

SERVICE DATE – AUGUST 9, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 30186 (Sub-No. 3)¹

TONGUE RIVER RAILROAD COMPANY, INC.—CONSTRUCTION AND OPERATION—
WESTERN ALIGNMENT

Decided: August 8, 2011

In a decision served on October 9, 2007 (Tongue River III), the Board granted the application of Tongue River Railroad Company, Inc. (TRRC) to construct and operate a 17.3-mile rail line known as the Western Alignment. According to the application, TRRC wishes to use this line in lieu of the southernmost section of a 41-mile line between Ashland and Decker, Mont., known as the Four Mile Creek Alternative. The Four Mile Creek Alternative, which was authorized in Tongue River II,² is an extension of an 89-mile line from Miles City to Ashland, Mont., that was authorized in Tongue River I.³ The decision in Tongue River III also revised and supplemented the conditions previously imposed on the prior approval of the construction and operation of the Tongue River I and Tongue River II lines.⁴

On July 26, 2010, the Northern Plains Resource Council and Mr. Mark Fix (collectively, NPRC) jointly filed a petition requesting that the Board reopen Tongue River I, Tongue River II, and Tongue River III, prepare a Supplemental Environmental Impact Statement, and reconsider the grant of authority to construct and operate the Tongue River lines. In a decision served on June 15, 2011, the Board denied NPRC's petition.

¹ This decision also embraces Tongue River Railroad—Rail Construction and Operation—in Custer, Powder River and Rosebud Counties, Montana, FD 30186 (Tongue River I), and Tongue River Railroad—Rail Construction and Operation—Ashland to Decker, Montana, FD 30186 (Sub-No. 2)(Tongue River II).

² Tongue River R.R.—Rail Constr. & Oper.—Ashland to Decker, Mont., 1 S.T.B. 809 (1996), pet. for reconsid. denied (STB served Dec. 31, 1996).

³ Tongue River R.R.—Rail Constr. & Oper.—In Custer, Powder River & Rosebud Cntys., Mont., FD 30186 (Sub-No. 1) (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).

⁴ The Board's decisions in Tongue River II and Tongue River III are currently under judicial review in the United States Court of Appeals for the Ninth Circuit.

On June 29, 2011, NPRC filed a petition asking that the Board extend the date by which it must file for reconsideration of the June 15 decision. The Board granted this request in a decision served on July 1, 2011. NPRC's filing became due on July 25, 2011, and NPRC filed its petition for reconsideration on that date.

On August 1, 2011, TRRC filed a petition requesting that the Board extend by 10 days the due date for its reply to NPRC's submission. In support of its request, TRRC explains that one of its attorneys has a pre-planned vacation for much of the 20-day response period, and that there is a press of other business. TRRC claims that NPRC will not be prejudiced given that NPRC has already sought an extension regarding the petition for reconsideration.

TRRC's request is granted. Accordingly, TRRC's reply is due on August 25, 2011.

It is ordered:

1. TRRC's extension request is granted, and its reply is due on August 25, 2011.
2. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.