



NORTHERN CHEYENNE TRIBE
ADMINISTRATION
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February 10, 2012

Ms. Victoria Rutson, Chief
 Office of Environmental Analysis
 Surface Transportation Board
 395 E Street, SW
 Washington, D.C. 20423

Re: Northern Cheyenne Tribe Statement Regarding Tongue River I

Dear Ms. Rutson:

The Northern Cheyenne Tribe, a federally recognized tribe, submits the following statement regarding the proposed Tongue River I Railroad ("TR I"). The Northern Cheyenne Tribe has direct traditional connections to the land on which the Tongue River I Railroad has been proposed, as well as to the broader cultural landscape of the Tongue River area, and we maintain that the proposed railroad will have adverse effects on significant historic, archaeological, and cultural resources located in and around the path of Tongue River I Railroad. We urge the Surface Transportation Board ("STB") to ensure the proper processes take place to comply with the law, most particularly those outlined in the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA). In addition, we remind the STB, as lead agency in the proposed project, that they must conduct government-to-government consultations with the Northern Cheyenne tribe and other tribes due to the political trust relationship the Northern Cheyenne Tribe has with the federal government, which has been recognized through treaties and the U.S. Congress.

The Northern Cheyenne Tribe submits the following statement regarding the proposed Tongue River I Railroad, but also reminds STB that meaningful tribal consultations have yet to take place and these statements shall, in no way, be considered the completion of the tribal consultation process. To summarize, the Northern Cheyenne Tribe asserts that: 1) the STB is required under section 106 of the NHPA to engage in tribal consultations regarding the proposed Tongue River I Railroad; 2) a cultural survey must be completed in partnership with the Northern Cheyenne Tribe on the historic, archaeological, and cultural resources that may be impacted by the proposed Tongue River I Railroad and the broader cultural landscape of the Tongue River area; 3) an Environmental Impact Statement must be completed on the Otter Creek Spur, as this section was never assessed under the original Environmental Impact Statement in 1980s, nor were any alleged updates completed in the Environmental Impact Statements for Tongue River II or Tongue River III; and 4) the Environmental Impact Statement originally done on Tongue River I never included meaningful consultations with the Northern Cheyenne Tribe or other tribes with historic, archaeological, and cultural resources in the proposed area, and 5) the Environmental Impact Statement originally completed on the Tongue River I railroad is stale at its advanced age of 24 years, the information collected for the EIS is even older, and the scope of the EIS is substantially out of compliance with the NHPA and the NEPA. The Northern Cheyenne Tribe also notes that a cadastral survey has been requested

LITTLE WOLF AND MORNING STAR
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 After 40 years of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

by the Tribe to better define reservation boundaries and STB's review of the issues outlined in this letter will need to take into account the results of this survey.

Unfortunately, this statement is being submitted in a process that has, as of yet, been ill-defined by the STB. On January 25 and 26, 2012, tribal representatives from the Northern Cheyenne tribe and other tribes, including the Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Crow Nation, Flandreau Santee Sioux, Ft. Peck Assiniboiné and Sioux Tribes, Northern Arapaho Tribe, Rosebud Sioux Tribe, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Oyate, Standing Rock Sioux Tribe, Three Affiliated Tribes (MHA Nation), and the Yankton Sioux Tribe, with traditional ties to the land proposed in TR I were requested to participate in what was thought to be a tribal consultation meeting, following a symbolic gesture—the tearing up of the expired Programmatic Agreement—in an earlier meeting, as well as several communications with the tribes in preparation for the meeting, which referred to it as a Section 106 consultation meeting. However, it came to light during the January meeting that decision makers were not present, despite the apparent presence of a representative from STB, Catherine Glidden, and information had already been shared by tribal representatives anticipating confidential consultation. Repeatedly throughout the meeting, when asked direct questions, Ms. Glidden was unable to answer them because, as she stated, she was neither a lawyer nor a decision maker for the Surface Transportation Board. In addition, instead of the section 106 tribal consultations under the National Historic Preservation Act, which the tribes initially thought was taking place, some question now remains to the exact process we are all collectively undertaking. The STB announced during the January meeting that it was taking a step back from the process—be it section 106 of the NHPA or NEPA—to hear comments from consulting parties.

1. Tribal Consultations: The Northern Cheyenne Tribe asserts that meaningful tribal consultations must occur with regard to the proposed Tongue River I Railroad under section 106 of the National Historic Preservation Act (NHPA), particularly because of the adverse impacts this proposed Railroad will have on the historic, archaeological, and cultural resources of the Northern Cheyenne tribe, and also because of the area's religious and cultural significance to the Northern Cheyenne Tribe. In particular, Section 101(d)(6)(B) of the NHPA states, "[i]n carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance..." (16 U.S.C. 470 et seq.) In addition, the regulations implementing the NHPA require that consultation with Indian tribes throughout the review process take place and that federal agencies are required to consult with Indian tribes on a government-to-government basis, in a manner that is respectful of tribal sovereignty. (36 CFR Part 800).

