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**NUCLEAR REGULATORY COMMISSION**

Title: Meeting to Discuss Draft Survey Methodology  
for Crow Butte in Situ Recovery Site

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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MEETING TO DISCUSS DRAFT SURVEY METHODOLOGY FOR CROW

BUTTE IN SITU RECOVERY SITE

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WEDNESDAY,

AUGUST 25, 2021

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The meeting was held via Videoconference,  
at 12:00 p.m. EDT, Diana Diaz Toro, Project Manager,  
presiding.

PRESENT:

LORRAINE BAER, Counsel for NRC

THOMAS BRINGS, Tribal Historic Preservation Officer,  
Oglala Sioux Tribe

DIANA DIAZ TORO, Project Manager, NRC

JESSIE QUINTERO, Branch Chief, Environmental Review  
Materials Branch, NRC

ANDREW REID, Counsel for Oglala Sioux Tribe

MARCIA SIMON, Counsel for NRC

JERRY SPANGLER, Contract Support Staff, NRC

JEAN TREFETHEN, Project Manager, NRC

## P R O C E E D I N G S

12:11 p.m.

MS. DIAZ TORO: So good morning. Good morning and good afternoon since we're all in different time zones.

Andy and Tom, I want to welcome you to the meeting and thank you for the opportunity to meet with us.

Before we start with the formal introductions in the meeting, I wanted to let you all know that the meeting today is being recorded and we have a court reporter today with us and his name is Matthew.

Welcome, Matthew, and thank you for being with us and supporting us.

So if you all see -- there's a third telephone number, that's the court reporter. So the best that we can remember when we are talking, if we can identify ourselves before we speak, it would help -- it would allow -- it would help the court reporter and the transcript.

With that said, Andy, I'm going to ask you to -- we can do sort of go through the introductions. You all can go first. We'll also try to introduce their attorney and then the NRC can go second. Thank

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1 you.

2 MR. REID: Yes, my name is Andrew Reid.  
3 I'm with the Native Justice, LLC. And I represent the  
4 Oglala Sioux Tribe.

5 Tom, you can introduce yourself.

6 MR. BRINGS: My name is Thomas Brings.  
7 I'm the Tribal Historic Preservation Officer for the  
8 Oglala Sioux Tribe.

9 MS. DIAZ TORO: Thank you. For the NRC,  
10 this is Diana Diaz Toro and I'm an Environmental  
11 Project Manager for the Office of Nuclear Materials  
12 Safety and Safeguards. I'm one of the project  
13 managers working on this identification effort  
14 project.

15 MS. TREFETHEN: This is Jean Trefethen.  
16 I'm also a Project working on this project.

17 MS. QUINTERO: Hi, this is Jessie  
18 Quintero. I'm the Branch Chief of the Environmental  
19 Review Materials Branch with Jean and Diana. Hi,  
20 everybody.

21 MS. SIMON: Hi. This is Marcia Simon.  
22 I'm an attorney in the NRC Office of the General  
23 Counsel and I represent the NRC staff.

24 MS. BAER: Hi. This is Lorraine Baer.  
25 I'm also an attorney in the Office of General Counsel

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1 and I am Marcia's co-counsel on the case.

2 MR. SPANGLER: Hi. I'm Jerry Spangler.  
3 I'm the contractor supporting the NRC staff.

4 MS. DIAZ TORO: Great. And then we have  
5 a court reporter.

6 So with that, before we start, I also want  
7 to make just a clarification about the recording of  
8 the transcript. Because the draft survey methodology  
9 is publicly available, Andy and Tom, we do not believe  
10 that there would be any sensitive information shared  
11 during this meeting. However, just like we did the  
12 last time, the plan is to keep the transcript non-  
13 public until you all have had the opportunity to  
14 review it. And once that's completed, then we would  
15 make the transcript publicly available, minus, of  
16 course, any sensitive information that you all  
17 identify. And the transcript would serve as the  
18 meeting summary for this meeting.

19 On August 10th, the NRC staff sent a draft  
20 survey methodology to identify sites of historic,  
21 cultural, and religious significance to the Oglala  
22 Sioux Tribe at the Crow Butte uranium recovery site in  
23 Crawford, Nebraska to both the Oglala Sioux Tribe and  
24 the Crow Butte Resources.

25 And following that, we scheduled a meeting

1 -- separate meetings, individual meetings as we had  
2 mentioned during the last status conference call with  
3 the Board. We had scheduled separate meetings one  
4 with the Oglala Sioux Tribe which we're now  
5 conducting and one with Crow Butte Resources which was  
6 held last week. That meeting, Andy and Tom, with Crow  
7 Butte Resources with CBR was also recorded and  
8 transcribed and we were following the same process,  
9 the transcript.

10 The plan was to send the transcript to  
11 Crow Butte Resources and they would review it, et  
12 cetera, and then we would make it publicly available.  
13 So once that is publicly available, we'll inform the  
14 parties of the transcript for both meetings are  
15 publicly available.

16 So today's meeting specifically is to  
17 listen to your comments on the draft survey  
18 methodology. I wasn't planning on providing an  
19 overview of the draft survey methodology, but I can  
20 certainly go very quickly or briefly through the  
21 sections of the survey methodology if you, Andy and  
22 Tom, would like me to do that. Otherwise, I think we  
23 can go directly into the -- listening to your comments  
24 about the survey methodology.

25 MR. REID: Yes, I don't think we need a

1 summary in this, Tom, as we each have the draft in  
2 front of us. Hopefully, Tom does. And what I thought  
3 we could do is just go through it page by page with  
4 comments.

5 MS. DIAZ TORO: Okay.

6 MR. REID: Does that sound all right?

7 MS. DIAZ TORO: Yes, sir.

8 MR. REID: Tom, is that okay with you,  
9 too?

10 MR. BRINGS: Yes, that's fine.

11 MR. REID: All right. Tom, do you have  
12 the survey methodology in front of you?

13 MR. BRINGS: Yes.

14 MR. REID: Okay. All right. I'm going to  
15 count on you. We haven't -- I have to let you know  
16 that we've had some difficulty communicating because  
17 I'm in Denver and they're up on Pine Ridge and Jim  
18 Mentz is up in Standing Rock. So we've had some  
19 trouble getting together to communicate to find a  
20 common position on the methodology.

21 So I'll have comments on my own as counsel  
22 for the Tribe based on my past conversations with the  
23 Tribe, but I have not been able to fully clear all of  
24 this with Tom and the Tribe. And so hopefully, I'm  
25 going to encourage Tom, since he's on the call, to

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1 speak up if I say anything that you believe is not  
2 okay in regards to the position of the Tribe.

3 Tom and I have spoken some, but not in as  
4 much detail as I think we're going to go through in  
5 terms of reviewing the methodology. So -- am I coming  
6 through okay on the phone?

7 MS. DIAZ TORO: I can hear you clearly,  
8 Andy. Thank you.

9 MR. REID: All right. And Tim wasn't able  
10 to make the meeting today, but I did speak with him.  
11 He has some issues. He has some professional  
12 differences with Mr. LeBeau, for example, and I  
13 understand a lot of this comes from a previous draft  
14 regarding the Powertech program which I don't -- it's  
15 my understanding that that draft was never accepted,  
16 formally accepted by the Tribe, and it's in  
17 litigation. But hopefully, we can get a little  
18 farther than they did in the Powertech matter and  
19 maybe clear up some of these things.

20 But I do appreciate the references to Mr.  
21 Mike Catches Enemy in his paper in here. I think it  
22 more accurately represents the Tribe's approach to the  
23 survey and I appreciate that that's in there. At some  
24 point, we're going to -- I would like to involve Mr.  
25 Catches Enemy. It could be at the survey stage or

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1 maybe at the review stage, the report writing stage.  
2 But we'd like to -- we're working on that. There's  
3 some issues with Mr. Catches Enemy with regards to his  
4 position and responsibilities with the Tribe that may  
5 not cover his participation in this survey, so we're  
6 trying to hack that out.

7           With that said, we're looking at having  
8 Mr. Mentz help us. It's not set yet, so a lot of it's  
9 based on the funding. As you probably know from your  
10 call with Crow Butte last week, that I have had  
11 conversations with counsel for Crow Butte and we are  
12 trying to work out the funding. It was a cordial  
13 conversation and made some progress and they're  
14 waiting for us to get back on how much we believe the  
15 Tribe would need in order to complete the survey.

16           And so I'll talk on that some a little bit  
17 later because that goes to the end of the -- the very  
18 end of this draft, there's a discussion, and I'm going  
19 to skip to that and then come back, in terms of the --  
20 it's on page 20 on the Part 7, 20 and 21, where it  
21 talks about the implementation. And there's two  
22 proposals, one with the Tribe. My understanding doing  
23 the cultural survey and then I guess the NRC would  
24 take the -- do more of the Section 106 survey.

25           Or the second option would be for the Crow

1 Butte contact directly for the Tribe to do the entire  
2 survey and then that would be presented to the NRC.  
3 Staff and the NRC staff would do what they will with  
4 it. They can accept or reject anything that's in  
5 there, the survey, and do whatever analysis they feel  
6 like is appropriate under the National Historic  
7 Preservation Act and NEPA for the supplement to the  
8 EA.

9 So anyway, I think what we're looking  
10 towards and just to maybe put our comments in context,  
11 probably our preference would be the second one, would  
12 be to have -- because we are making progress with Crow  
13 Butte and if Crow Butte and the Tribe can reach  
14 agreement on funding for the survey and I think  
15 there's a real possibility for that, then the Tribe  
16 can go ahead and do the survey and present it to the  
17 NRC. And I understand the NRC is going to have  
18 certain requirements, NRC staff that they need to meet  
19 in order to feel comfortable with the report.

20 I think we -- it's our goal to make sure  
21 it's scientifically defensible and supportable and  
22 that it's appropriate and then in a way that both  
23 complies with the requirements of the U.S. Government  
24 and that of the Tribe.

25 I'll say in terms of a context, too, as

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1 well, when I read the draft, I noticed that there was  
2 a considerable effort and I don't know if I should  
3 congratulate Mr. Spangler on that or not or who was  
4 responsible for that, but I did catch that there was  
5 a considerable effort to be sensitive to the  
6 differences in culture and worldview between a Western  
7 worldview and the Native worldview in terms of how we  
8 approach this and that respect needs to be given and  
9 credibility given to the Native worldview, as well as  
10 the acceptance that a lot of the, if not most of the  
11 information that's necessary to conduct the survey is  
12 contained in the expertise and knowledge and history  
13 of the Lakota people themselves.

14 So if I can start with page 1, footnote 2,  
15 there's a reference to the submission by the Tribe  
16 from Mr. Mentz as part of some of it not being  
17 relevant. I don't really have any real problems with  
18 including that footnote. I understand that you're  
19 just trying to be complete. I don't think it's  
20 necessary. It may create some issues as to whether or  
21 not we feel like it's relevant or not. And it's  
22 probably better just leaving that out. I don't think  
23 it's necessary for the draft, particularly if Mr.  
24 Mentz ends up doing the survey. He may have  
25 disagreement as to whether or not something he

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1 proposes is relevant or not. I just don't think that  
2 that footnote 2 is necessary. I think you can state  
3 that there was a submission from Mr. Mentz through the  
4 Tribe and that to the extent possible that the NRC  
5 staff has tried to incorporate those suggestions from  
6 his submission into this draft. I think that would be  
7 appropriate.

8           On page 2, in terms of the definitions  
9 that we're talking about on page 2 and 3, all of these  
10 definitions come from -- as well as those on -- all  
11 the definitions to about page 5, all of these  
12 definitions are under federal law and I understand  
13 that the National Historic Preservation Act and the  
14 regulations of the federal agencies, they're not  
15 definitions that are Lakota definitions. And so I  
16 don't know at some point we may need to re-define some  
17 of these, for example, as to what's considered a  
18 traditional cultural property. I understand that  
19 that's a term of art within the National Historic  
20 Preservation Act and at some point we may have to --  
21 in order to be respectful of the Lakota worldview, we  
22 may have to balance that with a line or a note that  
23 this may or may not comply with how the Lakota people  
24 would understand the traditional cultural property.  
25 In other words, that the purpose of the survey is to

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1 comply with the National Historic Preservation Act,  
2 not necessarily Lakota law and the traditions and  
3 customs of the Lakota people.

4 And I can try to -- if we want to go into  
5 that some more, I can try to get maybe some suggested  
6 language for that, but at some point -- I think it's  
7 fairly clear from this is this is to comply with the  
8 laws of the United States, not the laws of the Lakota  
9 people themselves which are customary law and is  
10 recognized, I think, both within the domestic and the  
11 international and tribal court system, the legal  
12 system.

13 So right now, I don't really have any  
14 suggestions on that except that on 2.1 and Tom,  
15 please, chime in if you need to in any of this, on the  
16 traditional cultural landscape, 2.1, the second  
17 paragraph talks about events which took place between  
18 1873 and 1877. That's a four-year period and it's  
19 extremely limited. I don't understand why that's in  
20 that. Obviously, this traditional cultural landscape,  
21 if there's issues that have taken place at any point,  
22 that are of concern to the Lakota people and affects  
23 their interests, then it seems to me it needs to be  
24 included. So I would actually strike the -- between  
25 the 1873 and 1877. I don't think that's necessary.

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1           The description of the cultural landscape  
2           itself will provide the information that you need  
3           regardless of the time. It's simply going to have --  
4           it's going to involve any events that took place  
5           within or near the area of concern which is the  
6           license area. And so if we need to limit it, I would  
7           suggest not limiting it by time, but geographically  
8           would be the better way. I don't understand why --  
9           I'm afraid that we may get into an issue we're  
10          fighting over things that happened outside that four-  
11          year period. That's an extremely narrow period. So  
12          that's my first comment on that.

13                 And I do note under 2.2 traditional  
14          cultural property that it's limited to tangible  
15          property which I understand is under the National  
16          Historic Preservation Act and the intangible property  
17          is covered under the tribal cultural survey area. And  
18          I think that's okay, just as long as that's understood  
19          that that definition under 2.2 for traditional  
20          cultural property is limited and does not include all  
21          of the issues in the scope of the survey for the  
22          intangibles.

23                 Again, on page 3 in terms of where the --  
24          I do like and this is a policy that I'm just making  
25          note of this, is on page 3, you have a section in

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1 there saying Native Americans have found this  
2 definition lack on foreign levels and they're listed  
3 there including that some of it's considered  
4 paternalistic and offensive. And it's based on  
5 ethnocentrism, paternalism, scientific elitism. And  
6 I think those are all concerns that the Lakota people  
7 have of this process, and I just wanted to applaud the  
8 staff for including that in the approach and  
9 recognizing that those are issues and that we should  
10 try to be sensitive to those. And all three of those  
11 will be addressed in the survey itself.

12 Again, on archeological sites, we're  
13 dealing with tangible issues. That's pages 3 and 4.  
14 And it doesn't really cover the intangible. And the  
15 science of archaeology has traditionally been a  
16 Western science driven by Western history and  
17 approaches and that will have to be also modified or  
18 revised to be within a Native lens.

19 Mike Catches Enemy has -- as you know, is  
20 an archeologist and hopefully is involved as well with  
21 that.

22 I'm looking at page 4 now. There isn't  
23 really anything that I need we need to discuss right  
24 now, unless you want to discuss the suggestion of the  
25 strike, the limitation of 2.1 of 1873 to 1877. I

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1 really don't understand that. If somebody wants to  
2 explain that to me that's fine.

