

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 30186 (Sub-No. 3)¹

TONGUE RIVER RAILROAD COMPANY, INC.—CONSTRUCTION
AND OPERATION—WESTERN ALIGNMENT

Decided: December 7, 2007

In a decision served on October 9, 2007 (Tongue River III), the Board granted the application of Tongue River Railroad Company, Inc. (TRRC) to construct and operate a 17.3-mile rail line known as the Western Alignment. TRRC wishes to use this line in lieu of the southernmost section of a 41-mile line between Ashland and Decker, MT, known as the Four Mile Creek Alternative,² that was authorized in Tongue River II,³ which is an extension of an 89-mile line from Miles City to Ashland, MT, authorized in Tongue River I.⁴ The decision also revised and supplemented the conditions previously imposed on the prior approval of the construction and operation of the Tongue River I and Tongue River II lines to further minimize the environmental impacts of those projects. The Board provided that the decision would become effective on November 8, 2007.

¹ This decision also embraces Finance Docket No. 30186, Tongue River R.R.—Rail Construction and Operation—In Custer, Powder River and Rosebud Counties, MT, and Finance Docket No. 30186 (Sub-No. 2), Tongue River Railroad Company—Rail Construction and Operation—Ashland to Decker, Montana.

² The remaining portion of that line approved for construction will not be affected by this realignment.

³ Tongue River RR Co.—Const. and Oper.—Ashland-Decker, MT, 1 S.T.B. 809 (1996). An appeal of this decision, docketed Northern Plains Resource Council Inc. et al. v. STB, No. 97-70073 et al. (9th Cir. filed Jan. 7, 1997), has been held in abeyance pending the Board's October 9 decision in Tongue River III.

⁴ Tongue River R.R.—Construction and Operation—In Custer, Powder River and Rosebud Counties, MT, Finance Docket No. 30186 (ICC served Sept. 4, 1985), modified (ICC served May 9, 1986), pet. for judicial review dismissed, Northern Plains Resource Council v. ICC, 817 F.2d 758 (9th Cir.), cert. denied, 484 U.S. 976 (1987).

A number of parties⁵ filed petitions asking the Board to stay the effective date of the October 9 decision. The Board denied these requests in a decision served on November 7, 2007, and the October 9 decision became effective as scheduled.

Some of the same parties have now filed petitions for reconsideration of the October 9 decision. In particular, Brown Cattle and Montana State Senator Wanzenried filed separate petitions on November 19, 2007, PRBC filed a petition on November 23, 2007, Alice Orr and Diamond Ranch filed separate petitions on November 26, 2007, and APF filed a petition on November 27, 2007.⁶

On November 30, 2007, TRRC filed a request asking that the Board extend the due date for its reply to the petitions. TRRC asks that the Board allow it to file a consolidated reply on December 17, 2007. TRRC asserts that the extension will allow it to respond to the issues raised by the various parties concerning both the merits of the Board's decision and the scope of the environmental review undertaken in this proceeding.

TRRC's request is reasonable and will be granted. A consolidated reply will simplify the proceeding. Accordingly, TRRC's reply to the petitions for reconsideration is due on or before December 17, 2007.

It is ordered:

1. TRRC's extension request is granted, and its reply is due on or before December 17, 2007.

⁵ On October 19, 2007, petitions for stay were filed by the following persons and entities: Alice Orr; American Prairie Foundation (APF); Brown Cattle Company (Brown Cattle); Caribou Land & Livestock Co.; Diamond Cross Ranch LLC (Diamond Ranch); FL Ranch; Montana State Senator David Wanzenried; Jerry Lunde; Musgrave Ranch; Powder River Basin Resource Council (PRBC); S&P Land Co.; Trout Unlimited; and V-C Cattle Company.

On October 29, 2007, an additional stay petition was filed jointly by: Northern Plains Resource Council, Native Action, Inc., Northern Cheyenne Tribe; City of Forsyth; and United Transportation Union-General Committee of Adjustment and United Transportation Union-Montana State Legislative Board. Subsequently, the Northern Cheyenne Tribe withdrew its name from the stay petition.

⁶ On December 3, 2007, Brown Cattle and Montana State Senator Wanzenried jointly filed a petition asking that the Board treat their petitions for reconsideration as filed timely on October 29, 2007, or that the Board extend the period for filing petitions for reconsideration and treat their petitions as filed timely on November 19, 2007. Their petition will be addressed by the Board in a subsequent decision.

2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary