

# **Official Transcript of Proceedings**

## **NUCLEAR REGULATORY COMMISSION**

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

Docket Number: (n/a)

Location: teleconference

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 MEETING TO DISCUSS IMPLEMENTATION OF SURVEY

5 METHODOLOGY FOR CROW BUTTE IN SITU RECOVERY SITE

6 + + + + +

7 WEDNESDAY,

8 SEPTEMBER 15, 2021

9 + + + + +

10 The meeting was held via Videoconference,  
11 at 11:00 a.m. EDT, Diana Diaz Toro, Project Manager,  
12 presiding.  
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PRESENT:

LORRAINE BAER, Counsel for NRC

THOMAS BRINGS, Tribal Historic Preservation Officer,  
Oglala Sioux Tribe

DIANA DIAZ TORO, Project Manager, NRC

TATE HAGMAN, Crow Butte Resources

ANNE LEIDICH, Counsel for Crow Butte Resources

DAVID LEWIS, Counsel for Crow Butte Resources

WALTER NELSON, Crow Butte Resources

DOUG PAVLICK, Crow Butte Resources

ANDREW REID, Counsel for Oglala Sioux Tribe

HAROLD SALWAY, Director of National Resources,  
Oglala Sioux Tribe

JERRY SPANGLER, Contract Support Staff, NRC

JEAN TREFETHEN, Project Manager, NRC

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

11:04 a.m.

MS. DIAZ TORO: I want to welcome everyone and thank you for the opportunity to meet with both Crow Butte Resources and the Oglala Sioux Tribe to continue our discussions on executing a survey to identify sites of significance to the Oglala Sioux Tribe that could be impacted by the renewal of the, the license renewal of the Crow Butte uranium recovery facility in Nebraska.

And so, like any other, like, you know, previous meetings, before we start introductions, I do want to let you all know that the meeting is being recorded. We have our court reporter today with us.

And with respect to the recordings and the transcripts of the meeting, the process will be the same as for previous meetings. We do not believe that there would be any sensitive information shared today.

The survey, the final survey methodology is publicly available and the transcripts of our previous meetings are as well, but like previously, we do plan to keep the transcript nonpublic until both CBR and the Tribe have had the opportunity to review it.

And once that's completed, then, you know,

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1 if there's any sensitive information that should not  
2 be made public, then we'll make the redactions  
3 necessary, and then the transcript of the meeting  
4 would be made publicly available and will serve as the  
5 meeting summary.

6 So, I think with that, what we should do  
7 as always is do introductions and go around the rooms,  
8 in this case, virtual rooms.

9 So, I can start for the NRC, and my name  
10 is Diana Diaz Toro and I'm a project manager with the  
11 Environmental Review Branch at the NRC, and I'm one of  
12 the project managers for this project. I'll ask Jean  
13 to continue.

14 MS. TREFETHEN: Hi, my name is Jean  
15 Trefethen and I'm working with Diana as a project  
16 manager, and I also work with the NRC. Lorraine, I'll  
17 turn it to you.

18 MS. BAER: I'm Lorraine Baer. I'm an  
19 attorney in the NRC's Office of General Counsel and I  
20 represent the staff.

21 MS. DIAZ TORO: All right, thank you,  
22 Lorraine, and I am looking again at the list just to  
23 see if Jerry Spangler was able to join us. It doesn't  
24 look like it, but I will introduce him in the event  
25 that he does come online and I'll make you all aware

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1 when you comes online, but hopefully, our contractor,  
2 Mr. Jerry Spangler, will join us.

3 And he has been with us assisting the NRC  
4 staff with the development of the survey methodology  
5 and other aspects of this project as it's related to  
6 the identification of sites of significance to the  
7 Oglala Sioux Tribe. So, Andy, I'll turn it over to  
8 you and to Mr. Brings.

9 MR. REID: Hi, Andrew Reid, attorney for  
10 the Oglala Sioux Tribe. Tom?

11 MR. BRINGS: I'm Thomas Brings. I'm the  
12 Tribal Historic Preservation Review Officer for the  
13 Oglala Sioux Tribe.

14 MR. REID: Harold? Harold, do you want to  
15 introduce yourself?

16 (Pause.)

17 MS. BAER: Is Harold here? He's not  
18 showing up in my list of participants.

19 MR. REID: I think he's in the same room  
20 with Thomas Brings.

21 MS. BAER: Oh, okay.

22 MR. BRINGS: He's in his own office. He  
23 should be on here pretty quick.

24 MS. DIAZ TORO: Okay, so, well, I guess,  
25 Tom, would you like to wait for him a couple more

1 minutes? We'll finish introductions, of course, but  
2 we could give him a couple more minutes if you all  
3 find that that would be best.

4 MR. BRINGS: Okay, give him a few minutes  
5 here.

6 MS. DIAZ TORO: Okay, so I'll continue  
7 with Crow Butte for the introductions.

8 MR. PAVLICK: Good morning, folks. This  
9 is Doug Pavlick, General Manager of Chemical Resources  
10 overseeing Crow Butte. Tate, go next?

