

EI-18447

FW: tongue river pa

Jolene Spang

to:

vicki.rutson, Catherine.Glidden, Schestnut, Steve.brady, joe.foxjr, esevone1, 'Valerie Hauser',
william.walksaong

01/06/2011 03:56 PM

Show Details

History: This message has been forwarded.

Attached is the signed Written Extension of Programatic Agreement for Tongue River Railroad. Also attached is Resolution No.DOI-028 (2011).

From: Wallace [<mailto:wallace@cheyennenation.com>]

Sent: Thursday, January 06, 2011 1:32 PM

To: jolene.spang@cheyennenation.com

Subject: tongue river pa

Jolene, heres your scanned document

Wallace Bearchum

Director Tribal Services/Enrollment

Northern Cheyenne Tribe

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NORTHERN CHEYENNE TRIBE

ADMINISTRATION

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



January 6, 2011

Ms. Victoria Rutson
Federal Preservation Officer
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: Tribal Concurrence in Written Extension (to 9/1/11) of
Programatic Agreement for Tongue River Railroad

Dear Ms. Rutson:

As I believe you know, the Northern Cheyenne Tribal Council has authorized the joinder of the Northern Cheyenne Tribe as a "Concurring Party" in the above Extension. To effect this joinder, I enclose a signature page signed by me on behalf of the Tribe, to which is attached Northern Cheyenne Tribal Council Resolution No. DOI-028 (2011), which sets forth the purposes and conditions of the Tribe's joinder in the Extension.

We look forward to working jointly with all other involved parties in the review and renegotiation of terms and conditions of the original Programatic Agreement. We would appreciate reasonable advance notice of all events in that process open to the involved parties, so that we can join in them.

Very truly yours,

Leroy A. Spang, President
Northern Cheyenne Tribe

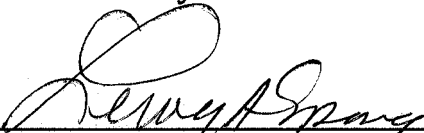
c: Valarie Hauser, ACHP

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.

Joinder of Northern Cheyenne Tribe as "Concurring Party"

As authorized by, and for the purposes and on the conditions set forth in, Resolution No. DOI-028 (2011) of the Northern Cheyenne Tribal Council (a copy of which is attached hereto), the Northern Cheyenne Tribe hereby joins as a "Concurring Party" in the written Extension [to 9/1/11] of the Programatic Agreement 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, STB Finance Docket No. 30186 (Sub.-No. 3).

Northern Cheyenne Tribe


By: Leroy A. Spang, President

Date: 1-6-11



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

Executive Direction
Code 101

JAN 03 2011

Leroy A. Spang, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Spang:

This is in reference to Northern Cheyenne Tribal Resolution No. DOI-028 (2011) enacted by the Council on December 6, 2010 and received in this office on December 17, 2010.

Resolution No. DOI-028 (2011) – accepting invitation to be “concurring party” to one year extension of original (2005) programmatic agreement for proposed Tongue River Railroad.

Resolution No. DOI-028 (2011) is hereby noted. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (a), (r) and (s) of the Northern Cheyenne Tribe’s Amended Constitution and Bylaws.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

RESOLUTION NO. DOI-028 (2011)

RESOLUTION ACCEPTING INVITATION TO BE "CONCURRING PARTY" TO ONE-YEAR EXTENSION OF ORIGINAL (2005) PROGRAMMATIC AGREEMENT FOR PROPOSED TONGUE RIVER RAILROAD.

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe as provided in the Amended Constitution and Bylaws of the Tribe approved by the Secretary of the Interior on May 31, 1996;

WHEREAS, on November 1, 2005 a five-year Programmatic Agreement among seven signatory parties,¹ came into effect;

WHEREAS, under the five-year Programmatic Agreement the potential effects of the construction and operation of the proposed Tongue River Railroad on historic properties on or eligible for inclusion on the National Historic Register of Historic Places were to be determined and mitigated or avoided;

WHEREAS, the five-year Programmatic Agreement also acknowledged the need to consider, in consultation with affected Indian tribes, the potential effects on tribal interests, values, and sacred sites in light of the requirements of the National Historic Preservation Act, American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, Executive Order 13007 (protecting Indian sacred sites), and Archaeological Resources Protection Act;

WHEREAS, during the term of the five-year Programmatic Agreement, there was little or no actual implementation of the provisions of the Programmatic Agreement, or consultation thereunder with Indian tribes including the Northern Cheyenne Tribe;

WHEREAS, during the term of the five-year Programmatic Agreement, the Wolf Mountain Battlefield was designated as a National Historic Landmark, due in no small part to the efforts of the Northern Cheyenne Tribe;

WHEREAS, the Wolf Mountain Battlefield lies within the Area of Potential Effect ("APE") of the proposed Tongue River Railroad;

¹ The signatory parties to the original Programmatic Agreement are: STB; SHPO; Corps of Engineers; BLM; DOA Agricultural Research Service; DNRC; and Tongue River Railroad Company, Inc.