3 But there's a similar problem, I think,  
4 on page 4 on the paragraph that starts historic sites  
5 are commonly defined that at least 50 years old and  
6 the historic period in western Nebraska begins at  
7 about 1800. Obviously, the historic period for Native  
8 people goes back thousands of years. And this is  
9 ethnocentric. It's elitist the way this is presented.

10 The Native period is often referred to as  
11 the prehistoric period and that history only began at  
12 the time of the Western invasion. I think that that's  
13 culturally insensitive. There might be a better way  
14 to revise this in terms and still calling it the  
15 historic period, but you could call it the period of  
16 -- I don't know, Western contact or the period of --  
17 and by the way, it started well before that. I think  
18 the first contact were by the Spanish conquistadors  
19 that came actually through the area in the 1600s. So  
20 there's an earlier period. What you're really talking  
21 about the period of settler colonialism or ethnic  
22 cleansing which puts it at the 1800s, late 1800s of  
23 the area.

24 The 1868 treaty that ceded lands are still  
25 property, recognized property, under the 1868 treaty

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1 of the Oceti Sakowin, the Great Sioux Nation. And so  
2 when you're talking about the historic period of  
3 settler colonialism after probably about 1889 or later  
4 during the Allotment Act of 1887 when the unceded  
5 lands were taken illegally in our perspective.

6 So I think that that misrepresents the  
7 scope of the survey. If you want to say the historic  
8 period on the -- it's not even Euro-American peoples,  
9 I guess, if you recall, of the United States and the  
10 Lakota or the Great Sioux Nation when the Oceti  
11 Sakowin began then. You can define it however you  
12 want, but it's not appropriate for either one of their  
13 definitions as far as the Lakota people are concerned.  
14 I hope I'm clear on that.

15 Okay, 2.4 down at the bottom of page 4,  
16 talks about historic properties. Again, we just --  
17 and I think it's made clear that it's under the  
18 National Historic Preservation Act which is your law.  
19 This is the law of the United States in terms of how  
20 it considers historic property under the statute. And  
21 it's limited property that can be listed, so obviously  
22 it does not include intangible properties and will not  
23 include the tribal cultural survey properties unless  
24 they're tangible and meet the significance  
25 requirements for the listing in the National Register.

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1 So that's a very narrow definition for historic  
2 properties. As long as it's made clear that this is  
3 -- we're referring to historic properties in here. We  
4 are referring to the Section 106 properties that can  
5 be listed. I think that's clear, but in our  
6 conversations I just want to make sure that that's  
7 understood by all parties.

8 All right so, so far the only  
9 recommendations I have are striking the limitation on  
10 page 2, the time limitation, and then maybe reworking  
11 page 4 where you're describing historic sites and that  
12 because it's not -- it may reflect the U.S.  
13 understanding, but it certainly doesn't reflect the  
14 Lakota understanding. If it's the Lakota people that  
15 are conducting this survey, then it's not going to be  
16 their understanding of what historic properties are.

17 You can potentially add a paragraph there,  
18 I suppose that what are considered to be historic  
19 properties for Native people, for the Lakota people  
20 and that it goes back the entire extent of their  
21 contact with the area which goes back a thousand  
22 years.

23 Now I'm moving on to page 5 and to the  
24 tribal cultural survey which is probably the most  
25 important part for us. And before I do that, I need

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1 to check in with Tom Brings and see if he has anything  
2 to add on those first four pages.

3 MR. BRINGS: No, I'm fine for now.

4 MR. REID: Okay, are you okay with what I  
5 said so far?

6 MR. BRINGS: Yes.

7 MR. REID: Okay. All right. So on the  
8 tribal cultural survey, I think it's pretty well done  
9 on the first two or three paragraphs indicated that  
10 we're looking at the approach from the Tribe's  
11 worldview and the Tribe's intangible values. And  
12 there's a discussion of the difference between the  
13 Lakota view of land and the relationship with the  
14 earth and that of the Western culture. We see that  
15 down in the bottom of page 5. And all of that said,  
16 I'm trying to point out the positive things because I  
17 do think we want to emphasize those things that are  
18 acceptable to the Tribe particularly.

19 Now under -- at page 6, the first section  
20 under the tribal cultural survey after traditional  
21 cultural knowledge there's a National Register  
22 eligibility requirements. These are criteria of the  
23 United States. These are obviously not criteria of  
24 the Lakota people of their own law. So as long as we  
25 understand that this is for the NRC staff to come into

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1 compliance with the National Historic Preservation Act  
2 and fulfill their obligations under U.S. law, then I  
3 think we're okay on this.

4 Obviously, for Native people it doesn't  
5 matter whether property is listed under National  
6 Register or not or protected under the National  
7 Register. What matters is whether or not it's  
8 protected according to their traditions and culture.  
9 But that's well and good if it can be listed that's  
10 fine.

11 I think what we're more concerned is the  
12 property that the NRC staff would find that's not  
13 eligible for this. I mean that's going to be a large  
14 part of the focus.

15 And so this discussion on page 6 and 7 is  
16 okay. One thing I would note on page 7 at the top, it  
17 refers to NEPA's requirement -- not requirement. And  
18 again, I would congratulate or applaud the NRC staff  
19 for including that. I think that was a major focus on  
20 the decision of the Board and which was affirmed by  
21 the Commission in terms of complying with NEPA's hard  
22 look at the interest of being impacted. And the hard  
23 look requirement doesn't require that it be property  
24 that is eligible or not eligible for the listing in  
25 the National Register. So I think this is an

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1 important point and focus that we have to have.

2 So it's much broader than the Section 106  
3 survey. That's in that next -- that's in the first  
4 full paragraph on page 7, the discussion is under  
5 NEPA. So that's good. That's good. I think that's  
6 okay.

7 And then the second full paragraph on page  
8 7 talks about the obligations of the NRC staff and I  
9 like it. Again, I'm going to say that's good, that's  
10 positive because you're stating it's the NRC's  
11 obligations in terms of the fulfillment of NEPA and  
12 the NHPA and these are not obligations of the Lakota  
13 Tribe or its people. This is an Agency obligation.  
14 It's an Agency survey ultimately and it's going to be  
15 an Agency analysis that is reviewed for sufficiency in  
16 terms of complying with those laws. And so that's --  
17 I think that's good.

18 Then there's this discussion on page 7 and  
19 page 8 and I noticed, I think it was in Appendix A  
20 where they talk about the cultural resource survey  
21 methodologies. And I may be wrong on this, but I've  
22 always had the impression after the decisions of the  
23 Board that we really are kind of new ground here,  
24 breaking some new ground. And I think that's part of  
25 the discussion. Page 7 is these are somewhat rare,

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1 this approach anyway. And that discussion of the  
2 different approaches that is found on pages 7 and 8  
3 and then in the appendix I think are excellent. And  
4 I'm very pleased to see them in there, particularly  
5 the references to Mr. Catches Enemy and I think it's  
6 the best approach of the Lakota people.

7 So, let's see. So far, so good. The only  
8 comment I would make is on page 8, the references to  
9 Mr. LeBeau. Those have not been fully embraced by the  
10 Oglala Sioux Tribe and there may be some differences  
11 between Mr. Mentz' approach and Mr. LeBeau's  
12 approach, but I think those are probably differences  
13 we can iron out. It shouldn't be something that's  
14 going to keep this from going ahead.

15 So at some point, what we probably have is  
16 a cart and horse problem. We want to involve Mr.  
17 Mentz, but if Mr. Mentz is going to be the one that's  
18 having the primary responsibility for the survey, we  
19 need to get that worked out with the contracted  
20 funding and all that so that he can then have that  
21 kind of participation. So it's somewhat at a  
22 disadvantage because of Dr. LeBeau's methodology  
23 concerns us without involving Mr. Mentz fully on  
24 board. But I do think that can be ironed out.

25 So there's really nothing to add on page

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1 7 and 8. One page 9, we get into parameters. I think  
2 before I go any farther, I need to check back in with  
3 Mr. Brings.

4 Tom, do you have anything at this point?

5 MR. BRINGS: No, everything is fine.

6 MR. REID: I think we're good so far. So  
7 now we're getting into the meat of the survey, right,  
8 how it's actually going to be done as a practical  
9 matter.

10 I do appreciate that we clarified how many  
11 acres were involved between what was stated in the EA  
12 and was stated in the license. There's 2,840 acres of  
13 which approximately 1,200 acres have been developed or  
14 have started development.

15 And I appreciate the description of the  
16 approach as being focusing on the undeveloped acres  
17 which would be approximately -- I don't know if that's  
18 right, but if there's been 1,200 disturbed or  
19 developed, that would only leave 1,600 acres  
20 undisturbed that would be the focus of the survey.

21 And I appreciate that the survey did not  
22 exclude those developed acres, just that we'd have to  
23 work that out with the Crow Butte in terms how to  
24 access that property and take a look at it.  
25 Obviously, it it's been disturbed and we visited some

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1 of that because some of those sites that were listed  
2 in the previously surveys were within the developed  
3 area. So we do know there are some sites there.

4 And some of the development occurs around  
5 the creek and the creek drainage, the water drainage  
6 areas which are undisturbed, but the immediate area  
7 around them is developed and disturbed. And the  
8 creeks will have to be a major focus. So this is not  
9 a situation we can actually block out 1,160 acres.  
10 It's going to be intertwined with the development and  
11 the acres, but obviously, it's manageable. And I  
12 don't think that's a major issue.

13 I think the discussion about the concerns  
14 of the disturbed area -- the distinction between the  
15 developed area and the undeveloped area is fair.  
16 There won't be any problems with that.

17 At page -- on page 9 at Section 4.1.3,  
18 area of potential effects, this is important in areas  
19 which are undertaken really directly or indirectly  
20 cause alterations in the character or use of historic  
21 properties. Now this is the problem I have here with  
22 what I was saying earlier about these sort of  
23 properties. If we're talking about historic  
24 properties according to the definition that was used  
25 in this earlier, in the draft, then this is not

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1 sufficient because the term historic properties is  
2 limited to that period of settler colonialism in the  
3 late 1800s. I can certainly see that it can alter the  
4 character and use of properties that are outside that  
5 definition. I'll go back to the section we're talking  
6 about.

7 Page 4, Section 2.4, the definition of  
8 historic properties, and it's usually -- unless it's  
9 defined in the code, and I think that we're actually  
10 looking at property described here. I don't  
11 understand why we have to say historic properties  
12 here. We could change that where like altercations  
13 and the character of use of -- it would be properties  
14 of concern to the Lakota people, properties --  
15 historic contacts with the Lakota people. But we  
16 can't use that term historic properties as to Lakota.  
17 That simply won't work. It would have to be reworked,  
18 redefined. You could just use -- you could say use of  
19 the property, the property in and around the licensed  
20 area would be another way to say that.

21 Anyway, and again, you're referring to the  
22 regulation. I think that's going to be an issue. So  
23 I would take issue with 4.1.3 of the area of potential  
24 effects.

25 All right, and I do understand, we're not

1 talking about investigating them, but certainly it's  
2 mentioned in here, for example, of the history,  
3 historic use or the history of Lakota people with the  
4 Crow Butte itself and the use of that area. Crow  
5 Butte is a vision quest area, site as well. That does  
6 not lie within the licensed area, but the activities  
7 at the site may affect the traditional uses in that  
8 area.

9 And it should be discussed and it may be  
10 that the NRC -- I guess what I'm saying is that just  
11 because an area of concern may lie outside the  
12 licensed area, does not mean it should not be  
13 discussed and included within the survey. And the  
14 Agency then can make a decision on its own as to  
15 whether or not the activities of Crow Butte can go  
16 ahead or can go ahead in a certain way that will  
17 mitigate that or they can make a decision that is just  
18 not something is subject to mitigation.

19 So let's say, for example, if the Lakota  
20 people were able to get access to Crow Butte as a  
21 vision quest site, and I'm speaking in terms of let's  
22 say Bear Butte is a vision quest site. It's  
23 limitations of when that activity can occur on Bear  
24 Butte by non-Native people so that the vision quest so  
25 that sermons can be conducted. Right now, for

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1 example, they have the big motorcycle rally going on.  
2 That would be terribly offensive to the Lakota people  
3 conducting ceremony or vision quest at that site.

4 Same thing might be true for Crow Butte.  
5 I'm not saying it is, but I'm just using this as an  
6 example. Then the NRC staff would discuss that in  
7 their EA, supplemental EA, and discuss how they're  
8 going to deal with that, if anything. They simply may  
9 decide it's outside the scope or it's not something  
10 that they're responsible for.

11 But I don't think it's appropriate just to  
12 leave it out and to say just because it doesn't fall  
13 within the historic properties definition. I think  
14 that's inappropriate. And that would be, for example,  
15 an indirect effect, indirect cause to using that  
16 property.

17 Another thing that could occur, for  
18 example, would be if it has to be a ceremony here in  
19 the Crow Butte license area or maybe it's collecting  
20 herbs or medicines in that area, if it's traditional  
21 hunting and fishing in the area, I'm not saying any of  
22 this would be impacted, but it's something that I  
23 think should not be excluded by the narrow definitions  
24 used in the area of potential effects.

25 Here, the area of potential effects should

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1 not be limited to the National Historic Preservation  
2 Act definition. It should be -- the area of potential  
3 effects should come under NEPA which has a much  
4 broader definition. If you look, for example, on the  
5 area that's considered for an environmental justice  
6 analysis, it includes the 50-mile radius. And so that  
7 should be -- so the area of potential effects is  
8 already recognized under NEPA as having a 50-mile  
9 radius. And so you do your environmental justice  
10 analysis for that radius and make a determination  
11 whether or not there's any activity in that area that  
12 would be affected by the activity of the developer.  
13 And oftentimes, it's not, because 50 miles is a fairly  
14 long area.

15 But it just so happens and this is not in,  
16 by the way, that Pine Ridge is within 50 miles of the  
17 Crow Butte site and that was an issue in the previous  
18 litigation over this license. And if you read the  
19 environmental justice section of the EA, you'll see  
20 that there's that discussion and the recognition that  
21 the Tribe is within that area for that discussion.

22 So by using the National Historic  
23 Preservation Act, narrow restriction on the scope of  
24 the consideration of historic properties of the  
25 potential effects, you're already violating NEPA.

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1 This definition violates NEPA which means you're  
2 violating the Board's instructions to the staff that  
3 they have to take a hard look. A hard look requires  
4 that they look at the area of potential effects and if  
5 they want to look to see how that's defined on NEPA,  
6 then one place to look for this is in the  
7 environmental justice section. So I would suggest  
8 Section 106 definition under the National Historic  
9 Preservation Act. So that may have to be reworked.

10 Again, I don't think it's necessarily a  
11 big issue because at this point I don't know of any.  
12 I don't suspect that there will be any concern.  
13 They're involved in the reclamation process at the  
14 license area. So I don't expect the activities that  
15 have been conducted right now by Crow Butte to have  
16 any major impact for activities on the Lakota Tribe or  
17 the Lakota people outside that license area. It may,  
18 but right now, I don't have any information that it  
19 would.

20 What I'm trying to say again is that it's  
21 inappropriate to leave this out of the discussion and  
22 it has to be included in the discussion.

23 So anyway, on page 10 is the last part of  
24 the section on the area of potential effects. There's  
25 a reference to the surveys by Bozell & Pepperl and I

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1 just to emphasize that they were very limited in terms  
2 of their scope as well as their physical acreage  
3 coverage and all of that.

4 Tom, let me check in with you again on  
5 this area of potential effects which is being limited  
6 to the historic use of historic properties. Do you  
7 have anything to add over what I said about that?