11 MR. HAGMAN: Good morning. I'm Tate  
12 Hagman, Restoration Manager at Crow Butte.

13 MR. PAVLICK: Walt?

14 MR. NELSON: I'm Walt Nelson. I'm the  
15 SHEQ Coordinator at Crow Butte. Good morning,  
16 everybody.

17 MR. PAVLICK: David?

18 MR. LEWIS: Dave Lewis with the Pillsbury  
19 Law Firm representing Crow Butte.

20 MR. PAVLICK: And Anne?

21 MS. LEIDICH: This is Anne Leidich, also  
22 with the Pillsbury Law Firm representing Crow Butte.

23 MR. PAVLICK: I think that's all for us,  
24 Diana.

25 MS. DIAZ TORO: Thanks, Doug. Welcome,

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1 everyone. So, let me give --

2 MR. REID: Could I get the -- I'm sorry,  
3 Miss. Could I get the name of the person who  
4 introduced himself right after Mr. Hagman, the  
5 restoration manager? There were three people from  
6 Crow Butte. I know --

7 MR. NELSON: Yeah, Andy --

8 MR. REID: Yeah?

9 MR. NELSON: It's Walt.

10 MR. REID: Oh, okay, all right.

11 MR. NELSON: It's Walt Nelson, SHEQ --

12 MR. REID: Okay.

13 MR. NELSON: -- Coordinator here at Crow  
14 Butte.

15 MR. REID: Yeah, thank you.

16 MR. NELSON: You bet.

17 MR. BRINGS: Harold is having a little --  
18 this is Tom Brings. He was having a little trouble  
19 with the Zoom, so he's just going to get on audio.

20 MS. DIAZ TORO: Okay, great, thank you.  
21 That's the same thing I told our contractor, Tom, if  
22 it's too difficult then to deal with the audio as  
23 well, so the phone line as well is another option, so  
24 thank you.

25 I'll just give a couple more minutes, and

1 thanks, everyone, for your patience. I want to be  
2 also mindful of everyone's time, so.

3 (Pause.)

4 MS. DIAZ TORO: So, while we wait, I did  
5 send, or hopefully you all will see that I did reply  
6 to everyone in reply to the schedule or the  
7 appointment that I sent for today in an email, and it  
8 had an agenda in it, and there's no or hasn't been any  
9 new topics or proposed topics, so I plan to follow  
10 that specific agenda.

11 Oh, okay, here we go. Apparently, there  
12 is someone in the lobby, but it doesn't look like I  
13 can see them in my Teams, so I'm just going to ask if  
14 my fellow colleagues from NRC can see anyone in the  
15 lobby, and if not --

16 MS. BAER: I don't see anything, Diana.

17 MS. DIAZ TORO: Okay, all right.

18 MS. TREFETHEN: It does look like there's  
19 a second 605 on the phone now.

20 MS. DIAZ TORO: All right, I think I did  
21 want to start if that's okay. Oh, here we go. Okay,  
22 I have someone now. Okay, oh, it's -- okay, I can see  
23 now. It's Jerry Spangler. All right, Jerry?

24 MR. SPANGLER: I finally got it to  
25 download. I can turn off this music that -- I tried

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1 the call-in line, but you didn't see it.

2 MS. DIAZ TORO: No, I wasn't able to. I'm  
3 wondering if that's also happening with Harold,  
4 whether I can't see him.

5 MR. SPANGLER: Now I got to figure out how  
6 to turn it off.

7 MS. DIAZ TORO: I can put you on mute  
8 while you figure it out. Well, I guess, Mr. Reid --  
9 oh, did I -- no, I do see Andy there. Andy and Tom,  
10 is it okay if we start and then we can catch up with  
11 Harold?

12 MR. BRINGS: Well, he's in the office with  
13 me, so he's on --

14 MS. DIAZ TORO: Oh.

15 MR. BRINGS: -- online with me.

16 MS. DIAZ TORO: Awesome, great.

17 MR. SALWAY: Good morning.

18 MS. DIAZ TORO: Hi, Harold, welcome.

19 MR. SALWAY: Thank you.

20 MS. DIAZ TORO: All right, so --

21 MR. REID: Harold, do you mind explaining  
22 who you are?

23 MS. DIAZ TORO: Yeah.

24 MR. SALWAY: Oh, I'm sorry. My name is  
25 Harold Salway. I'm the Director of Natural Resources

1 and I work here with Tom. He's the THPO in Cultural  
2 Affairs. Of course, you know him, and I'm the super,  
3 I guess. I'm part of the program.

4 I'll be participating throughout the  
5 activities and throughout the entire event. Any  
6 questions, I can be reached through Andy, and Andrew  
7 can keep us abreast of everything that's going on. I  
8 have full faith in him. Thank you.

9 MS. DIAZ TORO: Thank you, Harold. Jerry,  
10 did you want to introduce yourself? Just I did  
11 introduce you earlier, but just to give everyone the  
12 opportunity.

13 MR. SPANGLER: Hi, my name is Jerry  
14 Spangler. I'm the NRC's staff contractor and  
15 responsible, for good or ill, for the methodology that  
16 you have in front of you today.

17 MS. DIAZ TORO: Thank you, Jerry. So, I  
18 would like to start our meeting today just with a very  
19 high level and general overview and description of the  
20 areas of general agreement in the survey methodology.

21 Before I just start with that, I do want  
22 to thank each one of you for your time and for the  
23 input that you've provided to us during the meetings  
24 that we held on October 18 with Crow Butte Resources  
25 and, sorry, not October, on August 18 with Crow Butte

Resources, and August 25 with the Oglala Sioux Tribe.

We did review and consider your input, and the revised methodology incorporated that input as appropriate. And so, just going through those areas that, based on the meetings we had, were main topics where all parties agreed on, I wanted to sort of go through those.

