORO: No, it's okay.

18 MR. MENTZ: -- discussed that.

19 (Laughter.)

20 MR. MENTZ: That's why I just asked the
21 question a little bit ago. We got five, six, and
22 seven as personnel, people that will be doing the
23 interviews, the report, and is that going to be -- or
24 does NRC recommend that be separate from the
25 identification report, or does that intangible

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1 spiritual evaluation report --

2 And just to clarify, when I say that,
3 intangible spiritual evaluation report, that's what's
4 going to be the compressing of all the interviews and
5 putting that into --

6 MS. DIAZ-TORO: Okay.

7 MR. MENTZ: -- a report, or do we want to
8 make it a chapter in the final report? We could do
9 either one.

10 MS. DIAZ-TORO: No, that's certainly -- I
11 think that maybe I'm going to answer now your question
12 with a third question from me, and maybe I have to
13 apologize, but actually you just answered the question
14 that we were asking.

15 I think we're asking for what would be
16 your recommendation, right, or what is it that the
17 Oglala Sioux Tribe and you, Mr. Mentz, are proposing
18 and recommending, and that's -- so you answered the
19 question, so I appreciate it.

20 MR. MENTZ: And just to clarify that, I do
21 -- just because I answered it. I'm not the one that's
22 calling the shots here. It's the Oglala Sioux Tribe
23 in consultation with Mr. Reid.

24 So, could we take that back and just make
25 sure that we want to do -- because -- and the purpose

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1 is just because it may contain some sensitive
2 information, and I would just as soon rather have the
3 Oglala Sioux Tribe make that determination and not be
4 over the phone or me being --

5 MS. DIAZ-TORO: Okay.

6 MR. MENTZ: -- put on a record here right
7 now with the court reporter, and you're holding me to
8 that later saying, well, you said this. I don't --
9 see, I would really revert to the Oglala Sioux Tribe
10 to make that determination or recommendation.

11 MS. DIAZ-TORO: Understood, thank you.

12 (Simultaneous speaking.)

13 MR. MENTZ: Yeah, go ahead.

14 MR. SPANGLER: I have one follow-up
15 question for Mr. Mentz. These projects that you've
16 done in North Dakota and South Dakota, just a question
17 on clarification, were the reports filed with the
18 respective SHPOs or were those held confidential by
19 the tribes?

20 MR. MENTZ: Yeah --

21 MR. SPANGLER: I think the Nebraska SHPO
22 was wanting an answer to that question, whether they
23 will get a copy of this or do you keep that
24 confidential?

25 MR. MENTZ: Well, I'll answer it like this

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1 because I work mostly in North Dakota. I do work in
2 South Dakota. They're a little different in relation
3 to this question.

4 For the purposes of North Dakota, who we
5 started with, that first one really in the nation that
6 really -- we helped them put together -- actually we
7 put together the site for them.

8 But now what happens when we condense it
9 and put it into a report that has some very
10 significant information with spiritual, and it's
11 really borderline intellectual property rights versus
12 putting something out there that maybe the public can
13 view versus disclosure, confidentiality.

14 So what North Dakota did, they have a
15 separate room for all the Tribal reports, and nobody
16 gets access to them. Only the Tribes get access to
17 them. So even the archaeologists are a CRM from this.
18 Going in there and doing a Class 1 file search, they
19 got to get permission from the THPOs in order to get
20 into that room.

21 So, yes, they are held under really strict
22 lock and key. It's totally hands off to any CRM firm
23 unless the Tribes agree. So it's kind of a little
24 convoluted in a way because they have to then issue
25 letters out to the Tribe saying, hey, we're going into

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1 this area.

2 And so what happened was the Tribes and
3 the THPOs now decided that we will provide the points.
4 So there are points that go into a report, an
5 archaeological report, and some of that information is
6 compressed.

7 Like what we did with the one I was
8 mentioning at Whitestone Hill, all of our information,
9 our data, our report went into a chapter in the
10 overall Class 3 archaeological report and that was the
11 way they wanted it like that. The THPOs wanted it and
12 the Tribes wanted it because the applicant wanted
13 access for their records to get all the field notes
14 and all that really sensitive information and the
15 Tribes said no.

16 And they said they will back out if that's
17 what you want. And they couldn't do nothing, but they
18 had to have the Tribes so they agreed to the
19 applicant.

