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The Morning Star

**NORTHERN CHEYENNE TRIBE
ADMINISTRATION**

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6/20/2013

Ken Blodgett
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001,

Attention: Environmental filing, Docket No. FD 30186

Sent via U.S. mail

Re: Northern Cheyenne Tribe's Response to Tongue River Railroad Supplement to Alternatives Screening Analysis.

Dear Mr. Blodgett,

The Northern Cheyenne Tribe ("Tribe") provides this response to the "Supplement to Alternatives Screening Analysis" ("Supplemental Analysis") submitted by the Tongue River Railroad applicants ("Applicants") on April 30, 2013. As detailed below, the Tribe objects to the Supplemental Analysis and renews its call for the Surface Transportation Board ("STB") to include in Tongue River Railroad Environmental Impact Statement ("EIS") a full assessment of reasonable alternatives to reduce the impacts of the project on the Tribe and the Northern Cheyenne Reservation ("Reservation").

As discussed in scoping comments submitted by the Tribe and others, the proposed Tongue River Railroad may have direct and indirect impacts on Tribal interests, including adverse effects to human health of Tribal members and the Reservation environment. To address these impacts, the Tribe's scoping comments requested that the STB consider alternative alignments that would locate the project "as far as possible from the eastern Reservation boundary, the Tongue River, and other important waterbodies." In response, the STB directed the Applicants to consider the "Ashland East" and "Terminus 1" Variations (collectively "Northern Variations"), which would locate portions of the project up to four miles further from the Reservation boundary and the Tongue River than Applicants' preferred alignment, thus potentially reducing the human health, environmental, cultural, and aesthetic impacts to the Tribe from the project. The STB also directed the Applicants to evaluate two alternative routes going south from Ashland to Decker rather than north to Colstrip (the "Decker Alternatives").

Applicants oppose the Northern Variations, claiming that "[t]here do not appear to be any apparent offsetting benefits" to these alignments. Supplemental Analysis at 23. However, Applicants contradict this statement by conceding that the Ashland East Variation could

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potentially result in reduced noise and air quality impacts to the Tribe and the Reservation. *See* Supplemental Analysis at 22 (“noise impacts on the reservation could be lower [but] the number of receptors in the area traversed by the Ashland East Variation would need to be determined in order to meaningfully compare noise impacts”); *id.* (“further study would be required to assess air quality impacts to the reservation of the proposed Variation in contrast to the originally proposed routes.”). The Terminus 1 Variation would also be located further from the Reservation boundary and the Tongue River, and would similarly reduce noise and air quality impacts on the Reservation. While Applicants are correct that the precise magnitude of such benefits is uncertain, such uncertainty is not a valid basis to exclude consideration of the Northern Variations in the EIS. *See Sierra Club v. U.S. Forest Serv.*, 843 F.2d 1190, 1195 (9th Cir. 1988) (“The purpose of an EIS is to obviate the need for such speculation by insuring that available data are gathered and analyzed prior to the implementation of the proposed action.”).

Applicants also oppose the Decker Alternatives, claiming that “the two Decker alternatives would be disadvantageous for Otter Creek coal moving to its primary markets and therefore would not serve the purpose and need” of the project. Supplemental Analysis at 10. This argument is premised on Applicants’ narrow characterization of the purpose and need as “to **efficiently** transport low-sulfur, sub-bituminous coal from mine sites” in the region. Supplemental Analysis at 8 (emphasis added). The Tribe questions the validity of this construction of the purpose and need, which is narrower than the construction provided by the STB in its March 2013 scoping decision (goal of project “is to transport low sulfur, sub-bituminous coal from mine sites developed in Rosebud and Powder River Counties, Montana, including proposed mines in the Otter Creek area.”). *See Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv.*, 373 F. Supp. 2d 1069, 1087 (E.D. Cal. 2004) (NEPA does not permit an agency to “narrowly define its purpose and need so as to winnow down the alternatives until only the desired one survives.”). Moreover, even if “efficient” transportation of coal were the purpose and need of this project, analysis of project efficiency must evaluate costs beyond construction and operation costs incurred by Applicants, including the public and societal costs that may be avoided by various alternatives (e.g., reduced exposure to harmful pollutants, noise and vibration-related injuries, and traffic-congestion related impacts).

Applicants fail to demonstrate that the Northern Variations or Decker Alternatives would be infeasible or otherwise unreasonable to implement, and acknowledge that at least the Northern Variations may result in reduced adverse impacts to the Tribe. Accordingly, exclusion of the Northern Variations or Decker Alternatives from the EIS would be inconsistent with the “rule of reason” that guides NEPA decisionmaking. *See City of Sausalito v. O’Neill*, 386 F.3d 1186, 1207 (9th Cir. 2004) (“The rule of reason ‘guides both the choice of alternatives as well as the extent to which the [EIS] must discuss each alternative.’”) (quoting *City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997)) (brackets in original).

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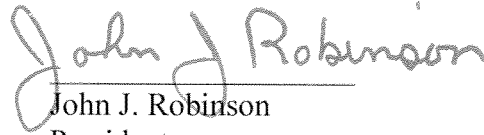
The Tribe continues to be concerned that the Tongue River Railroad project will result in unacceptable environmental, economic, and cultural injuries to the Tribe and its members. To address these concerns, the Tribe calls on the STB to prepare an EIS for this proposal that

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includes a full evaluation of all reasonable alternatives that could reduce impacts to the Tribe, including detailed assessment of the Northern Variations and Decker Alternatives.

Sincerely,

A handwritten signature in dark ink, reading "John J. Robinson". The signature is written in a cursive style with a horizontal line underneath the name.

John J. Robinson

President

Northern Cheyenne Tribe

cc: Shannon Johnson, U.S. Army Corps of Engineers
Shane Findlay, U.S. Bureau of Land Management
Kristi Ponozo, Montana Department of Environmental Quality