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TONGUE RIVER RAILROAD
TRANSCRIPT OF PUBLIC MEETING
November 17, 2004
7:00 p.m.

St. Labre Indian School
Auditorium
1000 Tongue River Road
Ashland, MT 59003

1 Appearing for the Surface Transportation Board:

2 Ken Blodgett
3 Environmental Protection Specialist
4 Surface Transportation Board
5 Section of Environmental Analysis
6 1925 K Street NW, Suite 500
7 Washington, DC 20423

8 Appearing for Public Affairs Management:

9 Scott Steinwert
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11 and

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1 (Whereupon the following proceedings
2 were held and oral comments taken.)

3 * * *

4 MR. BLODGETT: Can everybody hear me okay?
5 I think we're going to go ahead and get started. It's
6 a little bit after 7:00, and it seems like most
7 everybody has gotten in and got seated so we'll go
8 ahead and get started.

9 My name is Ken Blodgett and I'm an
10 Environmental Protection Specialist with the Surface
11 Transportation Board in Washington. And I'm pleased
12 to see that so many people were able to come out
13 tonight and provide comments on the Draft document.

14 The subject of tonight's meeting is to hear
15 oral comments on the Draft document titled Surface
16 Transportation Board Finance Docket 30186 (Sub-No. 3),
17 Tongue River Railroad Company's Proposed Construction
18 and Operation of the Western Alignment in Rosebud and
19 Big Horn Counties, also called Tongue River III.

20 The document was served on parties of record
21 and issued for public review on October 15th, 2004.
22 Before we go into hearing your oral comments, I wanted
23 to take a few minutes to discuss the Surface
24 Transportation Board and its role in regulating
25 railroads, and talk a little bit about the Section of

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1 Environmental Analysis and the environmental review
2 process. And then we'll discuss briefly the
3 Environmental Analysis itself and just give you an
4 overview of the development of the document.

5 One thing I'll say right now is I hope
6 everybody is going to come up and provide an oral
7 comment, but I know some people won't. And there are
8 other ways to provide your comments to us. As you
9 came in the door there were some forms up there.
10 Actually, you can write your comments down tonight and
11 turn them into us tonight. At the top of the same
12 form there is an address where you can mail them to
13 us, or you can, at anytime, draft a letter or write a
14 note and send it to that address. And there's also a
15 website where you can go online and file comments
16 electronically if you prefer to do that. But again,
17 tonight we're here mostly to hear oral comments.

18 The Surface Transportation Board is a
19 nonpartisan, independent Federal regulatory body which
20 is organizationally housed within the United States
21 Department of Transportation.

22 The Board is responsible for the economic
23 regulation of interstate surface transportation,
24 primarily railroads, within the United States.

25 The Interstate Commerce Commission's

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1 Termination Act of 1995 established the Surface
2 Transportation Board in order to fulfill and meet a
3 lot of the regulatory functions that the ICC had
4 formerly administered.

5 The Board is charged with providing an
6 efficient and effective forum for the resolution of
7 disputes within its jurisdiction. The Board's mission
8 is to ensure competitive, efficient, and safe
9 transportation that is made available to shippers,
10 consumers, and receivers.

11 In all of its decisions the Board is
12 committed to maintaining and advancing the
13 Transportation Policy Goals established by Congress.
14 The Surface Transportation Board is composed of three
15 members, each of which is appointed by the President
16 and confirmed by the Senate. The Board Members serve
17 terms of five years, and the Chairman of the Board is
18 designated by the President of the United States.

19 The Section of Environmental Analysis is the
20 office within the Surface Transportation Board which
21 is responsible for ensuring that the Board is in
22 compliance with the requirements of the National
23 Environmental Policy Act. We fulfill this
24 responsibility through an independent environmental
25 review of actions which come before the Board for

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1 their decision. Typically, in an action that does
2 come before the Board, we'll prepare some sort of
3 environmental documentation disclosing the
4 environmental impacts of a proposal, a proposed
5 action, and recommending mitigation to help lessen the
6 impacts of the action.

7 The Board's Rules implementing the National
8 Environmental Policy Act can be found at 49 CFR,
9 Section 1105.

10 In order to expedite the environmental
11 review process we are authorized to use third-party
12 consultants that are retained by the applicant. These
13 third-party consultants assist the Board in the
14 development of, in this case, a Draft Supplemental
15 Environmental Impact Statement. The selection of the
16 third-party consultant is with our approval and they
17 work under our direct control and supervision
18 throughout the environmental review process. In the
19 case of this document, the Railroad selected Public
20 Affairs Management as a third-party consultant, and we
21 have been working closely with them. There are two
22 staff members of Public Affairs Management here this
23 evening; Mr. Steinwert, who you'll hear from shortly,
24 and Cara Naiditch, at the back of the room as you come
25 in, helping sign people in and distribute some

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1 materials.

2 During the environmental review process we
3 also routinely consult with other federal agencies, as
4 well as state and local environmental agencies when we
5 prepare our environmental documents. For the Proposed
6 Tongue River Railroad Western Alignment we had three
7 cooperating agencies; the United States Army Corp of
8 Engineers, the United States Bureau of Land
9 Management, and the Montana Department of Natural
10 Resources and Conservation, who acted as the lead
11 agency for all of those Montana State Agencies.

12 These three agencies have decision making
13 authority which is independent of the Board and they
14 are three principal agencies from which the railroad
15 would need to obtain permits or approvals prior to
16 construction. To avoid duplicative environmental
17 analysis the Draft document includes environmental
18 review, which has been specifically requested by the
19 cooperating agencies and should facilitate them and
20 expedite their review process in issuance of any
21 necessary approvals from them.

22 The environmental review process is a public
23 process under the National Environmental Policy Act,
24 and public involvement is critical for the process to
25 proceed in a good fashion. I mean it's critical that

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1 we hear public comments on our Draft document, and
2 it's particularly important in the areas of
3 environmental mitigation. And that's one of the
4 reasons we're here tonight, because we want to get as
5 many comments on the document and hear as much as we
6 can about areas where you think something has been
7 misstated or needs to be changed or improved or
8 further analysis conducted.

9 At the end of the comment period we will
10 consider all comments which we have received and
11 perform any additional analysis which is deemed
12 necessary as a result of the comments we have
13 received, at which point we will prepare a Final
14 Supplemental Environmental Impact Statement addressing
15 the comments. The Final Supplement will include our
16 Final Environmental Analysis and Final Recommended
17 Environmental Mitigation. This Final document will be
18 served on parties to the proceeding and will be made
19 available to the public for review.

20 The Board at that time will then consider
21 the entire environmental record, the Draft document,
22 the Final document, and all environmental public
23 comments received when it issues its Final Written
24 Decision on Tongue River Railroad's Proposed
25 Application to construct and operate the line.

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1 And, in addition to considering the
2 environmental record, the Board will also consider any
3 economic and competitive transportation issues
4 relevant to the application.

5 The Board will impose any condition which it
6 deems warranted, which will include environmental
7 mitigation which it deems necessary, in their
8 decision.

9 I'll real quick go over some of the history
10 of Tongue River Railroad and its actions before the
11 Board that have led to Tongue River III.

12 In 1983 Tongue River Railroad filed an
13 application with the Interstate Commerce Commission
14 for construction of eighty-nine (89) miles of line
15 between Miles City and Ashland.

16 A Draft Environmental Impact Statement was
17 served in July of 1983, which studied a no-build
18 alternative, the Railroad's preferred alignment, and
19 three alternative alignments.

20 A Supplement was served in January of 1984,
21 and the Final Environmental Impact Statement was
22 served in August of 1985.

23 The Interstate Commerce Commission approved
24 the construction of Tongue River I via the preferred
25 alignment, and a Final Decision, which was served in

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1 May of 1986.

2 In 1989 Tongue River notified the Interstate
3 Commerce Commission that it was going to file an
4 application extending the rail line an additional
5 forty-one (41) miles from Ashland to Decker.

6 In July of 1992 a Draft Environmental Impact
7 Statement was served for review which examined the
8 preferred alignment, a no-build alternative, and a
9 Four Mile Creek Alternative. The Draft document
10 indicated that the Four Mile Creek Alternative would
11 be the environmentally preferable alignment because it
12 avoided a sensitive section of the Tongue River, and
13 that being Tongue River Canyon. It eliminated the
14 need for five bridges and a tunnel, and also avoided
15 the Tongue River Reservoir State Recreation Area.

16 Based on comments received, a Supplement of
17 the Draft document was served in March of '94. And
18 following further comments and additional concerns
19 raised by the Environmental Protection Agency and the
20 U.S. Fish and Wildlife Service, a Final Environmental
21 Impact Statement was served in April of '96, which
22 recommended the Four Mile Creek Alternative as the
23 environmentally preferable alternative alignment.

24 The Board, in a Decision of November '96,
25 approved Tongue River II construction via the Four

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1 Mile Creek Alignment.

2 In April of 1998 Tongue River Railroad filed
3 an application for authority to construct a 17.3-mile
4 alternative alignment to the southernmost portion of
5 what had been previously approved in Tongue River II.
6 This application was known as Finance Docket 30186
7 (Sub-No. 3), Tongue River III, or the Proposed Western
8 Alignment.

9 The Proposed Western Alignment lies
10 geographically between the two alternatives that had
11 been considered in Tongue River II and is located on
12 land above the environmentally sensitive Tongue River
13 Canyon.

14 The Section of Environmental Analysis
15 determined that a Supplement to the Environmental
16 Impact Statement was the appropriate means of
17 reviewing the application. A Final Scope was served
18 in 1999, February, and environmental review proceeded.

19 In March of 2000 the Tongue River Railroad
20 Company requested that environmental work be
21 suspended.

22 In January of 2003 Tongue River Railroad
23 came before the Board and requested permission to
24 submit supplemental evidence to update transportation
25 aspects of the original Tongue River III application

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1 that it had filed in 1998.

2 In March of 2003 an Amended Notice of Intent
3 to prepare, to begin, or to continue preparing the --
4 to continue the environmental review of the
5 application was served. And we also sought any
6 additional information that people could provide us
7 regarding changed circumstances that we should be made
8 aware of at that time in 2003.

9 And that had brought us to the issuance of
10 the Draft Supplemental Environmental Impact Statement
11 which we served on the public for review on
12 October 15th, 2004.

13 And I'll now turn the floor over to Scott,
14 who is going to talk briefly about the document
15 itself.

16 MR. STEINWERT: Thanks Ken. Good evening
17 everybody. My name is Scott Steinwert and I'm with
18 Public Affairs Management. As Ken told you, we are
19 the third-party contractor for this project.

