

SERVICE DATE - March 26, 2003

SURFACE TRANSPORTATION BOARD

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

Tongue River Railroad Co.– Construction and Operation – Western Alignment

AGENCY: Surface Transportation Board

ACTION: Amended Notice of Intent to Prepare a Supplement to the Final Environmental Impact Statement and Request for Comments on the Adequacy of the Final Scope of the Supplement Dated February 3, 1999.

SUMMARY: On March 11, 2003, the Surface Transportation Board (Board) issued a decision giving notice that it would allow the Tongue River Railroad Company (TRRC) to supplement the application it filed on April 27, 1998 (“Tongue River III”), pursuant to 49 U.S.C. 10901, to construct and operate a 17.3-mile line of railroad known as the “Western Alignment” in Rosebud and Big Horn Counties, Montana, to be built from Decker, Montana to a point 17.3 miles north of Decker. The Western Alignment is an alternative routing for a portion of the 41-mile Ashland to Decker, Montana rail line approved for construction on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), and referred to as “Tongue River II.” The Tongue River III proceeding had been held in abeyance at the applicant’s request since March 2, 2000, but it is again active. Accordingly, the purpose of this notice is to announce that the environmental review of Tongue River III will also resume, and to request comments from the public on its final scope, which was published on February 3, 1999, and on whether there is new environmental information that warrants inclusion in the Supplemental Environmental Impact Statement (SEIS) that will be prepared.

In 1996, in Tongue River II, the Board approved TRRC’s application to build a 41-mile line of railroad between Ashland and Decker, MT.¹ The line would connect with an 89-mile railroad line between Miles City and two termini located near Ashland that TRRC was previously authorized to

¹ That decision is currently on appeal before the U.S. Court of Appeals for the 9th Circuit, with judicial review held in abeyance pending resolution of the instant Tongue River III application. See Northern Plains Resource Council, Inc., et al. v. Surface Transportation Board, No. 97-70037 (9th Cir. Filed Jan. 7, 1997).

construct, but has not yet built.² Together, this 130-mile line would provide a new, shorter route than is currently available to transport coal from the Montana Powder River Basin to eastern destinations.

In the Tongue River II proceeding, the Board, following issuance of a Final Environmental Impact Statement addressing environmental concerns that had been raised, approved construction and operation of a routing for the southernmost portion of the Ashland to Decker line – the Four Mile Creek Alternative.³ Tongue River III involves a 17.3-mile alternate routing, called the Western Alignment, to the Four Mile Creek Alternative approved in Tongue River II.

On July 10, 1998, the Board's Section of Environmental Analysis (SEA) issued a notice of intent to prepare a SEIS to address the proposed new routing. A final scoping notice, published in the Federal Register on February 3, 1999 (copy attached), specified that the SEIS would evaluate the Western Alignment in full, as well as refinements to alignments previously considered in Tongue River I and Tongue River II, where significantly changed circumstances suggested that previous work was no longer adequate. On March 2, 2000, before SEA completed its Draft SEIS, TRRC requested that SEA suspend its environmental work. Almost three years later, on December 19, 2002, TRRC advised SEA that it was now in a position to move forward and asked SEA to resume its environmental review of the application.

On January 17, 2003, TRRC filed a request with the Board seeking to update its previously submitted evidence on the transportation merits. TRRC stressed that its updated information would be minimal, and it identified five general areas to be addressed.⁴ On March 11, 2003, the Board served its

² Tongue River Railroad Company - Rail Construction and Operation - in Custer, Powder River, and Rosebud Counties, Montana, Finance Docket No. 30186 (Sub-No. 1) (STB served May 9, 1986) (Tongue River I).

³ The authority was subject to extensive environmental conditions.