8 MR. BRINGS: The only thing I was thinking  
9 about was the second paragraph said there's no federal  
10 requirement, so even if they take this into  
11 consideration, I was just thinking that that would  
12 impact what we're able to do. That was the only  
13 question I had.

14 MR. REID: Yes, I get that. And they  
15 refer to -- in that paragraph they refer to a  
16 reasonable and good faith regulatory standard. So I  
17 think what they're trying to say there -- and maybe  
18 that first sentence is a bit misleading, but they're  
19 saying their regulation; this is the U.S. regulation,  
20 requires that the NRC staff make a reasonable and good  
21 faith effort to investigate (audio interference). And  
22 I think what you're saying is that the Tribe may feel  
23 like that's not sufficient, that they need to do more  
24 than a reasonable and good faith effort or --

25 (Simultaneous speaking.)

1 MR. BRINGS: (Audio interference).

2 MR. REID: Okay. All right. And that's  
3 one advantage to having the Tribe do the survey is  
4 that the Tribe -- if they conduct the survey, if the  
5 tribe itself conducts the survey with its own experts,  
6 then obviously that will help alleviate that concern  
7 that we have that the area of potential effects is  
8 fully covered and that the cultural resources are  
9 identified.

10 But yes, I -- and I would join in Mr.  
11 Brings' comment on that. That sentence in paragraph  
12 9 appears to let the NRC staff off the hook if they  
13 don't investigate the entire area or all cultural  
14 resources.

15 I certainly think that in this -- and I  
16 agree that it's a bit misleading because the area of  
17 potential effect certainly should include the license  
18 area itself, and so I don't think that the staff is  
19 excused from investigating the entire area. I think  
20 that's their obligation, the entire license area, the  
21 2,800 acres. And they may not be able to identify all  
22 cultural resources. I understand that. That's  
23 probably an impossibility, but there certainly needs  
24 to be a good faith effort to do so.

25 You might consider rewording that, as a

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1 suggestion to Mr. Spangler and the staff. That first  
2 line on the bottom paragraph of page 9 is potentially  
3 misleading.

4 All right. So moving to page 10 on the  
5 duration on the field of investigation. And I  
6 appreciate that the staff and Mr. Spangler took into  
7 account the suggestions of Mr. Mentz that were  
8 submitted by the Tribe. My only concern with this is  
9 it's a proposal, it's a broad proposal and that we not  
10 treat this necessarily as written in stone and that  
11 the actual length of time -- and this maybe is in the  
12 second paragraph of 4.1.4 -- the actual length of time  
13 needed may be shorter or longer within a reasonable  
14 period of time than the 15 days that are suggested  
15 here.

16 I think from what Mr. Mentz said that  
17 should be enough time. I don't necessarily see this  
18 as an issue, but let's say there's a heavy rain. I'm  
19 assuming that that would not count towards the 15  
20 days; we'd have to add a day or whatever, or snow, or  
21 whatever, until that issue was taken care of. Or  
22 let's say for example Mr. Mentz needed to be there but  
23 he got sick or there was transportation problems,  
24 things like, or that Crow Butte did not allow them  
25 onto the property. We're not talking about a block of

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1 15 days, but we're talking about 15 days in general  
2 being needed.

3 And I do understand that the proposal is  
4 to have this take place by the end of November of  
5 2021, so again that would be something we would shoot  
6 for is to get this done by. I don't see any problems  
7 with that from the Tribe's point of view; I'm just  
8 commenting that whoever does this, if the Tribe is  
9 involved in this, then we may need a little bit of  
10 flexibility in how it's being done. The details still  
11 have to be ironed out. And I could easily see how  
12 this might even be done in a shorter period of time,  
13 and also by fewer people.

14 Right now we are looking at anywhere I  
15 think from 5 to 10 people involved in the groundwork.  
16 And it may be that three or four people could do it,  
17 but we'll have to see. But I think we have to plan in  
18 order to have that flexibility. I know in my  
19 discussions with Crow Butte they used a 10-person  
20 figure and here you have a 5-person figure. I think  
21 that was based on Mr. Mentz' proposal. So somewhere  
22 within that range.

23 If he can get -- if whoever is doing it  
24 for example can get done, some people can get it done  
25 quicker than -- I think we're talking more about man

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1 hours or human hours really than days, but we can  
2 compute 15 days times 8 hours a day, how many hours  
3 that would be. And we could state it terms of it  
4 would take so many hours to do the survey. That might  
5 be a better way, but I don't know. Generally this is  
6 okay as long as it's understood to be flexible.

7 In terms of --

8 (Simultaneous speaking.)

9 MR. BRINGS: (Audio interference) --

10 MR. REID: Yes, go ahead, Tom.

11 MR. BRINGS: I was just going to mention  
12 during Tim Mentz' proposal it was -- he mentioned that  
13 the Tribes use transects that are smaller than what  
14 the private sector archaeologists use, and so that  
15 probably -- that's going to be one of the reasons why  
16 it's going to take longer because our transects are  
17 smaller and we cover areas more thorough.

18 MR. REID; Right. It will take more hours  
19 then. Right, Tom?

20 MR. BRINGS: Yes.

21 MR. REID: Yes, so but we need -- the  
22 transects are discussed later, but there may need to  
23 be some flexibility in that. I'm assuming if we get  
24 everything else ironed out, we can get this ironed out  
25 as long as it's with -- I understand the object, the

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1 goal of the NRC staff is to get this done by the end  
2 of November before the heavy snows. And as long as we  
3 can -- so I think that the details of that can be  
4 ironed out. Obviously we have to rely on experts.  
5 We're not experts in this survey.

6 Mr. Mentz, Mr. LaBeau, Mr. Spangler are  
7 experts on this, how it's done. And so they would  
8 have a better idea. And it could be that the survey  
9 gets out there and finds some real issues with perhaps  
10 the creeks, or some of the access to some of the areas  
11 that they require more time, or there may be a  
12 discovery because it's a more narrow survey. The area  
13 is tighter. As Mr. Brings mentioned that would  
14 require more time. We could make a major discovery  
15 that will have to add some survey time on that. I  
16 don't expect that, but it's certainly a possibility.

17 So and I think the only -- I don't know if  
18 you want to rewrite that all, but I do think that it  
19 should be understood that this can be revised or  
20 modified as we go along to add flexibility to the  
21 process but that we're aiming towards having it  
22 completed by the end of November. So maybe even a  
23 line that just simply says that this is subject to  
24 revision as the survey is conducted with a goal of  
25 completing the survey by the end of November 2021.

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1 All right. So in this paragraph you  
2 actually say the actual time needed could be  
3 substantially less, but it could also be substantially  
4 more depending on what's -- on the participants I  
5 think that's good. I don't see any problems with  
6 that. And there is a reference to Mike Catches Enemy  
7 there, and I think that's appropriate.

8 On objectives, 4.2, it's described as a  
9 corroborative process. I'm not sure that's --  
10 corroborative is the best word for this. This is an  
11 obligation of the NRC staff, not the Tribe. The Tribe  
12 is participating in this, but the Tribe is not  
13 collaborating with this (audio interference) part of  
14 its responsibility. It's the government's  
15 responsibility to protect these resources, not the  
16 Tribe's, primarily because it's the Government that's  
17 licensing the activity.

18 So I do have some issues whether -- I  
19 don't want the Tribe to be accused of collaborating  
20 with the colonial ruler, to be frank with you. And  
21 this is imposed upon the Tribe. It's a found land  
22 that's claimed by the Tribe. It's in violation of the  
23 1851 and 1868 treaties. It's in violation of the  
24 Tribal sovereignty. It's taking tribal resources.  
25 The resources that Crow Butte is mining belong to the

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1 Tribe. So I strongly object to the work  
2 collaboration.

3 If you want to I suggest that you could  
4 put the tribal cultural survey is based on  
5 participation with the Tribe that recognizes -- and  
6 actually it doesn't fully recognize tribal sovereignty  
7 and self-determination for reasons that I stated. So  
8 what I suggest, if you want to leave that line in, the  
9 tribal cultural surveys based on the participation of  
10 the Tribe, period. If you want to recognize tribal  
11 sovereignty, then you deny the permit and you reclaim  
12 the area and turn the land over to the Tribe.

13 If you want to recognize self-  
14 determination, then you recognize the jurisdiction  
15 that's been raised in this litigation. The Tribe has  
16 raised it. It's the one that has legal jurisdiction  
17 over this area. And the NRC Board and Commission have  
18 rejected that argument. So it's a rejection of the  
19 Tribe's self-determination. I understand why this is  
20 in there, but I think from the Tribe's point of view  
21 it's just inappropriate. So most you can say the  
22 tribal culture survey is based on the participation of  
23 the Tribe, period.

24 Is that okay with you, Tom?

25 MR. BRINGS: Yes, that's fine.

1 MR. REID: Okay. All right. Page 11.  
2 Okay. This is a discussion of -- the important part  
3 of page 11 is the discussion of the NEPA requirements.  
4 One thing I would note is there seems to be a lot more  
5 time spent discussing the National Historic  
6 Preservation Act Section 106 process than NEPA, but  
7 it's really NEPA that is of greatest concern to the  
8 Tribe because NEPA refers to the interests of the  
9 Tribe regardless of whether or not they're eligible  
10 for listing in the National Register. So the National  
11 Register focus is purely that of the U.S. Government  
12 and its staff, and the NRC staff and it's not the  
13 focus of the Tribe.

14 The Tribe tries to protect its interests  
15 through federal law with the FIPO in those  
16 requirements, but under this process we actually have  
17 -- I think it's NEPA that actually identifies the  
18 Tribe's interests better because it requires a hard  
19 look at any interests that are affected by -- the  
20 Lakota people that are affected by the activities in  
21 the license.

22 So on that page 11, the second full  
23 paragraph, the last line on there is actually pretty  
24 good, which says that the NRC will seek sufficient  
25 information from the Tribe describing the location,

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1 appearance, characterization and historical culture  
2 and spiritual value of the site to the Tribe. And I  
3 think that's our main focus there.

4 And then obviously this information has  
5 allowed the NRC staff to evaluate potential  
6 environmental impacts on such sites from the renewal  
7 of the CBR license. So this one section here,  
8 although it's short and it's vague and broad, is  
9 actually perhaps the most important section to us.

10 All right. And then under that it says  
11 the expertise of the Tribe is essential and it  
12 recognizes the unique expertise of the Tribe. And so  
13 that's important to us.

14 All right. On the survey methodology for  
15 the tribal cultural survey, this is not the Section  
16 106 survey. This is the survey under NEPA. To the  
17 extent though that the tribal cultural survey may  
18 assist or supplement the Section 106 survey, because  
19 I think in our previous discussions the parties have  
20 recognized that the cultural survey is required in  
21 order to identify -- or to help identify sites that  
22 may be under a 106 survey. I think Tim Mentz  
23 commented on that to some extent.

24 There's some discussion the information be  
25 collected on pages 11 and 12. I think that that's

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1 actually pretty good. I don't have any real issues  
2 with that.

3 On page 12 there's a listing of the  
4 categories: site type, activity, location, natural  
5 site features, physical attributes, and associated  
6 physical features, that are to be described in  
7 identifying these sites. I don't really have any --  
8 I think generally that's okay. I don't know if there  
9 might be -- needs to be an additional category there  
10 that says other interests that -- for example for the  
11 activity it says -- it's got physical attributes, but  
12 there isn't anything that says cultural attributes or  
13 spiritual attributes of the site, which would be  
14 included underneath of but not necessarily under the  
15 National Historic Preservation Act. So I think only  
16 having a category for physical attributes is too  
17 narrow.

18 All right. I'm going to move onto data  
19 acquisition.

20 Are we good, Tom, or do you have anything  
21 else to add?

22 MR. BRINGS: No, we're good.

23 MR. REID: Okay. So on pages 12 and 13 we  
24 do understand that there is a site form that has been  
25 developed for field investigations that the U.S.

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1 Government and the NRC has used in the past. We have  
2 no problems with that form being used as long as it's  
3 used by the Federal Government to satisfy their  
4 requirements. It does not necessarily satisfy the  
5 requirements of NEPA because it is a -- it's my  
6 understanding it's a form that was developed to comply  
7 with Section 106 of the National Historic Preservation  
8 Act, not NEPA. So in using this form to identify  
9 cultural resources I think may be inappropriate if  
10 it's a Section 106 form.

11 But anyway, I don't care what form you  
12 use. We have to see the form. We haven't seen that  
13 form. And perhaps the ultimate methodology needs to  
14 have any forms that might be proposed or used by the  
15 NRC staff attached as exhibits to the methodology.

16 So if you have certain forms that you want  
17 to use in order to elicit the information that you  
18 need for the staff to comply with its  
19 responsibilities, then it would be helpful and it will  
20 save future problems. We'll know what we're talking  
21 about and you'll get the information you need if you  
22 can provide the forms that you want filled out by the  
23 people conducting the survey. And those forms provide  
24 the scientific support for these surveys, so I think  
25 they're important and I don't have problems with that

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1 and I do think they should be filled out.

2           So for example, let's say you have an  
3 interview that's being done. The form will have to be  
4 tailored so that it contains the information the NRC  
5 staff needs from that interview. And we'll get to  
6 that section in a minute, but I do understand for  
7 example the interviews may simply want a summary of  
8 the significant information that was obtained from  
9 that source that is relevant to the considerations of  
10 the NRC staff.

11           And that may be better set out in a form,  
12 even just two or three questions for the reviewer to  
13 fill out. And that form can then become part of the  
14 record, but the actual interview which maybe has  
15 privileged or protected information would not be part  
16 of that. You'd only have to go on the information --  
17 a summary of the information that's relevant. And  
18 then the detail would be included either in the oral  
19 recording or the transcript that would be kept  
20 confidential.

21           All right. So I don't have any real  
22 problems with page 13 except we need to be careful  
23 that that form also complies with NEPA, as well as the  
24 NRC, as well as the National Historic Preservation  
25 Act.

1 All right. Before I move on, Tom, do you  
2 have anything else to add?

3 MR. BRINGS: No.

4 MR. REID: Okay. On the protection of  
5 sensitive -- go ahead.

6 (No audible response.)

7 MR. REID: Okay. On the protection of  
8 sensitive information, Tom, do you have anything to  
9 add there? We've had that discussion in the past and  
10 I think it's generally okay.

11 MR. BRINGS: Yes, I think everyone is  
12 aware of what we -- what the Tribe requires or needs.

13 MR. REID: Okay. And if the Tribe is  
14 actually conducting the survey again, that will  
15 minimize any problems with that issue because the  
16 Tribe will make the initial determination as to what's  
17 to be kept privileged.

18 MR. BRINGS: Yes.

19 MR. REID: Okay. On the Field  
20 Investigation, 5.4, which is where we get into the  
21 transects and so forth, Tom, you may want to pay  
22 special attention to this.

23 There's a discussion of the past surveys  
24 on pages 13 and 14. Talks about the sites that were  
25 identified. And then it talks -- on page 14 it talks

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1 about the transects width. And then the Tribe's  
2 recommendation. I don't see in the methodology being  
3 proposed here that the staff is limiting the surveyor  
4 to any particular transect width, so if that's the way  
5 it's understood and you're leaving that up to the  
6 expertise of the surveyor, whether it's Tim Mentz or  
7 LaBeau or anybody else, then I think that's  
8 appropriate.

9 I do think it's appropriate for the staff  
10 to request that the surveyor justify whatever transect  
11 width that they're using. So for example, we may use  
12 a more narrow one on the under-served areas than we do  
13 on the served areas, a more narrow one in the water  
14 drainages than we do on the other areas, but that I  
15 think should be left up to the expertise of the  
16 surveyor subject to explanation, reasonable  
17 explanation to the staff. And I don't see a  
18 limitation here on page 14.

