

**SEA's Responses to Comment Letter P15**

**Northern Plains Resource Council: Jeanie Alderson, Michael Reisner, Jack Tuholske (December 6, 2004)**

P15.1 SEA did not ignore this issue in preparing this SEIS. Chapter 6 of the Draft SEIS provides a detailed analysis of the environmental effects of coal bed methane development in combination with construction and operation of the Tongue River Railroad. Please also refer to Master Response 21: Adequacy of Cumulative Analysis.

P15.2 Please see response to comment P15.1.

P15.3 In preparing the Draft SEIS, SEA collected data from a wide range of sources, including past studies, reports, and surveys prepared by state and Federal agencies (see Chapter 13 of the Draft SEIS). Information from Tongue River I and Tongue River II also was updated where appropriate. Please also refer to Master Response 4, Information Used in Preparing the EIS.

P15.4 The Draft SEIS in Chapter 6 addresses the cumulative impacts of the railroad combined with reasonably proposed coal bed methane (CBM) projects located in the project area. SEA has updated this analysis in the Final SEIS in Master Response 21, Adequacy of Cumulative Analysis, to include new CBM projects approved since the release of the Draft SEIS.

P15.5 Tongue River I and Tongue River II were previously approved by the Board. The current Draft SEIS is for analyzing proposed refinements to the original approved rail line, including the substitution of the Western Alignment for the Four Mile Creek Alternative. Tongue River I, Tongue River II, and Tongue River III each represent separate project proposals by TRRC to the Board. Each of these projects has required a separate environmental review process. The cases that were proposed at different times have independent utility, and do not represent a "single course of action" as suggested in the comment. See Master Response 8, Scope of the EIS is too Narrow.

P15.6 The comment questions the Board's process for preliminarily determining the public convenience and necessity of a proposed project in advance of the completion of the environmental review. A preliminary finding that there is a public need for the rail line is not the final decision, however. After the environmental review has been completed, the Board will weigh the environmental effects of the project against the public need for the rail line, and determine whether to approve the construction. Please see Master Response 9, Determination of Public Convenience and Necessity.

P15.7 The docket number for Tongue River III, 30186, is the same docket number for both Tongue River I and Tongue River II. Tongue River III is STB Finance

Docket No. 30186, (Sub-No. 3), while Tongue River I is STB Finance Docket No. 30186 (Sub-No. 1), and Tongue River II is STB Finance Docket No. 30186, Sub-No. 2).

The comment states that the statutory standard in 49 U.S.C. 10901 prior to its amendment in 1995, should govern Tongue River III, because the proposed Western Alignment is not a “new” proposed line, but instead relates back to Tongue River II. That argument is relevant to the statutory standard that will govern the Board’s final decision—and has nothing to do with the adequacy of the environmental review.

P15.8 In amending section 10901 in the ICCTA, Congress intended to facilitate rail construction by shifting the emphasis from whether a project is consistent with the public convenience and necessity to whether the project is inconsistent with the public convenience and necessity. Under the revised statute, proposed rail construction projects are to be given the benefit of the doubt. If they are not found to be inconsistent with the public interest, then they are to be approved. As the Board said in Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901, 1 STB 75, 79 (1996), “there is now a presumption that construction projects will be approved.” The changes to section 10901 signal a change from the rationale of earlier decisions that were based on a Congressional emphasis on monitoring railroad construction expenditures to prevent excess capacity.<sup>8</sup> Thus, although the statutory criteria of public convenience and necessity remains, the burden of satisfying that criteria has been made progressively easier.

P15.9 Possible mining operations at the Otter Creek tracts are discussed in Section 6.4.3 of the Draft SEIS. SEA is aware that a development consortium (Consortium) has proposed the construction of a 750-megawatt coal-fired generator on these tracts and a 100-mile power line to tie into existing transmission lines. Moreover, the Consortium indicated the need for a 3 million-ton per year coal mine to supply the power plant. SEA acknowledges that the Tongue River rail line would increase the likelihood of coal mine development on the Otter Creek tracts, which in turn could increase the likelihood that the coal-fired generator plant and the power line are constructed. SEA therefore considered the potential development of these tracts when assessing the public need for the proposed project. However, as discussed in Master Response 21, Adequacy of Cumulative Analysis, there are no prospective mine development projects in the Otter Creek tracts or elsewhere in the Ashland area that meet SEA’s definition of “reasonably foreseeable,” which covers 5 years (2 years for construction of the rail line and 3 years of operation). Furthermore, the Consortium has not yet received any leases or permits for

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<sup>8</sup> In one earlier decision, *Chesapeake & Ohio Ry. V. United States*, 283 U.S. 35, 42 (1931), the court evaluated the standard of public convenience and necessity, stating that, “[u]ndoubtedly, the purpose of these provisions is to enable the Commission, in the interest of the public, to prevent improvident and unnecessary expenditures from the construction and operation of lines not needed to insure adequate service.”

development of the tracts to date nor has the Consortium been granted transmission rights. The lack of prospective projects is also discussed in Section 6.4.3 of the Draft SEIS.

SEA consulted again with the Montana Department of Natural Resources and Conservation (MT DNRC) in August 2005 to obtain the most current information on any leasing applications or agreements associated with the Otter Creek tracts. Based on 2004 test borings, MT DNRC compiled up-to-date information on the volume and properties of coal in the Otter Creek tracts. While the 2004 borings have confirmed large coal reserves in these areas and the State Governor supports development of these tracts, possibly with mining operations, no proposals are under review at this time for leasing of the tracts, and no industry group has identified a time line for submitting such a proposal.

Based on these factors, SEA does not consider the generator plant, the transmission line, or other mine development projects to be reasonably foreseeable, and thus did not include them in the cumulative analysis of the Draft SEIS.

P15.10 Appendix F of the Draft SEIS contains information on all pertinent state permits, including Section 401 water quality certification. For discussion of total maximum daily load (TMDL), see Master Response 20, Total Maximum Daily Load (TMDL).

P15.11 Master Response 20, Total Maximum Daily Load (TMDL) provides up to date information on the TMDL process based on communication with the MT DEQ.

P15.12 Recommended Mitigation Measures 19, 36, 40, 41, 43, and 46 incorporate reasonable soil, land, and water conservation practices, including “methods, measures, or practices that protect present and reasonably anticipated beneficial uses.” In developing these measures, SEA coordinated with state agencies to ensure that the measures meet the intent of the Montana Water Quality Act. Please refer to Appendix F of the Draft SEIS for the specific permitting requirements of the State of Montana.

P15.13 SEA takes no position on whether it is legally bound by, or has complied with, the Montana Constitution. The Draft SEIS is a public information document that is open to review in this Final SEIS. At this stage, the only question before SEA is whether the SEIS complies with the National Environmental Policy Act (NEPA). SEA believes that it has complied with that statute in preparing the environmental documentation for this proposed project.

SEA also recognizes the importance of Montana State environmental laws, and invited the MT DNRC to be a Cooperating Agency, representing all Montana state agencies. The purpose of having the MT DNRC as a Cooperating Agency is to provide input to SEA’s environmental analysis so that it is consistent, as much

as possible, with views and Montana State requirements. SEA included additional analysis specifically requested by the State in Appendix F of the Draft SEIS to further aid in the state's analysis of the potential environmental effects of the project.

P15.14 The primary focus of the SEIS is to provide information about the environmental effects associated with the proposed Western Alignment, and to compare those effects to the potential impacts of the approved Four Mile Creek Alternative. By providing this information, SEA has fully complied with the NEPA requirement of studying in depth the environmental effects of the proposals before the Board.

P15.15 In the Draft SEIS, SEA not only looked at the proposed Western Alignment and the Four Mile Alternative, but also updated analysis of the entire alignment as appropriate, to address changed circumstances that could result in a new substantial effect that was not previously addressed. This methodology is set forth in Section 1.5 of the Draft SEIS. CBM development is discussed in Chapter 6 of the Draft SEIS. Please see also Master Response 21, Adequacy of Cumulative Analysis.

P15.16 In the context of the SEIS, the “no action” alternative would equate to the Board's denial of TRRC's current application, which is for authority to construct and operate the proposed Western Alignment. If the Board chooses to deny that application by approving the “no action” alternative in Tongue River III, TRRC would still have the authority to build the Four Mile Creek Alternative previously approved in Tongue River II. See Master Response 3, The No-Action Alternative, and Master Response 21, Adequacy of Cumulative Analysis.

P15.17 SEA used the documents prepared in Tongue River I and Tongue River II as background information to aid in the analysis of Tongue River III. SEA updated the information found in these documents as appropriate. For example, the Draft SEIS in Tongue River III contains information based on the surveys detailed in Master Response 1, Adequacy and Timing of Studies, and Master Response 2, Biological Resources – Conclusions and Mitigation.

In its analysis of Tongue River III, in specific relation to CBM, SEA utilized many updated and newly published reports, including BLM's “Final Statewide Oil and Gas Environmental Impact Statement and Proposed Amendment of the Powder River Basin and Billings Resource Management Plans,” which was released in January 2003, as well as BLM's 2002 Biological Assessment (BA) for CBM production in Montana. For more information, please see Master Response 8, Scope of the EIS is too Narrow.

P15.18 SEA's analysis utilized information from a variety of documents; however, in each case, SEA verified the information through consultation and aerial surveys. For more information on the types of reference documents used by SEA, please see Master Response 4, Information Used in Preparing the EIS.

P15.19 SEA believes that the data on baseline (existing) conditions, compiled through site visits, aerial surveys, photographs, appropriate biological resource studies, and technical studies as identified in Section 3.1 of the Draft SEIS, are fully adequate, as is the description of the existing environment in Chapter 4 of the Draft SEIS. See Master Response 1, Adequacy and Timing of Studies, and Master Response 2, Biological Resources – Conclusions and Mitigation.

P15.20 The commenter references a report prepared for BLM in 2003. This report includes data for several tributary streams of the Tongue River that join the river either upstream or downstream of the proposed Western Alignment and the approved Four Mile Creek Alternative. Surveys conducted as part of these reports are similar to those prepared for the proposed rail line, as detailed in Section 4.2.4.2 of the Draft SEIS.

P15.21 Updated baseline habitat and species data are presented in the BA, which is located in Appendix D of this Final SEIS. Also included in Appendix D is the Biological Opinion issued by the U.S. Fish and Wildlife Service (USFWS). Please also see Master Response 1, Adequacy and Timing of Studies.

