

April 11, 2011

EI-18520

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: Comments

Mr. Blodgett

Thank you for the opportunity to address the "Tongue River Railroad PA Comments" to which the Surface Transportation Board (STB) is the lead agency.

Although there isn't any clear characterization of cultural rights in any of the US's human rights policies, practices or development; where their designation depends on that of culture, it is nonetheless a freedom issue that continues to surface when we discuss the loss of physical evidence to our lifeways and culture. Since culture is considered in all federal undertakings as being a way of life, the sum of material and spiritual activities and products of a tribal group, then cultural rights comprise all kinds of rights to maintain and develop cultures, such as the right of self-determination, including cultural development, the rights to freedom of thought, religion and association and the right to education. In this broad sense, cultural rights can too be seen in the same light as "the right to culture", in the sense of the right to preserve, develop and have access to a culture.

Tribal consultation under the mandate of Executive Order 13175 of November 9, 2000; the United States government has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive orders and court decisions.

The Fort Peck Assiniboine and Sioux Tribes' Tribal Historic Preservation Office (FPTTHPO) request that Surface Transportation Board work with tribes and interested Native American individuals as 'consulting parties in order to protect cultural resources. Also, consultation requirements of the National Historic Preservation Act (NHPA), as amended (Section 106) (16 U.S.C. 470) consultation with Native American tribes and interested Native American individuals, as consulting parties, is mandatory as part of the Section 4(f) project evaluation. In addition, the provision of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001-3013) will also apply to this project if Native American human remains are inadvertently discovered during 'ground-breaking' activity of the project, once the project is permitted to construct.

The FPTTHPO does require that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring a physical examination by a Traditional cultural practitioner. The FPTTHPO defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by a proposed project, including ... objects of historic or aesthetic significance."

In order to bring about meaningful consultation, the STB is requested to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. (Please note that the Tribe's will push for a 100% avoidance) In most cases, it is the federal environmental policy requirements that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Statement (EIS). An Environmental Assessment, (EA) prepared under NEPA, defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including.....objects of historic or aesthetic significance." In order for federal lead agencies to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if the project is determined to have an adverse impact on a cultural resources; then, to mitigate that effect of the project. Because this is an expansion of the railroad, it is unclear why an EIS was not conducted to include the tribes or cultural resources in the natural environment.

Because the Tribe's were not part of creating the last PA, the Fort Peck THPO feel that the next PA will not be a revision but a new construction that permits tribes to address cultural resources from a NEPA, NHPA and THPO standpoint.

Respectfully,

Curley Youpee, Director; Cultural Resources Department



Re: Tongue River PA comments / revisions due March 18
 Curley Youpee
 to:
 Kenneth.Blodgett
 04/11/2011 06:42 PM
[Show Details](#)

History: This message has been forwarded.

1 Attachment



Comment Letter to STB 4-11-11.docx

Here is my response to the comment request.
 Curley

--- On **Wed, 3/2/11**, **Kenneth.Blodgett@stb.dot.gov** <**Kenneth.Blodgett@stb.dot.gov**> wrote:

From: Kenneth.Blodgett@stb.dot.gov <Kenneth.Blodgett@stb.dot.gov>
 Subject: Tongue River PA comments / revisions due March 18
 To: ngabriel@achp.gov, "Charlene Vaughn" <cvaughn@achp.gov>, Dalice_Landers@blm.gov, doug@wescoresources.com, DCoburn@steptoe.com, rebecca.j.shipman@usace.army.mil, laxline@mt.gov, rebecca@northernplains.org, swilmoth@mt.gov, "Baete, Lisa" <Lisa.Baete@ARS.USDA.GOV>, christine_whitacre@nps.gov, conrad.fisher@cheyennenation.com, leroy.spang@cheyennenation.com, steve.brady@cheyennenation.com, joe.foxjr@cheyennenation.com, dale@lbhc.cc.mt.us, "Clair Green" <clairsgreen@yahoo.com>, "Waste'Win Young" <wyoung@standingrock.org>, "Steve Vance" <steve.vance@crst-nsn.gov>, "Lana Gravatt" <gravattlana@yahoo.com>, "dianne desrosiers" <dyandancer@yahoo.com>
 Cc: lowersioux@mnhs.org, wanapeyanajica@gmail.com, brandonsazue@hotmail.com, curley_up@yahoo.com, rstthpo@yahoo.com, scott@uppersiouxcommunity-nsn.gov, culturalresources@shakopeedakota.org, fjackson005@yahoo.com, president@fsst.org, pbrady@mhanation.com, narapahothpo_2009@ymail.com, cpreserve@fsst.org, wandawells@midstatesd.net
 Date: Wednesday, March 2, 2011, 7:29 AM

