



United States Department of the Interior

NATIONAL PARK SERVICE
INTERMOUNTAIN REGION
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IN REPLY REFER TO:
H3417 (IMRO) NHL

EI - 18504

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

MAR 11 2011

Dear Ms. Rutson:

Thank you for sending the National Park Service (NPS), Intermountain Region, a copy of the draft programmatic agreement (PA) regarding construction and operation by the Tongue River Railroad Company, of a rail line from Miles City to Decker in Custer, Rosebud, Powder River and Bighorn Counties, Montana. Although the NPS is not a signatory on the agreement, we appreciate the opportunity to comment. The NPS Intermountain Region administers the National Historic Landmark (NHL) program in an eight-state region, including Montana. Our primary concern regarding the Tongue River Railroad project is its impact on Wolf Mountains Battlefield/Where Big Crow Walked Back and Forth, which was designated as a NHL on October 6, 2008. As you noted in your letter of December 21, 2010, the alignment of the Tongue River Railroad will run through Wolf Mountains Battlefield and have a direct adverse impact on the NHL. Wolf Mountains Battlefield NHL, which is in Rosebud County, is the site of the last major battle of the Great Sioux War. On January 8, 1877, Lakotas and Northern Cheyennes led by Crazy Horse, Two Moon, and others attacked a U.S. army encampment at Wolf Mountains, but were forced to withdraw. The battle was a major turning point in the war and led to the eventual surrender, just a few months later, of the Lakotas and Northern Cheyennes.

We have reviewed the draft PA, and find that it does not address the project's impact on Wolf Mountains Battlefield NHL, nor does it provide any opportunity for the NPS to consult on the project. We request that the PA be amended to include specific language stating that the Surface Transportation Board will consult with the NPS regarding the Tongue River Railroad project and its impact to the Wolf Mountains Battlefield NHL, specifically regarding measures to avoid, minimize or mitigate adverse effects to the NHL, including in the development of treatment plans.

As you know, the NPS was first invited to participate in the consultation for the Tongue River Railroad project on December 21, 2010, and has accepted that invitation. However, the NPS is a latecomer to the consultation process because Wolf Mountains Battlefield was designated as a NHL in 2008, at which point much of the planning for the Tongue River Railroad had been completed. As you described in your December 21st letter, a PA for the Tongue River Railroad was executed in November 2005. Neither the PA, nor the environmental impact statements (EIS) for the project, including the final supplemental EIS of October 2006, took into special consideration the impact of the project on Wolf Mountains Battlefield because, at that point, it was not yet a NHL. In what has been described as a "ships passing in the night" scenario,

environmental studies for the railroad were underway at the same time that the NPS was evaluating Wolf Mountains Battlefield as a NHL. The battlefield was listed on the National Register of Historic Places on January 10, 2001, at a national level of significance. In 2002, the NPS published "The Clash of Cultures Trails Project" (available online at: <http://www.nps.gov/nhl/themes/Clash/Clashofcultures.htm>), which identified Wolf Mountains Battlefield as a potential NHL. That same year, the NPS began work on the Wolf Mountains Battlefield NHL nomination, resulting in its designation in 2008.

Section 106 of the National Historic Preservation Act requires federal agencies, prior to approval of an undertaking, to take into account the effects of an undertaking on historic properties, including NHLs. Section 110(f) of the Act outlines the specific actions that an agency must take when NHLs may be directly and adversely affected. In particular, agencies must, "to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm" to NHLs. If, as in the case of the Tongue River Railroad project, an undertaking may adversely affect a NHL, the agency is required to request the Secretary of the Department of the Interior (delegated to the NPS) to participate in the consultation process. As described in 36 CFR Sections 800.6 and 800.10, the agency also must provide background documentation, including an analysis of alternatives considered to avoid, minimize, or mitigate adverse effects on the NHLs. To date, the NPS has not been provided with such documentation, nor have we been involved in any consultation regarding an analysis of alternatives, including any that would, to the maximum extent possible, minimize harm to Wolf Mountains Battlefield.

Also, while the draft PA (Section II) notes that the Surface Transportation Board and the signatory and concurring parties will consult "to develop measures that avoid, minimize or mitigate adverse effects," and that other parties may be invited to "further review the framework for how treatment plans will be developed, and to review opportunities and alternatives that could avoid or minimize adverse effects," the NPS is not identified as being part of that consultation process. We would like to see that corrected in the final PA, and the NPS named as a consultant in that review process.

In addition to its compliance with Section 106, how does the Surface Transportation Board (STB) propose to fulfill its mandate under Section 4(f) of the Department of Transportation Act (49 USC 303)? As you are probably aware, Section 4(f) states that the Secretary of Transportation may approve a transportation project that requires the use of a historic site, including a NHL, "only if – (1) there is no prudent and feasible alternative to using that land; and (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use." Section 4(f) also requires the Secretary of Transportation to consult with the Secretary of the Interior "in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities." In light of these requirements, NPS is very concerned that STB continue to consult with NPS and the other consulting parties to identify an alternative that avoids Wolf Mountains Battlefield.

Wolf Mountains Battlefield has a very high degree of physical integrity, and the NPS welcomes this opportunity to work with you to protect the character-defining features of this nationally significant landmark. As noted in the NHL nomination, although there are some modern intrusions on the site, overall the battlefield retains a very high level of integrity of location, setting, feeling and association, which are the most important aspects of integrity for a battlefield. The NHL boundary encompasses the site where the military established its camp on

January 7, 1877, a rifle pit used by the military forces, several stone cairns, and a Northern Cheyenne traditional grave marker to note the location where Big Crow was shot during the battle. According to a Northern Cheyenne historian, the battlefield also contains the grave of a Northern Cheyenne warrior and a U.S. Army soldier involved in the engagement.

Finally, in your December 21st letter, you noted that the railroad would run through the eastern portion of the site. From our review of the project map, it appears that the approved route of the railroad will run through the entire width of the Wolf Mountains Battlefield NHL, in the center of the site.

Please feel free to contact me directly regarding these consultation discussions. I may be reached at (303) 969-2882 and/or at christine_whitacre@nps.gov.

Sincerely,



Christine Whitacre
Program Manager
Heritage Partnerships Program

cc:

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