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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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April 05, 2016  
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Public Record

**STB FINANCE DOCKET NO. 30186**

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**TONGUE RIVER RAILROAD COMPANY, INC. – RAIL CONSTRUCTION  
AND OPERATION – IN CUSTER, POWDER RIVER  
AND ROSEBUD COUNTIES, MT**

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**REPLY OF TONGUE RIVER RAILROAD COMPANY, INC. TO RESPONSE OF  
NORTHERN PLAINS RESOURCE COUNCIL TO SUPPLEMENT TO PETITION OF  
TONGUE RIVER RAILROAD COMPANY, INC.  
TO HOLD PROCEEDING IN ABEYANCE**

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Applicant Tongue River Railroad Company, Inc. (“TRRC”) hereby replies to Northern Plains Resource Council and Rocker Six Cattle Company (jointly, “NPRC”), which in their March 15, 2016 Response (“Response”) have once again asked the Board to terminate this proceeding with prejudice rather than hold it in abeyance.<sup>1</sup> Using words such as “flimflam scheme,” “disingenuous” and “delusional,” NPRC argues in its Response that TRRC should no longer be permitted to pursue its rail construction application. Response at 1, 3. It bases its position on the proposition that Arch has “abandoned” its effort to permit the Otter Creek mine and that the effort to do so is “dead for the foreseeable future.” Response at 1.

However, NPRC’s contentions notwithstanding, the Otter Creek mine and TRRC rail projects have not been abandoned and Arch has merely suspended its permitting efforts for a variety of reasons. Arch still holds a valuable lease from the State of Montana for the Otter

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<sup>1</sup> NPRC has previously filed a December 11, 2015 Motion to Dismiss TRRC’s Application in response to TRRC’s pending November 25, 2015 Petition to Hold this Proceeding in Abeyance. NPRC’s Motion, to which TRRC previously replied in opposition, seeks dismissal of this proceeding with prejudice.

Creek tracts, for which it paid millions of dollars. While Arch has suspended for the time being its efforts to obtain a permit for the project from Montana DEQ, an economic case for mining at Otter Creek, as reflected in no uncertain terms in the extensive record of this proceeding and in the April 2015 Draft EIS issued in this proceeding, remains viable over the medium and long term. Thus, it would be inconsistent with the record in this case to conclude that the Otter Creek tracts will never be mined and that the Tongue River Railroad will never be needed – and neither Arch nor TRRC have reached any such conclusions.

The decision of when to proceed with the Otter Creek Mine and Tongue River Railroad projects will and should ultimately be left for the proponents acting in response to the energy market. By holding this proceeding in abeyance, the Board will allow time for the proponents to gauge market developments and make decisions on when and how best to proceed. Further, as the Board knows, energy markets can change quickly, and what is now a weak market for coal can become a stronger one over time, particularly to the extent that natural gas prices rise. Moreover, Arch remains actively engaged in the coal mining business despite its ongoing Chapter 11 reorganization.

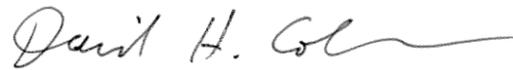
What NPRC seeks is for the Board, rather than the proponents, to become the arbiter of whether the proponents should be allowed to proceed with their projects by dismissing the TRRC proceeding, and doing so with prejudice. The Board should decline this invitation. Holding the proceeding in abeyance would respect the role of the proponents to determine the timing of their own mine and rail projects, while reserving to the Board the opportunity to issue a ruling on TRRC's application. Further, placing this case in abeyance pending resumption of the mine permitting process will not unreasonably prejudice any party, including area landowners. The uncertainty about property impacts, about which NPRC complains on behalf of certain area

landowners, could only be entirely eliminated if the Board were to prohibit any railroad from ever being built in the Tongue River area, something it clearly has no authority to do. On the other hand, what landowners can be certain about is that were a railroad to be built with Board approval, it will be subject to significant voluntary and other mitigation measures of the type identified in the Draft EIS.

### **CONCLUSION**

TRRC therefore urges the Board to hold this proceeding in abeyance pending a decision by Arch to reinstate its effort to procure an Otter Creek mine permit. Upon reinstatement of that effort, TRRC will inform the Board and the parties to this proceeding that the mine permit application process has been reinstated and of its views regarding the timing of the reinstitution of this rail construction proceeding.

Respectfully submitted,



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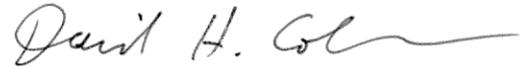
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April 5, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of April 2016, I have caused a copy of the foregoing Reply of Petition of Tongue River Railroad Company, Inc. to be served by first-class mail, postage prepaid, on each of the parties of record in STB Finance Docket No. 30186.



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David H. Coburn