19 Does that work for you, Tom?

20 MR. BRINGS: Yes, as long as it's left up  
21 to the Tribe because there will be places that are  
22 going to be a lot more scrutinized than like other  
23 wide open places. So it's good that we're able to be  
24 flexible in this area.

25 MR. REID: Right, and there could be areas

1 that actually could be quite wide because it's -- for  
2 example, where the building is located.

3 MR. BRINGS: Yes.

4 MR. REID: You're not going to be able to  
5 survey -- it would be quite wide. But anyway.

6 All right. And that's part of the  
7 subsequent discussion. In terms of the survey crew  
8 again there is a discussion of the 15 work days. Here  
9 you have it is anticipated that up to three tribal  
10 spiritual advisors would support the five-person field  
11 crew. So you could have up to eight people out there  
12 at a time under this description.

13 And I think that's okay within what Tim  
14 Mentz had proposed. I do know that the Crow Butte was  
15 talking about up to 10 people. Again I think this  
16 should be left flexible, up to the -- left to the  
17 expertise of the surveyor.

18 Tom, do you have any comment on this?

19 MR. BRINGS: Oh, yes, that should be left  
20 up to the surveyor, so I'm good with this.

21 MR. REID: Okay. All right. Okay.  
22 5.4.1., on pages 14 and 15, the Undisturbed Areas. I  
23 think we all recognized that that's the primary area  
24 of the focus, so I think that's okay, and that the  
25 waterways are also important because they were areas

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1 that were occupied and used extensively by the Native  
2 people living there. And so there's discussion of  
3 that and the issues involved with that.

4 I don't have any issues with that Section  
5 5.4.1. Do you, Tom?

6 MR. BRINGS: No.

7 MR. REID: It's just a description, right?

8 The only thing that's probably missing  
9 there would be -- it's a description of the nature of  
10 that area. It doesn't -- and maybe we don't need to  
11 put that in there, but there's generally not a -- and  
12 this is true throughout most of this document. Even  
13 though it's trying to be sensitive I guess with the  
14 Lakota world view, there's actually very little  
15 discussion when it's discussing physical things like  
16 the creek here, about the importance of water, the  
17 spiritual importance of water and the cultural  
18 importance of water in these areas to the Lakota  
19 people, as well as the importance of it in terms of  
20 its historical property and historical treaty lands.

21 And generally it's void of most of that  
22 discussions, which I don't have any real problems with  
23 because this is coming from the NRC staff and not from  
24 the Tribe. The methodology is being proposed by the  
25 NRC staff. It's not the Tribe's methodology. Whoever

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1 gets this contract will try to follow this  
2 methodology.

3 The Tribe is participating in the  
4 development of this methodology which minimizes  
5 disputes and future problems with this between the  
6 Tribe and the NRC staff and Crow Butte. All of that's  
7 well and good, but it needs to be recognized that this  
8 was not written by the Tribe; it was written by the  
9 NRC staff. And I think the NRC staff would want it  
10 that way. It's their responsibility.

11 But again I just want to point that out.  
12 There's a discussion of these creeks, but there's no  
13 discussion about the historic use or the importance of  
14 water, of water resources, the animals and the buffalo  
15 that were there in the past, that this was a sign and  
16 starve area with treaty lands and so forth.

17 All of that discussion I'm assuming, at  
18 least a lot of it, will be included in the final  
19 report. So it doesn't need to be here, but that will  
20 probably be included I would assume in the final  
21 report as background information.

22 So Tom doesn't have anything else to say,  
23 I'm going to move onto the next section.

24 5.4.2. is Previously Recorded Sites. It's  
25 only describing what was found before in the previous

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1 surveys. I don't have any -- I mean it's fact. I  
2 don't have any problems with that.

3 On page 16 there's a -- and this is  
4 probably one of the most important parts. The second  
5 paragraph talks about sites that were not eligible or  
6 not eligible for listing in the National Register. Of  
7 course these are important to the Lakota people  
8 because even though they may not be important to the  
9 United States as a matter of history -- because the  
10 National Register deals with history, not culture; in  
11 history, not spirituality. But they may be important.  
12 And I think the way that the methodology is written it  
13 recognizes that these sites that may not be eligible  
14 for the National Register could be very important to  
15 the Lakota people. They come with under NEPA's  
16 requirement of a hard look, those interests that may  
17 be impacted by the license.

18 And so anyway, there's some discussion of  
19 the sites on pages 16 and 17. And I don't really have  
20 any issues with this. Do you, Tom, descriptions of  
21 the --

22 MR. BRINGS: No.

23 MR. REID: -- what the early --

24 MR. BRINGS: No.

25 (Simultaneous speaking.)

1 MR. REID: -- (audio interference) in  
2 here?

3 Okay. One note I would make is on page  
4 17, on the last two; it's FN-1 and FN-2, where they  
5 talk about not considered under Nebraska SHPO  
6 protocols to be an archaeological site. I don't think  
7 we should be using the Nebraska SHPO protocols because  
8 here we're dealing with the requirements of the  
9 Federal Government, not Nebraska; and the requirements  
10 of the Lakota people, not Nebraska. So I do think  
11 it's inappropriate to refer to the requirements of  
12 state law in here.

13 Now if in describing these finds they were  
14 not listed because they were not considered under  
15 Nebraska SHPO protocols as being an archaeological  
16 site, that's okay, but instead of having the word is,  
17 it should be was. If you're going from the report on  
18 page 17, for example, F-1 is a single lithic flake and  
19 was not considered, you're talking about the survey.  
20 If you're saying is not considered, we can't agree to  
21 that. So you should put a period after flake and take  
22 out the rest of that reference to the SHPO.

23 Same way on FN-2. And same for any  
24 reference to state law, Nebraska law. I don't think  
25 we're dealing with that. Maybe I should qualify this

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1 a little bit. I do understand that Nebraska is  
2 claiming this property as part of the state and that  
3 it's part of -- it's within the state jurisdiction and  
4 so forth. Probably the best -- and the -- but the  
5 Tribe can't agree to that because the Tribe claims  
6 it's their property, in their jurisdiction. So I  
7 think we don't want to be in a situation we're  
8 agreeing to a methodology or participating in a  
9 methodology that's conceding to state ownership or  
10 jurisdiction over this property. So I think we're  
11 probably safer just putting a period after single  
12 lithic flake or changing the word is to was.

13 So, Tom, do you have anything else on  
14 that?

15 MR. BRINGS: No.

16 MR. REID: Okay. All right. Now moving  
17 to the Disturbed Areas, 5.4.3. Again I'm going to  
18 give you a positive stroke here for the NRC staff. At  
19 the top of page 18 in the first paragraph there's a  
20 statement here that a property can retain its  
21 traditional and cultural significance even though it  
22 has been substantially modified and the integrity of  
23 a possible TCP must be considered with reference to  
24 the views of traditional practitioners. I think  
25 that's very, very important.

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1           The Tribe recognizes that the lands under  
2 concern here that are not within the waterways have  
3 been farmed long before the Crow Butte, and that Crow  
4 Butte has come in and removed the topsoil, put in  
5 pipes and many hundreds of wells and so forth.  
6 There's been major disturbances. But depending on the  
7 cultural survey there may be interest of the Lakota  
8 people that are identified that still exist regardless  
9 of what has been done to their property.

10           And I'll give you an example: One of the  
11 discussions that were had at the site visit by the  
12 spiritual leaders, spiritual advisors -- and there  
13 were I believe two or three there, if we count Harold.  
14 And the discussion there was that an altar needed to  
15 be set up at the site. And that's not in here, by the  
16 way. We need to include that. But that an altar  
17 needs to be set up by the site and the spiritual  
18 advisors need to come to the site and conduct a  
19 ceremony and that they may need to stay there for a  
20 certain period of time in order to see if their  
21 ancestors are going to speak to them about the site.

22           And this is a very real thing for the  
23 Lakota people. It's part of the Lakota world view  
24 that is difficult for non-Native people to understand,  
25 but they can talk to their ancestors, often times

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1 through ceremony. And so they may have to do an  
2 Inipi, or a sweat ceremony, or some other ceremony  
3 there in order to -- or maybe a fast, which doesn't  
4 take a tremendous amount of time, but it may need to  
5 be done in order to determine the interests of the  
6 Lakota people to that area.

7 And so they may have answers specifically  
8 talking about part of the area that's gone through  
9 major disturbances and that may require for example a  
10 cleansing ceremony or apology, or something else that  
11 may need to be done. They may find out from their  
12 ancestors that the building that was there is on top  
13 of a grave site, or let's say ceremonial grounds. And  
14 so there may need to be some things -- and they can  
15 identify that.

16 It's just as real to them as it would be  
17 to an archaeologist going out there and finding bones,  
18 that their ancestors spoke to them. To them that's  
19 scientific evidence. And that would be recorded. It  
20 would be part of that. And then there would be a  
21 discussion about how to deal with that.

22 But that can happen in regards to the  
23 disturbed grounds, and so I do think I appreciate  
24 this, this comment in here, and I just wanted to  
25 highlight it because it's important. Just because the

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1 ground has been farmed over and disturbed does not  
2 mean that it lacks significance to the Lakota people.  
3 That will only be determined after this cultural  
4 survey.

5 Tom, do you have anything to add to that?

6 MR. BRINGS: No, I'm fine.

7 MR. REID: Okay. All right. And so that  
8 would be a suggestion that I have in terms of the  
9 getting into the summary and the field notes.

10 This might be another section, 5.4.4, and  
11 then move everything down. But there needs to be --  
12 and this was talked at from the beginning. This was  
13 talked at -- this has been talked at during almost  
14 every meeting that we've had. I know I personally  
15 emphasized it. And it was talked at by -- during  
16 previous litigation, during the hearings, both in this  
17 case and in the Marsden case, that in order for the  
18 Lakota people to assess their interest in their area  
19 they have to visit the area and conduct ceremony.  
20 That's not in here. That's not in the survey  
21 methodology.

22 And it's that ceremony that identifies the  
23 interests and the value of the sites. And so there  
24 has to be something in here that provides that the  
25 parties will allow access or that it will be worked

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1 out with Crow Butte. I don't see this being a  
2 problem. And conducting an altar does not mean like  
3 a Christian-style altar. It's oftentimes involves a  
4 fire and a staff and maybe a buffalo skull and some  
5 other things that are -- whatever they think is  
6 necessary, but generally it involves a fire, a small  
7 fire. And then to conduct ceremony. It may involve  
8 setting up a sweat lodge, which only involves a small  
9 amount of property.

10 So and this would be -- I'm assuming this  
11 would be on the undisturbed area, but when I was out  
12 there I know the spiritual advisors were concerned  
13 about exposure to radiation. So I don't think they  
14 want to go on -- get into any developed areas and do  
15 this. It would probably be among the waterways. But  
16 I do think there needs to be provision that allows  
17 that to happen because that's a very important part of  
18 this survey is that the spiritual advisors do what  
19 they need to do in order to determine the spiritual  
20 interests and the cultural interests of the Lakota  
21 people to that area. And that involves their access,  
22 conducting ceremony, and having an altar. And that's  
23 not in here.

24 So, Tom, do you have anything to add on  
25 that?

1 MR. BRINGS: No, I was going to mention  
2 that will there be a provision for like the ceremony  
3 that the Tribe is going to conduct in the area,  
4 because I haven't really seen anything like that  
5 either.

6 MR. REID: Yes. What would you -- how  
7 would you put it in your own words how that needs to  
8 be included in the methodology?

9 MR. BRINGS: I wouldn't mention specific  
10 ceremonies because we don't want to disclose any of  
11 that, but just ceremonies, mention that ceremonies  
12 will be conducted when something spiritual or  
13 historical is found --

14 MR. REID: Right.

15 MR. BRINGS: -- or something to that  
16 extent.

17 MR. REID: Right. And, Tom, clear this up  
18 for me, but I understand -- for example, let's say  
19 they found some bones. That may require some  
20 ceremony. Am I correct?

21 MR. BRINGS: Yes, that definitely will.

22 MR. REID: Okay. All right. So we need  
23 to have a provision for that to be done. And what  
24 we're talking about is something that shouldn't take  
25 a lot of time. If there are some bones found, they'll

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1 conduct a ceremony. There may be -- and it should  
2 according to the requirements of the spiritual  
3 advisors. But it shouldn't be anything that's going  
4 to have any major significant impact to what Crow  
5 Butte's activities -- to their existing activities or  
6 anything like that, at least at this point. So I  
7 don't foresee this as being something that will cause  
8 problems.

9           If it's a concern in the staff or Crow  
10 Butte that it may interfere with what the staff is  
11 doing or what Crow Butte's doing, then we can put a  
12 provision in there that this section can be -- or this  
13 provision can be reconsidered at the time of the -- or  
14 that you could put something in there that the -- if  
15 the Tribe needs access to conduct ceremony, that  
16 they'll give notice to the NRC staff and to Crow  
17 Butte, or to Crow Butte, if you're okay with that, to  
18 make arrangements for access at a certain point and  
19 for a certain time period. And we can do that without  
20 describing what the ceremony is.

21           But at least put something in there that  
22 will take care of that. And then you could put  
23 something in there that says -- to the effect that the  
24 Tribe will, or the surveyor will -- who's ever doing  
25 this, the surveyor will include that when they report

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1 as to the results of the -- if any of the ceremony.

2 Okay. So now we're on Summary of Field  
3 Investigation Approaches. And I see you have at the  
4 bottom there under the bullet points both NEPA and  
5 National Historic Preservation Act. That's good.

6 I didn't see any real problems with this  
7 except on the second one. Documentation and newly  
8 discovered archaeology sites on official Nebraska  
9 state site forms. And so my comments are the same  
10 there, but they're twofold: Not only the use of state  
11 forms -- we don't consider this to be under state  
12 jurisdiction -- and this is something being done by  
13 the Tribe.

14 We can certainly -- I think we can  
15 certainly agree to use the forms or go ahead and fill  
16 them out, the surveyor, but I think it will have to be  
17 done with the understanding this is not a concession  
18 that the state has any jurisdiction or role in this  
19 process, but that's done merely to preserve and  
20 protect those sites of interest to the Lakota people.

21 And then it's -- you have the site is  
22 qualified by archaeological sites. I would take out  
23 the word archaeological because a lot of the sites  
24 that we're talking about are not necessarily  
25 archaeological sites. You could put archaeological or

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1 cultural if you want, but I think you could just put  
2 documentation on newly discovered sites on official  
3 Nebraska site forms. That would probably be  
4 sufficient. Nebraska can then make their own  
5 determinations whether or not they're archaeological  
6 or not.

7 Now I'm moving onto oral history  
8 interviews, which is pages 18 and 19. And I notice  
9 that you refer to Mike Catches Enemy on this, and I  
10 think that's good. We agree with that. And I'm  
11 pretty good with this except for on page 19 the one,  
12 two, three, fourth full paragraph that starts the NRC  
13 staff are proposing the oral history interviews be  
14 conducted during 15 work days on the field of  
15 investigation plus 10 additional days to be determined  
16 by the Tribe.

17 Now I understand the reason why you want  
18 this is so that you get them completed in time to give  
19 sufficient time for the preparation of the report, so  
20 that you meet your November deadline. And my only  
21 concern here would be that it be flexible. We're  
22 going to have to probably use Lakota speakers, Native  
23 Lakota speakers. I don't know how long it will take.  
24 And we'll have to locate people, which can be done  
25 fairly quickly I would think, and then do the

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1 interviews.

