



January 3, 2013

Ken Blodgett, blodgettk@stb.dot.gov
 Surface Transportation Board
 395 E Street, SW, Washington, D.C. 20423-0001
 Environmental filing, Docket No. FD 30186
 Facsimile: (202) 245-0454

VIA Electronic Mail and Facsimile

RE: Tongue River Railroad Company, Inc. Revised Application for Rail Construction and Operation (STB Docket No. FD 30186) – Scoping Period

Dear Mr. Blodgett:

On behalf of Montana Environmental Information Center, Sierra Club, and their members in and around Colstrip, Montana, I write to request clarification of information provided in connection with the Surface Transportation Board's ("STB") Draft Scope of Study for construction of the Tongue River Railroad and an expanded scoping process.

On December 17, 2012, on the eve of the Christmas and New Year holidays and after all public scoping meetings had concluded, the Tongue River Railroad Company submitted a supplemental revised application for the construction and operation of the Tongue River Railroad, in which it identified for the first time in the project's 30-year history the "Colstrip route" as the company's preferred route for the railroad. At the same time, STB released to the public a new map of the Colstrip route, now available on the STB's Tongue River Railroad web page. STB also mailed a map to Colstrip-area landowners that depicts a Colstrip route that is different from the route depicted in the map available on STB's website. Although the map that was mailed to landowners has not been made available to the general public, it reportedly shows the proposed route of the railroad traversing land owned by an Amish community—land not shown to be impacted by any other map. By this letter, we respectfully request clarification regarding the proposed Colstrip route.

We further request an expanded scoping process, including an extension of the public comment period and an additional public meeting to be held in the Colstrip area. Although the Colstrip route has been included among the railroad's alternatives since the project was first proposed, it was previously rejected as technically infeasible. The public was only notified of the Tongue River Railroad Company's apparent change-of-heart regarding the feasibility and desirability of the Colstrip route when the Company submitted its supplemental revised application on December 17, 2012. Thus, Colstrip-area residents—including owners of land that would be bisected by the railroad's new preferred route—did not have any reason to know that they are likely to be directly affected by the construction of the railroad.

The requested clarification and expanded scoping process are necessary to ensure that people affected by the proposed railroad have a meaningful opportunity to participate in the entire public process provided for by the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq. Under NEPA,

[t]he primary purpose of the scoping period is to notify those who may be affected by a proposed government action which is governed by NEPA that the relevant entity is beginning the EIS process; this notice requirement ensures that interested parties are aware of and therefore are able to participate meaningfully in the entire EIS process, from start to finish.

Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1116-17 (9th Cir. 2002) (overruled in part on other grounds, Wilderness Soc’y v. United States Forest Serv., 630 F.3d 1173 (9th Cir. 2011)) (finding no NEPA violation based on failure to provide maps during the scoping period where “the location of the affected areas was reasonably known to the plaintiffs prior to the receipt of the maps”). This purpose is defeated if landowners who may be directly affected by the railroad are not given clear and accurate information about the proposed route and an opportunity to comment on the new preferred route in a public meeting.

Please do not hesitate to contact me about this request at (406) 586-9699 or jharbine@earthjustice.org.

Sincerely,

/s/ Jenny Harbine