



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8, MONTANA OFFICE
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 HELENA, MONTANA 59626



Ref: 8MO

December 2, 2004

Surface Transportation Board
 Case Control Unit
 Attn: Kenneth Blodgett
 STB Docket No. FD 30186 (Sub-No. 3)
 Washington DC, 20423

Re: CEQ 040493, Draft Supplemental EIS for Tongue
 River Railroad - Western Alignment, STB Finance
 Docket No. 30186 (Sub-No. 3)

Dear Mr. Blodgett:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U. S. Environmental Protection Agency, Region VIII, Montana Office (EPA) has reviewed the Draft Supplemental Environmental Impact Statement (DSEIS) for the Tongue River Railroad Company (TRRC) - Construction and Operation - Western Alignment - Tongue River III in Rosebud and Big Horn Counties, Montana. The EPA reviews EISs in accordance with its responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309 of the Clean Air Act directs EPA to review and comment in writing on the environmental impacts of any major federal agency action. EPA's comments include a rating of both the environmental impact of the proposed action and the adequacy of the NEPA document.

The DSEIS states that the purpose of the Tongue River Railroad (TRR) is to get coal to market more efficiently, indicating that the proposed TRR alignment would provide a shorter transportation route to eastern and midwestern coal markets for coal mined from the Decker/Spring Creek coal mines, saving 320 miles on each round trip to the midwest. This mileage reduction is stated to result in sizeable reductions in fuel consumption, locomotive emissions, train-turn-around times, maintenance and operation expenses, etc.. It is not clear, however, if the 320 mile savings on each round trip to an eastern destination and associated reductions in fuel consumption, locomotive emissions, train-turn-around times, maintenance and operation expenses, etc, fully justifies building a new rail line that will cost \$108.9 million dollars, and that will involve significant additional environmental, social and cultural impacts.

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We recommend that a clearer, more comprehensive cost-benefit analysis be provided to assist in providing improved understanding of the economic and operational efficiency benefit of the TRR, along with additional discussion and evaluation of unquantified environmental impacts, values and amenities associated with the construction and operation of the TRR for comparison with the cost-benefit analysis and economic and operational benefits. This is necessary to assist in full evaluation of all the various trade-offs, including environmental, social and cultural resource impacts of the proposed TRR to allow clearer demonstration that a second rail line is needed to serve this coal mining area, and that TRR benefits justify the adverse impacts. The CEQ regulations for implementing NEPA (40 CFR 1502.23) indicate that when a cost-benefit analysis is prepared, it should include discussion of the relationship between the cost-benefit analysis and any analyses of unquantified environmental impacts, values and amenities. Without this information, the public, and decision-makers do not know if the environmental impacts are acceptable, and/or how they can be compared to cost-benefit and economic and operational factors. We believe the No Action Alternative would have a lower magnitude of environmental impact than any of the action alternatives, and would be the environmentally preferable alternative.

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With regard to the proposed Western Alignment, the DSEIS indicates that the Western Alignment like the Four Mile Creek Alternative will avoid the sensitive Tongue River Canyon, and may be environmentally and operationally preferable to the Four Mile Creek Alternative, and identifies Western Alignment advantages over the Four Mile Creek Alternative, including reduced wetland impacts, fewer public road crossings, fewer home displacements, reduced right-of-way acquisition, lower operational emissions of air pollutants, fewer sensitive receptors to noise and vibration, reduced grade and climb for loaded trains, lower fuel use and operational costs, and fewer curves and increased operational safety (fewer derailments).

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The Western Alignment, however, also involves more earthwork during construction that may increase sediment loads to the Tongue River, portions of which are listed as water quality impaired by the State of Montana under Section 303(d) of the Clean Water Act. We are not opposed to selection of the Western Alignment, but we believe it is important that rail line construction and operation avoid further degradation of 303(d) listed segments of the Tongue River, as well as 303(d) listed Tongue River Reservoir, Hanging Woman Creek, Otter Creek and Pumpkin Creek. TRR construction and operation activities should be consistent with Total Maximum Daily Loads (TMDLs) and Water Quality Restoration Plans being prepared for the Tongue River TMDL Planning Area. If proposed mitigation measures do not adequately control erosion and reduce sediment and other pollutant production and transport to 303(d) listed waters, we believe watershed restoration measures should be proposed to control existing pollutant sources and loading to the river to offset or compensate for TRR caused pollutant loads, and thus, avoid further degradation to 303(d) listed surface waters.