And those include, for the field investigation, the actual on-the-ground examination of the areas within the licensed boundary of the uranium recovery facility.

We identified the duration of that field investigation, which is 15 days, the number of participants, which is eight to ten individuals, and that would include a five-person crew, three spiritual advisors, and one, potentially one field survey field supervisor and one project manager.

We also, in the survey methodology, indicated that additional field survey participants can be considered in order to reduce the duration of the field investigation, but that the number of participants will not affect the amount of the proposed lump sum payment by Crow Butte Resources.

So, with respect to the area to be examined during this field examination, those would be

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1 within the licensed area boundary of the uranium  
2 recovery facility, and the priority as discussed in  
3 the final survey methodology would be the undisturbed  
4 areas, then the previously documented archeological  
5 sites, and followed by the disturbed areas outside of  
6 the developed area, and so those areas basically  
7 consist of the land disturbed by the agricultural  
8 activities that have occurred within the licensed  
9 boundary.

10 And, you know, and then the fourth area of  
11 priority would be the 1,200-acre developed area, and  
12 that's basically the area that has been disturbed by  
13 the uranium recovery operations at the site.

14 With respect to the oral interviews, the  
15 survey identifies that those would be led and  
16 conducted by the Oglala Sioux Tribe.

17 With respect to duration, they would be  
18 conducted during the field investigations, plus an  
19 additional ten days afterwards, after the field  
20 investigations are completed.

21 And based on the input received, we  
22 identified that the number of participants would be  
23 five to 15 individuals to be interviewed. We also  
24 talk about the audio recordings or notes that would be  
25 taken during those actual interviews, and those will

1 be kept by the Tribe, but a summary of the interviews  
2 in English will be provided to the individual that  
3 will be preparing the final survey report.

4 We do continue to move towards starting  
5 the field survey investigations in October 2021, and  
6 this meeting reflects one of those steps to continue  
7 to move towards that time frame for starting those  
8 field investigations.

9 Next, with respect to the compensation, a  
10 general agreement has been reached for this  
11 compensation in the form of a fixed, firm-fixed price,  
12 or as I mentioned previously, a lump sum payment.

13 And based on recent discussions or  
14 information shared by the parties recently, it is our  
15 understanding that both the Oglala Sioux Tribe and  
16 Crow Butte Resources has had additional discussions,  
17 and that the Tribe has proposed a figure of \$190,000  
18 and this figure was accepted by Crow Butte Resources,  
19 and so I think that that ties very nicely to our  
20 second topic in the agenda which is an update on the  
21 payment negotiations.

22 And so, with that, I'll ask for, kindly,  
23 of course, from Crow Butte and from the Oglala Sioux  
24 Tribe about any updates or any additional information  
25 that the parties would like to share regarding those

1 additional discussions?

2 MR. PAVLICK: Diana, this is Doug Pavlick.  
3 So, we don't have a means for processing the payment  
4 yet because we're still kind of waiting for final  
5 confirmation that the number is acceptable and we  
6 proceed forward, and then we'll work through the  
7 details of how that payment will occur. David, do you  
8 have anything to add to that? I think that's --

9 MR. LEWIS: Yeah, just one thing, I  
10 noticed a change in the methodology from what Crow  
11 Butte had proposed in the markup and also what was in  
12 our firm-fixed price, you know, offered acceptance.

13 The firm-fixed price assumes that the  
14 Tribe prepares the draft and final report, and your  
15 proposal was, you know, 300 hours at Mr. Mentz's rate  
16 of 150 hours for preparation of that report, so it's  
17 about \$45,000 of the amount.

18 That's fine if the Tribe is still going to  
19 prepare the report. It looks like, from the most  
20 recent markup of the methodology, there's a  
21 contemplation that perhaps the Tribe hands that off to  
22 the NRC.

23 And Doug, you and I haven't discussed  
24 that, but there is a question then, you know, are we  
25 going to be paying for the preparation of the report



1 twice or should there be an adjustment if the Tribe  
2 doesn't prepare the report?

3 And we're fine with the Tribe preparing  
4 the report and therefore the original number, but if  
5 there's going to be a difference, then maybe we should  
6 just discuss it now.

7 MS. DIAZ TORO: Thank you.

8 (Simultaneous speaking.)

9 MR. LEWIS: Somebody is on mute, sorry.

10 MS. DIAZ TORO: No, no, no, I was on mute,  
11 and so I just got off of mute. David, thank you for  
12 sharing that. The survey still reflects those two  
13 alternatives to executing the methodology, the survey  
14 methodology.

15 And as we have previously discussed, that  
16 would be the Tribe conducting the survey on its own  
17 with assistance from the NRC contractor, Jerry  
18 Spangler facilitating and serving as a resource to the  
19 Tribe, or the Tribe, you know, selecting a contractor  
20 of its choosing.

21 And so, I think it would also be good to  
22 hear from Mr. Reid about that, about those two  
23 approaches, and, you know, consideration of those two  
24 approaches and hear the Tribe's views and Mr. Reid's  
25 views.

1 MR. LEWIS: Yeah, and again, the issue is  
2 not whether they use a contractor or not.

3 MS. DIAZ TORO: Right.

4 MR. LEWIS: You know, the proposal, the  
5 190 is for either of those eventualities. It's the  
6 question about, you know, is the Tribe going to  
7 prepare the report is a big -- well, almost a fourth  
8 of the lump sum amount is for preparation of that  
9 report. Andy, I'm interested in what your reaction  
10 is.

