



***SURFACE TRANSPORTATION BOARD
Washington, DC 20423***

E0-1576

Office of Environmental Analysis

December 29, 2010

Mr. Perry Brady
Tribal Historic Preservation Officer
Three Affiliated Tribes (MHA Nation)
404 Frontage Road
New Town, ND 58763

SUBJECT: Finance Docket 30186 (Sub-No. 3), Tongue River Railroad Company, Inc. –
Construction and Operation of the Western Alignment; Programmatic
Agreement: Section 106 Consulting Party Invitation

Dear Mr. Brady:

I am writing this letter to request your participation as a consulting party in the Section 106 process for the above referenced project. The project has the potential to adversely affect the Wolf Mountain Battlefield, which was designated a National Historic Landmark on October 26, 2008. To provide you with some background, I have described the project, including the steps we have taken to comply with the National Historic Preservation Act thus far, in more detail below.

The Surface Transportation Board's Office of Environmental Analysis (OEA) prepared the enclosed Programmatic Agreement (PA) as the final step in the Section 106 process for Tongue River Railroad Company's (TRRC) application to construct and operate a rail line in southeastern Montana, known as Tongue River III. The PA was prepared in consultation with the PA signatory and concurring parties and was executed in November, 2005, by the Montana State Historic Preservation Office; Advisory Council on Historic Preservation; U.S. Army Corps of Engineers; U.S. Department of the Interior, Bureau of Land Management; U.S. Department of Agriculture, Agricultural Research Service; and the Montana Department of Natural Resources and Conservation. The Northern Cheyenne and Crow tribes, as well as the Northern Plains Research Council, were concurring parties but declined to sign the PA.

The PA expired on November 1, 2010, after a term of five years from its date of execution. No work has been undertaken yet in implementation of the PA due to legal proceedings at the Surface Transportation Board resulting from petitions for reconsideration filed by several parties following the Surface Transportation Board's October 2007 final decision granting TRRC authority to construct the rail line. An Amendment to the PA (also enclosed) has been executed by all signatory parties extending the PA through September 1, 2011.

The Surface Transportation Board has determined the need to revisit the applicability of

the terms of the existing PA and update the PA given the designation of the Wolf Mountain Battlefield as a National Historic Landmark. In addition, since execution of the PA, the Northern Cheyenne Tribe and Lower Brule Tribe have notified the Surface Transportation Board of their interest in government-to-government consultations for the project.

Catherine Glidden, an environmental protection specialist with my office, met with the Northern Cheyenne tribal leadership in Lame Deer, Montana, on November 17, 2010 in order to ensure that their concerns are heard and properly addressed. During the meeting, the tribe noted (among other things) that it is concerned that the project would impact the Wolf Mountain Battlefield, a site of great importance to them. The alignment approved by the Surface Transportation Board in its October 2007 Decision runs through the eastern portion of the site and would have direct adverse effects to the National Historic Landmark. In addition to the above, the Northern Cheyenne stated that other tribes, other than those currently involved in consultations, should be invited as consulting parties. Based on our follow-up research, we have identified your tribe as having a potential interest in this project and thus invite your participation as a consulting party at this time.

In order to address the concerns of the Northern Cheyenne, other tribes that may have an interest in this project, and because of the relatively new designation of the Wolf Mountain Battlefield site as a National Historic Landmark, we have invited the National Historic Landmark Program to be a consulting party to the PA process and are inviting all tribes that may have an interest in the project area to participate in the PA consultation process. We also propose to:

- Inform the public of the re-opening of the PA process.
- Invite comment from current and newly designated PA consulting parties.
- Draft a PA which will address the new concerns of all the consulting parties.
- Provide for public involvement / comment on Draft PA.

Because we have only until September 1, 2011 to negotiate a new PA, I would very much appreciate hearing from you at your earliest convenience if you intend to participate in the Section 106 consultations regarding this matter. If you intend to participate as a consulting party, please provide us with the name, mailing address, email address, and phone number of your primary designated contact person.

We would greatly appreciate receiving your response to our invitation via email. You can direct your email response to Kenneth Blodgett of my staff at blodgettk@stb.dot.gov. OEA also welcomes any general comments you may have regarding the Surface Transportation Board's Section 106 review process for this project at this time. If you would like to send a response via general mail delivery, you may address such correspondence directly to me at:

Victoria Rutson
Surface Transportation Board
Office of Environmental Analysis
395 E St. SW
Washington, DC 20423

If you have any questions regarding any of the above, please feel free to Kenneth Blodgett, the environmental manager for this project, at 202-245-0305. Catherine Glidden is also available at 202-245-0293, gliddenc@stb.dot.gov, to answer any questions you may have regarding our tribal consultation process.

Thank you in advance for your assistance. I look forward to working with you on this project.

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

Enclosures (PA, PA Amendment)

cc: Advisory Council on Historic Preservation
Montana State Historic Preservation Office
U.S. Army Corps of Engineers
U.S. Department of the Interior, Bureau of Land Management
U.S. Department of Agriculture Agricultural Research Service
Montana Department of Natural Resources and Conservation
Tongue River Railroad Company
Northern Cheyenne Tribe
Crow Tribe
Lower Brule Tribe
Northern Plains Resource Council
National Historic Landmark Program