2. Cultural Resources Survey: The Northern Cheyenne Tribe asserts that a cultural resources survey is conducted that will take into account the historic, archaeological and cultural resources, including the oral histories of our tribal members and important tribal ethnographic content. The Cultural Resources Survey should consider the entire cultural landscape of the Tongue River and Otter Creek drainages that will be affected by the railroad. Identification efforts must stretch beyond the right of way to include resources potentially affected by the cumulative, indirect effects of railroad construction and operation. The Northern Cheyenne Tribe is prepared to conduct its own Cultural Resources Survey, as we have the capacity to do so. We also request that the costs of this Cultural Resources Survey be covered by the STB or the TRRC. The information collected by the Cultural Resources Survey is vitally important, as it will address and inform the section 106 process. We believe that putting the section 106 process on hold until this cultural resources survey is completed is the most prudent step forward, so that all parties may review the information collected and best be able to respond to identifying historic, archaeological, and cultural resources located within the proposed TR I area, as per the

Section 106 process of the NHPA. In addition, the Environmental Impact Statement EIS completed on Tongue River I in the 1980s never adequately included historic, archaeological and cultural resources.

3. Otter Creek Spur Environmental Impact Statement: The Northern Cheyenne Tribe asserts that an Environmental Impact Statement was never adequately completed for the Otter Creek Spur in Tongue River I, nor was it covered in any manner by the Environmental Impact Statements for Tongue River I, Tongue River II, or Tongue River III. As per the National Environmental Policy Act, any proposed major federal action that will significantly affect the quality of the environmental, must require an Environmental Assessment (EA) or an Environmental Impact Statement. Given the effect the proposed TR I will have on the environmental quality of the Tongue River, as well as the plants and wildlife sacred to the tribe, it is imperative to complete an Environmental Impact Statement of the Otter Creek Spur. While a Cultural Resources Survey conducted by the Northern Cheyenne Tribe, as mentioned above, would also include the Otter Creek Spur, an Environmental Impact Statement would be necessary to address environmental concerns.

4. Updated Environmental Impact Statement on Tongue River I: The Environmental Impact Statement originally done on Tongue River I never included meaningful consultations with the Northern Cheyenne Tribe or the other tribes with historic, archaeological, and cultural resources in the proposed area. In addition, the Environmental Impact Statement originally completed on the Tongue River I railroad is stale at its advanced age of 24 years, the information collected for the EIS is even older, and the scope of the EIS is substantially out of compliance with the NHPA and the NEPA. Furthermore, the recent 9th Circuit case, *Northern Plains Resource Council v. Tongue River Railroad*, No. 97-70037 (9th Cir. December 29, 2011), asserted that the Environmental Impact Statements done on Tongue River II and Tongue River III were stale. These EIS's are much younger than the Tongue River I EIS and involve the same project. Such compelling information should be clearly indicative of a decision to update the Environmental Impact Statement for Tongue River I, to include meaningful tribal consultations, and a Culture Resources Survey. In addition, there are multiple environmental considerations that STB should evaluate, including the effect the TR I will have on the environment, Tongue River, plants and wildlife. The water from the river, the plants used for gathering traditional medicine, the environment, and the wildlife are all important culturally to the tribe.

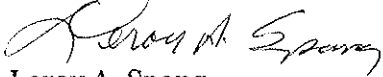
The Northern Cheyenne Tribe reiterates that considerable time and energy on the part of the Northern Cheyenne tribe and other tribes were put forth to make the trip to Rapid City, South Dakota, on January 25 and 26, 2012, to engage in, what we believed, would be meaningful consultations. Instead, a written statement on a sheet of paper was read to us and none of our questions could be answered. We urge the importance of confidentiality with regard to tribal consultations and the information the Northern Cheyenne tribe and other tribes have divulged during these meetings.

Out of this January 25-26, 2012, meeting, however, came a joint determination among the Northern Cheyenne Tribe, Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Crow Nation, Flandreau Santee Sioux, Ft. Peck Assiniboin and Sioux Tribes, Northern Arapaho Tribe, Rosebud Sioux Tribe, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Oyate, Standing Rock Sioux Tribe, Three Affiliated Tribes, and Yankton Sioux Tribe to assert that the STB should engage in tribal consultations, perform a Cultural Resources Survey, do an Environmental Impact Statement on the Otter Creek Spur, and update the Environmental Impact Statement on Tongue River I, as outlined above in our statement in order to be in

compliance with the NHPA and NEPA. In addition, it is the responsibility of the STB to coordinate access to property so that these studies may be completed.

The Northern Cheyenne Tribe submits this statement in anticipation of a decision by the STB to proceed with Section 106 consultations and/or reopen the Tongue River I Environmental Impact Statement and consult with the Northern Cheyenne Tribe and other tribes on a government-to-government basis.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leroy A. Spang".

Leroy A. Spang
President of the Northern Cheyenne Tribe