2           Some of the elderly people may not be able  
3 to sit for long interviews, so it may have to be done  
4 in several sessions. They may be an hour -- five  
5 sessions of an hour or something like that. So I  
6 think there needs to be some flexibility in this  
7 paragraph.

8           I don't know, like the previous discussion  
9 about the ground survey is -- you might put a line in  
10 there or something in there just to say this section  
11 is subject to revision as the interviews are being  
12 conducted as necessary or as needed, upon notice to  
13 the NRC staff, or something like that just so we know  
14 what's going on. We do want transparency. I don't  
15 want a survey being conducted outside the knowledge or  
16 understanding of the NRC staff. I think that's  
17 certainly what we're proposing.

18           On this last paragraph of that section,  
19 the Tribe interviews may record and transcribe. The  
20 transcriptions can take some time if they're from  
21 Lakota to English, if we have to do that. If you're  
22 asking for a summary of the report by the interviewer  
23 or by the preparer, then certainly the summary could  
24 be done in English and the interview be left in  
25 Lakota. And that would save some time.

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1           It would also save some expense. If we  
2 pay to have these interviews, you know, transcribed,  
3 we're going to have to pay the transcribers an hourly  
4 rate. And I know from my legal work just getting a  
5 transcript of let's say this thing would be well over  
6 \$1,000, probably \$2,000, probably \$1,000 an hour, at  
7 least 4 or \$500 an hour. So if you have a seven-hour  
8 interview, the transcript alone is going to be \$2,000  
9 or \$3,000.

10           And then to have that transcribed or  
11 converted from Lakota to English could easily involve  
12 another 4 to \$5,000 because it takes time. And my  
13 wife works for a -- what they call a localization or  
14 a transcription company, so I know how expensive they  
15 are. The transcribing this from Lakota to English  
16 could cost more than the actual transcripts themselves  
17 by the -- paying for the interviewers and so forth.  
18 So I had estimated that the -- to transcribe this  
19 length of interviews if they were Lakota to English  
20 may well cost over \$40,000. And it takes some time.

21           So this is something I'm having -- I will  
22 have some discussions with Crow Butte as to what they  
23 want, but it would help for us to have probably some  
24 agreement or some understanding between the NRC staff  
25 and the surveyor and the Tribe as to what the NRC

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1 staff actually needs as far as the final product of  
2 these interviews. If all they need is a summary in  
3 English that's a paragraph or two paragraphs long,  
4 that's one thing. If they need a 100-page transcript,  
5 word by word from Lakota to English, then that's  
6 another thing. It's going to take a lot more time.  
7 So that will have to be something that we need to work  
8 on and work out.

9 All right. So you do have provided within  
10 30 calendar days after completing the interviews.  
11 That's probably enough I would think assuming that we  
12 can find people to transcribe from Lakota to English.  
13 Now we'll have to pay them, so that will have to be  
14 included in the cost, but I would assume 30 days would  
15 be sufficient.

16 Final report. Yes, 60 days to complete  
17 the final report. I think that's within Tim Mentz'  
18 suggestion, so I would imagine that would be all  
19 right. Again, that may be subject to some flexibility  
20 if there have to be some revisions or whatever, or  
21 additions. Or let's say the report is being held up  
22 because we need transcripts from the field interviews.  
23 That will be subject to revision. You could perhaps  
24 even just put a provision or caveat in this  
25 methodology that simply says that all of the

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1 provisions here are subject to revision as the survey  
2 is being fulfilled with the agreement between the  
3 parties.

4 All right. In the geospatial mapping, I  
5 get that. And I'm looking at page 20 and I'm pretty  
6 much okay with all of that.

7 So on the final report section, Tom, do  
8 you have anything to say at this point?

9 MR. BRINGS: No.

10 MR. REID: Okay. All right.  
11 Implementation. And I discussed this earlier. This  
12 is on pages 20 and 21. I think we're good with that.  
13 Obviously I think our preference would be No. 2. I  
14 think it's easier if the surveyor simply does the  
15 whole thing and the surveyor is qualified to do both  
16 the Section 106 survey and the NEPA survey and then to  
17 combine. Splitting them up may cause some issues.  
18 For one, you need to use some of the NEPA survey in  
19 order to identify TCPs on Section 106, including the  
20 interviews. So they'll take place simultaneously. If  
21 you have different people doing it, there may be some  
22 issues.

23 There may be some differences,  
24 professional differences, too. For example, if you  
25 have Mr. LaBeau doing No. 1 and Mr. Mentz doing No. 2.

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1 So it's probably better to have the same person. And  
2 by the way, I don't know that Mr. Mentz will be able  
3 to do this. It's just at this point it's our  
4 preference. Whether he will ultimately do it I think  
5 depends on Crow Butte.

6 So access to the site. And I think we're  
7 okay. I'm looking at page 21.

8 Oral history interviews. I see no  
9 problems with that.

10 And then the references speak for  
11 themselves. Yes, I think that's it.

12 Tom, before I go onto the appendix and  
13 attachments, do you have anything else to say on this  
14 whole thing?

15 MR. BRINGS: No, I'm -- everything looks  
16 like it's good.

17 MR. REID: Okay. All right. And  
18 obviously we're asking for some flexibility. Tim is  
19 not on the line. You got his proposal, so I think  
20 this comports with most of it, or all of it. And I  
21 think that's good. I don't foresee any major issues,  
22 but if they come up, then we'd simply request that the  
23 parties work together in good faith to try to iron  
24 them out.

25 And so as we end up with a final product

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1 or the next revision of this methodology some other  
2 issues may arise, particularly when Mr. Mentz becomes  
3 so involved, if he does, and -- or whoever is  
4 involved, LaBeau or anybody else, that we may have to  
5 work out, but I think we've got a really, really good  
6 draft here. I think it's a good working draft and I  
7 think we're happy with it generally with some of those  
8 major exceptions that we have regarding the  
9 involvement of the state, some of the limitations on  
10 timing and the definition of the affected property and  
11 so forth.

12 The cultural -- I thought was excellent  
13 and I'm really glad you included that. I think we  
14 have an opportunity to create a precedent for future  
15 surveys, so including Powertech, for example, and  
16 others that may be helpful for Native people, and not  
17 only for us, but also for federal agencies like the  
18 NRC. And so I think we should view this in a positive  
19 light and hopefully we can use this from the Tribe's  
20 point of view and as a bit of a model that maximizes  
21 the Tribe's ability within federal colonial law to  
22 preserve and protect its interests in these areas in  
23 license for development by the Federal Government.

24 So I don't know. That's all I have. Tom,  
25 do you have anything else on this?

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1 MR. BRINGS: No, I'm fine with everything.

2 MR. REID: Okay. Well, can you at least  
3 share your general impression on this methodology?

4 MR. BRINGS: Excuse me?

5 MR. REID: Can you at least share your  
6 general impression on the methodology?

7 MR. BRINGS: Yes, it's fairly everything  
8 that was on Tim Mentz' proposal that -- like just  
9 those changes we made, but all in all it's everything  
10 we thought or were thinking about in the methodology  
11 process. So just the changes that we suggested and  
12 hopefully it goes through there smooth. That's all  
13 I've got.

14 MR. REID: Okay. The final comment I  
15 would make is on the cost. I know and you know, and  
16 I'm not going to disclose my conversation with Crow  
17 Butte's Council because I don't know if he wants me  
18 to. I assume he shared that with the NRC staff maybe  
19 at the meeting you had with him last week. They've  
20 made a proposal and I think what they're suggesting is  
21 that they pay a lump sum to the Tribe and that the  
22 Tribe then contract with the surveyor or that the Crow  
23 Butte can contract with -- it was just your suggestion  
24 here -- can contract directly with the surveyor and  
25 that that be done through the -- with the

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1 participation of the Tribe.

2 And so the issue on that is going to be  
3 whether or not the -- how much of that, if any of the  
4 costs of that, that the Tribe will have to bear, and  
5 that there's a sufficient amount that's allocated to  
6 do the survey the way it should be done.

7 And so I think that we're having a good  
8 discussion about that. I'm supposed to get back to  
9 him today with a counteroffer, or counter-price. I  
10 need to speak with Mr. Brings and Mr. Mentz some more  
11 about that before I could do that.

12 The one point -- I don't know if you went  
13 over that with Crow Butte when they came up with their  
14 figure, but I will note there was some areas that they  
15 did not include and I just want to make it part of the  
16 record that I'll bring up with Crow Butte that will  
17 need to have to be considered in the price. And that  
18 includes -- that would include for example that  
19 there's money being set aside to pay for the ground  
20 survey per hour. It does not cover the travel and  
21 lodging expenses of the people.

22 Mr. Mentz if he does it, will have to come  
23 down from Standing Rock, with one more people from his  
24 company from Standing Rock, they will have to stay in  
25 a hotel and have expenses, so those need to be

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1 included in the price, as well as anyone -- I'm  
2 assuming people from the Reservation may drive down  
3 and drive back, but if not, if they have to stay in  
4 the area, then their travel expenses need to be  
5 covered as well.

6 Same way with the interviews. If Mr.  
7 Mentz and his company is conducting the interviews,  
8 travel expenses and lodging expenses will have to be  
9 covered.

10 And then there's the major expense that I  
11 mentioned earlier, and that's of the transcribing. If  
12 the Tribe is -- if the surveyor is required to  
13 transcribe the Lakota interviews from Lakota into  
14 English, then -- or even oral interviews into writing,  
15 that's going to be part of the problem. If you've got  
16 an oral interview and you want a written transcript in  
17 Lakota, you're going to have hire a Native Lakota  
18 person to transcribe that into Lakota so you have it  
19 written in Lakota. That's expensive and it's  
20 difficult. So we're talking about being able -- if we  
21 create a Lakota transcript and then an English  
22 transcript, then you're talking about I would assume  
23 in excess of \$40,000. So that's something we'll have  
24 to work out.

25 And part of that will be driven by what

1 the NRC staff needs. So it would be helpful for us to  
2 know -- or maybe we can decide this later, but it  
3 would be helpful for us to know if -- what the NRC  
4 staff actually needs to prepare its supplemental  
5 report, or supplemental EA. Do they need an English  
6 transcript? Do they need a Lakota transcript? Or is  
7 a summary in English with an oral tape of the oral  
8 interview sufficient, which would be the cheap way to  
9 go? So that would be another one.

10 Finally, let's see, there was -- oh, and  
11 then the amount that Crow Butte had set for hourly  
12 payment for the ground survey crew and the  
13 interviewers I think do not take into account probably  
14 -- I would assume Mr. Mentz; there may be other  
15 persons of his expertise, might be doing a lot of the  
16 ground work, if not most of it, in the interviews, and  
17 I think he needs to be paid at an appropriate hourly  
18 rate. I don't think that was suggested by Crow Butte.

19 I do understand if you have -- if Mr.  
20 Mentz is employing people who are not -- do not have  
21 a certain expertise that would justify a higher rate  
22 that that's okay, but I do think that we should not  
23 pay Native people a lower hourly rate just because  
24 they're not Ph.D. archaeologists or European  
25 archaeologists. I think their expectation needs to be

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1 respected. And that would include the spiritual  
2 advisors and the people being interviewed, that they  
3 should be paid a decent hourly rate for their  
4 expertise. So that will push up the amount. But I  
5 don't think it would be ultimately unreasonable.

6 Also the hourly rate for the preparation  
7 of the report. I'm assuming that Mr. Mentz or whoever  
8 the expert is that would be doing the groundwork and  
9 the interviews are in charge of them will be preparing  
10 the report. And so I think they need to pay an  
11 appropriate hourly rate. I don't think the rate  
12 suggested by the Crow Butte's Council met that  
13 requirement, so those will push up the ultimate cost  
14 of the survey, but I don't think it would be out of  
15 reason. And I will get that final figure together and  
16 justify it and get that back to Crow Butte.

17 I'm assuming as long as Crow Butte's  
18 willing to pay for the cost of survey, then that's --  
19 the cost of the survey will not be an issue for the  
20 NRC staff. So whatever the Tribe and Crow Butte can  
21 agree to will take that issue off the board, although  
22 that would be something I think we need to disclose  
23 and be transparent about that. I know I promised you  
24 that. But I don't think that the cost of the survey,  
25 if that can be worked out with Crow Butte, and who's

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1 paying for, that that should be an issue that should  
2 go with the survey.

3 So I think with that that's all I have.  
4 Thank you.

5 MS. DIAZ TORO: Thank you, Andy, and thank  
6 you Mr. Brings. I want to certainly appreciate --  
7 show my appreciation for the thorough review and  
8 sharing with us your thoughts section by section on  
9 the survey methodology. And so those -- the NRC will,  
10 as we talked about, consider those. And I'll talk a  
11 little bit later on about the next steps.

12 But before I do, I want to first of all  
13 just recognize that we did schedule the meeting for  
14 two hours and that we're approaching that two hour  
15 mark. And I want to be respectful of everyone's time  
16 of course, but I would like to kindly request if  
17 possible, right, that if we all could stay for a  
18 little bit longer, if that's -- if your, Andy and Mr.  
19 Brings', time allows for that, just for me and the NRC  
20 staff certainly with me to ask a few clarifications  
21 about some of the statements that you -- or some of  
22 the observations that you made and comments that you  
23 made, Mr. Reid.

24 And so before I sort of launch into that,  
25 right, discussion or those clarification questions I

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1 wanted to make sure that it would be okay for all of  
2 us to stay for -- beyond the noon Mountain Time end  
3 date.

4 MR. REID: It's okay for me. Tom, is it  
5 okay for you?

6 MR. BRINGS: Yeah, I'm fine.

7 MR. REID: Okay.

8 MS. DIAZ TORO: All right, so hopefully it  
9 is with the NRC staff as well, right, since I'm  
10 asking, but Mister -- so, Andy, I was -- one thing  
11 that I understood throughout the, or one thing that  
12 you had mentioned throughout your observations and  
13 comments that I wanted to clarify is that this survey  
14 methodology that the NRC put together, it is our  
15 proposal certainly, and the objective is to only  
16 conduct one survey. It is not splitting the survey  
17 into two. The NRC staff has not conducted its own  
18 Section 106 survey.

19 So, the goal of the survey methodology is  
20 it's one survey to comply with both the National  
21 Historic Preservation Act and the National  
22 Environmental Policy Act.

23 And as you went through your comments and  
24 your observations, I know that you -- that you  
25 highlight those statements that are throughout the

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1 document that talk about compliance with both of those  
2 federal statutes.

3 So, I just wanted to make that  
4 clarification, that it's not -- we're not splitting  
5 the survey. It's only one survey. Additionally,  
6 since -- along those --

7 MR. REID: Before you go there, let me  
8 just say one quick thing.

9 MS. DIAZ TORO: Yes.

10 MR. REID: On page 20, on the  
11 implementation number one, it says the Tribe will  
12 conduct a Tribal cultural survey, which is the NEPA  
13 survey the way that I read that. It would not include  
14 the Section 106 survey, so I would just suggest maybe  
15 you need to clear that up a little bit if you meant  
16 the entire survey there. That's the reason I said  
17 that.

18 MS. DIAZ TORO: So, the Tribal cultural  
19 survey, it is both, you know. It is the survey  
20 methodology to be used to identify sites of  
21 significance to the Oglala Sioux Tribe and to, for the  
22 NRC to assess impacts on those identified sites under  
23 NHPA and under NEPA.

24 And the survey methodology, it's clear  
25 that those, that identification of the sites, it's

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1 regardless of the National Register eligibility  
2 determinations which, you know, we all know are under  
3 Section 106, and so we're not -- it's not two surveys.  
4 It's one survey to identify sites to meet both NHPA  
5 and NEPA.