P15.22 The *Fish and Wildlife Species Occurrence by Habitat, Tongue River Railroad Project Area* report presented in Appendix D of the Draft SEIS included a wildlife species/habitat matrix to document the species that have been recorded or that have the potential to occur in the vicinity of the entire rail line from Miles City to Decker, as well as the habitats within which they have been recorded or have the potential to occur. The matrix also includes information on the percentage of each habitat type along the proposed rail line and 400-foot project area (200 feet to each side of center line).

P15.23 SEA's analysis of biological resources and potential adverse effects is detailed and comprehensive and complies with NEPA. The analysis can be found in Sections 4.2.2, 4.3.2, and 5.3.2 of the Draft SEIS. Appendix D in the Draft SEIS contains the report titled *Fish and Wildlife Species Occurrence by Habitat, Tongue River Project Area*, which lists the species and habitats found in the vicinity of the project. Appendix L of the Draft SEIS contains the BA used in the analysis presented in Sections 4.2.2, 4.3.2 and 5.3.2 of the Draft SEIS. The updated BA, located in Appendix D of this Final SEIS also includes eight figures showing the distribution of bald eagles and black-tailed prairie dogs in the relation to the Tongue River Railroad route. The Biological Opinion, issued by the USFWS on July 12, 2006 requires specific mitigation to protect the species. Please also see Master Response 2, Biological Resources – Conclusions and Mitigation.

P15.24 A detailed analysis of species not formally listed or identified as federal or state species of concern, or as a sensitive species by a federal agency such as BLM, is

not typically required by NEPA. The Draft SEIS mentions that burrowing owls, mountain plover, and black-footed ferrets depend on prairie dog towns for successful breeding, and goes on to discuss prairie dog surveys and analysis. SEA believes that the prairie dog analysis and corresponding biological resources mitigation measures appropriately address related population dependencies. (See Master Response 2, Biological Resources – Conclusions and Mitigation.) The Draft SEIS also contains a discussion of raptors, including the ferruginous hawk, burrowing owl, and merlin. These discussions can be found in Sections 4.2.2.2 and 4.3.2.2 of the Draft SEIS.

The burrowing owl has been added to the Montana Species of Concern List since the earlier drafts of the Draft SEIS and the updated analysis is reflected in Chapter 5: Errata, where it references Page 4-13, line 1.

P15.25 The discussion of Montana species of concern in the Draft SEIS includes several neotropical migrant bird species such as the Baird’s sparrow (*Ammodramus bairdii*), black-and-white warbler (*Mniotilta varia*), Brewer’s sparrow (*Spizella breweri*), dickcissel (*Spiza americana*), flammulated owl (*Otus flammeolus*), olive-sided flycatcher (*Contopus cooperi*), and the sage sparrow (*Amphispiza belli*). Pre-construction surveys stipulated in Mitigation Measure 26 would determine more precisely the potential for the presence of state species of concern and impacts to possible habitat areas. Recommended Mitigation Measures 26 through 30 and 91 are intended to address potential impacts to all breeding bird species. A detailed analysis of species not formally listed or identified as federal or state species of concern, or as a sensitive species by a federal agency such as BLM, is not typically required by NEPA (40 CFR 1502.2(a) and 40 CFR 1502.2(b)).

Neotropical migrants potentially present in the project area are identified in the report “Fish and Wildlife Species Occurrence by Habitat, Tongue River Railroad Project Area,” which was included in Appendix D of the Draft SEIS.

P15.26 The “Fish and Wildlife Species Occurrence by Habitat, Tongue River Railroad Project Area” in Appendix D of the Draft SEIS lists both amphibious and reptilian species and their habitats. The Northern Leopard frog was listed on page 3 of that document. See Master Response 2, Biological Resources – Conclusions and Mitigation.

P15.27 Known data on species of concern—specifically, federal threatened and endangered species that may be located in the Tongue River project area—are included in the updated BA, Appendix D of this Final SEIS.

Species discussed in detail include: black-footed ferret, pallid sturgeon, whooping crane, interior least tern, and bald eagle. Two species that USFWS has recently declined to list—the mountain plover and the black-tailed prairie dog—

are also discussed in the updated BA. If SEA's recommended mitigation is imposed and implemented, refinement of data currently available for these species will be prepared through pre-construction surveys, so that the most up-to-date information can be reflected in construction specifications and planned operations to reduce, avoid, and mitigate potential adverse impacts to the extent possible. Revisions to the BA include survey data for the black-tailed prairie dog colonies that would provide potential black-footed ferret habitat. See also Master Response 1, Adequacy and Timing of Studies, and Master Response 2, Biological Resources – Conclusions and Mitigation.

P15.28 Table 4-17 in the Draft SEIS delineates the amount of prime and other farmland that would be lost due to the construction and operation of the proposed Western Alignment, as well as the approved Four Mile Alternative. See Master Response 18, Land Use Effects of the Project, for more information on the negotiations that would take place between landowners and TRRC.

P15.29 Ambient air quality is discussed on page 4-44 of the Draft SEIS. New sources of air pollutants in proximity to the project site (Rosebud, Custer Powder River, or Big Horn counties) are discussed on page 5-23 of the Draft SEIS. Baseline air quality is also discussed in the cumulative impacts chapter on page 6-18 of the Draft SEIS.

Exhibit J of the Northern Plains Resource Council letter contained the following documents:

- Newspaper articles regarding dust problems at existing mining operations in Wyoming
- Newspaper articles regarding the air quality effects of CBM extraction activities in Wyoming
- Appeal of “Resource Management Plans in Buffalo and Platte River in Northeast Wyoming and Powder River and Billings Resource Management Plans in South Central Montana that Authorize Development of Powder River Basin Oil and Gas Project”
- Exhibit P, attached to the Northern Plains Resource Council letter, listing air pollution sources within 300 kilometers of one or more of the 15 Class I areas in the modeling domain of the study, “Final Technical Support Document: Air Quality Impact Assessment for the Montana Final Statewide Oil and Gas EIS and Proposed Amendment of the Powder River and Billings Resource Management Plans and the Wyoming Final EIS and Planning Amendment for the Powder River Basin Oil and Gas Development Project” that were allegedly not included in the modeling effort
- Two Microsoft Excel files, providing data on air pollution sources

Chapter 6 of the Draft SEIS includes analysis of the air quality effects of CBM extraction activities, mining and other reasonably foreseeable sources that are located geographically close enough to the project (within MAQCR-143) to be considered for cumulative impact consideration. The list of air sources in Exhibit P of the NPRC letter and the two Excel files noted above do not identify any additional cumulative sources within MAQCR-143 that were not considered in the Draft SEIS.

P15.30 The Draft SEIS identifies the number of railroad jobs that would be created or lost by the project, as estimated by TRRC. (See Chapter 6, “Cumulative Effects,” for a discussion of potential regional job increases.) As shown in Table 4-47 of the Draft SEIS, in the first year of operation, the project could result in the net loss of seven regional railroad jobs under the Western Alignment and the net gain of four regional railroad jobs under the Four Mile Creek Alternative. This analysis includes Forsyth and Sheridan, which are located on the existing BNSF rail lines. SEA believes that this estimate of net job change underestimates the amount of new jobs that the entire rail line from Miles City to Decker would create regionally, because it does not take into account that train crew jobs would increase as TRRC begins to move tonnage from new mines in the Ashland area that are unlikely to be opened in the absence of the rail line via either the proposed Western Alignment or the approved Four Mile Creek Alternative. The economic stimulus of the project for Southeastern Montana is further discussed in Section 2.2 of the Draft SEIS. SEA believes this analysis is adequate and consistent with NEPA, and sees no need to determine if the presence of a shorter transportation route (the Proposed Western Alignment) will further impact jobs at local coal mines.

There would be no impact to agricultural jobs with the recommended mitigation measures identified in the SEIS. Mitigation Measures 2 through 6 were developed to reduce potential effects to farms and ranches along the proposed rail line.

P15.31 Extensive collection of baseline data is not always necessary to determine if a project would (or would not) have a significant effect and whether environmental mitigation is warranted. SEA collected baseline data where appropriate. Where potentially significant effects could occur, SEA recommended mitigation, where appropriate, to avoid or reduce the effect. SEA’s final recommended mitigation includes conditions addressing issue areas where extensive data were collected (e.g., recommended Mitigation Measure 24, Biological Opinion) as well as issue areas where it was not (e.g., recommended Mitigation Measure 4, Displacement of Capital Improvements).

P15.32 The rugged terrain, limited access, and rural location of the proposed Western Alignment has presented a unique challenge to conducting detailed environmental studies. The ability to conduct on-the-ground surveys was constrained due to the nature of the terrain and limited roads accessing the area. In cases like these, it is

appropriate to rely on aerial surveys and aerial photography, as well as on previous mapping and surveys conducted in the area (e.g., topographic maps, soils maps, wildlife surveys). For more information, please see Master Response 1, Adequacy and Timing of Studies.

P15.33 SEA discussed the Alternatives Considered but Dropped from Further Analysis in Section 1.3.1 of the Draft SEIS. These alternatives were originally presented and analyzed in Tongue River I. Among these were the Tongue River Road alternative route, the Moon Creek alternative route, and the Colstrip alternative route. Figure 1-2 of the Draft SEIS shows the locations of each alternative. The 404 (b)(1) Showing in Appendix D of the Draft SEIS also discusses the broader range of alternatives that were originally considered before being narrowed to the four routes analyzed in Tongue River I. Tongue River II alternatives included a Preferred Alignment, the Four Mile Creek Alternative, and the “No-Build” alternative. An updated version of the 404 (b)(1) Showing is included in this Final SEIS as Appendix F. The Board completed a thorough alternatives analysis in compliance with NEPA requirements in this case. See also Master Response 3, The No-Action Alternative.

P15.34 The Draft SEIS Appendices and the documents cited in Chapter 13 of the Draft SEIS include the underlying scientific data upon which SEA relied in its analysis and conclusions.

Throughout the Draft SEIS, SEA analyzed the construction-period (short term) and operations (long term) effects, as well as the cumulative effects of the proposed rail line. SEA detailed the breadth of scientific studies and analysis undertaken for the proposed rail line in Master Response 1, Adequacy and Timing of Studies.

P15.35 The impacts on traffic in Miles City were carefully analyzed in Tongue River I; as they have not changed substantially (no major increase in population in Miles City) since then, no new analysis was warranted.

