



Update and Next Steps in Tongue River I

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Dear Consulting Parties:

I am contacting you with the latest update on the Tongue River Railroad Project and to inform you of our planned next step in the Section 106 consultation process currently underway in Tongue River I.

As you know, the 9th Circuit Court of Appeals issued a decision in the Tongue River case on December 29, 2011 affirming in part and reversing in part the Surface Transportation Board's decisions in Tongue II and Tongue III. In its ruling, the court decided that the Board did not take the requisite "hard look" required under the National Environmental Policy Act in its Tongue II and III proceedings. The court therefore remanded several environmental issues back to the Board for additional environmental reviews in Tongue II and III.

After the 9th Circuit Court's decision, two petitions to reconsider and clarify the court's decision were filed--one by the Northern Plains Resource Council and one by the United Transportation Union (with the City of Forsyth, and Native Action, Inc.). The petitions requested that the court clarify its requirement for the Board to complete additional environmental work in Tongue II and III and asked for rehearing on alleged errors in the decision.

The court denied both petitions and, on March 2, 2012, issued a "mandate," which is the official notification from the court that its decision is final. This means that there is now no grant of authority from the Board allowing Tongue River Railroad to move forward with construction and operation in either Tongue II and Tongue III.

Accordingly, the Board must now decide two questions: first, whether to initiate further environmental review in Tongue II and III; and second, what the court's decision in Tongue II and III means for Tongue I. You have made it clear to us that you believe that the Board should initiate a new Environmental Impact Statement in Tongue I, in addition to moving forward with the Section 106 consultation process under the National Historic Preservation Act.

Once the Board issues a decision addressing how it will proceed in light of the court's decision, we would like to schedule a meeting of the Section 106 consulting parties in the Tongue I project area. I will notify you as soon as the Board issues its decision in these proceedings.

Please feel free to contact me by email or by phone (202-245-0293) if you have questions, concerns, or comments regarding any of the above.

Best regards,

Cathy

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