

Volume II
Appendices

**DRAFT SUPPLEMENTAL
ENVIRONMENTAL IMPACT STATEMENT**

STB Finance Docket No. 30186 (Sub-No. 3)
Tongue River Railroad Company, Inc. – Construction and Operation –
Western Alignment

Tongue River III - Rosebud and Big Horn Counties, Montana

Lead Agency:

Surface Transportation Board
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Appendix A

Summary of Comments in Response to the Board's
1998 NOI and 2003 Revised NOI for the Supplemental EIS

APPENDIX A: SUMMARY OF COMMENTS IN RESPONSE TO THE BOARD'S 1998 NOTICE OF INTENT AND 2003 REVISED NOTICE OF INTENT FOR THE SUPPLEMENTAL EIS

The Section of Environmental Assessment (SEA) of the Surface Transportation Board issued a Notice of Intent (NOI) to prepare a Supplement to the Final EIS for the proposed Tongue River Railroad Company's rail line extension from Ashland to Decker, MT.

In advance of the NOI, SEA received comments from agencies regarding the project. Following publication of the NOI, SEA received an additional 22 comments from agencies, organizations, and individuals. All of the comments, both pre- and post-NOI issuance are summarized below. The summary of comments relate to both the 1998 Notice of Intent and the 2003 Revised Notice of Intent. The summary of comments from 1998 comments precedes that from 2003.

The comments are organized by Federal, state, and local agencies, community groups, individuals and the applicant. The comments have been subdivided into five categories:

1. Process Comments
2. General Issues to be Addressed in the EIS
3. Environmental Comments about the Western Alignment
4. Environmental Comments beyond the Western Alignment
5. General Comments

Federal Agencies

U.S. EPA/Region 8 (Pre-NOI Comment)

May 14, 1996

John Wardell, Director

Process Comments

- The purpose and need is in question since Tongue River Railroad Company (TRRC) has failed to act on the construction of the already authorized section of railroad from Miles City to Ashland.
- The purpose and need is in question since coal in the area to be served by the Tongue River Railroad (TRR) is already moving to market without the TRR.
- The purpose and need of the project is in question because the Montco Mine has not been constructed.

Environmental Comments beyond the Western Alignment

- The Four Mile Creek was the environmentally preferable alternative (in 1996) since it would avoid the environmentally sensitive section below the Tongue River Dam, and would eliminate the need for construction of a tunnel and five bridges in the canyon.
- EPA requested in the DEIS that the effect of alternate scenarios of regional coal demand and transport needs, and alternate rail coal transport opportunities be thoroughly evaluated and described in relation to the project's purpose and need. This was not included in the FEIS.

- EPA is pleased to see that SEA has recommended innovative riverbank stabilization methods.
- EPA opposed the issuance of 404 permits for the initial 89-mile segment (Sub. No. 1) because it believes that TRRC did not consider alternatives that would have a less adverse impact upon the aquatic ecosystem.
- EPA notes that the 404 permit for the 89-mile segment has now expired. EPA opposes re-issuance of this permit for the reason noted above, namely the project's impact upon aquatic ecosystems.

U.S. EPA/Region 8

August 20, 1998

John F. Wardell, Director

Process Comments

- The Army Corps of Engineers (ACOE) review could result in modifications that would be in conflict with STB environmental review unless the two processes are integrated.
- The EPA offers general guidance for drafting the document's purpose, existing conditions, environmental consequences, mitigation, and cumulative effects.

Environmental Comments about the Western Alignment

- The EPA suggests changed circumstances relating to water quality, wetlands, and riparian areas; specifically that Hanging Woman Creek and Otter Creek are now listed by the State of Montana as water quality-limited streams.
- The EPA suggests changed circumstances relating to air quality; specifically that the Northern Cheyenne Reservation is now a Class I area.
- The EPA suggests changed circumstances relating to wildlife; specifically that sicklefin chub and sturgeon chub are proposed candidate species for threatened and endangered species listing and may be present in Tongue River.
- If the TRR will facilitate or cause additional developments or land use changes (e.g., increased coal development), the effects of these indirect effects must also be analyzed and disclosed as part of the cumulative effects section.
- Particular attention should be given to the cumulative effect of increased levels of erosion and sedimentation, increased pollutant load, and infringement upon stream channels and riparian corridors.
- The potential noise effects of the construction and operation of the TRR and its reasonable alternatives should be evaluated and disclosed in the EIS.
- Economic effects such as estimates of job additions or losses attributable to railroad construction and operation, effects on coal development and transport, etc., should be evaluated and disclosed.

Environmental Comments beyond the Western Alignment

- The entire route should be analyzed (the ACOE is considering the entire project for the purposes of its permit).
- The EIS is more than 5 years old and should be carefully examined.

U.S. Department of the Army Corps of Engineers (Pre-NOI Comment)

February 25, 1998

Candace Thomas, Chief

Environmental Comments about the Western Alignment

- Wetland delineation and functional analysis will need to be completed for all creeks crossed by the Western Alignment, including more specific information relating to actual construction across creeks and adjacent wetlands.
- ACOE recommends preparation of a table for the Western Alignment and previous alignment that compares the alternatives in terms of acres of wetlands impacted, number of stream crossings, acres of forest cleared, threatened and endangered species impacts, cultural impacts, etc.

Environmental Comments beyond the Western Alignment

- The ACOE indicates that no wetland delineation was done for the 89-mile segment.

U.S. Department of the Army Corps of Engineers (Pre-NOI Comment)

May 20, 1998

Robert S. Nebel, Chief

General Issues to be Addressed in the EIS

- The ACOE will require that wetland delineation, impact assessment and functional analysis be completed for the Western Alignment.

Environmental Comments about the Western Alignment

- The ACOE does not believe that the Western Alignment would reduce or avoid impacts associated with other alignments, specifically the Four Mile Creek Alternative. The ACOE includes a table comparing the impacts of the Four Mile Creek alternative with the Western Alignment that demonstrates Four Mile Creek as being environmentally preferable to the western Alignment.

Environmental Comments beyond the Western Alignment

- The ACOE will consider the entire route for the purposes of processing a Corps permit.

U.S. Department of the Army Corps of Engineers

August 21, 1998

Kathryn M. Schenk, Chief

Process Comments

- The ACOE requests Cooperating Agency status for the Western Alignment, since the Corps was a Cooperating Agency for the 89-mile segment (Sub No. 1.)
- The ACOE requests a STB point of contact for cultural compliance.
- The ACOE requests a contact name for the third-party contractor handling NEPA documentation, coordination, input, and review.

- If the STB requires the third-party contractor to provide a “no conflict of interest statement,” please forward a copy of such letter to the Corps.
- The ACOE requests permission to review the preliminary NEPA document or chapters prior to public distribution.
- Joint public meetings (STB/ACOE) on the DEIS should be held.
- Project Manager for the Section 404 application is Mr. Rodney Schwartz (406) 221-4143; NEPA compliance: Ms. Betty Latka (406) 221-4602; Montana regulatory issues: Mr. Allen Steile (406) 441-1375.

General Issues to be Addressed in the EIS

- State water quality standards should be met for construction.
- Draft mitigation plan needs to be included in DEIS.
- All reasonable alternatives need to be studied and wetland impacts compared.

Environmental Comments about the Western Alignment

- The cumulative effects of increased mining on wetlands and water quality should be addressed.

Environmental Comments beyond the Western Alignment

- The ACOE views the project as one entire railroad.
- The ACOE indicates that wetland delineation and functional assessment was never completed for the 89-mile segment (Sub. No. 1).
- The ACOE suggests that one EIS for the entire Miles City to Decker line would be more easily understood. The ACOE suggests that STB use text and analysis from previous documents and update as needed.