WHEREAS, this Fall, faced with the impending expiration of the five-year Programmatic Agreement, its signatory parties prepared a written Extension which extended the Programmatic Agreement to September 1, 2011, for the following purposes:

- accommodating the request of the Northern Cheyenne Tribe for further consultation regarding historic properties of religious and cultural significance;
- ensuring that the Surface Transportation Board ("STB") process for complying with Section 106 of the National Historic Preservation Act affords the Northern Cheyenne and other tribes opportunities for participation consistent with that Act;
- revisiting and updating the terms of the original Programmatic Agreement given the passage time and the designation of the Wolf Mountain Battlefield as a National Historic Landmark;
- consulting with tribes, including the Northern Cheyenne, and taking appropriate measures to address tribal concerns which may be raised during the renegotiation of the Programmatic Agreement; and
- incorporating further the role of tribes in the Programmatic Agreement and making needed revisions therein to update the Programmatic Agreement; and

WHEREAS, the STB has invited the Northern Cheyenne Tribe to be a "concurring party" to the one-year Extension of the Programmatic Agreement and, after careful consideration, the Northern Cheyenne Tribal Council has determined to accept that invitation for the purposes and on the conditions set forth below:

THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Northern Cheyenne Tribe hereby accepts the invitation to become a "concurring party" to the one-year Extension of the Programmatic Agreement, for the following purposes and on the following conditions:

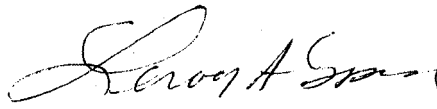
- a. As a "concurring party" the Tribe will participate jointly with all other signatory and other concurring parties (if any) in the review and renegotiation of the terms and conditions of the Programmatic Agreement, to assure that the purposes of the one-year Extension of the Programmatic Agreement are realized, and to otherwise protect cultural, religious and historic interests, values and sites of the Northern Cheyenne Tribe which may be affected by the construction or operation of the Tongue River Railroad. Without limitation, this will include:

- addressing concerns expressed by the Northern Cheyenne Tribe and the Advisory Council on Historic Preservation that the original Programmatic Agreement does not adequately consider potential effects on the Wolf Mountain Battlefield;
 - conducting all necessary consultations with the Secretary of the Interior regarding potential effects on the Wolf Mountain Battlefield, and potential avoidance and mitigation measures with respect thereto; and
 - adding the National Historic Landmarks Program as a signatory party to the Programmatic Agreement.
- b. As a "concurring party" to the one-year Extension of the Programmatic Agreement, the Northern Cheyenne Tribe hereby requests, and expects to be accorded, standing to participate fully in the reconsideration and renegotiation of the Programmatic Agreement, including full access to all information and documents jointly relied upon by the negotiating parties in connection therewith.
- c. The Northern Cheyenne Tribe hereby requests that, on completion of the renegotiation of the Programmatic Agreement, the Tribe be accorded an option, to be exercised in the Tribe's discretion, to become either a "concurring party" or "signatory party" to the renegotiated Programmatic Agreement.
- d. The Tribe's execution of, and participation as a "concurring party" to, the one-year Extension of the Programmatic Agreement shall not expressly or impliedly waive or diminish any claim that the Tribe may have that any federal law, regulation or trust responsibility has been violated in any prior phase of the permitting of the Tongue River Railroad (including any proposed extension or adjustment of the route thereof) by STB or any other federal agency.
- e. In the review and renegotiation of the Programmatic Agreement, the Tribe will be represented by the following team, subject to the overall supervision and control of the Northern Cheyenne Tribal Council:

Team Leader Joe Fox, Jr., Tribal Vice President
Steve Brady, Chairman of the Tribe's Cultural Commission
Conrad Fisher
Steve Chestnut, Tribal Attorney

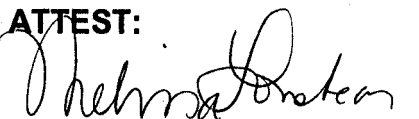
2. Either the Tribal President or the above Team Leader may execute the one-year Extension of the Programmatic Agreement on behalf of the Northern Cheyenne Tribe.

PASSED, ADOPTED AND APPROVED by TWO-THIRDS VOTE of the Northern Cheyenne Tribal Council by 10 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 6th day of December, 2010.



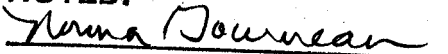
Leroy A. Spang, President
Northern Cheyenne Tribe

ATTEST:



Melissa Lonebear, Secretary
Northern Cheyenne Tribe

NOTED:



Norma Bourneau
SUPERINTENDENT