11 MR. REID: Yeah, that's fine. Just to put  
12 it in context, as you know, and I think I've said this  
13 at every meeting that we've had, the Tribe's position  
14 is that the land, the area where the activities are  
15 taking place is --

16 (Telephonic interference.)

17 MS. DIAZ TORO: Hey, Andy, I think we  
18 might have -- at least I don't listen from my --

19 MR. REID: -- and that it's their  
20 sovereign territory, and that we have not conceded  
21 that either, that the NRC or the United States has  
22 jurisdiction or even the authority to issue the  
23 license. So, under that, or with the activity --

24 And it's our position anyway that the  
25 activities violate international law and the human

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1 rights, collective human rights to self-determination  
2 and sovereignty, as well as the 1851 and 1868 Fort  
3 Laramie treaties.

4 (Telephonic interference.)

5 MS. DIAZ TORO: Hey, Andy, I'm going to --  
6 I'm not sure if you can hear me or not, but I might  
7 need to ask you to --

8 MR. REID: -- use every effort that it can  
9 --

10 MS. DIAZ TORO: Hey, Andy?

11 MR. REID: -- or take advantage of  
12 everything -- huh?

13 MS. DIAZ TORO: So, you kept going --

14 MR. REID: Am I cutting off?

15 MS. DIAZ TORO: Yes, you are, sir.

16 MR. REID: All right, I'm going to --

17 MS. DIAZ TORO: I apologize.

18 MR. REID: -- close my video. I'm going  
19 --

20 MS. DIAZ TORO: I apologize. Okay, sure.

21 MR. REID: -- to close my video and see if  
22 that helps, okay.

23 MS. DIAZ TORO: Maybe I'll stop mine as --

24 MR. REID: Maybe that will help.

25 MS. DIAZ TORO: Maybe I'll stop mine as

1 well and maybe that will help too.

2 MR. REID: Well, it's okay, and, right,  
3 I'll try to repeat quickly what I just said.

4 MS. DIAZ TORO: Yes, thank you.

5 MR. REID: And Tom and Harold, please jump  
6 in if you think that I need to -- if you need to add  
7 anything or correct anything I'm saying.

8 But we've always taken the position, the  
9 Oglala Sioux Tribe has always taken the position that  
10 the area of activity is within what are known as the  
11 unseated lands of the 1868 treaty, which is also  
12 covered by the 1851 treaty of Fort Laramie that  
13 secures this area or recognizes this area as part of  
14 the Oceti Sakowin Oyate, which is known as the Great  
15 Sioux Nation, and that both the original licensing and  
16 the current relicensing, as well as all of the  
17 activities that have occurred in that area, are in  
18 violation of those treaties and international law, the  
19 law of nations, international human rights law, and so  
20 forth. Those arguments have been made.

21 So, the Tribe does not concede any of  
22 that. Our participation in this process is really for  
23 the goal of trying to use everything we can to protect  
24 the interests of the cultural, spiritual, and  
25 historical interests of the Oglala Sioux Tribe, as

1 well as the Lakota people in this area given the  
2 situation we have of the U.S. government exercising  
3 authority under its plenary power over the area.

4 And so, with that in mind, we've been  
5 engaging in this process of developing the  
6 methodology, looking for a contractor that was  
7 acceptable to the Tribe to do the survey that would be  
8 respectful of the Lakota traditions and would be  
9 capable of gathering the information, particularly  
10 from the elders and the spiritual advisors, many of  
11 them Lakota speaking, that would have -- and also who  
12 are reluctant to provide information to non-Lakota, to  
13 be able to set up a methodology in which we could  
14 convey that information to the NRC and Crow Butte so  
15 that at least these important sites of great historic,  
16 spiritual, and cultural importance to the Lakota  
17 people would be protected.

18 So, that's the goal here, and we've been,  
19 as you know, we've been working with Tim Mentz and  
20 Makoche, which is his company, in terms of trying to  
21 set up and design the methodology.

22 I sent to all of you an email yesterday  
23 because late last week, Tim indicated that he would be  
24 unable to do the survey for us, so the Tribe has been  
25 trying to find another contractor.

1           It's our intent at this point -- and we  
2           think we've found one, and I think Tom Brings and  
3           Harold Salway can speak more to that, but it's both  
4           the timing, the schedule, the costs of the survey, and  
5           a lot of the methodology was designed from our  
6           standpoint through the advice we were receiving from  
7           Mr. Mentz.

8           I understand this position this puts Crow  
9           Butte and the NRC staff in now that we're changing the  
10          experts that are advising us on this process, but I  
11          said in my email yesterday and I'll relate that here  
12          again that we will use the utmost good faith in trying  
13          to comply or stick with the methodology that was  
14          worked out, as well as the schedule.

15          There may have to be some revisions to  
16          that based on the needs of the future contractor, but  
17          hopefully we'll be able to stick with that, as well as  
18          the amount, but we can't give final confirmation on  
19          all of that or get any of that really until we've been  
20          able to sit down with a contractor, but our initial,  
21          I think our initial responses from the contractor is  
22          that we'll be able to stick with the current  
23          methodology and amount. On Crow Butte's --

24               MS. DIAZ TORO: Hey, Andy?

25               MR. REID: -- question about the costs, we

1 understand that a large part of the cost involves the  
2 time spent by the contractor on the preparation of the  
3 report.

4 It's still our intent to have the  
5 contractor do that under or with the assistance and  
6 supervision of the Mr. Brings, and Mr. Salway, and  
7 others from the Tribe, as well as under the  
8 methodology that we have.