P15.36 Although they would not be eligible for consideration under environmental justice,<sup>9</sup> the text of the Draft SEIS has been revised to reflect the existence of the Amish Community north of Ashland. See Chapter 5: Errata, where it references Page 4-48, section 4.2.9.1. The Montana Department of Commerce, the Rosebud County Clerk and Recorder's Office, and the Rosebud County Department of Revenue were all contacted in March 2005 for information on the Amish. Based on the information obtained, it appears that the Amish would be especially sensitive to traffic-related impacts. Several mitigation measures included in the

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<sup>9</sup> To be considered for environmental impacts under environmental justice, a minority community must exceed 50 percent or be “meaningfully greater than the minority population in the general population.” The small size of the Amish population in the Ashland area precludes them from being considered a community under environmental justice.

SEIS would address potentially adverse effects related to traffic safety, thus minimizing any potential impacts of this project on the Amish. For example, recommended Mitigation Measures 53, 54, and 57 are specifically designed to limit the amount of construction-related traffic on public roads and reduce instances of speeding when construction traffic does utilize public roads. Imposition and implementation of these measures would reduce impacts to the Amish community by project-related traffic.

P15.37 Master Response 20, Total Maximum Daily Load (TMDL) provides up to date information on the TMDL process based on communication with the MT DEQ.

P15.38 Table 4-17 in the Draft SEIS delineates the amount of prime and other farmland that would be lost due to the construction and operation of the proposed Western Alignment, as well as the approved Four Mile Creek Alternative. See Master Response 18, Land Use Effects of the Project, for more information on the negotiations that will take place between landowners and TRRC.

P15.39 The impacts of this project on market value are speculative at best. Recommended Mitigation Measures 1-13 are intended to avoid or reduce effects on the operation of ranches directly affected by the rail line.

P15.40 See Master Response 19, Availability of Water During Construction, for a detailed response on TRRC's use of water during construction periods.

P15.41 SEA acknowledges in Section 4.3.2.2 of the Draft SEIS that the placement of fill could result in the releases of sediment that could be harmful to aquatic resources. However, recommended Mitigation Measures 43 and 45 were developed to address this potential effect. For example, Mitigation Measure 43 requires SEA to submit detailed construction plans to applicable regulatory (water quality control) agencies for review and approval prior to any construction of the proposed rail line. See also Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.

P15.42 SEA has thoroughly analyzed the impacts to water quality in the Draft SEIS in Sections 4.3.4; 5.3.4; 6.6.4; and 7.2.4.

Master Response 22, The Use and Sizing of Culverts for Side Drainages, contains a summary of specifications that would be required by recommended Mitigation Measure 49 to ensure that hydrologic effects of the proposed rail line are reduced.

Recommended Mitigation Measure 23 calls for consultation with the MT DNRC in conducting surveys of ephemeral streams that would be crossed by the railroad to determine the potential impacts of erosion and sedimentation on state species of concern. Once the surveys are conducted, appropriate mitigation would be established.

Under Mitigation Measure 46, TRRC would be required to construct stream crossings (including in intermittent streams) during periods of low to no flow.

P15.43 Sections 4.2.2, 4.3.2, 5.3.2, and 6.6.2 of the Draft SEIS contain a detailed analysis of the setting, impacts, and recommended mitigation measures for wildlife in the area of the proposed rail line.

In response to comments in the Draft SEIS, SEA created a Habitat Matrix, located in Appendix B of this Final SEIS, which identifies the types of wildlife habitats along the entire rail line from Miles City to Decker. The Habitat Matrix provides information beyond that contained in the BA to allow SEA to determine the level of potential impact on more common species.

An analysis conducted by TRRC at the request of BLM evaluates the effects of construction and operation of the entire rail line on BLM property in the areas of wildlife habitat; vegetation; riparian/wetlands; livestock grazing; soil, water, and air; cultural resources; recreation; socioeconomic effects; access; wilderness; and environmental justice. This evaluation is presented in Appendix E of the Draft SEIS.

SEA also consulted with USFWS and the State of Montana to obtain current information on the presence of species and habitats.

SEA conducted a BA of TRRC's Preferred Alignment to address potential impacts to endangered species, and consulted with the Corps and EPA regarding potential impacts to the Tongue River Canyon associated with the proposed Western Alignment. The Final BA and the Biological Opinion issued by the USFWS are located in Appendix D of this Final SEIS. See Master Response 2, Biological Resources – Conclusions and Mitigation.

P15.44 If the use of eminent domain were necessary, TRRC would be bound by all applicable laws and regulations in implementing these proceedings. Furthermore, recommended Mitigation Measure 1 (Direct and Indirect Land Loss) states that TRRC would negotiate compensation for direct and indirect loss of agricultural land on an individual basis with each landowner whose property would be affected as a result of the construction and operation of the line between Miles City and Decker. This cost would be borne by TRRC, not the local farmers and ranchers. See also Master Response 18, Land Use Effects of the Project.

P15.45 See Master Response 2, Biological Resources – Conclusions and Mitigation. Regarding noxious weeds, the potential spread would be controlled through the adoption and implementation of Mitigation Measure 21.

P15.46 In Sections 4.2.6, 4.3.6, and 5.3.6, and on page 4-128 of the Draft SEIS, SEA discusses the impacts of this project on transportation and traffic on local roads. The impacts to safety caused by construction and operation of the rail line are

discussed, and recommended mitigations measures (Mitigation Measures 58-65) to address the potential impacts are presented, on page 4-133 of the Draft SEIS.

P15.47 As shown in Table 4-47, in the first year of operation, the project could result in the net loss of seven regional railroad jobs under the proposed Western Alignment and the net gain of four regional railroad jobs under the Four Mile Creek Alternative. This analysis includes Forsyth and Sheridan, which are located on the existing BNSF rail lines. SEA believes that this estimate of net job change underestimates the amount of new regional jobs that would be created by the entire rail line from Miles City to Decker; it does not take into account that train crew jobs would increase as TRRC begins to move tonnage from new mines in the Ashland area that are unlikely to be opened in the absence of the rail line via either the proposed Western Alignment or the approved Four Mile Creek Alternative. SEA's estimates also do not take into account the significant new job opportunities that would become available at any new surface mines in the Ashland area. (See Chapter 6, "Cumulative Effects," for a discussion of potential regional job increases.) Therefore, the estimate of net job change is conservative. The economic stimulus of the project for Southeastern Montana is further discussed in Section 2.2 of the Draft SEIS.

P15.48 Tongue River III focuses on the analysis of the proposed Western Alignment and a comparison between the effects of that proposed alignment and the Four Mile Creek Alternative. The proposed Western Alignment would provide a shorter route for a previously approved line, and as such would not result in an effect on Montana or Wyoming coal mining jobs that is substantially different from the Four Mile Creek Alternative. Master Response 11 provides a discussion of the loss of competitive advantage held by Montana coal. Please refer to this response for additional information.

P15.49 SEA analyzed the impacts of the work camps on page 4-163 of the Draft SEIS and determined that TRRC's construction camps would be self-contained, thus minimizing impacts on local areas. SEA also determined that, because the construction camps would be removed and the land restored following construction, the environmental impacts of the camps would be minimal and temporary. The facilities would comply with all applicable state and local regulations.

Recommended Mitigation Measure 7 is addressed to the impact of construction camps. The mitigation measure requires, upon completion of construction, that TRRC return the camps to their previously existing use.

P15.50 SEA's analysis of cumulative effects is contained in Chapter 6 of the Draft SEIS. SEA's analysis was conducted in accordance with the Council on Environmental Quality's (CEQ's) regulations for implementing NEPA (Section 1508.8), as well as the CEQ's publication "Considering Cumulative Effects under the National Environmental Policy Act," January 1997. In its analysis, SEA defines the spatial

and temporal boundaries for the cumulative analysis, and lists and discusses reasonably foreseeable actions within these areas. Specific projects in the area are listed and discussed (e.g., seven planned power plants, CBM gas wells, and Custer National Forest timber sales projections). SEA has also updated some of the cumulative analysis as it relates to CBM development in the Tongue River watershed based on more recent data provided by the BLM and in light of the current litigation regarding the BLM's Final EIS for statewide methane development. In addition, this Final SEIS contains additional information on the potential for new mines to be developed in the Ashland area. Please refer to Master Response 21, Adequacy of Cumulative Analysis for this additional information.

P15.51 The cumulative analysis presented in Chapter 6 of the Draft SEIS and in this Final SEIS is consistent with the CEQ's regulations for implementing NEPA (Section 1508.8). Those regulations define cumulative effects as the "incremental effect of the [proposed Federal] action when added to other past, present, and reasonably foreseeable future actions" (Section 1508.7). Potential cumulative impacts for the construction and operation periods are assessed for each of the topic areas covered in Chapter 4 of the Draft SEIS. For each topic, the conclusions concerning potentially adverse effects are based on the analysis methodology and projects considered, as set forth in Sections 6.1 through 6.5 of the Draft SEIS and the Executive Summary and Chapter 1 of this Final SEIS. The information presented in these sections and the subsequent cumulative analysis demonstrate that SEA's approach is sufficiently comprehensive to comply with the provisions of Section 1508.8 of the CEQ's regulations for implementing NEPA. For additional information, see Master Response 21, Adequacy of the Cumulative Analysis.

P15.52 The air quality analysis is primarily based on the document "Air Quality Impact Analysis Update TRR III Tongue River Railroad Project" prepared by CH2M Hill, which is included as Appendix H in this Final SEIS. This Final SEIS explains that, as a mobile source, the project would not require an air quality construction or operating permit from the Montana DEQ. In addition, it states that the already approved alignment (Four Mile Creek) is longer in length and will result in more air emissions during operations than the proposed alternative (Western Alignment).

Relying on the approach taken in recent similar projects, current interpretation of Federal and Montana state requirements, and consultations with EPA and Montana DEQ, the following approach was followed to assess air quality impacts from the proposed project in Tongue River III:

- Use currently accepted and referenced emission factors to update estimated emissions inventory for operational and short-term construction activities from both the proposed Western Alignment and the Four Mile Creek Alternative.

- Recommend conditions to mitigate PM emissions from construction activities with water trucks and other commonly accepted dust control methods. Because construction emissions are temporary and of short duration, no further mitigation is required.
- Estimate operational emissions, particularly the by-products of diesel fuel combustion in locomotive engines, and summarize the data by county on a ton per-mile-per-year basis.
- Calculate the difference between estimated emissions for the approved Four Mile Creek and the proposed Western Alignment alternatives. Where the proposed Western Alignment emission totals by county are less than the approved Four Mile Creek Alternative (hence a decrease in emissions from the already approved project), no further analysis is needed. If the proposed Western Alignment emission totals by county are more than for the Four Mile Creek Alternative, a comparison to EPA threshold definition for major stationary sources would be made. As provided by EPA, an increase of 100 tons per year or more would be considered major and would require a modeling analysis. Emissions of less than 100 tons per year would not be considered significant, and no further analysis would be required.

