



Preserving America's Heritage

EI-18383

KB

October 4, 2010

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

RE: *Programmatic Agreement Regarding Construction and Operation of a Rail Line by the Tongue River Railroad Company*
Montana

Dear Ms. Rutson:

On September 19, 2010, the Advisory Council on Historic Preservation (ACHP) received a request from the Surface Transportation Board (STB), to extend the referenced programmatic agreement (PA) for a period of ten years. The PA, which was executed on 2005, includes a provision for the PA to remain in effect for five years after its execution. STB is required to notify the parties within three months of the expiration date to request an extension for a period to be determined.

On August 23, 2010, the ACHP's Director of the Office of Native American Affairs, received a call from the Vice President of the Northern Cheyenne Tribe, the Honorable Joe Fox, Jr., requesting information on the status of work carried out under the PA given the pending expiration. On the phone with Vice President Fox was Mr. Steve Brady, Chairman of the Northern Cheyenne Cultural Committee and Mr. Conrad Fisher, Tribal Historic Preservation Officer. Since the tribe had not been contacted by STB during the entire five year period of the PA, concerns were expressed regarding the status of the PA and any work that was carried out. During this call and subsequent calls, the ACHP learned that the Northern Cheyenne Tribe actually objects to the PA being extended and requests that it be consulted regarding the potential for historic properties of religious and cultural significance to the tribe to be located within the area of potential effect (APE) for this project. We understand that the Northern Cheyenne Council has adopted a formal resolution in this regard, too.

The tribe apprised the ACHP that in the intervening years, a property located within the APE has been designated a National Historic Landmark (NHL). The property is the Wolf Mountain Battlefield and it is apparently in the path of the proposed rail line.

Based on the concerns of the Northern Cheyenne Tribe and the designation of the NHL, the ACHP also questions the appropriateness of an extension of the PA without further consultation. We, therefore, recommend that STB reinstate consultation with the signatories, concurring parties, and the affected tribes to review the terms of the PA; to assess whether it outlines an appropriate process for further

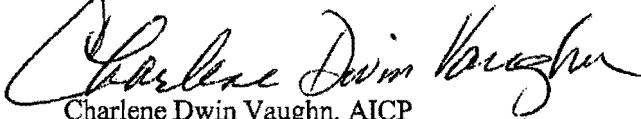
ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

identification and evaluation; and to determine whether further avoidance, minimization, and mitigation measures are required. Furthermore, in accordance with Section 800.10(c) of the National Historic Preservation Act (NHPA) regulations ("Protection of Historic Properties" (36 CFR Part 800)), STB must notify the Secretary of Interior and involve the Secretary in the consultation if there is potential for an adverse effect to the Wolf Mountain Battlefield NHL.

We look forward to working with STB and the consulting parties to conclude the Section 106 process for this proposed undertaking. Should you have any questions, please feel free to contact Najah Duvall-Gabriel at (202) 606-8585 or via email at ngabriel@achp.gov.

Sincerely,

A handwritten signature in cursive script, reading "Charlene Dwin Vaughn".

Charlene Dwin Vaughn, AICP
Assistant Director
Office of Federal Agency Programs
Federal Licensing, Permitting, and Assistance Section