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The Morning Star

NORTHERN CHEYENNE TRIBE ADMINISTRATION

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



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December 6, 2004

Surface Transportation Board
Case Control Unit
Washington, DC 20423
Attn: Kenneth Blodgett

Re: STB Docket No. FD 30186 (Sub-No. 3)

Mr. Blodgett,

I would like to take this opportunity to provide comments on behalf of the Northern Cheyenne Tribe related to the Draft Supplemental Environmental Impact Statement for the Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment, Tongue River III – Rosebud and Big Horn Counties, Montana Project. This project, and its associated cultural, economic, and environmental impacts, is of the highest concern to the Northern Cheyenne Tribe.

As you are aware, the Surface Transportation Board (STB) is statutorily required under Section 106 of the National Historic Preservation Act to conduct official consultation with Tribes whose cultural resources may be impacted by development activities. This consultation process must occur throughout the entire project including the planning, construction, and final close-out stages of project implementation. Although a number of contacts have been made with various Tribal representatives, these contacts in no way constitute formal consultation with the Northern Cheyenne Tribe. The Northern Cheyenne Tribe is very disappointed with the efforts by the STB to date to schedule and hold consultation meetings on the proposed project. While we understand the difficulty in coordinating some of these meetings, given that Tribal representatives change from time to time with Tribal elections being held every two years, it is the STB's responsibility nonetheless to ensure that consultation occurs on every level of project implementation – including Environmental Impact Statements.

The Northern Cheyenne Tribe has many concerns related to cultural resources located along the entire Tongue River Railroad alignment. These concerns are not only related to historic and pre-historic sites and artifacts, but also, to contemporary sites being utilized in the Tongue River Valley for various cultural practices currently. These sites are associated with various cultural and religious ceremonies that would be disrupted by trains passing through the area. Historically speaking, there are also a number of sites associated with Northern Cheyenne homesteads throughout the Tongue River Valley that would be affected by the proposed project. Additionally, the large amount of ground clearing that will be performed as part of the project has the potential to impact a large number of culturally significant plant species utilized by

members of the Northern Cheyenne Tribe. These plants serve very significant roles in contemporary religious ceremonies and many have medicinal properties associated with them.

The National Environmental Policy Act requires that any environmental analysis conducted as a result of a federal action address the cumulative impacts of all activities, current and proposed, and identify appropriate mitigation measures to offset such impacts. The proposed project would have a number of short and long term cumulative impacts that have not been addressed in the DEIS for this project. The DEIS does not take into account Coalbed Methane (CBM) development that will occur throughout southeastern Montana; it does not address air increment consumption by CBM development activities and the Colstrip, Round-up, and Hardin Power Plants; and it does not address impacts to water quality in combination with discharges to the Tongue River from CBM development activities. Additionally, it does not take into account that the U.S. Environmental Protection Agency is currently reviewing the Northern Cheyenne Tribe's Water Quality Standards, to be implemented on the Tongue River, for approval.

The Northern Cheyenne Reservation is currently classified as a Class I Air-shed, and the community of Lame Deer, located in the center of the Reservation, has been re-designated as a PM₁₀ Non-attainment area by the U.S. EPA. Recently, the Tribe conducted an air increment analysis that showed that most of the air increment available under the Class I Air-shed designation has already been consumed by various emissions sources in the area. Additionally, a recent EIS developed for the Round-up Power Project identified air impacts to the Northern Cheyenne Tribes air quality and exceedences of the available air increment. Furthermore, three other potential emissions sources, a new power plant currently being constructed in the Hardin, MT area, Coalbed Methane compressor stations, and the proposed Otter Creek Coal Mine, will further impact the Northern Cheyenne Tribe's air quality. The current DEIS does not account for all of these impacts in its analysis of short and long term impacts to air quality from the Tongue River Railroad.

Currently, the U.S. Environmental Protection Agency is reviewing the Northern Cheyenne Tribe's application for Treatment as a State for the authority to establish water quality standards for all surface waters within the exterior boundaries of the Northern Cheyenne Reservation. This includes establishing water quality standards for that reach of the Tongue River that flows through the eastern boundary of the Reservation. The Tribe has completed the development of numeric water quality standards for a wide array of constituents in this water body and has formally adopted them as Tribal Law. With the increasing occurrence of CBM development related discharges into the Tongue River, there exists great potential that some of these standards may be violated. The DEIS does not take into account proposed CBM development activities in its analysis of cumulative impacts, nor does it analyze the Northern Cheyenne Tribe's water quality standards as part of this process. This could have serious detrimental impacts to proposed dredge and fill activities related to the construction of the Tongue River Railroad.

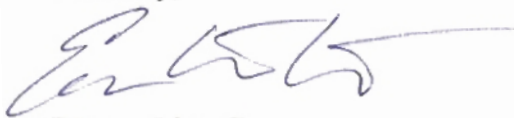
The Ft. Laramie Treaty of 1868 granted members of the Northern Cheyenne Tribe certain hunting and fishing rights. To this day, many members of the Northern Cheyenne Tribe rely heavily on subsistence hunting and fishing along the Tongue River Valley. This includes State sanctioned hunting and fishing during established hunting and fishing seasons outside the external boundaries of the Reservation. The proposed project, in conjunction with CMB

development activities has great potential to disrupt these important resources throughout the Tongue River Valley. Migration corridors utilized by Elk populations that exit throughout the proposed project area would be significantly impacted by the cumulative effects of these projects. Fish populations in the Tongue River itself could be impacted by siltation associated with dredge and fill activities required to establish the Tongue River Railroad and by those caused by erosion associated with CBM development. The high number of roads associated with railroad construction and with CBM development could have serious negative impacts on a number of species including raptors, deer, grouse, and various species of fox.

Finally, the Northern Cheyenne Tribe feels that the DEIS needs to take a more comprehensive look at social and economic impacts that the proposed project may have on the communities in southeastern Montana. With the new Clean Air Interstate Rule (CAIR) being proposed by the U.S. EPA, there exists potential for negative impacts to several of the coal mines around the Colstrip area - more specifically, the Western Energy Mine, the Peabody Coal Co. Mine, and the Sarpy Creek Mine. These mines could be potentially impacted by the opening of the new railway that would allow low sulfur coal to be purchased from Wyoming at a reduced rail cost by markets to the east of these mines. Markets that previously may have purchased their coal from the Colstrip area mines may terminate their purchase agreements and cause serious economic impacts to these Mines. This in turn could result in negative economic impacts to the Northern Cheyenne Tribe as a number of Tribal members are currently employed by these mines. Additionally, any economic analysis should also analyze the potential for beneficial impacts to the Northern Cheyenne Tribe through the utilization of common carrier rail service agreements from the Ashland area to potential markets to the east for the production of Tribal goods and services.

The Northern Cheyenne Tribe strongly urges the Surface Transportation Board to revisit the DEIS and conduct a more comprehensive analysis of all the impacts and potential mitigation scenarios related to this proposed project. As a matter of history, the Northern Cheyenne Tribe was not consulted on the first environmental analysis, and had it been, these same issues would have been identified and could have been analyzed long ago. As the newly elected President of the Northern Cheyenne Tribe I look forward to working with the Surface Transportation Board to address these many issues. If you have any questions, please feel free to contact my office at (406) 477-6284.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. LittleCoyote', with a stylized flourish at the end.

Eugene LittleCoyote,
President,
Northern Cheyenne Tribe

cc: file.