9 It will be shared with the NRC's expert,  
10 Mr. Spangler, and as well as, I would assume, Crow  
11 Butte, so that we have a transparent document,  
12 ultimate report that adequately or accurately reflects  
13 the interests of the Lakota people in the area.

14 And so, at this point, we are still trying  
15 to lean heavily on the contractor to do the leg work  
16 on this, including the preparation of the report.  
17 That said, we will try to get a contractor that will  
18 stay within the amount that Mr. Lewis and I worked out  
19 for the survey, but I can't get final confirmation on  
20 that until we have the contractor on board.

21 I don't know if Tom or Harold want to talk  
22 about their contractor that they've been discussing  
23 this with, the substitute contractor, or not, whether  
24 it's appropriate, but they're welcome to do so.

25 MR. BRINGS: I just got to state that

1 we've used this contractor before on a lot of the  
2 surveys that the Oglala Sioux Tribe has been using, so  
3 we have confidence in the new contractor. I'd just  
4 like to express that.

5 MS. DIAZ TORO: Thank you, Mr. Brings and  
6 Mr. Reid, and how long do you anticipate it will take  
7 to, I guess, finalize and let us know that the, you  
8 know, that the contractor, that you have brought in  
9 your contractor. Do you have a time frame or --

10 MR. REID: Tom, you'll have to answer  
11 that.

12 MR. BRINGS: Okay.

13 MR. SALWAY: This is Harold. What I  
14 wanted to express was we've been utilizing this  
15 contract for him on the Tribal side, and there are a  
16 few loose ends we'll have to tie up, but it's nothing  
17 major.

18 We can do that amongst us here and have a  
19 final recommendation once we go through the Tribal  
20 procedures, and everything should be in place on our  
21 end, and it shouldn't be too long from now.

22 MR. BRINGS: This is Tom Brings. I think  
23 we're going to be able to stay within the potential  
24 start dates, one of the three that you got picked out,  
25 so I think we're going to still be able to stay in the

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1 same time frame.

2 MS. DIAZ TORO: Thank you. So, you think  
3 you will be able to, I guess, finalize anything, you  
4 know, within the Tribe, follow the process and  
5 procedures, Tribal process and procedures so that we  
6 could start executing the survey either October 11,  
7 October 18, or October 25? Did I hear that correctly  
8 or am I missing something?

9 MR. BRINGS: Yes.

10 MS. DIAZ TORO: No? Okay, great.

11 MR. BRINGS: Yes, that was the --

12 MS. DIAZ TORO: Thank you, Mr. Brings.  
13 All right, I wasn't sure --

14 MR. REID: And this is --

15 MS. DIAZ TORO: Andy, yes?

16 MR. REID: This is Andrew Reid again. Tom  
17 and Harold, were you able to have any discussion on  
18 costs, as to whether or not the new contractor you're  
19 talking to believes that they would be able to stay  
20 under the, within or under the \$190,000 that Crow  
21 Butte is willing to pay for this survey?

22 MR. BRINGS: Yeah, from what I understand  
23 from when I introduced this to them, from what I  
24 understand, they'll be able to stay under the cap.

25 MR. REID: All right, then it sounds like,

1 Diana, it sounds like then we're pretty much good to  
2 go at this point, so, pending some final confirmation  
3 from the contractor.

4 MR. LEWIS: This is Dave Lewis. It sounds  
5 like if you have this new contractor on board, the  
6 concern I just raised will go away, so.

7 MS. DIAZ TORO: Okay, thanks, Dave. I was  
8 going to follow up with you to make sure, if you had  
9 any follow-up questions.

10 So, I think with respect to this topic,  
11 we'll await for Mr. Brings, and Mr. Salway, and Mr.  
12 Reid to respond back to the NRC staff and Crow Butte  
13 about the contractor specifically before, you know,  
14 the start of October, and then we'll go from there.

15 And with respect to those start dates,  
16 since we were talking about it, I'll jump a little bit  
17 to that topic, the potential start dates, and then  
18 I'll come back to the participants, but I think it  
19 just makes sense to talk about those three potential  
20 start dates that the NRC staff offer, October 11,  
21 October 18, and October 25.

22 And I wanted to understand from the Tribe  
23 and from Crow Butte if there are any preferences to  
24 any of those start dates or any, you know, any of the  
25 weeks that might not work specifically for logistics

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1 reasons or scheduling reasons?

2 MR. SALWAY: This is Harold. On the  
3 Tribal side, I think we should be good to go at  
4 whichever one would best fit everybody else's time  
5 frame. We just have a couple of minor things we have  
6 to take care of, but other than that, I think we're  
7 pretty flexible on the go timeline.

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

9 MR. BRINGS: We're going to have to  
10 coordinate with the contractor, and like I said, like  
11 we're going to have to coordinate with the contractor  
12 and see how that goes.

13 MS. DIAZ TORO: Thanks, Mr. Brings. I was  
14 going to ask that as well, and then I was going to  
15 kindly ask if you could also share with, you know,  
16 with this contractor that you're discussing these  
17 three potential start dates and see which one  
18 certainly works for you all, and then, you know,  
19 certainly you can get back to us in the near future,  
20 right, about that as well.

