



EO-2686

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

November 5, 2015

Dawn Colton
Community Services and Planning
City of Miles City
17 South 8th Street
Miles City, MT 59301

Re: Docket No. FD 30186, Tongue River Railroad Company, Inc.—Rail Construction and Operation—in Custer, Powder River and Rosebud Counties, Montana;
Request for Concurrence of Section 4(f) *de minimis* Findings

Dear Ms. Colton:

The Surface Transportation Board's (the Board) Office of Environmental Analysis (OEA) has determined that the proposed construction and operation of the rail line referenced above by the Tongue River Railroad Company (TRRC) would not adversely affect the activities, features, and attributes of the Spotted Eagle Recreation Area with the implementation of mitigation recommended by OEA in its Environmental Impact Statement (EIS). As the official with jurisdiction over the Spotted Eagle Recreation Area, this letter requests your written concurrence with a Section 4(f) *de minimis* impact finding.

In a letter from OEA dated January 28, 2015, we requested your input on: (1) the applicability of Section 4(f) of the U.S. Department of Transportation Act of 1966¹ to the recreational property that could be affected by the construction and operation of the proposed rail line; (2) whether there are any other properties under City of Miles City (City) jurisdiction that would qualify as Section 4(f) properties and would be affected by any of the alternatives for the proposed rail line; and (3) whether a finding of *de minimis* impact is appropriate.

The City responded by letter dated February 25, 2015, that a 4(f) *de minimis* impact finding could be reached with development and implementation of additional measures not yet identified. Following subsequent consultation by telephone and email with you and Mr. Dwayne Andrews, Former City Council member, OEA has revised some preliminary mitigation previously included in the Draft EIS and recommends that additional mitigation be included in

¹ Referred to throughout this letter as Section 4(f).

the Final EIS. OEA believes that a *de minimis* impact finding for the Spotted Eagle Recreation Area is appropriate under Section 4(f) with the implementation of the recommended mitigation. This letter provides the revised and new mitigation for your review.

Eligible Section 4(f) Properties

As you are aware, OEA prepared a Draft EIS for TRRC's proposed rail line construction. On April 17, 2015, OEA issued the Draft EIS for public review and comment. The Draft EIS indicates that four of the ten alternatives analyzed for the proposed Tongue River Railroad could have an effect on one recreational property managed by the City that is eligible for protection under Section 4(f) – the Spotted Eagle Recreation Area. OEA's characterization of this 4(f) property in the Draft EIS is as follows.

The Spotted Eagle Recreation Area. This 245-acre, officially designated recreational area is owned by the City and located southwest of Miles City between the BNSF mainline and Interstate 94. Onsite activities include fishing and swimming in Spotted Eagle Lake, archery, target shooting, picnicking, and hiking. Most of the recreational activities and features are concentrated in the 18-acre Spotted Eagle Lake and to the north and east of the lake. Interstate 94 crosses through the southeastern corner of the area, the existing BNSF railroad forms the northern border, and developed roads, parking, and other constructed features are located throughout the area. As such, human activity and disturbance—both audible and visual—is a common characteristic of the recreational attributes of the area.

In its February 25, 2015 letter, the City confirmed that the Spotted Eagle Recreation Area is a publically available park and as such, qualifies for Section 4(f) protection. The letter from the City provided additional information about the activities, features, and attributes of the Spotted Eagle Recreation Area. OEA has considered the additional information and will revise its Section 4(f) Evaluation appropriately as part of the Final EIS. As noted in the City's letter, this property is open to the public daily from 6:00 am to 10:00 pm, 365 days per year. It provides recreational fishing opportunities for local fisherman, youth, and the elderly. The local chapter of Walleyes Unlimited has made investments and improvements at the property, including a handicap-accessible fishing platform, tree plantings, and walking trails. The Custer County Rod and Gun Club is also a frequent user of the park. The City's letter indicated that it does not have jurisdiction over any other Section 4(f) properties that would be affected by the proposed rail line.

Preliminary Section 4(f) Determination

The Tongue River, Tongue River East, Tongue River Road, and the Tongue River Road East Alternatives under consideration in the Draft EIS would cross the western periphery of the Spotted Eagle Recreation Area. During construction, there would be temporary and localized noise and visual disturbances perceptible to users of the recreational area adjacent to the construction corridor. Construction would permanently incorporate approximately 11 acres from the Spotted Eagle Recreation Area into the railroad right-of-way. OEA did not identify any

developed facilities or features in the Spotted Eagle Recreation Area that would be in the proposed railroad right-of-way.

The potentially affected area would constitute less than 5 percent of the total area of the property and would be located along the property's western periphery, away from developed recreational features and areas likely to be used by visitors. Recreational users currently experience audible and visual disturbances from vehicular traffic along roads within and adjacent to the property and the BNSF main line that forms the northern border of the property. The roads and BNSF main line result in a perceptible level of disturbance.

