

207257

LAW OFFICES OF JOE A. RODRIGUEZ

MONTANA OFFICE:
P.O. Box 820, Lame Deer, Montana 59043
Ph: (406) 477-6315 Telefax: (406) 477-8361

Licensed in Montana & California

SANTA BARBARA, CA OFFICE:
P.O. Box 61112, Santa Barbara, CA 93160
Ph: (805) 685-4977 Telefax: (805) 685-4928

Please Reply To : Lame Deer, Montana Office

February 10, 2003



Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, D.C. 20423-0001

RE: Finance Docket No. 30186 (Sub-No.3)
Tongue River Railroad Company -- Rail Construction
And Operation -- in Rosebud and Big Horn Counties, Montana

Dear Secretary Williams:

I have enclosed for filing in the above matter(s) an original and ten (10) copies of Native Action's Opposition to TRRC's Petition for Leave to File Supplemental Evidence.

Thank you for your attention to this matter.

Sincerely,

Joe A. Rodriguez
JAR:dmo

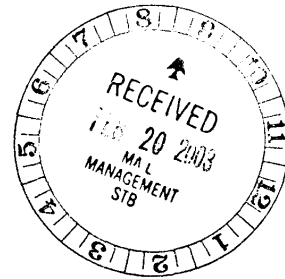
enclosures

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Office of Proceedings

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Part of
Public Record

207257



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 30186 (SUB-NO.3)

TONGUE RIVER RAILROAD COMPANY - RAIL CONSTRUCTION
AND OPERATION - IN ROSEBUD AND BIG HORN COUNTIES,
MONTANA

NATIVE ACTION, INC.'S OPPOSITION TO PETITION FOR LEAVE TO
FILE

SUPPLEMENTAL EVIDENCE

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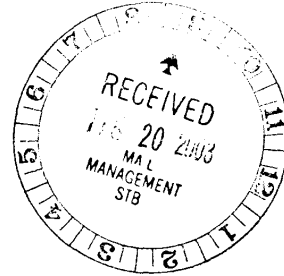
Joe A. Rodriguez
P.O. Box 820
Lame Deer, MT 59043
(406) 477-6315

Attorney for Native Action, Inc.

February 10, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 30186 (SUB-NO.3)



TONGUE RIVER RAILROAD COMPANY - RAIL CONSTRUCTION
AND OPERATION - IN ROSEBUD AND BIG HORN COUNTIES, MONTANA

NATIVE ACTION, INC.'S OPPOSITION TO PETITION FOR LEAVE TO
FILE SUPPLEMENTAL EVIDENCE

Native Action, Inc. hereby states its opposition to Applicant Tongue River
Railroad Company's (hereinafter referred to as "TRRC") Petition for Leave to File
Supplemental Evidence, dated January 17, 2002.

ARGUMENT

**I. THE TRRC'S PETITION SHOULD BE DENIED AS IT IS NOT
A PETITION FOR RELIEF PURSUANT TO 49 CFR 1117.1.**

In its Petition, TRRC requests leave to file supplemental evidence with regard to
five "transportation" issues. TRRC purports to file its Petition pursuant to 49 CFR
1117.1, a catch-all regulation which allows "Petitions (For Relief) Not Otherwise
Covered".

While said regulation does not specify the types of Petitions allowed thereunder,
it does limit such Petitions to *Petitions for Relief*. TRRC's Petition does not seek a
specific relief; rather it simply seeks to supplement types of information already on file

as a part of its underlying application. Black's Law Dictionary (5th Edition) defines "relief" as:

"...Deliverance from oppression, wrong or injustice. In this sense it is used as a general designation of the assistance, redress, or benefit which a complainant seeks at the hands of a court, particularly in equity."

TRRC's Petition does not cite any action, decision or misdeed on the part of the Surface Transportation Board, the protestants, or any party whatsoever, for which the TRRC is entitled to relief. No harm or prejudice....no "oppression, wrong or injustice" has been cited by the TRRC as the basis for its Petition.

Consequently, the TRRC's Petition is not a Petition for Relief pursuant to 49 CFR 1117.1 and should be denied.

II. TRRC'S PETITION IS AN INAPPROPRIATE ATTEMPT TO AMEND ITS APPLICATION

As stated above, the TRRC's Petition is not a Petition for Relief; rather it is an attempt to substantially amend its application and improperly enhance its legal position before the Surface Transportation Board (hereinafter referred to as "Board").

TRRC specifically seeks to supplement the record before the Board only with regard to "transportation" issues which relate to the TRRC's application. (TRRC Petition for Leave to File Supplemental Evidence, page 3). However, at this late juncture, only information pertinent to the environmental review process should be allowed to be supplemented in the record. In fact, the National Environmental Policy Act (NEPA) requires such consideration of new or changed circumstances as they relate to environmental impacts.

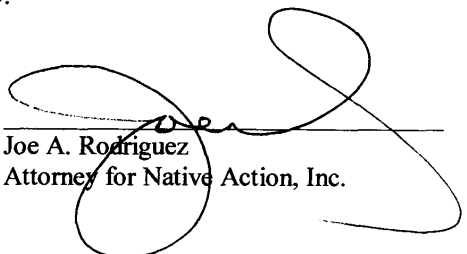
This is not the case in this instance. The five categories of evidence outlined by the TRRC in its Petition clearly relate to business viability and purported public need issues. TRRC seeks to improperly and likely substantially, amend its underlying application. As such, TRRC's Petition is improperly founded and should be denied.

Instead, should TRRC believe that the "transportation" information which it seeks to supplement into the record is fundamental to its application; the TRRC should seek to dismiss its application and these proceedings; and file a new application for Sub - No. 3 with the additional information. A full blown review of such information pursuant to a new application would thereby occur. Public comment, discovery and the full spectrum of review could therefore become available.

CONCLUSION

Native Action hereby requests that the Board deny TRRC's Petition For Leave to File Supplemental Evidence.

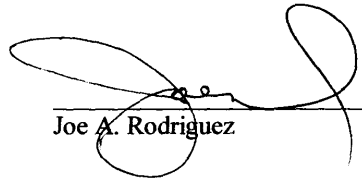
Dated this 10th day of February, 2003.



Joe A. Rodriguez
Attorney for Native Action, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by U.S. Mails upon all parties of record, this 10th day of February, 2003.



Joe A. Rodriguez