21 And then for Crow Butte, any of these  
22 dates that might not specifically work for you all,  
23 Doug?

24 MR. PAVLICK: I'm going to defer to Tate  
25 because I think they're all good from our standpoint.

1 I just want Tate to weigh in on that if you could,  
2 Tate.

3 MR. HAGMAN: I think anything will work  
4 during that time.

5 MS. DIAZ TORO: Okay.

6 MR. PAVLICK: And, Diana, our preference  
7 is sooner is better from a weather standpoint,  
8 although that's hard to predict, but the sooner we get  
9 started, the more likelihood that we won't get -- even  
10 if we get, you know, a day or two delay from weather,  
11 we still can get this in this fall.

12 MS. DIAZ TORO: And Doug, I think you  
13 stole my words because that's exactly what I was going  
14 to finish this topic with. You know, I think the  
15 earlier -- I agree with you. The earlier that we  
16 start, the more flexibility we will have when it comes  
17 to weather, right, in case anything happens from that  
18 standpoint, so I fully agree.

19 So, let me see, Andy, were you going to  
20 share anything else with respect to the potential  
21 start dates?

22 MR. REID: Yeah, and it's in regard to the  
23 methodology. I noticed that the final revisions, a  
24 lot of them change the flexibility of the document,  
25 changing words like should to shall, and would to

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1 will, and there are a lot of those changes that were  
2 put in the document, I guess, to firmly commit the  
3 parties to, particularly to the schedule in terms of  
4 getting things done and how they would be done. Lots  
5 of firm language was added in there. That's not what  
6 we requested, but it was put in the revisions.

7 I'm a little bit concerned about that and  
8 I expressed that to you in my email yesterday, to you  
9 and Crow Butte as well, that this is a little bit of  
10 a messy process because of the weather and the number  
11 of parties involved, because of the availability of  
12 the contractor's people, as well as the spiritual  
13 advisors and other people, the Lakota people that will  
14 be used from the Tribe.

15 The contractor that's under consideration  
16 will have to depend heavily on the Tribe furnishing  
17 members or persons from the Tribe that will facilitate  
18 their access to the historians and the spiritual  
19 advisors and so forth.

20 So, it will be a bit of a messy process,  
21 and I noted yesterday that I'm a little concerned  
22 about that the NRC staff or counsel may feel like it  
23 needs to be locked in stone.

24 We are committing, the Tribe is committing  
25 to get this done in good faith by the end date on this

1 and I think that's probably the most important thing,  
2 but having a document that's set out where it's so  
3 hard, I think, makes me pretty uncomfortable,  
4 particularly since it seems like every point of  
5 flexibility in the methodology that was in there  
6 before now has been taken out and made hard.

7 So, that's one concern, particularly with  
8 the change in the contractor as well, and we haven't  
9 even had a chance to sit down with the contractor yet  
10 because Tim only backed out last week, late last week.

11 I certainly haven't talked to the  
12 contractor and we haven't had a chance to sit down and  
13 find out whether or not there might be any things that  
14 need to be done to make this work that might conflict  
15 a little bit with the methodology.

16 I think the overall intent and so forth is  
17 there and we have no problems with that, and we'll  
18 certainly try to comply with that.

19 Another example that I'll give you is the  
20 part that talks about doing the interviews, the  
21 historic interviews, the cultural survey part on the  
22 reservation at the same time or within the same time  
23 block as the on-the-ground survey.

24 I think that's important. Whether or not  
25 it can actually be done or what's --

1 (Telephonic interference.)

2 MR. REID: -- survey, whether or not  
3 everything -- I think what's more important is to get  
4 these things done, not necessarily the sequence.

5 The interviews will be important, as I  
6 think Harold and Tom will tell you, in terms of  
7 identifying, and I think Tom's already mentioned this,  
8 in terms of identifying the specific sites, is you  
9 need the cultural and spiritual background when you go  
10 out, and historic background knowledge when you go out  
11 to that area to help locate these sites, but that  
12 doesn't prevent the, at least beginning the on-the-  
13 ground survey, archeological survey, or the Section  
14 106 survey of the area.

15 So, I can see going out there and then  
16 speaking to some of the advisors and historians, and  
17 then the contractor making the determination that they  
18 have to go back out and look back at a site that they  
19 may have looked at before in their 106 survey to  
20 determine whether or not there's evidence of  
21 ceremonial use or to determine the nature of the  
22 cultural, spiritual, and historic value.

23 And so, it's a messy process, and I know,  
24 again, I'm being long-winded, but I just want to make  
25 sure the record is clear that we believe there needs

1 to be at least some flexibility in how this is done  
2 and some flexibility on some of the interim dates  
3 while we try to stick with the end date as a hard  
4 date, so that's in terms of the delivery of the  
5 report.

6 That's all I have to say on that. Tom, I  
7 don't know if you and Harold have anything to say on  
8 that as well.

9 MR. SALWAY: Yeah, this is Harold. I  
10 think that's really a key point. If we're talking  
11 about weather conditions, and time and travel from  
12 some of the elders and spiritual people, or  
13 traditional representation from travel site, we're  
14 going to have to allow a little bit of flexibility in  
15 some of their capabilities.

16 Also, if we need to bring in certain  
17 alternates to fill in different activity and events,  
18 I think that's also important, but I think once we  
19 have everything in place, there shouldn't be too much  
20 allowance for any type of functions that may be  
21 nebulous, as far as the time goes anyway, but I think  
22 that's a good key.

23 We probably need a little flexibility  
24 throughout the process, but the timeline should be  
25 pretty consistent. I just wanted to throw that in.