OEA recommended mitigation in the Draft EIS requiring TRRC to plant a tree buffer between the Spotted Eagle Recreation Area and the railroad right-of-way to reduce visual impacts and the perception of noise on users of this property and requiring TRRC to consult with the City to develop means to offset potential losses of recreational use of the property.

Based on its consultation with the City, OEA has revised and developed additional mitigation to address the City's concerns. The City indicated that the recommended mitigation measure requiring TRRC to plant a tree buffer should be revised to include tree buffer maintenance. The City also advised that, for the tree buffer to be effective, specific tree species should be planted. An effective tree buffer might include evergreen species for year-round buffering and cottonwoods because they are tall and fast growing. OEA has revised the mitigation measure for the Final EIS to read:

TRRC shall provide a tree buffer between Spotted Eagle Recreation Area and the railroad right-of-way to reduce the visual and noise impacts of the rail line on the recreation area. TRRC shall consult with the City of Miles City regarding specific tree species to be used in the tree buffer and appropriate maintenance of the tree buffer.

Additionally, the City indicated that the source of water for Spotted Eagle Reservoir is an open drainage ditch from the Miles City Fish Hatchery. As noted by the City, the Spotted Eagle Reservoir could eventually become dry if the flow is not maintained from the fish hatchery to the reservoir. Accordingly, OEA will recommend the following new mitigation measure in the Final EIS.

TRRC shall design the rail line in such a manner as to ensure that water flow between the Miles City Fish Hatchery and the Spotted Eagle Reservoir is maintained throughout the construction and operation of the rail line.

In addition to the issues identified above, the City expressed concerns about traffic flow and the safety of pedestrians and bicyclists entering or exiting the Spotted Eagle Recreation Area along Spotted Eagle Lane. The City requested that the Board require TRRC to install automatic drop gates where the existing BNSF main line crosses Spotted Eagle Lane. OEA has considered this concern. In Appendix V, *Downline Analysis*, of the Draft EIS, OEA estimated the time that each passing train would block a particular crossing and estimated the average delay per vehicle and the average traffic delays for all vehicles at that crossing in a 24-hour period. OEA's analysis included the rail crossing of Spotted Eagle Lane, which leads to the Spotted Eagle

Recreation Area. OEA estimated that the Tongue River Railroad would, at most ^[1] (in the year 2037), result in an additional 23 stopped vehicles per day at this crossing. This represents a 2 percent increase above the number of vehicle trips affected by the existing rail traffic at the crossing. The average stopped vehicle at the crossing would experience a delay of 1.78 minutes. Additionally, OEA estimated that with the Tongue River Railroad there would be, at most ^[2] (in the year 2037), an annual predicted accident frequency of 0.015821 accidents per year or 1 accident every 63 years. Without the estimated increase in rail traffic due to the Tongue River Railroad, OEA estimated an annual predicted accident frequency of 0.01402 accidents per year or 1 accident every 71 years. Based on this analysis, OEA believes that the potential impacts of increased rail traffic crossing Spotted Eagle Lane on access to the recreation area would be minor and would not constitute an adverse effect on the activities, features, or attributes that qualify the Spotted Eagle Recreation Area for protection under Section 4(f).

OEA included preliminary mitigation in the Draft EIS that would require the Tongue River Railroad to make *Operation Lifesaver* education programs available to communities, schools, and other organizations located along the proposed rail line. As described on their website <http://oli.org/>, “Operation Lifesaver’s mission is to end collisions, deaths and injuries at highway-rail grade crossings and on rail property through a nationwide network of volunteers who work to educate people about rail safety.” Through this program, the City can receive free rail safety programs and presentation in school classrooms, for driver education students, community service and civic groups, professional bus, truck and emergency first responder drivers and others.

Pursuant to Section 4(f), an impact to a public park, recreation area, or wildlife and waterfowl refuge may be determined to be *de minimis* if the use of the Section 4(f) property, including incorporation of any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures), does not adversely affect the activities, features, or attributes that qualify the resource for protection under Section 4(f). OEA believes that the proposed Tongue River Railroad would not adversely affect the activities, features, and attributes of the Spotted Eagle Recreation Area and that a *de minimis* impact finding is appropriate, contingent on the implementation of mitigation measures to be recommended in the Final EIS. OEA requests your written concurrence that a *de minimis* impact finding is appropriate. Please reply to Mr. Kenneth Blodgett of my staff at the address below, or by email at blodgettk@stb.dot.gov.

Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001
ATTN: Office of Environmental Analysis
Docket No. 30186

^[1] Under the high production, northern alternative scenario, see Draft Tongue River Railroad EIS, Appendix V, *Downline Analysis*

^[2] Under the high production, northern alternative scenario, see Draft Tongue River Railroad EIS, Appendix V, *Downline Analysis*

If you have any questions, please do not hesitate to contact Kenneth Blodgett, OEA's Project Manager, at (202) 245-0305, or Alan Summerville of ICF International, Project Manager for OEA's third-party contracting team, at 703-934-3616. We would appreciate your reply by December 10, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly distinguishable.

Victoria Rutson
Director
Office of Environmental Analysis

cc:

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