



***SURFACE TRANSPORTATION BOARD***  
*Washington, DC 20423*

*Office of Environmental Analysis*

October 22, 2012

Dr. Mark Baumler  
 State Historic Preservation Officer  
 Montana Historical Society  
 225 North Roberts, P.O. Box 201201  
 Helena, MT 59620-1201

Attn: Stan Wilmoth

RE: Docket No. FD 30186, Tongue River Railroad Company, Inc.—Rail Construction and Operation—in Custer, Powder River and Rosebud Counties, Mont.

Dear Dr. Baumler:

The Surface Transportation Board (Board) is beginning the scoping process for an Environmental Impact Statement (EIS) evaluating a revised proposal by the Tongue River Railroad Company (TRRC) to build and operate a new rail line in Montana. We are interested in hearing from you and including your comments, ideas, and concerns on the Draft Scope of Study for the EIS, which is attached to this letter. Pursuant to the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA), the Montana Antiquities Act, and Montana Human Skeletal Remains and Burial Site Protection Act, OEA would like to initiate consultation with your office to determine if the proposed rail line has the potential to affect architectural, archeological, tribal or other historic properties.

In 1986, the Board's predecessor agency, the Interstate Commerce Commission (ICC), authorized TRRC to build and operate an 89-mile rail line from Miles City to Ashland, Montana, for the purpose of transporting coal from area coal mines to a rail line north of Miles City in a proceeding known as Tongue River I.<sup>1</sup> As you may know, following a remand from the Ninth Circuit on two different but related TRRC cases,<sup>2</sup> the Board issued a decision requiring TRRC to file a revised application describing changes to the proposal it had originally filed in Tongue River I.<sup>3</sup>

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<sup>1</sup> Tongue River R.R.—Rail Constr. and Operation—In Custer, Powder River and Rosebud Cntys., Mont. (Tongue River I), FD 30186 (ICC served Sept. 4, 1985), modified (ICC served May 9, 1986), pet. for judicial review dismissed, N. Plains Res. Council v. ICC, 817 F.2d 758 (9th Cir.), cert. denied, 484 U.S. 976 (1987).

<sup>2</sup> Tongue River R.R.—Rail Constr. and Operation—Ashland to Decker, Mont., 1 S.T.B. 809 (1996), pet. for reconsid. denied (STB served Dec. 31, 1996); Tongue River R.R.—Rail Constr. and Operation—Ashland to Decker, Mont., FD 30186 (Sub-No. 3) (STB served Oct. 9, 2007), pet. for reconsid. denied (STB served Mar. 13, 2008). The Ninth Circuit remanded these decisions, in part, for incomplete baseline data that formed the foundation of the EIS in Tongue River I.

<sup>3</sup> Tongue River R.R.—Rail Constr. & Operation—In Custer, Powder River & Rosebud Cntys., Mont., FD 30186 et al. (STB served June 18, 2012).

Specifically, the Board required TRRC to “present fully TRRC’s current proposal to build the rail line between Miles City and Ashland.” The Board also required TRRC to provide “current information regarding TRRC’s ownership; the planned terminus points for the proposed line; the purpose of the proposed rail line; the demand and need for its construction; and TRRC’s financial fitness to proceed.” The Board also stated that it will prepare a **new EIS**—not a supplement to the EIS prepared in Tongue River I by the ICC.<sup>4</sup>

The Board received an application from TRRC on October 16, 2012 for the construction and operation of an approximately 80-mile rail line from Miles City, Montana, to two ending points, one near the site of the previously planned Montco mine near Ashland, Montana, and another at the proposed Otter Creek mine east of Ashland, Montana. OEA issued a Notice of Intent (NOI) to prepare an EIS for the project, a Draft Scope of Study, and a notice of scoping meetings.<sup>5</sup> We would appreciate your comments on the Draft Scope of Study and potential alternatives to TRRC’s proposed alignment, including at a minimum, those analyzed in the EIS in Tongue River I (see attached map) by the close of the scoping comment period on **December 6, 2012**.

The proposed rail line would extend approximately 80 miles, depending on the route selected, from Miles City, Montana, to two ending points near Ashland, Montana (see attached map). Other major elements of the proposed project would include a 200-foot-wide right-of-way; crossings of local roads, streams, trails, and utility corridors; two passing sidings one near Milepost 27 and the other near Milepost 46; and ancillary facilities. The anticipated train traffic between Miles City and Ashland on the proposed rail line would consist of 26 round trips per week, or 3.7 loaded unit coal trains daily on average, with 7.4 trains per day total (empty and loaded). The EIS will analyze and compare the potential impacts of (1) construction and operation of the proposed rail line, (2) all reasonable and feasible alternative routes, and (3) the no-action alternative (denial of the application).

As part of the NEPA and Section 106 processes, OEA is requesting your initial comments regarding the potential for the rail line to affect historical, architectural, archeological, tribal or other historic properties that may be in the project area.

### **Initiation of Section 106 Consultation**

OEA much appreciates your involvement in the Section 106 consultations for the earlier proposed alignments of Tongue River I, II, and III, and would now like to initiate consultation with you for the new undertaking as currently proposed by TRRC to the Board. OEA also appreciates the attendance of Stan Wilmoth of your staff at our meeting held on January 25-26, 2012, with tribes and other consulting parties to discuss the alignment under consideration at that time. OEA will be re-visiting the definition and documentation of the Area of Potential Effects (APE) and the methodology for the identification of historic properties and traditional cultural properties that was developed in the now expired Programmatic Agreement and will send information on those topics under separate cover for your review and comment. Also, under separate cover, we will provide for your review and comment, a list of Section 106 consulting

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<sup>4</sup> Id. at 8.

<sup>5</sup> The Forsyth meeting location has been updated since publication of the Notice of Intent in the Federal Register. The new location is the Haugo Center at Riverview Villa, Rosebud Street, Exit 95, Forsyth, MT 59327.

parties currently under consideration by OEA. We welcome any suggestions you may have regarding consulting parties that you think should be added to our list.

Additional information on this project is available on the Board's website at [http://www.stb.dot.gov/stb/environment/key\\_cases.html](http://www.stb.dot.gov/stb/environment/key_cases.html), and on the project website at [tonguerivereis.com](http://tonguerivereis.com). If you have any questions or would like to discuss the proposal in more detail, please contact Ken Blodgett at 202-245-0305 ([blodgett@stb.dot.gov](mailto:blodgett@stb.dot.gov)) who is the environmental manager for this project. You can also contact Alan Summerville with ICF International (our third party contractor), at 703-934-3616 ([Alan.Summerville@icfi.com](mailto:Alan.Summerville@icfi.com)). As before, Catherine Glidden of my staff will be working on the historic preservation and tribal portions of the project. She can be contacted at 202-245-0293 ([gliddenc@stb.dot.gov](mailto:gliddenc@stb.dot.gov)).

We look forward to consulting with you and your office on this project.

Very truly yours,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large initial "V" and "R".

Victoria Rutson  
Director  
Office of Environmental Analysis

Attachments