



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

October 11, 2012

Ms. Lisa Axline
Montana Department of Natural
Resources and Conservation
1625 Eleventh Avenue
P.O. Box 201601
Helena, MT 59620

Re: Docket No. FD 30186, Tongue River Railroad Company, Inc.—Rail
Construction and Operation—in Custer, Powder River and Rosebud Counties,
Mont.; **Cooperating Agency Invitation for New EIS**

Dear Ms. Axline:

I am writing to invite you to participate as a cooperating agency in an Environmental Impact Statement (EIS) to be prepared by the Surface Transportation Board (Board). The EIS will evaluate a revised proposal by the Tongue River Railroad Company (TRRC) to build and operate a new rail line in Montana.

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

¹ Tongue River R.R.—Rail Construction 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 Construction 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 Construction 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

file a revised application describing changes to the proposal it had originally filed in Tongue 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 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 I by the ICC.⁴

TRRC has informed the Board that it intends to file its revised application shortly. Because we believe that TRRC’s revised proposal would have the potential to impact resources under your jurisdiction and because we appreciate that you have special expertise that would assist in ensuring a thorough and rigorous EIS, we are writing to you now, consistent with 40 C.F.R. § 1501.6, to ask you to join us as a cooperating agency in the preparation of a new EIS.

We expect your agency's involvement to include primarily those issue areas under your agency's jurisdiction and special expertise. No direct writing or analysis should be required of your agency for the document's preparation. The activities we plan to undertake to facilitate interagency cooperation will likely include the following:

1. Invite you to participate in scoping meetings and other meetings;
2. Consult with you on any relevant technical studies that will be required for the project;
3. Provide you with project information, including study results;
4. Request your review of relevant sections of the Draft EIS prior to its release for comment by the public and other agencies;
5. Encourage your agency to provide input on subjects within your jurisdiction and expertise; and
6. Include information in the EIS required by your agency to discharge its National Environmental Policy Act (NEPA) responsibilities and any other requirements regarding jurisdictional approvals, permits, licenses, and/or clearances.

Please be assured that we will work closely with you to ensure that the EIS allows you to discharge your jurisdictional responsibilities. And we ask that you feel free to tell us if, at any point in the process, your needs are not being met. We expect that at the end of the environmental review, the EIS and our public involvement process will satisfy all of our NEPA requirements, including those related to project alternatives, environmental consequences, and mitigation.

OEA intends to issue the Notice of Intent (NOI) to prepare an Environmental Impact Statement and Draft Scope of Study soon after we receive TRRC’s revised application. We

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).

⁴ Id. at 8.

plan to hold public scoping meetings in four communities in Montana (Miles City, Ashland, Forsythe, and Lame Deer) in the near future. We will let you know as soon as we have worked out the details of these meetings and will include the meeting details in the NOI.

If you have any questions or would like to discuss the proposal in more detail or our agencies' respective roles and responsibilities during the preparation of the EIS, 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**). Please forward confirmation that you will participate as a cooperating agency to us by October 26th, 2012. We look forward to your response and to working with you and our other cooperating and consulting agencies on the new EIS for TRRC's proposal.

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