We recommend that the STB and TRRC contact the TMDL Program Managers for the Montana Department of Environmental Quality (i.e., George Mathieus at 406-444-7423) and EPA (Ron Steg at 406-457-5024) to ensure MDEQ and EPA concurrence on, and coordination of proposed activities with the MDEQ/EPA Tongue River Planning Area TMDL and Water Quality Restoration Plan development.

Also, potential adverse impacts to the threatened bald eagle from the Western Alignment need to be more fully and accurately evaluated and compared to the Four Mile Creek Alternative to more clearly demonstrate that the Western Alignment is the least environmentally damaging practicable alternative in accordance with Clean Water Act Section 404 requirements. The TRRC should be required to work with the U.S. Fish & Wildlife Service (USFWS) to gather more up-to-date information on potential impacts to the bald eagle. There may be a need for the TRRC and STB to enter into formal consultation with the USFWS if adverse effects to the bald eagle are likely to occur. We understand that the USFWS may consider the lower portion of the Four Mile Creek alignment and the upper section of the Western Alignment (where S566 crosses the Tongue River) to have less impacts to wildlife and federally listed species than either the Four Mile Creek Alternative or the Western Alignment. Would such an alternative be considered “practicable” from a 404(b)(1) standpoint (i.e., the term “practicable” means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes in accordance with 40 CFR 230.3(q))?

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The DSEIS states that estimates of wetlands in the analysis corridor are qualitative estimates based on aerial surveys, and that wetlands have not been confirmed through quantitative methods due to inability to access the corridor. It is difficult to delineate wetlands and evaluate wetland functions and values from aerial surveys alone. On-the-ground wetland delineation and functional assessment is needed. As you know, wetland mitigation will be required to assure that the project will compensate for unavoidable wetland impacts in accordance with applicable requirements under Section 404 of the Clean Water Act. Wetland impacts should be avoided and minimized, to the maximum extent practicable, and then unavoidable wetland impacts should be compensated for through wetland restoration, creation, or enhancement. The goal of wetland mitigation should be to replace the functions and values of lost wetlands in areas adjacent to or as close as possible to the area of wetlands loss.

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A Conceptual Habitat Mitigation and Monitoring Plan is included in the DSEIS. The conceptual wetland mitigation plan and the list of potential mitigation sites in the DSEIS does not provide adequate information on how the applicant will ensure that the mitigation sites will meet the wetland criteria, and provide adequate replacement of lost wetland functions and values. It is stated that mitigation alternatives will be explored during the 404 permitting process. We recommend that a detailed Wetland Mitigation Plan be prepared during the permitting process to assure that adequate replacement of lost wetland functions and values occurs. This Plan should be approved by the appropriate agencies before implementation of the proposed project.

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We also recommend consideration of a single 404 permit to cover the dredge and fill permitting for the project due to the numerous aquatic impacts. We feel this is preferred over issuance of a combination of numerous individual and nationwide permits, since it may allow for improved cumulative effects evaluation as well as to reduce paperwork and permit processing time, and assure that all necessary permits for dredge and fill activities can be obtained for the full project. Although we realize if the project is to be constructed in several segments over varying time periods it may be appropriate to permit each construction segment individually.

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We also have concerns regarding potential indirect and cumulative effects of the TRR in regard to environmental impacts of additional future coal mine development that may be facilitated by the proposed rail line. The DSEIS states that the TRR is essential to the development of Ashland area mines, which have no alternative means of economic transport without the railroad. The largest remaining undeveloped reserves of low sulfur, high BTU, sub-bituminous coal in the U.S. are stated to be located near Ashland. It is further stated that the State of Montana recently acquired an estimated 530 million tons of coal reserves from the federal government in the Otter Creek tracts near Ashland. A likely indirect effect of the TRR would be facilitation or inducement of future coal mine development in these areas. The indirect and cumulative environmental impacts of potential reasonably foreseeable future coal mining that may be induced or facilitated by the TRR should be completely analyzed and presented in accordance with 40 CFR 1508.7 and 1508.8.

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We note that there may be indirect and cumulative effects on Tribal Trust resources from coal development on or near Northern Cheyenne Reservation boundaries that may be induced or facilitated by the TRR. Clear disclosure of direct, indirect and cumulative impacts of potential TRR construction and operation on Tribal Trust resources is needed.

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In addition, it is stated that Wyoming coal is presently transported to midwestern markets via the circuitous Sheridan to Miles City BNSF railroad route, and some of this Wyoming coal is likely to be transported over the more direct TRR route. Concerns have been evidenced that a more efficient transportation route for Wyoming coal may lead to additional mining of Wyoming coal, which may result in reductions of coal production in Montana. The potential economic and social impacts of the TRR on coal production in Montana should be more clearly analyzed and presented. Is it likely that the more efficient TRR coal transport route may result in additional mining of Wyoming coal in this area, resulting in additional associated environmental, social and economic impacts? If so, these additional associated environmental, social and economic impacts need to be more fully and clearly analyzed and presented.

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The DSEIS states that the proposed Western Alignment could affect paleontological and cultural resources, and that impacts would be mitigated by provisions in the Programmatic Agreement (Appendix G). We are pleased that efforts have been made to consult with Native Americans (Appendix M), and that a draft Programmatic Agreement including consultation with the Northern Cheyenne and Crow Tribes has been drafted, however, it is not clear if this Programmatic Agreement has been finalized with the above noted Tribes signatory to this Agreement. If the Tribes have not signed this Programmatic Agreement how will National Historic Preservation Act cultural resource consultation requirements be met?

11

We are also concerned that TRR construction and operation may result in adverse effects to the Montana Dept. of Fish, Wildlife & Parks Fish (MDFWP) fish hatchery at Miles City (i.e., may reduce success of hatching, rearing and production of fish). This hatchery provides stocking sources for many species of warm water fish, including the endangered pallid sturgeon. The DSEIS identifies potential concerns regarding vibrational effects on fish production, as well as concerns regarding coal dust and herbicide use for weeds along the railroad corridor near the hatchery. We are particularly concerned about effects to fisheries programs that promote

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recovery of the endangered pallid sturgeon. The analysis and disclosure of potential noise and vibrational effects and coal dust upon fish hatchery operations and success in the DSEIS does not alleviate all the concerns. Adverse impacts to success of hatching, rearing and production of hatchery fish for warm water fish stocking programs need to be more fully evaluated and considered.

12 cont.

We are pleased that Mitigation Measure 86 requires TRRC to consult with the MDFWP, however, we are concerned that such consultation may not result in effective avoidance of adverse effects to fish hatchery operations and warm water fish stocking programs. Mitigation Measure 87 requires TRRC to adhere to “reasonable” mitigation conditions imposed by MDFWP, but it is not clear who determines if mitigation conditions are “reasonable.” We believe Mitigation Measure 87 should require TRRC to adhere to mitigation conditions imposed by MDFWP that effectively avoid adverse effects upon hatchery operations.

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Also, it is not clear to us why alternative railroad alignments that move the railroad away from the hatchery to avoid potential railroad construction and operation effects upon the fish hatchery were not analyzed and presented. We believe alternative railroad alignments that move the railroad away from the hatchery are likely to be the most effective means of avoiding adverse effects to fish hatchery operations and fish production. Accordingly, we believe alternative railroad alignments that move the railroad away from the hatchery to avoid or reduce potential railroad construction and operation effects upon the fish hatchery should be fully evaluated and presented.

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It would also be helpful if a cost-benefit analysis for alternative railroad alignments at Miles City were provided to allow improved understanding of the economic advantages of the proposed alignment near the fish hatchery for comparison with other potential Miles City alignment alternatives, along with improved evaluation of potential impacts to the fish hatchery, and any other unquantified environmental impacts, values and amenities associated with Miles City alignment alternatives. This is needed to fully evaluate all the various options and trade-offs. It presently appears that economic advantages to the TRRC from their preferred Miles City alignment is taking precedent over alternatives that may avoid fish hatchery impacts.