6 In the implementation, Andy, as you  
7 mentioned, there are two approaches, and so the first  
8 approach that you see there -- and I'm just providing  
9 clarification so that we're all on the same page.

10 That approach recommends that the Tribal  
11 members themselves, with facilitation by Mr. Spangler,  
12 the NRC contractor, would perform the survey. So, the  
13 Tribe itself, the Tribal members themselves from the  
14 Oglala Sioux Tribe would conduct that survey, and that  
15 survey would cover both NHPA and NEPA.

16 And then the second approach that is there  
17 and, you know, starts on page 21, at the top of page  
18 21, is for, you know -- which is the second option  
19 that is discussed in this document is that appropriate  
20 resources, CBR, would contract directly with a  
21 contractor that the Tribe recommends.

22 So, again, that second approach is also,  
23 would also focus or would also use the survey  
24 methodology that we're talking about today, which  
25 again covers both NHPA and NEPA, and --

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1 MR. REID: Okay, then I think you need to  
2 clarify because on page five, you define a Tribal  
3 cultural survey, and in that definition, it's not  
4 clear that it includes the Section 106 survey because  
5 you have a separate part on that that goes on for two  
6 pages about the NHPA survey on pages two, three, and  
7 four, and then spends page five talking, in part of  
8 that, talking about the Tribal cultural survey.

9 I just think it's misleading. Maybe you  
10 need to either change your definition of Tribal  
11 cultural survey on page five or you need to clear that  
12 up on page 20 on what you're describing there.

13 The other thing is, let me ask you this.  
14 On the implementation, on the first one, who would pay  
15 for that?

16 MS. DIAZ TORO: So, you're talking about  
17 option two, Andy, right, correct?

18 MR. REID: Option one. I understand  
19 option two. Crow Butte would pay for it. Under  
20 option one, if the Tribe were to work with the NRC and  
21 Mr. Spangler and not with Crow Butte, who would pay  
22 for that?

23 MS. DIAZ TORO: Both -- you know, we did  
24 talk to Crow Butte last week and they did hear with us  
25 their proposal to you, Andy, so both, in both cases,

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1 CBR would be paying, either under the first approach  
2 or the second approach.

3 Under the second -- like I said, under the  
4 first approach, it would be the Tribe themselves  
5 conducting the survey with facilitation from Mr.  
6 Spangler, and then under option two, you know, CBR  
7 could contract out with the Tribe's contractor of  
8 choosing or CBR could give money to the Tribe and  
9 letting the Tribe contract with a contractor of the  
10 Tribe's choosing, so --

11 MR. REID: Okay, thank you.

12 MS. DIAZ TORO: Yeah, and we'll certainly  
13 take into consideration providing that clarification  
14 under the definition of Tribal cultural survey, but I  
15 wanted to make sure that that definition includes both  
16 NHPA and NEPA.

17 MR. REID: Okay.

18 MS. DIAZ TORO: And so since we mentioned  
19 the payment, along those lines, Andy, we did, or  
20 during last week's meeting with Crow Butte, with the  
21 licensee, they did mention that they had reached out  
22 to you and they did share with us that they had  
23 proposed a lump sum payment approach.

24 And so just to make sure that I understood  
25 correctly, is the Tribe agreeable to that lump sum

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1 payment approach? We're not talking about the -- I'm  
2 not talking about the quantity, right, certainly, but  
3 more so the approach, that lump sum payment.

4 MR. REID: I think we'd be okay with that.  
5 I think what we need is just more information about  
6 what the NRC and the NRC staff might need in terms of  
7 how that's dealt with.

8 For example, if we can negotiate a lump  
9 sum payment and then use that money to pay the experts  
10 or whatever, however, in other words, if it gives the  
11 Tribe the freedom to use that money however they will  
12 in order to make the survey happen, or will the NRC  
13 staff need specific justification for the amount of  
14 the lump sum?

15 MS. DIAZ TORO: Okay.

16 MR. REID: If it's something we've worked  
17 out with Crow Butte, do you need justification for how  
18 we got to that figure?

19 MS. DIAZ TORO: Right now, it doesn't seem  
20 like we would need -- if you agree with Crow Butte,  
21 right, about that number, it's not necessarily for the  
22 NRC to understand the justification, but that there is  
23 agreement on that, as long as, of course, what we're  
24 talking about here, the survey methodology and the  
25 parameters that we've discussed are also agreed upon,

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1 right?

2 MR. REID: Right, and I'm assuming that  
3 Crow Butte would require that the lump sum be  
4 sufficient to cover all costs of the survey. In other  
5 words, the money would be tied to the survey, and so  
6 I don't think there'd be any issue with that, and that  
7 the Tribe would agree that that's sufficient funds for  
8 the survey so that if the survey actually ended up  
9 costing more, that would be a problem for the Tribe  
10 and not Crow Butte, or the NRC.

11 MS. DIAZ TORO: Right, right, and like I  
12 said, right, I think that's something that you all,  
13 you and Crow Butte's attorney are working on, and that  
14 agreement would be between you all.

15 Again, I would emphasize that we would  
16 also, you know, from the NRC staff, we would need  
17 agreement on the survey methodology, right, to execute  
18 it.

19 MR. REID: Do you need to know, if Crow  
20 Butte and the Tribe agree on a lump sum, does the NRC  
21 need to know the amount?

22 MS. DIAZ TORO: I haven't thought about  
23 it. Crow Butte --

24 MR. REID: You can talk to Marcia and get  
25 back to --

1 (Simultaneous speaking.)

2 MS. DIAZ TORO: Yeah, that's something,  
3 yeah, that I might need to talk with the lawyers,  
4 yeah, with Marcia.

5 MR. REID: Okay, and the other --

6 MS. DIAZ TORO: Now --

7 MR. REID: -- question I have on that --

8 MS. DIAZ TORO: Yeah.

9 MR. REID: -- does the NRC have a  
10 preference on one or two? In other words, if we work  
11 through the NRC, obviously that we're working directly  
12 with Mr. Spangler, but I looked at the second approach  
13 where we get contracted by Crow Butte and then --  
14 because on the first one, we're working with the NRC,  
15 but we're paid kind of by a third party.

16 On the first one, we're paid directly by  
17 Crow Butte and then the NRC expert is participating  
18 with us. So, the end result will be the same. It's  
19 just how it's structured is different. Does the NRC  
20 have a preference on that?

21 MS. SIMON: Andy, hi, this is Marcia. I  
22 told Diana I would try to answer that. So, just to be  
23 clear, as she said earlier, both options one and two  
24 would be paid for by Crow Butte, and it's not that  
25 option one would be some way where the money came

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1 through the NRC and then out to the Tribe. In both  
2 cases, the staff envisions that Crow Butte would deal  
3 directly with the Tribe.

4 The key difference in the way the staff  
5 was envisioning options one and two is that under  
6 option one, the Tribal members would participate  
7 themselves, and presumably would be compensated, you  
8 know, for their time as you had discussed in some of  
9 the prior status conferences. Under option two, it  
10 would be done through, you know, the Tribe would use  
11 a contractor.

12 And so when Crow Butte spoke with us last  
13 week and they mentioned this idea of a potential fixed  
14 price, lump sum approach, it sounds to the staff, and  
15 I think to everyone, that that could work under both  
16 options, where Crow Butte would provide the lump sum  
17 to the Tribe, and the Tribe could either decide that  
18 its own members could participate in the survey and be  
19 reimbursed from that lump sum, or if the Tribe wanted  
20 to hire Mr. Mentz or another contractor to do it, then  
21 they could use those funds to hire the contractor.

22 And, for instance, if there was some  
23 compensation for people who were being interviewed who  
24 are Tribal members, then, you know, then that lump  
25 sum, some of that would go to them and some of that

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1 would go to the contractor if that was the path that  
2 you took.

3 So, hopefully that's clear, and so I guess  
4 the bottom line is in either case, we would see the  
5 money going directly from Crow Butte to the Tribe or  
6 to the Tribe's contractor, but if after hearing the  
7 lump sum idea going to the Tribe and then the Tribe  
8 having the option, you know, if that's something that  
9 the Tribe is agreeable to --

10 That is not something the staff had  
11 thought about initially, and that seems like it would  
12 be, you know, a relatively simple approach, so that's  
13 why Diana was following up with you, you know, on how  
14 the Tribe felt about that and whether you thought that  
15 would be something the Tribe might agree to. So,  
16 hopefully I've answered your question, and probably  
17 said much more than you needed.

18 MR. REID: If you look back on page 10  
19 under 4.1.5, it defines participants in the survey.  
20 It does not include a contractor from the Tribe. It  
21 includes the NRC staff and contractor. It doesn't  
22 include a contractor.

23 So, under option one, the participants  
24 would not include, for example, if the Tribe employed  
25 Mr. Mentz, unless we considered him a participant from

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1 the Tribe. I think we'd like to keep some distance  
2 from whoever does the survey as an expert and have  
3 them as a contractor.

4 So, either we could include under 4.1.5  
5 that the participants would include the Tribe and/or  
6 the Tribe's cultural resource specialist or  
7 representatives and spiritual advisors, and, if any,  
8 contractor, something like that then would cover then  
9 option one.

10 Otherwise, we're kind of stuck with option  
11 two because that's the one that provides specifically  
12 for contracting an expert to come in and do that.

13 MS. SIMON: Yeah, I think that this is why  
14 this is a draft and this is why we're having meetings,  
15 right --

16 MR. REID: Right.

17 MS. SIMON: -- so we can --

18 (Simultaneous speaking.)

19 MS. SIMON: -- we can find little  
20 inconsistencies like this that sound like they can be  
21 relatively simply addressed by just adding a word. I  
22 think that, you know, in 4.1.5, you know, the Tribe  
23 and/or the Tribe's specialist, you know, and, you  
24 know, and/or the Tribe's contractor, you know, if  
25 appropriate, or something like that.

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1 MR. REID: Okay, all right, thank you.

2 MS. SIMON: Okay.

3 MS. DIAZ TORO: Thank you, Marcia.

4 MR. REID: Thank you for the  
5 clarification.

6 MS. DIAZ TORO: So, maybe along those  
7 lines, Andy, as well, and Marcia, Andy, when you were  
8 talking about, when you were discussing your comments  
9 in the section for securing oral history interviews  
10 and the proposal for conducting those, you did mention  
11 about the recording and the transcribing the  
12 interviews.

13 And so in the survey methodology, the  
14 proposal is for after those interviews are conducted,  
15 that a summary in English would be provided to the NRC  
16 staff and -- because in our proposal, what the NRC  
17 staff is proposing is that the Tribe itself conduct  
18 the interview, right, recognizing that it would be  
19 conducted in Lakota.

20 Now, as you were making your observations,  
21 it seemed appropriate to ask whether, and in light of  
22 your comments about the cost, of course, about  
23 recording and transcribing the interviews, and I  
24 wanted to ask if it would be agreeable and possible to  
25 have the interviewers prepare a summary directly in

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1 English instead of recording and transcribing those  
2 interviews.

3 MR. REID: Well, I think we would want an  
4 oral recording, either digital or taped, and then an  
5 English summary is kind of what I envisioned --

6 MS. DIAZ TORO: Right.

7 MR. REID: -- without a written transcript  
8 either in English or Lakota, and then we'd have the  
9 oral recording so that if it became necessary in the  
10 future, then we would have something we could go back  
11 to.

12 Let's say there was a question as to  
13 something mentioned in the summary that the NRC staff  
14 needed further information on. It would be important  
15 to have the oral recording, and we could actually go  
16 back and listen to that.

17 A Native Lakota speaker could then  
18 transcribe, let's say, five minutes of it or whatever  
19 was necessary in order to answer that question. So,  
20 yeah, I think we're on the same page then if what the  
21 NRC staff was looking is for a summary, and then --

22 MS. DIAZ TORO: A summary.

23 MR. REID: -- the NRC staff would make a  
24 determination whether or not that's sufficient for its  
25 needs or whether it needs more. Then you could come

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1 back to the interviewer and then do that. So, we do  
2 envision the interviewers will be able to provide an  
3 English summary on the interview --

4 MS. DIAZ TORO: Okay.

5 MR. REID: -- if that answers your  
6 question.

7 MS. DIAZ TORO: Thank you, yes, it does.  
8 And not to go too far from the oral history  
9 interviews, I wasn't sure if I heard correctly that  
10 you say that the NRC should tell the Tribe what  
11 information it needs from the interviews. Did I hear  
12 that correctly?

13 MR. REID: Well, yeah, if there's specific  
14 information it needs. Let's say they don't  
15 necessarily need to know the history of the entire  
16 region, but they need to know specific history  
17 regarding that area within the licensed area, within  
18 Crow Butte, then the form could have a question about  
19 what is -- the interview is in terms -- they could be  
20 just simply guidelines. Maybe it's not --

21 MS. DIAZ TORO: So --

22 MR. REID: -- questions, but guidelines  
23 that the staff would like to have these issues  
24 addressed, like the history of the area in and around  
25 the licensed area.

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1 MS. DIAZ TORO: So, and would you all,  
2 would the Tribe and Mr. Brings, of course, I ask,  
3 would the Tribe want the NRC to provide those  
4 guidelines/questions? Is that something that you're  
5 interested in?

6 MR. REID: Well, I think it would help to  
7 make sure that we --

8 MS. DIAZ TORO: Okay.

9 MR. REID: -- ask the questions that you  
10 wanted. My concern is just that we can do an  
11 interview and then you come back and say well, that's  
12 not what we wanted or you need to ask them about this.  
13 If we know going into it --

14 I have to tell you, sometimes these  
15 interviews are hard to set up because the elderly  
16 people are often isolated, in isolated areas, and so  
17 we'll have to travel out to areas, some places where  
18 they don't even have running water and so forth.

19 But to go out to those areas where some of  
20 the Elders are located and then sit with them is a  
21 major process, and so if we know specifically the  
22 information that the NRC staff wants --

23 We don't need the detailed information,  
24 but just the general topics that they want covered.  
25 That would be helpful.

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1 MS. DIAZ TORO: Okay, and certainly it's  
2 focused, and those guidelines and questions would be  
3 focused on the sites that have been, that are  
4 identified during the field work, the field survey  
5 certainly, and so that's sort of the focus of those  
6 oral history interviews.

7 And, Andy, is it -- have you all thought  
8 or have identified the number of oral history  
9 interviews and their duration, how long they would  
10 take to conduct those interviews? I'm not sure if  
11 maybe a maximum number of hours could be identified,  
12 for example.

13 MR. REID: Well, I know that Crow Butte  
14 was proposing 20 interviews at 15 hours per interview,  
15 which I think they're talking about seven hours or  
16 seven and a half hours per interview, because we were  
17 compensating both the interviewer and the interviewee  
18 for a total of so many hours. I have the number of  
19 hours here.

20 I think ten people is probably reasonable.  
21 I don't think it would be more than that. The issue  
22 we have is we have some people that know the history  
23 of the area, but not have the spiritual knowledge or  
24 the cultural knowledge, and then we'll have other  
25 people we have to interview that know about the

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1 culture of the area, let's say the use the herbs and  
2 so forth of the area.

3 Then we'll have other people that will  
4 know about the spiritual nature of the area. You  
5 know, these ancestors are found there and this is the  
6 burial grounds and so forth, and so I don't think ten  
7 is unreasonable. That would be three or four in each  
8 area.

9 So, I would say somewhere between five and  
10 15, but it's got to be left open. Obviously, there  
11 will be some people that will have knowledge on more  
12 than one area, on more than one topic, so, but, yeah.

