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SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

June 12, 2009

Mr. Steve Guertin
US Fish and Wildlife Service Regional Director, Region 6
Regional Migratory Bird Permit Office
P.O. Box 25486
DFC (60154)
Denver, CO 80225-0486

Re: Finance Docket 30186 - Tongue River Railroad Company, Inc., Construction and Operation; Bald & Golden Eagle Protection Act – Application for Permit

Dear Mr. Guertin:

Pursuant to the Bald and Golden Eagle Protection Act (Eagle Act) and implementing regulations adopted by the U.S. Fish and Wildlife Service (USFWS) at 50 CFR § 22.28, the Surface Transportation Board (Board) hereby requests a Bald Eagle Take Permit with respect to its approval of the construction of the Tongue River Railroad in Montana. The Board states as follows in support of this Application:

In connection with its consultation with the Board on the Tongue River Railroad project pursuant to Section 7 of the Endangered Species Act, USFWS developed an Incidental Take Statement relative to the bald eagle. That Statement was incorporated in USFWS's July 12, 2006 Biological Opinion issued for the Tongue River Railroad project. A copy of that Biological Opinion is attached to this Application. The Incidental Take Statement and related terms and conditions appear at pages 29-32. The Board does not request any reevaluation of the terms of the Incidental Take Statement.

The Board published the Biological Opinion in its October 13, 2006 Final Supplemental Environmental Impact Statement (FSEIS) issued in connection with the Tongue River Railroad project. In a decision in STB Finance Docket No. 30186 (Sub No. 3), *Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment* (served October 9, 2007), the Board approved the construction and operation of the southernmost portion of the Tongue River Railroad subject to various environmental conditions, and modified certain environmental conditions issued with respect to prior approvals of the other portions of the Tongue River

Railroad line.¹ As relevant here, the Board adopted Mitigation Measure 24, which provides that, "[Tongue River Railroad Company] shall adhere to the terms and conditions of incidental take statements set forth by the U.S. Fish and Wildlife Service in a Biological Opinion, issued on July 12, 2006."

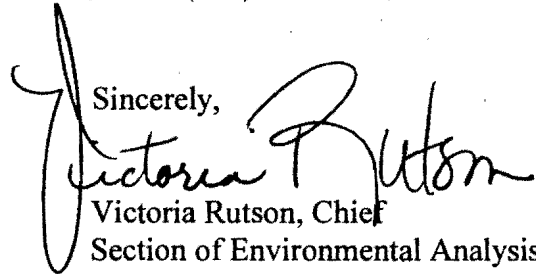
The Board has consulted with the Tongue River Railroad Company with respect to this Application and can confirm that that Company supports the issuance of the Permit requested here. Construction of the Railroad has not yet commenced and therefore the terms and conditions of the Incidental Take Statement have not yet been triggered.

CERTIFICATION

The Board hereby certifies that it will ensure that the Tongue River Railroad Company will fully comply with the terms and conditions of the Incidental Take Statement and the requested Eagle Act Permit, which it understands will incorporate those same terms and conditions.

If you would like additional information, please do not hesitate to me or Kenneth Blodgett of my staff by telephone at (202) 245-0305, fax at (202) 245-0454, or e-mail at blodgettk@stb.dot.gov.

Sincerely,



Victoria Rutson, Chief
Section of Environmental Analysis

Enclosure: Biological Opinion on the Construction and Operation of the Tongue River Railroad (July 12, 2006)

¹ The Board and its predecessor agency (the Interstate Commerce Commission) had previously approved construction of the Tongue River Railroad between Miles City, MT and Decker, MT. See Finance Docket No. 30186, *Tongue River R.R. Co. – Construction and Operation – In Custer, Powder River and Rosebud Counties, MT* (ICC served May 9, 1986) and *Tongue River Railroad Co. – Construction and Operation – Ashland to Decker, MT*, 1 S.T.B. 809 (1996).