20 I'm going to give you a quick overview of
21 the documents and the analysis that our company
22 prepared for the Surface Transportation Board.

23 Just to start off, the Supplemental EIS that
24 Ken referred to is really contained in two different
25 volumes. There's a Volume I, which is the EIS itself,

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1 and a Volume II, which contains all the appendices,
2 all the technical studies, the data, the background
3 information that we relied on in preparing the EIS.

4 The focus of our analysis, as Ken mentioned,
5 it was to -- we were asked really to compare the
6 impacts of the Proposed Western Alignment to the
7 approved Four Mile Creek Alternative that was approved
8 by the Board previously.

9 As part of that analysis we also looked at
10 the entire alignment where Tongue River had proposed
11 some minor modifications to the alignment that was
12 approved by the Board previously.

13 Volume I, as I said, contains the bulk of
14 the analysis, or the EIS. Chapter 4 of this document
15 contains most of our analysis. And that's the focus,
16 as I said, the analysis of comparing the Western
17 Alignment, the impacts of that proposed alignment to
18 those of the approved Four Mile Creek Alternative.
19 And Chapter 5 contains an analysis of the remainder of
20 the alignment, all the way to Miles City, and the
21 modifications that have been proposed by Tongue River.

22 In this Report we look at environmental
23 issues in twelve different topic areas. They include
24 land use, biological resources, soil and geology
25 impacts, hydrology and water quality issues, cultural

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1 resources, transportation and safety, air quality,
2 noise and vibration, socioeconomic impacts on
3 recreational activities, aesthetics, and energy
4 consumption.

5 Our analysis concluded, basically concluded
6 that both the alignments, both the Western Alignment
7 and the Four Mile Creek Alternative could be operated
8 safely and that the impacts of constructing either one
9 are fairly comparable. However, we did determine that
10 the Western Alignment is the environmentally
11 preferable alternative, and I'll walk you through the
12 main reasons that we came to that conclusion.

13 First, is that the Western Alignment has
14 fewer grade crossings or road crossings. The
15 Alignment would cross the road four times versus seven
16 times for the Four Mile Creek Alternative. The
17 Western Alignment has a flatter grade, which would
18 result in the potential for fewer train derailments
19 over the life of the rail line compared to the Four
20 Mile Creek Alternative. The flatter grade is also a
21 shorter distance, would result in less fuel
22 consumption, and therefore resulting in less air
23 quality or air emissions from the train operations.
24 The Western Alignment also would affect less total
25 acreage because it's a shorter route than the Four

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1 Mile Creek Alternative, and it would fill in less
2 wetland habitat. The Western Alignment Alternative
3 would fill in 1.69 acres versus 6.09 acres for the
4 Four Mile Creek Alternative. And then, finally, the
5 Western Alignment would have fewer impacts on noise
6 sensitive receptors. Those are typically residences,
7 homes. There are none along the Western Alignment
8 Alternative. There are five residences that could
9 potentially be affected by noise along the Four Mile
10 Creek Alternative.

11 We did, however, identify that the Western
12 Alignment does have some adverse impacts that are
13 greater than the Four Mile Creek Alternative. It
14 would require substantially more grading, and as a
15 result, it has greater potentials for soil erosion,
16 sediment loads to Tongue River, and dust and visual
17 quality during construction. And, as a result, we've
18 included a number of mitigation measures to address
19 those potential impacts.

20 As part of our analysis we were also asked
21 to go back through Tongue River I and Tongue River II
22 and look at all the mitigation measures that were
23 proposed in those past documents and adopted by the
24 Board, and update those where necessary to reflect
25 either current Board practices and how they implement

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1 mitigation measures, or the state of the art, so to
2 speak, in the way appropriate mitigation measures that
3 are implemented today, especially around those areas
4 of biological restorations, erosion, techniques and
5 those things. We've updated all those mitigation
6 measures.

7 And in Chapter 7 of this Report we've
8 compiled all the mitigation measures for the entire
9 rail line. They total eighty-nine (89) mitigation
10 measures. We've indicated where mitigation measures
11 that we are proposing are new ones, where we've
12 modified old ones, and where ones that were proposed
13 before remain in place, unmodified. We are also
14 recommending that all these mitigation measures that
15 we've updated be applied to the entire construction of
16 the rail line from Miles City to Decker.

17 And at this point I'll turn it back over to
18 Ken.

19 MR. BLODGETT: Okay. At this point we'd
20 like to start receiving oral comments.

21 I guess a couple guidelines to help us get
22 through the oral commenting period. I want to
23 reiterate that our purpose here this evening is to
24 hear your comments on the Draft Supplemental
25 Environmental Impact Statement that we've issued on

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1 October 15th. So I would ask that you try to focus
2 your comments on this Environmental Analysis. And
3 we're looking for constructive areas in which we can
4 improve on the Environmental Analysis.

5 I guess I should've mentioned earlier that
6 we have a court reporter here tonight to make sure
7 that we accurately capture your comments. The
8 comments will become a part of the public record and
9 made available to the public. So as you come up to
10 the microphone to speak I would ask that you state
11 your name clearly at the beginning before you speak.

12 As I call one name to come up to the
13 microphone to speak, I'll also state who the next
14 person will be so they know to start getting their
15 things together, because they'll be the next one in
16 line to come up to the microphone and speak to us.

17 I think for the first round through the
18 names we'll try to limit, if you can, your speaking to
19 about three minutes, just so everybody in the room
20 that wants to speak has time to speak. And when we
21 get through the list one time, we'll open the floor
22 for anybody that hasn't indicated a desire to speak to
23 come speak. And then we can let everybody speak again
24 as much as they want. So we'll try to run it that
25 way.

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1 Again, I want to reiterate that you don't
2 have to speak. We'd love to hear from you, but if
3 you'd prefer to put something down in writing we're
4 happy to take written comments tonight. You can mail
5 them to us. The comment period ends on December 6th,
6 so we'd like to get your written comments by
7 December 6th.

8 So, with that, we'll begin taking oral
9 comments. The first person that we'll hear from is
10 Mr. and Mrs. McKinney, one or the other or both; Bill
11 and Ann. And they will be followed by Wallace McRae.

12 **ORAL COMMENT**

13 BY ANN MCKINNEY: I am Ann McKinney and I
14 live with my family at the 4D Ranch in Birney,
15 Montana. My grandchildren are the sixth generation to
16 live on this ranch of our family. We are raising
17 cattle for beef.

18 We have fought the railroad for twenty (20)
19 years or more. Our feeling is, why take prime
20 agricultural land and make a railroad that will only
21 haul coal, Wyoming coal at that. It's taken twenty
22 (20) years to come up with the Western Alignment,
23 which isn't a big improvement over the Four Mile Creek
24 Alignment, plus it will cost more. What will be in it
25 for Montana? We will get the higher taxes for the

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1 impact of people to build the railroad, the boon and
2 the bust mentality. After the railroad is built, the
3 jobs will go and we will end up with the cleanup job,
4 and, of course, the railroad.

1 cont.

5 In looking at your Environmental Impact
6 Statement I see no real new problems, only an
7 enlargement of the old ones.

8 The start of the Western Alignment is on our
9 land. It dissects our ranch with our summer range on
10 one side and our hay meadows and our winter range on
11 the other. We are very skeptical if we can operate
12 this division of land. We are not sure underpasses
13 will work, and with fourteen (14) trains a day it will
14 be hard for cattle, to drive them.

2

15 There are a few things in the study that
16 jump out at me. I go by that Decker approximately
17 once or twice a week. I never go by there when there
18 isn't a train waiting. There will have to be
19 sightings for fourteen (14) trains a day. Where are
20 they going to be, and what are their dimensions?

3

21 There is a road relocation. Is that
22 included in the acres disturbed or will they have to
23 add to it?

4

24 Culverts will not accommodate the water on
25 the big drainages. Who determines the size of the

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1 culverts on the big drainages like Prairie Dog, Spring
2 Creek, and Canyon Creek? Culverts do not work. They
3 plug up and the water goes across the road. Due to
4 the fire of '88, whole trees have been known to float
5 down the creek.

5 cont.

6 Construction camps: Do we have a licensed
7 landfill big enough to accommodate this much garbage?

6

8 Culture values: Our family was usually a
9 close unit. Everybody in Birney was friends and did
10 things together, but now family and friends are
11 divided.

12 There are a few problems which will solve
13 themselves, such as water quality. With all the
14 construction, sediment will be a problem. The quality
15 of water in time will kill the fish. Then we'll have
16 no fisheries.

7

17 The migratory habits of the wild game have
18 always been to come to the river in the morning and
19 the evenings to eat the green feed, and migrate to the
20 hills and rest in the daytime. They will slaughter
21 themselves trying to keep that pattern alive, so there
22 will be no hunting. The air quality and the noise
23 pollution and vibration will discourage the birds from
24 migrating here.

8

25 What about the Native Americans? We took

9

10

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1 this land away from them once. Now we threaten to
2 carve into their sacred grounds with a railroad. That
3 in no way would benefit them. It's hard to tell what
4 our future will be, but guaranteed we will have a
5 larger weed problem.

10 cont.

11

6 I think our outfit will support the no-
7 action alternative. We know it will work. If it
8 ain't broke, don't fix it.

12

9 MR. BLODGETT: Thank you.

10 MS. ANN MCKINNEY: Do you want this?
11 (Referring to her written comments.)

12 MR. BLODGETT: Sure. Mr. McRae, and next in
13 line will be David Davenport.

14 **ORAL COMMENT**

15 BY MR. WALLACE MCRAE: My name is Wallace D.
16 McRae. I am President of Rocker Six Cattle Company
17 whose deeded land and land leased from the State of
18 Montana is fated to be crossed by the Proposed Tongue
19 River Railroad. My address is included in here.

20 I previously reviewed and commented on the
21 various documents prepared by the Surface
22 Transportation Board and traveled to Washington, DC on
23 two occasions, at my own expense, to consult with the
24 ICC and its staff to convey the concerns of our family
25 ranch corporation resulting from the construction and

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1 operation of the Tongue River Railroad.

2 Despite the extremely short period allowed
3 to prepare comments and the STB's refusal to extend
4 the comment period during the busy fall gathering,
5 shipping, and working cattle for us ranchers, I have
6 tried to study the documents prepared by the STB for
7 the Draft EIS.

8 I'm not going to read this all because I
9 know that it's not going to fit within the three-
10 minute time limit, but I will try and hit some of the
11 high points.

12 I was pleased by the use of the word
13 "should" which appeared to be merely suggestions to
14 the Tongue River Railroad and their responsibilities
15 to affected landowners was changed to the obligatory
16 word "shall." Thank you.