20 So we put it in a chapter. It was a very
21 lengthy chapter, but we provided the points in that
22 report. And that was what is now listed in the -- if
23 you do a file search on that area then you will find
24 that report. And you will find information that we
25 provided, but the sensitive stuff is hands off. And

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1 I understand South Dakota is doing that now, too.

2 MR. SPANGLER: Thank you. And maybe a
3 follow-up question to Mr. Brings. I know you haven't
4 discussed it with your Tribal leaders yet, but do you
5 like that approach? Is that something we could work
6 into the proposal that it would include a chapter that
7 had been reviewed by the Tribe and determined to be
8 appropriate for public release?

9 MR. BRINGS: Yes. That's something we
10 could always work on. We have to determine, like,
11 with the interviews what, like, the spiritual leaders
12 and some of the elders what they determine is able to
13 released, able to be shared, I guess.

14 MR. SPANGLER: Thank you. That gives me
15 lots of clarification. Thank you very much.

16 MS. DIAZ-TORO: Thank you, Jerry. So I
17 think that last question that we had, Mr. Mentz, with
18 respect to the background and literature searches that
19 you proposed to conduct, and we were wondering what
20 background and literature searches related to TCPs
21 would be conducted as part of this effort.

22 MR. MENTZ: So that was going to be one of
23 my questions. But I left it out of this document
24 completely, and I have yet to ask the question, I
25 guess. And it kind of falls in line with what Mr.

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1 Spangler is asking in relation to how other SHPOs are
2 doing it with this sensitive information.

3 Now as we know, there has been Class 1's,
4 our file searches, done in the 80s. And now I think
5 a literature search still needs to occur for any
6 updated information. And you guys know better than me
7 if anything has ever been done more since the two
8 reports in the 80s in the two Tribes so.

9 But the thing about this is that, okay, so
10 now the question is, what do we put in in relation to
11 how we can -- like an example will be the information
12 that we did at Whitestone Hill. You won't find it.

13 So SHPO met with all the 16 Tribes in the
14 Great Plains. And they asked that question, and they
15 talked about this question. And the thing about it
16 was that, okay, there's a hands off determination in
17 relation to all of this existing data now.

18 We provided a lot of data. I provided a
19 lot of data in the North Dakota SHPO in relation to
20 these types of stone features and sites that included
21 to some degree a limit on the intangible. So North
22 Dakota is sitting with that, but they guard that very
23 carefully for access. But when it came to, like I
24 said, the archaeologists are saying, well, I need to
25 get in there to see and do some background and a

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1 literature search on these CCPs, they were denied it.

2 So what was the result of it? They could
3 only go in there and pull out the archaeological
4 reports that had datum, data points.

5 Now I've done TCP reports that doesn't
6 have no archaeology connected to it. Those are all in
7 the backroom, the locked room, for the Tribes. And so
8 nobody has access to it.

9 So when you're saying or asking that
10 question about this, it's really a determination of
11 the THPOs and the Tribes whether they want to really
12 get you to get some of that information.

13 Again, it's proprietary rights in relation
14 to not only now the individuals that are giving that
15 and, of course, Oglala is going to have to work that
16 out with the people that are going to be interviewed
17 in relation to how they release that information and
18 how Oglala is going to protect it but also now it gets
19 into now we have got to do a reporting. And, oh, by
20 the way, we may have to release this to the public.

21 So it's going to be something that -- I
22 have never been in this type of a situation in a court
23 setting, but I'm just saying that in relation to the
24 literature search. Right now I don't know where you
25 can get that. And that's been determined by the

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1 Tribes and the THPOs not me.

2 And I'm Makoche. So when I do literature
3 searches, of course, I can get into those rooms, and
4 I can go through. And I can go through all their
5 maps, and I can see what's all been surveyed and where
6 it ties into what report and whatnot and then I have
7 access.

8 But for me to do that, let's say in
9 Nebraska, of course, I'm assuming, and what I'm
10 hearing, they don't have that ability. So I don't
11 know how you address that.

12 And maybe that's something that if you can
13 clarify your question better and give it to Andy so
14 that way he can get to the Oglala Sioux Tribe, let
15 them talk about that. Let them see that because I'm
16 really right now, the only thing you'll have is
17 something that's going to be developed and processed
18 and put into a report after the fact not something
19 that you're getting existing information and then
20 going into it, especially for locational data and then
21 the information.

22 So I don't know if that answers your
23 question. But that, I don't know. I'll have to leave
24 that with Oglala.

25 MS. DIAZ-TORO: Okay. Thank you. I

1 appreciate it.

2 MR. MENTZ: I hope that answered your
3 question.

4 MS. DIAZ-TORO: It did. Sorry.

5 MR. MENTZ: I probably did a bad job on
6 it. I'm sorry.

7 MS. DIAZ-TORO: No, no. I don't think you
8 did, sir. Absolutely not. It did answer, you know,
9 there are uniques to specific information that's
10 located and held by different organizations, Tribes,
11 groups, right, and are unique to those organizations,
12 Tribes and places. So thank you. I think what --

13 MR. REID: If I may comment on that
14 quickly on the confidentiality issue, I think there's
15 going to be -- it required at least two levels of
16 confidentiality. One would be the one where the Tribe
17 believes that it cannot just voucher information to
18 anyone outside of the Tribal designated
19 representatives. And I think that's what Mr. Mentz
20 was talking about the Tribes holding onto.

21 And then there's the second level of
22 confidentiality that can be disclosed to certain
23 people, such as those that have signed the
24 confidentiality agreement of the archaeologists, those
25 involved in the TCP survey but which cannot be

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1 disclosed to the public so, for example, the exact
2 location of certain areas that need to be protected.

3 So you're not disclosing -- the difference
4 would be you may not be disclosing the detail of the
5 spiritual nature of an area because that is to be
6 protected by the Tribe. And that's not to be
7 disclosed to anyone outside of the spiritual advisers
8 and those that they believe can have that information.

9 And then there's a second level that can
10 be disclosed to the experts and so forth but not to
11 the general public because we don't want anyone going
12 out there and disturbing those sites.

13 And then there would be the third level
14 then that would be data that's available to be
15 disclosed to the public.

16 So for example, the final report may
17 include a listing of sites that have -- intangible
18 sites that have spiritual value to the Lakota people,
19 but it will not disclose the exact location of that
20 site. Or if it discloses the exact location of that
21 site, it may not disclose the ceremonial value or the
22 spiritual details of that site.

23 And I think that can be included in a
24 description of the survey proposal with perhaps a
25 provision that would allow Crow Buttes, experts or

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1 anyone that wishes to seek that information a process
2 so that they can request that or petition the Tribe to
3 release that information. But the ultimate
4 determination, and I agree with Mr. Mentz, it has to
5 be made by the Tribe itself in consultation with the
6 spiritual advisers.

7 And then, for example, Mr. Spangler may
8 want to know, well, what's the basis of you declaring
9 that area to be of spiritual value, and he may request
10 that information from the Tribe. The Tribe may then
11 have to make the decision whether or not to disclose
12 that. And then the NRC will have to make a decision
13 as to how they're going to deal with that if the Tribe
14 refuses to disclose that.

15 But that would be -- I think we can write
16 that into the proposal. But I see at least two areas
17 of confidentiality. Does that help clear things up a
18 little bit on that?

19 MS. DIAZ-TORO: Thank you.

20 MR. REID: The other comment I wanted to
21 make before we leave is on the area, the survey area.
22 I realize the NRC, it appears to me, is starting to
23 limit that survey area to the yellow parts of the
24 graphic that was provided as part of the NRC's
25 materials.

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1 I note in the license application from
2 Crow Butte, the original application, that came from
3 the Figure 3.1-4. And then I would note that in that
4 figure, the blue part, which we've talked about, the
5 3,300 acres, so the blue part, is a permit area. It's
6 a UIC permit area. The Underground Injection Control
7 Permit that was issued by the State of Nebraska under
8 the Clean Water Act and the Safe Drinking Water Act.

9 And that's the area that's allowed to be
10 impacted by the activities of Crow Butte, the aquifer.
11 So that's the underground area of the water resource
12 that can be impacted. They cannot go outside that
13 area or it's an excursion.

14 The one thing I will note is that the
15 yellow area does not include the facility itself or
16 the evaporation ponds and so forth, that those are
17 separate. And those are actually outside the yellow
18 area.

19 In addition, the graph that we've been
20 discussing that's been -- the limited -- the yellow
21 area just attracts the ore body. It doesn't attract
22 the disturbed areas.