U.S. Department of Agriculture (Pre-NOI Comment)

February 2, 1998

Jeffrey R. Vonk, Regional Conservationist

USDA comments will be prepared by the Natural Resources Conservation Service (NRCS) State Office in Montana. The Request for Comments was sent to Shirley Gammon, Montana State Conservationist, at NRCS Bozeman MT (406) 587-6813.

U.S. Department of the Interior

Bureau of Indian Affairs

July 28, 1998

Keith Beartusk, Area Director

Process Comments

- STB consultation with the Northern Cheyenne Tribe is needed – they have a vested interest in the alignment.

General Issues to be Addressed in the EIS

- Water, viewsheds, noise, safety, cultural resources, and wildlife are issues of concern to the BIA.

Environmental Comments beyond the Western Alignment

- The entire line should be analyzed for cumulative impacts, as segmentation of analysis is not allowed under the Council on Environmental Quality Regulations.

U.S. Bureau of Land Management

August 21, 1998

Dalice Landers, Realty Specialist

Process Comments

- The Western Alignment EIS (Sub. No. 3) should meet BLM standards in order for them to issue a Record of Decision.

General Issues to be Addressed in the EIS

- The EIS needs to be address wildlife, vegetation, soil, water, air, cultural resources, recreation, socioeconomics, access, wilderness, and environmental justice issues.

Environmental Comments beyond the Western Alignment

- The Miles City to Ashland (Sub. No. 1) analysis was not site-specific enough to cover BLM lands. BLM would need to prepare their own NEPA document.
- The entire line should be addressed in order to consider cumulative impacts.
- Impacts relating to cultural resources, environmental justice, and threatened and endangered species need further review.
- The 89-mile segment will pass through Battle Butte Battlefield, a nationally significant cultural resource.
- The MOA for this segment does not include BLM, it does not address Native American consultation issues, and it was not negotiated under Council regulations.

U.S. Department of the Interior/Fish and Wildlife Service

August 24, 1998

Kemper M. McMaster, Field Supervisor

General Issues to be Addressed in the EIS

- A detailed wetlands delineation and monitoring plan should be completed.
- A Biological Assessment pursuant to USFWS regulations should be completed.
- Section 7 consultation should be completed. The EIS cannot begin until Biological Assessment is completed.

Environmental Comments about the Western Alignment

- Threatened/endangered species could include bald eagles, peregrine falcons, and black-footed ferrets.
- The EIS should include delineation of all prairie dog colonies since the black-footed

- ferret uses these colonies for habitat.
- Candidate species such as mountain plover, swift fox, and sturgeon chub should be considered in the Biological Assessment.

Environmental Comments beyond the Western Alignment

- Wetland delineation was not completed for the 89-mile segment (Sub. No. 1).
- The Western Alignment has no independent utility; the EIS needs to analyze the rail line as a whole.

State Agencies

Montana Fish, Wildlife & Parks (Pre-NOI Comment)

January 30, 1998

Patrick J. Graham, Director

Process Comments

- What is the status of the Multi-Agency Task Force?

Environmental Comments about the Western Alignment

- The impacts of the Western Alignment on cut/fills, erosion, and water quality should be analyzed.
- The project may affect the Tongue River State Recreation Area.
- The project may affect the hatchery in Miles City.

Montana Natural Heritage Program (Pre-NOI Comment)

February 12, 1998

Anne Dalton, Research Assistant

No substantive issues—provided list of sensitive species.

Montana Department of Transportation (Pre-NOI Comment)

February 13, 1998

Marvin Dye, Director

Process Comments

- A new MOU needs to be negotiated regarding highway crossings.

General Issues to be Addressed in the EIS

- The MT DOT is concerned about the safety aspects of new crossings.

Environmental Comments beyond the Western Alignment

- The MT DOT is still awaiting design plans for the I-94 separated grade crossing at Miles City.

Montana Department of Natural Resources & Conservation (Pre-NOI Comment)

February 12, 1998

Wayne Wetzel, Special Projects Coordinator

Environmental Comments about the Western Alignment

- A hydrological analysis of Tongue River crossing south of Ashland should be undertaken.
- The Montana DRC has comments about blasting and its effect on the Tongue River Reservoir dam. A coordinated blasting plan will be needed.

Montana Department of Natural Resources & Conservation (DNRC)

August 14, 1998

Wayne A. Wetzel, Special Projects Coordinator

Process Comments

- What was approved by the STB for the proposed rail alignment? A corridor or a center line, and how is it defined?
- Has the STB received notification from TRRC regarding changes to the centerline?
- The Montana Department of State Lands Land Administration Bureau no longer exists. Please refer to the Montana Department of Natural Resources and Conservation, Trust Lands Management Division.

Environmental Comments about the Western Alignment

- The EIS should evaluate impacts of a new terminal facility in Miles City if such a facility is necessary.
- The impact of alternatives to sever parcels with a potential for future mechanical irrigation should be considered.
- The increase in taxable value calculations should be provided for all alternatives.
- Indirect or secondary displacements should be considered (such as homes upstream from a proposed crossing).
- Fire prevention is predicated on adequate maintenance of rolling stock. How will TRRC ensure maintenance of other carriers using its tracks (BNSF or other non-coal carriers)?
- Regional fiscal impacts – TRR may have a net beneficial impact on schools since it will induce growth of new mines which expand the tax base beyond what is necessary to support the expected influx.
- The number of non-coal trains should be estimated, and an explanation should be included as to how safety measures will be applied to their operation.
- The potential transport of hazardous materials should be evaluated in a larger regional context. The potential for other carriers to transport hazards on TRR track should be considered.
- The derailment risk analysis should assume more than coal transport (i.e., hazards).
- The ER describes a change in TRRC's intention to revegetate all cut and fill slopes.

Montana Historical Society Historic Preservation Office

August 19, 1998
Stan Wilmoth, Historic Preservation Officer

Environmental Comments about the Western Alignment

- The National Historic Preservation Act was amended in 1992 to require Tribal consultation in the planning and decision-making of federal agencies.
- The American Indian Religious Freedom Act (amended in 1993) should be taken into consideration.
- The Religious Freedom Restoration Act (enacted in 1993) should be taken into consideration.
- The Sacred Sites Executive Order (released in 1996) should be taken into consideration.

Environmental Comments beyond the Western Alignment

- The proposed Programmatic Agreement (Draft 1996-7) has not been accepted by the Advisory Council on Historic Preservation, or concurred upon by the Northern Cheyenne Tribe.
- The entire route should be analyzed.

Native Americans

Attorneys for Northern Cheyenne Tribe

August 24, 1998
Patrick L. Smith

Attorney for the Native Action, Inc.

August 24, 1998
Joe Rodriguez, Esq.

Process Comments

- The need for the railroad has changed since the Montco Mine has not been developed.
- STB should comply with the Presidential Memorandum signed April 29, 1994. It states that Executive Agencies shall consult with tribal governments prior to taking action that affect federally recognized tribal governments. No consultation has yet taken place.

General Issues to be Addressed in the EIS

- The document offers guidance in the preparation of an adequate socioeconomic analysis of impacts, drawing upon the BLM's Guide to Social Assessment. The BLM's Guide to Social Assessment explains the difference between the *inputs* of a project such as new jobs or increased tax revenues, which require knowledge of the project, and the *impacts* of a project, which require knowledge of a specific community.

Environmental Comments about the Western Alignment

- The Tongue River is now listed as "impaired" under the Clean Water Act. The State of Montana now considers the upper and lower Tongue River, Otter Creek, and Hanging Woman Creek to be impaired. This constitutes significant new information.

