



March 18, 2011

EI -18502

Kenneth Blodgett
Surface Transportation Board
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)

Comments Submitted By E-mail

Dear Mr. Blodgett:

The Montana Preservation Alliance is a state-wide non-profit organization founded in 1987, with a mission to save and protect our state's historic places, traditional landscapes and cultural heritage. We appreciate the opportunity to comment on the extension of the Tongue River Railroad Company's (TRRC) Tongue River III (TR III) Programmatic Agreement (PA), and hope you will take the following comments into consideration.

Site Identification and the Tongue River Valley Cultural Landscape

The Tongue River Valley is an uncommonly well preserved cultural landscape, with a very high density of Native American prehistoric and contact-era sites, including a National Historic Landmark battlefield, a buffalo trap, abundant rock art, eagle catching sites, vision quest sites, tipi rings, encampments, lithic scatters, ethnobotanical sites and other traditional cultural properties. While indications are that levels of site density, integrity and site significance in the anticipated area of potential effect (APE) is very high, there has been little systematic survey and professional recordation of the project area.

In addition, the Tongue River Valley contains a large rural historic district related to frontier era agriculture and ranching during the late 19th – mid 20th century, also of exceptional significance and very high integrity. MPA has documented numerous cultural resources in this unusual valley, working for over 8 years with the ranching community and Northern Cheyenne cultural leaders to identify themes and significant resources located in the region. In addition to supporting NHL recognition for the Wolf Mountains Battlefield, most recently, MPA has drafted a Multiple Properties Document that provides contextual and property descriptions of the rural resources in the Tongue River Valley. That document was approved in 2010 for submission to the National Register of Historic Places by the Montana State Historic Preservation Review Board and its submission is currently in process with the Montana State Historic Preservation Office.

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Wolf Mountains Battlefield National Historic Landmark

The Wolf Mountains Battlefield represents the last major site of conflict between the Northern Cheyenne Indian Nation and the U.S. Army, and a final chapter in the Great Sioux Wars military campaign of the 1870s. The battlefield has an impressive level of integrity, and was listed in the National Register in 2001 with support and funding assistance from the federal government's American Battlefield Protection Program. It was listed in 2008 as a National Historic Landmark (NHL).

Long before the site was designated as an NHL in 2008, the significance of this battlefield was widely recognized. These facts should have triggered efforts by the Surface Transportation Board (STB, or OEA, the STB's Office of Environmental Analysis) long ago to initiate meaningful consultation with the Northern Cheyenne and other tribes affiliated with the site, and give serious consideration to impacts posed to the battlefield by the proposed rail corridor. Federal laws and the exception significance of the Wolf Mountains Battlefield, as well richness of the Tongue River Valley's cultural and historical landscape requires a rigorous effort by the agency to explore other alternatives to constructing a railroad directly through the heart of the battlefield and destroying the integrity of the site, the associated landscape and the viewshed surrounding it.

As a National Historic Landmark, the Wolf Mountains Battlefield is subject to extra consideration for its significant historic and cultural values under the law. Section 110 of the National Historic Preservation Act requires that Federal agencies must "to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark..."

Furthermore, Section 4(f) of the Department of Transportation Act states that any federally-assisted transportation projects may not "use" land from a historic site or park, among other environmentally-sensitive areas, unless 1) there is "no feasible and prudent alternative" to using the site, and 2) the project includes all possible planning to minimize harm to the site.

According to the FSEIS, the TRRC undertook a feasibility study to evaluate alternative routes for the rail line. We would request a copy of that feasibility study be shared with all consulting and interested parties engaged in the 106 consultation for this undertaking. There may well be viable alternatives to constructing a major rail line directly through the heart of the Tongue River Valley; any and all alternatives merit careful consideration under law, as the impact of this railroad project as currently described will be severe and do not appear to be mitigatable. Furthermore, we suggest a report be requested in accordance with Section 213 of the NHPA, to evaluate impacts posed to this NHL by the proposed undertaking, and prepared during the period of extension for the current Programmatic Agreement. Such information will be most useful in crafting of a new PA for this large-scale, proposed undertaking in this culturally sensitive region.

Tribal Consultation

The Northern Cheyenne Indian Nation is a federally-recognized, sovereign nation with a fully qualified, professional Tribal Historic Preservation Office. Section 106 of the National Historic Preservation Act mandates government-to-government consultation with federally-recognized tribes should occur as early as possible in the NHPA compliance process. The TR III project was initiated

in 1997, thus there have been fourteen years during which the Northern Cheyenne should have been consulted by STB; and in our understanding, the Northern Cheyenne Tribe has been on record since December 2004, as having been “very disappointed by the efforts by the STB to date to schedule and hold consultation meetings on the proposed project” (FSEIS 3-111). There appears to be no excuse for the STB’s failure to have engaged the Northern Cheyenne in a meaningful way during the period that this project has been under development. In addition, our research and consultation with other tribes who have a traditional affiliation with the Tongue River Valley, and/or were engaged there by the U.S. Army during the 1870s, indicates there are a number of interested tribes that must be properly consulted with regard to this project, including the Cheyenne, Lakota, Arapahoe, and Crow.

Conclusion

We can only hope that the STB will do better in the process to craft a new PA for this proposed undertaking, engage affiliated tribes and other interested parties in a meaningful way, and apply rigorous standards in a genuine and concerted attempt to identify resources, and evaluate the potential impacts posed by the Tongue River Railroad project. We look forward to a Programmatic Agreement that is developed in the best interest of the valley’s cultural resources, acknowledges the presence of nationally-significant sites, requires additional site reconnaissance and respects traditional perspectives on the region’s cultural landscapes. We ask that MPA be granted status as a consulting party in development of the new PA and discussions on the proposed Tongue River Railroad, and that MPA receive future notifications of public opportunities to receive information and to comment.

In closing, we encourage the STB to

- Immediately engage the Northern Cheyenne and all interested tribes in meaningful, ongoing, direct consultation;
- Initiate a request for development of a Section 213 report in collaboration with the NPS National Historic Landmarks Program;
- Require greater effort to identify cultural resources in the Tongue River Valley, sooner than later, and;
- Rigorously examine alternatives to routing the rail line through the Tongue River Valley and particularly the Wolf Mountains Battlefield NHL.

Sincerely,



Chere Jiusto
Executive Director

Cc via Email:

Mr. Conrad Fisher, Northern Cheyenne Tribal Historic Preservation Officer
Mr. Steve Brady, Chair, Northern Cheyenne Cultural Committee
Ms. Valerie Hauser, Advisory Council on Historic Preservation
Dr. Mark Baumler, Mr. Stan Wilmoth, Montana SHPO
Ms. Christine Whitacre, National Historic Landmark Program
Ms. Kristen McMasters, American Battlefield Protection Program
Ms. Barbara Pahl, National Trust for Historic Preservation



Comments on TRRC PA

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to:

blodgett

03/18/2011 07:44 PM

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Show Details

1 Attachment



MPA Comments TRRR PA March 2011.pdf

Dear Mr. Blodgett

Attached please find comments submitted with regard to the re-opening of the Programmatic Agreement for the Tongue River Railroad Company, Inc.—Construction and Operation— Western Alignment.

We have worked extensively in the project area during the last decade and believe our comments will be informative to the process.

Thank you for your consideration.

Cordially,

Chere

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Executive Director

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