23 The disturbed areas also include the roads
24 that we drove when we went to the site visit. That's
25 now shown on the figure. And it's not included in the

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1 amount of the ore body area that's impacted.

2 The NRC issues a source materials license,
3 which allows Crow Butte to extract and possess source
4 materials from that area within the permit boundary.

5 My understanding is that's not limited
6 necessarily to the yellow area. There's no limitation
7 from the NRC license as to area. And that's
8 controlled by the application. The application
9 includes the full 3,300 acres.

10 So for that reason -- and also the roads
11 and the access to those disturbed areas where the ore
12 body is also opens up that area to others to get into
13 the blue area, which we call the undisturbed area.

14 I think that's a misnomer. It's not
15 actually an undisturbed area. It can suffer
16 significant disturbance. So it's OST's position, the
17 Tribe's position, that the survey needs to include the
18 entire 3,300 acres that are subject to the UIC permit.

19 So I just wanted to clear up that that's
20 what we're talking about, not just the area above the
21 ore body.

22 In addition, I would note that there have
23 been excursions already, including surface excursions.
24 The Crow Butte was sued by the State of Nebraska in
25 2008 for surface disturbance, which would go outside

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1 of the ore body into the blue area. So I think it's
2 inaccurate to state that the blue area is undisturbed
3 and therefore does not need to be surveyed.

4 I think we're getting ourselves into a
5 position, which I won't accept, where the Tribe is
6 being told that the only area that they can survey is
7 the yellow area that's disturbed because the blue area
8 is undisturbed and that the yellow area has been so
9 disturbed that it's beyond the survey. That's a
10 catch-22 situation, which we will not agree to.

11 MS. DIAZ-TORO: So, Mr. Reid, thank you.
12 We weren't making any determinations about what areas
13 would be or what areas would be not. We were just --
14 our questions were focused on better understanding the
15 plans for deciding which disturbed areas to survey and
16 which not. And then based on several statements in
17 the document, we just wanted to provide clarification
18 about the difference between the yellow areas and the
19 blue areas.

20 So we were just merely providing
21 clarification. We were not making any determinations
22 or any decisions. This meeting wasn't a decision-
23 making meeting. And we were just -- the focus was
24 just purely to better understand or get a good sense
25 of the proposal that was provided so.

1 MR. REID: And that's what I'm doing. I'm
2 providing clarification of the Tribe's position.

3 MS. DIAZ-TORO: Yes. So I just wanted to
4 make sure that we're not -- you know, there are enough
5 -- we haven't decided anything, and we have not made
6 any determinations whatsoever.

7 It was just purely clarification about
8 what has happened in the yellow areas and in the blue
9 areas. And there are certain activities beyond the
10 mining activities, right, that could occur that are
11 outside the scope of the NRC so that was it.

12 MR. REID: Thank you.

13 MS. DIAZ-TORO: Thank you.

14 MR. MENTZ: This is Tim.

15 MS. DIAZ-TORO: Yes.

16 MR. MENTZ: Could I just have one more
17 clarifying question? And I said this, rather I asked
18 this earlier. And I understand the response in
19 relation to we're beyond the Section 106 in relation
20 to the intangible. That's where it's kind of getting
21 me confused.

22 So in this process, this is a determined
23 federal undertaking in relation to initiating an
24 identification survey, and it's under Section 106.

25 And so my question is, and I wanted to

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1 give a comment about this, is clarifying and maybe if
2 you could put it in writing for my records a letter
3 saying that clarifying the position in relation to the
4 court and your responsibilities on seeking information
5 on the intangibles versus now asking for a Section 106
6 identification survey. I need to know that.

7 So, again, what I'm stating is that these
8 are two -- it's like apples and oranges and they're
9 both in the same basket, but the apple, the 800
10 regulations, I'll be following that in relation to
11 site identification. So I'll be working through 36
12 CFR 800.3 to 800.13.

13 Now 800.4 addresses this on the
14 confidentiality of this information. And the citation
15 is 36 CFR 800.4(a)(4). And I just want to read this
16 for the record, 800.4, Identification of Historic
17 Properties, (a) is determine scope of identification
18 efforts. So that's what we're going to be doing out
19 there. I'm right now telling you that here are the
20 types of identification efforts I'm going to be doing
21 there, and I gave you a document, a proposed draft
22 document.