1 MS. DIAZ TORO: Thank you, Harold. With  
2 respect to the schedule and the revisions in the  
3 survey methodology, we do recognize that there needs  
4 to be flexibility, certainly when it comes to weather,  
5 and Andy, we did talk about that during our meeting in  
6 August.

7 And with respect to the oral history  
8 interviews, Harold, I agree with you, and the field  
9 investigation approach and the oral history approach  
10 described in the survey methodology, you know, in our  
11 opinion, does account for the spiritual advisors  
12 certainly to be present and bringing the spiritual  
13 advisors.

14 That's why the survey methodology  
15 contemplates starting the oral history interviews at  
16 the same time as the field investigation interviews,  
17 and that the individuals that would be conducting the  
18 field investigation, the survey crew not only has the  
19 individuals that would be examining, but as important,  
20 the spiritual advisors that would be providing that  
21 critical input that you discussed, so.

22 MS. BAER: Diana, do you mind if I jump in  
23 real quick?

24 MS. DIAZ TORO: Sure, go ahead.

25 MS. BAER: So, in addition to the

1 flexibility that Diana mentioned with regard to, you  
2 know, weather not counting against the days allotted  
3 for the investigation period of the oral history  
4 interview period, some of those woulds and shoulds  
5 that you mentioned, Andy, were changed in this  
6 revision partially to reflect the change from a draft  
7 methodology to a final methodology.

8 Because as you mentioned, there are a  
9 number of parties involved in this proceeding, and so  
10 the methodology needs to be reasonable for all of  
11 those parties, and in order for everybody to have a  
12 little bit of a sense of predictability with regard to  
13 the schedule and the cost, we did change some of those  
14 shoulds and woulds to wills.

15 And so, I hope that addresses part of your  
16 questions about that, but it is to reflect feedback  
17 that we received from everybody and to have a little  
18 bit more predictability.

19 MS. DIAZ TORO: Thanks, Lorraine.

20 MR. REID: And I understand that, and  
21 actually I think every should and every must was  
22 changed to will and shall in the document, so it made  
23 it a very hard document, but I don't -- I just wanted  
24 to make sure it's on the record.

25 And I understand your explanation and I

1 just want -- and I do believe that if we run into some  
2 problems, that I expect the NRC staff and its counsel  
3 will work with us to try to do what's necessary.

4 As long as we're all operating in good  
5 faith, I expect the other parties will as well, and  
6 that if we need -- if we get into the middle of  
7 something and find out that we need to make some  
8 adjustments or revisions, as long as we can try to  
9 keep within the schedule, that the other parties will  
10 work with us.

11 I believe in the last call, I used the  
12 example what if they found a major site that needed  
13 some excavation or something like that or -- the other  
14 big problem we may have is that we would like to have  
15 some historic and spiritual advisors, and that's in  
16 the methodology, onsite with the surveyors,  
17 particularly if they're non-Lakota surveyors out there  
18 doing some of the leg work.

19 And many of them are elderly. A lot of  
20 them do not have the financial resources, which  
21 hopefully the Tribe will have to pay their way and  
22 expenses if they have to stay overnight, or for  
23 several nights, or for a week, that that's included in  
24 the amount that we figured for the survey.

25 So, hopefully we can get that worked out,

1 but it's dependent a lot on their availability and  
2 whether or not -- if you're talking about somebody  
3 that's in their 70s or 80s staying out there for a  
4 week and walking the ground, it can be very difficult,  
5 and so it depends a lot on that and that may require  
6 some flexibility, and that's all we're alerting you  
7 to.

8 And I do expect that if we have a  
9 reasonable justification for whatever adjustments or  
10 revisions that we want to the methodology, that you'll  
11 work with us as long as we can stick within the  
12 schedule. Thank you.

13 MS. DIAZ TORO: Thanks, Andy. So, we have  
14 about ten minutes left, and so we only have a couple  
15 more topics. It's really one topic and it's divided  
16 into two, but it won't take that long, and it's  
17 related to the site forms and to the oral interview  
18 guidance.

19 During the -- Andy, if you remember, and  
20 Tom, if you remember, during our August 25 meeting, we  
21 talked about it, and the NRC staff indicated, we  
22 indicated that we would be developing a site form to  
23 be used during the field investigation.

24 We also asked whether oral interview  
25 guidance, for example, in the form of questions, would

1 be helpful to the Tribe in conducting the interviews,  
2 and was responded with affirmation, and so we expect  
3 to provide those documents to you all for review and  
4 comment by next Wednesday, September 22.

5 So, I just wanted to let you all know  
6 about that. That's the next step for us certainly and  
7 I'm just giving you a heads up about it, and I think  
8 that we have covered probably all of our topics for  
9 today.

10 MR. REID: On that last one --

11 MS. DIAZ TORO: Yeah.

12 MR. REID: -- Diana --

13 MS. DIAZ TORO: Yeah.

14 MR. REID: -- on the cultural -- when I  
15 mentioned it would be helpful to have the NRC staff  
16 provide questions that they want answered, it doesn't  
17 have to be in great detail. I'm not saying or not  
18 proposing that the NRC staff give 100 questions that  
19 they wanted answered.

20 I think what we're more looking at is what  
21 specific information does the NRC staff believe that  
22 it needs in order to comply with the National Historic  
23 Preservation Act, and NEPA, and obligations, and the  
24 orders from the Commission and the Board, so that's  
25 all.

1           So, it would be, for example, you could  
2     have a list of topics that you want addressed or  
3     covered, the history of the area, knowledge of the  
4     spiritual practices, the cultural use of the area, for  
5     example, gathering herbs and things like that, the  
6     hunting, the history of the hunting and so forth, and  
7     use of the area for hunting and gathering.

8           And maybe -- obviously a topic would be  
9     the occupation of the area and use of the area by the  
10    Lakota people and others, you know, those kinds of  
11    things. So, you could do it by topic rather than just  
12    giving us a list of questions. I just want to make  
13    sure that the -- and I'm trying to be cooperative  
14    here.

15           We're just trying to make sure that you  
16    get what you need, that the NRC staff is able to make  
17    sure that the topics, the information that it feels  
18    like it needs to comply with the law is provided to  
19    it, and that we don't end up in a situation where the  
20    staff comes back and says well, we need this  
21    addressed, or we don't have this information, and  
22    therefore, we're not going to talk about it in the EA  
23    supplement, so that's my main concern on that. I  
24    don't know if that's clear or not, but I'm trying to  
25    be.

1 MS. DIAZ TORO: No, I think it helps a  
2 lot, Andy, and I think that we're, I'll use the same  
3 words, for us developing or offering to develop the  
4 site forms and provide guidance, it's in that same  
5 venue of cooperation with the Tribe and its guidance,  
6 right.

7 And we understand that you're talking with  
8 or discussing, in discussions with your contractor,  
9 and you might be not sure if you still want to use the  
10 site, you know, our site forms or if you're going to  
11 use the site forms that your own contractor would  
12 provide, so --

13 MR. REID: Well, one thing we can do on  
14 that is if our contractor has certain site forms, we  
15 can provide them to you and --

16 MS. DIAZ TORO: Right.

17 MR. REID: -- Mr. Spangler and your staff  
18 can determine whether or not those are sufficient for  
19 you, and if not, what additional information you need.

20 I realize there are different goals. The  
21 NRC staff has to comply with Tribal, environmental  
22 laws, and the Commission order. Crow Butte is trying  
23 to get this done as soon as possible, I understand  
24 that, so it can get on with the renewal and its  
25 business, and the Tribe, its interests is in

1 protecting these areas and protecting its interest in  
2 these areas.

3 So, we have differing goals, but hopefully  
4 we can address them all in this process so that it's  
5 a win-win for everybody.

6 MS. DIAZ TORO: Great, thanks, and there  
7 are different -- the parties do have different  
8 interests certainly. We've acknowledged that before.  
9 I think that we all are acting in good faith as you  
10 mentioned, Mr. Reid, and so as long as we can continue  
11 to cooperate and continue to, you know --

12 We all continue to act in good faith, and  
13 so, and cooperate, and I think that that's one of the  
14 great things that has worked for all of us as a group  
15 and why we are, you know, today where we are, right.  
16 We have made progress and we should continue to make  
17 progress as we move forward, so.

18 So, we can -- so, I mean, if you all, with  
19 respect to the site form, if you do, if the contractor  
20 does -- would -- if there is the opportunity for your  
21 contractor to provide us with a copy of the site form,  
22 that, I think that that would be, we can agree to  
23 that, absolutely. We can look at it.

24 I think that that's all that we had today.  
25 I do want to thank you for the time. I know that we



1 have some items that we need to follow up on with Mr.  
2 Brings, and Mr. Salway, and Mr. Reid, and so we can  
3 certainly do that separately.

4 We continue to move towards -- what I've  
5 heard from all parties is that we do continue to move  
6 forward towards starting the survey in October.

7 You know, we can follow up with you, Andy,  
8 and Tom, and Harold, afterwards about the contractor  
9 and the preferred start date for the contractor as  
10 well, and certainly last, but not least, the site  
11 forms, right.

12 And I think that's it from me. I'm not  
13 sure if my colleagues from NRC would like to bring up  
14 anything that I might have missed?

15 MS. TREFETHEN: This is Jean. I'm not  
16 aware of anything, Diana. Thank you.

17 MS. DIAZ TORO: Thank you.

18 MR. SPANGLER: This is Jerry. I have  
19 nothing to add.

20 MS. DIAZ TORO: Thanks, Jerry.

21 MS. BAER: And this is Lorraine. I don't  
22 have anything to add either.

23 MS. DIAZ TORO: Okay, from Crow Butte,  
24 Doug and Dave, anything last that you want to bring up  
25 or share?

1 MR. PAVLICK: Nothing from me, Diana.  
2 Dave?

3 MR. LEWIS: No, nothing here. Thank you.

4 MS. DIAZ TORO: Okay, thanks. Andy, Tom,  
5 and Harold, anything else?

6 MR. BRINGS: This is Tom Brings. I don't  
7 have anything.

8 MR. SALWAY: This is Harold. As I  
9 mentioned earlier, once we tie up a couple of things  
10 on our end, I think we should be okay.

11 MS. DIAZ TORO: Thank you, Harold.

12 MR. REID: And this is Andy. We'll get  
13 back to you on the contractor as soon as we have that  
14 nailed down.

15 MS. DIAZ TORO: Okay.

16 MR. REID: Thank you.

17 MS. DIAZ TORO: We'll await that from the  
18 Oglala Sioux Tribe, Andy. All right, so I think with  
19 that, it's noon, and so we can adjourn. Thank you for  
20 your time, for your cooperation, and hopefully the NRC  
21 staff will be in touch very soon with all of you.

22 (Whereupon, the above-entitled matter went  
23 off the record at 12:00 p.m.)

24

25