17 In coming to understand the obligations of
18 the ICC and the STB I discovered that the most
19 important criteria is that a proposed railroad must be
20 judged to have a sound financial foundation in order
21 to ensure that it is not a fly-by-night speculative
22 venture which will fail. Surely the STB is aware of
23 the constantly changing financial backers involved in
24 the TRR, and they are indicative of a very shaky and
25 speculative venture. In the fall of 1999 one of the

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13

1 financial backers of the railroad pulled out, giving
2 voice to what previous major financial interests
3 involved in the railroad indicated by their departure.
4 "We just gave it, our financial investment, back to
5 the company. We didn't think the project made sense,"
6 said Chevron spokesman Manfield Mitchelmeier from the
7 corporation's San Francisco headquarters. "We didn't
8 think it was going anywhere and we weren't going to
9 keep spending five million or six million dollars a
10 year for something that was going nowhere." Why was
11 this indication of financial instability ignored?

13 cont.

12 Further, the very structure of the Tongue
13 River Railroad is in a constant state of flux. The
14 various ownership positions are extremely cloudy and
15 defy analysis. The change to a limited liability
16 corporation gives me great concern as well. Who or
17 what ultimately is responsible for any liability
18 associated with the construction and operation of the
19 TRR?

20 In cowboy vernacular, what happens to
21 landowners if a whole enterprise goes belly up
22 sometime down the road? We Montanans are well aware
23 of our state having to pick up the slack and assume
24 responsibility for underfunded, speculative industrial
25 ventures which failed. Despite attempts by legal

14

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1 representatives of the UTU and the NPRC to require the
2 TRR to disclose financial information, the STB has
3 refused to force the railroad to do so.

14 cont.

4 Once again, as I have in the past, I must
5 protest the refusal of the STB to provide suitable
6 maps of the proposed route. I defy any landowner to
7 peruse a map of a 130-mile railroad on an eight-and-a-
8 half by eleven inch page with no topographical
9 features and figure out where it is going and how it
10 will impact their ranch operations.

15

11 To further complicate the problem, we now
12 have figure 1.6, which is up there, which adds the
13 1998 proposed refinements of the original 1985 and '86
14 approved alignments. Additionally, the only roads in
15 Figure 1.6 are U.S. Highways. Why? Except for the
16 fact that there was no room. Were other public, such
17 as county roads, ignored?

16

18 Finally, the only way to differentiate
19 between the Tongue River in the '85 and '86 alignments
20 in the EIS is to assume that the river is the more
21 winding in the original alignment, since both are
22 represented by the same type of drawn lines. Surely
23 there must be available to the STB maps that could
24 better show topographical features, public and private
25 roads, proposed placements of cattle passes, fences,

17

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1 and other improvements for potentially affected
2 property owners.

17 cont.

3 There is not even a suggestion, that I can
4 find, where the sightings might be located. The
5 location of sightings and the duration of their use
6 should be spelled out or shown on maps due to their
7 interference with cattle movements and access to fire.
8 Why does the STB refuse to supply suitable maps?

18

9 I fail to understand why there are no
10 landowner representatives on the multi-agency railroad
11 task force, as described on page 7.3. The exclusion
12 of those of us who will be the most negatively
13 impacted by the construction and operation of the
14 Tongue River Railroad represents a grave injustice and
15 reinforces a pervasive feeling that our concerns and
16 inputs are being calculatedly dismissed by both the
17 TRR and the STB. The agencies, both State and Federal
18 that are on the task force, are representatives of
19 their respective governments. Governmental agencies
20 are, above all, supposed to represent the public.
21 This public trust is not being realized despite legal
22 and constitutional mandates for them to do so.
23 Rather, more and more often, agencies not only fail to
24 represent the public, but especially in the case of
25 extractive and exploitive industrial corporations,

19

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1 represent those entities who prosper by imposing their
2 wills on a defenseless public.

19 cont.

3 Am I out of time? Close?

4 MR. BLODGETT: It's okay.

5 MR. WALLACE MCRAE: I take violent exception
6 to the statement on page 4-61 that states, and I'm
7 quoting: "SEA believes that crossing non-irrigated
8 grazing land does not constitute a severance of the
9 parcel because it would still be possible to move
10 cattle between pastures." Close quote. I invite
11 members of the TRR and the STB and their top hands to
12 catch their best horses and come along with us and
13 help us the first time we attempt to mash our cows and
14 calves through a corrugated metal pipe.

15 The statement goes on to say: "Ranches have
16 noted that cattle may be reluctant to use cattle
17 passes constructed across or under the railroad,
18 especially those that are used infrequently." End
19 quote.

20

20 For the sake of accuracy, I would have you
21 substitute the words "totally or completely unwilling"
22 for the optimistically stated "may be reluctant."

23 Further, this situation, quoting again,
24 "this situation could increase herding time between
25 pastures but would not constitute a significant

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1 impact." This is completely insulting in its urbanity
2 and casts doubt on any of the writers of the EIS to
3 have the slightest inkling of the railroad's impact on
4 livestock operations or a basic understanding of the
5 problems a railroad will present to ranchers,
6 bisected, severed, and isolated by its construction
7 and operation. For the sake of your own credibility,
8 I implore you to completely rewrite this offensive and
9 ignorant assumption.

10 I should quit. I have more, but I want to
11 end on a high note.

12 MR. BLODGETT: Thank you.

13 MR. WALLACE MCRAE: I'm going to send this
14 in.

15 MR. BLODGETT: Okay. Mr. Davenport,
16 followed by Clint McRae.

17 **ORAL COMMENT**

18 BY DAVID DAVENPORT: I'm David Davenport.
19 I'm on a ranch over on Rosebud Creek, but I'm on the
20 Conservation District, a supervisor.

21 And the Conservation District would like to
22 address the Measure 45 on page 4112, stream bank
23 stabilization and the use of rip rocks in riprap.
24 It's kind of a problem. And one of the biggest
25 problems is the word riprap is not a very

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20
cont.

21

28

1 environmentally sound deal, but if you take rocks from
2 the hills that they're in and bring them to the river,
3 you're just causing erosion up on top of the hill
4 instead of in the river. So the Conservation District
5 would sure prefer the use of formed cement blocks in
6 the stream bank, stabilization instead of rocks. The
7 rocks, or I mean the cement blocks probably weigh
8 somewhere close to a ton, so that you can use them
9 instead of riprap in the use of forming barbs, which
10 would slow the river down and help with the sediment
11 collection along the stream banks. And, hopefully,
12 you would be a railroad that would be a little better
13 than the Burlington Northern and some of those that
14 are always in a state of emergency because their rocks
15 are moving and the railroad is falling into the river.
16 So that's kind of what we would kind of like to
17 address.

18 MR. BLODGETT: Alright. Thank you.
19 Mr. Clint McRae, and he'll be followed by Dan Dutton.

20 **ORAL COMMENT**

21 BY CLINT MCRAE: My name is Clint McRae. I
22 ranch with my family and my folks on Rosebud Creek,
23 and the Tongue River Railroad is proposed to cross
24 about three-and-a-half miles of our summer pasture on
25 Tongue River, just north of Ashland.

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29

21
cont.

1 First of all, opening, I'd like to state
2 that the Tongue River Railroad has always been a
3 project, twenty-some years, that has been looking for
4 a purpose. There is no purpose for this railroad.
5 There is no need. And I think that this proves every
6 point up here, all these little maps and extensions
7 prove why there's no need.

22

8 The first item I'd like to talk about today,
9 and Dad had talked about it but I'm going to go into a
10 little bit further, is this multi-agency task force.
11 The people that are on that task force represent a
12 very small minority of landowners on the Tongue River,
13 and that's state land and BLM, among others. The vast
14 majority of the people that are affected by this are
15 private landowners, and yet there is not one person on
16 that Board that represents our best interests, and I
17 would call for you to at least have one of us on there
18 that's negatively impacted by this. Anything else is
19 not representing our best interests. I think as long
20 as we have faced the uncertainty of this railroad, the
21 least you could do is put one of us on that task
22 force.

23

23 Chapter 4, page 61, again I quote that the
24 railroad would, quote, "increase herding time between
25 pastures but would not constitute a significant

24

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30

1 impact." End quote. According to whom? The Service
2 Transportation Board? The Tongue River Railroad
3 Company? How much expertise do these people have in
4 moving cattle across there? I don't think they have
5 any. And I think that it's an insult to say that what
6 they are doing is more important than what we are
7 doing, and they have no idea what kind of severance
8 this railroad would have.

9 We are looking at around fourteen (14)
10 trains a day total on this rail line. I have tried to
11 move cattle across the railroad with that train
12 traffic and it's impossible, because about the time
13 you try to move them across a crossing and there's a
14 train coming, that train is required to blow his horn,
15 and when he blows that horn not only do the cattle
16 scatter but so do the horses. It is an impact that
17 isn't mentioned in here, and it's a thing on severance
18 that should be dealt with.

19 A lot of us are going to have grass on one
20 side and water on the other side. A railroad is
21 severance on non-irrigated land also.

22 Crossings: When we negotiated with one of
23 the representatives from the Tongue River Railroad a
24 couple of years ago about an access agreement, we
25 asked him specifically, who is responsible for the

24 cont.

25

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1 payment of the material in these crossings. We were
2 told that the landowner was. He said you can
3 negotiate any crossing you want, but you are required
4 to pay for the material for that crossing. Further,
5 we asked who is liable for those crossings. And he
6 told us that the private landowner was liable for it.
7 I have a problem with that. I'm in the block
8 management program, which is mentioned in this
9 document, and I have a question. If we negotiate a
10 crossing and a hunter that's hunting, free public
11 access on our place, is injured or killed by a train
12 at these crossings, who stands to be liable for that?

25 cont.

13 It's mentioned several times now on page --
14 Chapter 5, page 21, that the county road would have to
15 be relocated eight or nine times. When these roads
16 are relocated, that takes our land out of production,
17 our private land out of production. Who pays for
18 that? Does the county pay for that or does the
19 railroad pay for that? Do the taxpayers pay for it?
20 That wasn't brought out in there.

26

21 Where are these sites? There was no maps in
22 there, no mention. I would like to request detailed
23 maps of these sites, legal descriptions, and section
24 numbers where this will happen.

25 It's also mentioned that there will be a

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1 realignment in Tongue River I, which is the original
2 89 miles which crosses our place. Where is this
3 realignment? We need maps, good maps, legal
4 descriptions, and section numbers on where this would
5 take place.

27

6 The same with sightings, which was mentioned
7 earlier. How long are they? Where are they? Again,
8 we need detailed maps, legal descriptions, and section
9 numbers.

