



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

October 22, 2012

Mark Wilson
 Field Supervisor
 MT USFWS Ecological Services Field Office
 585 Shepard Way, Suite 1
 Helena, MT 59601

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

Dear Mr. Wilson:

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 Section 7(a)(2) of the Endangered Species Act, OEA is requesting a list of federally-listed species that could be found in the area of the proposed rail line.

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.¹ As you may know, following a remand from the Ninth Circuit on two different but related TRRC cases,² 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.³

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

¹ 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).

² 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.

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

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.⁴

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).

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.⁵ 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**.

Pursuant to Section 7(a)(2) of the Endangered Species Act (ESA) and in accordance with the Board's environmental policies and procedures, OEA is requesting information regarding the presence of federally-listed threatened and endangered species and designated critical habitat in the project area. OEA's review of the latest USFWS species list indicates that four federally-endangered species and two candidate species are found in the three counties where the rail line is proposed (see following Table).

Species	Federal Status	Montana County
Pallid Sturgeon	Endangered	Custer, Rosebud
Interior Least Tern	Endangered	Custer, Rosebud
Black-Footed Ferret	Endangered	Custer, Rosebud, Powder River
Whooping Crane	Endangered	Custer
Greater Sage Grouse	Candidate	Custer, Rosebud, Powder River
Sprague's Pipit	Candidate	Custer, Rosebud, Powder River
Source: http://www.fws.gov/montanafieldoffice/Endangered_Species/Listed_Species/countylist.pdf		

We request your concurrence or a revised species list within 30 days of your receipt of this letter, and are requesting any comments that you may have on the proposed action's potential effects on federally-listed species. If we have not received a response within that time, we will assume that you concur with the list we have provided and will proceed accordingly with our

⁴ Id. at 8.

⁵ 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.

assessment of federally-listed species as required under Section 7(a)(2) of the ESA. Once the full extent of potential impacts to federally-listed species is determined, we will make a determination of effect regarding potential impacts of the proposed action.

OEA also requests comments you may have on species or resources protected by the Bald and Golden Eagle Protection Act, Migratory Bird Treaty Act, and the Fish and Wildlife Coordination Act.

Additional information on this project is available on the Board's website at http://www.stb.dot.gov/stb/environment/key_cases.html and on the project website at 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 (e-mail address: **blodgettk@stb.dot.gov**), or Alan Summerville of ICF International, our independent third party contractor for this project, at 703-934-3616 (e-mail address: **Alan.Summerville@icfi.com**). We look forward to your participation in the Board's environmental review process.

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