

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL UTILITIES SERVICE

AVS-NESET 345 kV TRANSMISSION LINE PROJECT :  
Section 106 :

TRANSCRIPT OF CONSULTATION MEETING

Taken At  
165 Railroad Street SE  
Killdeer, North Dakota  
April 16, 2014

BEFORE LAURA DEAN, PhD  
Federal Preservation Officer  
for the Rural Utilities Service

(APPEARANCES AS NOTED HEREIN)

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A P P E A R A N C E S

- Mr. Kimball Banks.....Metcalf Archaeology.
- Mr. Derrick Braaten.....Baumstark Braaten Law  
Partners - for KMA.
- Ms. Caitlin Lock Coomes..Baumstark Braaten Law  
Partners - for KMA.
- Mr. George (Ed) Dickey...Killdeer Mountain Alliance.
- Mr. Craig Dvirnak.....Area Rancher.
- Ms. Rhonda Dvirnak.....Area Rancher.
- Mr. John Eddins.....Advisory Council on  
Historic Preservation
- Ms. Damita Engel.....Metcalf Archaeology.
- Mr. Mervin G. Floodman...U.S. National Forest  
Service.
- Mr. David Kluth.....Western Area Power  
Administration - Upper  
Great Plains Region.
- Ms. Kristen McMasters....American Battlefield  
Protection Program.
- Mr. Cris Miller.....Basin Electric.
- Mr. Curtis Pearson.....Basin Electric.
- Mr. Paul Picha.....State Historical Society  
(N.D. SHPO).
- Ms. Susan Quinnell.....North Dakota State Historic  
Preservation Office.
- Mr. Richard Rothaus.....Center for Heritage  
Renewal, North Dakota State  
University.
- Ms. Mary Sand.....Killdeer Mountain Alliance.
- Mr. Rob Sand.....Killdeer Mountain Alliance.
- Ms. Fern Swenson.....N.D. State Historic  
Preservation Office.
- Ms. Jan Swenson.....Killdeer Mountain Alliance  
supporter.
- Ms. Connie Triplett.....Killdeer Mountain Alliance  
supporter.

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1           (The following proceedings were had and made  
2 of record herein, commencing on April 16, 2014, at  
3 4:02 p.m. MDT.)

4                                 - - -

5           DR. DEAN: I want to thank everybody for  
6 coming. I know this weather isn't meaningful to you,  
7 but it is definitely meaningful to me. Apparently  
8 I just was able to sneak in here.

9           My name is Laura Dean, and I'm the federal  
10 preservation officer for the Rural Utilities Service.  
11 I've gotten involved because of the issues raised  
12 about the battlefield, and particularly under  
13 Section 106 of the National Historic Preservation  
14 Act.

15           There are two primary environmental statutes  
16 that the federal government has to comply with. One  
17 is the National Environmental Policy Act, and the  
18 other is Section 106 of the National Historic  
19 Preservation Act. We're here today to talk about  
20 issues under 106, to consult about those issues, and  
21 hopefully reach some resolution. But if we can't,  
22 there's another meeting scheduled for May 9th.

23           There are two other consulting parties that  
24 are part of this discussion. One is the  
25 Standing Rock Sioux Tribe and the other is the

1 Sisseton Wahpeton Oyate. Neither are here today. I  
2 meet with them -- the agencies will meet with them  
3 tomorrow. We thought we would have a separate  
4 meeting, in part because of the special relationship  
5 between Indian tribes and the federal government. At  
6 our scheduled May 9th meeting, the plan is to have  
7 everybody together at the table.

8           So we can start with introductions. As you  
9 can see, there is three federal agencies involved.  
10 RUS has taken the lead for the NEPA process, and  
11 Western Area Power has taken the lead for  
12 Section 106. But because RUS needs to finish  
13 Section 106 review before we can move forward with  
14 NEPA, RUS has agreed to help Western manage the  
15 Section 106 process.

16           Plus, the farm bill just passed; and so for  
17 the first time in three years, I can actually travel.  
18 So this was my choice, not Florida but North Dakota.

19           MR. SAND: Good choice.

20           DR. DEAN: So I have been doing 106 for over  
21 20 years, probably close to 30 years. My last job  
22 was with the Advisory Council on Historic  
23 Preservation. I spent a lot of time there. I've  
24 been with the Rural Utilities Service for six years,  
25 and my job there is not only handling very

1 controversial projects, I am to build out our  
2 Historic Preservation Program. So I am to train our  
3 folks, to provide them with guidance and the tools  
4 that they need to do this process better.

5 So we'll go around the room.

6 MR. KLUTH: My name is David Kluth. I'm the  
7 regional preservation officer for Western Area Power  
8 Administration - Upper Great Plains Region. I've  
9 been working with them for about eight and a half  
10 years, two different stints; between that I had a  
11 little stint with the Fish and Wildlife Service out  
12 of their Region 3 office in Minneapolis. So I've  
13 been with Western, off and on, for about ten years  
14 now.

15 MR. MILLER: Cris Miller. I'm the  
16 environmental project administrator for Basin  
17 Electric.

18 MR. BRAATEN: Derrick Braaten, attorney with  
19 Baumstark Braaten Law Partners. I'm here on behalf  
20 of and along with Killdeer Mountain Alliance, and  
21 Caitlin Lock Coomes is another attorney with us that  
22 just stepped out.

23 MR. SAND: And I'm Rob Sand, one of the  
24 spokespeople for Killdeer Mountain Alliance.

25 DR. DEAN: Okay. Derrick, did you sign in?

1 MR. BRAATEN: I did, yes.

2 DR. DEAN: Okay. Great.

3 MR. ROTHHAUS: Richard Rothaus. I'm here for  
4 the Center for Heritage Renewal, North Dakota State  
5 University.

6 DR. DEAN: And just as a reminder, we are  
7 having the meeting recorded. We've got a couple of  
8 folks on the phone. The Advisory Council on Historic  
9 Preservation has entered consultation, and the  
10 American Battlefield Protection Program will be  
11 participating in consultation.

12 It's two hours later on the East, so I don't  
13 expect either to call in, but we thought this would  
14 be a good way to provide them with a record of the  
15 discussion.

16 MS. SAND: Laura, can you hear me?

17 DR. DEAN: Yes.

18 MS. SAND: Hi. I'm Mary Sand with the  
19 Killdeer Mountain Alliance.

20 DR. DEAN: Okay. Great.

21 MR. EDDINS: And this is John Eddins with the  
22 Advisory Council.

23 DR. DEAN: Hey, John. How you doin'?

24 MR. EDDINS: Good. How you doin'?

25 DR. DEAN: You couldn't miss the fun, could

1 you?

2 MR. EDDINS: That's right.

3 MS. MCMASTERS: Kristen McMasters with the  
4 American Battlefield Protection Program on overtime.

5 DR. DEAN: Oh, my goodness.

6 MR. EDDINS: Well, the Advisory Council does  
7 not get overtime.

8 MS. MCMASTERS: And neither do we, but it  
9 sounded good.

10 MR. EDDINS: Yep, it did.

11 DR. DEAN: Well, I want to thank you.

12 Mr. Dickey, are you on the phone?

13 MR. DICKEY: Yes, I am. I'm Ed Dickey. I'm  
14 with the Killdeer Mountain Alliance, and in former  
15 incarnations, I was the Deputy Assistant Secretary of  
16 the Army for Civil Works, acting assistant secretary  
17 for two years and principal deputy for four, and so I  
18 have a lot of experience with the NEPA process and  
19 the planning process.

20 DR. DEAN: Well, thanks to everybody on the  
21 phone. I hope you can hear, but if you need to sign  
22 off, we will have a record of the conversation that  
23 we'll be able to share with you. And we've got some  
24 other folks here in the room.

25 MS. SWENSON: I am Fern Swenson of the Deputy

1 SHPO.

2 MR. PICHA: I'm Paul Picha, chief archeologist  
3 with the State Historical Society, but I also am  
4 involved with review and compliance for --

5 MR. DICKEY: Could we speak up, please.

6 MR. PICHA: Paul Picha, chief archeologist  
7 with the State Historical Society, also involved with  
8 reviewing and compliance for the North Dakota SHPO.

9 MS. QUINNELL: Susan Quinnell, review and  
10 compliance coordinator, North Dakota SHPO.

11 MR. DVIRNAK: Craig Dvirnak, area rancher.

12 MR. BANKS: Kimball Banks. I'm the regional  
13 manager for Metcalf Archaeology. And just a point of  
14 interest, before that I was with the federal  
15 government for 26 years doing review and compliance.

16 MS. MCMASTERS: Laura, we can't hear. I don't  
17 think most of us can hear the names of people in the  
18 room. Could you repeat them.

19 DR. DEAN: I sure can. We've got some folks  
20 around the table, and --

21 Susan, maybe the SHPO wants to come up to the  
22 table.

23 And we have some folks behind the table. So  
24 if there are any questions -- and Craig -- or any  
25 comments that you can't hear, just chime in. I also

1 have my cell phone. So if you guys on the phone have  
2 a problem, you can always text me on my cell. So let  
3 me take that out and actually pay attention.

4 MR. DICKEY: And, Laura, can we ask folks to  
5 say their names, so we know who's talking.

6 DR. DEAN: Yes. And if they forget, I will.  
7 Can you hear me okay?

8 MR. DICKEY: Yes, ma'am.

9 MS. MCMASTERS: Yes.

10 MR. EDDINS: Yes.

11 DR. DEAN: Okay. Good. So, everybody, we've  
12 got folks participating on the phone. If you've  
13 never done it, I don't know if you understand how  
14 excruciatingly painful it can be. So if you would  
15 please just give your name before you speak, that  
16 would be very helpful.

17 And there is some ladies on the back row.

18 MS. SWENSON: Jan Swenson.

19 DR. DEAN: Jan Swenson.

20 MS. SWENSON: I'm a Killdeer Mountain Alliance  
21 supporter.

22 DR. DEAN: Okay. And then who else?

23 MS. TRIPLETT: Connie Triplett, also a  
24 Killdeer Mountain Alliance supporter.

25 DR. DEAN: Okay. Great.

1 All right. I think that's it. Oh -- no.

2 MS. ENGEL: Damita Engel with Metcalf

3 Archaeology.

4 DR. DEAN: All right. That's everybody.

5 I thought we would start very quickly with just a

6 little bit of an overview of 106.

7 And, John Eddins, if I leave anything out, you

8 let me know. Okay?

9 MR. EDDINS: Yes, ma'am.

10 DR. DEAN: All right. 106 of the National

11 Historic Preservation Act is implemented through

12 regulations which can be found at 36 CFR Part 800.

13 Those regulations do not require protection or

14 preservation of historic properties -- of significant

15 historic properties, or significant cultural

16 resources, National Register eligible or listed

17 properties. What they require the federal agencies

18 to do is to gather information to make informed

19 decisions about how these National Register eligible

20 or listed properties may be affected by a federal

21 action.

22 In the case of Western, the action is an

23 interconnection. In the case of RUS, it's the entire

24 project. The RUS may fund the project; we don't know

25 yet. But if we do, we are the bank. Western only

1 has an interconnection. We are the bank, which is  
2 why we took leadership on the NEPA process.

3 The decision making under -- 106 is based on a  
4 consultative approach, and that's what we're doing  
5 today. It's a little different than NEPA. NEPA, you  
6 come into a meeting, you provide written or oral  
7 comments, you can submit those written and oral  
8 comments; the agencies respond; and then you move  
9 forward.

10 Here, with 106, our effort is to try to reach  
11 a resolution among the different consulting parties  
12 about what's important, what's historic, the  
13 project's effects to them, and how we will move  
14 forward together. And so this is our first  
15 conversation about that today.

16 In terms of roles and responsibilities, the  
17 decision making in Section 106 review, under the  
18 regulations, rests solely with the federal agencies.  
19 And the reason for that, in part, is because every  
20 decision under 106 either has some direct or indirect  
21 implication for the expenditure of taxpayer dollars.  
22 And it's our responsibility, certainly RUS's  
23 responsibility, to make sure that we responsibly  
24 spend those taxpayer dollars. But in order to reach  
25 an intelligent decision, we have to reach out and

1 work with you. And that's what we want to do this  
2 evening. We want to hear from you.

3           You will be happy to know I have read every  
4 comment. I've read every newspaper article. We  
5 heard your concerns, and so I have gone back; I've  
6 read *Bulletin 40*. I have been out to the  
7 battlefield; I had a tour today. I actually picked  
8 up *Empire of the Summer Moon*, which is about the  
9 southern Plains, and there are some very interesting  
10 parallels in terms of what was going on there, at the  
11 same time here. So we hear you, and we have tried to  
12 do our homework in terms of understanding the  
13 circumstances and the context here.

14           This is also different from the NEPA process  
15 in that we want to hear from the consulting parties.  
16 And the consulting parties are Killdeer Mountain  
17 Alliance, for example, which is an organization --  
18 and Mr. Dickey is the representative for that  
19 organization, and then you have an attorney here as  
20 well; correct? So this is -- we're not based on the  
21 number of comments submitted; it's based on what that  
22 entity -- would be Killdeer Mountain Alliance -- has  
23 to say at the meeting.

24           The SHPO is represented here, the State  
25 Historic Preservation Office, which represents the

1 views of the State.

2 The Center for Heritage Renewal is here  
3 because of their concern about the battlefield and  
4 receipt of grant funding to study the battlefield.

5 Mr. Dvirnak intimately knows the landscape and  
6 has concerns about the discussion here and wants to  
7 make sure that his voice as a landowner is heard and  
8 is also, I think, representing other landowners'  
9 concerns.

10 MR. DVIRNAK: Correct.

11 DR. DEAN: The ACHP, as I said, the Advisory  
12 Council, has entered consultation and so would be  
13 participating.

14 John, you're participating because -- your  
15 reason for participating is?

16 MR. EDDINS: Potentially issues of property of  
17 interest to the tribes and just generally for  
18 procedural issues.

19 DR. DEAN: Okay. And the American Battlefield  
20 Protection Program, the agencies reached out directly  
21 to that program because we know of their interest in  
22 this particular battlefield as a Civil War  
23 battlefield and as a threatened site.

24 So you also were provided with a document.  
25 It's called a programmatic agreement. And before we

1 get started, I just want to say a few words about  
2 that.

3           In concluding Section 106 review, the federal  
4 agencies typically make a finding of effect. Either  
5 there are no historic properties there, there is  
6 nothing there that's National Register eligible or  
7 listed, so there's no problem; or there's no effect  
8 to something that is there that's of that status; or  
9 a National Register listed or eligible property is  
10 present, but there won't be any harm to it. There  
11 will be an effect, but it will not be adverse; or  
12 there's a National Register listed or eligible  
13 property within the project area, actually, the area  
14 of potential effects -- and I say this -- I want to  
15 be careful.

16           I don't want to get into a lot of jargon, but  
17 I want us to be careful about our language. Because  
18 I notice in some of the comments, sometimes it says  
19 "Killdeer Mountain" when it probably should be  
20 "Killdeer Mountain battlefield." So we need to take  
21 care. It doesn't say National Park Service study  
22 area, when it really should say -- so we need to  
23 really be precise about what we mean.

24           So getting back -- we could have a  
25 determination that there is an adverse effect, that

1 historic property will be harmed, and we can conclude  
2 the process then with that finding and coming to  
3 agreement on appropriate mitigation.