Environmental Comments beyond the Western Alignment

- The entire line needs to be evaluated in terms of potential socioeconomic impacts to the Northern Cheyenne. The Ninth Circuit Court, on October 6, 1986, ordered the preparation of a Supplement to the Powder River EIS because the original EIS had failed to adequately analyze socioeconomic impacts to the Northern Cheyenne. Tongue River (Sub No. 1) is therefore similarly deficient.
- The other potential mines in the area that TRR could potentially serve are no longer valid. The Northern Cheyenne Tribe successfully challenged in court the 1982 lease sales that were based upon the Powder River I FEIS and the federal coal lease sales of 1982. In 1991, the companies petitioned the court to have their leases voided and to seek a refund of monies.
- Tongue River (Sub No. 2), while better than Sub No. 1, still confines itself largely to cultural concerns which, while important, are nevertheless distinct from economic and demographic impacts. Without analysis of economic and demographic issues, critical issues of distribution and questions of equity are left largely unaddressed.
- The Western Alignment is not a separate project; it has no independent utility. The Western Alignment is linked to the other two projects.

Community Groups (non-government)

Northern Plains Resource Council, Inc. (Pre-NOI Comment)

March 18, 1998

Jack R. Tuholske

James H. Goetz

Attorneys at Law

Process Comments

- The purpose and need for the project has changed since Montco Mine is no longer being pursued.

Environmental Comments about the Western Alignment

- The Tongue River is an impaired water body under EPA's new regulations. This changed circumstance requires updated analysis.

Environmental Comments beyond the Western Alignment

- The EIS should consider the entire line from Miles City to Decker.

General Comments

- TRRC has altered the route of the approved line and has shown it to local property owners.

Attorney for the Northern Plains Resource Council Inc.

August 21, 1998

Jack R. Tuholske, P.C.

Process Comments

- Montco Mine is no longer a reason for the railroad.

General Issues to be Addressed in the EIS

- New changes to the old alignment will result in more cut and fill, new impacts on ranching operations, and impact to archaeological resources.
- The projection of coal production used in the 1985 EIS never materialized. A fresh look is needed at the purpose and need for the project.
- The environmental report lacks specific information about cuts and fills, and the amount of erosion and sedimentation.
- The EIS needs to document specific amounts of pollutants generated by project.
- The effects of sodic soils over which the railroad would be built in the Montco area need to be analyzed.
- If there is the potential to haul hazardous materials, the EIS needs to identify what the potential is, and evaluate the potential for spills.
- The impacts of a construction camp on 10 acres of land in Ashland needs to be evaluated with regard to water and sewerage impacts.

Environmental Comments about the Western Alignment

- The Upper and Lower Tongue River, Otter Creek, and Hanging Woman Creek are impaired water bodies under EPA.
- The Crow Tribes' economic interests in the Westmoreland Absaloka mine may be adversely affected by TRR.

General Comments

- The changes in the railroad route shown to landowners are substantially different from what was evaluated in the 1985 and 1996 EISs.
- The Western Alignment has no independent utility.
- The maps of the Western Alignment in the ER are too vague; they need to be shown on USGS quads.

United Transportation Union Local 486

August 22, 1998

Clifford Locke, MT Legislative Representative

Environmental Comments beyond the Western Alignment

- The EIS should consider the entire route.

The Lower Tongue River Protection Association

August 25, 1998

The Lower Tongue River Protection Association Members

General Issues to be Addressed in the EIS

- The TRR route will affect existing wells, springs, reservoirs, and dams.
- The impacts of sidings should be analyzed.

- The impacts to lands involved in Block Management hunting should be analyzed.
- Impacts relating to noise, air pollution, fires, accidents, and weeds should be evaluated.

Environmental Comments about the Western Alignment

- The black-tailed prairie dog may be listed as threatened and endangered species.
- The conservation easements created as part of the Tongue River Dam Project will be impacted by the Western Alignment.

General Comments

- Property owners will only allow TRR easements across their property and not fee title ownership.
- Is TRRC really a common carrier? Property owners question the assertion that TRRC can condemn their property through eminent domain to acquire the right of way.
- The entire route should be analyzed.
- The Montco Mine lost its permit by not building within a certain time. The original EIS permit should have a time limit too.
- The No Build alternative should be the preferred.

Individuals

Bones Brothers Ranch (Pre-NOI Comment)

June 10, 1998

Irv Alderson, President

General Issues to be Addressed in the EIS

- The EIS should address the potential of the project to bisect hayfields, cross creeks, and cross county roads.

Bones Brothers Ranch

August 18, 1998

Irv Alderson, President

Jeanie Alderson, Vice President

Natalie Alderson

Mary Alderson

Andrew Lemann

Martin Samuel Alderson Lemann

General Issues to be Addressed in the EIS

- The EIS should identify standard mitigation (fences, weed protection, cattle passes, compensation for livestock killed by trains).
- The potential for noise and vibration impacts should be analyzed.

Environmental Comments about the Western Alignment

- The new alignment crosses a site of historical significance—the last visible part of the stage route from Sheridan to Miles City.

General Comments

- The entire route should be studied.
- The original purpose of the line—to serve Montco Coal—no longer exists.
- Changes from the '96 proposed route are significant.
- The operation of their ranch will be impacted.
- The pasture for wintering bulls will be bisected.
- The rail line crosses a gravel pit which is another source of income for this ranch.
- If TRRC is allowed one mile of latitude in location of the alignment, there is no way to identify and assess impacts.
- The impact of the Western Alignment will not be less than the impact of the Four Mile Creek Alternative.

The Brown Cattle Co. (Pre-NOI Comment)

June 10, 1998

Art Hayes, Jr., President

General Comments

- The project represents a new route from that shown in the 1989 EIS; there will be impacts to the property owner's irrigated meadow.

The Brown Cattle Co.

August 19, 1998

Art Hayes, Jr., President

General Issues to be Addressed in the EIS

- Soil disturbances and erosion problems should be evaluated.
- The project will result in noxious weeds that compete with natives grasses.
- The project cuts off access to land, making weed and fire control difficult and costly.

Environmental Comments beyond the Western Alignment

- The scope should not be limited to only the Western Alignment.
- The property owner commented on the '92 EIS:
 - Draft EIS was written without gathering new data on wildlife habitats and places of historical significance.
 - Data is 20 years old—outdated.

General Comments

- The project represents a new route from that evaluated in the 1985 FEIS; it will require more fill and deep cuts.
- The new route will bisect the only natural pass which is available to wildlife and livestock movement.
- The new route covers a reservoir and may bury an adjacent well—the only sources of water in that pasture.

- East of the ridge the rail line will sever a 12-acre irrigated meadow, rendering it useless.
- The rail line will cross six acres of farm/hay land, rendering it unproductive.
- The rail line goes directly over the crossing across Hanging Woman Creek—the only access to hay and pasture on the west side of the creek.

Mark Fix

August 20, 1998

General Issues to be Addressed in the EIS

- Siltation impacts on the Tongue River Reservoir should be analyzed.
- The property owner has comments regarding the difficulty of replanting cut and fill slopes, and resultant problems with windblown dust.
- The EIS should discuss electric and communication lines.
- The EIS should discuss impacts to ranchers if land is obtained via easement or fee title.
- The capacity of Tongue River Electric Cooperative (TRECO) to supply power via existing rural lines for the work camp near Ashland should be evaluated.
- The impacts to property tax revenues and local schools should be evaluated.
- The impacts from the influx of construction workers and their families should be evaluated.
- The impacts on air quality during the construction period should be evaluated.
- The impacts of increased flooding upon livestock should be evaluated.
- The impacts to the quality of recreation at Tongue River Reservoir should be considered.
- The wildlife enhancement efforts funded by Tongue River Reservoir will be impacted.

General Comments

- TRR has shown a different alignment from that approved in the 1985 FEIS.
- The new alignment would impact ranching operation: cutting access, bisecting pasture.
- The entire route should be analyzed.
- The no-build is the preferred alternative.
- The property owner questions TRRC's common carrier status for hauling coal.
 - Water from the Tongue River can only be used for agriculture, not for construction of the railroad.
 - If Montco Mine is not being built why build the railroad? The permit for original 89-mile segment should have been tied to the Montco Mine permit.
 - The impacts of "temporary roads" will not be temporary.
 - The 3,000-foot-wide corridor was created for cultural resources analysis, not construction.

JW (Bill) Boulware

August 18, 1998

General Comments

- The proposed alignment divides his ranch in two (runs through calving pasture, irrigated hayfields).

- There is an abundance of wildlife in the valley.
- Many archaeologically significant resources are located within the valley.

Musgrave Ranch

August 17, 1998

William R. Musgrave

Judith Ann Musgrave

Berniece M. Musgrave

General Issues to be Addressed in the EIS

- Loss of habitat and game movement impacts should be considered.
- Air, noise, visual, fire impacts should be evaluated.
- The potential for fuel spills during construction and operation should be considered.
- The protection of riparian habitats is critical from a state perspective because of the substantial productivity of riparian zones and their limited proportion of the total state habitats.

Environmental Comments about the Western Alignment

- The EIS should not use the current turbidity of the Tongue River as the baseline because the ongoing construction of the dam has altered its natural state.
- The proposed line passes through the only patch of curly leaf mahogany, an important forage for deer.

Environmental Comments beyond the Western Alignment

- The entire route should be reevaluated.
- New property owners have had no input.
- Wetland delineation was never done.

General Comments

- There are more deer in the valley now than in 1992.
- The ER uses conservative erosion rate estimates.
- TRRC's plan to reseed only 20 percent of cut and fill slopes is unacceptable.
- The increased number of stream crossings would affect snow melt and thunderstorm runoff.
- The project will result in an increase in sediments in the Tongue River.
- The project will result in encroachment on public and private roads.
- The Tongue River Valley is an important wintering area for birds.

FL Ranch

August 3, 1998
William P. Carrel

Process Comments

- STB should define how far the rail line can be altered from its centerline after approval of an alignment.

General Issues to be Addressed in the EIS

- The potential for increased erosion should be considered.
- The proposed alignment is upwind from the river; construction dust, emissions, and possible spills will impact the river and dwellings downwind.

General Comments

- The rail line will cross five tributaries of the Tongue River.

FL Ranch

July 15, 1998
Nancy W. Carrel

Environmental Comments about the Western Alignment

- Analysis should be conducted on the social and economic impacts to southeastern Montana of hauling Gillette coal, versus developing the line to serve coal resources.

General Comments

- The EIS should consider the entire route.
- The line will impact an extremely productive and scenic river valley.

Rocker Six Cattle Co.

August 18, 1998
Wallace D. McRae, President

Process Comments

- The NOI was improperly noticed, since the notice appeared in only the Forsyth Independent Enterprise, The Miles City Star, and The Sheridan Press. The official local newspapers of Big Horn and Powder River counties are The Powder River County Examiner and The Hardin Herald Tribune. The notice should have appeared in these papers since Big Horn and Powder River are the counties in which the railroad will be built and operated, if approved.
- Why isn't there landowner involvement on the task force?
- The need for the railroad is questionable since no mines are operating or being proposed for this area.

General Issues to be Addressed in the EIS

- The realignment of the route near bluffs increases fire danger since fires started on steep, inaccessible terrain are more difficult to control.

Environmental Comments about the Western Alignment

- No biological, cultural, or fisheries analysis has been done “on the ground” for the proposed alignment.

Environmental Comments beyond the Western Alignment

- The entire line should be reevaluated, and mitigation applied consistently throughout.
- An inter-agency task force is required on Sub-No. 2 and not on Sub-No. 1.

General Comments

- The TRRC originally asked Congress to exempt them from any environmental review—they do not want to acknowledge NEPA and rights of landowners.
- The original analysis is now outdated.
- The original route has been altered for TRRC benefit, not the rancher landowners—no consultation has occurred in the development of the new alignment.
- Road and river crossings will be washed out in spring floods.

Attorney for John D. Fitzgerald & Francis G. Marceau

August 24, 1998

Gordon P. MacDougall

General Issues to be Addressed in the EIS

- Rail carrier employee impacts related to the diversion of rail traffic should be considered.

Environmental Comments about the Western Alignment

- Since BNSF traffic would be routed through this corridor, the impact of a reduction in traffic on communities along current BNSF lines should be considered.

Environmental Comments beyond the Western Alignment

- The entire route should be analyzed.

Alice Orr

August 20, 1998

Environmental Comments beyond the Western Alignment

- The EIS should consider the entire route.

General Comments

- The Tongue River ecosystem is very fragile; the impacts of the project will be disastrous.

Lunda Ranch

August 19, 1998

General Issues to be Addressed in the EIS

- Impacts to vegetation should be considered.
- Erosion and wildlife impacts should be considered.

Summary of Comments Received on Revised (2003) NOI

Federal Agencies

U.S. EPA/Region 8 (Pre-[revised] NOI Comment)

May 7, 2003

John Wardell, Director

General Issues to be Addressed in the EIS

- Special attention should be made in the Supplemental EIS regarding Montana's identification and validation of water bodies with impaired uses in their Clean Water Act
- The Supplemental EIS should identify and validate the 303(d)-listed streams in the project area, which should include the entire railroad corridor from Decker to Miles City.
- The Supplemental EIS should evaluate coal bed methane development related impacts in the Tongue River Railroad project area, and include the past, present, and reasonably foreseeable coal bed methane development in the cumulative effects analysis for the construction and operation of the Tongue River Railroad.
- The EIS should consider how past and present activities have historically affected and continue to affect the resources, ecosystems, and communities of concern. The baseline condition of the resource of concern should include a description of how conditions have changed over time and how they are likely to change in the future with and without the proposed action.
- The EIS should identify the resources of concern or ecosystem components that might be affected by the proposed action or its alternatives.
- It is also important to incorporate future actions of agencies and the public into cumulative impact analyses.
- The cumulative effects analysis should also include development of mitigation measures to reduce cumulative impacts.
- Air quality impacts of construction and operation of the Tongue River Railroad to the designated Class 1 Northern Cheyenne Reservation should be disclosed, including potential impacts to air quality and visibility for the Class 1 area.
- Potential air quality impacts and mitigation measures for the Tongue River Railroad and coal bed methane development should be included in the cumulative impacts analyses.
- The Supplemental EIS should identify wetlands and riparian areas potentially affected by project activities.
- The Supplemental EIS must describe the existing wetlands and their acreage, type, and ecological role.
- Consult the US Army Corps for comments on wetlands issues.
- Address avoidance and reduction of pollution at the source as the preferred course of

- action to lessen the implementation of the 1990 Pollution Prevention Act.
- Consult to the greatest extent possible with the Tribal Governments.
- The SEA should evaluate whether the Amish settlement ten miles north of Ashland, Montana, in Rosebud County, is low income and whether environmental impacts are likely to impact the community disproportionately.

State Agencies

State of Arkansas

Arkansas Soil and Water Conservation Commission

April 28th, 2003

Tracy Copeland, Manager State Clearinghouse

General Comments

- No substantive comments.

Montana Natural Heritage Program

April 2nd, 2003

Martin Miller, Data Assistant

General Comments

- The Montana National Heritage Program submitted a list of all the plant and animal species of concern in the project area, asking that they be addressed in the Biological Resources section of the SEIS.

Public Comments

Montana Environmental Information Center

May 9th, 2003

Jeff Barber, MEIC Program Director

General Issues to be Addressed in the EIS

- The SEA should complete wildlife inventories not done for Tongue River II.
- Since the permitting of Tongue River II, elk have returned in greater numbers to the upper Tongue River country. SEA needs to examine the impacts of the entire stretch of TRR on elk populations.
- Methane development, which is about to come to southeastern Montana, will alter the character of the physical environment, and the entire TRR project needs to be examined in this light. There are air quality and land use issues that will become of greater concern.
- The impacts of the DM&E on the entire TRR project need to be addressed.
- The environmental analysis for Tongue River III needs to address when, and if, construction will actually occur and adjust its analysis accordingly.
- The economics of TRR have never made sense. The Board should commission its own economic analysis and not depend on past optimistic figures projected by TRRC.

- Tongue River III should not be examined as a supplement to the previous EISs. We urge the Board to broaden its examination of this railroad and take a closer look at the entire route.

Northern Plains Resource Council

May 20, 2003

Michael Reisner

Process Comments

- There is no explanation in the Final Scope to address why the supplement only addresses the proposed Western Alignment and not the entire rail line. NEPA determines that actions which are connected must be analyzed together. The STB's decision to limit the scope to the Western Alignment is arbitrary, capricious, and otherwise not in accordance with the law.

General Issues to be Addressed in the EIS

- The STB needs to analyze the cumulative environmental impacts from methane development.
- The State of Montana development of TMDLs is directly relevant to the impacts of the proposed railroad on water quality.
- The new EIS needs to analyze the cumulative impacts of the proposed railroad on the mountain plover, black-tailed prairie dog, and other recently listed endangered species.
- The new EIS needs to integrate the new Montana Supreme Court ruling that protects every citizen's fundamental right to a clean and healthful environment.
- The new EIS needs to evaluate the substantial changes the TRRC has made regarding the proposed railroad since 1998, including changes in right-of-way locations, etc.
- The TRRC needs a Section 404 permit prior to discharging dredge and fill materials into intermittent streams and wetlands, per the Clean Water Act.
- Since the Montco Mine is no longer operational, the new EIS needs to examine the public convenience and necessity of the proposed railroad in light of current economic conditions.
- The EIS should explain how the demand for coal will be effected by the layoffs at Decker Mine.
- The EIS should reexamine the transportation and financing issues related to the construction of the whole line.
- The EIS needs to consider an alternative under which the STB's approval is conditioned on TRRC completing the construction of the entire railroad within a prescribed amount of time. This alternative would provide landowners in the valley with some degree of certainty.
- The EIS needs to analyze the impacts of changes to the State of Montana eminent domain laws made in 2001.
- The EIS needs to analyze the cumulative impacts of the proposed railroad on the spread of noxious weeds in the Tongue River Valley and the indirect impacts of the spread of such weeds on farms, ranches, wildlife habitat, and native vegetation.
- Prepare a new EIS, which would then require the Company to submit a new application

for the entire 130-mile route.

Bones Brothers Ranch

May 1st, 2003

Terry Punt and Jeanie Alderson

General Comments

- The original purpose for the railroad no longer exists.
- The threat of the railroad continues to devalue property along the proposed routes and places uncertainty on landowner's long-term planning efforts.
- Otter Creek coal is high in sodium and has too much overburden to be economically profitable.
- There will soon be tens of thousands of coal bed methane wells in the area. The cumulative impacts to the air, water, and environment need to be studied. Our ranching operation cannot sustain development on such a scale.
- Any claims that TRRC has the actual financial backing for this project should be carefully investigated.
- How are the landowners able to plan our future ranching operation with the constant fluctuation of the alignment?
- We ask that the Board choose the No Build Alternative.

Mark Fix

May 9, 2003

HC 32 Box 4196

Miles City, MT 59301

Environmental Comments about the Western Alignment

- With the developments in the Tongue River drainage of coal bed methane, the environmental consequences have increased dramatically for the TRR Western Alignment.
- No analysis has been done to determine what water load will be added by the surface exposure in the Western Alignment. All native Montana crops will die with a sodium absorption rate (SAR) above 12, and the water discharged in the upper Tongue River has a SAR of 50.

General Comments

- The laws have been changed in Montana; the railroad can only obtain an easement, and payment must be made for every use that is made of the easement.
- TRR has repeatedly stated that the railroad is not feasible without income from Wyoming rail traffic.
- The Decker Mine has laid off workers and will probably no longer be able to provide coal for TRR.
- The water from Tongue River is specified for agricultural use only. If the coal bed methane water is used for dust suppression, it will raise the loads in the Tongue River

- and threaten irrigated farms and ranches.
- The impacts from the coal bed methane development are so dramatic that we cannot take any additional environmental impacts from a railroad.
- Railroads are hard on wildlife, and construction should be avoided on conservation easements.
- Wildlife studies need to be completed.
- The original EIS is over 20 years old and is outdated. Complete a new EIS.

Beth Kaeding

May 7th, 2003

669 Stonegate Drive

Bozeman, Montana 59715

General Issues to be Addressed in the EIS

- A thorough inventory of the plant, fish, and wildlife resources for all of the alignments needs to be done, including field studies.
- The 17 million cubic yards of earth that need to be moved present enormous environmental problems. The erosion and sedimentation that results from this scale of construction needs to be thoroughly analyzed.
- The amount of water needed during construction is considerable. How will this affect the streams and/or water table of the region? How will this use as well as the operation of the railroad effect the sauger, sickle-fin chub, and paddlefish, all species of concern for this watershed?
- How will noxious weeds be prevented from spreading when the amount of bare earth that will be exposed is so large?
- There will be a huge impact to southeast Montana from coal bed methane development in Wyoming and Montana. The cumulative impacts will be substantial.
- Prepare a full and new EIS for the entire 89-mile proposed railroad that analyzes coal bed methane development, several new power plants in Wyoming, expanded coal mining in Wyoming, and the potential for new power plants in Montana.

General Comments

- Other issues of concern are fires from railroad operation; disruption of livestock operations; death of stock on the lines; noise; the lack of financing to secure the success of this speculative venture; the impacts to land, water, and local residents from a partially completed project that is abandoned after completion; and the effect this project will have on the character of the region and the lives of the area residents.

Appendix B

Summary of Comments in Response to BLM/DNRC Public Scoping
Meetings

APPENDIX B: SUMMARY OF COMMENTS IN RESPONSE TO BLM/DNRC PUBLIC SCOPING MEETINGS

SUMMARY OF PUBLIC SCOPING COMMENTS

Tongue River Railroad Environmental Assessment

Cossitt Consulting

March 31, 1999

The State of Montana and the Bureau of Land Management (BLM) held joint public scoping meetings on February 17, 1999, in Miles City, MT and February 18, 1999, in Ashland, MT. The purpose of these meetings was to provide basic information about the environmental review process and decisions to be made by the State of Montana and the BLM, and to solicit comments on issues and alternatives to be considered in those decisions. Persons attending the meeting were requested to submit their comments in writing. The deadline for comments was March 4, 1999.

A total of 55 written comments were received by the deadline. This includes all letters sent to the Montana Department of Natural Resources and Conservation (DNRC), lead agency representing the State of Montana for this project, and the BLM. One additional letter was dated March 18, 1999, and is not included in the total of 55. A complete listing of all persons who submitted written comments is included in Appendix A. Some individuals wrote more than one letter. Letters that were not exact duplicates of any other letter were counted as individual comment letters.

Notes taken by Marylee Norris and Greg Hallsten at the public scoping meetings were also reviewed for this summary of public scoping comments.

Methodology

Letters were assigned a number and each comment in the letter was assigned an alphanumeric code (e.g., 1a, 1b). Some of the letters included comments on previous EIS documents, and these attachments were also reviewed and comments assigned alphanumeric codes. Comments were then classified by type of issue (Appendix B).

Comment Summary

1. Land Resources

Topography

Issues were raised that relate to the steep and rugged terrain of the area, especially with regard to the location of the proposed Western Alignment. Issues included the amount of earth to be moved for cut and fill, the size of fills across main drainages, effects on erosion, water flow, and runoff. A specific question was raised on where the fill would come from for the one-mile fill on Prairie Dog Creek.

Soils

Soil-related comments dealt generally with erosion and revegetation. Comments included the following specific issues:

- Mapping for soil type and slope stability,
- Total estimates of soil loss from erosion,
- Total estimated volume of cut and fill,
- Stockpile sites,
- Alkaline soil difficult to reclaim, and
- Erosion effects above the Tongue River Dam.

Wetlands

Concerns about wetlands included the need to identify affected wetlands and mitigation measures.

2. Water Resources

Water Quantity

Concerns were raised about use of water for dust suppression, where the water would come from, and what effect it might have on the river and irrigated operations. The effects of the proposed coal bed methane gas well project were raised as a significant connected action. It is projected that each gas well could result in groundwater brought to surface at a rate of 200 gallons per minute. Approximately 200-250 gas wells are projected.

Water Quality

Effects of sedimentation and erosion were cited as issues of concern. The listing of the Tongue River, Hanging Woman Creek, and Otter Creek as “impaired waters” under the Clean Water Act was noted as having occurred since the earlier EISs were released. It was noted that any current baseline data for turbidity would be affected by Tongue River Dam construction. A concern was expressed about the cumulative effects of the Tongue River Railroad, Spring Creek coal development, and the Redstone and Pennaco projects on water quality.

It was noted that the State of Montana must develop TMDLs for each pollutant contributing to the “Impaired Water Status.”

Flooding

There were comments about potential for flooding as a result of cut and fill, culverts that are inadequately sized or that become blocked, and flow from individual drainages. Comments included

- Which flood event (e.g. 25-, 50-, 100-year) would be used as the design event?
- Who determines standards for culvert size and adequacy of other structures for flood events?
- Need to consider flooding from drainages and how cut and fill could affect floodwater flow.
- Concern that the fill across Hanging Woman Creek would function as a dam with resultant flooding.
- Concern that the track could be located in the floodplain.
- Water back-up in T5N, R47E, from Section 7 onto Section 12.
- Ice flow build-up from bridge in Section 32, T42E, 6S.

Springs/Aquifers/Reservoirs

Specific concerns were raised about springs and reservoirs that would be covered by the tracks or otherwise affected by railroad construction and how landowners would be compensated. Also raised as a concern was the effect of the cut and fill across major drainages on springs and aquifers, particularly in the large cut and fill areas proposed for the Western Alignment.

River – General

Comments stated that detailed information is needed on how construction and operation will affect the river. Questions were also raised about bridge design standards and effects of river crossings. One person expressed a concern about gradient changes in the river.

3. Air

There were comments about the effects of dust from construction and operations. Questions were raised about control of dust on roads that would experience more traffic during the construction phase. The effect of fuel emissions from vehicles and trains was noted as a concern, particularly where the valley is narrow. At the public meeting, several issues related to diesel emissions from locomotives were raised, noting the potential for effects on vegetation, wildlife, and livestock, and asking if Montana had emission control standards for locomotives. A comment stated that the designation of the Northern Cheyenne Reservation's Class I air quality status should be noted and considered.

4. Living Resources

Wildlife

Concerns were raised about the need for detailed studies to augment previous literature searches. The effect of the railroad on wildlife movement, particularly deer, to and from the river across the tracks was a concern. A number of specific species were mentioned:

- A herd of 40 pronghorn winter graze state section (T2N, R44E, Sec. 36).
- Burrowing owls in prairie dog towns (Fix property).
- Bald eagles.
- Game and nongame species.
- Birds (effect from noise and vibration).
- Elk (not previously considered in EIS documents).

Effect on habitat, and particularly one parcel under consideration for a conservation easement with the state, were noted as concerns. Mitigation measures for impacts to wildlife, including train-caused death, need to be considered.

Fisheries

Concerns were raised about the effect on the Miles City Fish Hatchery as well as the effects in general on fisheries in the river. Concerns included noise, vibration, dewatering (water used for dust suppression), and increases in mercury and salinity as a result of coal and methane development. Also noted was a need for fisheries data.

Vegetation

Concerns were expressed regarding the need for updated information (inventory of plant species, endangered species, and plants important to Native American cultural practices), revegetation of disturbed areas, and effects of dust and emissions on vegetation.

Weeds

Concerns were raised about the spread and control of noxious weeds. Specific issues included (but were not limited to)

- The need for a weed control management plan.
- The route of the Western Alignment would go right through the middle of Rosebud County's worst weed-infested area.
- The need for weed-free ballast and fill material.
- The effect of sprays on environment and chemical-free crop production.
- Liability, responsibility, and bonding requirements.

The Rosebud County Weed District wrote a several-page letter that detailed concerns and specifically requested BLM to insist on requirements that matched the District's.

5. Cultural and Paleontological Resources

Cultural Resources

Concerns included the identification of sites, and analysis and mitigation of impacts. The following were specific items of concern:

- Fort Keogh Buffalo Jump.
- Battle Butte Battlefield.
- Carrying out Sections 106 and 110 of the National Historic Preservation Act before construction.
- Wolf Mountain Battlefield.
- The importance of the area to Native Americans, and the difficulty of obtaining information from non-Indian consultants.
- Birney Cemetery.
- Old stage route from Sheridan, Wyoming, to Miles City.

Paleontological Resources

A concern was raised about petrified tree stumps and other paleontological artifacts.

6. Socioeconomic Conditions

Comments indicated that the socioeconomic information in previous EIS studies was inadequate. It was noted that the analysis should be redone for the entire line, taking into account the effects to the Northern Cheyenne.

Effects to Landowners

Comments raised the issue of economic effects on landowners. These included the following:

- Increased cost of operations with a railroad track bisecting the property.
- Compensation for timber lost as a result of construction or railroad-caused fires (and a note that timber values had increased since previous EISs).

- Reduced value of leases with resultant decrease in revenue to lessor (such as State/BLM).
- Reduced value from effects to Block Management Program (hunting).
- Right-of-way value and compensation to landowners.
- Loss of livestock from train-caused death.
- Diminished property values (land severed by railroad is less valuable).
- Issue of determining just compensation for any economic impact.

Jobs

Divergent opinions were expressed about job creation. Some comments indicated the railroad would bring much-needed jobs into the area. Others indicated that there would be a net loss of jobs once construction was completed. The following specific comments were made:

- 40-50 employees from Local Union 951 would be affected in Sheridan, WY, with relocation and potential displacement of junior workers elsewhere.
- Loss of railroad employees in Forsyth.
- If Montana coal is not price competitive with Wyoming coal, it is unlikely that new mines would result in jobs in Montana.
- Secondary effects from worker displacement and job loss on other businesses and communities in Wyoming and Montana.

Taxes

Divergent opinions were expressed about effect on taxes. Some comments indicated there would be an increase in tax revenue as a result of the project. Others contended that there would be a decrease. There was a question about need for government funds to mitigate railroad impacts. One person stated that new coal tax revenues resulting from this project should be dedicated for school and highway programs rather than to Montana's reserve fund.

Cultural Values/Aesthetics

Comments indicated a strong attachment to the local landscape. Descriptive words included "serenity, pristine, unique." The project was noted to have already "divided family and friends in this area."

7. Physical Structures

Sidings

Comments indicated concern about lack of information about sidings, where they might be located, and effects of sidings on landowners operations.

Roads

Concerns related to impacts of new access roads, changes in existing road locations, the need for additional condemnation or right-of-way easements, increased traffic, and responsibility for railroad-related impacts. The county road near the state section leased by the Rocker Six Ranch was noted as a particular problem. Commentors stated that new maps show the road being moved closer to the river to accommodate the track; the road was already moved once from the river because of its proximity to eroded banks.

Terminal

Will a terminal still be necessary near Miles City?

Culverts

Concerns were raised about the placement and design of culverts:

- Would location be evaluated to avoid snow drifts and subsequent blockage?
- Would landowners be consulted on location?
- Would culverts handle water flow and flood events?

Crossings

Questions were raised with regard to crossings:

- Responsibility for cost of building and maintaining.
- Design and safety criteria.
- Location and consultation with landowners.
- Delays while waiting for trains to pass.
- Signage.
- Liability.

Work Camps

Where would work camps be located during construction phases and what would be the effects of the resulting increased traffic, potential for trespass, machinery locations, increased recreation pressure, noise, dust, accident risk and supply stockpiles?

Utilities

Where and how would utilities be relocated if necessary? Consider potential for utility disruptions during construction.

Fencing

Issues related to fencing:

- Standards, specifications.
- Ability for wildlife to pass through but retain livestock.
- Concerns about fencing during construction phase.
- Need for woven wire for calving pastures.
- Fence maintenance and need for bonds.

8. Easements/Right-of-Way Railroad Right-of-Way

Issues focused on how the railroad would acquire and compensate landowners for right-of-way. Comments indicated that landowners do not want to have right-of-way become fee title land; easements are preferred. Commentors stated that easements should revert to the landowner when no longer used by the railroad, and use should be restricted to railroad activities only. Landowners were concerned that without that restriction, other uses, such as pipeline or utilities, could also utilize the easement without measures for landowner compensation. Landowners also considered a royalty-type compensation, based on tonnage and miles, to be more equitable compensation than a one-time payment for land or easement. Questions were also raised about the various widths for right of way—150 feet on some properties, 300 feet on others.

The State and BLM were requested to consider economic effects to the parcels they manage, including lease revenue and land use, in determining value of easements. The State Land Board was requested to conduct public hearings on this issue.

Access

Questions were raised about effects to access for fire-fighting, weed control, and State and BLM lands. Would new access roads be considered public access? How would public access be controlled? The proposed bridge site in T1S, R44E, Section 27 would require access across Rocker 6 Ranch land, and the landowner should be involved in negotiations for the access road.

Questions were raised about the need for landowners to obtain access across State and BLM land for pipelines or other structures necessitated by railroad activities. Another question related to need for easements/access across the tracks for crossings, water lines, etc.

9. Land/Resource Use

Agriculture

Issues included:

- Decreased land area for irrigated crops and other effects on irrigation.
- Effects on livestock, pastures, and operations.
- Cutting off livestock from water supply.
- Effects of dust on livestock consuming dust-covered vegetation.
- Effects on sub-irrigated land.
- Effects on crop yield as a result of contaminants and other effects such as noxious weeds.
- Mitigation and compensation for impacts from railroad-related activities.

Mark Fix had specific suggestions regarding location of crossings, culverts, access roads, and an overpass on his property.

Hunting

Concerns were expressed about effects on hunting as a result of impacts to game species and access issues.

Timber

It was noted that timber values have increased in value since the last EIS.

Transportation

There was a concern that the Burlington Northern Santa Fe (BNSF) Railroad would use the route to bypass the Sheridan to Billings route.

Divergent opinions were expressed about what should be hauled on the track. Some felt that restrictions should be placed on what could be hauled, especially with regard to hazardous materials. It was also suggested that the rail line be used for general freight, hauling grain from the Ashland area, and passenger service.

Recreation

Comments related to recreation included:

- Effect on Tongue River Reservoir recreation area and cabin sites at the reservoir.
- Effect on recreationists along the river.
- The potential for developing the Spotted Eagle Recreation Area near Miles City into state park.

10. Noise

Persons concerned about noise mentioned impacts to the tranquillity and silence of the area, effects of vibration on physical structures and irrigation systems, and the need for mitigation and compensation.

11. Public Health and Safety

In addition to fire-related issues, issues included:

- a. Police concerns.
- b. Safety of Birney community.
- c. Hazardous material spills.
- d. Safety at crossings.
- e. Derailments: the need for analysis of potential for derailments and identification of trouble spots.
- f. Need for an emergency response plan.

Fire

Fire issues included:

- Rail-related fires.
- The need for a fire prevention plan.
- Access to fires in rugged country.
- Access to fires that may be hampered by the rail line.
- The effects on landowners and fire-fighting crews.
- Liability, compensation, bonding, etc.

12. Mitigation, Monitoring, and Enforcement

Comments conveyed concerns about responsibility for railroad-related activities and their impacts over the long term. Commentors stated that mitigation and/or monitoring plans need to be developed for a number of issues, including weeds, fire enforcement, fencing, water supply and quantity (wells, springs, water pipelines), spills and other emergencies, crossing safety, and dust suppression. Concerns were expressed about TRRC's ability to cover compensation costs or meet other obligations in the future. Comments indicated a need to require bonds from TRRC to guarantee availability of funds for future needs.

Key questions for each topic are:

- Who will develop the mitigation or monitoring plan?
- Who will monitor?
- Who will enforce?

- How will the plan or guideline be enforced?
- How will the mitigation measure(s) be funded?
- Is bonding necessary and if so, how is the amount determined?
- Who accepts liability for the mitigation plan (or impact)?
- How will compensation be determined (e.g., compensation for loss of livestock, fire-fighting costs, access for spills, fires)?

13. Other Issues

Release of Information/Public Comment

Mark Fix raised questions about who were the participants in the Party of Record and how notifications were made to the Party of Record. He also requested that copies of the original EISs be sent to the landowners so that they can provide information on changed circumstances. The Northern Cheyenne Tribe and Native Action requested that the tribe be involved in a government-to-government fashion.

Status of the TRRC

Questions were raised regarding the legal status of the TRRC as a limited liability partnership or a corporation, the effect of legal status on the application, and overall liability.

Maps/Routes

Comments indicated that new maps indicate routes that vary from those approved in Tongue River I and Tongue River II EIS documents. There was concern that the altered routes are outside of the original analysis area (particularly noted was cultural survey boundaries). There was concern that existing maps do not provide enough detail for decisions about issues and permits. A question was raised about who to contact for recourse if the track line is laid outside of the approved area.

Comprehensive Analysis on Full Length of Route from Miles City to Decker

Comments indicated a need to review the entire route in one EIS document.

Public Necessity

There were divergent opinions about the public necessity for the project. Some felt that the TRR was essential for developing low sulfur coal in the area. Others refuted the need, stating that the original analysis was flawed, demand for coal was down rather than up, the Montco Mine was never developed, and no mining permits had been issued in the past 15 years.

Scope of Analysis

Comments related to scope of analysis included:

- Include the Northern Cheyenne Reservation in the analysis of direct impacts.
- Consider the cumulative effects of coal bed methane development.
- Consider effects of coal mine development in Montana.

Previous Analysis Inadequate

Comments indicated that analysis in previous EIS documents was inadequate and based on insufficient data.

Time Limits for Construction

Comments mentioned the time limit for construction of the railroad ends this year.

Appendix C

Public Involvement Process for Tongue River I and Tongue River II

APPENDIX C: PUBLIC INVOLVEMENT PROCESS FOR TONGUE RIVER I AND TONGUE RIVER II

SUMMARY OF SEA'S ENVIRONMENTAL REVIEW PROCESS, PUBLIC INVOLVEMENT, AND AGENCY COORDINATION IN THE TONGUE RIVER RAILROAD COMPANY'S APPLICATIONS FOR CONSTRUCTION AND OPERATION OF A RAIL LINE FROM MILES CITY TO DECKER, MONTANA IN TONGUE RIVER I AND TONGUE RIVER II

The following information is provided to summarize the environmental review process, public involvement, and agency coordination conducted by the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) for the Tongue River Railroad Company's (TRRC's) proposed rail line construction and operation between Miles City and Decker, MT. SEA's environmental review process is based on the Council of Environmental Quality's (CEQ's) regulations implementing NEPA and the Board's environmental rules at 49 CFR 1105. SEA encourages public involvement and has received extensive public input throughout the Board's proceedings for this rail line proposal.

Proposed Action and Background

On April 27, 1998, TRRC filed an application with the Board in Finance Docket 30186 (Sub-No. 3) seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn counties, MT, known as the "proposed Western Alignment," herein referred to as Tongue River III. The line that is the subject of this application is an alternative routing for a portion of the 41-mile Ashland to Decker rail line that was approved by the Board on November 8, 1996, in Finance Docket No. 30186 (Sub-No.2), via the Four Mile Creek Alternative and subsequently referred to as Tongue River II.

The TRRC rail line proposal has been considered by the Board in two separate proceedings. In its original application filed in 1983, TRRC sought approval from the Interstate Commerce Commission (ICC, the Board's predecessor agency) to construct and operate 89 miles of railroad between Miles City and two termini located near Ashland in Finance Docket 30186 (Sub-No. 1) and subsequently referred to as Tongue River I. In a decision served May 9, 1986, the ICC approved Tongue River I. TRRC then sought in Tongue River II approval to extend the line another 41 miles from Ashland to Decker. As discussed above, the Board approved Tongue River II, via the Four Mile Creek Alternative, in November 1996.

The ICC/Board's environmental staff, now the Section of Environmental Analysis (SEA), prepared environmental impact statements for both Tongue River I and Tongue River II. TRRC has advised the Board that it has undertaken various preconstruction activities on both segments but actual construction has not yet begun. In Tongue River III, SEA is preparing a Draft Supplement to the EIS (Draft SEIS) to review the impacts of the proposed Western Alignment.

Public Noticing for Tongue River I and Tongue River II

Federal Register Notices

As directed by the CEQ guidelines, SEA has published all required *Federal Register* notices:

Tongue River I

- Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) for Tongue River I – April 16, 1981

Federal Register notices were published announcing the availability of the DEIS, the Supplemental DEIS, and SEIS in Tongue River I similar to the notices published in Tongue River II.

Tongue River II

- NOI to prepare an EIS and hold public scoping meetings for Tongue River II – November 17, 1989
- Preliminary scope and request for comments – December 18, 1989
- Final Scope of EIS for Tongue River II – March 16, 1990
- Notice of Availability of a Draft EIS and request for comments for Tongue River II – July 24, 1992
- NOI to prepare a Supplemental DEIS for Tongue River II – December 6, 1993
- Notice of Availability of Supplemental DEIS and request for comments for Tongue River II – March 24, 1994
- Notice of Availability of a Final EIS for Tongue River II – April 19, 1996

Public Notices

In Tongue River I and Tongue River II, the ICC sent by first class mail all press releases to a list of approximately 600 media recipients. ICC also regionally targeted press releases using Gale's Directory to regional press, radio, and TV. Now the Board posts all press releases on the Board's web site and emails all press releases to approximately 1,700 media recipients.

A full set of Tongue River I and Tongue River II environmental documents was left for public review at the "Just Us Café" in Ashland, with the owner's consent.

Service List

SEA has maintained an extensive service list throughout all the proceedings for TRRC's proposed rail line construction and operation. This list has been updated over the course of all the proceedings. All Board notices and decisions pertaining to these proceedings are served to parties on the service list. The service list includes parties of record, the applicant, Federal, state, and local government agencies, property owners, Native American interests, environmental interest groups, business groups, and the names of all persons who commented in any of the environmental review proceedings. SEA will add any name to the list that expresses interest in receiving notices and decisions.

Cooperating Agencies

Tongue River I

In Tongue River I, USDA; Corps; Federal Railroad Administration (FRA); MT DSL; Custer County Planning Board; Powder River County Commission; and Northern Cheyenne Indian Tribe were cooperating agencies.

Tongue River II

In Tongue River II, BLM and MT DSL were cooperating agencies.

In addition, in preparing the environmental documents, SEA has requested and received the input of a number of Federal, state, and local agencies. These include

Tongue River I

- Northern Cheyenne Tribe
- City-County Planning Board, Miles City/Custer County
- Powder River County Board of Commissioners
- MT DSL
- State of Montana, Office of the Governor
- USDA's Science and Education Administration
- Corps, Omaha District
- U.S. Department of the Interior
- USDOT
- EPA, Region VIII

Tongue River II

- Northern Cheyenne Tribe
- City of Sheridan, WY
- Powder River County Board of Commissioners
- Rosebud County
- MT DFWP
- MT DNRC
- MT DOT
- MT SHPO
- MT Office of Public Instruction
- Corps, Omaha District
- EPA, Region VIII

Scoping Process

The CEQ recommends that agencies preparing EISs conduct scoping as a way to help insure that all key issues are identified early and properly studied. SEA conducted extensive scoping for all proceedings related to TRRC's proposed rail line construction and operation, including opportunities to submit written scoping comments as well as scoping meetings with the public and/or government agencies. Project-related scoping activities to date include

Tongue River I

- Two meetings in Miles City to identify the environmental issues that the public believed should be considered in the DEIS for Tongue River I – August 7, 1980.
- Locally published notices seeking public participation regarding possible alternate rail alignments and advising the public about the availability of maps showing the affected area – November 1980.
- Two scoping meetings—one in Ashland and another in Broadus—to discuss modifications to the proposed alignment for Tongue River I – June 23, 1981.
- SEA also considered comments from a public workshop in Miles City, sponsored by the Custer County Planning Board, to discuss environmental issues to be considered in the DEIS for Tongue River I – September 15, 1980.

Tongue River II

- Scoping for the DEIS at St. Labre Indian School, Ashland – December 6 and December 7, 1989.
- Formal meeting with the Northern Cheyenne – February 5, 1990.
- SEA considered comments from the Northern Cheyenne received February 16, 1990, through the tribe's lawyer, Steven H. Chestnut (Seattle, WA.)
- SEA hired Sherri Deaver of Ethnoscience (Billings) to prepare a report on the potential impacts to the Northern Cheyenne in Tongue River II. The report, Potential Cultural Effects to the Northern Cheyenne from the Proposed Tongue River Railroad Extension, was submitted in June, 1991, and was incorporated into the Draft EIS.
- SEA contacted separately the Crow Tribe, the Arapaho Tribe, and—in one combined letter—the Assingboine and Sioux Tribes in April, 1990. In the letters, SEA explained the proposed project in Tongue River II and sought comments on the scope of the EIS.

Public Review of Environmental Documents

Public Hearings

The Board typically seeks public comment on an environmental document by making the document available to the public and allowing adequate time to receive written comments. However, during the Board's formal hearings on the merits of TRRC's proposed rail line from Miles City to Ashland in Tongue River I, the Board also solicited public participation regarding environmental issues, and the comment received were used to help develop mitigation to alleviate potential environmental impacts. These hearings were held in Miles City in January 1985. During the Board's formal hearings on the merits of TRRC's proposed rail line from Ashland to Decker in Tongue River II, the Board also entertained comments on the DEIS and any other environmental issues. These formal hearings were held on August 19, 1992, in Lame Deer and Forsyth; August 20, 1992, in Miles City; and August 21, 1992, in Sheridan.

Comments Received on Previous EISs

For each of the two previous EISs prepared for the project, numerous comments have been received, as follows:

- After issuance of the DEIS for Tongue River I on July 15, 1983, 50 written public comments were received. These comments were from a wide range of sources, including local property owners, environmental interest groups, local agencies, state agencies, and Federal agencies.

Each comment was formally responded to in the Final EIS.

- After issuance of the Supplemental DEIS for Tongue River I on March 12, 1984, 13 written public comments were received. These comments were from a wide range of sources, including local property owners, environmental interest groups, local agencies, state agencies, and Federal agencies. Each comment was formally responded to in the Final EIS.
- After issuance of the DEIS for Tongue River II on July 17, 1992, 47 formal written comments were received. These comments were from a wide range of sources, including local property owners, environmental interest groups, local agencies, state agencies, and Federal agencies. Each comment was formally responded to in the Final EIS.
- After issuance of the Supplemental DEIS for Tongue River II on March 17, 1994, 58 formal written comments were received. These comments were from a wide range of sources, including local property owners, environmental interest groups, local agencies, state agencies, and Federal agencies. Each comment was formally responded to in the Final EIS.