⁴ TRRC stated that it intends to update the record in the following five areas: (1) transfer of the Otter Creek Tracts 1, 2, and 3 to the State of Montana; (2) tonnage forecasts, financial forecasts, and estimated construction costs; (3) TRRC's business structure, proposed financial structure, and plan for raising the funds required for construction; (4) supporting statements from Montana officials; and (5) the effects, if any, of the Board's recent approval of the Dakota, Minnesota, and Eastern Railroad's proposed construction of a rail line to serve the southern Powder River Basin in Wyoming. See Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, STB Finance Docket No. 33407 (STB served Jan. 30, 2002), appeal filed, Mid States Coalition for Progress, et al., v. Surface Transportation Board, No. 02-1359 et al. (8th Cir. filed Feb. 7, 2002). In addition, the Board has indicated that it expects TRRC to provide further insight into its relationship, if any, with The Burlington Northern and Santa Fe Railway Company, with which the proposed line connects.

decision allowing TRRC to file its supplemental evidence on the transportation merits. The Board will establish a procedural schedule for replies after TRRC has filed its evidence and the agency has had an opportunity to review it.

SEA is now resuming its environmental review of the application. SEA intends to use the final scope issued in February, 1999, because, based on currently available information, it appears to thoroughly cover environmental issues requiring analysis in the SEIS. However, because of the three-year lapse in action on the Tongue River III application, it may be appropriate to update portions of the final scope, or the environmental record that serves as the basis of the SEIS to reflect new environmental circumstances that may differ significantly from when the final scoping notice was published in 1999. SEA is aware of issues related to coal bed methane development in the region, changes in listed Endangered and Threatened species, and that there may be U.S. Army Corps of Engineers jurisdictional changes as a result of the SWANCC case (Solid Waste Agency of Northern Cook County v. Corps of Engineers, 531 U.S. 159, 51 ERC 1833 (2001)). In addition, information that TRRC will provide on the transportation issues in response to the Board's decision of March 11, 2003, may require modifications to the final scoping notice for Tongue River III published on February 3, 1999.

Therefore, SEA requests comments from all interested parties on whether and how the final scope of environmental issues associated with the Western Alignment, as published in the February 1999 final scoping notice, may now require modification. In addition, we invite interested parties to provide us with information, including specific examples, on any significant changes in land use, topography, wetlands or water resources, endangered species, or cultural resources that warrant inclusion in the final scope and consideration in the SEIS. If significant changes have occurred that could affect the final scope as published in February 1999, we should be informed of these changes now so that we can consider such evidence in determining what, if any, changes to the final scope of the SEIS should be made.

All comments should provide specific evidence to support the claims that are made. We want to know with specificity why commenters believe that environmental circumstances have changed significantly, warranting changes to the final scope and further analysis in the SEIS.

SEA will also consult affected Federal, state, and local agencies on any appropriate changes to the final scope of the SEIS. After considering comments filed in response to this Notice, and evaluating whether new information filed on the transportation issues will affect the final scope of the environmental study and all other available information, SEA will publish an amended final scope in the Federal Register. SEA will then prepare a draft SEIS including preliminary mitigation recommendations that will be available for a 45-day comment period. Based on comments on the draft SEIS, and any further analysis, SEA will prepare a final SEIS, which will include appropriate environmental mitigation recommendations. The Board will consider the draft and final SEIS, and any comments or other available environmental information, in deciding whether to grant TRRC's application. In its decision,

the Board will consider both environmental and transportation-related issues and will impose any environmental conditions it considers appropriate.

DATES: Written comments on the adequacy of the final scope of potential environmental issues dated February 3, 1999, are due 45 days from this Notice, on May 12, 2003. TRRC may reply within 15 days thereafter.

ADDRESS: Send an original and 10 copies of comments referring to STB Finance Docket No. 30186 (Sub-No. 3) to: Surface Transportation Board, Case Control Unit, Washington, DC 20423-0001, Attention: Kenneth Blodgett, Section of Environmental Analysis.

FOR FURTHER INFORMATION CONTACT: Kenneth Blodgett, (202) 565-1554. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary