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**SURFACE TRANSPORTATION BOARD DENIES TONGUE RIVER RAILROAD REQUEST
TO REOPEN PRIOR CONSTRUCTION/OPERATION DECISION FOR CONSIDERATION
OF ANOTHER ROUTE**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has denied the Tongue River Railroad Company's (TRRC) request to reopen the Board's 1996 decision granting TRRC the authority to construct and operate a railroad line between Ashland and Decker, Montana, subject to conditions.

In July 1997, the TRRC petitioned the Board for approval of the realignment of a rail route that the Board had authorized in November 1996 for construction and operation. The 1996 decision had denied TRRC's request to construct the line over TRRC's preferred route based on the Board's findings of adverse, unavoidable environmental impacts that could not be effectively eliminated. The Board instead approved a "Four Mile Creek Alternative" routing less favored by TRRC that would mitigate adverse environmental impacts but allow TRRC to achieve most of the efficiencies it had sought. In its petition to reopen, TRRC proposed that the Board consider a new route, the "Western Alignment," roughly paralleling TRRC's preferred route, but slightly west of that route and the Tongue River. TRRC asserted that the Western Alignment would mitigate the preferred route's potential environmental consequences as well as potential economic and operational problems which TRRC claims make the Four Mile Creek Alternative not a viable choice.

The Board may, on its own initiative or in response to a petition, reopen a case or one of its prior decisions on the grounds of material error, the emergence of new evidence, or substantially changed circumstances. In its petition to reopen, TRRC did not allege material error on the Board's part. In today's decision, the Board stated that TRRC has presented neither newly discovered evidence nor evidence of changed circumstances that would warrant the reopening of its 1996 decision.

Relative to the presentation of "new evidence," the Board stated that allegations contained in TRRC's petition alleging that the Four Mile Creek Alternative has unacceptable economic, safety and operating problems, and that the Western Alignment is superior to it from both an operational and an environmental standpoint, is not "new," as such evidence could have been developed and presented earlier during the lengthy environmental review process in this case. Relative to "changed circumstances," the Board found that TRRC has failed to show any changed circumstances requiring consideration of the Western Alignment at this point, such as a change in topography or terrain, or removal of some obstacle that had prevented TRRC from introducing the Western Alignment earlier. The Board noted that its Section of Environmental Analysis had repeatedly discussed the issue of alternative routes with TRRC prior to the Board's 1996 decision, and had provided TRRC the opportunity to develop additional alternatives throughout the environmental process. The Board further noted that, throughout the process, TRRC had continually maintained that its preferred route and the Four Mile Creek Alternative were the only possible alignments.

Based on these findings, the Board concluded that TRRC is attempting to use its petition to reopen as a vehicle to propose an entirely new route. The Board noted in its decision that this is an abuse of the agency's process, and the requested reopening would be prejudicial to the interest of the numerous parties and agencies that participated in this lengthy case on the basis that the entirety of TRRC's proposal had been placed before them. The Board further noted that its denial of the petition here is without prejudice to TRRC's filing a new application for authority to construct the Western Alignment that the railroad now seeks.

The Board issued its decision in *Tongue River Railroad Co.--Rail Construction and Operation--Ashland to Decker, Montana*, Finance Docket No. 30186 (Sub-No. 2), on December 1, 1997.

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