

# CONFIDENTIAL

## Memo

August 14, 2006

I was contacted by James Whitted of the Sisseton Tribal Historic Preservation Office at approximately 9:30 AM regarding the Keystone pipeline project. He was responding to the Consultation letter sent to Franky Jackson. He apologized for being late in his response. I briefly discussed our findings in South Dakota and said that to this point we had found two possible cairn sites and that our recommendation was for avoidance and not for subsurface testing. He appreciated that and was hoping to be able to get copies of our report and site forms. In addition they would like to be able to visit the sites prior to construction and possibly to monitor them during construction. I told him that I would forward his concerns and suggested that it would be possible to send a copy of the site forms and report. I also told him that at this point we were still in the process of writing the report and filling out site forms. He would appreciate getting updates on the pipeline progress from time to time.

James Whitted  
Tribal Historic Preservation Office  
Sisseton South Dakota  
P.O. Box 509  
57262-0509

Ed Stine

## Native American Consultation Process - Keystone

As soon as the archaeological subcontract is awarded:

1. The archaeological subcontractors will obtain the list of federally-recognized Native American tribes for each state crossed by the proposed pipeline corridor through the SHPOs and Native American Consultation Database maintained by the National Park Service. Note: There could be at least four subcontractors conducting Native American consultation and there could be overlaps between states (e.g., the same tribes could be on the lists for both North and South Dakota). ENSR will review the lists for each state to determine if there are any overlaps and assist the subcontractors in making sure that multiple letters do not go to the same tribe(s).
2. The archaeological subcontractors will prepare draft consultation letters and submit the letters to ENSR and TransCanada for review. ENSR and TransCanada will review the letter and submit any edits to the contractors. The letter will include the project description and project map, and will request any comments/concerns the tribes may have regarding the proposed project. A date as to when the tribes must respond to the consultation letter (typically 30 days from receipt of the letter) will be included as well. (The attached file contains an example consultation letter taken from the Rockies Express Pipeline Project.)
3. The letters will be sent out by the archaeological subcontractors via certified mail on the archaeological contractor's letterhead. Copies of the consultation letters on the archaeological subcontractor's letterhead will be sent to ENSR and TransCanada for inclusion in the project files.
4. Follow-up phone calls will be made by the archaeological subcontractors to those tribes that have not responded within 2 weeks of mailing out the letters.
5. All correspondence with the tribes (i.e., letters, phone calls) must be documented by the archaeological subcontractors in a spreadsheet for inclusion in the EA and project files.
6. In the past, most of the tribes have not responded to the letters; however, on occasion they have requested a copy of the survey report or compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) if human remains are found during the surveys or project construction. If the tribes request a copy of the survey report, the archaeological subcontractors will be responsible for sending the report to the appropriate tribal member(s). Compliance with NAGPRA will be accomplished through an Unanticipated Discoveries Plan that will be prepared by the archaeological subcontractors and submitted to and approved by the SHPOs. The plan will be included in the survey reports and Plan of Operations.
7. There is a possibility that the tribes may request a field visit or "face-to-face" meeting. If this were to happen, then the consultation process goes from "informal" to "formal government-to-government consultation," which would require a "government entity" (i.e., DOS) to meet with the tribe(s). We definitely need direction from the DOS on this issue: a) if someone at the DOS would be responsible for meeting with the tribe(s), then we need to document the name of that person; b) if no one at the DOS would be responsible, then the DOS needs to identify a government official (or someone else to act on their behalf) to take on the responsibility of government-to-government consultation.

## **Metcalf Archaeological Consultants, Inc.**

MEMO: ENSR International  
Keystone Pipeline  
TransCanada North Dakota

Submitted by: Ed Stine

Date: Friday, December 2, 2005

Met with Paul Picha and discussed possibilities/considerations for Trans Canada Pipeline Research Design/SOW North Dakota segment. NDSHPO concerns yet to be answered include, obviously, the alignment and how firm it will be when we get the maps; the diameter of the pipeline; and what other agencies might be involved. It appears that the PSC will be the lead agency with possible input from the CORP of Engineers, US Fish & Wildlife, Bureau of Rec., and possibly the US Forest Service (if for example the line crosses the Sheyenne Grasslands). With the caveat that NDSHPO will not dispute more stringent requirements that any of the agencies, particularly PSC, may require, and without any particular alignment available, they feel that all river crossings, the Pembina Gorge area (if crossed), beach ridge areas, and possibly any stretches of native prairie (where ox cart trails may remain) should have 100% pedestrian survey. They will want a Class I files search of a corridor 1 mile wide (½ mile on either side of pipeline), with results mapped, and would review the results, probably in conjunction with a PSC representative and a MAC representative. At that time we would work out final requirements.

Current feelings are that in addition to known sites and the aforementioned river crossings etc. a 20 to 25% sample should be covered with a pedestrian survey. It may be that the whole route should be covered with a Class II windshield survey as well. This would ensure that areas with native prairie and ox cart trail remnants would be covered. Aerial photos with the alignment plotted would be nice but are not essential. Corridor width for pedestrian survey is expected to be 200' to 300' where there are no existing parallel pipelines and 100' to 150' wide where existing line is paralleled.

Other general questions include 1) any plans that this will be part of an Energy Corridor; 2) expected depth of pipeline; 3) locations and size of compression stations, lay-down areas, storage yards, concrete coating yards 4) general route plans from Alberta? To Kansas, Missouri or where ever.

Once NDSHPO is formally contacted they will, if requested, contact PSC so that they are involved at the front end and will not have later concerns that could result in delays or additional unanticipated work. Contact letter should be addressed to Merlan Paaverud, Jr., State Historic Preservation Officer, with a CC to Susan Quinnelle, NDSHPO Review and Compliance Officer.

## **Metcalf Archaeological Consultants, Inc.**

MEMO:       ENSR International  
              Keystone Pipeline  
              TransCanada North Dakota

Submitted by: Ed Stine, Staff Archaeologist

Date:         January 17, 2006

Ed Stine met briefly with Paul Picha (NDSHPO Chief Archaeologist) and went over the TransCanada Keystone pipeline project routing. Based on the results of the files search and our general knowledge of areas with site potential we identified segments on the maps that we both felt ought to be covered by pedestrian inventory. The goal of the meeting was to ensure that sensitive segments of the route would be inventoried. Paul was very much in favor of the idea of having the route being covered by a qualified geomorphologist. This would provide for a less intensive inventory of the whole line by ensuring any sensitive areas are included and yet allow for areas with low potential to be dropped from further investigation. The main area of concern with regards to dropping segments from intensive inventory was that no railroads or NRHP eligible structures should go unrecorded. As long as the project topographic maps are closely examined we should be able to identify railroad lines along with existing structures ahead of time and go directly to those locations to record or update the site forms. Paul said it would be a good idea to meet with PSC officials and address any of their concerns while going over the final research design's project maps as early into the project schedule as possible. He also reminded me that if the line passes near any cemeteries, especially catholic cemeteries, an adequate buffer should be included to avoid any possible burials immediately adjacent to the grounds. Suicides and bodies otherwise unacceptable were sometimes interred near the cemetery but off the official grounds. All that being said the research design should be acceptable to NDSHPO.