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In regard to potential air pollutant emissions associated with the TRR construction and operation, we believe there is a need for additional information to support statements that emissions of air pollutants from the proposed Western Alignment would be lower than emissions from the previously-approved Four Mile Creek Alternative. Also, the FEIS should clarify that the Prevention of Significant Deterioration (PSD) thresholds (which should be expressed tons per year and not tons/mi-yr) are used for comparison purposes and do not have regulatory significance in this application.

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The EPA's more detailed questions, concerns, and/or comments regarding the analysis, documentation, or potential environmental impacts of the SDEIS for Tongue River Railroad - Western Alignment, STB Finance Docket No. 30186 (Sub-No. 3) are included in the enclosure with this letter. The EPA's comments include a rating of both the environmental impact of the proposed action and the adequacy of the NEPA document (see explanation of EPA EIS rating

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criteria enclosed). Based on the procedures EPA uses to evaluate the adequacy of the information and the potential environmental impacts of the proposed action and alternatives in the SDEIS has been rated as Category EC-2 (Environmental Concerns-Insufficient information).

17 cont.

EPA's concerns regard demonstration of project purpose and need in light of project costs and benefits and potential environmental, social and cultural resource impacts. EPA recommended improved cost-benefit analysis and additional discussion and evaluation of unquantified environmental impacts, values and amenities associated with the construction and operation of the TRR for comparison with the cost-benefit analysis and economic and operational benefits. This is needed to more clearly demonstrate that a second rail line is needed to serve this coal mining area, and that rail line benefits justify the adverse impacts. EPA also expressed concerns regarding impacts to water quality, wetlands, the threatened bald eagle, the Miles City fish hatchery, Tribal Trust resources, and indirect and cumulative environmental impacts, and believes additional information, data, analysis and discussion should be included in the final EIS.

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We appreciate the opportunity to review and comment on this DSEIS. If you have any questions regarding our input, please contact Mr. Steve Potts of my staff in Helena at (406) 457-5022 or in Missoula at (406) 329-3313. Thank you.

Sincerely,



John F. Wardell
Director
Montana Office

cc: Larry Svoboda/Julia Johnson, EPA, Denver, 8EPR-EP
Mark Wilson, USFWS, Helena
Lou Hanebury, USFWS, Billings
Rodney Schwartz, COE, Omaha
Allan Steinle, COE, Helena
David Millegan, Northern Cheyenne Tribe, Lame Deer
Gary Bertellotti, MDFWP, Helena
Jeff Ryan, MDEQ-WQD, Helena

U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

Definitions and Follow-Up Action*

Environmental Impact of the Action

LO - - Lack of Objections: The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC - - Environmental Concerns: The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO - - Environmental Objections: The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU - - Environmentally Unsatisfactory: The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 - - Adequate: EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 - - Insufficient Information: The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 - - Inadequate: EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

**EPA Review of Draft Supplemental EIS Tongue River Railroad -
Construction and Operation - Western Alignment, Tongue River III -
Rosebud and Big Horn Counties, Montana**

Brief Project Overview:

The Tongue River Railroad (TRR) is composed of two segments; an initial 89 mile segment from Miles City to near Ashland, Montana; and a 41 mile extension from Ashland to Decker, Montana, proposed by the Tongue River Railroad Company, Inc. (TRRC). The project located in Custer, Big Horn, Powder River, and Rosebud Counties, Montana, is the subject of three separate applications to the U.S. DOT Surface Transportation Board (STB), known as Tongue River I, Tongue River II, and Tongue River III. The overall purpose of Tongue River I, Tongue River II, and Tongue River III is to transport coal from mines in the Powder River Basin and Tongue River Valley to markets in the Midwest and northeastern states.

TRRC's original application filed in 1983, sought approval from the Interstate Commerce Commission (ICC), the STB's predecessor agency, to construct and operate 89 miles of rail line between Miles City, Montana and two termini located near Ashland, Montana. In a decision served May 9, 1986, the ICC approved Tongue River I. TRRC filed another application in 1991 for Tongue River II, seeking approval to extend the line from Ashland to Decker, Montana. The STB approved Tongue River II, authorizing construction of 41 miles of rail line via the Four Mile Creek Alternative, in a decision served in November 1996. The STB selected the Four Mile Creek Alternative over the TRRC's preferred alternative, since the Four Mile Creek Alternative avoided disturbances to the environmentally sensitive section of the Tongue River below the Tongue River Dam, and eliminated the need to construct a tunnel and five bridges in the Tongue River Canyon.

The TRRC did not like the STB's selected Four Mile Creek Alternative due to safety, cost and operational considerations. The TRRC filed an application with the STB on April 27, 1998 seeking authority to construct and operate a 17.3 mile line of railroad known as the "Western Alignment" (Tongue River III) as an alternative routing for the Four Mile Creek Alternative which is in the southern most portion of the Ashland to Decker, Montana rail route. A Notice of Intent to prepare a Supplemental EIS to evaluate the Western Alignment was published on July 10, 1998, however, work on this Supplemental EIS was suspended on March 10, 2000, and was then initiated once again on March 26, 2003.

The Western Alignment would generally follow a route between TRRC's preferred Tongue River Canyon alignment and the Four Mile Creek Alternative, and would be located on uplands out of the Tongue River Canyon. The Western Alignment would begin at a point approximately 9 miles downstream of the confluence of Four Mile Creek and the Tongue River. It would then cross the Tongue River approximately 3,000 feet downstream of the existing county road river crossing. After crossing the river, the Western Alignment would parallel the existing Tongue River road for 4 miles, then separate from the county road and climb away from

the valley floor. At Four Mile Creek the Western Alignment would cross the County Road with a 100 foot long bridge and run approximately 320 feet west of Hosford Diamond Cross Ranch headquarters, then climb away from the Tongue River Valley and proceed to connect to the existing Spring Creek rail spur. The railroad right-of-way width would average 200 feet, ranging from 100 to 300 feet depending upon cut and fill requirements. There would also be seven passing sidings each approximately 8500 feet long, and set-out tracks for storage of rail cars and equipment.

It is important to note that the TRRC has not constructed any portion of the Tongue River Railroad including the portion from Miles City to Ashland that was approved by the ICC in 1986. The U.S. Army Corps of Engineers, which has Clean Water Act Section 404 permit authority for the Tongue River Railroad, has indicated that it will consider the railroad in its entirety, including the 89 mile original segment from Miles City to Ashland, since all previously issued 404 permits have expired, and the project, although presented piecemeal, is essentially construction of one continuous track by the TRRC. The Corps also indicated that environmental conditions have changed since the original 1985 environmental compliance, noting that wetland delineation was never done for the 89 mile Miles City to Ashland segment. This DSEIS includes proposed refinements to the alignments previously approved in Tongue River I and II, and mitigation measures to address potential impacts of the entire rail line in Tongue River I, II, and III.

Comments:

- 1. Thank you for including Table 1-1 (page xxi) comparing key environmental issues and Table 2-1 (page 2-3) comparing construction and operation features for the Western Alignment and Four Mile Creek Alternative, and providing clear maps showing the alternative railroad alignments (Figures 1-1 through 2-1), and the chronologies of events (pages 1-4, 1-8, 1-12) for Tongue River I, II, and III. These tables, maps and chronologies facilitate improved project understanding and evaluation of alternatives and help define issues, and assist in providing a clearer basis of choice among options for the decisionmaker and the public in accordance with the goals of NEPA. 19
- 2. It is stated in many places in the DSEIS that the TRR consists of the 89 mile segment from Ashland to Miles City and the 41 mile segment from Decker to Ashland (i.e., 130 mile total railroad length). The FEIS should explain or clarify why it is stated that the TRRC is proposing to construct 116 miles of rail line from Miles City to near Decker, Montana (Appendix D, Conceptual Habitat Monitoring and Mitigation Plan), rather than the 130 miles of rail line that would result from the 89 and 41 mile railroad segments. 20

Purpose and Need and Alternatives

- 3. The Tongue River Railroad (TRR) does not appear to be needed to get coal to market, since coal from the Decker/Spring Creek coal mines is presently finding its way to markets, via the existing BNSF rail line from the Spring Creek spur south into Sheridan, 21