



-WOHEHIV-
The Morning Star

NORTHERN CHEYENNE TRIBE ADMINISTRATION

P.O. BOX 128
LAME DEER, MONTANA 59043
(406) 477-6284
FAX (406) 477-6210



-WOHEHIV-
The Morning Star

EI-18515

March 31, 2011

Mr. Kenneth Blodgett
Surface Transportation Board (STB)
Office of Environmental Analysis
395 E ST SW
Washington DC 20423

RE: Tongue River RR Construction and Operation Western Alignment Programmatic Agreement Docket No. FD 30186 (sub-no. 3).

Dear Mr. Blodgett

The Northern Cheyenne Tribe (NCT) would like to thank you for the opportunity to comment on the extension of the Tongue River Railroad Company's (TRRC) Tongue River III (TRIII) Programmatic Agreement (PA) for Construction and Operation - Western Alignment Tongue River III-Rosebud and Big Horn Counties, Montana, Docket No. FD 30186 (sub-no.3).

The Northern Cheyenne Tribe is a federally recognized tribe and the United States holds in trust nearly 444,000 acres of land (surface and subsurface) on the Northern Cheyenne reservation and is adjacent to the TRIII. The NCT considers the Tongue River Valley part of their historic and ancestral homelands. There are numerous ethnographic studies that support our claim. In addition, there are other research data that has not been considered or incorporated into record that the tribe feels is important in assessing the overall effects of the project.

The cultural depth the NCT and other tribes have in this area cannot be overstated and should be thoroughly assessed in terms of cumulative effects upon the Tongue River Valley and rail line corridor. For example, the recognition of the Wolf Mountain Battlefield as a historic landmark has been recent however this battle is only one of many sites that potentially could be adversely impacted by the TRIII.

First and foremost, is the issue of consultation efforts by STB with the NCT and other tribes. In the past five years, the NCT has voiced its concern over the lack of consultation regarding the Tongue River PA via correspondence. Because of the high density of cultural sites in, and near the TRIII corridor and the minimal consultation

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

(TRIII, cont.)

efforts by STB with NCT and other tribes there should be a revamping of the temporary PA currently in place.

In the past, consultation efforts have been minimal. Consultation should be looked at in terms of government to government relations including face to face round table discussions rather than telephonic discourse with "tribal officials." This does not constitute effective, efficiency and legitimate consultation. Official documents such as tribal resolutions should serve as legal document either supporting or opposing TRIII activities. Also, as indicated, the signatories to the TRIII PA were unaware of the pending expiration of the PA. As a consequence there is an expired PA that has been extended for one year. Whether or not this can be construed as negligence, it shows the extent of responsibility and commitment or lack of it by those that were signatories to the PA.

A thorough analysis of the expired PA by tribes through government to government consultation is warranted. A round table discussion by tribes and those that have an interest in the PA should serve as meaningful consultation to discuss a revamped TRIII PA. A thorough review of compliance and qualitative research methodology such as the class one investigations and subsequent investigative methods should be revisited including the research design addressed in Attachment A so that requirements of National Historic Preservation Act (NHPA) can be appropriately addressed and satisfied.

In addition, the participation and recommendations by concurring parties is critical in constructing a PA that satisfies the concerns of all parties and required in the NHPA. Recent court decisions regarding cultural resource issues have brought new standards and review of cultural sites. Most recently, the Wolf Mountain Battlefield and other sites nearby have either been designated as NHLs or are in the process for nomination. These sites are critical in that they serve as benchmarks in the history of our great nation and as cultural identifiers to those tribes whose ancestors participated in the historic events. They also are intricately tied to the Battle of the Little Bighorn (where long hair was wiped away), whose defeat was heard around the world. It is a pristine area that requires a systematic and comprehensive inventory of the whole Tongue River Drainage and valley. We can interpret this as being a cultural landscape. The Wolf Mountain battlefield should be given special attention in light of its new status and role in U.S. and tribal history.

Because of the sensitivity of the pristine area and the thought that much of the research data may be outdated, other compliance issues should be revisited. For example, a much more comprehensive environmental analysis is needed to fully comprehend the scale and intensity of effects within the Tongue River Valley and the Northern Cheyenne reservation rather than the narrow and limited focus of the TRIII corridor.

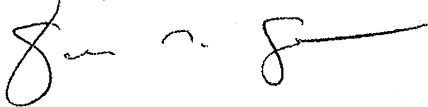
(TRIII, cont.)

The TRIII PA is outdated. There is a need to revisit the purpose of the PA and its content as well as its intent. Consultation with tribal groups that have an intimate and an ancestral tie to this area is necessary. A consultation letter sent to tribes or a telephone conversation does not replace a consultation meeting. A no-response from a tribe is not a sign of no interest. Tribal participation in all aspects of the PA is warranted. For example, in any archaeological investigation, a tribal cultural expert should be part of the investigation not as a monitor but as an integral part of the "archaeological team" investigating resources throughout the project. This is one example of the need to revamp the TRIII PA that currently does not meet the needs of the Northern Cheyenne and other tribes and their historical and ancestral ties to the Tongue River valley of southeastern Montana.

The NCT also endorses the comments made other parties and agencies including: Bureau of Land Management; Advisory Council on Historic Places; Montana Historical Society; Montana Preservation Alliance; Northern Plains Resource Council; National Park Service Heritage Partnerships Program and others. We would like to give special thanks to all the tribes that made comments, support, and insistence that they be part of the undertaking including: Sisseton Wahpeton Oyate; Rosebud Sioux; Lower Brule and others that we might have missed.

Thank you for the opportunity to comment. If you have any questions, please contact our office at 406-477-4839.

Sincerely,



Joe Fox, Jr., Vice-President
Northern Cheyenne Tribe