



EI-18494  
KB

March 16, 2011

Kenneth Blodgett  
Surface Transportation Board  
Office of Environmental Analysis  
395 E Street SW  
Washington DC 20423

Dear Mr. Blodgett,

Thank you for the opportunity to comment on the Programmatic Agreement (PA) for the Final Supplemental Environmental Impact Statement (FSEIS) for Construction and Operation - Western Alignment Tongue River III – Rosebud and Big Horn Counties, Montana, Docket No. FD 30186 (sub-no.3)

Northern Plains Resource Council (Northern Plains) has numerous concerns with the FSEIS and is currently challenging its validity in court. Therefore, it should be clear that we do not support the FSEIS as it is currently written and believe that it is invalid. Also, we believe that the whole Programmatic Agreement process is illegal and should be discontinued until the court case has been resolved. Despite this, we intend to remain active in any and all public comment processes in order to ensure that the Tongue River Valley is protected. Thus, we are providing comments on this revised PA.

Northern Plains is a grassroots, non-profit conservation and family agriculture group that organizes Montana citizens to protect our water quality, family farms and ranches, and our unique quality of life. We have many members who live in the Tongue River Valley where the proposed Tongue River Railroad (TRR) would be located – if ever built. Our members' livelihoods depend entirely on clean air and water and lands that remain intact with respect to native soils and vegetation. The proposed TRR would bisect this important area, disrupting an agricultural valley that has existed sustainably for over 100 years. With the leasing of the Otter Creek coal tracts, the railroad is a more likely possibility, so it is even more important that adequate baseline environmental information is gathered before any damage occurs to the valley.

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Billings, MT 59101

### Lack of Cumulative and Baseline Analysis

Throughout the entire process of permitting and analyzing the TRR, there has never been a complete look at the cumulative effects of the *entire* proposed Tongue River Railroad. The railroad has been permitted in various different segments or “alignments.” However, without a complete look at the entire proposed route of the railroad it is impossible to know whether mitigation measures, such as those proposed in the PA, are holistic and adequate ways to protect the cultural resources of the valley.

Northern Plains has been actively participating in the TRR process since the late 1970s and, during this entire time, an analysis of the costs of the entire project to the landscape and existing uses of the Tongue River Valley has never been done. For more information on our comments on the lack of cumulative effects data, please see our comments on the FSEIS for the Construction and Operation - Western Alignment Tongue River III – Rosebud and Big Horn Counties, Montana (Attachment 1).

As mentioned in these original comments from Northern Plains, the FSEIS consistently does not gather baseline data and base a decision on the construction of the railroad from that data as required by the National Environmental Policy Act (NEPA). Instead, the document repeatedly provides promises of mitigation measures in the future when the railroad is constructed. This PA, unfortunately, also falls into this promise, and trap.

### Scope of the PA

Upon reading the FSEIS that was completed in 2006, it is clear that the PA is used as a baseline gathering tool and mitigation measure after the permitting of the railroad. The already conducted Class 1 survey is the only baseline data that the TRR Co. includes, and this survey was conducted without consultation with the affected people in the area including the tribes and the long-time ranchers and farmers.

Indeed, it is not even certain from the FSEIS analysis what route the TRR will cross. On page 2-21 of Volume 1 of the FSEIS, the EIS mentions “For Tongue River III, SEA [Section of Environmental Analysis] developed a new PA under Section 800.14 of the Section 106 Regulations (36 CFR 800) of the NHPA [National Historic Preservation Act], which would apply to construction and operation of the entire rail line from Miles City to Decker via **either** the proposed Western Alignment **or** the approved Four Mile Creek Alternative” (emphasis added). The route for the railroad remains uncertain to this day.

Additionally, the data and modeling used in much of the process is old and extremely dated. In the 2006 FSEIS much of the cultural data collected or proposed for collection is based on the estimations from the TRR I and TRR II environmental analyses. The data from those documents is, at this point, between 20 to 30 years old. As a result of this dated information, the FSEIS, and this PA, do not take into account any newly designated historical properties.

At least one area along the proposed TRR route is on the National Historic Register and was listed in 2004. This site is the Bones Brothers Ranch, and the effects of development on this site are not mentioned in the PA. Additionally, the Wolf Mountain Battlefield was listed on the National Historic Register in 2001 and the discussion in the PA does not adequately cover this significant area.

In addition, there is significant cultural data that is missing in the approved FSEIS. In the Draft SEIS, the Class 1 survey that was included is not mentioned in the FSEIS.

#### *Specific Concerns about the PA*

In terms of the specific PA, there are a number of areas that concern us. The Class I survey that was conducted before the Draft SEIS is questionable in its accuracy. It does not appear that an on-the-ground survey and consultation was conducted with the tribes in the area nor with the ranching families in the area. The PA leaves all of these steps for implementation before construction. In addition, the revised PA states that the Class I inventory will be conducted with a 1,500 foot buffer on either side. If the route is not yet finalized as mentioned above, how can a survey be done on the proposed route?

Furthermore, it should be noted that the Class I inventory and windshield survey that is proposed in the revised PA in the FSEIS is a very inadequate way to measure any baseline cultural data or even gauge where these site may be located. Specifically, the TRR is proposed for the opposite side of the river from most of the roads in the area, so very little information will be obtained in a windshield survey. Access to private property and roads is absolutely necessary to get a complete view of the cultural resources of the area.

The Class III Inventory seeks to pick up where the Class I Inventory leaves off, but as stated on page A-3 the TRRC, Inc is allowed to inventory a "portion of the alignment, such that once TRRC, Inc. has access to a portion of the alignment TRRC, Inc., may direct the Cultural Resource Use Permittee to perform a Class III Inventory for that portion." This allowance will result in a piecemeal survey of the area. It is critical that the valley as a whole is considered.

Finally, consultation with the ranchers and farmers in the area as well as the Tribes is essential for an accurate analysis of the cultural resources. There is decent system set up for consultation with the Tribes in the revised PA (although the original proposal was never signed by the Tribes) but there are no specifics on consulting with the area ranchers on homesteads and other such sites.

#### *Public Participation and Notice*

Overall, it should be clear that the Tongue River Railroad Company and the cooperating state agencies need to do a thorough environmental analysis as required by law instead of relying on mitigation measures such as the Programmatic Agreement to patch up the holes in this proposed project. NEPA was designed as a "look before you leap" statute

and the process of permitting the railroad and addressing cultural resources has been inadequately addressed throughout the entire process.

Thank you for the opportunity to comment and if you have any questions please feel free to contact Northern Plains at 406-248-1154.

Sincerely,

A handwritten signature in cursive script that reads "Jeanie Alderson". The signature is written in black ink and is positioned above the typed name.

Jeanie Alderson  
Chair of the Tongue River Railroad Task Force  
Northern Plains Resource Council



Re: Tongue River Railroad PA Comments  
Becca Fischer  
to:  
Kenneth.Blodgett  
03/16/2011 02:39 PM  
Show Details

EI - 18494  
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2 Attachments



FNLNPCComments-PA\_3.16.11.pdf Final Comments SDEIS December 6 2004.pdf

Mr. Blodgett,

Attached are Northern Plains Resource Council's comments on the Programmatic Agreement and our comments on the SDEIS as referenced in the PA comments. Please contact me if you have any questions.

Thank you for the opportunity to comment.

Sincerely,

**Rebecca Fischer**  
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Northern Plains is a grassroots conservation and family agriculture group. We organize Montana citizens to protect our water quality, family farms and ranches, and unique quality of life. **If you aren't already a member, you should join!**

On Mon, Mar 14, 2011 at 12:52 PM, <[Kenneth.Blodgett@stb.dot.gov](mailto:Kenneth.Blodgett@stb.dot.gov)> wrote:

Tongue River Railroad Consulting Parties:

Attached are the only two comments which I have received to date during the PA update / revision comment period. Comments were requested to be submitted not later than March 18. Comments are posted on the Board's website (Environmental Correspondence Tracking System). If you have already submitted comments which I have not yet received, please let me know (202-245-0305).

Thanks for your input.

(See attached file: MT SHPO EI-18491.pdf)

(See attached file: EI-18493 Jenks.pdf)