4           In this particular case, it's a 278-mile  
5 transmission line. Basin cannot get access to do the  
6 necessary studies for that line before the agencies  
7 need to approve so they can start moving forward, if,  
8 in fact, we were to approve it.

9           So the Section 106 regulations recognize that  
10 circumstances like that, where you have large  
11 corridors, you can't gain access to do the surveys  
12 before project approval, you can phase your  
13 identification of the historic properties and your  
14 finding of effect. In other words, you can phase the  
15 steps that you would take to find important things  
16 and figure out how they'll be impacted, and do that  
17 before construction.

18           And the way we do that is through this  
19 programmatic agreement. It establishes the  
20 procedures that Basin will follow, what Basin needs  
21 to do for all of its phases that are remaining before  
22 it can construct. It's a really important document.

23           I've been in meetings like this before, where  
24 consulting parties have spent the entire time stuck  
25 on effects and identification and have spent no time

1 on this document. And this is the document. If we  
2 go forward, this is the thing that will carry us  
3 forward. It's really important to weigh in on it.

4 So part of our discussion today and our  
5 discussion going forward is going to be on this  
6 document. The way this works legally is RUS has to  
7 have 106 complete before we can complete the NEPA  
8 process. And it's at that point that the agency  
9 would say yea or nay to the project, but we can't get  
10 there without getting through this process.

11 In signing this agreement, not all consulting  
12 parties are equal. There is three different types of  
13 roles when it comes to this agreement. The first  
14 parties are the signatory parties. Those are the  
15 parties -- once their signature is on this agreement,  
16 it is considered executed. Those parties are the  
17 three federal agencies, the U.S. Forest Service,  
18 Western, and RUS; the ACHP, Advisory Council; and the  
19 State Historic Preservation Office.

20 I think Western would agree that we would  
21 invite Basin to become a signatory party.

22 MR. KLUTH: Yes.

23 DR. DEAN: However, for RUS, Basin doesn't  
24 have to do that, because we control the money. We  
25 control the money, and controlling that money means

1 we can control our borrower.

2           The other type of party is a concurring party.  
3 A concurring party would be the rest of the parties  
4 in the room, the rest of the consulting parties.  
5 They would provide concurrence in the agreement. But  
6 if you elect not to sign the agreement, that  
7 agreement still can be implemented. It goes forward  
8 and is implemented. It goes forward and is  
9 implemented as long as the signatory parties sign.  
10 So it's important to look at the agreement.

11           Some people have complained that they have a  
12 complete agreement before them. And I recognized  
13 that that would be part of the issue. I've been  
14 doing this a long time, and so rather than start out  
15 all over the place, in my mind, it just helps the  
16 conversation to have something specific to weigh in  
17 on. So that's why you have this.

18           There is also a scheduling, timing issue. We  
19 have a very aggressive schedule we're trying -- we  
20 don't know if we'll provide money to Basin -- but we  
21 have a schedule because of the projected need, and  
22 we're going to do our best to try to meet that  
23 schedule. So, again, having a complete agreement  
24 before you so you have something concrete to weigh in  
25 really helps focus everybody's participation. So

1 that was the intent here. It was not to throw it in  
2 your face and say we're done, not by any stretch of  
3 the imagination. And I also knew that there were  
4 parties here who had never seen anything like this  
5 and I wanted you to understand how these agreements  
6 are structured and what they look like, again, to  
7 facilitate your participation.

8 So with that said, are there any questions?  
9 Well, you can wait until --

10 All right. So with that, John, did you want  
11 to add anything?

12 MR. EDDINS: No, ma'am. Sounds like a good  
13 coverage of what the process is.

14 DR. DEAN: Okay. Great. So we'll start with  
15 just an update, because I know a lot of people may  
16 not understand where we are in terms of what has been  
17 done to survey the right of way. See, I have to be  
18 careful. Under NEPA, RUS looks at a corridor. We  
19 are going to choose a preferred corridor. The  
20 North Dakota Public Service Commission selects the  
21 right of way. And everybody hopes it would be in the  
22 corridor selected by RUS.

23 Also, that right of way is affected by  
24 landowner concerns and interests. That's another big  
25 community here. It has to be -- it needs to be where

1 access will be granted. And so with a linear project  
2 like this, 278 miles, if we waited to finish all of  
3 the identification, all of the surveys, it would take  
4 years, and then we could get to the end and have to  
5 move it and then have to go back through it again.  
6 So we have to -- sort of a dance that Basin is doing  
7 in working with landowners, working with the federal  
8 agencies, and working with the state agencies to come  
9 up with an appropriate centerline where they can  
10 actually build a project.

11 And since Basin is owned by its co-op members,  
12 Basin is loathe to have to condemn property. They  
13 would rather put the project where the landowners are  
14 willing to have it. Okay? So I'm sorry. I'm done.  
15 Go ahead.

16 MR. MILLER: First, I guess, we have another  
17 gentleman join us, Laura.

18 DR. DEAN: Merv.

19 MR. FLOODMAN: Yes.

20 DR. DEAN: Hi. How you doin'?

21 MR. FLOODMAN: Very good.

22 MS. MCMASTERS: Voice on the phone.

23 DR. DEAN: Good to see you.

24 MR. FLOODMAN: I recognized your voice right  
25 away.

1 MS. MCMASTERS: I'll take that as a  
2 compliment.

3 MR. MILLER: For those on the phone, this is  
4 Cris Miller with Basin Electric, so I'll just provide  
5 an update of our current cultural resource efforts.  
6 For those that are very familiar with our project, we  
7 basically have two components, our main line, which  
8 was from Beulah, the Antelope Valley Station, running  
9 up to Williston, and over to Tioga, and that is  
10 probably 198 miles in length.

11 Surveying, throughout the corridor we had a  
12 hundred percent of our Class I surveys were  
13 completed. As far as the Class III pedestrian  
14 surveys, we're just over 90 percent of the Class III  
15 surveys completed. The tribal surveys were started  
16 last fall. They basically did their efforts from the  
17 Antelope Valley Station up to the Missouri River just  
18 south of Williston.

19 As always, we've got some parcels where we  
20 didn't have survey permissions on, so the tribal  
21 surveys will start again in earnest here as soon as  
22 the snow leaves us for good and probably in two-three  
23 weeks. So they probably have about 40 percent of  
24 that effort left. So they'll pick up their spots  
25 where they had to jump around on the south side of

1 Williston and then complete the Williston to Tioga  
2 length.

3 DR. DEAN: Cris, just a curiosity. Do you  
4 know what they've been finding?

5 MR. MILLER: I know they've identified -- I  
6 can't recall the number of sites -- but they have  
7 been finding some stone features.

8 I guess, Dave, if you have any more --

9 MR. KLUTH: Yeah. Just the typical  
10 archaeological sites, stone feature sites; some can  
11 be rather small; some can be large as well; lithic  
12 scatters; cultural materials scatters; historic  
13 material scatters, and things like that, so just the  
14 kind of the whole range of typical sites that you  
15 would find in this region.

16 MR. MILLER: I know it's been communicated  
17 that there has been no burials identified within the  
18 right of way as well, so --

19 DR. DEAN: Okay.

20 MR. MILLER: -- so the features that have been  
21 found are certainly going to be avoided, that we know  
22 today.

23 The other project segment is the north  
24 Killdeer loop, which runs from a substation by  
25 Killdeer and goes on the east side of

1 Killdeer Mountains and loops back to the west. That  
2 route is still being developed. No surveys,  
3 Class III surveys, have been performed. Surveying --  
4 the Class I's were performed within that corridor.

5           Specific to the Killdeer Mountain Battlefield  
6 study area, our line crosses that approximately eight  
7 miles in length. Around seven and a half of those  
8 miles were performed, a few physical surveys were  
9 performed last fall. That report is out and is being  
10 out for comments to the agencies as we speak.

11           This spring we will pick up -- there's two  
12 small field locations, and yet we still have one  
13 property which we do not have survey permissions on.

14           DR. DEAN: And then in terms of visual  
15 effects. We rode around today, but obviously didn't  
16 ride the entire 278 miles. Are there any areas where  
17 you're thinking -- or SHPO is thinking there might  
18 need to be any architectural study?

19           Because I know we did the -- for 106, the area  
20 in which we look for affected we call them historic  
21 properties; those are properties that are listed and  
22 are eligible for listing on the National Register --  
23 it's called the area of potential effects. And you  
24 can have an area of potential effects for direct  
25 impacts, which is a transmission line structure being

1 put on top of it, or you can have a visual area of  
2 potential effects. And Western determined that that  
3 visual area was a mile on either side of the  
4 centerline.

5 MR. KLUTH: Correct.

6 DR. DEAN: But that doesn't mean you have to  
7 survey everything within it. You survey where you  
8 think there could be a historic property affected.  
9 And I know that was in one of SHPO's letters, that  
10 maybe that would happen, and I've only seen a bit of  
11 the right of way.

12 So I was just wondering, do you think we will  
13 be doing down that path?

14 MS. SWANSON: Susan, have you? Would you --

15 MS. QUINNELL: No, we don't expect to need any  
16 special architectural surveys, not for transmission  
17 lines.

18 DR. DEAN: Okay.

19 MS. QUINNELL: There's only been one instance  
20 when we had a concern, and that was when a huge  
21 transmission line was, I mean, literally within a few  
22 feet of a barn, but it should --

23 DR. DEAN: I know that project.

24 MS. QUINNELL: Yeah. It should have never  
25 been -- I mean, it was also close to habitation. I

1 didn't understand how it ever got in that spot in the  
2 first place.

3 DR. DEAN: That was just recently, wasn't it?

4 MS. QUINNELL: Yes, that was a recent one.

5 DR. DEAN: Yes. That was one we funded, yes.

6 MR. MILLER: On another project, I might add.

7 DR. DEAN: Yes.

8 MS. QUINNELL: Yes. Nothing to do with Basin.

9 DR. DEAN: Yes, it was. Okay. So any  
10 questions about that?

11 Everybody should have received the  
12 supplemental, yeah, the Battlefield Geophysical  
13 Survey, which we'll get to, I'm sure -- I'm  
14 certain -- in a minute. Okay. There are no  
15 questions then.

16 MS. MCMASTERS: Laura, this is Kris McMasters.  
17 I just want to be super clear on one point before we  
18 move on.

19 DR. DEAN: Mm-hmm.

20 MS. MCMASTERS: I just want to know that there  
21 has been and will be no historic landscape  
22 evaluation.

23 DR. DEAN: I don't anticipate that there would  
24 be a historic landscape evaluation at this point in  
25 time.

1 MS. MCMASTERS: Even for the battlefield.

2 DR. DEAN: Yeah, even for the battlefield.

3 Yeah. The level of effort for identification --  
4 there is no required level of effort for  
5 identification. There is no required level of study,  
6 I should say, under the Section 106 regulation.

7 What is required is that the agencies meet the  
8 regulatory standard, which is a reasonable good faith  
9 effort standard, and that there are a number of  
10 factors that weigh into that, and I always bring my  
11 handy-dandy regs with me. So one of those factors is  
12 the magnitude and nature of the undertaking, the  
13 nature and extent of potential effects.

14 So right now, Kristen, we've got work that has  
15 been done. I don't feel that it's warranted in order  
16 for us to get at what the effects may be.

17 MS. MCMASTERS: Okay. Thank you.

18 DR. DEAN: Mm-hmm. In terms of the historic  
19 properties, the supplemental -- Medicine Hole was  
20 mentioned -- was discussed in the supplemental, and  
21 the agencies, the Medicine Hole will not be -- is not  
22 within the corridor; it's not within the right of  
23 way, but it is a property that can see -- where the  
24 transmission line could be viewed. It's on Killdeer  
25 Mountain. We also had heard from -- some of the

1 comments from the individual tribal members indicate  
2 that Killdeer Mountain had been a place of a vision  
3 quest, and it was used by the tribes.

4           106 provides sufficient flexibility for us to  
5 agree that these places are eligible for listing for  
6 the National Register without any further study, in  
7 part because of their sensitivity. So I was  
8 wondering what folks around the table thought about  
9 that?

10           At first, it was just Medicine Hole, but what  
11 we seem to be seeing in the comments is it's not only  
12 Medicine Hole, it's Killdeer Mountain itself. So,  
13 again, I'm an outsider. I can only say what is in  
14 the comments. So do you have any thoughts about  
15 that?

16           MR. SAND: Well, I guess I would. That's what  
17 I'm hearing as well. I mean, certainly for the  
18 locals of us, whether they're part of the Killdeer  
19 Mountain Alliance or not, the Killdeer Mountains  
20 have specific, you know -- I mean, they mean a whole  
21 lot to us and a lot to people around the state.

22           There's historical significance for -- you  
23 know, a lot of the people who are part of the  
24 Alliance are Native Americans who've been -- well,  
25 you'll be meeting with some of them tomorrow -- so

1 there's that ancient and continuing significance of  
2 the Killdeer Mountains. There are particular stories  
3 associated with Medicine Hole.

4 DR. DEAN: Mm-hmm.

5 MR. SAND: Particularly with the Three  
6 Affiliated Tribes, but used by others as well,  
7 I understand. And then the Killdeer Mountains  
8 themselves were a place that for some say perhaps  
9 11,000 years has been a real key place for the  
10 Native Americans. It was a trading area.  
11 I understand that -- and Craig and Rhonda could tell  
12 you a whole lot more about the history of Natives  
13 going there to trade -- the proximity to the  
14 Knife River flint, a lot of that was traded from  
15 here. And it was a gathering place where  
16 I understand that sometimes normally hostile tribes  
17 would get together to trade, but I'm not well-versed  
18 in all this history.

19 But so much of the support that we have and  
20 the people who are part of this, for them it's the  
21 primary -- the Killdeer Mountains is the primary  
22 issue, and how this might adversely affect it. But  
23 for some, it's the battlefield itself because of the  
24 history of the battle. For some Natives -- you'll  
25 get more clarification tomorrow -- but the

1 battlefield doesn't mean a whole lot to them. It's  
2 the mountain.

3           So those are all part of the -- or just  
4 perhaps some of them. I'm sure I'm touching on just  
5 some of it here as far as the significance. And then  
6 there is the very early settlement where the  
7 Diamond C Ranch was established and other ranches and  
8 then the homesteading era.

9           But the Diamond C Ranch was, I understand,  
10 like it was the second brand registered, to  
11 Diamond C, in the state. I haven't explored this  
12 significantly, and then there is the whole tie-in  
13 with Theodore Roosevelt and capturing the boat  
14 thieves and bringing them to the Diamond C to get in  
15 the wagon and take them to Dickinson. So there is a  
16 lot of history and significance to the Killdeer  
17 Mountain. So that seems to be where a lot of our  
18 interests come, is kind of an overlapping. For some  
19 it's the history of battle, because they're history  
20 buffs perhaps, and for others it's spiritual,  
21 recreational. It's just whatever. So I'll stop at  
22 that for now.

23           DR. DEAN: Okay. Any other thoughts on the  
24 mountain? Because one of the things we -- yes, any  
25 other thoughts on the mountain?