28

10 Work camps: One area said that there will
11 be some work camps near Ashland. What is near
12 Ashland; a hundred yards or eight miles? We need to
13 have, again, detailed maps, legal descriptions, and
14 section numbers.

29

15 Storage areas, the same thing. Where are
16 they? How many? Detailed maps and legal descriptions
17 and section numbers are needed.

30

18 Fencing the right-of-way: At the
19 landowner's request the railroad would, I'm convinced,
20 fence the right-of-way. They also need to be held --
21 their feet held to the fire of maintaining that fence.
22 A lot of my neighbors that have railroads running
23 across their places have a fence down each side, and
24 when the rail line comes in to fix that fence they
25 tear the fence down, fix it up, and when they leave

31

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1 they don't fix the fence. They get cattle on that
2 rail line, unbeknownst to the landowner, and there are
3 collisions and the cow loses on that deal. Who is
4 liable for it?

31
cont.

5 The second thing is that they have to be
6 responsible for maintenance of that fence as well as
7 the building of that fence.

8 Weeds: Weeds are a problem. There are
9 other areas in the state where there is a boom that
10 goes about twenty feet off the center of the right-of-
11 way, it sprays the weeds, but from the end of the boom
12 to the fence line nothing is growing, and that's where
13 the weeds grow. If the weeds cross underneath that
14 fence onto private land, that becomes the private
15 landowner's responsibility. The Tongue River Railroad
16 needs to be told that they are responsible for the
17 full width of that right-of-way for weed control.

32

18 In Chapter 4, page 28 and 29, it said that
19 the TMDLs for the Tongue River would be finished in
20 the spring of 2004. I am on that committee and it is
21 not done. And we were told at our last meeting that
22 it probably would not be done. So that needs to be
23 corrected.

33

24 The last one I would like to touch on is we
25 need one Environmental Impact Statement. I was in

34

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1 grade school when this issue was first brought about.
2 I'm a little older than that now. It's been hanging
3 over our heads that long. There have been several
4 changes during the years on this whole route and we
5 need one document. There's new information that's out
6 there. We need this new information to get it in
7 there. And to compare an 18-year-old Environmental
8 Impact Statement on the original 89 miles to one
9 that's yet to be finished on the Western Alignment is
10 not a very responsible thing to do. So I request one
11 Environmental Impact Statement on the whole line.

34 cont.

12 Thank you.

13 MR. BLODGETT: Thank you. Mr. Dutton,
14 followed by Karol Felton I believe.

15 **ORAL COMMENT**

16 BY MR. DAN DUTTON: Thank you. Good
17 evening. My name is Dan Dutton and I own and operate
18 a farm/ranch operation south of Belfry, Montana in
19 Carbon County. You may wonder why I drove 200 miles
20 to come to this meeting. I live in a county with over
21 700 million tons of coal under the ground. I live in
22 a valley with a river, and I suspect a lot of
23 engineers would think my place would be a great place
24 for a railroad. But I'm here tonight because I
25 believe in the value of private property rights as

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1 detailed in the Constitution of the State of Montana.

2 I believe Article II, Section 3, when it
3 says that Montanans have the right to a clean and
4 healthful environment, and that their rights include
5 acquiring, possessing, and protecting property.

6 I also believe Article II, Section 17, when
7 it says that no person shall be deprived of property
8 without due process of law, and Article II, Section 29
9 when it says that private property shall not be taken
10 or damaged for public use without just compensation to
11 the full extent of the loss having first been paid to
12 or paid into the court for the owner.

13 The development of the Tongue River Railroad
14 is a private property rights issue.

15 These proceedings notwithstanding, one way
16 or the other I suspect, the square peg, known as the
17 Tongue River Railroad, will be forced into the round
18 hole, known as the Tongue River Valley. A
19 monopolistic greed will continue to be served at the
20 expense of the people in Montana.

21 The Tongue River Railroad or some utility
22 will occupy a strip of land 130 miles long and 200 to
23 300 feet wide to fill a need already being filled by
24 another railroad, assuming that the Tongue River
25 Railroad will eliminate the need for the rail service

35

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1 currently hauling coal from the Decker and Spring
2 Creek Mines and the mines in the Gillette, Wyoming
3 area. After all, isn't that why it's being built?
4 This Draft EIS does not address, as it must, the
5 environmental impact of, I would suspect abandonment
6 of the current rail lines that are being used.

35 cont.

7 In earlier public comments on this project
8 concerns were raised regarding easement versus fee
9 simple title transfer of condemned private land for
10 the right-of-way for the Tongue River Railroad. I do
11 not see those concerns addressed in this Draft EIS.
12 Easement for a single use of the railroad is the
13 preferred method as opposed to fee transfer as it
14 gives the private landowner and the public some
15 protection against other unintended uses, such as
16 power transmission lines, pipelines, communication
17 cables or lines, and so forth.

36

18 Much of the data in this Draft EIS used to
19 support environmental claims is outdated and needs to
20 be updated. This Draft EIS only minimally addresses
21 the environmental conflicts that will arise between
22 the Tongue River Railroad activities and the
23 development of coal bed methane in the area.
24 Mitigation measures in Section 5 do not adequately
25 address TMDLs and changes in water flow relative to

37

38

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37

1 coal bed methane development.

38 cont.

2 The reasons for changing the already
3 approved route for the Tongue River Railroad from the
4 Four Mile Creek Alternative to the proposed Western
5 Alignment is strictly economic. Any connection to
6 environmental concerns is bogus, or at best,
7 incidental.

39

8 Our democracy continues its rapid
9 transformation to plutocracy, and state and federal
10 governments embrace big business. With the state and
11 federal governments embracing a collaboration of
12 corporations and by relying on a voluntary approach to
13 corporate responsibility in development, such as the
14 Tongue River Railroad, the farmers and ranches and
15 citizens of Montana are abandoned. We cannot rely
16 solely on corporations for responsible development.
17 Responsible development is first to societal,
18 governmental, and individual effort. Too often the
19 purpose of corporate responsibility is to avoid
20 accountability mechanisms, especially those that
21 affect the bottom line.

22 Early in my comments I said that development
23 of the Tongue River Railroad was a private property
24 rights issue. I have come to think that it is an
25 issue of human rights and human justice. If one is of

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1 the libertarian mindset, businesses exist only to make
2 money for their owners and that any diversion of
3 managerial commitment to other activities, such as
4 environmental concerns, is a breach of fiduciary
5 responsibility. Further, if there are environmental
6 or human rights problems arising from the profit-
7 making activities of the business, the resulting
8 problems will be dealt with by tort law. This will
9 soon be played out in condemnation procedures. The
10 enjoyment of human rights is not just about enforcing
11 one's own rights, but it is also about accepting your
12 responsibility for respecting the rights of others.

13 Thank you.

14 MR. BLODGETT: Thank you. Ms. Felton, then
15 will be followed by Judy Musgrave.

16 **ORAL COMMENT**

17 BY KAROL FELTON: My name is Karol Felton.
18 My husband Richard and I, we own a ranch down-river.
19 He's the Vice President. I'm a nurse here at the
20 Clinic in Ashland and I'm a cheap hired hand.

21 Anyway, this comment that I'm going to make
22 tonight may not be environmental, but it's from
23 experience. We own a ranch between Livingston and
24 Big Timber, Montana. We've been around the railroad
25 for twenty-some years and we've had nothing but

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1 problems.

2 Some of the comments tonight are, you know,
3 what if. You know, that isn't -- to me it isn't what
4 if. It is when it does. It will and it does happen.

5 We were promised up there at the Livingston
6 area that if they hit our cattle they will compensate
7 us. Well, they compensate you what they want you to
8 -- what they think your cattle are worth. They have
9 no inkling as to what the cost of a cow is. So, will
10 we be rightfully compensated for any deaths?

11 Who will help? Like, this is a fire area in
12 the summer, and up there, there are hot boxes on the
13 cars. Who is going to help fight the fires? And when
14 it starts, I mean it's going to burn people's
15 pastures. There will be no feed for their cattle.
16 And how will they be compensated for that?

17 And again on the noxious weeds, cattle and
18 horses do not gain well on weeds, and if it's not kept
19 under control it will take the pasture over. So we
20 have to be assured that they will be compensated and
21 it will be taken care of.

22 Ranchers down here, they have a dawn to dusk
23 job. And if the railroad comes through it's going to
24 be a 24/7. And what you're promising to do, it just
25 means more work for my family.

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40

1 Thank you.

2 MR. BLODGETT: Thank you. Judy Musgrave,
3 followed by Bill Musgrave.

4 **ORAL COMMENT**

5 BY JUDY MUSGRAVE: Good evening.

6 MR. BLODGETT: Hi.

7 MS. JUDY MUSGRAVE: My name is Judy
8 Musgrave. We live three miles below the Tongue River
9 Damn. We live where there are zero noise receptors.
10 Actually, our house is a mile away from the Proposed
11 Western Alignment, depending on where they decide to
12 put in their 3,000-foot corridor. Perhaps you cannot
13 hear a train a mile away in California or DC, but in
14 rural Montana you can. In fact, we hear the trains
15 five miles away right now at the coal mines, which is,
16 as the crow flies, how far away we are from the Decker
17 Coal Mine.

44

18 The more than 130-mile Tongue River Railroad
19 has been studied in such a piecemeal fashion that the
20 Surface Transportation Board has no way of knowing
21 what the project's impacts as a whole will be on the
22 Tongue River Valley and its residents.

45

23 There is no baseline data on the wildlife
24 populations or habitat in this particular SEIS. It
25 attempts to rely on biological inventories completed

46

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41

1 over twenty (20) years ago. These studies are not
2 only out of date but they also only cover a small
3 percentage of the route, leaving vast areas unstudied.

46

4 The Surface Transportation Board needs to
5 complete a new NEPA, which is a National Environmental
6 Protection Agency Analysis, reflecting changes that
7 have occurred in the valley since the EIS was drafted
8 in 1984.

47

9 For instance, this SEIS fails to take into
10 account the cumulative effects of the Tongue River
11 Railroad with predicted significant environmental
12 impacts from coal bed methane. The development is
13 going to be in the Western Alignment area, right close
14 to where we live also. So we get both. Thanks.

15 The Powder River Gas Coal Creek Project is
16 expected to begin soon. It's at the upper end of the
17 Western Alignment, the Proposed Western Alignment; the
18 statewide coal bed methane. SEIS predicts that coal
19 bed methane, in and of itself, will cause air and
20 water quality standards violations, cause substantial
21 population-wide impacts on numerous species of
22 wildlife, including bald eagles, which we do have
23 year-round bald eagle residents in our valley, and
24 adversely impact millions of acres of wildlife
25 habitat. The Tongue River Railroad will only increase

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42

1 these impacts.

48 cont.

2 The Proposed Western Alignment would require
3 moving 17.3 million cubic yards of fill material. The
4 fill material consists of rock and high-sodium soil.
5 That's an average of more than one million cubic yards
6 per mile. What will that do to the air quality and
7 the already fragile Tongue River? How can moving a
8 million cubic yards of dirt and rocks a mile be
9 mitigated? You can't pretend that that will be okay
10 with mother nature. Remember, the "E" in EIS stands
11 for environment.

49

12 The Proposed Western Alignment has been
13 surveyed, the way I understand it from the EIS, and
14 it's been evaluated doing flyover. Now, I don't see
15 how you can in anyway justify saying that you have
16 actually looked at the Tongue River environmental and
17 cultural resources any more than someone can say that
18 they visited our nation's capital by flying over it in
19 an airplane. The evaluation needs to be done on the
20 ground and it needs to be done with input from valley
21 residents.

50

22 And on-the-ground evaluation of a piece of
23 our property near the Proposed Western Alignment was
24 conducted by Western Land Services for the Powder
25 River Gas for coal bed methane development a year ago.

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1 I have no prepared statements, but I would
2 just like to say I'm not an advocate of the Four Mile
3 Route by any means, but yet the very sensitive Tongue
4 River Valley was turned down because it was too
5 sensitive to build a railroad through.

52

6 And if you look at that map right there, you
7 know, it's like this is the Tongue River Valley and
8 it's sensitive, but over here, a quarter of a mile, is
9 not part of that. It would involve millions of acres.
10 So how many miles from the Tongue River Valley is very
11 sensitive? I've spent 52 years of my life there and
12 it's a very fragile piece of country. You go in there
13 and take all the cuts and fills and cuts and fills and
14 it's going to be unbelievable what the erosion could
15 be.

53

16 And even though we've been in a drought for
17 Lord knows how many years, eventually it will rain and
18 it will rain like hell. You know, in 1923 and 1978
19 there were conditions that built up lots of moisture
20 in the soil, and a lot of hills slipped. And that
21 will happen again. It's just a matter of time.

22 So, other than that, I agree with what
23 everybody has to say. But I think the no-build
24 alternative is the only practical thing. The rest of
25 it, it's just a no-brainer.

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45

1 Thank you.

2 MR. BLODGETT: Thank you. Ms. Valentine,
3 followed by Nancy Carrel.

4 **ORAL COMMENT**

5 BY CHRISTINE VALENTINE: I'm representing my
6 husband Steven Valentine, as well as myself.

7 This is in three parts. The first part is
8 overall concerns about the railroad and Tongue River
9 III. The second part is specific concerns. And the
10 third part is recommendations.

11 Part one, overall concerns: The DSEIS, and
12 I'll refer to it from now on as "the study" has been
13 constructed over a period of time and in separate
14 stages. The final route is not yet decided. Data
15 used are from other studies and not new or pertinent
16 to the whole route of the Tongue River Railroad.

55

17 With the Advent of coal bed methane
18 development in the proposed area, new studies are
19 needed to determine the effects of both the Tongue
20 River Railroad, mining, and coal bed methane
21 simultaneously. The study does not establish any
22 precedent for railroad development when the mines to
23 be served already have existing transportation
24 available. No new mining permits have been issued for
25 the area to be served by Tongue River Railroad in

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1 Montana.

2 The railroad is slated to serve the Decker
3 Mine, which is due to exhaust its supply of coal
4 within the next ten years. The study plans for coal
5 mines in the Otter Creek area at the beginning of the
6 study, but supplies no data on the impact of the mines
7 and railroad in the Otter Creek area throughout the
8 rest of the Impact Statement.

57

9 Section 4162, employment, estimates the
10 losses and gains to the employment in the area. No
11 mention is made of the economic impact of the movement
12 of jobs to other areas. For example, tax losses to
13 the towns of Forsyth and Miles City and loss of trade
14 to the stores in those same towns when a large number
15 of families exit to employment in other towns. No
16 mention is made of the loss of jobs in Wyoming due to
17 the shifting of the route of transportation of coal.
18 No mention is made of the impact of the railroad on
19 the existing mines at Colstrip, which will undoubtedly
20 be impacted.

58

21 Water for construction is to be taken from
22 the Tongue River Reservoir and the Tongue River.
23 Given the extent of the drought in the last five
24 years, it would stretch resources far too much and
25 endanger water reserve for agricultural purposes.

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1 Backup plans cite the Northern Cheyenne Water
2 Agreement. However, if the water is just not
3 available, this plan is useless.

59 cont.

4 Landowners have yet to be approached by the
5 Tongue River Railroad Company regarding waivers for
6 construction. The Tongue River Railroad Company has
7 no permits to build. By the time these are obtained,
8 a new Environmental Impact Statement will be needed.

60

9 Section two, specific concerns: Section 2,
10 page 3, this project is being billed as being needed
11 by Montana. However, fully half the trains will carry
12 Wyoming coal from the Gillette area which is already
13 served by an existing railroad. Who stands to gain
14 from moving Wyoming coal through Montana? Mostly it
15 will be coal brokers who can reap higher profits per
16 ton. You can be sure the price of coal at the end of
17 the route in Minnesota will not reflect the savings
18 from the new routing.

61

19 The study does not seem concerned with the
20 amount of sediment or erosion taking place during the
21 construction phase. The climate is such that we have
22 drought, often followed by violent thunderstorms with
23 heavy rain, giving rise to gully washers. The impact
24 of soil erosion from construction sites being carried
25 into the Tongue during these storms may be to create

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1 banks of soil in the riverbed, changing the flow and
2 the quality of the water.

62 cont.

3 Eagle habitat, Section 4, page 10, is widely
4 discussed in the study, but only in terms of
5 disturbing nesting sites on or near the Proposed
6 Alignment. Eagles have a very wide flight path up and
7 down the Tongue River, and this should be considered
8 as a whole rather than piecemeal. There were bald
9 eagles nesting in this area when they were on the
10 endangered species list. The Tongue River eagles
11 helped to populate the species as a whole, and that
12 should not be underestimated. We still need to
13 preserve eagle habitat as far as is possible. No
14 mention is made of the golden eagle population in this
15 area.

63

16 Section 4, page 3: What does the study mean
17 when it cites that hunting access will be almost fully
18 restored? How much access will actually be lost to
19 hunters? This needs to be more fully explained.

64

20 Biological resources were poorly assessed
21 throughout the study. Helicopter studies alone are
22 not enough to assess the habitats in this area. The
23 study states that further studies will be done prior
24 to construction. All data needs to be collected and
25 fully assessed before any permission is given to

65

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1 construct the railroad. The Tongue River Railroad
2 Company is made the responsible party for these new
3 studies. We need a completely unbiased agency to
4 perform these studies.

65
cont.

5 Wildlife studies make little mention of the
6 pelican population in the Tongue River during the
7 summer months. Originally confined to the Reservoir,
8 the pelican flocks are observed feeding in the river
9 for the last fifteen (15) years as far as the Birney
10 town site and possibly further north.

66

11 The site of the Battle of Wolf Mountain does
12 not receive enough attention in the study. A national
13 historic site, the last study conducted by Jeffrey
14 Pearson states that the site, quote: "spans the width
15 of the Tongue River for approximately two-and-one-half
16 miles and extends along the access of the river about
17 two miles." We simply do not understand how the study
18 can claim that the Battlefield will not be affected by
19 construction, especially considering access roads for
20 equipment, which brings me to the next point.

67

21 The study makes no mention of any
22 displacement of land due to access roads for heavy
23 equipment. Construction of the railroad will not
24 occur in a vacuum.

68

25 Employment is seen as a positive for the

69

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1 area. However, no mention is made of support services
2 that will be needed, such as those of police. These
3 will have to be provided from the taxpayer base. The
4 construction phases of Colstrip I and II brought with
5 it an increase in use and sale of drugs to the area,
6 and more police were needed.

69 cont.

7 Recommendations: A more inclusive
8 Environmental Impact Statement should be undertaken
9 only after the Tongue River Railroad Company has all
10 the permits necessary to building the railroad, and
11 should include the whole of the route planned, Decker
12 to Miles City.

70

13 The new study should be more sensitive to
14 the site of the Battle of Wolf Mountain and its
15 environs and it should be performed by an agency that
16 does not stand to benefit financially from building
17 the railroad.

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18 The new Environmental Impact Statement must
19 include coal bed methane development plans for the
20 area together with the proposed entire routing and
21 combined effects of both industries on the Tongue
22 River Valley.

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23 If mining is planned for the Otter Creek
24 tracts then the impact of branch lines into that area
25 needs to be included.

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1 A more extensive exploration of the effects
2 of shifting employment patterns for railroad workers
3 and their families is essential to a further study.
4 The new EIS must answer the questions:

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5 1) Where will water for the construction
6 phase be obtained if the reservoir on Tongue River
7 maintain the same drought status as the last five
8 years? There is simply not enough to service all
9 parties that need water from the reservoir.

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10 2) How will the Tongue River be affected by
11 erosions from construction sites in violent storms and
12 flooding?

76

13 3) How will aquatic life and farming be
14 affected by the levels of soil erosion in the water
15 planned by the Tongue River Railroad Company? And;

77

16 4) How will employment and coal production
17 in the mining operations at Colstrip be affected by
18 the Tongue River Railroad?

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19 Thank you.

20 MR. BLODGETT: Thank you. Nancy Carrel,
21 followed by Mr. Phil Wood.

22 **ORAL COMMENT**

23 BY NANCY CARREL: My name is Nancy Carrel.
24 My family ranches right on the Tongue River about ten
25 miles below the Tongue River Dam.

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1 Thirty years ago, that's thirty (30) years,
2 I came here to St. Labre for a meeting about a Tongue
3 River Railroad. At that meeting Mike Gustafson told
4 us that the demand for southeastern Montana coal was
5 so great that by the year 1980 the trains in this area
6 would almost be running into each other. Those were
7 his words.

8 In the early 1980s the Tongue River Railroad
9 Company submitted an application to the ICC for a
10 permit to build a railroad from Miles City to Ashland.
11 The railroad was described by its proponents as a
12 common carrier, one which would haul cattle and other
13 products as well as coal. By means of this
14 misrepresentation the Railroad Company obtained a
15 permit to build, which included the right to condemn
16 personal property in 1985.

17 In 1991, with no construction in sight, the
18 Tongue River Railroad Company applied for another
19 permit, to extend the railroad line from Ashland to
20 Decker. There was no reference to this railroad's
21 being for the purpose of hauling Wyoming coal. The
22 rationale was that it would stimulate the economy of
23 southeastern Montana.

