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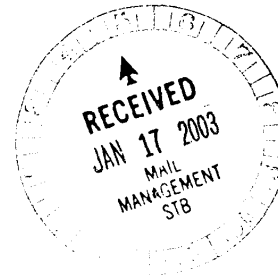
Betty Jo Christian
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January 17, 2003

Via HAND DELIVERY

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

ENTERED
Office of Proceedings
JAN 17 2003
Part of
Public Record



1330 Connecticut Avenue, NW
Washington, DC 20036-1795

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

Dear Secretary Williams:

Enclosed for filing please find an original and ten copies of the Petition of Tongue River Railroad Company for Leave to File Supplemental Evidence.

Sincerely,

Betty Jo Christian

Betty Jo Christian
Attorneys for Applicant
Tongue River Railroad Company

cc: All Parties of Record.

WASHINGTON

PHOENIX

LOS ANGELES

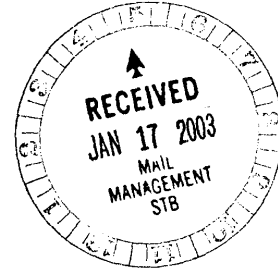
LONDON

BRUSSELS

207066

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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



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

PETITION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE

**ENTERED
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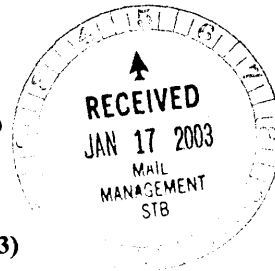
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Attorneys for Applicant
Tongue River Railroad Company

January 17, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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

**TONGUE RIVER RAILROAD COMPANY – RAIL CONSTRUCTION AND
OPERATION – WESTERN ALIGNMENT IN ROSEBUD AND
BIG HORN COUNTIES, MONTANA**

PETITION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE

Pursuant to 49 C.F.R. § 1117.1, Tongue River Railroad Company (“TRRC”), the Applicant in the above-cited proceeding, hereby requests leave to file Supplemental Evidence in order to provide a limited update of the record concerning the transportation aspects of this case. TRRC also requests that the Board establish a schedule for the filing of responses to that Supplemental Evidence and, if necessary, a reply by TRRC. The purpose of this request is to ensure that the Board has before it the most current evidence available at the time it issues its decision in this case.

This proceeding involves TRRC’s application for authorization to construct and operate over a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana, as an alternative routing for the southernmost portion of the line of railroad between Ashland and Decker, Montana previously approved by the Board. See Tongue River Railroad Company - Rail

Construction and Operation -- Ashland to Decker, Montana, Finance Docket No. 30186 (Sub-No. 2) (not printed) (served Nov. 8, 1996.) ("TRRC II") The Application, including TRRC's supporting evidence, was filed on April 27, 1998. On June 23, 1998 the Board issued a procedural schedule establishing due dates for comments in support of or in opposition to the application and for replies to comments. In that same decision, the Board stated that it would not issue a decision on the merits of the Application prior to completion of the environmental review process.

In the environmental review process, the Board on July 10, 1998 issued a Notice of Intent to file a supplemental environmental impact statement ("SEIS") addressing the proposed new routing. A final scoping notice, issued in conjunction with cooperating agencies (US Army Corps of Engineers; U.S. Department of Interior, Bureau of Land Management; and Montana Department of Natural Resources and Conservation, acting for several state agencies) was published in the Federal Register on February 3, 1999. The final scoping notice contemplated that the SEIS will include not only an analysis of the alternative alignment that is the subject of the pending Application, but also will update any environmental issues relating to the remaining portion of the TRRC line, not implicated in this Sub No. 3 proceeding, that the Board has previously approved. The environmental process moved forward expeditiously and on October 8, 1999 a Draft Programmatic Agreement was issued and comments requested. However, before a Draft SEIS or the Programmatic Agreement had been finalized, TRRC, on March 2, 2000, was forced to ask the Section of Environmental Analysis ("SEA") to suspend work until certain issues, unrelated to the environmental review, were resolved. On December 19, 2002, TRRC advised the SEA that the issues had been fully resolved and TRRC was prepared to complete the regulatory process, and requested that SEA resume its environmental review of the Application.

During the interim period, TRRC has kept the Board advised with submittal of four-month reports, as required by the November 8, 1996 order in TRRC II.

TRRC believes it is important to ensure that an up-to-date record on the transportation issues, as well as the environmental issues, is available to the Board at the time it issues its decision in this case. TRRC therefore respectfully requests that the Board authorize TRRC to file Supplemental Evidence addressing the merits of its Application, to which other parties would have the opportunity to respond and TRRC an opportunity to reply. The Supplemental Evidence would, of course, be in addition to the Changed Circumstances Analysis that will be performed in the environmental process with respect to all areas identified in the STB's February 3, 1999 Final Scope of Supplemental Action.

TRRC makes this request even though in fact there have been very few developments that would affect the Board's consideration of the merits of its 17.3-mile alternate route application. The purposes to be served by the rail line, the advantages of the proposed alignment over that previously approved by the Board, the need for the rail line and the competitive situation have not changed since the filing of the Application. In fact, the demand for the coal that TRRC would transport remains strong and thus the economic underpinning for construction of the line has not abated. Likewise, the State of Montana remains fully supportive of the TRRC project. Nonetheless, to ensure that the Board has before it the most complete and current record, TRRC has identified the following areas in which it believes an update may be appropriate:

- (1) Current status of the transfer of the federal minerals known as Otter Creek Tracts 1, 2, and 3 to the State of Montana, pursuant to federal legislation (H.R. 2107

Department of the Interior and Related Agencies Appropriations Act, 1998)
enacted in October 1997 (prior to the filing of the Application.)

- (2) Updates, if necessary, to tonnage forecasts, financial forecasts and estimated costs of construction.
- (3) Updates, if necessary, to descriptions of TRRC business structure, proposed financial structure and plan for raising the funds required for construction.
- (4) Updates to supporting statements from key Montana public officials.
- (5) Effect (if any) of the Board's recent authorization of the DM&E Railroad's proposed construction of a rail line to serve the Southern Powder River Basin of Wyoming.

TRRC does not anticipate that this Supplemental Evidence will be lengthy since, as noted above, it does not believe that any of the key elements underlying its Application have changed in any meaningful way. In order to eliminate any possible confusion as to the portions of the 1998 Application that are affected by the proposed Supplemental Evidence, Applicants will specify, as to each individual item of Supplemental Evidence, the particular portions of the Application affected, including a reference to particular pages and paragraphs.

No party will be prejudiced by the filing of TRRC's proposed Supplemental Evidence, since TRRC's request specifically contemplates that all parties to this proceeding be given an opportunity to respond to the Supplemental Evidence under a schedule to be established by the Board. See, e.g., Finance Docket No. 33388, CSX Corp. et al -- Control -- Conrail, Inc., et al, Decision No. 198 (served Sept. 19, 2001) at p. 8, fn. 9, and cases cited therein. Moreover, there

will be no possibility of confusion, since TRRC expects to include in its Supplemental Evidence reference to the particular portions of the Application affected. The filing of this Supplemental Evidence will not result in any delay in the decision of this case, since the Board has already ruled that it will not issue a decision on the merits until the environmental review process has been completed and, given the current status of that process, there is ample time for the filing of supplemental evidence, responses by other parties, and a reply by TRRC before this case is ripe for decision. Finally, this update of the record -- by all parties -- is clearly in the public interest, since it will insure that the Board's decision will be based on the most current information available, presented in an efficient, timely and cost-effective process.

Accordingly, TRRC respectfully requests that the Board (1) authorize TRRC to file its proposed Supplemental Evidence; and (2) establish a schedule for the filing of responsive supplemental evidence by other parties, and a reply (if necessary) by TRRC to such responsive evidence.

Copies of this Petition are being served on all parties of record to this proceeding.

Respectfully submitted,

Betty Jo Christian DHC

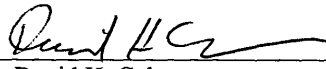
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Attorneys for Applicant
Tongue River Railroad Company

January 17, 2003

Certificate of Service

I hereby certify that on this 17th day of January 2003, a true and correct copy of the foregoing Petition for Leave to File Supplemental Evidence was served by first-class mail, postage prepaid, on all parties of record to this proceeding.

A handwritten signature in black ink, appearing to read "David H. Coburn", written over a horizontal line.

David H. Coburn