Chapter 4.3.7 of the Draft SEIS concluded that the proposed Western Alignment would have greater per-mile fugitive dust emissions and construction equipment exhaust emissions because the proposed Western Alignment, although shorter, would require more earthmoving activity. The emissions for the entire approved Four Mile Creek Alternative would be greater though, because it is significantly longer and would take longer to build.

Chapter 4.3.7 also found that, because the proposed Western Alignment would be a shorter route than the Four Mile Creek Alternative, with a flatter grade, operation of the proposed Western Alignment would result in fewer emissions than the approved Four Mile Creek Alternative for each criteria pollutant.<sup>10</sup> Because the emissions of all pollutants would decrease for the proposed Western Alignment in comparison to the approved Four Mile Creek Alternative, comparison with EPA's project significance threshold of 100-tons-per-year, which triggers analysis of NAAQS, PSD increments, AQRVs, visibility, and deposition, was not required.

Because the proposed Western Alignment would produce fewer emissions than the Four Mile Creek Alternative during operation, it would also contribute fewer emissions to cumulative air pollution. The Draft SEIS thus properly concluded

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<sup>10</sup> Criteria Pollutants - EPA uses six "criteria pollutants" as indicators of air quality, and has established for each of them a maximum concentration above which adverse effects on human health may occur. These six pollutants are: ozone, nitrogen dioxide, sulfur dioxide, particulate matter less than 10 microns in diameter, lead, and carbon monoxide.

that the effects of the proposed Western Alignment on cumulative air emissions would be less than the effects generated by the approved Four Mile Creek Alternative.

The cumulative impact analysis contained in the Draft SEIS documents the current list of projects that are approved, planned, programmed, or otherwise reasonably foreseeable in the project vicinity. The analysis documents where the effects of the proposed rail line would intersect with the effects from these other projects, and discusses the potential for a cumulative effect. Additional information is provided in Master Response 21, Adequacy of Cumulative Analysis, particularly as it relates to the development of CBM wells and Ashland mines.

P15.53 Chapter 6 of the Draft SEIS identifies the potential for cumulative effects on ranches for the entire rail line and thoroughly assesses CBM development as a potential cumulative impact. Recommended Mitigation Measures 1 through 5 were developed to address potential impacts to farmers and ranchers, and would reduce potential impacts to their operations as a result of the construction of the proposed rail line via either the proposed Western Alignment or Four Mile Creek Alternative. As explained in the Draft SEIS, BLM, in permitting CBM developments, requires similar mitigation to reduce the land use impacts of CBM development in the area. In addition, BLM requires the CBM sites to be reclaimed at the end of their utility. Based on this analysis, SEA concludes that no long-term adverse cumulative effect would occur to ranching operations as a result of this project.

Additional information on BLM's permitting requirements for CBM developments is included in Master Response 21, Adequacy of Cumulative Analysis.

P15.54 The comment that the Tongue River railroad will give a competitive advantage to Wyoming coal is noted. However, that issue goes to the transportation merits of this project and is not an environmental effect of the proposed project that requires assessment under NEPA. Please also see Master Response 11, Loss of Competitive Advantage Held by Montana Coal.

P15.55 The first part of the comment states that the Draft SEIS did not provide baseline data on wildlife species in the Draft SEIS and suggests that it is illegal to defer additional wildlife surveys to the pre-construction period. For a detailed discussion of these issues, please refer to Master Responses 1, Adequacy and Timing of Studies, and 2, Biological Resources – Conclusions and Mitigation. The information below supplements the information provided in Master Responses 1 and 2.

Known data on species of concern, specifically federal threatened and endangered species that may be located in the Tongue River project area, are included in the

updated BA, Appendix D of this Final SEIS. Species discussed in detail include: black-footed ferret, pallid sturgeon, whooping crane, interior least tern, and bald eagle. Two species that USFWS has recently declined to list, the mountain plover and the black-tailed prairie dog, are also discussed in the BA. Refinement of data available for these species will be provided through pre-construction surveys, so that the most up-to-date information will be incorporated into construction specifications and operations to reduce, avoid, and mitigate potential adverse impacts.

Revisions to the BA since completion of the Draft SEIS include survey data for the black-tailed prairie dog colonies that would provide potential black-footed ferret habitat, as provided in the following excerpt:

In spring 2004, an aerial survey was conducted to delineate potential black-tailed prairie dog active colonies along the proposed Tongue River Railroad (Entrix, Inc. 2004a). Four colonies greater than 80 acres were delineated. A ground reconnaissance using USFWS (1989) black-footed ferret survey guidelines will subsequently be conducted prior to construction to determine the status of the above documented prairie dog colonies and any others found on aerial survey.

Presence of mountain plover was also recorded during the black-tailed prairie dog survey and is reported in the revised BA.

In addition, winter survey data for the bald eagle nests located within the Tongue River area are included in the revised BA and are based on activity and productivity surveys conducted in 2004 by MT DFWP. The following is the relevant text from the revised BA:

In February 2004, an aerial survey was conducted for the Bald Eagles wintering individuals (BLM 2002b) along the proposed Tongue River Railroad (Farmer 2004). In February 2004, 13 bald eagles were recorded; 6 adults and 7 juveniles. The Tongue River Railroad does not fall within the 0.25-mile wintering diurnal perching area zone of these observations (MBEWG 1994). If construction is delayed or for a longer period than planned, then additional pre-construction surveys may be needed. Relevant resource agencies will discuss any additional surveys, if needed.

The Final Biological and Conference Opinions for Coal Bed Methane Production in Blaine, Gallatin, Park, Carter, Powder River, Custer, Rosebud, Treasure, Wheatland, Sweet Grass, Stillwater, Carbon, Golden Valley, Musselshell, Yellowstone, and Big Horn Counties, Montana, issued in September 2002 by the USFWS, anticipates that four bald eagles per year will be lethally taken as a result of CBM project activities. The USFWS based the anticipated take of bald eagles on the same concerns the USFWS had in the 1995 Tongue River Railroad Biological Opinion (for Tongue River II), as well as the extensive project area in

the Powder River and Billings Resource Management Planning area. As a comparison, the USFWS's Biological Opinion issued on July 12, 2006 addressing the Tongue River Railroad Company's rail line from Ashland to Decker, Montana concluded that no more than two eagles during the construction phase and one eagle per year during the operation phase will be taken.

The July 12, 2006 Biological Opinion is included as Appendix D of this Final SEIS. In their opinion, the service determined that the direct and indirect effects of the construction and operation of the Tongue River Railroad, as proposed, are not likely to jeopardize the continued existence of the bald eagle.

The Biological opinion also notes that on February 16, 1999 the status of the mountain plover was changed to a proposed threatened species, and on September 9, 2003, the Service published a final rule which determined that the action of listing the mountain plover as threatened was not warranted, and the proposed rule was withdrawn. Therefore, effects to mountain plover are not included in the 2006 Biological Opinion and no cumulative adverse effect to this species is anticipated.

The second main concern expressed in the comment is that the Tongue River railroad project could have significant cumulative impacts in combination with the CBM development. Given the presence of wildlife resources within the CBM and Tongue River Railroad project areas, the potential for impacts under each project, and the overlap of the CBM project area and the ROW for the Tongue River Railroad, as shown in Figure 6-2 of the Draft SEIS, potential cumulative impacts on wildlife is a key consideration.

Accordingly, in completing this Final SEIS, SEA consulted with BLM to obtain the most current information on the timing and location of approved CBM development projects. As discussed in Master Response 21, Adequacy of Cumulative Analysis, four CBM Plans of Development (PODs) have been approved within the larger CBM project area since completion of the Draft SEIS. Statements in the biology section (and others) of the cumulative analysis of the Draft SEIS concerning a lack of reasonably foreseeable projects within and abutting the proposed ROW have been revised accordingly. Please refer to Chapter 5: Errata, where it references Page 6-13, lines 35 and 43.

Project-specific Environmental Assessments (EAs) were completed for each of the approved four PODs. Whereas the Statewide Oil and Gas FEIS analyzed long-term cumulative effects of CBM activity throughout the region and disclosed the general types of effects, the project-specific EAs analyzed the potential cumulative impacts associated with each proposal. The Tongue River Railroad was evaluated as a reasonably foreseeable project in the cumulative analysis of each project-specific EA. As discussed in Master Response 21, due to the timing of well construction at approved CBM sites, BLM determined that construction required for such operations would not result in cumulative impacts in

combination with the Tongue River Railroad. As stated in each EA, construction of wells would occur within a 6-month time frame after project approval. In most cases, construction of wells has already begun at these approved CBM PODs. Comparatively, construction on the Tongue River Railroad is not likely to commence prior to 2008, well after these PODs would have been implemented. As stated in Section 6.2 of the Draft SEIS, SEA has chosen to study the project's cumulative impacts over a 5-year period starting with construction and ending after a few years of operation. Therefore, because impacts of current CBM proposals would not occur within the same temporal parameters as construction of the Tongue River Railroad, no cumulative impacts would result.

According to the BLM, construction of additional CBM wells beyond those discussed in Master Response 21 would likely occur in the future either adjacent to or within the Tongue River Railroad ROW. However, the exact number of CBM gas wells, their specific location, and the time frame for development of these wells are governed by several variables such as variations in market pricing and improvements to extraction technologies. Therefore, the potential for additional significant cumulative impacts resulting from CBM development and the Tongue River Railroad cannot be determined at this time. To accurately assess the potential for cumulative impacts, specifics of CBM development proposals (time and location) must be established. Without such details confirmed, SEA is unable to examine impacts of CBM developments in relation to the spatial and temporal parameters of the cumulative analysis for the Tongue River Railroad. The spatial and temporal parameters are discussed in Section 6.2 of the Draft SEIS.

Lastly, it is important to understand that evaluation of impacts for the statewide CBM would not specifically apply to the TRR project. In addition, potential impacts associated with Wyoming CBM development are not specifically included in the TRR SEIS, as proposed projects are not located within the TRR study area.

The Montana Final Statewide Oil and Gas Environmental Impact Statement and Proposed Amendment of the Powder River and Billings Resource Management Plans (BLM 2002) was prepared as a statewide assessment of potential impacts associated with all oil and gas development for 20 years. Alternative B, cited by the commentator, includes large-scale CBM well development, roads, and utility construction without measures to mitigate potential direct and indirect impacts to high-value habitats, species of concern or federal threatened and endangered species. The preferred CBM development alternative, Alternative E, would include measures to mitigate impacts to wildlife through implementation of measures outlined in the 2002 Biological Opinion and implementation of the Wildlife Monitoring and Protection Plan. It is important to recognize that these measures would be included in the statewide development of CBM, and thus would apply to specific projects proposed in the Tongue River Railroad area. The commentator has omitted a critical piece of the quoted sentence; more

appropriately, the quote should read: “**Because of this level of CBM development**, Alternative B would have widespread ecosystem-level types of impacts...” (Statewide Oil and Gas FEIS 4-172). It is recognized that the number of wells is the determining factor for extent of impacts, as described on Page 4-175 of the Statewide Oil and Gas FEIS. “The potential for impacts is high under Alternative B because of the large number of CBM wells.”

P15.56 BLM assesses the impacts of CBM production wastewater releases on Tongue River water quality in its environmental review of each CBM project. Master Response 21, Adequacy of Cumulative Analysis, also includes updated information on CBM permitting and conditions governing the protection of water quality.

Potential effects of this proposed project’s construction-related sediment delivery to the Tongue River have been described in Section 4.3.3 (Environmental Consequences – Soils and Geology) and Section 4.3.4 (Environmental Consequences – Hydrology and Water Quality) of the Draft SEIS. Proposed mitigation measures for reducing soil erosion and related water quality impacts are described in detail on pages 4-103 through 4-107 and 4-111 through 4-114 of the Draft SEIS. Please see Master Response 21, Adequacy of Cumulative Analysis, for a detailed explanation of the cumulative effects of this project on water quality, sedimentation, and erosion.

P15.57 Please see response to comment 56 above as well as Master Response 21, Adequacy of Cumulative Analysis, for a detailed explanation of the cumulative effects of this project on water quality.

P15.58 SEA concluded in the Draft SEIS in Section 6.6.6, that “traffic delays at rail crossings and increased safety concerns would be direct impacts of rail operations.” Mitigation measures to address these impacts are presented in Chapter 4 of the Draft SEIS, in Section 4.3.6, Environmental Consequences – Transportation and Safety. Specifically, mitigation measure 66 (Train Operations) requires that TRRC shall adhere to all reasonable Federal, state, and local requirements regarding train operations, including requirements that relate to maximum durations of crossing blockage.

The operations associated with CBM gas wells will not generate significant increases in vehicular traffic in relation to existing roadway capacity. SEA reviewed the Affected Environment and Environmental Consequences sections of the Statewide Oil and Gas EIS to confirm this. There was no discussion of potentially significant transportation or traffic impacts that would result from CBM development. As a result, no cumulative effects would be expected.

P15.59 The comment is concerned that the compressor-noise associated with CBM development has not been analyzed as part of the cumulative analysis. SEA consulted with BLM on this issue to ask whether compressor noise had been

examined in the EAs completed for approved PODs and whether potentially significant impacts had been identified. It was found that the EAs did not analyze potential increases in noise levels specifically associated with compressors.

However, Fidelity Exploration and Production Company states in the EA completed for the Deer Creek North POD (currently under review), that Bitter Creek LLC had conducted a survey in the Badger Hills or CX area to quantify noise generated by compressors. During the night with calm conditions prevailing, the noise level was 37.7 to 46.5 decibel (dB) at a distance of 0.2 mile (approximately 1,000 feet); during the day, with windy conditions prevailing, the noise level ranged from 50 to 55 dB at a distance of 0.2 mile (approximately 1,000 feet). At the loudest end of the range, these noise levels are approximately 20 A-weighted decibels (dBA) and 10 dBA below the 65-dBA noise impact threshold established for the Badger Hills project.

For compressor noise to contribute to cumulative noise impacts, two conditions would be necessary:

- Compressors noise intersecting or overlapping with the noise contours for this project (identified in Table 4-38 of the Draft SEIS)
- Within area of overlap, compressor noise contributing to noise levels that exceed the 65-dBA threshold established for this project.

Based on the data from the Badger Hills or CX area, it does not appear that these factors would occur; therefore, compressor noise is not expected to contribute to significant cumulative noise impact.

P15.60 In the Draft SEIS, SEA properly stated that the purpose of the Tongue River III project is “to provide for the transport of coal from existing and future mines to markets in the mid-western and northeastern states.” Please see Response P15.9.

P15.61 The cumulative analysis in the Draft SEIS considers cumulative effects on air quality in the Upper Midwest Region on pages 6-21 through 6-22. SEA has also updated those analyses in Master Response 23, Cumulative Air Quality Analysis.

P15.62 See Master Response 23, Cumulative Air Quality Analysis.

P15.63 See Master Response 23, Cumulative Air Quality Analysis.

P15.64 See Master Response 23, Cumulative Air Quality Analysis.

P15.65 The comment states that the Board has failed to consider whether construction of the DM&E Railroad would preclude the need for the Tongue River Railroad. It is not clear at this time if the DM&E Railroad will be built. The DM&E Railroad

and the Tongue River Railroad cases involve different mines. In making its final decision on whether to approve or deny Tongue River III, the Board will evaluate the merits of the proposal and examine the need for the project in light of other rail facilities that service existing mines and potential future mines.

P15.66 Based on consultation in August 2005 with a Forest Planner/Environmental Coordinator from the Custer National Forest, leasing of tracts within the Ashland Ranger District for oil, gas, and CBM development is not reasonably foreseeable at this time. There are no applications for such development and none are foreseen. The National Forest has not completed the leasing analysis for land within its management area or the environmental review that would be required subsequent to the completion of a leasing analysis. An EIS would be required before any leasing agreements could be entered into. The EIS would identify a reasonably foreseeable development scenario, the volume of CBM within the National Forest, and the percentage of the National Forest that would be developed for CBM purposes. None of these factors can be determined prior to completion of the EIS.

Therefore, the Custer National Forest is not currently able to enter into leasing agreements that would precede oil, gas, or methane development. Until such leasing agreements can be completed, such development is not reasonably foreseeable and therefore is not included in the cumulative analysis completed for this project.

P15.67 See Master Response 21, Adequacy of Cumulative Analysis.

P15.68 The cumulative impact of CBM is discussed in Chapter 6 of the Draft SEIS. Master Response 21 includes updated information on cumulative impacts of CBM wells based on applications to the BLM since November 2004. Individual CBM applications to BLM are required to mitigate their project-specific impacts, including impacts to water quality, sedimentation, and erosion to ensure that no cumulative effect would result. As a result, SEA is not required to complete a quantitative analysis of potential cumulative impacts.

P15.69 Regarding the effectiveness of SEA's recommended mitigation measures, see Master Response 7, Enforcement of Mitigation Measures. TRRC would provide quarterly reports to the Board during construction and for the first 2 years of operation, which would track the effectiveness of mitigation measures. One of the activities of the Task Force, as required under Mitigation Measure 14, would be to ensure the effective implementation of mitigation measures related to biological resources. The purpose of the Task Force would be to approve the implementation and monitoring of biological (i.e., terrestrial and aquatic) mitigation measures for the entire rail line (Tongue River I, Tongue River II, and Tongue River III), with the exception of such issues concerning the Miles City Fish Hatchery. In addition, depending on the findings of pre-construction surveys that TRRC would undertake, certain mitigation measures could be augmented or

modified to accurately and fully address potentially adverse effects. Lastly, while SEA's final recommended mitigation reflects its best efforts to address the potential impacts of this project, the effectiveness of SEA's recommended mitigation measures cannot be determined at this stage of the project. Appropriate monitoring of the mitigation's success would occur during implementation, however, when field results would be monitored in relation to the goals of the mitigation measure, and changes or modifications in the mitigation approach could be implemented, when appropriate, to meet the required goals.

P15.70 The anticipated effectiveness of BMPs proposed in recommended Mitigation Measure 36 (Storm Water Pollution Prevention Plan [SWPPP]) is presented in the Draft SEIS in Section 4.3.3.2, Construction-period Impacts on Soils and Geology. The effectiveness of various BMPs that TRRC would be required to follow under SEA's recommended mitigation have been verified by federal agencies and independent studies, as explained in the Draft SEIS.

P15.71 Please refer to response P15.70 above for a discussion of the effectiveness of proposed BMPs. The Draft SEIS does not assert that the Reclamation Plan described in Mitigation Measure 19 would "solve all erosion and sediment loading impacts." As the Draft SEIS makes clear in Section 4.3.3.2, sediment would be generated by the project, and a portion of that sediment would impact the river. Sediment generation and delivery estimates are given in Tables 4-21 and 4-22 of the Draft SEIS, respectively.

In response to the comment, Table 4-22 of the Draft SEIS is expanded to present the information in terms of sediment delivery and effectiveness of BMPs. Please see Errata Chapter 5: Errata, where it references Table 4-22 for the updated information.

Recommended Mitigation Measures 19 and 20 describe the reclamation planning and monitoring that would occur after construction of a rail segment is complete.

The reclamation and revegetation processes that would be required under Mitigation Measure 19 involve planning, plan review, and implementation of the process that would re-establish vegetative cover. Under SEA's recommended mitigation, revegetation effectiveness would be assessed by observing progress against a set of established goals (success criteria). Mitigation Measure 19 would also establish the method by which success criteria for the revegetation plan would be measured.

Mitigation Measure 20 would provide a mechanism for developing alternate revegetation plans if the success criteria are not achieved. Mitigation Measure 20 would also establish annual milestones for monitoring, and funding for approval prior to final engineering of each construction segment. In short, SEA believes that together, Mitigation Measures 19, 20, and 36 would provide a framework for

successful mitigation and monitoring related to revegetation and reduction of sediment delivery as a result of this project.

P15.72 SEA believes that the recommended biological mitigation measures developed and set forth in the Draft SEIS are adequate to mitigate the potential environmental impacts of the proposed rail line on biological resources. As stated in recommended Mitigation Measure 14, TRRC would be required participate as a member of a Multi-agency/Railroad Task Force. The purpose of the Task Force would be to approve the implementation and monitoring of biological (i.e., terrestrial and aquatic) mitigation measures for the entire rail line. Recommended Mitigation Measure 18 would require the preparation and implementation of a formal mitigation plan approved by the Task Force for minimizing impacts on species of concern, and Mitigation Measure 19 would require TRRC to implement reclamation and revegetation of the ROW. As indicated in Section 7.2.2 of the Draft SEIS, the recommended biological mitigation measures are far-reaching and go well beyond simply surveying.

See also Master Response 1, Adequacy and Timing of Studies, and Master Response 2, Biological Resources – Conclusions and Mitigation.

P15.73 The mitigation measures listed in the Draft SEIS include well established and widely implemented BMPs to reduce dust emissions. The BMPs have been field tested and have been proven to reduce dust from construction sites. Mitigation Measure 36 requires the development of a SWPPP. Several of the BMPs that would be employed under the SWPPP would serve to reduce dust emissions. As explained in Section 4.3.3.2, the anticipated effectiveness of the two BMPs in particular includes:

Seeding and/or mulching of cut and fill slopes:

|                         |   |
|-------------------------|---|
| seeding and fertilizing | 25% mitigation (USDA Forest Service 1990) |
| straw application       | 60% mitigation (Burroughs and King 1989)  |

Armoring surface:

|                |   |
|----------------|---|
| rock surfacing | 75-80% mitigation<br>(Burroughs and King 1985; Luce and Black 1999) |
|----------------|---|

P15.74 As stated in Section 1.4 and 1.5 of the Draft SEIS, SEA has concluded that the preparation of an SEIS is the appropriate means of conducting the environmental review of TRRC's application for the proposed Western Alignment in Tongue River III. Please see also Master Response 16, The Need for a New EIS, and Master Response 21, Adequacy of Cumulative Analysis.

P15.75 In NEPA analyses, identification of a project purpose and need typically occurs before the environmental analysis is initiated. It would be difficult to determine the scope of the analysis of the environmental impacts of a project without having

a Purpose and Need Statement on which to base the determination of what issues should be assessed during the course of the environmental review.

**SEA's Responses to Comment Letter P16  
Montana Department of Transportation (November 26, 2004)**

This letter is a duplicate of State Letter #3 and has therefore has been deleted.

KAREN L. MORRIS  
P.O. BOX 476  
MILES CITY, MONTANA 59301

December 2, 2004

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

RE: Tongue River Railroad Western Alignment (TRR III)

Dear Mr. Blodgett:

I encourage the Surface Transportation Board (STB) to reevaluate the findings issued in the Draft Supplemental Environmental Impact Statement for the Tongue River Railroad Western Alignment (TRR III).

The document is deficient in several respects. I believe that, once these deficiencies are addressed and remedied, the conclusion reached will be far different. Specifically:

- The data used for the analysis is incomplete and out-of-date. Current information regarding environmental and economic impacts, including the existing conditions, must be used for an accurate analysis. Among the areas which require additional focus are wildlife populations and habitat, water quality, air quality, wells and springs, the impact of the clogging of existing waterways by the fill dirt which would have to be removed for the project, as well as the interplay between these elements. Due to the impacts of our long-term drought, the Tongue River and its environs are even more fragile than in the past. In addition, the possibility of coal bed methane and/or oil and gas development and the related impacts need to be factored into the analysis. 1
- The cumulative impact analysis required by the National Environmental Policy Act (NEPA) is missing. There can be a significant differential in the degree of impact when the full scope of a project is analyzed, rather than focussing on segments in a piecemeal fashion. In addition, the cumulative impact must be evaluated from a single time perspective (the current one) in order for a valid analysis to be performed. 2
- The draft EIS specifically says the route has been "refined"; however, this was done without seeking input from those landowners most directly impacted by the route. With all due respect, conditions in eastern Montana are far different from those in Washington, DC and, as the Federal Highway Administration can attest to from their 3

experience in designing the Interstate Highway system on paper, reality is a far different matter than designs drafted on paper.

3 cont.

- The need for the proposed railroad has not been demonstrated. Other railroads already provide service to existing coal operations. In fact, the proposed railroad would be anticipated to remove any competitive advantage currently experienced by the mines in Colstrip. Montana land and the well-being of her citizens should not be sacrificed to provide an advantage for Wyoming businesses. The socioeconomic impacts have not been properly evaluated in the EIS.

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Again, I strongly urge you to reevaluate your findings considering all of the facts as they currently exist. I fully realize that many individuals and groups have stepped forward in support of the project; however, these people have not been fully informed of the impacts. In fact, these same people came forward to support a road project in our neighborhood. The draft Environmental Assessment for this project indicated a FONSI; however, when all NEPA requirements were met and current and accurate facts were used in the evaluation, the finding was changed to a recommendation of "no build". The responsibility for following federal requirements and doing an adequate job of providing accurate findings and assessment of impacts to the public is yours. As I am sure you are well aware, this is not a responsibility to be taken lightly.

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Sincerely,



Karen L. Morris

**SEA's Responses to Comment Letter P17**  
**Karen Morris (December 2, 2004)**

P17.1 The comment states that much of the information used to complete the Draft SEIS is incomplete or out of date. The commenter requests that more current information be used to ensure an accurate analysis. In addition, the comment states that the potential for CBM development is not adequately factored into the analysis.

For a discussion of the age of information used, please refer to Master Response 1, Adequacy and Timing of Studies, and Master Response 4, Information Used in Preparing the EIS. In response to the CBM issue raised in the comment, please refer to Master Response 21, Adequacy of Cumulative Analysis.

P17.2 The comment states that the Draft SEIS does not contain a cumulative analysis that analyzes the full scope of the project, as required under NEPA. In response to this comment, please refer to Master Response 21, Adequacy of Cumulative Analysis.

P17.3 To date, the rail line alignment has been refined to optimize grade, reduce curve radii, and move the alignment out of the farmlands along the river, where feasible. Prior to construction, further refinements along the final approved route may be implemented based on final engineering and negotiations with property owners. However, rail line design and engineering is constrained by what is possible in terms of the alignment, grade, and curve radii. It may not be possible to achieve all that a property owner might want given the characteristics of a particular property and the need to accommodate safety, engineering, and design concerns.

P17.4 The comment states that the need for the project has not been adequately demonstrated and that the project would eliminate any competitive advantage currently held by Montana in the coal industry. For a discussion of the project need, please refer to Master Response 9, Determination of Public Convenience and Necessity, and for a discussion of the economic advantage issue, please refer to Master Response 11, Loss of Competitive Advantage Held by Montana Coal.

P17.5 The comment requests a reevaluation of the findings and conclusions presented in the Draft SEIS. SEA believes that the analysis presented in the Draft SEIS is thorough and appropriate and complies with NEPA. On the basis of aerial and field surveys, record searches, and coordination with regulatory agencies and technical experts, the Draft SEIS accurately documents the existing conditions of the project area, identifies the potential impacts that the project would have on the environment, recommends a comprehensive set of mitigation measures to address potentially significant impacts, and discloses potential unavoidable adverse effects of the project, should it be approved. Thus, SEA believes that the analysis presented in that the Draft SEIS, as supplemented by this Final SEIS, provides the Surface Transportation Board with a thorough and comprehensive analysis of the

environmental issues and the environmental concerns that have been raised, thereby giving the Board the information it needs to balance and weigh the environmental issues in deciding whether to approve Tongue River III, and what mitigation to impose.

STEPTOE & JOHNSON <sup>LLP</sup>  
ATTORNEYS AT LAW

David H. Coburn  
202.429.8063  
dcoburn@steptoe.com

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
Tel 202.429.3000  
Fax 202.429.3902  
steptoe.com

December 6, 2004

**Via Hand Delivery**

Mr. Kenneth H. Blodgett  
Environmental Protection Specialist  
Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

Re: **Tongue River Railroad Company, Inc. - Finance Docket 31086 (Sub-No. 3) -  
Construction and Operation of the Western Alignment - Draft  
Supplemental Environmental Impact Statement**

Dear Mr. Blodgett:

We are writing on behalf of the Tongue River Railroad Company, Inc. (TRRC) to provide comments on the Draft Supplemental Environmental Impact Statement (DSEIS) in the above-referenced proceeding. Generally, TRRC supports the DSEIS and agrees with the conclusions set forth in that document. TRRC offers these comments regarding (a) its views on the benefits of the Western Alignment; (b) specific mitigation measures in Chapter 7 of the DSEIS; and (c) information that TRRC believes needs to be clarified or corrected in the informational section of the DSEIS.

**A. The Western Alignment Remains TRRC's Preferred Route**

The DSEIS concludes that TRRC could construct its rail line along either the Four Mile Creek Alternative or the Western Alignment. The DSEIS also acknowledges, however, that the latter route, which is 12 miles shorter, has the substantial advantages of reduced fuel usage and reduced potential for accidents due to its flatter grades. In addition, the DSEIS also correctly concludes that the Western Alignment would require fewer at-grade highway crossings and fewer acres for the right of way, impact fewer property owners, affect significantly fewer wetlands, and affect fewer noise receptors. Further, the DSEIS concludes that with mitigation

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WASHINGTON PHOENIX LOS ANGELES LONDON BRUSSELS

Mr. Kenneth H. Blodgett  
December 6, 2004  
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the Western Alignment will be environmentally preferable to the Four Mile Creek Alternative, notwithstanding the greater amount of earthwork required for the Western Alignment.

The DSEIS's conclusions regarding the benefits of the Western Alignment dovetail with the evidence of the transportation advantages of that routing submitted by TRRC in its April 1998 Application in the *TRRC III* proceeding. In particular, the Verified Statements of Larry A. Parker (BNSF Director of Asset Management) and David Mahle (BNSF Director of Capacity Planning), submitted with the *TRRC III* Application, address the substantial operating advantages of the Western Alignment as compared to the Four Mile Creek Alternative. Mr. Parker, for example, describes the lower maintenance costs that would be associated with the Western Alignment and the consistency of that Alignment with BNSF's policy concerning grades on lines transporting heavy coal traffic. Mr. Mahle details the significant operational cost savings that would be associated with the Western Alignment. In addition, the Verified Statement of TRRC witness Robert Leilich, also submitted with the *TRRC III* Application, addresses the significant cost and operational advantages of the Western Alignment.

1 cont.

In view of the advantages described in its Application, and confirmed in the DSEIS, TRRC presently intends to construct its line over the Western Alignment should the STB approve its pending application in *TRRC III*.

#### **B. Comments on the Proposed Mitigation Measures**

##### **Proposed Mitigation Measure 2:**

On page 7-11, lines 6-15 (Mitigation Measure 2), the DSEIS addresses right-of-way (ROW) fencing to control livestock and provides that the Task Force must approve the type of fencing. TRRC believes that it is important that greater weight be given to the individual landowner's preference for the type of fencing to be installed along the ROW. While the mitigation measure attempts to do this through Task Force consideration of landowner concerns on a case-by-case basis, as noted below in TRRC's comment on Proposed Mitigation Measure 14, the contemplated Task Force should not have general approval authority over TRRC implementation measures, including fencing. TRRC understands the importance of the individual landowner's views on fencing and will consult with landowners on these matters.

2

##### **Proposed Mitigation Measure 14 (and Proposed Measures 2, 18, 20, 25, 26, 29, 31, 32, 34, and 35 to the extent that these measures address the operation of the Multi-agency/Railroad Task Force):**

TRRC is concerned with the scope of the Task Force apparently contemplated by the DSEIS, as described in Mitigation Measure 14 and related measures noted above, and

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recommends that SEA modify its Task Force-related measures as described in these comments below. See DSEIS at pp. 4-69--4-70 and 7-12--7-13.

In *TRRC II*, the STB adopted a mitigation measure requiring that TRRC “participate as a member of an informal Multi-agency/Railroad Task Force (Task Force), which will advise, assist and coordinate with TRRC in accomplishing the mitigation measures set forth in the Mitigation Plan in the DEIS addressing aquatic and terrestrial ecology.” See Finance Docket No. 30186 (Sub No. 2), *Tongue River Railroad Company -- Rail Construction and Operation -- Ashland to Decker, Montana (“TRRC II”)* (served Nov. 5, 1996) at Appendix B, p. 4. In that same decision, the STB explained that in addition to the above “supervisory” functions, the Task Force “will be available to deal with the unanticipated [terrestrial and aquatic] environmental issues that can arise as this particular project is implemented and construction begins, specifically including issues related to the concerns of landowners and Native Americans.” Further, the Task Force was authorized to “consult” with interested parties on these matters. In a subsequent TRRC II decision rejecting the petition of the Northern Plains Resource Council to be a member of the Task Force, the Board again described the Task Force’s purpose “to advise, assist, and coordinate with” TRRC in the implementation of mitigation measures related to aquatic and terrestrial matters. See *TRRC II* (served December 31, 1996) at 2.

As envisioned in the *TRRC II* proceeding, therefore, the Task Force was an “informal” body assigned to “advise, assist and coordinate” with TRRC, and others, on relevant aquatic and terrestrial mitigation measures. See *TRRC II* DEIS at p. A-15, Measure A.9.1. The Task Force was not, by contrast, designed as an entity empowered to formally approve or disapprove specific TRRC plans for implementation of the STB’s terrestrial and aquatic mitigation conditions before each of those measures can be implemented.

3 cont.

That advance approval function, however, is exactly the very different, and substantially more expansive, role that is now proposed to be assigned to the Task Force in the *TRRC III* DSEIS. No explanation is offered in the DSEIS as to why this change in the Task Force’s role from that approved by the Board in *TRRC II* is being contemplated, and TRRC submits that there is no good reason for this change.

As apparently envisioned in the DSEIS, the Task Force will need to approve, in advance of implementation, numerous specific mitigation implementation steps. Specifically, the Task Force will be called upon to approve: Fencing options provided by TRRC (Measure 2); TRRC’s field search schedule for identifying plant species of concern (Measure 18); TRRC’s revegetation plans (Measure 20); alternative mitigation if those revegetation plans do not succeed (Measure 20); work plans related to revegetation (Measure 20); plans to minimize harm to species of concern (Measure 25); plans to minimize impacts on the black-tailed prairie dog and black-footed ferret, among several other species (Measure 26); plans relative to the possible habitat destruction/compensation (Measure 29); plans for implementing a lost wildlife compensation and monitoring program (Measure 31); preparation of surveys of pronghorn antelope and possible

development of alternative mitigation (Measure 32); plans for river crossing and riprap area mitigation (Measure 34) and plans for other aquatic resource mitigation (Measure 35).

Of substantial concern to TRRC is the possibility that the proposed requirement for Task Force pre-implementation approval of each of the above-identified steps could unduly delay the rail construction process. TRRC appreciates and understands SEA's interest in providing an opportunity for the interested agencies that compose the Task Force to have some oversight over the matters at issue, but the requirement that TRRC obtain a consensus (or at least a majority) view for each of these many matters from agencies that do not always share common goals or missions is a recipe for more delay. The sheer number of matters that the Task Force has been assigned to approve offers broad opportunities for the approval process envisioned by the DSEIS to become overwhelmed.

Moreover, while TRRC understands that Measure 14 contemplates that the Board will make final decisions in the event that the Task Force is unable to do so, the lack of time deadlines for Task Force deliberations or for Board decision making is incompatible with the parallel need to develop and adhere to construction schedules, particularly given the short annual construction season in Southeast Montana. It is not difficult to envision that merely convening Task Force meetings or conference calls to address each of the many tasks assigned to the Task Force could consume precious weeks. In addition, in the event that the Task Force cannot make a decision, it is not clear which entity at the Board will serve as the ultimate decision maker. TRRC doubts that SEA intends that the entire Board will be burdened with making decisions on specific TRRC mitigation implementation plans. TRRC assumes that such decisions will rest with the Chief of SEA – but the DSEIS neither makes this clear nor imposes any deadlines for action.

3 cont.

Further, the composition of the Task Force appears open to question since Measure 14 contemplates that "other interested parties may be invited to participate [presumably on the Task Force] as appropriate." TRRC is concerned that, unless clarified, this language could spawn future debates about Task Force composition as private parties and organizations opposed to the TRRC rail line seek a seat at the table to approve or disapprove plans to implement the mitigation measures spelled out in the DSEIS.

To avoid the types of problems that TRRC has noted above, TRRC submits that SEA should modify Measure 14 and the related measures identified above as follows:

Rather than serve as a forum for pre-approval of TRRC's specific mitigation implementation plans and procedures, the Task Force should be given an opportunity to review TRRC's terrestrial and aquatic implementation plans (and related surveys and other data collected as required by the proposed DSEIS measures), which would have to be submitted by TRRC to the Task Force in advance. TRRC should be authorized to implement those plans

following submission to the Task Force unless, within 10 days following their submission, any Task Force member raises an issue or concern in writing. In the event that such an issue or concern is raised, the Task Force should be convened (by meeting or conference call) within 5 days thereafter to consult with TRRC on the issue. If the matter is not resolved by the Task Force at its meeting or during a further 5 day consultation period that might (if needed) follow the initial Task Force meeting on the issue, then the Chief of SEA should make a final decision within 10 days thereafter.

3 cont.

In addition, TRRC submits that (as contemplated in the DSEIS) SEA could call a meeting of the Task Force on its own initiative to discuss an issue of concern arising from TRRC's actions in implementing terrestrial or aquatic mitigation measures. In the event that such a meeting is called, the same time frames set forth above should apply -- 5 days to convene the meeting or conference call; 5 days to consult as needed and 10 days for a decision by SEA.

This proposed procedure is fully consistent with the advisory and consultative role assigned to the Task Force by the Board in *TRRC II*, and should fully accommodate the interests of the different Task Force members in overseeing TRRC's efforts. Further, by ensuring that decisions are efficiently reached within a 30 day period, greater predictability will be added to the procedure.

Further, consistent with the Board's December 31, 1996 decision in *TRRC II* holding that the Task Force is not open to additional, non-agency members, SEA should clarify that while the Task Force members can consult with other interested persons, the actual membership of the Task Force is fixed and limited to the agencies specified in the DEIS. This clarification will remove any doubt on that issue, and thereby avoid a replay of issues already decided by the Board.

**Proposed Mitigation Measure 16:**

TRRC is prepared to retain a third-party contractor, at TRRC's expense, as specified in this proposed measure at p. 7-13 of the DSEIS. However, TRRC requests that SEA clarify that: (1) before the third-party contractor is given any assignments by SEA relative to this project that TRRC be consulted to determine if the matter can be resolved without the need for any action on the part of the contractor and (2) if any action by the third party contractor is deemed warranted by SEA following such consultation, that the third party contractor submit for TRRC's approval a budget for the requested work.

4

**Proposed Mitigation Measure 17:**

TRRC is prepared to submit periodic reports to SEA on the status of implementation of the various environmental conditions set forth in the DSEIS in Measure 17 at p. 7-13. This

5

proposed measure, however, calls for “no less than quarterly” reports, whereas TRRC is already under an obligation by virtue of the November 8, 1996 Board decision issued in *TRRC II* to submit reports to the Board (and serve such reports on all parties of record) every four months on the status of its efforts. See *TRRC II* Decision at 25. Rather than be burdened by two sets of reporting requirements, TRRC submits that this mitigation measure be revised so that TRRC is authorized to meld the environmental implementation status reports into its pre-existing four month reporting obligation. In that way, a single report can be submitted to the Board and SEA, and served on all the parties of record.

5 cont.

**Proposed Mitigation Measure 29:**

As explained at page 4-81, Mitigation Measure 29 (at page 7-20 of the DSEIS) discusses the protection of habitat for State Species of Concern. However, the text of the mitigation measure does not clearly indicate that it is applicable to State Species of Concern. Therefore the first sentence should be revised as follows to tie the measure to the discussion on State Species of Concern in on pages 4-81 to 4-84: “Active habitats for State Species of Concern such as nests, brooding locations, and migratory corridors, etc., shall not be destroyed during construction of the railroad.” The same change is also applicable to the discussion on page 4-84, lines 22-24.

6

**Proposed Mitigation Measure 31:**

Mitigation Measure 31, at pages 7-20--7-21 of the DSEIS, discusses the compensation program for lost wildlife habitat. While TRRC agrees with the concept of a compensation program for lost wildlife habitat, the wording in the DSEIS needs to be clarified with respect to the ROW negotiations with private landowners. As drafted the mitigation measure could be interpreted as requiring TRRC to encompass the compensation program in each ROW acquisition. In practice, this will not be feasible. For example, in some cases it likely will be practicable to purchase “cutoff” land for donation; however, in other situations the landowner may not be willing to sell such land. In other circumstances, TRRC may have to address the compensation issues through land in the vicinity of the line, but not immediately adjacent to it. TRRC should be free to work with wildlife managers to develop a compensation program using all available tools. Therefore, TRRC proposes that subsection (1) of Mitigation Measure 31 be removed from Mitigation Measure 31 and that the subsection be made a stand-alone mitigation measure that is not directly tied to ROW negotiations with private landowners.

7

In addition, subsection (2) of Mitigation Measure 31 should be revised to make clear that the proposed mitigation is contingent on the relevant landowner agreeing to any construction of ponds adjacent to the grade. TRRC thus suggests that the first sentence of subsection (2) be revised to read: “If the landowner agrees and where practicable, TRRC shall construct ponds adjacent to the railroad grade, or use railroad grade as a dam.”

**Proposed Mitigation Measure 42:**

Proposed Mitigation Measure 42 at p. 7-26 of the DSEIS contemplates that TRRC must conduct a soil survey along the alignment, presumably in order to produce data relevant to potential erosion and slumping impacts. TRRC believes that some or all of the relevant soil data may be available from local conservation districts. TRRC therefore requests that this measure be modified to allow such data to be collected by TRRC from such districts or other sources in lieu of conducting its own soil surveys where the data is otherwise already available. In that regard, TRRC notes that it will be collecting such data for purposes of final engineering and design as well.

8

**Proposed Mitigation Measure 49:**

On page 7-27, Mitigation Measure 49, the DSEIS requires TRRC to “ensure that all culverts and other drainage structures installed at non-perennial stream crossings during construction of this line comply with the design criteria of the American Railway Engineering and Maintenance of Way Association, established in the year 2000. This means that at a minimum, culverts shall be designed to discharge a 25-year flood without static head at entrance and a 100-year flood using the available head at entrance, the head to two feet below base of rail, or the head depth of 1.5 times the culvert diameter/rise, whichever is less. Additionally, TRRC shall incorporate the culverts into the existing grade of the streambed to avoid, to the maximum extent possible, changing the character of the streambed and impacting migrating amphibians and reptiles.” The mitigation measure fails to recognize that the design criteria of the American Railway Engineering and Maintenance of Way Association (AREMA) are only recommended guidelines for culvert design. The AREMA manual recognizes that culvert design is not an exact science, but rather is based on an engineer’s interpretation of field data and hydrology and influenced by personal judgment based on the engineer’s experience in a given locale. While the AREMA manual recommends a design approach, the manual recognizes that the final decision regarding the appropriate method for sizing culverts is the responsibility of the design engineer and that other methods may be more appropriate for a given individual situation.

9

TRRC’s criteria for culvert sizing are based on the Montana Department of Transportation Hydraulics Manual, Chapter 7, Hydrology, October 1995. According to these criteria, culverts must satisfy the following criteria: no railroad/roadway overtopping; no backwater damage to adjacent property; minimum 24” CMP under all railroad facilities; and Maximum Allowable Headwater as follows:

| Pipe Size (D) | Allowable Headwater @<br>Design Flow | Allowable Headwater @<br>100-year Flow |
|---------------|--------------------------------------|--|
| < or = 42”    | < 3.0 D                              | < 4.0 D                                |

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|             |          |          |
|-------------|----------|----------|
| 48" – 108"  | < 1.5 D  | < D + 5' |
| > or = 120" | < D + 2' | < D + 4' |

9 cont.

Mitigation Measure 49 should be revised to reflect that the AREMA design criteria are recognized as guidelines. The final design of culvert sizing should be determined by the project engineer based on the best available on-site information in order to meet applicable culvert sizing criteria for the specific area.

**C. Clarifications and Corrections of Informational Sections**

On page 1-3, lines 10-11, the DSEIS incorrectly states that the Western Alignment would be located approximately 320 feet west of the Diamond Cross LLC Ranch Headquarters. The Western Alignment would be located 2,700 feet west of the Diamond Cross LLC Ranch Headquarters. The Four Mile Creek Alternative alignment would be located approximately 300 feet south of the ranch headquarters.

10

On page 4-55, lines 42-44, the DSEIS discusses the subdivision development informally known as Cormorant Estates, where four cabins are located. The Western Alignment would not be visible from these cabins. The closest cabin is approximately 1250 feet from the alignment centerline, the next closest 1500 feet, and the remaining two cabins are approximately 2000 to 2200 feet from the alignment. There are three cabins on Boat House Point, which is located on the south side of Cormorant Bay. These cabins are approximately 5000 to 5200 feet from the proposed Western Alignment. The Western Alignment would not be visible from these cabins sites either. Three cabins are located on the north side of Cormorant Bay and just west of the Tongue River Dam spillway. These cabins are in excess of 3000 feet east of the Western Alignment. Portions of the Western Alignment may be visible from two of the three cabins.

11

On page 4-118, lines 11-12, the DSEIS should be clarified regarding the relationship of the railroad to the Crow Indian Reservation. At its closest point, the Four Mile Creek Alternative is approximately four miles east of the Crow Indian Reservation boundary. The Western Alignment, at its closest point, is approximately nine miles east of the Crow Indian Reservation boundary.

12

On page Pg 4-160, line 30, the DSEIS incorrectly states that the Western Alignment would be "over 500 feet" west of the Tongue River Dam abutment. The Western Alignment in fact would be over 5000 feet from the dam abutment.

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TRRC appreciates the opportunity to submit these comments and looks forward to the issuance of a Final SEIS in this proceeding.

Sincerely,



Betty Jo Christian  
David H. Coburn  
Sara Beth Watson

Attorneys for Tongue River Railroad Company, Inc.

**SEA's Responses to Comment Letter P18  
TRRC (December 6, 2004)**

- P18.1 Comment stating that TRRC intends to construct its line over the proposed Western Alignment (should the Board approve that alignment) is noted.
- P18.2 The comment takes the position that individual landowners should be given greater preference as to the type of fencing installed along their ROW, and that the Task Force should not have general approval authority over TRRC's approach to implementing mitigation measures.

SEA sees no reason to modify recommended Mitigation Measure 2. SEA's recommended mitigation contemplates that private property owners would have the right to request specific types of fencing on their land, although the types of fencing installed by TRRC would be subject to review by the Task Force to ensure that the fencing allows for movement of big game animals, as discussed in Mitigation Measure 14. The potential restriction of movement of deer and pronghorn antelope was identified as a potential adverse effect of either the proposed Western Alignment or Four Mile Creek Alternative. Thus, while the installation of fencing would largely be a matter that is handled by TRRC in consultation with private property owners, it is appropriate that the Task Force have the ability to review fencing types to ensure that movement of big game animals is maintained.

- P18.3 The commenter expresses concerns relating to the function and authority of the Task Force, the potential effect of the Task Force on the construction schedule, and the membership of the Task Force.

As explained in Section 4.3.2.1 of the Draft SEIS, SEA recommends that the Task Force condition from Tongue River II apply to the proposed Western Alignment, and that the condition language be clarified to set out in more detail the roles and responsibilities of the Task Force. As set forth there, SEA believes it makes sense for the Task Force to approve in advance TRRC's specific mitigation plans and procedures in certain areas, as the Board is ultimately responsible for ensuring that the mitigation measures it adopts are appropriate and properly implemented. SEA believes that the original mitigation language, which indicated only that "the purpose of the Task Force shall be to advise, assist, and coordinate with TRRC," was inadequate because it failed to specifically state that any advice or input provided by the Task Force would in fact be followed.

SEA agrees that the Task Force will review implementation plans and studies prepared in advance of each construction year, and will review the monitoring reports prepared by TRRC to evaluate the effectiveness of mitigation. SEA also agrees that the establishment of time frames for the operation of the Task Force is a reasonable suggestion, and that timeframes would ensure efficiency and eliminate unnecessary delay.

See Chapter 5:Errata, where it references page 4-69, line 19 for the addition of time limits in Mitigation Measure 14.

Regarding the membership of the Task Force, SEA agrees that the intent of Mitigation Measure 14 was to allow for additional input on specific issues, where relevant expertise beyond that present on the Task Force would be advantageous. To this end, SEA recommends the following clarifying language to Mitigation Measure 14, third paragraph:

Task Force Members shall participate in the Task Force at their own discretion and expense and to the extent that their resources permit. Further, Task Force members may use additional resources available to them to accomplish mitigation. Other parties may be invited to consult on *specific issues*, as appropriate; *however, the actual membership of the Task Force is limited to the agencies specified in this condition.*

- P18.4 SEA agrees with the suggested clarification to Mitigation Measure 16 regarding future assignments that might be given to SEA's third-party contractor. Please refer to Chapter 4 Final Recommended Mitigation Measures and to Chapter 5: Errata where it references Page 4-70, lines 16-20 for the revised language.
- P18.5 SEA agrees with the suggested change to Mitigation Measure 17 relating to TRRC's reporting. Please refer to Chapter 4 Final Recommended Mitigation Measures and to Chapter 5: Errata where it references Page 4-70, lines 22-26 for the revised language.
- P18.6 SEA agrees with the proposed addition of "state" in Mitigation Measure 29. Please refer to Chapter 4 Final Recommended Mitigation Measures and to Chapter 5: Errata where it references Page 4-84, lines 22-24 for the revised language
- P18.7 SEA agrees with the suggested change to recommended Mitigation Measure 31. Please refer to Chapter 4 Final Recommended Mitigation Measures and to Chapter 5: Errata where it references Page 4-86-87 for the revised language.
- P18.8 SEA agrees with the suggested change to recommended Mitigation Measure 42, which permits TRRC to rely on soil survey data collected by local conservation districts. Please refer to Chapter 4 Final Recommended Mitigation Measures and to Chapter 5: Errata where it references Page 4-107, lines 30-32 for the revised language.
- P18.9 SEA acknowledges that the AREMA criteria are guidelines in terms of sizing of culverts. However, one of the main components of recommended Mitigation Measure 49 is to ensure that, wherever feasible, the culverts shall be incorporated into the existing grade to avoid changing the character of the streambed and

impacting migrating amphibians and reptiles. SEA has revised the mitigation measure in the Draft SEIS to clarify that the AREMA criteria are guidelines, but the measure continues to require incorporation of the culvert into the existing grade of the streambed. See Chapter 3 and Chapter 5: Errata, where it references Page 4-114, line 10 for SEA's final recommended mitigation.

P18.10 The suggested text has been revised. Please refer to Chapter 5: Errata, where it references Page 4-114, line 10 for the revised language.

P18.11 Comment noted. The section referenced by the commenter, page 4-55 of the Draft SEIS, is part of Section 4.2 Affected Environment, which discusses existing conditions, but not the environmental consequences of the project.

The discussion of the effects of the project upon existing resources is included in Section 4.3. The discussion of impact to aesthetics (Section 4.3.11) includes a discussion of the visibility of the proposed rail line from public vantage points, such as local roadways. Effects on private viewsheds are not typically discussed in a NEPA document. Section 4.3.10 (Recreation) includes a discussion of the effects of the proposed rail line on visitors to the Tongue River Reservoir State Park and in particular campers at that facility.

P18.12 The discussion of the distance between the two alignments and the Crow Indian Reservation has been revised based on the information provided. See Chapter 5: Errata, where it references Page 4-118, lines 11-12.

P18.13 The text has been revised to include the correct information on the distance between the Tongue River Reservoir Dam and the proposed Western Alignment. See Chapter 5: Errata, where it references Page 4-160, line 30.