24 In 1997 Governor Marc Racicot came to our
25 Birney School graduation. In his speech he praised

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1 the virtues of the little country school, perhaps
2 unaware that the projected railroad would run right
3 behind the schoolhouse. Afterwards we asked him why
4 he was promoting the railroad. Twice he said that it
5 would stimulate the economy of southeastern Montana.
6 Twice we asked him how that could be when the purpose
7 of the railroad was to haul Wyoming coal. In true
8 political fashion, he evaded the question. The third
9 time we asked, his aide said it was time to go, and he
10 left. Apparently the railroad interests were not
11 ready to admit that the Tongue River Railroad was all
12 about hauling Gillette coal.

13 Now, in 2004, it is finally acknowledged
14 that the railroad is for the purpose of transporting
15 Wyoming coal. Where in this is the concept of the 79
16 common carrier with the rights of condemnation of
17 private property? Where is the stimulus to the
18 economy of southeastern Montana? How can the Railroad 80
19 Company justify the loss of jobs in Sheridan and
20 Forsyth, or the severe economic impact on the farming 81
21 and industry of the Tongue River Valley, or the impact 82
22 on the fish and game of the valley, how to answer the 83
23 very pertinent objections of the Northern Cheyenne
24 Indians, how to address the extreme fire hazard
25 associated with such a railroad in this drought- 84

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1 stricken county, where there are no fire protection
2 services. Above all, how to demonstrate the need for
3 this proposed railroad when there are already several
4 established routes for the transportation of Gillette,
5 Wyoming coal.

6 The railroad was not needed thirty (30)
7 years ago and it is not needed today, and it would be
8 an environmental and economic disaster for the whole
9 Tongue River Valley in Montana.

10 MR. BLODGETT: Thank you. Mr. Phil Wood.

11 MR. PHIL WOOD: I'm going to submit written.

12 MR. BLODGETT: Okay. Followed by Denise
13 Wood.

14 **ORAL COMMENT**

15 BY DENISE WOOD: I'm Denise Wood, and
16 together with my husband Phil we manage the Diamond
17 Cross Ranch in Birney, Montana, so I'm here
18 representing the Diamond Cross Ranch.

19 I would like to incorporate several comments
20 made by previous speakers in my comments tonight.
21 Those would be those made by Ann McKinney, Wallace
22 McRae, Clint McRae, Dan Dutton, Judy Musgrave, Bill
23 Musgrave, Christine Valentine and Nancy Carrel. They
24 all say some pretty important things and very
25 important things. And my notes are pretty brief, so

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1 they've had time to prepare a more extensive document
2 than I have, so I would like theirs added to mine.

3 First of all, I would like to respectfully
4 request that you consider extending the deadline for
5 the public comment period by a minimum of sixty (60)
6 days. The reason being, my husband and I manage the
7 property that's known as the Diamond Cross. And it
8 recently changed hands, which means we've just been
9 managing it for a very short period of time, less than
10 a year on part of it, and some property that is under
11 negotiation for purchase for next spring is going to
12 be included and add more land that we have to worry
13 about where the railroad is concerned. Both the Four
14 Mile, and the Western Alignment now, proposed as they
15 stand, cover a lot of ground that we currently manage.
16 And this document just came into our possession less
17 than a month ago, so we have not had a chance to fully
18 comprehend or even understand all the background where
19 all the railroad issues are concerned. And we feel
20 that at least sixty (60) days would give us sufficient
21 time to become familiar with and prepare an
22 appropriate response to a lot of the issues that we're
23 faced with, and we just need more time.

24 I would like to add my voice that the no-
25 action alternative be pursued, first on constitutional

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1 grounds, and reiterating what Dan Dutton said earlier.
2 The Montana Constitution provides a Declaration of
3 Rights in Article II. These rights are deemed to be
4 fundamental rights, and the abridgement of any of
5 these rights by the State or the private sector
6 requires strict scrutiny by the Montana Courts to
7 ascertain that there is a compelling state interest.
8 Included in these fundamental rights, the State
9 Constitution has defined inalienable rights of all
10 persons to include the right to a clean and healthful
11 environment, and the rights of pursuing life's basic
12 necessities, enjoying and defending their lives and
13 liberties, acquiring and possessing and protecting
14 property, and seeking their safety, health, and
15 happiness in all lawful ways.

87 cont.

16 And specifically then I would like to refer
17 to Section 8.1, which states -- or 8, on page 8.1,
18 "unavoidable adverse environmental effects of the
19 Proposed Western Alignment and the approved Four Mile
20 Creek Alternative." And I will read through this, but
21 none of the adverse environmental effects are
22 acceptable, absolutely none of them.

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23 Our employer has invested several million
24 dollars in developing a guided hunting and fishing
25 operation that is pretty close to the Musgrave

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1 property, and some of it is adjacent and encompasses
2 the river area right there, and this will have adverse
3 impacts on his investment and it will not allow the
4 pursuit of his business as he intends it to be. So he
5 is definitely opposed to that.

89 cont.

6 And earlier this evening, Ken, when you
7 asked us to focus our comments specifically on this
8 document, I understand that you did that with the
9 intention of what I believe to be expediting your
10 process and your need to put this back to the people
11 that are trying to get this pushed through, in words
12 that we are giving you to use almost against us. And
13 forgive me for being somewhat cynical, but these
14 public comment periods are designed to hear the
15 comments in a very honest place, not just offer us the
16 opportunity to come in here and take up some time and
17 then have you go back to the Board and then just punch
18 out a document that still covers your needs,
19 regardless of what we're saying.

20 It's not only the environment, but our
21 lives, the quality of our lives. We have deep roots
22 in this area. And everything we've invested in,
23 emotionally, physically, financially is about to
24 change, irrevocably change, never to be the same.

25 And to reiterate some other comments earlier

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1 is that there is really no need for this railroad.

2 There is no need for this railroad.

3 Thank you.

4 MR. BLODGETT: That is everybody that had
5 indicated a desire to speak when they came into the
6 meeting. I'd like to now ask if anybody that hasn't
7 spoken would like to speak, or if anybody that's
8 already spoken would like to take some more time to
9 speak.

10 **ADDITIONAL ORAL COMMENT**

11 BY WALLACE MCRAE: I didn't do this before
12 because it isn't addressing what --it's not a
13 response to what is in the EIS. But, Ken, you and I
14 were talking earlier, and I said that I went to
15 Washington, DC and talked to, I think it was the SEE.
16 Before it was the SEA for the ICC. I feel like
17 E-I-E-I-O here.

18 The staff in the SEE at that time was very
19 frustrated with us because they kept saying, 'What are
20 you doing? What are you people doing here?' We said,
21 'Well, we're landowners along the Tongue River
22 Railroad and we're concerned about that.' We were
23 with the Northern Plains Resource Council. And
24 finally one of their people said, 'Well, aren't we in
25 litigation with you?' I said, 'probably.' And I

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1 think the staff attorney that was at the meeting said,
2 'You people shouldn't even be here. If you want to
3 talk to us, send your attorney.' They didn't want to
4 talk to real people with real problems about this.

5 At the same time we talked to a Board Member
6 named Gus Owen. He's the only member that I've ever
7 talked to.

8 You said that the Service Transportation
9 Board is nonpartisan. It's appointed by the
10 President. I don't think that there are very many
11 appointments that a President makes, no matter which
12 party it is, that aren't partisan appointments. How
13 do we decide that it's nonpartisan?

14 Anyway, there was a Gus Owen that was on the
15 Board. He's the only Board Member that I ever talked
16 to personally. He and his attorney were both there.
17 We said, 'It's damn hard to run a ranch when you've
18 got the cloud of the Tongue River Railroad hanging
19 over your back for over twenty (20) years.' You know,
20 I think a lot of the landowners here have addressed
21 that very well.

22 Finally somebody back there understood what
23 our problems were. The next time that the ICC had a
24 meeting with Mike Gustafson, whose name was mentioned
25 here, who has been promoting this thing from day one,

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1 we said, 'How long are you going to take, you know?
2 You've got permits. When are you going to start?'
3 That's when Mike was trying to get the original Tongue
4 River Canyon that's not on the map. Mike said, 'You
5 give me a permit' -- No, I'm sorry. It was for the
6 Four Mile. Mike said, 'You give me a permit, within
7 three years of this date I will have the land
8 acquired, I will have the railroad built, and I will
9 guarantee that the Tongue River Railroad will be in
10 operation.' Gus Owen called his bluff and right then
11 moved that they give the permit, and if it wasn't
12 built and completed and operating in three years they
13 would lose their permit. I didn't hear that in the
14 record that you read of all of the things that
15 happened, that there was a motion made and seconded.
16 And the next time, when Gus was out, the new Board,
17 the nonpartisan Board threw that out. And he's been
18 going ever since. That was a long time ago.

19 If nothing else comes out of this meeting
20 tonight, it seems to me that a message that I would
21 like to be conferred back to Washington, DC, is these
22 people are tired of it. Put a time limit on the damn
23 thing. Either build the railroad or pull the permit,
24 just like was done in the past. That makes sense to
25 me, and I think it makes sense to everybody in this

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1 room. I don't know if it makes any sense in
2 Washington, DC, but it sure as hell makes sense in
3 Montana. Put a time limit on that thing. If
4 Gustafson says he can do it in three years, give the
5 son of a bitch three years. If he says five, give him
6 five, but put a limit on it, because we've had it.

7 MR. BLODGETT: Thank you. Okay. Would
8 anybody else like to speak? Nobody?

9 Okay. Well, that concludes the oral comment
10 period of tonight's meeting. We'll be around
11 afterwards for anybody that would like to speak to us.
12 Again, I encourage you to, if you chose not to speak,
13 or even if you did, to submit oral comments. We can
14 get you going here tonight with the addresses and
15 everything you need to know to be able to submit a
16 written comment if you'd like to do that.

17 I thank you all for coming tonight. I
18 appreciate you taking the time out of your schedules
19 to be here.

20 And again, the next step will be, we'll
21 review the comments. We'll do further environmental
22 analysis on the comments that have been received, as
23 it is warranted, and a Final Environmental Impact
24 Statement will be released to the public for review.

25 MR. WALLACE MCRAE: Will you publish the

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1 comments?

2 MR. BLODGETT: Yeah.

3 MR. WALLACE MCRAE: You haven't been. The
4 last batch of letters on all of the more recent ones,
5 there's been letters, there's been oral testimony, and
6 those were summarized but there was no record of that.
7 There was no public record of that that went out.
8 Will these remarks be published?

9 MR. BLODGETT: These remarks are part of the
10 public record.

11 MR. WALLACE MCRAE: Will they be in the
12 document?

13 MR. BLODGETT: Our plans are to make them
14 part of the Final Document.

15 MR. WALLACE MCRAE: They weren't in the last
16 several.

17 MR. BLODGETT: But this time our plans are
18 to make all comments received part of the Final
19 Document.

20 MR. DAVENPORT: To do a true environmental
21 impact you're going to have to get a TMDL; correct? I
22 mean that has to be, to be a complete environmental
23 assessment you have to have a TMDL is what I mean.

24 MR. WALLACE MCRAE: No.

25 MR. DAVENPORT: Somebody is going to have to

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1 put --

2 MR. WALLACE MCRAE: They'll get it permitted
3 and then they'll say that they will do that later.

4 MR. DAVENPORT: Well, somebody has got to
5 push that.

6 MR. BLODGETT: Well --

7 MR. DAVENPORT: You see, because I mean coal
8 bed methane people don't want one of those.

9 MR. CLINT MCRAE: I would think that, what,
10 it's 10,000 tons of sediment in the river for the
11 upper end? We've got to have a TMDL.

12 MR. DAVENPORT: That's what I mean. To be
13 complete, you've got to have that or it's a wasted
14 document.

15 MR. BLODGETT: But that will come through
16 further analysis of state agencies.

17 MR. WALLACE MCRAE: But we don't have an
18 opportunity to comment on that.

19 MR. DAVENPORT: Yeah. That seems to me to
20 be probably your biggest drawback here, is if you
21 don't have any assessment of what you can do to a
22 river or what has been done to a river previous, you
23 don't have any basis to say what environmental impact
24 you have. I mean, truthfully, you've got to have a
25 TMDL.

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1 MR. BLODGETT: Right. And the TMDL I think
2 will be an issue that will be tackled by the State.

3 MR. DAVENPORT: Yeah, but I mean the DEQ has
4 got to be involved.

5 MR. BLODGETT: Right.

6 MR. DAVENPORT: And they don't seem to be
7 here.

8 MR. BLODGETT: But they are a cooperating
9 agency.

10 MR. DAVENPORT: Yeah.

11 MR. BLODGETT: I mean they are involved in
12 the review of the document. So the Montana Department
13 --

14 MR. DAVENPORT: So it would be good if you
15 could push them to do that.

16 MR. BLODGETT: Right. I mean there are more
17 permits besides this one that would need to be
18 obtained prior to construction from, you know, some of
19 the cooperating agencies, state agencies.

20 **ORAL COMMENT**

21 BY MR. RICK FELTON: The Tongue River is
22 probably the last major river valley through Montana
23 that doesn't have a railroad. It's a pristine valley.
24 If you come in here in the spring of the year while
25 everything is green and we've gotten a little rain,

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1 you know, it's a beautiful valley. It's just, I mean
2 it's second to none. And you run a railroad down
3 through this thing and it's going to deflate the value
4 probably by 50 percent. It's going to ruin it.

5 MR. BLODGETT: Can you state your name?

6 MR. RICK FELTON: What's that?

7 MR. BLODGETT: Can you state your name? I
8 mean, I don't believe we've got your name.

9 MR. RICK FELTON: Oh, yeah. It's Rick
10 Felton of Felton Angus Ranch, Inc. My wife was up
11 here earlier.

12 MR. BLODGETT: Okay.

13 MR. RICK FELTON: I was going to say
14 something earlier but everybody else pretty much
15 covered all the points I was going to talk about.
16 But, you know, it's a gorgeous valley, and a railroad
17 down through here is going to absolutely ruin it.

18 MR. PAUL STOLLENWERK: I'd like to say
19 something.

20 MR. BLODGETT: Okay. If you could come up
21 to the -- or state your name and talk so everybody can
22 hear you.

23 MR. PAUL STOLLENWERK: My name is Paul
24 Stollenwerk, and I --

25 MR. BLODGETT: If you want it to be part of

1 the public record I think she {the court reporter}
2 can't hear.

3 **ORAL COMMENT**

4 BY PAUL STOLLENWERK: My name is Paul
5 Stollenwerk. I'm from right here in Ashland. I live
6 right here in Ashland.

7 And everybody else has made really good
8 points. There's not much else I can say. And the
9 only thing I'd like to say is I think, like everybody,
10 what about real detailed maps? I mean, I've heard --
11 I've got stories it goes right by my house. It might
12 go right through my house. How does that impact me?
13 I mean, you know, I have no idea what kind of future
14 to -- I'd like to build a house, but should I? I have
15 no idea where it's going to be.

16 I think everybody, big, small, it doesn't
17 matter, should be able to look at a map and say this
18 is right where it's going to be.

19 Thank you.

20 MR. BLODGETT: Any others? Okay. Again, I
21 thank you all for coming. I appreciate the time and I
22 appreciate the chance to get to meet you.

23 And I guess that will conclude the oral
24 comments on the document.

25 Thank you.

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(Whereupon the meeting concluded
at the approximate hour of 8:30 p.m.)

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REPORTER'S CERTIFICATE

I, Charlene A. Berdahl, duly appointed,
qualified, and acting Official Court Reporter in and
for the Sixteenth Judicial District Court, Department
Number Two, of the State of Montana, DO HEREBY
CERTIFY, that the foregoing 68 pages of typewritten
material constitute a true and correct Transcript of
the proceedings to the best of my ability, which were
mechanically recorded by me, and typed by me, had and
taken in the above-referenced cause at the time and
place herein mentioned.

DATED this 21st day of November, 2004.

Charlene A. Berdahl
Official Court Reporter/Notary Public

**SEA's Responses to Comments made at Public Meeting, St. Labre Indian School,
November 17, 2004**

- T2.1 The railroad would transport Wyoming coal, but also Decker area coal and likely Ashland area coal. The benefits to Montana are discussed on page 2-5 in the Draft SEIS under subsection Tax and Employment Benefits. Job opportunities would not be restricted to the construction period. Assuming TRRC operation of the railroad, TRRC would use its own crew of approximately 50 persons. For administrative and maintenance functions. TRRC would employ 49 additional persons, for a total of 99 persons. The additional helper locomotive and crew members required for operation over the Four Mile Creek Alternative would result in the need for about 11 additional crew members, for a total of approximately 110 persons.
- T2.2 SEA believes that crossing non-irrigated grazing land does not constitute a severance of the parcel, because it would still be possible to move cattle between pastures. Ranchers have noted that cattle may be reluctant to use cattle passes constructed across or under the railroad, especially those that are used infrequently. It is acknowledged that this situation could increase herding time between pastures.
- T2.3 The comment requests that the locations of sidings be provided to the public. Based on preliminary engineering, all sidings would be located within the proposed 400-foot ROW, although the exact location of the sidings has not yet been determined. Exact locations of sidings would be determined in consultation with property owners.
- T2.4 The area required for the road relocation is included in the acres disturbed.
- T2.5 Culverts are sized for 25-year flood event per state standard.
- T2.6 Rosebud County Landfill will accept construction debris at the rate of \$8/ton, and will only take debris from the district of Rosebud. The Rosebud County Landfill accepts 8,000 tons of garbage per year. Currently, there is space at the landfill for approximately 8,000 tons of garbage, and the County Commissioners are accepting bids for the construction of a new cell with the capacity for 80,000 tons of garbage.
- T2.7 See Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.
- T2.8 Draft SEIS Section 4.3.2.2 acknowledges that impacts to wildlife are anticipated due to the location of the ROW relative to the river. Species of wildlife that migrate from upland areas to riparian corridors may be isolated from migratory destinations. However, access opportunities for wildlife species over or under the

- railroad would be assessed as part of the pre-construction survey analysis. Additional mitigation may be developed based on the findings of the survey.
- T2.9 According to Mitigation Measure 26, TRRC will be required to conduct habitat surveys for migratory birds before construction. Based on these surveys, TRRC shall develop appropriate mitigation measures, as needed, for approval by the Task Force in accordance with the process set forth in Mitigation Measure 14.
- T2.10 See Master Response 15, Effect of the Project on Native Americans.
- T2.11 Mitigation Measure 21 is specifically intended to prevent the spread of noxious weeds during and after construction. Regarding enforcement and monitoring of mitigation measures, see Master Response 7, Enforcement of Mitigation Measures.
- T2.12 Comment noted.
- T2.13 Regarding the financial stability of the TRRC, please refer to Master Response 17, Financial Stability of the Tongue River Railroad Company.
- T2.14 TRRC would be liable for the construction and operation of the railroad. Montana would not be responsible for subsidizing operational costs if TRRC's operations are not achieving expected profit levels.
- T2.15 The commenter is concerned with the quality of maps that were provided in the Draft SEIS and requests that SEA's maps provide a higher level of detail. In response to these concerns, please refer to Master Response 6, Maps of the Adopted and Proposed Alignments, and also refer to Appendix A of this Final SEIS, which includes additional mapping of the proposed rail line ROW between Miles City and Decker, Montana.
- T2.16 The purpose of Figure 1-6 in the Draft SEIS was to highlight the proposed refinements in the alignment, rather than showing state or county roads. County roads relevant to the project are discussed in Section 4.2.6.1 of the Draft SEIS, and are shown on Figure 4-5 of the Draft SEIS.
- T2.17 The commenter is concerned with the quality of maps that were provided in the Draft SEIS and requests that SEA's maps provide a higher level of detail. In response to these concerns, please refer to Master Response 6, Maps of the Adopted and Proposed Alignments, and also refer to Appendix A of this Final SEIS, which includes additional mapping of the proposed rail line ROW.
- T2.18 The comment requests that the locations of sidings be provided to the public. Based on preliminary engineering, all sidings would be located within the proposed 400-foot ROW, although the exact location of the sidings has not yet

been determined. Exact locations of sidings would be determined in consultation with property owners.

- T2.19 The role of the Task Force is to review and approve the mitigation measures to be implemented by TRRC for addressing adverse effects to aquatic and terrestrial ecology. The Task Force will not address land use issues.
- T2.20 The comment expresses concern related to SEA's statements regarding cattle passes and the movement of cattle between pastures. While SEA recognizes that the introduction of the rail line and movement of cattle below grade via passes would introduce a change in current ranching operations, SEA has determined that these changes should not result in significant adverse effects on ranchers or cattle. Cattle passes are commonly used on roadways and rail corridors throughout the country.
- T2.21 A discussion of streambank stabilization methods is provided in Mitigation Measures 44, 45, and 47. As discussed in Mitigation Measure 44, TRRC will consult with various federal, state, and local agencies during the design process of the stream crossings, and will incorporate reasonable requests from these agencies into the design. In addition, as described in Mitigation Measure 45, TRRC will comply with the Corps Section 404 permit requirements, and will follow EPA's guidance for riverbank stabilization methods. At this point in the Project, the methods considered for streambank stabilization include placing or planting logs, trees, and other vegetative plantings with rock riprap along bridge sites and stream encroachment areas. In addition, Mitigation Measure 47 states that TRRC will preferentially utilize naturally occurring trees, shrubs, and grass to stabilize banks, and that riprap or gabions will be used only as a supplement where they would improve fish habitat or in cases where engineering requirements dictate. It also should be noted that rock riprap is typically obtained from rock quarries.
- T2.22 The comment states that there is no need for this project. For a discussion of the project need, please refer to Master Response 9, Determination of Public Convenience and Necessity.
- T2.23 The comment expresses concern regarding the exclusion of landowners as members of the Multi-Agency Task Force.