13 MS. DIAZ TORO: Okay.

14 MR. REID: Mostly we just need  
15 flexibility.

16 MS. DIAZ TORO: Okay.

17 MR. REID: We've already identified some  
18 people that have significant knowledge.

19 MS. DIAZ TORO: Oh.

20 MR. REID: For example, the one that went  
21 out there, one of the spiritual advisors knew a lot  
22 about the history of the area, but then she may not be  
23 the one with -- although she did have knowledge of the  
24 ceremonies and so forth --

25 MS. DIAZ TORO: Okay.

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1 MR. REID: -- that were conducted. So,  
2 yeah, we could -- hopefully we can get -- I don't see  
3 -- this is not a matter that we would need 20 or 30  
4 interviews, I don't think, so probably --

5 MS. DIAZ TORO: Okay.

6 MR. REID: -- five to 15.

7 MS. DIAZ TORO: Five to 15. Thank you,  
8 Andy. I appreciate it.

9 MR. REID: Tom? Let me just check with  
10 Tom. Tom, would you agree with that or no?

11 MR. BRINGS: Yeah, sounds good.

12 MR. REID: Okay.

13 MS. DIAZ TORO: All right, thank you, and  
14 then I also had wanted to make sure I understood  
15 correctly. When you were discussing the ceremonies or  
16 potential ceremonies that the Oglala Sioux Tribe would  
17 need to conduct, you know, you mentioned that we would  
18 or suggested that we would need to add maybe a  
19 separate line item for conducting those ceremonies.

20 And in our survey proposal, the field  
21 crew, right, would -- we're proposing or we have  
22 proposed that the field crew also include spiritual  
23 advisors from the Oglala Sioux Tribe.

24 So, would the spiritual advisors be able  
25 to conduct those ceremonies during the survey time

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1 period considering the focus and the scope of the  
2 proposed action, which is, you know, the license  
3 renewal of this operating facility?

4 MR. REID: Well, if they found bones,  
5 burial grounds, let's say ceremonial grounds or so  
6 forth while they're doing the survey, then I think  
7 they could do it at that time.

8 In terms of speaking with ancestors and so  
9 forth, that would require a longer period of time. It  
10 may require an overnight stay or two or three nights.  
11 Am I correct with that, Tom?

12 MR. BRINGS: Yes, that's right.

13 MS. SIMON: Can I ask a clarifying  
14 question about that, Diana?

15 MS. DIAZ TORO: Yeah, sure.

16 MS. SIMON: So, would the -- sorry, let me  
17 put my camera on. Would the spiritual advisor's role  
18 as part of the field crew be, encompass those  
19 potential ceremonies that you're talking about, or  
20 would their role with the field crew be something in  
21 addition to that?

22 MR. REID: Well, it would encompass --

23 (Audio interference.)

24 MR. REID: -- a place that has spiritual  
25 significance that therefore may be a ceremonial site,

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1 may have artifacts there, ceremonial artifacts. They  
2 can probably identify sites that would be burial  
3 grounds, and therefore might be more likely to have  
4 bones. So, they would have a role in identifying  
5 potential sites, so they would assist the surveyors  
6 that way.

7           And then if they did find a site of  
8 significance that needed some kind of spiritual, first  
9 off, spiritual analysis in terms of determining the  
10 nature, the spiritual nature of that area, then they  
11 could conduct a ceremony to determine is this a  
12 powerful site? Is this a site that needs some healing  
13 or what's involved in that?

14           So, for example, with the bones from a  
15 grave site, it's going to involve a specific ceremony  
16 to deal with, how we deal with those bones and the  
17 taking and proposing a reburial, and Tom can give you  
18 more information on that.

19           So, that would be an example where, in the  
20 field, they would conduct those ceremonies. So, they  
21 would do largely both in answer, I think, both, both  
22 the ceremonies and helping to identify sites of value,  
23 and that's separate from coming on there to set an  
24 altar or a fire and do an Inipi, or a sweat ceremony,  
25 or whatever, other ceremonies.

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1                   That would be a separate process and  
2                   that's why I'm saying I think you need a separate line  
3                   item specifically for that. Tom, do you have anything  
4                   else on that?

5                   MR. BRINGS: Yeah, I was just going to add  
6                   that the spiritual advisors would be in addition to  
7                   the field crew. They would be there for, like Andy  
8                   said, if anything spiritual or significant is found,  
9                   then they'd be there for the advice.

10                  MS. SIMON: Okay, thanks. That's helpful.

11                  MS. DIAZ TORO: Thank you, Marcia. Thank  
12                  you, Andy. Let me see. Marcia, Lorraine, Jean,  
13                  anything? I think maybe it's my time to ask you all  
14                  if there was anything, any other clarifications that  
15                  would be beneficial certainly to discuss today?

16                  MS. TREFETHEN: This is Jean. I don't  
17                  have any to add at this time.

18                  MS. DIAZ TORO: I'm going to let Marcia  
19                  and Lorraine think a little bit. And Andy, before --  
20                  so one thing that CBR talked to us last week was that,  
21                  you know, certainly there is sensitivity about CBR's  
22                  licensee's participation, right, and they indicated  
23                  that they, because of safety and security reasons,  
24                  right, that they would need to be nearby, right.

25                  They would not be directly observing

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1 certainly the survey methodology, but I wanted to  
2 share that with you both, you and Mr. Reid, so that  
3 would be known, that they would have someone nearby,  
4 right, not directly observing, but nearby.

5 And additionally also, they indicated that  
6 they would need to have access to the final survey  
7 report, including the information on the locations of  
8 identified sites so that they could be avoided or  
9 mitigated in the event that there would be adverse  
10 effects that would be identified.

11 So, CBR wants to be able to reference this  
12 information in supporting license activities, and so  
13 I wanted to understand if the Tribe has any comments  
14 about this?

15 MR. REID: Yeah, I don't think that would  
16 be an issue. When there's a ground survey being  
17 conducted by Mr. Mentz or anybody else, they'd just be  
18 walking the grounds, and I don't think that that would  
19 have any problems with CBR observing that as long as  
20 they didn't interfere with them walking in certain  
21 areas or going, if they didn't stand in front of them  
22 or tell them to stop, unless it was understood that  
23 that's an area that they weren't supposed to be in  
24 because let's say a pond where they had radiation  
25 coming from it because it's an evaporation pond or

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1 some place like that. We can work those things out.  
2 That's not an issue.

3 So, the only time that I think that it  
4 might be a problem would be, for example, if they  
5 discovered some bones, or ceremonial grounds, or  
6 something where there needed to be a ceremony. Then  
7 I think that would be discussed with CBR, but we can  
8 let CBR know ahead of time and CBR would be asked to  
9 leave while they conducted the ceremony, you know --

10 MS. DIAZ TORO: Okay.

11 MR. REID: -- something like that. That  
12 would be the only time I can imagine that they would  
13 not be there.

14 In terms of location of the sites, I think  
15 we would want them to know the location of the sites  
16 because the Tribe does not want those sites disturbed  
17 either. So, if they find -- or in terms of  
18 mitigation, we can discuss that.

19 The only issue then would be that it's  
20 only CBR that would know that. There would have to be  
21 some discussions about how to keep that information  
22 private, but --

23 MS. DIAZ TORO: Okay.

24 MR. REID: I mean, this is a common thing  
25 among these TCPs, so I don't see that being an issue

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1 either. Obviously, the Tribe wants Crow Butte to know  
2 so that they don't disturb those sites --

3 MS. DIAZ TORO: Okay.

4 MR. REID: -- so that's both parties.

5 MS. DIAZ TORO: Okay, thank you,  
6 appreciate, and then -- because we can certainly share  
7 that with Crow Butte Resources since they were  
8 indicating that or making that observation. I wanted  
9 to make sure that we're all on the same page.

10 If I could turn a little bit back to the  
11 duration of the field survey and the duration of the  
12 oral history interviews, I wanted to make sure that I  
13 understood correctly from you that, you know, for oral  
14 history interviews, the draft, or the NRC staff and  
15 these draft methodology is proposing that it takes  
16 place within the 15 work day field work period or  
17 that, you know, it starts during that time, and then  
18 with an additional ten days to be chosen by the Tribe,  
19 provided that the interviews are completed within the  
20 14 calendar days of the last day of the field work.

21 And so it seemed to me, listening to your  
22 observations and comments, that you indicated that  
23 that did not seem unreasonable, but I wanted to make  
24 sure that I understood you correctly, and is that, the  
25 approach that the NRC staff is proposing is agreeable

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1 to the Tribe, meaning the 15 work day plus the  
2 additional ten days to be chosen by the Tribe, to be  
3 completed within 14 calendar days of the last day of  
4 the field work.

5 MR. REID: Well, we'll have to check with  
6 Mr. Mentz on that or whoever the Tribe contracts with.  
7 My comments were directed as to whether or not it was  
8 a block of 14 or 15 days.

9 I had discussed that it be stated in terms  
10 of so many hours, and I mentioned that we may have  
11 rain, or snow, or logistical problems that may require  
12 more time.

13 What I was commenting on was that from  
14 what Mr. Mentz submitted, it's 15 days if we're able  
15 to spend eight hours a day during those 15 days, was  
16 sufficient to complete the survey. That was the  
17 comment, but if you can't get those 15 days in within  
18 the two-week period, then you're going to need more  
19 time.

20 And all I was suggesting was we leave that  
21 open to a flexible -- we can try to, if the surveyor  
22 could be instructed to try to get it done within a  
23 block of two weeks, but if they can't get it done  
24 within that two-week block, then I think we need some  
25 flexibility on that.

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1 MS. DIAZ TORO: And so certainly I was  
2 going to mention weather, you know, at the end of our  
3 discussion, Andy, so we understood weather. It's a  
4 factor that we can't really account for today, right,  
5 certainly.

6 One thing to consider is that for the  
7 field work, we're proposing 15 work days, and that  
8 would allow for, you know, hopefully, right, if  
9 there's bad weather, a few days or a week, you know,  
10 a few days during what you put, those two weeks,  
11 right. That can provide that flexibility and account  
12 for that bad weather.

13 MS. SIMON: I think that -- sorry, this is  
14 Marcia.

15 MS. DIAZ TORO: Go ahead.

16 MS. SIMON: I think that everyone's  
17 understanding of the idea of having 15 eight-hour days  
18 of time to do the work is what's meant. Does that  
19 help?

20 So that if, you know, if -- I think that  
21 the staff would want to, you know, certainly would  
22 want to minimize any logistical delays. Hopefully  
23 there could be enough advanced planning to avoid that,  
24 but certainly weather delays, no one can control that.

25 MS. DIAZ TORO: Right, right.

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1 MS. SIMON: And so I think the  
2 understanding would be that it would be kind of what  
3 you were referring to, Andy, you know, 15 times eight  
4 or 120 --

5 MS. DIAZ TORO: Right.

6 MS. SIMON: -- you know, hours per person  
7 or however it's worked out, but the idea, when we say  
8 work days in the methodology, and maybe this can be  
9 clarified, it means, you know, an eight-hour day when  
10 people are able to work.

11 MR. REID: Right, so maybe we shouldn't  
12 call them calendar days, just 15 days, 15 eight-hour  
13 days, and then --

14 MS. SIMON: Yeah.

15 MR. REID: Right, and I have no problems  
16 with putting in there something that the contractor or  
17 the Tribe would agree to act in good faith in terms of  
18 getting those done in the block, you know, and I  
19 understand Crow Butte wants this.

20 They don't want the Tribe coming back over  
21 a three-week period, coming back for four hours here  
22 and, you know, five hours there, and I understand they  
23 want it -- Crow Butte wants it done in a block. They  
24 want to get it done and out and over with, and I think  
25 we can try to do that.

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1           The issue is obviously going to be what  
2           the contractor's needs are when he gets out there.  
3           And I did mention, let's say they find a significant  
4           burial site that needs some excavating. That could  
5           require more time. It doesn't mean the survey stops.

6           They could continue to survey the other  
7           areas, but it may have to be adjusted, and that's why  
8           I made the suggestion that somewhere in there, we can  
9           indicate that these time periods, including the  
10          interview period, are flexible and may be adjusted  
11          according to agreement of the parties while the survey  
12          is being conducted.

13          And, for example, doing the interviews at  
14          the same time as the ground survey may be an issue  
15          because we only have so many Lakota speakers who are  
16          qualified to do this kind of work, and so Tim is one  
17          of those.

18          So, he may be doing both the interviews  
19          and ground work, you know, or Harold Salway may be  
20          able to do some of the interviews because he's fluent,  
21          but, and it has to be somebody that can not only do  
22          the interviews, but is comfortable enough with English  
23          to prepare an acceptable survey, I mean summary of the  
24          interview.

25          So, there may be some problems with doing

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1       them both at the same time, and the reason why I  
2       didn't raise it before is because you did add on ten  
3       extra days outside of the ground work and that may  
4       resolve that issue, but I would like to remain  
5       flexible on that.

6                 In my mind, the big goal is to get this  
7       done by the end of November, and I really don't want  
8       to get hung up on, you know, these kinds of things.  
9       We need to be fluid and deal with it on the ground as  
10      it happens, and I just want to know that we'll have  
11      the cooperation of the NRC staff in doing that as long  
12      as you're assured that we're doing it in good faith.  
13      I think that's the main thing.

14                MS. SIMON: Yeah, and if I could just --  
15      yeah, this is Marcia. If I could just clarify, I  
16      think the -- Diana can correct me if I'm wrong, but I  
17      think one of the reasons for including some of the  
18      interviews during the field survey was there was some  
19      discussion in July at the meeting about wanting to  
20      bring some people to the site so they could actually  
21      see the site, and then, you know, be interviewed.

22                And so, we thought if they were going to  
23      be brought to the site to see it, it might be useful  
24      or efficient to be able to interview them while we  
25      were there, and so I think that was kind of the basis

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1 for including that, so it was trying to balance kind  
2 of, you know, the best of both worlds.

3 MR. REID: Yeah, that's fine.

4 MS. SIMON: Okay.

5 MS. DIAZ TORO: And then I think --

6 MR. REID: By the way, Tom, if you have  
7 anything to say, please jump in on any of this.

8 MR. BRINGS: Okay.

9 MR. REID: Okay.

10 MS. DIAZ TORO: Since we were talking  
11 about -- I did mention that CBR, you know, would have  
12 an individual there as well nearby for safety and  
13 security purposes.

14 Now, they also have suggested that the NRC  
15 staff contractor, that Mr. Spangler observe the  
16 Tribe's site identification process during the field  
17 investigation, so I wanted to understand, Mr. Reid and  
18 Mr. Brings, if the Tribe would be agreeable to having  
19 Mr. Spangler observe that identification process  
20 during the field survey.

21 MR. REID: I think that's okay, but we may  
22 ask him to leave if there's ceremony necessary. Tom,  
23 are you okay with that?

24 MR. BRINGS: Yeah, that'll be fine. We'll  
25 be good.

1 MS. DIAZ TORO: Okay, thank you. All  
2 right, Marcia, Lorraine, anything else?

3 MS. SIMON: Yeah, just a couple more  
4 things. Thank you for your patience. I know that,  
5 you know, when you went through the section, I think  
6 5.4 on the methodology and the various areas, the  
7 methodology has a prioritized approach, you know, with  
8 the idea the undisturbed areas first, the previously  
9 identified sites being reevaluated second, and then  
10 the disturbed areas third, and it sounded like you  
11 were generally okay with that kind of prioritization  
12 and I just wanted to make sure that's true.

13 MR. REID: Yes.

14 MS. SIMON: Okay.

15 MR. REID: Yes.

16 MS. SIMON: Okay, and then I think -- I  
17 just want to ask this, though I think I know the  
18 answer, but maybe not. As far as the writing of a  
19 final report about the survey and, you know, that  
20 would also encompass the interviews, so the entire  
21 effort, is it the Tribe's preference to have --

22 Assuming that you were to hire a  
23 contractor, you know, and say it was Mr. Mentz or  
24 someone else to do the work, would it be the Tribe's  
25 preference to have that person write the report and

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1 then the NRC staff, Mr. Spangler, would review a draft  
2 of it to make sure that it kind of covers the bases  
3 that the NRC needs as far as meeting its NHPA and NEPA  
4 obligations, or would you prefer that the information  
5 be turned over to the NRC's contractor, Mr. Spangler,  
6 and then have him write the report?

7 MR. REID: Right, you know, I think our  
8 preference would be to have the contractor, but we may  
9 end up in a situation where the contractor either  
10 doesn't have the time or we can't find a contractor  
11 that would do that.

12 So, the Tribe, for example, we may have to  
13 have Mr. Catches Enemy do the ground work if Mr. Mentz  
14 cannot come. I'm hopeful that Mr. Mentz, and so far,  
15 he's been cooperative, but we don't have any guarantee  
16 that he'll do this.

17 Some of it's based on whether or not we  
18 can work things out with Crow Butte on the funding,  
19 but if that falls apart, the Tribe is still interested  
20 in protecting its interests.

21 So, we may have Tom Brings, and Mr.  
22 Catches Enemy, and whoever we can find that's  
23 qualified come on and fulfill this methodology, but  
24 they may not have the time or ability at this point to  
25 do the final report, in which case we would hand the

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1 summary interviews, and the results of the ground  
2 survey, and the results from the, let's say the  
3 spiritual Elders during the altar and ceremony there,  
4 the part I'm asking you to add, we would have a  
5 summary of that and hand that to Mr. Spangler, and  
6 then Mr. Spangler would do that and it would become  
7 the NRC's final report, which I understand.

8           Otherwise, we're giving you a report and  
9 then you're going off our report and you're using your  
10 expert to review our report based on his own personal  
11 knowledge of having been there during parts of the  
12 survey.

13           I understand he won't be doing the  
14 interviews, but he would be there for the ground work  
15 and he would be reviewing the summaries of the  
16 interviews and so forth, and that would be his expert  
17 opinion as to that rather than his expert opinion of  
18 our expert's opinion, so those are the two -- I don't  
19 think there's going to be a lot of difference.

20           MS. SIMON: Okay.

21           MR. REID: I know there's been some issues  
22 with Mr. Spangler in the past in terms of Powertech or  
23 something else, but from my contact with Mr. Spangler  
24 and so forth, I've found him to be very cooperative  
25 and understanding with what we're suggesting.

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1           So, I'm hopeful we'll come out with a good  
2 result no matter what happens, but I don't know if  
3 that answers your question. I'm not going to be able  
4 to give you a real answer on that until we have a  
5 contractor.

6           MS. SIMON: Okay, well, if I can try to  
7 summarize, and correct me if I misheard anything, the  
8 Tribe is okay with either approach depending on how  
9 the survey ends up being implemented. So, if the  
10 survey is implemented by a contractor, then it makes  
11 sense to have the contractor write the report.

12           If the Tribe can't find a contractor and  
13 needs to use its own members to perform the survey,  
14 then they might not have time given their other duties  
15 and might want to hand it over to the NRC to write the  
16 report. Is that accurate?

17           MR. REID: Well, that's correct somewhat.  
18 Our preference obviously is to have a Lakota expert  
19 write the report --

20           MS. SIMON: Okay.

21           MR. REID: -- and Mr. Spangler is not a  
22 Lakota expert. So, that's our preference. If we  
23 cannot find somebody to do that who has the time to do  
24 that and the expertise on that, then obviously we'll  
25 hand what we have over to Mr. Spangler.

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1 MS. SIMON: Okay.

2 MR. REID: And I think in my discussions  
3 with Mr. Spangler, and he can correct me on this, but  
4 he had suggested during the site visit that he would  
5 be open to sharing his draft report or whatever with  
6 us so that we could review it and comment on that  
7 before it goes out as part of the EA.

8 And so, with that kind of process, even if  
9 we have to rely on Mr. Spangler, and he's not Lakota  
10 and didn't do the interviews or the actual field work  
11 himself, it would help alleviate some of the concerns  
12 we have about a non-Lakota person doing the final  
13 report.

14 MS. SIMON: Okay.

15 MR. REID: So, our preference is to have  
16 somebody like Mr. Mentz, but if we have to, we'll work  
17 with Mr. Spangler.

18 MS. SIMON: Okay, thanks for the  
19 clarification.

20 MR. REID: And that's not to put Mr.  
21 Spangler down in any way. It's just that he's not  
22 Lakota and not personally familiar with the Lakota  
23 culture.

24 MS. SIMON: I guess the hope would be,  
25 given that you have members of the Tribe identifying

1 the sites, and identifying their significance, and  
2 participating in the interviews, that even if they had  
3 to provide all of that data to Mr. Spangler, he could  
4 still -- you know, the report could still cover, you  
5 know, the information that was collected even if it  
6 can't be written by someone who is a member of the  
7 Tribe, but I understand what you're getting at and the  
8 preference. That --

9 MR. REID: Well, the NRC staff has to do  
10 what it has to do under the board's decision and the  
11 requirements of law, and so the NRC staff is going to  
12 come out with an EA whether or not it has the  
13 participation of the Tribe or not.

14 So, whether the Tribe actually, or the  
15 Tribe's contractor writes the final report isn't  
16 really relevant because the NRC staff has got to  
17 produce something.

18 And so in the final report, if the Tribe  
19 or the Tribe's contractor doesn't write it, I'm  
20 assuming that would be in the EA or in the NRC staff's  
21 product is that they would report that they had  
22 offered the Tribe the opportunity to have its own  
23 contractor write the report and they said no, that  
24 they couldn't do it --

25 MS. SIMON: Yeah.

1 MR. REID: -- you know, or that the  
2 information was provided to Mr. Spangler and their own  
3 expert did that.

4 So, either way, I'm assuming that they  
5 would simply cite that as a way of showing that they  
6 in good faith satisfied their duties under NEPA and  
7 the National Historic Preservation Act like they did  
8 before --

9 MS. SIMON: Okay.

10 MR. REID: -- under consultation.

11 MS. SIMON: I just want to clarify though  
12 that I think the staff's envisioning having a final  
13 report from the survey separate from the EA regardless  
14 of who writes it.

15 MS. DIAZ TORO: Yes.

16 MR. REID: Yes, absolutely.

17 MS. SIMON: Okay.

18 MR. REID: Absolutely.

19 MS. SIMON: All right, thanks, Andy.

20 MS. DIAZ TORO: Yes.

21 MR. REID: All right. And on that before  
22 we quit, I would hope that the final report, to the  
23 extent that it is able to be made public, that we can  
24 delete any information that may have to be kept  
25 private, or redacted I mean, that it would become part

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1 of the EA, so we are expecting a final written report.

2 MS. DIAZ TORO: Okay, yes, and we, in  
3 previous efforts, we've done that, Andy. We certainly  
4 have had information redacted or not be made public,  
5 simply not be made publicly available or disclosed  
6 anywhere, right, not the survey report and not the EA.

7 MR. REID: Right, but it is referred to in  
8 the EA as a basis for the EA.

9 MS. DIAZ TORO: Right, exactly, it's  
10 referred to, but it's kept nonpublic.

11 MR. REID: All right, sounds fine.

12 MS. DIAZ TORO: And there are valid  
13 reasons for, you know, for doing so.

14 MR. REID: Thanks.

15 MS. DIAZ TORO: I think maybe that's it,  
16 Andy and Tom, unless --

17 MS. BAER: Hi, sorry, I have one question.  
18 This is Lorraine.

19 MS. DIAZ TORO: Oh, you do. Okay, go  
20 ahead, Lorraine, sorry.

21 MS. BAER: So, I think I gathered from  
22 what I heard today that the Tribe is amendable to the  
23 lump sum approach regardless of whether the money is  
24 coming from Crow Butte and going directly to Tribal  
25 members or whether it goes to the Tribe and then the

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1 Tribe redistributes the funds to a contractor of its  
2 choosing, but I just wanted to clarify and make sure  
3 I heard correct that that is the Tribe's preferred  
4 approach or is the Tribe envisioning something else,  
5 some other sort of payment scheme?

6 MR. REID: Not necessarily a preferred  
7 approach. It's an approach that I think we can agree  
8 to --

9 MS. BAER: Okay.

10 MR. REID: -- with Crow Butte. If it  
11 works for Crow Butte, I think we can make it work for  
12 us as long as we can agree on a figure, and, yeah.

13 MS. BAER: Okay, thank you.

14 MS. DIAZ TORO: Thanks, Lorraine.

15 MR. REID: On that one question before we  
16 get off, does the NRC have any issue, and this is  
17 probably directed towards its attorneys, as to the  
18 nature of that lump sum? In other words, whether Crow  
19 Butte's putting it down as -- you know, they can do a  
20 contract directly with Mr. Mentz, and then in the  
21 contract, it has an amount for the performance.

22 They can do a lump sum to the Tribe that's  
23 described -- I think what was mentioned as -- I don't  
24 think -- honorarium or something like that, but, you  
25 know, it's not just -- does the NRC have any issue as

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1 to how the lump sum is characterized?

2 MS. DIAZ TORO: I mean, I don't think it's  
3 how it's characterized. It's something between you,  
4 the Tribe, and Crow Butte.

5 MR. REID: And Crow Butte.

6 MS. SIMON: Andy, can I just ask for  
7 clarification? When you say characterize, do you mean  
8 whether it's a lump sum paid to the Tribe or whether  
9 it's a contract between Crow Butte and Tim Mentz or --

10 MR. REID: The only reason why I raise  
11 that is because Crow Butte in the past has mentioned  
12 paying an honorarium --

13 MS. SIMON: Right.

14 MR. REID: -- you know, and then when they  
15 said, well, you know, if the increase the amount of  
16 the honorarium so it covered the amount of the survey,  
17 we might consider that. That's what they had  
18 mentioned in the past.

19 And on the other hand, you know, they've  
20 talked about -- I'm not sure for -- and maybe this is  
21 a discussion I will have for Crow Butte. They may not  
22 want a contract for the --

23 MS. SIMON: Right.

24 MR. REID: -- survey. They may not want  
25 to say we are paying for the survey. They may prefer

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1 to say we are simply paying the Tribe an honorarium --

2 MS. SIMON: Right.

3 MR. REID: -- so that they can --

4 MS. DIAZ TORO: Right.

5 MR. REID: -- get a response to the  
6 application for renewal, you follow me? And so, if  
7 that's okay with the NRC, I don't think we'll have a  
8 problem with that. I just need to know if the NRC has  
9 any --

10 MS. SIMON: Yeah.

11 MR. REID: -- any issue on that.

12 MS. SIMON: I think, you know, the initial  
13 thought that Lorraine and I probably both have is that  
14 that's the issue between Crow Butte and the Tribe, you  
15 know, whether it's called an honorarium or whatever,  
16 a lump sum or however it's done, I think, is something  
17 -- if the Tribe and Crow Butte can work that out, I  
18 don't think the staff has any --

19 MS. DIAZ TORO: Right.

20 MS. SIMON: -- concern with it.

21 MS. DIAZ TORO: Thank you for confirming.

22 MR. REID: And before we close, let me  
23 check one more time with Tom, Tom Brings, to find out  
24 if he has anything else.

25 MR. BRINGS: I don't have anything at the

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1 moment. Thank you.

2 MS. DIAZ TORO: Thank you, Tom. So, Andy,  
3 before we conclude, I just wanted to share with you  
4 the next steps. So, we'll have the transcript of the  
5 meeting. We'll send it to you for your review, and  
6 then we'll make it publicly available. It will serve  
7 as the meeting summary.

8 And then the NRC will review your  
9 recommendations as discussed today, and we'll finalize  
10 the survey methodology. We will consider -- and I  
11 apologize that I -- we will consider your comments and  
12 Crow Butte's comments, CBR's comments certainly, and  
13 we will finalize the methodology.

14 And our target is to send both parties  
15 that final methodology on or around September 8, and  
16 then the plan would be to schedule another meeting  
17 with all of the parties at the same time so that then  
18 we can discuss that final methodology.

19 And we were looking at an opening the  
20 second week or September, about September 13, so I  
21 wanted to share that with you because that's what  
22 we're targeting right now, and so if Mr. Brings, if  
23 you might not be available during that week of  
24 September 13, if you --

25 (Audio interference.)

1 MS. DIAZ TORO: -- Monday exactly the  
2 13th, but that week of the 13th. So, I just wanted to  
3 briefly mention the next steps so that we're all on  
4 the same page as to where we're going.

5 MR. REID: Yeah, that's good. I'll try to  
6 get back to Mr. Mentz and anyone else from the Tribe  
7 so that if we have any further comments on the  
8 methodology, we get that to you within the next week.

9 MS. DIAZ TORO: Okay.

10 MR. REID: By the end of this week,  
11 they'll have that. The other thing I wanted to  
12 mention, as your staff goes through the contract, I  
13 mean as your staff goes through the transcripts, I'd  
14 encourage you to focus in on those specific terms that  
15 I was concerned about and clarify them in order to  
16 avoid -- and Marcia will know what I'm talking about  
17 as a lawyer. Terms matter. Words matter.

18 And so, where we had some issues about how  
19 certain things were described, or not described, or  
20 wasn't clear, even though I know the staff wants to be  
21 done with this methodology and have it locked in, if  
22 you can, please go back in the transcripts  
23 specifically to those specific terms that I was  
24 concerned about.

25 For example, historic properties is a big

1 issue, the time limits that I mentioned and some of  
2 the geographical limits I mentioned. Those could be  
3 potential killers for us, so you need to be --  
4 hopefully you'll go back and revise those.

5 When I say they're killers for us, I mean  
6 it could be -- we could go ahead and do the survey,  
7 but then let's say you had that four-year time limit  
8 for historic consideration. We're not going to tell  
9 our contractor that they're stuck with that.

10 That may be your methodology, but if  
11 they're interested, the Lakota people, that are  
12 outside that four-year period, we're not going to  
13 agree to that unless I have further discussion with  
14 you and maybe with your counsel about why it's  
15 necessary, so, and that's what I'm talking about.

16 MS. DIAZ TORO: Okay.

17 MR. REID: -- to our properties or trying  
18 to limit any of the NEPA part to a Section 106 survey,  
19 those are going to be the kinds of things we'd have  
20 issues with, and I would rather clear them up now and  
21 get them worked out before we get started doing them  
22 than having them be an issue before, I mean during or  
23 after the survey, so, if that makes sense to you, and  
24 we'll have comments on those too.

25 MS. DIAZ TORO: Yes.

1 MR. REID: Okay, so I look forward to the  
2 final draft, and hopefully by that time, we can also  
3 have this worked out with Crow Butte on the funds.

4 MS. DIAZ TORO: Okay, thank you, and thank  
5 you to Mr. Brings for the time and for staying, I was  
6 going to say a little bit longer, but maybe a little  
7 bit is not -- 52 minutes longer than necessary, right.  
8 I do appreciate it wholeheartedly for staying longer  
9 with us and the time.

10 So, have a great day and, you know, look  
11 in your emails for the transcript soon to be sent to  
12 you all.

13 (Whereupon, the above-entitled matter went  
14 off the record at 2:52 p.m.)

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