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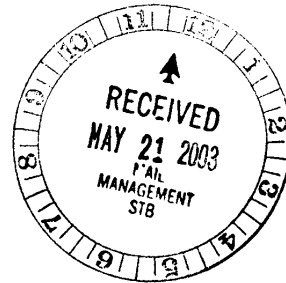
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May 20, 2003

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Secretary  
Surface Transportation Board  
1925 K Street NW  
Washington, D.C. 20423

Re: FINANCE DOCKET No. 30186 (Sub-No. 3)

Dear Secretary:

Enclosed you will find an original and ten copies of Northern Plains Resource Council Inc.'s Preliminary Response to Supplemental Evidence. I ask that you please file this with the Board.

Thank you for your attention on this matter. Please call should you have any questions.

Very truly yours,

*J. Tuholske*  
Jack R. Tuholske

enc.

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Public Record



BEFORE THE SURFACE TRANSPORTATION BOARD  
OF THE UNITED STATES OF AMERICA

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FINANCE DOCKET No. 30186 (Sub-No. 3)

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

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NORTHERN PLAINS RESOURCE COUNCIL INC.'s

PRELIMINARY RESPONSE TO SUPPLEMENTAL EVIDENCE

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Comes now the Northern Plains Resource Council, and joins in the Preliminary Response to Supplemental Evidence filed by the United Transportation Union, General Committee of Adjustment on the Burlington Northern and Santa Fe Railroad Company, and Montana State Legislative Board. Northern Plains joins in, and incorporates all arguments made in that Preliminary Response.

In addition, Northern Plains notes that the Tongue River Railroad has obviously spent months gathering this new evidence, including retaining new experts and proffering new expert opinions that reach the merits of the pending application. Those opposed to the application, as

a matter of fundamental fairness and due process, must be given adequate time to conduct discovery and provide rebuttal information. The twenty day response time sought by the Applicant is patently unfair. It is impossible to retain an expert and provide that person with the opportunity to develop a rebuttal statement within that time frame.

Furthermore, the supplemental evidence is rife with conclusory statements and short on explanation and underlying data. For example, the new verified statement of Mark T. Morey makes assumptions regarding past and current demand for coal without any explanation of the data he used to reach those conclusions. *Morey Statement ¶ 1*. He makes statements regarding demand for "compliance coal" without foundation. *Morey Statement ¶ 2*. He makes assumptions about future coal development in Montana at places like the CX Ranch (currently leased as an operating coal bed methane production facility) without explanation. *Morey Statement ¶ 3*. Mr. Morey is a new expert and his evidence has never been tested through discovery. The parties opposing the application deserve the opportunity to gather all the information used to formulate these opinions, and the opportunity to provide that information to their own experts along with the conclusions contained in the Verified Statements.

The same may be said of the other Verified Statements that were included in the Supplemental Evidence. Each new Verified Statement contains information and conclusions with little or no foundation. These statements deal with sophisticated economic and natural resource predictions. A proper response will require adequate time to obtain the background information and then analyze the conclusions that Tongue River's experts have drawn from that information.

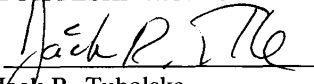
Those protesting the Application must be given adequate opportunity to conduct discovery and submit rebuttal evidence in response to the Supplemental Evidence that this Board has allowed the Applicant to file. Tongue River Railroad has, after all, decided that the record needed to be reopened so that it could supplement what all parties consider to be a stale record. In response, all Northern Plains seeks is the same opportunity to rebut that evidence.

Any claim of delay by Tongue River must be cast aside. It is Tongue River that asked this Board to delay its own petition for years. It is Tongue River that decided that the record needs to be supplemented. Any delay imposed by allowing the protestants to conduct discovery and submit rebuttal evidence is the result of Tongue River's actions alone.

Because the new supplemental evidence contains substantial new expert testimony, and contains numerous assumptions without providing any basis, Northern Plains requests that the Board provide them with 180 days to respond, and permit limited discovery directed at the supplemental evidence.

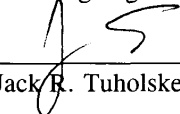
Dated this 20 day of May, 2003.

TUHOLSKE LAW OFFICE P.C.

  
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Jack R. Tuholske  
*Attorney for Northern Plains*

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of May, 2003, I deposited a true and correct copy of the foregoing in the United States mail, postage prepaid, to all parties of record.

  
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Jack R. Tuholske