1           MR. BRAATEN: Well, actually more of a  
2 question just to clarify something.

3           DR. DEAN: Derrick, yes.

4           MR. BRAATEN: I think you had just mentioned  
5 something that the agencies might agree that the  
6 mountain, for example, or Medicine Hole, was eligible  
7 for the National Registry.

8           DR. DEAN: Mm-hmm.

9           MR. BRAATEN: And I wanted to ask if you're  
10 saying that the agencies do agree, or if you're  
11 saying that you could agree and still move forward  
12 with the 106 process without looking at any adverse  
13 impacts? And I'm also wondering if the fact that the  
14 mountain itself would be within that one-mile visual  
15 viewshed has any impact on what you do to address the  
16 mountain itself?

17           DR. DEAN: Yes. Well, let's see. So, yes, in  
18 the supplemental, the agencies proposed to agree  
19 about Medicine Hole, but the supplemental was a  
20 draft. It's meant to go out there; what people's  
21 comments; what are other consulting parties' views,  
22 such as the SHPO? We have to take all of that into  
23 account, because even if the agencies do agree, two  
24 other critical consulting parties are the ACHP and  
25 the SHPO. And so you want to make sure that all the

1 signatories agree to this approach.

2           What it allows us to do with something that is  
3 of religious and cultural significance to tribes is  
4 to say, yes, it's eligible and not study it any  
5 further and not be insensitive to their cultural  
6 concern.

7           But, no. If whatever we determine is eligible  
8 within the APE, we've got to go forward then and say:  
9 What's the effect of that on the -- what's the effect  
10 of the project on that? And what the PA should do is  
11 record all our decisions about effects up to this  
12 point, and then what we do to determine effects going  
13 forward, who's involved and how we would come up with  
14 mitigation.

15           So we've got to record what we know and what  
16 we agree to and then how to go forward. That's why  
17 the PA is so important. Does that get at --

18           MR. BRAATEN: Yes. Thank you.

19           DR. DEAN: Okay. Great. Well, we sort of  
20 heard, I think, when I looked at the documentation,  
21 before we put out the supplemental draft, it was the  
22 battlefield and Medicine Hole had been mentioned; but  
23 then subsequent to that, I'm seeing more about the  
24 mountain itself, not just the battlefield, but the  
25 mountain as being important. So, we'll explore that

1 further, and I'm sure I'll hear a lot about that  
2 tomorrow, yes. Okay.

3           So everybody is waiting patiently. Killdeer  
4 Mountain Battlefield, let's see if I can get this  
5 started. I think I know more about this battle than  
6 I ever thought I would. And I think it is an  
7 important place, but the key is you've got this  
8 report now with the map, and it shows possible  
9 movements. Are there any reactions to this? Any  
10 comments on this? Any comments on the geophysical  
11 study that was done? So everything is wonderful?

12           MR. SAND: I would have a question of  
13 Mr. Rothaus because I don't know -- this is dated --  
14 I'm not sure when this particular drawing was  
15 created, that you have an overlay, and then there was  
16 the National Park Service Battlefield Protection  
17 Program maps which came to my attention several years  
18 ago -- or I don't know. I'm losing track of time --  
19 but we found out about that. So then there's the  
20 study, and right now you're doing reading stuff?

21           MR. ROTH AUS: NDSU right now is still doing  
22 archival research. We've done nothing on the ground.

23           MR. SAND: Yeah. And was this part of what  
24 contributed to what you're looking at, or was there  
25 other -- I suppose you're just -- are you starting

1 from scratch, or is that kind of a starting point?  
2 Because I'm kind of wondering where they came up with  
3 the core area and then the study area.

4 MR. ROTH AUS: You mean from the 2010 National  
5 Park Service Report?

6 MR. SAND: Yes.

7 MR. ROTH AUS: 2010 National Park Service  
8 Report, as I understand it, and I wasn't party to  
9 it -- it was before I was working on any of this --  
10 is based on existing documentary evidence, the  
11 official battle reports such as they exist, other  
12 sources. Based on my knowledge of those sources, the  
13 boundaries, the circles that are drawn -- boundary's  
14 a hard word. I'll say circle -- circles that are  
15 drawn in that 2010 report look perfect -- okay.

16 MS. MCMASTERS: This is Kris McMasters. And  
17 I'm happy to talk a little bit about those maps,  
18 because it is my office that created those --

19 DR. DEAN: Okay.

20 MS. MCMASTERS: -- NPS maps. And I'm happy to  
21 be helpful in clarifying how they were drawn.

22 Essentially, this battlefield was early  
23 identified in the 1990s as one of the principal  
24 battlefields of the Civil War. And I don't need to  
25 go through all the history, but it's one of a very

1 small number of engagements in the nation that the  
2 National Park Service has looked at since 1993 when  
3 we put our report out to Congress about those  
4 battlefields in the nation really require  
5 Congressional high priority and attention to  
6 preserving and protecting. So in 1993, Killdeer was  
7 one of the battlefields that were first surveyed.

8 In 2010 we were tasked -- or, actually,  
9 earlier -- by Congress to get out and reevaluate  
10 these battlefields that were first reported to  
11 Congress in '93, because some of them have actually  
12 been lost over time. And Congress needed to have an  
13 update on what the condition of the battlefield was,  
14 what the threats were, did they still retain those  
15 qualities that made them significant enough to  
16 evaluate.

17 There are only 383 of these battlefields the  
18 Park Service has mapped to this extent, and that's  
19 out of a universe of over 15,000 engagements of the  
20 Civil War. So you might consider it the top maybe  
21 3 percent of the nation.

22 So we did send out teams. We sharpened up our  
23 historic information. They went out and looked over  
24 the landscape, but it was simply a windshield survey.  
25 It was done from public right-of-ways unless we

1 specifically got permission by landowners, and we did  
2 the best we could without archaeological assistance.  
3 We just did not have enough money from Congress then  
4 to go out and do any subsurface investigations.

5           And what we did put out on the web and the map  
6 that is, I hope, currently available to everybody, is  
7 our most conservative map of what we feel the entire  
8 extent of the battlefield is, which is the study  
9 area; where the bloodiest conflict was in the core  
10 areas, but there's conflict in the entire study area.  
11 It's just where the core is is considered the  
12 heaviest of conflict, and it gives our preservation  
13 partners someplace to begin where they're thinking  
14 about buying or preserving land with easements or  
15 purchases. So it's a priority one of the high  
16 priority, if you will.

17           And these lines on the map allow us to use  
18 Land and Water Conservation funds to help purchase  
19 and preserve land. And we've been investing that  
20 with our partners, the Civil War Trust, and other  
21 state and local governments throughout the nation.  
22 But we needed to have lines on the map where we could  
23 say this land is eligible for federal assistance,  
24 versus just anywhere else that isn't eligible.

25           So that's one reason why we chose to put lines

1 on a map, so that we have a handy way of actually  
2 being available to communities and partners who need  
3 and want the grant funding that we have.

4 Our lines sometimes do move just a little, I  
5 can admit that, because of the archaeological  
6 information sometimes battlefields increase. But  
7 what we have is what we can defend from our site  
8 visit and a windshield survey. And I hope everybody  
9 understands that is, of course, a minimum preliminary  
10 recommendation from our teams.

11 Those maps that were drafted nationwide were  
12 sent out to partners who asked to be part of the  
13 process, but especially out to all the SHPOs in the  
14 nation. They all had an opportunity to look over  
15 these maps and help us refine them to the best of  
16 their abilities. If they had other partners they  
17 could recommend to help us get those maps down as  
18 accurately as possible, they would recommend it. And  
19 we spent some years, actually, working together to  
20 try and get the info out as accurately as possible.

21 Some battlefields have shrunk over time  
22 because of what's been lost, and so we reflect that  
23 in the yellow area of the map where we call it a  
24 potential National Register area. And it's a  
25 snapshot; things may have changed from 2010 to today.

1 In four years damage can happen, and it might change  
2 those lines somewhat. But what we have from 2010 was  
3 a snapshot and our best recommendations to Congress  
4 about what the nation needs to preserve.

5 DR. DEAN: Okay. Thank you, Kristen. This is  
6 Laura. Thanks.

7 MALE VOICE ON PHONE: Good.

8 DR. DEAN: Yeah. I remember from the 2010  
9 study, the picture on the cover was Killdeer Mountain  
10 Battlefield, and the comment then was that the  
11 battlefield -- what the NPS study area was -- I think  
12 the assessment then was that it was still in pretty  
13 good shape, but they anticipated change. They could  
14 see it coming.

15 MS. MCMASTERS: Absolutely. And it was  
16 definitely, maybe in '93, a battlefield where people  
17 paid a little less attention because there were less  
18 perceived threats.

19 DR. DEAN: Mm-hmm.

20 MS. MCMASTERS: But as more perceived threats  
21 come along from extractive industries, or in some  
22 areas it's the pressure of housing developments, the  
23 preservation priorities do change and may increase  
24 because of that pressure.

25 DR. DEAN: Here -- and anybody in the room can

1 correct me if I'm wrong -- from what I can see on the  
2 ground, and I rode out with Mr. Dvirnak today, who is  
3 probably the person, in my estimation, with the most  
4 intimate knowledge of the landscape, so I have a much  
5 better understanding than I did before -- the real  
6 problem is the extractive industries. I don't expect  
7 there to be housing developments and that kind of  
8 thing. I mean, I just don't anticipate it. It could  
9 happen.

10 But the other thing I've noticed is that --  
11 I'm an East Coast person, and so I'm not used to such  
12 landscapes of such immensity, and so while there is  
13 industrial development and modern development, it's  
14 part of a very big, big space. You know what I mean?  
15 And the vistas are still -- viewsheds have been  
16 compromised, but you still can get a sense of -- the  
17 immensity of that landscape is not lost. I guess  
18 that's what I want to say.

19 MS. MCMASTERS: Well, I think our program came  
20 down on the side that the integrity out there in 2010  
21 when we made our report was good enough to have the  
22 vast majority of the battlefield within the yellow.  
23 I hope some of you have seen the map so you know what  
24 I mean.

25 DR. DEAN: I'm looking at it right now.

1 MS. MCMASTERS: Oh, good. Okay. Well, it was  
2 within the yellow, and at that time we judged it to  
3 be potentially eligible. So it's part of the POTNER,  
4 the potentially National Register eligible area.

5 DR. DEAN: Okay.

6 MS. MCMASTERS: I'm hoping it's still pretty  
7 close to what we saw in 2010.

8 DR. DEAN: Well, four years later there are 21  
9 oil pads in there. There are two transmission lines  
10 which already exist. There's a road that's been  
11 connected to the main road that wasn't connected  
12 before, so the trucks, the oil trucks, can get out.  
13 So it is changing.

14 MS. MCMASTERS: It's under even more pressure  
15 than we knew of in 2010.

16 DR. DEAN: Yep. And there are four oil pads  
17 up close to the foothills of the mountain now, which  
18 weren't there, what, even two years ago?

19 MR. DVIRNAK: Those were in '7 and '8.

20 DR. DEAN: Okay. My mistake then.

21 MR. ROTHHAUS: Laura, can I just say a couple  
22 words? This is Richard Rothaus. I haven't seen the  
23 geophysical report, so I don't know what's in it yet,  
24 but that's actually, I don't think, a real big issue  
25 at the moment. I just wanted to note that one of the

1 miscommunication points I think we've been having,  
2 although SHPO and NDSU I think have worked this out  
3 for other battlefield studies, where we're doing is  
4 *National Register Bulletin 40*, as the battlefield is  
5 defined, doesn't necessarily rely heavily on  
6 archaeology. And, in fact, there are plenty of  
7 instances where archaeology just never comes into  
8 play. And that, of course, is a very different way  
9 of defining a site than the State of North Dakota  
10 standards. And that's been one of the issues,  
11 I think, where sometimes we've been talking at odds  
12 and not communicating clearly on that, is that  
13 we're -- because we're working on these National Park  
14 Service battlefield studies, we're tightly focused on  
15 *NRB 40* and how things are defined there.

16           And just to give a tiny sneak maybe preview,  
17 I think we have additional information on avenues of  
18 approach into this battle that will sort of -- we'll  
19 be recommending some changes and shape to the  
20 southern boundary, but it's probably going to be  
21 recommendations to make it bigger, not smaller,  
22 which, of course, won't surprise anyone. But we're  
23 still way far away from making any recommendations on  
24 that yet.

25           DR. DEAN: Okay. Well, so are you saying that

1 because *Bulletin 40* does recognize -- if I was a  
2 little younger, I could remember the page -- it  
3 actually does specifically call out archaeology as a  
4 way to better define the battlefield. And I haven't  
5 worked out here, but one of my favorite stories,  
6 which was Custer National Monument. And what they  
7 were able to do there, and what they did, was they  
8 did an archaeological survey which allowed them to  
9 identify who was shooting at whom. The Sioux had  
10 better weapons. The Indians had much better weapons  
11 than they thought they would at the time, et cetera,  
12 et cetera.

13 This study was sent to you; yes?

14 MR. MILLER: Was it sent to me?

15 DR. DEAN: No. We sent --

16 MR. MILLER: He did send it in the last  
17 week --

18 DR. DEAN: Okay. So if it's not there, it  
19 should be there. And what is really quite  
20 interesting here is the lack of anything related to  
21 the activities. Now, the half mile where access was  
22 not granted, I saw that half mile today. And that's  
23 actually where there may be evidence, but again we  
24 need to go look. And we can't look until we get  
25 access to it.

1           But, yes, archaeology is important to this.  
2 Now, I -- just for the sake of argument -- after  
3 looking through all of these things, ignoring other  
4 work so I can burrow back into all of this, I'm  
5 thinking that there are areas of the 2010 -- and  
6 I think the NPS boundary is overly large in some  
7 places.

8           MS. MCMASTERS: Laura, I guess, you know,  
9 that's something that probably could be looked at  
10 more clearly or collaboratively, and I understand for  
11 folks that sometimes battlefield boundaries seem very  
12 big. There is an almost assumption there has to be  
13 some sort of buffer in there that nothing really  
14 happened. But we actually have a survey methodology  
15 that we've been working with for almost 15 years now,  
16 and that survey methodology lays out a KOCOA  
17 analysis. It is being used all over the place in the  
18 nation. It's not a new approach. And actually in  
19 the state of Virginia, that KOCOA Military Terrain  
20 Analysis is mandated by the State for battlefield  
21 characterization.

22           And by using a standard and systematic way of  
23 identifying battlefield with that KOCOA approach,  
24 defending our boundary lines is not nearly as  
25 difficult as maybe it once had been.

1           And I think that this particular study might  
2 have really benefited from using that particular  
3 approach. That's actually part of some of my  
4 comments that, you know, you feel like your  
5 boundaries were better defended if they were  
6 characterized with an approach that's used in other  
7 places and through time. Actually, it works on  
8 battlefields from earlier time periods, and we've  
9 even used it on World War II battlefields. So it's  
10 something new and terrifically exciting throughout  
11 the field.

12           Just a few weeks ago I was at a battlefield  
13 conference in South Carolina, and I felt like maybe  
14 two-thirds of the papers all identified KOCOA as a  
15 critical part of characterizing and understanding  
16 battlefields that were presented from even over in  
17 Europe. So I'd recommend that as something that we  
18 should really use. It doesn't require you,  
19 necessarily, to reevaluate all your historic  
20 literature; it can be used, what's already been  
21 generated. It's more of looking at the landscape  
22 with a different lens, and it's looking at your  
23 expectations and your research design with a  
24 different understanding.

25           Often battlefields are looked at with what

1 I call a density model for artifacts where there's a  
2 sense that if you find a bunch of artifacts, you've  
3 clearly found the most significant part of the site.  
4 And for battlefields it doesn't always work that way.  
5 Battlefields may have a very, very light artifact  
6 scatter, but that doesn't change the significance of  
7 that spot.

8           When we use our KOCOA model, it helps us  
9 understand the internal workings of the battlefield,  
10 and it really helps us derive where significant  
11 things happened on the landscape within the historic  
12 landscape, and it doesn't necessarily tie you to a  
13 numbers count of the artifact. And so I think that  
14 might have been part of my comments as well.

15           DR. DEAN: Okay.

16           MS. MCMASTERS: That the density of what is  
17 found is not necessarily a one-to-one correlation  
18 with significance. Some places you don't expect to  
19 find a lot of stuff on battlefields.

20           MR. PICHA: This is Paul from North Dakota  
21 SHPO. We've heard what you said. I guess I would  
22 offer, perhaps, an alternative interpretation of  
23 that. A number of Civil War period battlefields have  
24 been investigated with very similar methodologies to  
25 the one used here, with, at least from my

1 perspective, excellent results. For example, in  
2 Nebraska there was a battlefield that involved  
3 Native American and military engagements, a metal  
4 detector survey was used. The patterning in that  
5 battlefield was readily apparent based on the  
6 material record.

7           And I would agree with you, there were varying  
8 densities. However, to say that light scatters are  
9 significant without some other outstanding evidence,  
10 I would have to tend to disagree with that.

11           For example, in the case of the Killdeer  
12 Mountain, we do know the importance of military  
13 artillery to the battle. Similarly, military  
14 artillery was involved in the Nebraska battlefield.  
15 The pattern that has been reported there in the  
16 National Register nomination, as well as the academic  
17 reporting in the journal article, supports that.  
18 Similarly, Doug Scott's 2013 work at Custer also  
19 supports that methodology and understanding the whole  
20 idea about battlefield practices.

21           In the case here, that's also important, is  
22 the weaponry that's involved. For example, the idea  
23 that in Doug Scott's work and other people's work,  
24 there is a significant difference between, shall we  
25 say, the density and distribution of the, say,

1 casings versus the density and distribution of  
2 bullets. And we know that, for example, some of this  
3 weaponry has potentially maybe a thousand yards. And  
4 so, I mean, there is a whole number of factors  
5 I think that, in terms of the material cultural  
6 record, that needs to be analyzed and reported upon,  
7 which I think they have done a very good job of in  
8 the draft report that's under review.

9           But, and the whole idea of battlefield, shall  
10 we say, archaeology has advanced significantly in the  
11 last 20 years, and a lot of it is a result of,  
12 A. Taking into account, for example, some of the  
13 leading scholars in the field have been actively  
14 involved in World War II battlefields, even  
15 World War I battlefields in the Old World, in France,  
16 for example, and also, shall we say, quote/unquote,  
17 "Indian War" battlefields in North America. And the  
18 methodology that has been used, I think -- that's  
19 been used on this project thus far is fully in accord  
20 with what I would at least view as a very sound and  
21 well-thought-out methodology that has been applied  
22 across numerous cases, and with, I mean -- I think  
23 with important and significant results, and  
24 understanding, shall we say, battlefield dynamics.

25           And so I don't mean to go on here, but I just

1 want to go on record to say I would take exception to  
2 a statement that draws a one-to-one relationship, but  
3 still everything needs to be substantiated and argued  
4 from a perspective that's based on something as well  
5 as just a, you know -- low density can be viewed as  
6 negative evidence; but alternatively, if there is a  
7 well-grounded argument that can be -- I wouldn't say  
8 negative evidence, but a density threshold is one  
9 factor to be considered, but it's got to be  
10 considered in context. And that's where the historic  
11 context becomes important.

12 MS. MCMASTERS: I would agree with you on that  
13 a hundred percent, that density counts have to be  
14 looked at in context. And, you know, Doug Scott's  
15 worked with our program on a number of occasions, and  
16 he really is an excellent researcher who has  
17 contributed immeasurably to the field.

18 And I think as long as the context is best  
19 understood, then if you find just a few items on a  
20 large acre basis, if they're friction primers from a  
21 piece of artillery, then you may be looking at one  
22 end of a cone of a field of fire. And that field of  
23 fire is part of what's accounted for in the KOCOA  
24 method that Doug Scott helped me develop with our  
25 program, and it is all hinged on that context.

1           And that's why I do kind of object to using  
2 number counts as a sign of significance, in that it  
3 only works if you know internally what happened and  
4 you set up your research design to reflect what your  
5 anticipation is.

6           DR. DEAN: Well, this is Laura. Kristen,  
7 I think there's a little bit of confusion. The  
8 number counts were not being used to determine,  
9 really, significance. This is all being done within  
10 the 106 box. So the question is how much  
11 identification do we need to do to make an  
12 intelligent decision about effects, and then if there  
13 are any adverse effects, what to do about them. So  
14 the number count, the geophysical survey was done,  
15 and I could be wrong.

16           Paul, you have to correct me.

17           But I think it was done to see what's there.  
18 Is there a direct impact on anything tangible, in the  
19 ground artifacts, resulting from the battle? So that  
20 was a critical question. And that's a 106 question.

21           The battle is obviously important in this  
22 community and in this state. And since I've been  
23 reading about the southern Plains, I know what  
24 happened at the start of the Civil War, as I told  
25 some of you, and all the soldiers got pulled out and

1 left the settlers on the Plains kind of on their own.  
2 And, of course, things happened, and they had to  
3 bring soldiers back in. And they came back in with  
4 cannon and howitzers, which they had not had before,  
5 and they came back in with different weapons, much  
6 improved weapons, which they had not had before the  
7 Civil War.

8           So I don't know about Western and the Forest  
9 Service, but I think we all agree the battlefield is  
10 important. It's important to Native Americans, but  
11 the geophysical study was not done to determine its  
12 importance. It was done to provide information about  
13 the direct effects of the project on the battlefield.

14           And is that correct, Paul?

15           MR. PICHA: I would agree with that, yeah.

16           DR. DEAN: Okay.

17           MR. ROTH AUS: Can I say one thing?

18           DR. DEAN: Sure.

19           MR. ROTH AUS: This is Richard Rothaus. I'll  
20 be quick.

21           DR. DEAN: No, you can't say --

22           MR. ROTH AUS: Super glad to have the  
23 geophysical done. It's things we never would have  
24 gotten to in this round of our battlefield study to  
25 work at that level of intensity. But I want to give

1 an illustration, as I'm reading *NRB 40* as to how  
2 boundaries are determined.

3           So the bulletin says: A boundary should  
4 include any area where the actions of the individuals  
5 are being defined or instigated by their thinking  
6 that the enemy is present and an engagement is  
7 imminent.

8           So the example I like to think of where we're  
9 going to get the least archaeology on the ground is,  
10 perhaps, avenues of approach. So avenues of approach  
11 where the soldiers are coming into an area before the  
12 battle, if they're coming into this area and they're  
13 in formation and they think battle is imminent,  
14 then -- Kristen will correct me if I'm wrong -- but  
15 *National Register Bulletin 40* says: When we draw a  
16 line around the battlefield, that line should include  
17 that area there.

18           Chances of finding anything on the ground with  
19 an archaeological survey from that, especially out  
20 here where the battles are pretty diffuse, slim to  
21 none. You could do metal detector surveys at  
22 five-foot intervals, and unless you're lucky enough  
23 to find the horseshoe that fell off while they were  
24 marching in, you've got no archaeology on the ground,  
25 but it still falls within the boundary as defined by

1 NRB 40. That's an NRB 40 peculiarity.

2 Nothing Paul said is illogical, or wrong, or  
3 anything like that. It's just our work is driven by  
4 those standards in the KOCO analysis, and they're  
5 never going to match up perfectly.

6 DR. DEAN: Right. Right. Because where do  
7 you draw the line? I mean, in some of the battles  
8 I was reading about in the southern Plains were  
9 40-mile long runs, you know, one side chasing the  
10 other. There's all those 40 miles; do you put in  
11 everything from the time they left the fort when they  
12 knew -- you know, so some of this truly is going to  
13 be a subjective analysis. But then going through  
14 Section 106, which is our guide here, even if you did  
15 have that as the boundary, what's the direct effect  
16 of the transmission line?

17 The transmission line doesn't change the  
18 landscape. It doesn't lower buttes. It doesn't  
19 raise buttes. It doesn't fill in empty spaces. It  
20 marches along the existing landscape. It tries to  
21 avoid everything. And, in fact, every transmission  
22 line I've dealt with, their goal is to avoid. They  
23 have the right of way. They can move within it up to  
24 a point. It's going to be a thousand-foot span.

25 Given that, what would be the impact even if

1 the boundary were that large? The most difficult  
2 situation is probably visual and not direct; right?

3 MR. ROTHBAUS: Absolutely.

4 DR. DEAN: Okay. So actually we're kind of  
5 talking, in a way -- since we didn't find anything  
6 tangible, we're kind of talking about nothing -- not  
7 nothing, but you know what I mean. In terms of  
8 effects, that's where we have to start looking.

9 So in terms of visual effects, what I see --  
10 and I'm the only one here who hasn't seen it before  
11 up close. I've seen pictures, but I swear pictures  
12 can never do justice to it in its entirety. You've  
13 got transmission lines already going through it. You  
14 have industrial. You've got oil wells. How is this  
15 particular transmission line that's proposed by Basin  
16 going to adversely affect the battlefield landscape,  
17 irrespective of how big or small it is, given those  
18 existing features? And that's really the question  
19 that we have to deal with. And so I need to hear  
20 from you so that I can understand your perspective on  
21 that.

22 MR. SAND: Yeah. I think you're directing  
23 that at me, and --

24 DR. DEAN: No. No, you're just right across  
25 from me. I was looking -- I was trying to look at

1 everybody.

2 MR. SAND: Since I'm trying to represent an  
3 alliance, and it's not always that easy because of  
4 a lot of different people.

5 DR. DEAN: Mm-hmm.

6 MR. SAND: The significance of it to people  
7 who -- you know, I have to admit that, personally,  
8 I'm interested in history. I'm not real deep in it,  
9 but it interests me, and especially where I live.  
10 And for the Native Americans, this has something  
11 that's hard for me to translate. So really it's  
12 going to be a question you need to ask tomorrow.

13 DR. DEAN: Oh, I am. I'm going to, yeah.

14 MR. SAND: And a lot of that testimony has  
15 already been given. So I'm glad that they'll get to  
16 have their say, at least those people there. And  
17 some of it you've already read.

18 DR. DEAN: Mm-hmm.

19 MR. SAND: And then for the impact on the  
20 mountain, or I should say, so if I'm --

21 DR. DEAN: Mountain or battlefield now?

22 MR. SAND: No. Right. That's where I was  
23 going to back up, because the battlefield is what  
24 we're talking about here.

25 DR. DEAN: Mm-hmm.

1           MR. SAND: And that is there is a cumulative  
2 effect. Some of it we can't stop, and then that is  
3 the oil development is state law. It's clear that  
4 everyone can have access to their minerals, and there  
5 is no argument with that. I haven't heard any  
6 argument from anyone on that. Yes, it's sad for us  
7 to see what visual impacts it has, what all kinds of  
8 other impacts it has, easier for those who are  
9 getting big checks. But still, we just need to look  
10 a little bit at the cumulative effects. And it's  
11 troubling that there was -- a known battlefield has  
12 been -- wasn't addressed early, mention of a  
13 one-acre site, historical site, and maybe I read  
14 something about the closeness to -- there are so many  
15 things I've read, but closeness to the Medicine Hole,  
16 but never a mention of closeness to the  
17 Killdeer Mountain.

18           So it's like why couldn't -- why was that  
19 ignored when people -- I mean, people knew, but why  
20 was it not publicly stated that this is planned to go  
21 right through the middle of a battlefield? Even  
22 though the boundary has not been super clearly,  
23 concretely defined, it's going through the core. So  
24 why is it that that has been such a stubborn -- well,  
25 first of all, why did it happen in the first place?

1 And then when we asked for alternatives, it's always  
2 the same one, only saying we're not going to put it  
3 on top of a grave if we find one.

4 DR. DEAN: Well, part of the answer is that  
5 this process, the NEPA process, began in 2011,  
6 actually before that. RUS has its borrowers for  
7 transmission lines prepare an alternative evaluation  
8 study and a micro-corridor study. So we have them.  
9 They come to us with a potential purpose and need,  
10 and we say, okay, you have to demonstrate that  
11 purpose and need to us. And that's what they do  
12 through the alternative evaluation study, and then we  
13 have them look at very large corridors: What are the  
14 options available to meet that purpose and need? And  
15 so it's that macro-corridor study where we have the  
16 borrower winnow down geographically what they're  
17 going to look at through the NEPA process.

18 So that went on, and then we had scoping in  
19 2011. We proceeded -- the agencies proceeded through  
20 scoping in 2011 and Section 106. These are supposed  
21 to be open processes. They're supposed to be  
22 transparent, which they were. And the reason is  
23 precisely because if we've missed something, we hope  
24 that someone out in the real world will say "Aha.  
25 You have missed this. You have ignored it or you

1 didn't" -- whatever we did, and they will catch us on  
2 it.

3           And we will say "Oh, yeah. We did." And  
4 that's exactly what happened. It happened late,  
5 though, as part of the Public Service Commission  
6 process. And as soon as we knew that, we circled  
7 back and went forward trying to better understand the  
8 battlefield and certainly the effects on it. So it  
9 worked. I mean, on one level it worked because we  
10 did not -- we only included the state site, and you  
11 cried foul. And we said "Oh, yes. Now we have to  
12 try to fix this."

13           But in trying to fix it, we're looking at the  
14 fix is based on, in part, what's the potential to  
15 effect? Are we going to put a wall, or -- are we  
16 going to put a generating plant -- that would be a  
17 better example -- in the middle of this battlefield  
18 right next to Mr. Dvirnak's property, right next to  
19 the big archaeological site, are we putting a  
20 generation plant there? That would be a tremendous  
21 impact.

22           The transmission line is not -- what do you  
23 call them? Not the little people; it's a single pole  
24 as opposed to --

25           MR. MILLER: Steel lattice structure.

1           DR. DEAN: Steel lattice. And I saw a lot of  
2 steel lattice leaving Bismarck. It's interesting  
3 when you see things on the landscape, I said, "There  
4 must be a generating plant nearby." Definitely was.  
5 West of there, there's not so much transmission.  
6 Single pole. That definitely, from my perspective,  
7 helps with the visual effects.

8           The SHPO asked that Basin move the substation  
9 out of the core area, and Basin has done that.  
10 Moving it out of the core area is important because  
11 other lines may want to interconnect, and so it takes  
12 that potential for interconnection out of the core  
13 area. So things have been done now in response to  
14 the knowledge about the battlefield, as they should  
15 be done.

16           Does that help some?

17           MR. SAND: It does. I have to admit, you  
18 know, to history that I was at scoping meetings  
19 early, and that didn't hit my radar. I was thinking  
20 of other impacts at the time and didn't think of --  
21 but what it goes back to, and you're aware of it  
22 because you've read things, and that is -- and I know  
23 this is water under the bridge for -- SHPO didn't  
24 have things in their site files that so many of us  
25 believe should have been there. They should have

1 been there, and I think they are there now, but  
2 I know that's water under the bridge.

3           The difficulty we really have at this point is  
4 that Basin Electric still has the option to propose  
5 another alternative. And if they're smart, I think  
6 they're thinking about ones in case they're not  
7 successful here, but we don't see any movement there.  
8 And it seems reasonable that another alternative  
9 would be proposed or considered.

10           And if Ed Dickey could weigh in there, because  
11 he's more familiar with the NEPA process, and maybe  
12 he can help stay our case better there. Ed?

13           MR. DICKEY: Yeah, well, I mean I'm really --  
14 I'm amazed that it's clear that there's been a  
15 learning process here. We understand the battlefield  
16 to be something much bigger than what was  
17 anticipated. And the normal response to that kind of  
18 new information is, in fact, to develop an  
19 alternative, or at least evaluate an alternative, to  
20 lay it out so that one can understand just what kind  
21 of trade-off is available. But we have no  
22 alternatives at all here and we're in the same place  
23 we were, you know, before we knew anything.

24           And I just really find -- certainly, from a  
25 NEPA perspective, I find that amazing. And it seems

1 to me from a 106 process where one is to, you know,  
2 sequence decision making, beginning with avoidance,  
3 that I haven't seen the effort to avoid here. And  
4 it's just very difficult for me to understand that.

5           Let me just say one thing about, too, of  
6 impacts, as well, that we all know that the oil  
7 development is going on, and that this is the 150th  
8 anniversary of this battle. And when we celebrate  
9 the 200th anniversary of the battle, every estimate  
10 would suggest that the oil wells will be gone. I  
11 don't know that anyone suggests that they'll be --  
12 this area will be restored. And certainly if you go  
13 to the Industrial Commission site, they make a big  
14 deal and show you lots of evidence of what a restored  
15 site looks like. But the point is that I think this  
16 transmission line is anticipated to have a much  
17 longer life, and that so 200 years from now, I think  
18 it will still be there, long after the oil  
19 development is gone. So just an observation.

20           DR. DEAN: Okay. Ed, this is Laura. And Rob,  
21 couple of things. We're in a supplemental DEIS, as  
22 you all know. The DEIS could have been done, but we  
23 went back -- Basin went back to reevaluate the  
24 purpose and need and found out that progress, the  
25 need, was increasing, the load and reliability

1 forecast were much more significant than had been  
2 predicted previously. So there needed to be a  
3 change. In other words, now we have communities --  
4 other part of the public interest -- that needs  
5 reliable electricity, so we have to move. RUS with  
6 Western and the Forest Service decided rather than do  
7 a final DEIS, that we would do a supplemental that  
8 would take into account these changes to the purpose  
9 and need.

10 And I look at Dave because I have to swoop in  
11 when there's a problem, so I don't have all of the  
12 history. I have bits and pieces of it, which could  
13 make me dangerous, so I want to be careful.

14 In determining whether to look at alternatives  
15 and how far to go with that, the agencies need to sit  
16 down and think about what it is that might be  
17 affected, what those effects might be, what are we  
18 looking at here? We're doing all of this in the  
19 public interest. And part of that public interest is  
20 cost. Because every time -- my trip up here, you  
21 guys are paying for that. Every time I make a move,  
22 somebody in the public is paying for it, so we don't  
23 just make decisions willy-nilly. We've got to be  
24 careful.

25 So the question is, what are we doing to the

1 battlefield? Not only that, but can Basin get access  
2 elsewhere? I mean, this is the other part of the  
3 dance. If they were to move the line, where were  
4 they going to move it? And it's my understanding  
5 that they did try --

6 Is this right, Cris, there was an alternative  
7 farther south?

8 MR. MILLER: Our original routing was to the  
9 south of our current alignment, but it's through that  
10 interactive process with the land --

11 MR. DICKEY: I'm sorry. I can't hear.

12 MR. MILLER: I'll start over. Our original  
13 routing was actually to the south of our current  
14 alignment, you know, that was proposed. So once our  
15 right of way people started engaging the landowners,  
16 and it's through that interaction is how we came up  
17 with our current alignment. The landowners on this  
18 alignment, we had very strong willingness to sign  
19 easements, and we actually have acquired the  
20 easements through this area. So that's where we got  
21 to where we're at today.

22 DR. DEAN: So all of this, it's not any one  
23 decision or one factor. The agencies need to look at  
24 all of this in determining how to proceed with these,  
25 the next steps, if you will. So it may look like we

1 haven't done anything, but, in fact, we have.

2           We've talked about the constraints and the  
3 complications and the nature of the battlefield.  
4 Western had been here and seen the battlefield. I  
5 had asked Basin to give me photos. The minute we got  
6 farm bill money, our assistant administrator said  
7 "You're going to North Dakota." So we are trying to  
8 do the types of things to get the type of information  
9 to insure that our decision making is informed. And,  
10 yes, it wasn't included to begin with, but we've got  
11 an open process. We know it's an issue now, and we  
12 are paying attention.

13           MR. SAND: Yeah. One thing I need to say.  
14 And that is that none of us deny that there is a  
15 demand. Certainly, some of us are looking at  
16 different ways that demand could be met. But in  
17 terms of this -- it seems essential that there be a  
18 power line from the power station to Charlie Creek,  
19 and so I think that we all understand that. No one  
20 wants to stand in the way of that. So I mean, that's  
21 the clarification there.

22           As far as speaking back to the other,  
23 I understand that that's a difficult thing, and I  
24 don't know who would be adversely impacted otherwise.  
25 I've asked and not gotten that information, but

1 I haven't gone far enough.

2 But I'm just having to speak for the Alliance  
3 in that there is that concern of the community -- or  
4 the impact on the battlefield and specifically how in  
5 time that -- I mean, how it might impact the  
6 mountain, and I don't know all of that. I don't  
7 really know what more to say on that, because, well,  
8 tomorrow is going to tell you a lot, I'm sure.

9 DR. DEAN: Tomorrow is going to tell me a lot.  
10 So let's do this. As I see it, and the Forest  
11 Service and Western I think would agree, there are  
12 two types of potential impacts to the battlefield.  
13 They're direct and visual. You are also suggesting  
14 that there could be a cumulative impact; yes?

15 MR. SAND: Yes.

16 DR. DEAN: After the meeting tomorrow, why  
17 don't I do an outline, or summary, or something that  
18 will just -- we'll work together with Western and the  
19 Forest Service and the SHPO and the ACHP, and we'll  
20 make a proposal: Here's what we see. And you all  
21 can react to that. We're due back here in May,  
22 May 9th, I think, for a meeting. You can react to  
23 that, and then we can have an opportunity May 9th to  
24 sit down and have an additional conversation. What  
25 I'm trying --

1 MS. MCMASTERS: Laura, this is Kris McMasters.  
2 I think that would be a terrific idea because,  
3 frankly, from what I've seen, normally I get kind of  
4 a no-build suggestion for mitigation, or a maybe we  
5 could put it underground kind of suggestion, or maybe  
6 we could co-locate it with the line that you  
7 mentioned is already there to diminish the impact.  
8 And it would be great to see what alternatives you've  
9 already considered and dismissed and see what the  
10 criteria for that decision making is. I mean, I know  
11 undergrounding has its negatives, but it would be  
12 nice to know that at least somebody considered that.  
13 And I think it would be very helpful for us to see  
14 that, as a group, as a matter of the suite of  
15 mitigation that's already been considered and scoped  
16 out to some extent.

17 DR. DEAN: Yes. And I think it would help us  
18 really focus our next conversation and take us right  
19 back to the PA. And you know what I'll do; I'll try  
20 to find a way either to put it -- well, I don't think  
21 I can put it in the PA, but I'll attach it somehow so  
22 the two are together, because, ultimately, whatever  
23 we decide about the battlefield and Killdeer Mountain  
24 and Medicine Hole has to be recorded in the PA. So I  
25 will do that.

1           Now, I don't remember what the COA acronym  
2 stands for, but I know it's essentially a terrain  
3 analysis, right?

4           MS. MCMASTERS: You know, I'll be happy to  
5 share that with you, because if you ever see another  
6 battlefield, they'll be bringing it up again -- and  
7 anyone else -- this is part of my program, so I'm  
8 happy to send off some basic information and a cheat  
9 sheet to make it easy.

10          DR. DEAN: Well, I actually think that  
11 today -- oh. It's the Key Terrain Observation and  
12 Fields of Fire, Cover and Concealment, Obstacles,  
13 Avenues of Approach. I have done my homework.

14          MS. MCMASTERS: You get an A+ in my class.

15          DR. DEAN: Yes, that's right. And I think I  
16 had a COA tour today.

17          MS. MCMASTER: Good.

18          DR. DEAN: Because I went out with  
19 Mr. Dvirnak, who has been on that property since he  
20 was a kid. His dad was on the property. He grew up  
21 with his neighbors, who have also found things. And  
22 he was able to take me to places and show me places  
23 and show me the terrain so that I have now an  
24 infinitely better understanding of the battlefield  
25 based on the terrain. It's not --

1           MS. MCMASTERS: Laura, now that you mention  
2 it, that is a good point. That is one thing I saw  
3 that would have been helpful to me is if there are  
4 any collector's materials. Sometimes it's in local  
5 historical societies, and I think that if we just had  
6 a knowledge of that, it would be very helpful, too,  
7 to help characterize this battlefield.

8           DR. DEAN: Well, I can tell you what  
9 I learned. It is very, very cool. Craig Dvirnak's  
10 grandfather bought the ranch in 1929. In 1939 a  
11 gentleman visited the ranch who had lied about his  
12 age and fought in the battle in 1864.

13           MS. MCMASTERS: Oh, my goodness. So he might  
14 have been able to hunt out all the good stuff.

15           DR. DEAN: There's no might about it. They  
16 have a picture of him -- they have a couple of  
17 pictures of him. He died in 1943. He walked around  
18 the battlefield with Mr. Dvirnak's grandfather and  
19 your father and --

20           MR. DVIRNAK: And aunt.

21           DR. DEAN: -- and aunt. So they have within  
22 their family their remembrance of what he told them.  
23 And, in fact, based on what he told them, they were  
24 able to find a particular point. And you can go  
25 online and see all this, or I can just when I get

1 back to town, I'll loop back with you and I can give  
2 you the Internet site and Internet information.

3 Mr. Dvirnak's grandfather and father and he  
4 have collected there for decades. His grandfather  
5 and father have donated their collection -- it's  
6 donated on loan to Dickinson State University. And  
7 that happened just within the past couple of years,  
8 right?

9 MR. DVIRNAK: Yes.

10 DR. DEAN: And it's a spectacular collection.

11 MS. MCMASTERS: Oh, my word. Well, see, now  
12 that would have been very helpful to add that to the  
13 documentation that exists. I mean, that would have  
14 only taken -- well, I don't know, maybe it's a huge  
15 collection -- but it would have been great to have  
16 that just to add to the paucity of what was actually  
17 found.

18 DR. DEAN: Yeah. Yeah. Well, I don't  
19 think -- right now none of it is written down, right?  
20 Where you found things or anything?

21 MR. DVIRNAK: It's all in my head.

22 DR. DEAN: It's all in his head. And I'm not  
23 sure, just like with the tribes, certain things  
24 are -- I shouldn't say confidential. I have not  
25 asked Craig whether or not I should write it down.

1 It was for me today. But as I said, it was very,  
2 very, very instructive in terms of what happened.  
3 Yeah, it was great, in fact. I wasn't cold.  
4 I brought extra clothes, so I was in good shape.  
5 I really appreciated it.

6 And the thing I noted about Craig's  
7 description was he has definitely taken into account  
8 how those Union soldiers would have moved. He  
9 also -- the Dvirnaks, starting in 1998?

10 MR. DVIRNAK: Mm-hmm.

11 DR. DEAN: -- offered the tribes an  
12 opportunity to come to their property and perform  
13 certain ceremonies that needed to be performed  
14 because of the ancestors which were lost. Several of  
15 the Sioux Tribes took him up on this, and they came  
16 there for four years to perform their ceremonies.  
17 They not only came to perform the ceremonies, but  
18 they also talked with Craig about their perspective  
19 on what has happened.

20 So he has both sides, which give quite an  
21 interesting perspective on how this battle occurred  
22 and how it transpired. And it's not really a battle,  
23 but how the -- I want to call it an engagement,  
24 because I think "battle" gives the wrong impression.

25 So, Kristen, I have done my homework.

1 MS. MCMASTERS: Well, I wish I were there,  
2 honestly. We have not had a farm bill for the  
3 Park Service. But I have to say, in all jealousy,  
4 that that would be really good information, however,  
5 to share within this documentation, just as a  
6 demonstration, if nothing else, of more of that  
7 material culture to put what was found in its  
8 context. It sounds wonderful.

9 DR. DEAN: Okay. Well, we'll consider it, but  
10 we have to defer to Craig and Rhonda. And we'll talk  
11 to them about that.

12 MS. MCMASTERS: Absolutely, absolutely.

13 DR. DEAN: Kimball.

14 MR. BANKS: I have to say something here, that  
15 the Dvirnaks were very good with us when we were  
16 doing the survey out there and we went with them to  
17 different pole locations, and they gave us their  
18 assessment of the potential impact for placement of  
19 specific poles. And so that was very helpful to  
20 Basin and to us in our survey work.

21 DR. DEAN: Okay. And if you couldn't hear,  
22 John, Kristen, and Mr. Dickey, that was Kimball Banks  
23 from Metcalf, and he was just saying that Craig and  
24 Rhonda went out with Metcalf while they were doing  
25 the archaeological survey at specific structure

1 locations and gave their assessment of the potential  
2 effects, and Basin and Metcalf found the Dvirnaks'  
3 information to be extraordinarily helpful.

4 MS. MCMASTERS: That is great.

5 DR. DEAN: Yeah. So, I mean, what is emerging  
6 to me, "integrity" under *Bulletin 40*, is defined as  
7 whether somebody coming back from the battle would  
8 recognize a location.

9 MS. MCMASTERS: You're right. Looking at that  
10 page, actually.

11 DR. DEAN: Right. Well, they would recognize  
12 Killdeer Mountain from miles away, and irrespective  
13 of some of the other things that have happened,  
14 close up there are ranches, there's oil wells,  
15 there's transmission lines, and what have you. But  
16 it's Killdeer Mountain which remains pretty much the  
17 same. I mean, there are two telecommunications  
18 towers on top of them, which I saw today and I hadn't  
19 seen before.

20 I think, also, my sense is that the real  
21 intensity of the conflict is closer to the mountain.  
22 It's closer to that area. And that's kind of my  
23 assessment, but we can talk about that later.

24 MR. PICHA: This is Paul from North Dakota  
25 SHPO. And not to change tack here, but I'd like to

1 also comment on what Laura outlined earlier about the  
2 outline of potential effects. And the important  
3 thing, for a regulatory point of view, to keep in  
4 mind is the nature and scope of the undertaking, it  
5 has to be commensurate with what the activity is  
6 going to be. And so I would be a little hesitant to,  
7 for example, to characterize underground buried lines  
8 in the same kind of format, and their potential for  
9 effects to historic properties, as I would for an  
10 overhead line that has been modified by design to, at  
11 least from some people's perspective, to minimize  
12 that, shall we say, either direct effect in the pad  
13 area and/or the visual effect. So I would just like  
14 to have that on record.

15 DR. DEAN: Yeah. So you're saying that  
16 undergrounding is going to be harder to -- with the  
17 transmission line, there's going to be a thousand  
18 foot span, so that means the direct impact will be at  
19 the structure locations with the thousand foot  
20 interval. If you underground, it's going to effect  
21 everything through that entire eight miles, because  
22 it's going to be a continuous -- like a pipeline -- a  
23 continuous impact.

24 MR. PICHA: And I would just say -- and I know  
25 we're talking a lot about the Killdeer Mountain

1 either battlefield study area, core area, or the  
2 mountain, I would also make that whole observation,  
3 the idea that you're perhaps going to do underground  
4 some, and we're not even talking about the other  
5 262 miles that -- if that observation is even being  
6 considered -- which, I think that changes the whole  
7 scope of the thing. And I think the work that has  
8 been -- the identification efforts have been  
9 commensurate with the nature of the undertaking, and  
10 they have sought to -- which the goal is to do under  
11 the regs -- to identify historic properties or  
12 potential historic properties.

13 DR. DEAN: Yeah. And we'll go through that.  
14 I appreciate that, Paul.

15 We'll lay that out, Kristen, for you and for  
16 everybody else as straightforward as we can so you  
17 can see how the agencies might be thinking.

18 Undergrounding is a reliability issue too; is  
19 that correct, Cris?

20 MR. MILLER: You have constructability cost.

21 DR. DEAN: Yeah. 106 asks that the agencies  
22 consider historic preservation. They do not ask the  
23 agencies to make that their sole concern. So what we  
24 have to do is throw historic preservation into the  
25 hopper with reliability, with cost, with a number of

1 factors, step back and objectively make a decision  
2 based on how all these factors interplay.

3 MR. BRAATEN: I just have a question. And  
4 you're saying you have to step back and look at it  
5 objectively, but it seems to me, from what I'm  
6 hearing, and I'm not a geologist or anything, but  
7 from what I'm hearing, the level of impact, whether  
8 it's direct or indirect, visual, what have you, is,  
9 as far as I can tell, pretty subjective. And what  
10 I would like to know is to the extent that is  
11 subjective, how do you arrive at that subjective  
12 opinion? And how is that balanced against, for  
13 example, whether it's underground or not, and whether  
14 that's viable or not?

15 I think Ms. McMasters was saying "other  
16 alternatives." And so if, to some extent, this  
17 decision on the level of impact is subjective, then  
18 how do you balance that with the significance of  
19 other alternatives that might avoid that level of  
20 impact?

21 DR. DEAN: Historic preservation is not  
22 physics, so it's not hard science.

23 MR. BRAATEN: Right.

24 DR. DEAN: It is, by its very nature,  
25 subjective. So what you try to bring to bear is

1 sufficient experience. And we've all been working in  
2 this field for quite some time, and you also listen  
3 to folks, you know. That's why I'm asking questions.  
4 If I'm looking at this incorrectly, tell me why.  
5 Explain. What am I missing? And that's what the  
6 consultative process is to be about.

7           And then reliability is critical, because even  
8 though Basin builds a project, if it's not reliable,  
9 what's the point? You were talking about  
10 underground.

11           MR. BRAATEN: No. I was trying to get away  
12 from that, because I don't think that was what  
13 Ms. McMasters was pointing out, and I think we jumped  
14 on that. But just putting that aside, and I guess my  
15 point is more so -- my understanding is that you're  
16 going to propose something or put something in  
17 writing to help everyone understand what has been  
18 looked at in terms of alternatives and so forth, and  
19 what I'm saying is, can we also have an understanding  
20 then of what you think the impact is on the  
21 battlefield and how that is balanced against these  
22 alternatives?

23           DR. DEAN: Okay. Yes. Yes, because that's  
24 the -- on the basis of our conversation today, you  
25 guys can weigh in and then we'll look at that. We've

1 got another conversation coming up in a little less  
2 than a month. We'll look at that and we'll make a  
3 proposal, and then that's what we'll talk about.

4           And you're right. I'm trying to better focus  
5 where we are and get us at the critical point.  
6 I mean, we're partially there, because by looking at  
7 all the information, it's clear to me what the issues  
8 are. We just need to hone in on them a little bit  
9 more in light of this PA. So, yes, we will do that,  
10 all of these things.

11           And on that note, I tell you what I'm  
12 thinking. Why don't we take a little break, maybe  
13 about ten minutes -- and it's almost perfect, ten  
14 minutes, and then spend the last hour talking about  
15 this PA. If for no other reason, just if you've got  
16 questions, you need some explanation, we can talk  
17 through it, because we want you to weigh in on this  
18 agreement. This is what will carry us forward. It's  
19 very, very important. So why don't we take about ten  
20 minutes. We come back at 6 o'clock.

21           (A recess was taken from 5:52 p.m. to  
22           6:10 p.m.)

23           DR. DEAN: Kristen and John and Mr. Dickey,  
24 Mary, are you still on the phone?

25           MS. SAND: Yes, I am. Thank you.

1 MR. DICKEY: Yeah. Ed's still here.

2 DR. DEAN: John, I owe you lunch.

3 MR. EDDINS: All right.

4 MS. MCMASTERS: I'm still here.

5 DR. DEAN: You too, Kristen.

6 MS. MCMASTERS: Nice.

7 DR. DEAN: Well, and actually it would be  
8 great because that gives us an opportunity just to  
9 talk about everything up here, bring you guys fully  
10 up-to-date, because while I came in late, I've at  
11 least looked at a lot of stuff, and I can make sure  
12 that you guys are up-to-speed with where I am.

13 MS. MCMASTERS: Right.

14 DR. DEAN: So talking about the PA; 106  
15 agreements traditionally start out with "Whereas"  
16 clauses. These clauses provide the context for the  
17 agreement.

18 The next part of the agreement, major part,  
19 are the stipulations. The stipulations identify  
20 what Basin will do on behalf of the federal agencies  
21 to meet the following on requirements of Section 106.  
22 So if Basin needs to identify something, it will  
23 stipulate that.

24 It also needs to provide for things that  
25 aren't expected. Like, suppose down the road they do

1 hit a burial, what would they do? Well, North Dakota  
2 state law kicks in, but, also, as agencies, we'd want  
3 to know what's going on and we would like to  
4 weigh in.

5           These agreements have to be written. The  
6 challenge is to write them with enough prescriptions  
7 so that you can determine what to do, but then in  
8 some cases sufficient flexibility, because you can't  
9 anticipate everything. So some places they have to  
10 be somewhat flexible, other places prescriptive.

11           There are examples of agreements that lay it  
12 out, what needed to be done, and then agencies went  
13 even farther than that. And that wasn't required in  
14 the programmatic agreement, but it helped the  
15 implementation of that agreement.

16           And then, finally, are the pages for the  
17 signatures. Just to reiterate, there are three  
18 different types. The federal agencies and consulting  
19 parties, when it comes to signing an agreement, are  
20 of three different types; they're the signatories,  
21 invited signatories, and concurring party. The  
22 regulations stipulate that the signatories must sign  
23 the agreement in order for it to be considered  
24 executed. Invited signatory's signature is not  
25 required for the agreement to be considered executed,

1 but those invited signatories can terminate and  
2 amend -- or propose that the agreement be terminated  
3 or amended. Concurring parties, it's wonderful to  
4 have an agreement where the concurring parties sign  
5 on, but their signature is not required for the  
6 agreement to be implemented. And they can amend the  
7 agreement only if the signatories were to agree to  
8 that. So that's the complication. I hope it's not  
9 too confusing, but that's the complication here.

10 So I have comments from the SHPO. I have  
11 comments on the agreement from Basin. The agencies  
12 meet weekly. And I'm assuming in the next couple  
13 weeks we will be talking about this.

14 Do any of the other parties have any reaction  
15 to the agreement? Want greater explanation of what  
16 it does? Any questions?

17 Richard, does it make sense?

18 Is there a fatal flaw? That's the other thing  
19 you're looking for, a fatal flaw. Opportunity for  
20 Basin to go to construction without doing any survey.

21 MR. ROTH AUS: This is Richard Rothaus, and,  
22 Laura, NDSU emailed you some comments yesterday --

23 DR. DEAN: Oh.

24 MR. ROTH AUS: -- so you probably didn't see  
25 them yet, but I can boil them down really quickly.

1 DR. DEAN: Okay.

2 MR. ROTH AUS: Our main concerns are that --  
3 and I'm trying to pick words carefully here -- the  
4 NPS study area be recognized -- that's not the  
5 language I used in the email to you, but I think it's  
6 better language than what we sent to you, because  
7 that's the language there -- that that be recognized  
8 and that --

9 DR. DEAN: Recognized as the boundary?

10 MR. ROTH AUS: As existing.

11 DR. DEAN: As existing?

12 MR. ROTH AUS: As something that needs to be  
13 taken into account.

14 DR. DEAN: Okay.

15 MR. ROTH AUS: And that when considerations of  
16 adverse effect, if any, are done, that they include  
17 what's in *NRB 40*, especially what you cited almost  
18 word-for-word about integrity.

19 DR. DEAN: Mm-hmm.

20 MR. ROTH AUS: And those, to us, were the two  
21 biggies: That we wanted that larger circle to be  
22 recognized as something that at least some people are  
23 concerned about, and that for this sort of project,  
24 the main concern is integrity as defined in *NRB 40*.

25 We have serious concerns about the visual

1 impact of a transmission line that bisects the  
2 battlefield, but those could be dealt with in the  
3 process, so aren't relevant to the PA.

4 DR. DEAN: Well, no. They are relevant to the  
5 PA, I mean, because there's a question, either we do  
6 it now, or we just defer the discussion -- I'll be  
7 nice -- the discussion till later. I want to start  
8 that discussion now, and if we can get it resolved,  
9 great, because it can be in here. If we can't  
10 resolve it, we really need to be clear about  
11 specifically what we're going to do and when it gets  
12 resolved, so --

13 MR. ROTH AUS: Well, I think then because the  
14 direction the transmission line runs, it essentially  
15 clips off -- goes right through the southern portion  
16 of what NPS has described as the study area, that's a  
17 major visual impact for people who come and look. If  
18 we had the time machine and someone -- and a  
19 participant came back, they would look at it and say  
20 "This looks different." We think that would actually  
21 be an impact on integrity.

22 The problem is, of course, and there's no  
23 point in ignoring it, that transmission lines are  
24 hard things to mitigate. You can't hide this behind  
25 palm trees. So what would be done about that is a

1 much more complicated question. And I don't know  
2 that there is an answer. In fact, I know there isn't  
3 an answer, because we deal with these all the time.  
4 There is no answer to: How do you mitigate  
5 transmission lines? That's an easy and  
6 straightforward one, so.

7 DR. DEAN: Well, certainly not visual effects.

8 MR. ROTHBAUS: Yeah. It is what it is.

9 DR. DEAN: And even telecommunications towers.  
10 You know, the Pennsylvania Turnpike going through a  
11 wooded area, you would think let's make the tower  
12 look like a tree. Well, that works, unless the tower  
13 is bigger than all the trees, and so you get a tree  
14 line here and then this tree thing sitting above it.  
15 It actually makes it more noticeable. So, yeah, it's  
16 not always easy.

17 But if you have any proposals, any ideas,  
18 because this is a complex --

19 MS. MCMASTERS: Can I -- couple off of you,  
20 Laura, just to see your reaction?

21 DR. DEAN: Mm-hmm.

22 MS. MCMASTERS: All right. So with some other  
23 mitigations, we've suggested in the last year to --  
24 we've included suggestions on interpretation,  
25 providing some sort of interpretation on the site so

1 that -- I mean, essentially that's what's being lost  
2 is the interpretability or the readability of the  
3 landscape. And in some cases, allowing the public to  
4 sort of understand better from key points along the  
5 corridor in a public spot could at least be  
6 considered. Now, I know that's going to maybe cause  
7 traffic issues, or where are they going to be able to  
8 read these signs without causing some other problem?  
9 But I'm just tossing it out on the table. You  
10 certainly have till May to think about if that's even  
11 a possibility. Just a thought.

12 DR. DEAN: Okay. Well, there is a road now  
13 that carries trucks carrying oil. The land is all  
14 privately owned, so any spot for interpretation would  
15 have to come with the agreement of probably not one,  
16 but several landowners. So I hear what you're  
17 saying, but after --

18 MS. MCMASTERS: I'm not saying it's easy, and  
19 I've never been there myself, but it is part of some  
20 mitigations we do throughout the nation.

21 DR. DEAN: Yeah.

22 MS. MCMASTERS: So that's one idea rather than  
23 sort of tossing our hands up and saying nothing can  
24 be done. That's been done.

25 DR. DEAN: Yeah. Yeah.

1 MS. MCMASTERS: And another thought might be  
2 that recently we've asked and have gotten what's  
3 called HALS level documentation for -- in this case,  
4 I'd suggest the corridor. And HALS is the Historic  
5 American Landscapes Survey and it's part of the  
6 National Park Service, and they have very clear  
7 standards on historic landscape survey standards, and  
8 all that I can send to you. I know it sounds a  
9 little bit like gobbledygook, but it's a way of  
10 recording the landscape within standards that are  
11 being submitted to the National Archives. And since  
12 I understand you're not doing any more landscape  
13 evaluation, this would be a mitigative measure.

14 DR. DEAN: All right. I will keep those in  
15 mind and when we follow up next week, we'll talk a  
16 little bit more about it. Okay?

17 MS. MCMASTERS: Sure. And I'm happy to send  
18 you off that language that would help you look it up  
19 and see what the Historic American Landscapes Survey  
20 would recommend.

21 DR. DEAN: Okay. Great.

22 MS. MCMASTERS: Those are just two ideas.  
23 And, of course, other ideas are finding ways of  
24 masking the construction, of course minimizing, but  
25 also making sure the colors don't stand out on the

1 horizon. Those are also creative ways that we've  
2 done. I mean, in other battlefields, when we've had  
3 the cell towers you mentioned, we've gone the gamut  
4 from having silos built so they look like a silo  
5 rather than a tree, certainly making sure that --  
6 there may be other options, like we had one of them  
7 do a windmill sort of thing so that it looked like  
8 one of those Western -- I know it's kind of crazy,  
9 but it --

10 DR. DEAN: Can you see us smiling?

11 MS. MCMASTERS: I mean, I certainly wouldn't  
12 suggest that in this case, but it was a very creative  
13 way for that federal agency to try and minimize the  
14 visual intrusion that a line like this will have.

15 DR. DEAN: Well, and I would encourage  
16 everybody, just suppose it was an adverse effect --  
17 we're not there yet, but let's suppose it was. What  
18 would you do? The point is to be creative, think  
19 outside the box. Give it a thought, because if we  
20 get there, we want to know -- we want to be able to  
21 also -- rather than this being a strictly linear  
22 process, we need to talk about what's possibly  
23 eligible, possible effects, and also what would we do  
24 with it? So got to be all a part of the same  
25 conversation. So any ideas you have, nothing is too

1 out there, be creative, so --

2 MS. MCMASTERS: Yeah. I echo that because of  
3 situations where I've been if something really  
4 creative comes in at the last minute, there is no  
5 time to scope it out, and it sometimes just gets  
6 dismissed because people haven't had a chance to  
7 really look at the cost and think about if it's  
8 within the realm of possibility.