23 So 800.4(a)(4) says this, gather
24 information from any Indian Tribe pursuant to 800.3(f)
25 to assist in identifying properties, including those

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1 located off Tribal lands which may be of religious and
2 cultural significance to them and may be eligible for
3 the National Register -- and this is important right
4 here -- recognizing that an Indian Tribe and Native
5 Hawaiian organization may be reluctant to divulge
6 specific information regarding the location, nature
7 and activities associated with such sites.

8 That's why I made my comments in relation
9 to what the regulations say. It goes on to say that
10 Agency officials should address concerns raised about
11 confidentiality pursuant to Subsection 800.11(c).
12 800.11(c) is Section 304 of the statutory law, NHPA.
13 So I just want you to know that and clarify that --

14 MS. DIAZ-TORO: Yes.

15 MR. MENTZ: -- that question I have
16 because, you know, if we're going to put some
17 information in a report is my point.

18 My point in this is if we're going to do
19 that, and if Oglala makes that determination based on
20 the limits and how much they want to go, this is the
21 section that I am looking at in relation to how that
22 information will be protected.

23 So, again, I'll just ask my question.
24 Clarify to me if I'm only working under the shroud of
25 trying to address intangibles or am I also being

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1 included to be able to get out there to identify under
2 the 800 regulations the identification of historic
3 properties. Those are two separate functions.

4 So I want to know that because you
5 mentioned earlier that --

6 MS. DIAZ-TORO: Mm-hmm.

7 MR. MENTZ: -- you know, the intangibles.
8 That's kind of one of the things that came up in
9 court. So, okay, thank you.

10 MS. DIAZ-TORO: So, sure. Thank you. So
11 the Board, the judges, have identified deficiencies
12 under both the National Historic Preservation Act,
13 Section 106, and the National Environmental Policy
14 Act.

15 And so NRC staff is focusing on
16 identification efforts and identification of sites of
17 significance to the Tribes. And so that is the
18 purpose of the -- that would be the purpose of the
19 field survey conducted at the Crow Butte IS uranium
20 recovery site to identify sites of significance to the
21 Oglala Sioux Tribe and with the ultimate goal of
22 remedying both of those deficiencies under both
23 statutes.

24 MR. MENTZ: Thank you.

25 MS. DIAZ-TORO: Sure. Anytime. All

1 right. So it does look like we've reached maybe the
2 end of our meeting. And I do want to thank Mr. Mentz
3 and Mr. Brings for their time and for their patience
4 and providing clarifications about the proposal that
5 Mr. Mentz put together.

6 And I think with that, that's all that the
7 NRC had. Anything else that I might have missed,
8 Lorraine or Jean or Jerry? All right. I'm hearing
9 silence.

10 MR. SPANGLER: No. I'm good. Thanks.

11 MS. DIAZ-TORO: Thank you.

12 MS. BAER: Yes, nothing from me at this
13 time either.

14 MS. DIAZ-TORO: Thank you. So that's it
15 for us. And, again, I appreciate it very much. Mr.
16 Mentz, I don't know -- I answered your last question
17 that you had. And, Mr. Brings, anything else that you
18 would like to bring up or have a question about?

19 MR. BRINGS: No. Sounds great. Fine.
20 Thank you.

21 MR. MENTZ: And I just ask if you could
22 put that on a piece of paper for my records. Sorry.
23 I would like a document for that.

24 MS. DIAZ-TORO: For what was said here?

25 MR. MENTZ: Yes. Just clarifying my role

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1 in relation identification and intangibles so.

2 MS. DIAZ-TORO: Okay.

3 MR. MENTZ: What you just said, if you
4 could just write that to me.

5 MS. DIAZ-TORO: I will provide the
6 transcript of the meeting to the Tribe. That's the
7 plan. I think it takes about three days maybe for the
8 contractor to provide us, approximately, right, plus
9 or minus, and so we'll provide that non-public to the
10 Tribe.

11 All right. With that, Mr. Reid, thank you
12 as well. And you'll be seeing the transcript from me
13 within the next -- well, I guess it's Thursday, right?
14 So then early next week is my expectation. And with
15 that I want to thank you again and have a wonderful
16 weekend, everyone.

17 (Whereupon, the above-entitled matter went
18 off the record at 1:48 p.m.)

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