



Tongue River PA Extension

Catherine Glidden to: dlanders, rebecca.j.shipman, laxline,
lisa.baete, ngabriel, DCoburn, dale,
Conrad Fisher, leroy.spang, steve.brady,
Cc: Vicki Rutson

10/22/2010 04:05 PM

Greetings,

Attached for your signature is an Amendment to extend the existing Section 106 Programmatic Agreement (PA) until September 1, 2011. The current PA is set to expire at the end of this month. Therefore, it is critical that we receive your signature page by **Wednesday October 27th**.

Also attached is a cover letter explaining the purpose of the extension. Please contact me 202-245-0293 if you have any questions.

Best Regards,

Catherine Glidden
Environmental Protection Specialist
Office of Environmental Analysis
Surface Transportation Board
Washington, DC 20423
(202) 245-0293



2010 Temporary Extension ammendment.pdf



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**Extension of the Programmatic Agreement Regarding
Construction and Operation by the Tongue River Railroad
Company of a Rail Line From Miles City to Decker in Custer,
Rosebud, Powder River and Big Horn Counties, Montana
STB Finance Docket No. 30186 (Sub-No. 3)**

WHEREAS, the Programmatic Agreement (PA) regarding the Tongue River Railroad construction and operation, STB Finance Docket No. 30186 (Sub-No. 3), was executed among the Surface Transportation Board (STB), Montana State Historic Preservation Office, Advisory Council on Historic Preservation, U.S. Army Corps of Engineers, U.S. Department of Agriculture Agricultural Research Service, Montana Department of Natural Resources and Conservation, and the Tongue River Railroad Company on November 1, 2005; and

WHEREAS, the PA is scheduled to expire on November 1, 2010, after a term of five years from its date of execution; and

WHEREAS, during the period in which the PA was in force, the Wolf Mountain Battlefield, a property located within the area of potential effect (APE), was designated a National Historic Landmark on October 6, 2008; and

WHEREAS, since execution of the PA, Indian tribes, including the Northern Cheyenne Tribe, have notified the STB of their interest in initiating government-to-government consultation for the Tongue River Railroad construction project; and

WHEREAS, the Northern Cheyenne Tribe has adopted a formal resolution opposing the extension of the existing PA and has requested further consultation regarding historic properties of religious and cultural significance to tribes which may be located within the APE for this project; and

WHEREAS, the STB is committed to ensuring that the STB process for complying with the NHPA Section 106 affords tribes and consulting parties opportunities for participation consistent with the NHPA; and

WHEREAS, the STB has determined the need to revisit the applicability of the terms of the existing PA and update the PA given the passage of time and the designation of the Wolf Mountain Battlefield as a National Historic Landmark; and

WHEREAS, the STB shall consult with Indian tribes, including the Northern Cheyenne Tribe, and take appropriate measures to address tribal concerns when renegotiating the PA, regardless of whether the Indian tribes concur with this amendment to the PA; and

WHEREAS, the STB shall invite the National Park Service to participate to address potential effects on the Wolf Mountain Battlefield; and

WHEREAS, the signatories agree to extend the terms of the current PA until September 1, 2011, during which time its terms will be renegotiated, as appropriate;

NOW, THEREFORE, the signatories to the PA agree that the PA will remain in effect through September 1, 2011, to allow the consulting parties time to incorporate further the role of Indian tribes and to make revisions needed to update the original PA given the passage of time and the designation of the Wolf Mountain Battlefield as a National Historic Landmark.

SURFACE TRANSPORTATION BOARD

By:_____ Date:_____

MONTANA STATE HISTORIC PRESERVATION OFFICER

By:_____ Date:_____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:_____ Date:_____

U.S. ARMY CORPS OF ENGINEERS

By:_____ Date:_____

U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

By:_____ Date:_____

U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE

By:_____ Date:_____

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By:_____ Date:_____

TONGUE RIVER RAILROAD COMPANY, INC.

By:_____ Date:_____

Concurrence:

NORTHERN CHEYENNE TRIBE

By:_____ Date:_____

CROW TRIBE

By:_____ Date:_____

NORTHERN PLAINS RESOURCE COUNCIL

By:_____ Date:_____



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

October 22, 2010

Re: Finance Docket 30186 (Sub-No. 3), Tongue River Railroad Company, Inc.
Construction and Operation of the Western Alignment: Temporary Extension of
Programmatic Agreement

Dear Consulting Party:

Enclosed for your signature is an Amendment to the Section 106 Programmatic Agreement (PA) for the above-referenced project that would temporarily extend the existing PA until September 1, 2011. As you know, the existing PA is set to expire on November 1, 2010. We are asking that you approve this temporary extension of time to allow us to accomplish the following:

- address recent concerns (expressed by the Northern Cheyenne Tribe and the Advisory Council on Historic Preservation) that the current PA does not adequately consider potential affects to the Wolf Mountain Battlefield, which was designated as a National Historic Landmark in 2008 following execution of the original PA in 2005;
- add the National Historic Landmarks Program as a signatory to the PA;
- consult with the Northern Cheyenne Tribe and other potentially affected tribes; and
- make general updates to PA, as appropriate.

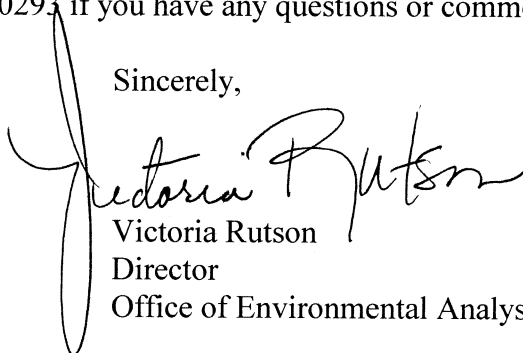
The Board's decision authorizing this construction was issued after a fully executed PA was in place. When that existing PA was executed, it was assumed that the 5-year term of the PA would be adequate to allow compliance with Section 106 of the National Historic Preservation Act. As many of you know, the Board's decision approving the rail line construction has been challenged in the 9th Circuit Court of Appeals. Because of litigation before the Board and now the court, completion of this proceeding has taken far longer than expected. If the court upholds the Board's decision, it is important to have an agreement document, such as a PA, in place at that time. The temporary extension of the existing PA will allow us to work with all parties to modify the PA in a way that reflects circumstances that have changed since the PA was executed in 2005 and to have a revised agreement document by the end of the extension.

We request that you provide your signature on the PA amendment and return the signature page to us by fax or email by **Wednesday, October 27, 2010**. I apologize for the short time frame. We need your quick response because the PA is set to expire on Friday, November 1, 2010. Please email the relevant signatory page of the Amendment to Catherine Glidden at gliddenc@stb.dot.gov, who will be acting as the temporary contact for this project in Ken

Blodgett's absence. If more convenient, please feel free to send the signature page via FAX at 202-245-0454.

Thank you in advance for your assistance. Please do not hesitate to contact me at (202) 245-0295 or Catherine Glidden at 202-245-0293 if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large, stylized initial "V" that loops around the first part of the name. The signature is positioned to the left of the printed name and title.

Victoria Rutson
Director
Office of Environmental Analysis