9 DR. DEAN: Right. And I know the ACHP,  
10 particularly for archaeology and probably for  
11 landscapes too, just across the board, you know, it's  
12 kind of getting tired of the same old mitigation and  
13 would support --

14 Am I correct, John?

15 -- would support creative proposals.

16 MR. EDDINS: Yeah, definitely. We are open to  
17 alternative mitigations for effects to historic  
18 properties and, you know, we are supportive of the  
19 consulting parties getting together and developing  
20 imaginative and creative ways to deal with effect on  
21 historic properties in a way that develops the  
22 knowledge of the public of the historic property, and  
23 draws them to it, and assists them in understanding  
24 them and maybe even experiencing it in a way that  
25 they might not if it was just there and had not been

1 the subject of the review process and the knowledge  
2 that's developed by it. So we're open to creative  
3 process.

4 DR. DEAN: Okay. Great. And what I will do  
5 as I get the comments -- again, this is supposed to  
6 be an open process -- so that means I'm not going to  
7 sit on everything. As I get comments from folks, I'm  
8 going to PDF them and make sure everybody gets them  
9 and you can see what the concerns are. And that if  
10 you haven't prepared comments, it will help you  
11 prepare your comments, might help with your  
12 discussion, the way you see the agreement, and what  
13 have you.

14 One thing to mention. There is a stipulation  
15 in here on page 6; there are a couple of  
16 stipulations.

17 First, Stipulation 3, which is Forest Service  
18 Lands. While Western is the lead agency for  
19 Section 106, Western cannot dictate to the Forest  
20 Service what the Forest Service does on lands it  
21 manages, and this stipulation is meant to recognize  
22 that. Forest Service has to issue a special use  
23 permit for the crossing and is going to do that based  
24 on its processes and procedures.

25 Stipulation 4, of Curation. The

1 archaeological resources identified on Forest Service  
2 land are federal. The archaeological resources  
3 identified on private land, irrespective of the money  
4 that paid for them to be identified, are not federal.  
5 They belong to the landowner, the person who owns the  
6 land from which they've come. So curation, what we  
7 ask the landowner to do is based on that. The  
8 landowner can choose -- can elect to keep those  
9 artifacts if they like, because they belong to them.  
10 We would like for them to donate them, but we can't  
11 make them do it.

12 MS. MCMASTERS: Laura, I have a question then.  
13 How does that jive with most archeologists' ethics?  
14 How can they work like that?

15 DR. DEAN: They have to work within the law.  
16 We all have to follow the law, ethics  
17 notwithstanding. They've got a legal responsibility.

18 The private landowner owns those artifacts;  
19 correct, John?

20 MR. EDDINS: That is correct. And a lot of  
21 the PAs that are developed that we deal with or we  
22 receive, even if we don't participate, they  
23 acknowledge state law. And it just depends on the  
24 nature of the state law, and usually state law would  
25 say that the artifacts belong to the landowner. And

1 we always encourage federal agencies to work with the  
2 landowner and try to convince them of the  
3 appropriateness of donate the artifacts to the State,  
4 and, you know, having them curated in a facility that  
5 is approved by the SHPO and meets the standards that  
6 are appropriate. But you can't take the artifacts  
7 from the folks, because they belong to them in most  
8 states.

9 DR. DEAN: That's right.

10 MS. MCMASTERS: I guess I haven't ever come  
11 across this kind of a wrinkle, because it just has  
12 never occurred to me that a federal agency would get  
13 involved with anyone where those artifacts weren't  
14 previously identified as going to a public  
15 repository. I guess I must live in a pretty narrow  
16 world. I'm surprised.

17 MR. EDDINS: I think in most of the PAs that  
18 we work on, they acknowledge that the artifacts that  
19 are recovered from private land belong to the  
20 landowners, but that we encourage the landowners to  
21 consider donation of those to a facility where they  
22 would be curated and that they would be available for  
23 study in the future and also for a submission to the  
24 public, but that acknowledges that by state law they  
25 usually belong to the landowner.

1 DR. DEAN: Yeah. And this --

2 MR. PICHA: This is Paul from North Dakota  
3 SHPO. I would just like to second what John said.  
4 In North Dakota, that is indeed the case; and I would  
5 second the second part of what John said, as well, on  
6 other kinds of documents we do encourage that, but  
7 we --

8 DR. DEAN: We cannot make them.

9 MR. PICHA: -- cannot. It's not a  
10 requirement, but we would actively encourage that  
11 facet of curation.

12 DR. DEAN: And many landowners do, or want to,  
13 but there are those that do not. It's just like --  
14 I'm sorry?

15 MR. EDDINS: Many landowners do. Lots of  
16 folks, when you talk to them about it and explain the  
17 importance of the material, they do follow through  
18 and meet your best expectations. But once again, we  
19 cannot force people to do that.

20 DR. DEAN: Right. The next stipulation is one  
21 on confidentiality. The Section 106 regulations  
22 require the agencies to protect information only  
23 about historic properties. That means only about  
24 those resources which are listed in or eligible for  
25 listing in the National Register. And we can protect

1 it to the extent that we can.

2 Usually, this relates to tribes and their  
3 concerns about confidentiality. But I think in this  
4 case, too, there is an element of that concern as it  
5 relates to the landowners within the right of way  
6 that the agencies need to be cognizant of and  
7 attentive to. So I just wanted to make sure  
8 everybody understood that as well.

9 So any thoughts, Killdeer Mountain Alliance?

10 Mr. Dvirnak, any thoughts on this agreement?

11 MR. DICKEY: I have one point that I'd like to  
12 address, and that's on page 5, Paragraph E on  
13 avoidance.

14 DR. DEAN: Mm-hmm.

15 MR. DICKEY: Because the first sentence there,  
16 it says "The avoidance of adverse effects on historic  
17 properties is the method -- is the treatment  
18 preferred by Basin Electric." I mean, is that a  
19 hope? Is that a fact?

20 I mean, the reality is we've seen a lot of  
21 discussion of minimization and mitigation, but we  
22 haven't seen any analysis of avoidance. We just have  
23 been told that, you know "We've done all we can.  
24 Trust us," but we haven't seen any analysis of  
25 avoidance.

1 DR. DEAN: Well, since the archaeological  
2 survey began and information about archaeological  
3 sites has been coming forward, Basin has been  
4 incorporating that information in the siting of  
5 access roads and transmission structures and other  
6 things so that they --

7 MR. DICKEY: Well, that's true. But I'm  
8 interested in avoidance of visual impacts; obviously  
9 going to avoid building a facility on a canyon, but  
10 I'm just saying that this statement seemed to be a  
11 bit disingenuous in light of what we've seen to date.

12 DR. DEAN: Well, it is the preferred  
13 treatment, but that doesn't mean it can always be  
14 achieved.

15 MR. DICKEY: Well, I guess the point is,  
16 again, is that Basin may or may not sign this. I  
17 mean, is this a statement of fact? Or, I mean, who  
18 told you that? I mean, is that a wish, or what is  
19 that? The law says you're supposed to avoid as the  
20 first preference, but I haven't seen any  
21 demonstration by Basin that that's their preferred  
22 alternative.

23 DR. DEAN: Well, as I said --

24 MR. DICKEY: They just say they can't avoid.

25 DR. DEAN: As I said, as soon as information

1 about the archaeological sites within the corridor  
2 and the right of way became available, and with the  
3 tribal resources survey that's ongoing, and the  
4 archaeological survey that's ongoing, Basin -- I have  
5 evidence that Basin has been adjusting the location  
6 of structures, access roads, and other facilities so  
7 to avoid. Can they always do it? No. But it is  
8 what they prefer, what the company prefers.

9 Kimball.

10 MR. BANKS: This is Kimball Banks from  
11 Metcalf. We've worked very closely with Basin in  
12 realtime in terms of notifying them of archaeological  
13 sites, historic and prehistoric, and working with  
14 them to resite poles to avoid those.

15 DR. DEAN: Right. And then the other thing is  
16 while avoidance may be the preferred alternative,  
17 over 278 miles with a project with access roads and  
18 other things, you would be very lucky if you can  
19 avoid everything. So they will make -- the company  
20 will make the best effort to do so, but that doesn't  
21 mean that they will achieve perfection.

22 And, again, 106 doesn't require perfection.  
23 It requires a reasonable effort, which I think that  
24 Basin has made. And I'll try to -- we can put that  
25 in writing for you, and we can put in some dates and

1 maybe give you some examples. Okay?

2 MR. DICKEY: I guess. I would like to see the  
3 line moved. I would see demonstration of preference.  
4 I mean, I don't know what preference means when there  
5 hasn't been -- when we have a line running through  
6 the battlefield.

7 DR. DEAN: Well, the battlefield isn't the  
8 only resource here that they would like to avoid.

9 MR. DICKEY: Or through the mountain, right?  
10 I mean --

11 DR. DEAN: They're not going through the  
12 mountain. Transmission line does not go through the  
13 mountain. It is south of the mountain.

14 MR. DICKEY: Well, it's a question of how you  
15 define the mountain, but that's another issue. The  
16 point is that I'm saying we end up -- we have a plan  
17 before us with several miles going through the  
18 battlefield as defined by the Park Service study --

19 DR. DEAN: Right.

20 MR. DICKEY: -- and being explored now and for  
21 archaeological evidence. But, the reality is that's  
22 what we have. We haven't avoided it; went right  
23 through it.

24 DR. DEAN: Right. But the question is, it  
25 went right through it, and then the question for 106

1 under the regulations, does this meet -- is the  
2 battlefield in this location a historic property?  
3 And if so, does the transmission line going through  
4 it meet the requirements for adverse effect? And  
5 we're still sorting that out.

6 MR. DICKEY: I understand. Right.

7 MR. SAND: If I may say something.

8 DR. DEAN: Mm-hmm.

9 MR. SAND: This is Rob Sand, Killdeer Mountain  
10 Alliance. What we don't want -- in talking about is  
11 there's a lot, many miles, and all that, we need to  
12 remember this is a significant site.

13 DR. DEAN: Mm-hmm.

14 MR. SAND: It's identified as the top  
15 3 percent in the nation by the Battlefield Protection  
16 Program, and that there is considerable opposition.  
17 And what baffles us constantly is that all we get is  
18 stonewalling.

19 And I see Curt here and I see Cris here, and  
20 they work for their bosses. But I have heard their  
21 boss on the radio, a program out of Fargo, and it  
22 was, like, obstinate. It was like this is -- I get  
23 my electricity from the co-ops that are served by  
24 Basin Electric, and I want my power; everybody does.  
25 We hear things like: Well, if we don't build this,

1 we might threaten the power that I'll get to my house  
2 or the farmer gets to his water well.

3           This is being built to service the oil  
4 industry, and that is what's pushing it, but we're  
5 just not getting the -- it's like they're ignoring  
6 the very fact. So many times the reference is the  
7 monument, that one-acre piece of monument, is the  
8 battlefield, when we all know it's much more than  
9 that. It's eight miles crossing is what they're  
10 proposing. So we just -- from KMA, it's: Give an  
11 alternative and consider it seriously, for all of us,  
12 that avoids this site.

13           DR. DEAN: Okay. Well, couple of things. As  
14 an outsider, latecomer, if you will, there's been  
15 considerable press about the battlefield and the  
16 impacts to it. I've been surprised looking at --  
17 because I've got some experience with other  
18 transmission lines -- that there has not been an  
19 upswell within the public. I mean, we haven't heard  
20 anything other than the same parties. So that's one  
21 thing.

22           The other is Basin doesn't make a decision  
23 about how federal money is spent --

24           MR. SAND: No.

25           DR. DEAN: -- our agency does. So all that's

1 fine, but it's our agency and Western and the  
2 Forest Service that makes the decision. So at the  
3 end of the day, the President can go on TV and talk,  
4 but it is a federal decision.

5 MR. SAND: Correct.

6 DR. DEAN: Okay? So remember that. And  
7 that's why this conversation's so important. Okay?  
8 So any other comments? Any other reaction?

9 MS. SAND: I have a comment, Laura.  
10 Mary Sand.

11 DR. DEAN: Mm-hmm.

12 MS. SAND: I feel that you didn't respond to  
13 what Rob just asked, which is where is the  
14 alternative that avoids the battle? Is that not  
15 legally required -- that avoids the battlefield?

16 DR. DEAN: No.

17 MS. SAND: And why aren't they being held to  
18 that?

19 DR. DEAN: It's not required. Remember,  
20 I said at the outset that Section 106 does not  
21 require preservation. It doesn't require protection.  
22 It requires that federal agencies make informed  
23 decisions. And so there can be adverse effects.  
24 There are those you cannot avoid. And this might be  
25 one of those. If this is an adverse effect, it might

1 be one that you simply cannot avoid because of the  
2 circumstances of this particular project.

3 Basin has tried to minimize this to some  
4 extent by the selection of single pole structures,  
5 movement of the substation, and what have you, but  
6 this may be one that they can't avoid.

7 MS. SAND: Now, we hear all of the good things  
8 they've been trying to do. We're grateful that they  
9 moved the substation. What we're wondering is where  
10 is the alternative? Where is the alternative that  
11 they are supposed to present to the public for  
12 consideration? We have yet to see that.

13 DR. DEAN: At this point in time, we're well  
14 down the pike, and there might not be another  
15 alternative. You want them to move it, but they have  
16 to be able to move -- in asking for an alternative,  
17 you may be asking for us to go back through the NEPA  
18 process and back through 106.

19 Right?

20 MR. KLUTH: Yes.

21 DR. DEAN: And so the question is, should we  
22 do that? Is that in the public interest in this  
23 particular case? And so we have to look at that and  
24 see if that is in the public interest.

25 Kristen has suggested maybe undergrounding

1 through the battlefield, maybe you can co-locate.  
2 There are other options, and so we will respond to  
3 all of those in what we send out to you shortly.

4 MS. SAND: Okay. Thank you.

5 DR. DEAN: Yeah.

6 MS. MCMASTERS: Laura, this is Kris McMasters.  
7 And there is one thing that's been kind of ringing  
8 through my head. And earlier we talked about perhaps  
9 you pulling together some documentation on some of  
10 the avoidance mitigation. There is one other topic  
11 I would really like to see, perhaps, you pull  
12 together some of your background for me, and that  
13 would be on the issue of, perhaps, segmentation.

14 And the reason why I ask this is I just  
15 somehow feel that so many decisions have been made,  
16 to the point where there is no alternative other than  
17 going A to B. And it feels like this has just been  
18 kind of built so that we're in a box at this point.  
19 And I'd just like to know how we got so many other  
20 pieces down the road approved to the point where  
21 we've got two sort of shotguns pointed at each other  
22 and we -- you know, I just wasn't a part of all that.

23 DR. DEAN: Yeah. Neither was I. So what I've  
24 done is put together a timeline, and I can share that  
25 with you and John Eddins so that you can see when

1 these federal reviews began and how we moved through  
2 those processes.

3 MS. MCMASTERS: Yeah. How we got to the point  
4 where so many other things are already set in stone  
5 and forcing this segment to be stuck there too.

6 MR. EDDINS: This is John Eddins at the  
7 Advisory Council. One thing to keep in mind, too, is  
8 that the 106 regs were written to deal with both  
9 federal agencies who are doing their own projects  
10 that they fund on land that they manage, but also  
11 cover situations where a private proponent will come  
12 forward and propose to do something on land that may  
13 cross some federal land, but it may mostly cross  
14 private land. And they may be involved in research  
15 on it for years, and then it will come to the federal  
16 agencies that might provide grants or permits of some  
17 sort and say, "Okay. Here is a project we want to  
18 do. We've done this bunch of research and we feel  
19 this is the best place to put it because thus and  
20 so."

21 And so the federal agencies then either are  
22 considering issuing funding or issuing some kind of  
23 permit. They're more limited than the fed who is  
24 doing something with their own funds on their own  
25 land that they manage in terms of considering

1 alternatives, because, you know, alternatives are  
2 kind of eliminated as you go through the planning  
3 process.

4           And a lot of these folks will go through a  
5 process, as they reference something about the real  
6 estate folks going out and checking with the  
7 landowners to see about purchasing land, and for  
8 whatever reason, they came up with this right of way  
9 that they're proposing.

10           They may have eliminated things for a variety  
11 of reasons, and it may or may not have given close  
12 consideration to the presence of historic properties  
13 and the possible effects on that. And that's one  
14 thing the fed has to take into account, even if  
15 they're just providing grants or permits, you know.  
16 It's not their project, but they're assisting in some  
17 way.

18           When it comes to them finally, they have to  
19 then start to say "Okay. How will it affect historic  
20 properties?" But they may be kind of limited in the  
21 range of alternatives they can propose, because the  
22 proponent has already gone through trying to sort out  
23 what would be the best alternative and maybe  
24 eliminating some for a variety of other reasons,  
25 maybe effects on environmental resources of some

1 sort, some other nature, or resistance from  
2 landowners, or for whatever reason.

3           So you just have to keep that in mind, that  
4 the Section 106 regulations lay out a process, talk  
5 about avoidance, minimization, and resolution of  
6 adverse effects, and there's logical progression  
7 there.

8           Although, the regulations don't really say you  
9 have to avoid before you minimize, and you have to  
10 minimize before you resolve. There is no precedence  
11 really specified in the regulations, but it's  
12 logical. You try to avoid before you minimize; you  
13 minimize before you resolve. And we all need to keep  
14 that in mind. And is it logical for all of us, and  
15 that's the way we proceed, but it's not necessarily  
16 required by the regulations you go in that order.

17           But once again, permitting and granting  
18 agencies have a bit more limited capacity to propose  
19 and enforce alternatives. They can propose them, but  
20 they have a hard time enforcing them, because the  
21 planning process for these private proponents who  
22 pick up these projects that come forward, maybe even  
23 have purchased rights to land by the time they get to  
24 the fed to make a proposal. There are limitations  
25 involved. And that doesn't remove the federal

1 agency's responsibility to look at that. And if they  
2 feel that there are extremely important historic  
3 properties and the nature of the effects that they  
4 determine will be happening are important enough,  
5 that they not then consider whether or not it's  
6 appropriate to follow through.

7 But nonetheless, the regulations kind of apply  
8 a little bit differently. Just because of the  
9 capacity of the federal agencies and the different  
10 types of federal actions they have, they work out a  
11 little bit differently in the process.

12 DR. DEAN: Yeah. I appreciate that, John,  
13 because that's one of the nuances. The Section 106  
14 is a regulatory process, irrespective of the federal  
15 agency, you know, if we are giving money, and  
16 interconnection of permit. But as John pointed out,  
17 it can play out quite differently for a land managing  
18 agency versus an assistance agency.

19 The land managing agency controls its land.  
20 We don't. That's why we have to be particularly  
21 sensitive to the landowners as part of the multitude  
22 of factors that we consider. So it is an important  
23 nuance to remember. It's -- I was going to say it's  
24 kind of fun because it makes it interesting.

25 MR. DICKEY: But it also reminds us that this

1 is just one step in the process. There's also the  
2 NEPA process, which is broader in scope, if you will;  
3 and then, you know, the essence of the NEPA process  
4 is to integrate environmental impact analysis into  
5 the decision-making process. And I think it's in  
6 that area where RUS has, frankly, fallen short.

7           And so we have a bigger issue. Again, it  
8 always comes back to the question of where is the  
9 alternative analysis? And when there isn't an  
10 alternative analysis laid out in the environmental  
11 impact statement, the public has no basis for  
12 accepting adverse consequences, and that's the issue  
13 here.

14           DR. DEAN: I think it's in there. And  
15 remember, we started an alternatives analysis --  
16 Basin started its alternatives analysis before we  
17 even started scoping in 2011. So I hear you, and --

18           MR. DICKEY: I'm just saying all I know is  
19 what I read in the report, and I presume that that's  
20 what the decision maker in RUS has available to him  
21 too, the public document, the environmental impact  
22 statement that was to lay out the basis for this  
23 public interest position. And I'm just saying from  
24 my perspective, it's quite inadequate.

25           DR. DEAN: Did you provide us -- I know

1 Killdeer Mountain Alliance, several members provided  
2 comments on the DEIS.

3 MR. DICKEY: Yes.

4 DR. DEAN: Did you point out those  
5 inadequacies?

6 MR. DICKEY: Yes.

7 DR. DEAN: Okay.

8 MR. DICKEY: That's why we look forward to  
9 reading the final EIS.

10 DR. DEAN: And we look forward to going  
11 through those comments again.

12 MR. DICKEY: In writing. Having written those  
13 responses myself in a different world, I know what  
14 the challenge is.

15 DR. DEAN: Yes. This should be fun. Well,  
16 listen. It's about ten to 7:00. I have comments on  
17 the PA from the Center. We have comments from the  
18 SHPO. We're going to get comments from Killdeer  
19 Mountain Alliance.

20 Is this a process that can work?

21 MR. EDDINS: And you'll get comments from the  
22 Advisory Council too.

23 DR. DEAN: From the Advisory Council. And  
24 hopefully we'll get comments from Battlefield  
25 Protection.

1           Kristen?

2           MR. EDDINS: One of the things we were going  
3 to stress, Laura, was the fact that you need to  
4 clarify in terms of what the Forest Service -- you  
5 know, the responsibilities of the agencies, and who  
6 in contact with, who are you going to call to deal  
7 with aspects of it, who is going to provide the  
8 determinations? Because it's not real clear. I  
9 mean, you kind of set out the outline of it, but it  
10 probably needs to be a little bit clearer to folks  
11 about who you need to talk to at different points in  
12 the lawsuit's process and for different aspects of  
13 it, you know.

14           And how the coordination with the consulting  
15 parties is going to be carried out, say, if there is  
16 historic properties found on Forest Service land, or  
17 when determinations are made, that sort of thing. It  
18 should be a little bit clearer, I think, in there.

19           DR. DEAN: All right. Excellent. And at this  
20 point, John, your comments -- and Kristen, your  
21 comments don't have to be formal on letterhead. You  
22 know, RUS -- if you send an email, that's part of the  
23 documentary record.

24           MR. EDDINS: Yeah.

25           MS. MCMASTERS: I appreciate that. I live off

1 of email.

2 DR. DEAN: Yeah. And it just makes it too  
3 hard, because I know what it's like getting my boss  
4 to sign a letter, review it and then sign it. And so  
5 this just makes it easier through the process, plus  
6 if you send it out via email, you can copy everybody.

7 MR. EDDINS: And you know what it's like to  
8 get comments from --

9 DR. DEAN: Don't even say. I used to work --  
10 I know. And so on that note, is there anything else?  
11 Anything we didn't cover here? Any final thoughts?  
12 We're on a very aggressive schedule. I know that.  
13 We're going to do -- that's why we're helping  
14 Western. And between the two of us, we will do what  
15 we can to facilitate your participation. We'll be  
16 back in person May 9th. I might have our assistant  
17 administrator with us.

18 For those of you who don't know, the Standing  
19 Rock Sioux Tribe is hosting a tribal summit on  
20 May 7th and 8th. I'm not sure -- all the details for  
21 that have not yet been worked out clearly, but that's  
22 why we planned a May 9th meeting, thinking that there  
23 would be other agencies here, both Standing Rock and  
24 Sisseton Wahpeton would be available to participate,  
25 and it just would be easier that way. So, hopefully,

1 that will go off and that timing will work.

2 MR. DICKEY: And where will that meeting be,  
3 Laura?

4 DR. DEAN: You know, I haven't gotten that far  
5 yet. I don't know. We're going to be at -- the  
6 tribal summit is at Fort Yates, but I don't know that  
7 we will be staying there. We may be staying in  
8 Bismarck. So we have to work out those logistics.

9 MR. DICKEY: Thank you.

10 DR. DEAN: But I'll let you know as soon as I  
11 can.

12 And, George -- I mean, Ed, would it help,  
13 since you're on the East Coast, would it help if we  
14 got together and just talked about this a little bit  
15 more?

16 MR. DICKEY: Yes. I will certainly be happy  
17 to do that.

18 DR. DEAN: Okay. All right. Well, then we  
19 will do that.

20 MR. PICHA: This is Paul --

21 MR. DICKEY: Perhaps next week.

22 DR. DEAN: Yes?

23 MR. PICHA: This is Paul from SHPO. I would  
24 just add one comment to what Laura said, too, about  
25 the components of the PA. There are certain factors

1 or certain matters that could be treated as  
2 attachments to a document like this too. I mean,  
3 obviously, you do have the "Whereas" clauses and the  
4 Stips, but on certain projects -- not that everything  
5 needs to be totally spelled out in the body of the  
6 text -- but it is perfectly acceptable to have some  
7 matters treated as attachments and, therefore, cut  
8 down some of the verbiage in the document itself.

9 DR. DEAN: Yeah.

10 MR. PICHA: I just want to add that.

11 DR. DEAN: And sometimes that means you  
12 could -- what's in the attachments, if those  
13 procedures might need -- or something like that needs  
14 to be revised, it can be, and then reattached, so --

15 MR. PICHA: Yes.

16 DR. DEAN: -- that provides you a little more  
17 flexibility. That's an excellent point.

18 So anything else? Well, we will get back to  
19 you with a summary of our discussion with the tribes  
20 tomorrow and also follow up on our take on kind of  
21 what constitutes -- what might constitute the  
22 battlefield historic property, what the possible  
23 effects are, explain how Basin has avoided things,  
24 talk about possible mitigation if there is an adverse  
25 effect, and I think also talk about possible effects,

1 how we might see this in terms of *Bulletin 40* -- how  
2 this would play out in terms of *Bulletin 40*, which  
3 should help focus your comments. Okay? Does that  
4 sound like a plan?

5           And then we will meet together on May '9th.  
6 Comments on the PA are due, I think, April 28th if  
7 you have anything written. We have another  
8 teleconference with the tribes scheduled for the  
9 25th. That's next Friday. That is if it's needed.  
10 I don't know that it will be needed, but at least we  
11 have that on paper.

12           We're hoping that we can move forward -- based  
13 on the milestones, that we can move forward after the  
14 May 9th meeting with the PA to have this resolved.  
15 Or if we don't have it resolved, to resolve to  
16 continue the discussion until "X" to sort it out.

17           So that's another thing. Richard mentioned  
18 that maybe we wouldn't have effects to the  
19 battlefield resolved. And maybe we won't. And if we  
20 don't, the PA could say "This is how we will do that.  
21 And we will do it by this time."

22           Isn't that right, John?

23           MR. EDDINS: Yes, PA -- I was -- you have to  
24 keep shutting it off. You said PAs placed because --

25           DR. DEAN: No, no. I said that the PA doesn't

1 necessarily have to state at this point how we  
2 resolved the adverse effects to Killdeer Mountain  
3 Battlefield. But it could say --

4 MR. EDDINS: Right. If it sets forth  
5 protocols for how you consult to determine how you  
6 would resolve adverse --

7 DR. DEAN: That's right. That's right. So  
8 many things are possible. It's how we put it  
9 together at this point. So we really, really need  
10 your input. And, again, if you email it, share it  
11 with everybody.

12 MR. BRAATEN: Do you have an email list that  
13 can be shared?

14 DR. DEAN: I will send it out.

15 MR. BRAATEN: Okay.

16 DR. DEAN: I will send it out. And, yes, I  
17 do. And it should be -- it's everybody -- the last  
18 email, the reminder about the meeting, has everybody  
19 on it.

20 MR. BRAATEN: Okay.

21 MR. SAND: Okay.

22 DR. DEAN: But I will make sure. I will go  
23 back and check and just make sure, because I have  
24 been sending things to Lori Jepson too, but that  
25 bounced back.

1           MR. SAND: Yes. She was having trouble with  
2 her computer.

3           DR. DEAN: Okay.

4           MR. SAND: All she can read on is her little  
5 phone.

6           I wanted to say, evidently some people have  
7 something I don't. I don't know if I was supposed  
8 to, and that is that large thing there.

9           DR. DEAN: Okay. The report?

10          MR. SAND: It could be that it was sent, but I  
11 was in Montana for a while and things were being  
12 forwarded, and then we stopped the forwarding. So  
13 it's possible it's in some kind of UPS limbo. I  
14 don't know.

15          DR. DEAN: Ed has this, right?

16          Ed, you have the geophysical report?

17          MR. DICKEY: The geophysical report? I have  
18 the Metcalf report.

19          DR. DEAN: Yes. That's this big one. Since  
20 he was the representative, he got the report.

21          MR. DICKEY: Yes. Yes. It's in user -- Rob,  
22 you have it in electronic form.

23          MR. SAND: Okay. I didn't recognize it. That  
24 doesn't look electronic to me.

25          MR. DICKEY: I made it available in electronic

1 form.

2 DR. DEAN: Okay. Well, I want to thank  
3 everybody. You've hung in there.

4 And kudos to you guys on the phone.

5 MR. DICKEY: Well, we thank you, Laura, for  
6 your disciplined execution of your mission.

7 DR. DEAN: Thank you. It must be the weather,  
8 huh?

9 MR. DICKEY: It is. It is.

10 DR. DEAN: Thank you, guys.

11 MR. DICKEY: That's why those North Dakotans  
12 are such hard workers.

13 DR. DEAN: I think so. And I will loop back  
14 with you folks in D.C. when I get back to the office,  
15 which will be Monday.

16 MR. DICKEY: Okay. Very good. Thank you.

17 DR. DEAN: All right. Thank you.

18 MR. DICKEY: Have a nice weekend.

19 MS. SAND: Thank you.

20 (The hearing concluded at 7:00 p.m. MDT.)

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CERTIFICATE OF COURT REPORTER

I, Sharon Fox, a Registered Merit Reporter,  
DO HEREBY CERTIFY that I recorded in shorthand  
the foregoing proceedings had and made of record at  
the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing  
typewritten pages contain an accurate transcript of  
my shorthand notes and digital data then and there  
taken to the best of my ability.

Dated at Bismarck, North Dakota, this 29th day  
of April, 2014.

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Sharon Fox, RMR, CRR  
Court Reporter