Greetings Consulting Parties,

I just wanted to remind the Tongue River Programmatic Agreement consulting parties that we are seeking your input on updating and revising the PA by March 18. I am forwarding the initial email seeking input dated January 31, with attachments, for your convenience.

Thanks for your help.

Ken

----- Forwarded by Kenneth Blodgett/STB on 03/02/2011 09:07 AM -----

From: Kenneth Blodgett/STB

To: ngabriel@achp.gov, Charlene Vaughn <cvaughn@achp.gov>, [Dalice Landers@blm.gov](mailto:Dalice_Landers@blm.gov), doug@wescoresources.com, DCoburn@steptoe.com, rebecca.j.shipman@usace.army.mil, laxline@mt.gov, rebecca@northernplains.org, swilmoth@mt.gov, "Baete, Lisa" <Lisa.Baete@ARS.USDA.GOV>, [christine whitacre@nps.gov](mailto:christine_whitacre@nps.gov), conrad.fisher@cheyennenation.com, leroy.spang@cheyennenation.com, steve.brady@cheyennenation.com, joe.foxjr@cheyennenation.com, dale@lbhc.cc.mt.us, Clair Green <clairsgreen@yahoo.com>, Waste'Win Young <wyoung@standingrock.org>, Steve Vance <steve.vance@crst-nsn.gov>, Lana Gravatt <gravattlana@yahoo.com>, dianne desrosiers <dyandancer@yahoo.com>

Cc: lowersioux@mnhs.org, wanapeyanajica@gmail.com, brandonsazue@hotmail.com, curley_up@yahoo.com, rsthpo@yahoo.com, scott@uppersiouxcommunity-nsn.gov, culturalresources@shakopeedakota.org, fjackson005@yahoo.com, president@fsst.org, blackfeethpo@gmail.com, pbrady@mhanation.com, narapahothpo_2009@ymail.com

Date: 01/31/2011 03:11 PM

Subject: Tongue River PA attached for comment / revision

Greetings,

Tomorrow, February 1, the Surface Transportation Board (Board) is serving a notice to the public re-opening the Tongue River Programmatic Agreement (PA) to updates and revisions. The notice will also be published in the Federal Register. The notice seeks comment from the public not later than March 18 on the Board's Section 106 review process for this project, as well as specific comments regarding the revision of the existing PA.

At this time, we also seek comment from the PA consulting parties. Please review the attached PA and Identification Plan (Attached A to PA) and provide your specific comments/edits/ideas for updating and revising the PA to me not later than March 18. We will review comments as received and make the necessary revisions to the PA in consultation with consulting parties on an ongoing basis, as appropriate. A copy of the revised PA which incorporates and addresses the concerns raised during the comment period will then be provided to the consulting parties for further review. The schedule for making revisions to the PA is attached. To meet the deadline for execution of the revised PA, it is imperative that we have your input not later than March 18.

Consulting party contact information is attached. Please notify me of any

necessary corrections to the contact information. The National Historic Landmarks Program (Department of the Interior) and five tribes have recently notified us of their interest in participating as consulting parties. Tribes which have not yet responded to our invitation to participate as consulting parties are indicated on the consulting party list. Those tribes will be copied on this email.

The Tongue River 1, 2, and 3 environmental review documents and documents related to the Section 106 PA compliance process are available for viewing on the Board's website at www.stb.dot.gov, at "Key Cases" under "Environmental Matters." There are also links to the Board's Environmental Correspondence Tracking System (ECT), where all incoming and outgoing environmental correspondence pertaining to the docket is posted. Please contact me at 202-245-0305 if you need help navigating the website or finding information.

Thanks for your help in updating and revising the PA.

Ken

(See attached file: Final PA Oct 11, 2005.doc)

(See attached file: PA Attachment A - ID Plan.doc)

(See attached file: 2010 consulting party contact info.doc)

(See attached file: Schedule for Revision.doc)