



November 16, 2004

Mr. Kenneth H. Blodgett
Environmental Protection Specialist
Office of Economics, Environmental
Analysis and Administration
Surface Transportation Board
Washington, D.C. 20423

REF: *Tongue River Railroad Company, Inc. – Finance Docket 31086 (Sub-No.3).*

Dear Mr. Blodgett:

On October 26, 2004, we received a revised draft Programmatic Agreement for the Tongue River Railroad Company (TRRC) Western Alignment for our review and comment. We have reviewed the current draft and offer the attached comments for your consideration. We recommend that before the Section of Environmental Analysis (SEA) presents a final PA to the signatories and concurring parties, that SEA contact the parties to consult about and resolve any remaining comments offered that SEA does not incorporate into the agreement.

If you have any questions regarding these matters, please contact me at (303) 969-5110 or Email at astanfill@achp.gov.

Sincerely,

Alan Stanfill
Senior Program Analyst
Western Office of
Program Review

ACHP Comments on Draft #4, Programmatic Agreement Regarding Construction and Operation of a Rail Line from Miles City to Decker, Montana

1. Upon careful review of the revised draft and prior comments provided by us and other reviewers, we are convinced that an Identification Plan is needed. In addition to providing thorough definitions of Class I through Class III standards, the Plan needs to discuss identification strategies in relation to the project as presented on detailed maps. The Plan should clarify how and where inventory efforts will be conducted and the nature and purpose of those efforts. For example, among the purposes of a “Windshield “survey should be the intent to assess whether cultural landscapes may exist in the APE (eg., farming, ranching, Traditional Cultural), and to provide initial recognition and identification of such landscapes and the elements that distinguish them.
2. An Identification Plan, should also provide clearer explanations of how tribal involvement will be integrated into the identification effort, and whether there is a need to contract directly with the tribes to gather information about properties of traditional religious and cultural importance to them within the APE. Having a tribal representative walking around with the archaeological field crew may not be the best strategy to gain this information since it would not be reasonable to assume that any one member of any particular tribe would retain all the traditional information necessary to recognize or evaluate the importance of such properties. A more concerted and systematic effort involving informant interviews may be necessary, and that effort needs to be presented in a Plan.
3. The Board needs to explain what information will be provided prior to determining whether requested information missing in an inventory report is required. What standards and guidelines will the Board follow to determine whether information requested from a reviewer is required? Clarification of the specific identification information that will be generated in reports would be helpful for minimizing requests for additional information and delays when parties invoke the dispute resolution clause as their only option when the Board decides that requested information is not required. The sequential steps of Stipulation I.f. should be numbered for clarity.
4. At Stipulation II, how will the Board consult with the signatories and concurring parties to identify treatment options? Evidently, the Inventory Report will provide the basis for consulting about the development of treatment options, but the PA is not clear as to whether the Inventory Report will include recommendations for treatment or when or how the Board will seek consensus from the signatories and concurring parties about appropriate mitigation measures.
5. Stipulation III directs TRRC to prepare a Treatment Plan for each affected segment of the alignment. Such Plans are then presented to the signatories and consulting parties for review in accordance with Stipulation IV. The stipulation states that requests for additional information beyond that which is contained in the Treatment Plan may be refused by the Board. To avoid delays and disputes, please provide clarification of the standards and guidelines that will be followed by the Board to determine whether requested information is required.

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6. We continue to be concerned that no consultation requirement is provided to ensure that discussions about appropriate treatment and mitigation measures occurs among the consulting parties, or that a mechanism for reaching consensus on appropriate mitigation is provided prior to submission of the Treatment Plans for review. Furthermore, Stipulation V only provides for the review of Data Recovery Reports, thereby, discouraging consideration of other mitigation actions. The PA is set up to consider avoidance or data recovery as optional