As explained in Mitigation Measure 14, the role of the Task Force is to review and approve the mitigation measures that would be implemented by TRRC for potentially adverse effects to aquatic and terrestrial ecology. The Task Force will not address land use issues or related mitigation. Thus, it is not appropriate to include landowners as members of the Task Force.

As provided in recommended Mitigation Measure 1, TRRC would be required to negotiate compensation for direct and indirect loss of agricultural land on an

individual basis with each landowner. As part of the negotiations, TRRC would determine, in consultation with the landowner, the location and type of fencing, cattle passes, private grade crossings, and the replacement of irrigation systems and water sources displaced by the ROW, as appropriate. Thus, SEA has taken the needs of landowners into account in developing appropriate mitigation for this proposed project.

- T2.24 The commenter expresses concern over SEA's statements regarding cattle passes and the movement of cattle between pastures. While SEA recognizes that the introduction of the rail line and movement of cattle below grade via passes would introduce a change in current ranching operations, SEA has determined that these changes should not result in significant adverse effects on ranchers or cattle. Cattle passes are commonly used on roadways and rail corridors throughout the country.
- T2.25 In general, all of the ROW will be fenced for purposes of public safety and security. In areas where the topography would create a natural barrier, fencing may not be required. Access gates would be provided to landowners at private grade crossings. It would be up to the individual landowners to determine who may utilize the crossings. At this point, only TRRC personnel would have access to areas within the proposed ROW. The comment raises several questions related to who would pay for and maintain the fencing along the railroad ROW. If fencing consists of a type approved by TRRC and approved by the Task Force, TRRC would pay for and maintain the fence. If a property owner requests a different type of fencing, costs would be negotiated between TRRC and the property owner. Regardless of whether the fence is a type approved by TRRC or specifically requested by the property owner, TRRC would be responsible for maintenance of the fence.

Recommended Mitigation Measure 2 (ROW Fencing) would require TRRC to construct fencing along the railroad ROW to control livestock, when requested by the landowner.

- T2.26 Proposed road relocations are shown on the aerial photographs, in Appendix A of this Final SEIS. TRRC would be responsible for the cost of all public road relocations.
- T2.27 Please refer to Appendix A of this Final SEIS, which includes aerial mapping of the proposed rail line ROW from Miles City to Decker, Montana.
- T2.28 The comment requests that the locations of sidings be provided to the public. Based on preliminary engineering, all sidings would be located within the proposed 400-foot ROW, although the exact location of the sidings has not yet been determined.

- T2.29 The exact location of the work camps will not be known until further negotiations take place between TRRC and the landowners.
- T2.30 The exact location of the storage areas will not be known until further negotiations take place between TRRC and the landowners; however, the storage areas likely will be placed within the ROW.
- T2.31 See response to comment T2.25 above.
- T2.32 The commenter suggests that project would result in a greater noxious weed problem. Recommended Mitigation Measure 21 is specifically intended to prevent the spread of noxious weeds during construction, as well as during operation. Recommended Mitigation Measure 21 would require that TRRC develop a noxious weed control program in consultation with the Task Force, local ranchers, and county extension agents, prior to commencing any construction of the rail line. The program would require TRRC to use construction methods that minimize the introduction and spread of noxious weeds, including the use of sterile ballast, weed-free seed straw, mulching, and hydroseeding materials. SEA concludes that the implementation of its recommended noxious weed control program would reduce adverse effects associated with noxious weeds from the construction of either the proposed Western Alignment or the approved Four Mile Creek Alternative.
- T2.33 Master Response 20, Total Maximum Daily Load (TMDL) provides up to date information on the TMDL process based on communication with the MT DEQ.
- T2.34 The comment calls for a new EIS that covers the entire line from Miles City to Decker. Please refer to Master Response 16, Need for a New EIS.
- T2.35 The purpose of the project is not to replace the existing rail lines, but to provide a more efficient route for the transport of low-sulfur coal from southeastern Montana to markets in the midwest and east. The existing lines would continue to carry a considerable amount of non-coal freight traffic and some coal trains, particularly those servicing the Sarpy Creek, Big Sky, and Western Energy mines. These lines would also serve as an auxiliary route to the Tongue River line if the latter were to be temporarily inaccessible for some reason. Therefore, the existing lines would not be abandoned as a result of the project.
- T2.36 The text has been changed to account for the possibility of easements. Please see Chapter 5: Errata, where it references Page 4-59, line 18.
- T2.37 For a discussion of the validity of the information used to prepare the Draft SEIS, please refer to Master Response 4, Information Used in Preparing the EIS.
- T2.38 The comment raises concerns related to potential cumulative impacts that could occur as a result of CBM development in combination with the proposed project,

including changes in TMDLs. The Draft SEIS in Chapter 6 provided an extensive evaluation of cumulative effects, including cumulative effects of the proposed TRRC rail line in conjunction with CBM development. SEA has also updated some of that analysis in this Final SEIS based on the most recent information available from the BLM. Please refer to Master Response 21, Adequacy of Cumulative Analysis.

- T2.39 As shown in Table 1-1 of the Draft SEIS, there are several reasons why the Western Alignment would have a lesser environmental impact than the Four Mile Creek Alternative. Also, the Preliminary Conclusions subsection of the Executive Summary of the Draft SEIS identifies six reasons why the Western Alignment is the environmentally preferable alternative according to SEA.
- T2.40 The installation of ROW fencing and cattle crossings below the tracks should minimize the potential for cattle kills by locomotives. Please also see the response to comment T2.25.
- T2.41 SEA is recommending five mitigation measures related to the prevention and suppression of wildfires. In the event of a fire within the railroad ROW, SEA believes that the implementation of recommended Mitigation Measures 9-13 would be adequate to ensure that wildfire impacts resulting from implementation of the proposed Western Alignment or the Four Mile Creek Alternative would not be significant.
- T2.42 The commenter contends that the project would result in a greater noxious weed problem. Mitigation Measure 21 specifically addresses the spread of noxious weeds during and after construction. Recommended Mitigation Measure 21 would require that TRRC develop a noxious weed control program in consultation with the Task Force, local ranchers, and county extension agents, prior to commencing any construction of the rail line. The program would require TRRC to use construction methods that minimize the introduction and spread of noxious weeds, including the use of sterile ballast, weed-free seed straw, mulching, and hydroseeding materials. SEA concludes that the implementation of its recommended noxious weed control program would reduce adverse effects associated with noxious weeds from the construction of either the proposed Western Alignment or the approved Four Mile Creek Alternative.
- T2.43 Comment noted.
- T2.44 Section 4.3.8 of the Draft SEIS discusses the effects of construction and operational noise on existing residences, schools, and churches. SEA's methodology, which is consistent with past practice, is to identify receptors within a 65-dB contour (generally 250 feet from the rail line corridor) and determine whether any of these receptors would experience an increase of 3 dB or more over existing sound levels. Receptors located more than 250 feet from the proposed rail line corridor would not experience sound levels greater than 65 dB. The

- Musgrave Property is located more than 250 feet from the proposed Western Alignment and the Four Mile Creek Alternative, and is therefore outside the noise contour area that would experience a significant increase in noise (more than 3dB).
- T2.45 For a discussion of the adequacy of the analysis provided in the Draft SEIS, please refer to Master Response 8, Scope of the EIS is too Narrow, and Master Response 16, The Need for a New EIS.
- T2.46 The issue raised in this comment about the Draft SEIS is addressed in Master Response 2: Biological Resources – Conclusions and Mitigation.
- T2.47 The issue raised in this comment about the Draft SEIS is fully addressed in Master Response 8: Scope of the EIS is too Narrow, and Master Response 16: The Need for a New EIS.
- T2.48 The Draft SEIS included a thorough analysis of the cumulative effects of the proposed rail line in conjunction with other reasonably foreseeable developments, including CBM wells. For additional discussion, please refer to Master Response 21, Adequacy of Cumulative Analysis.
- T2.49 The Draft SEIS included a thorough analysis of the potential increases in erosion and sediment delivery to the Tongue River. The SEIS includes mitigation measures that would reduce the potential erosion rates to near existing levels. Please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates, for a complete discussion.
- T2.50 See Master Response 1, Adequacy and Timing of Studies, regarding the utilization of aerial surveys and photography. As stated in Section 4.2.5.3 of the Draft SEIS, the PA requires completion of detailed on-the-ground surveys of the railroad ROW prior to construction; development of a Treatment Plan, in consultation with the parties to the PA; and procedures for reviewing and addressing objections and/or disagreements. The PA has been signed by all parties. The fully executed PA is included in this Final SEIS as Appendix C, and will replace the previous PA developed for Tongue River II. The PA identifies the framework for on-site ground surveys that would be required prior to construction.
- T2.51 The comment raises several points that question the need for the project and the long amount of time the project has been proposed. Regarding the need for the project, please refer to Master Response 9, Determination of Public Convenience and Necessity. With regard to a time limit, please refer to Master Response 13, Imposition of a 3-Year Time Limit on Construction.
- T2.52 Comment noted.

- T2.53 The comment is concerned with the potential for an increase in sediment loading in the Tongue River as a result of the project. For a discussion of this issue, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.
- T2.54 Comment noted.
- T2.55 For a discussion of the validity of the information used in preparing the Draft SEIS, please refer to Master Response 4, Information Used in Preparing the EIS. The comment also raises concerns related to potential cumulative impacts that could occur as a result of CBM development in combination with the proposed project, and possibly new mines in the project area. For a discussion of these issues, please refer to Master Response 21, Adequacy of Cumulative Analysis.
- T2.56 The commenter questions the necessity of the project on the basis that existing rail lines already serve the mines in this region. For a discussion of project need, please refer to Master Response 9, Determination of Public Convenience and Necessity.
- T2.57 Pursuit of mining operations in the Otter Creek area would require a separate environmental analysis related specifically to that project proposal. The impacts associated with the Otter Creek area mines would be disclosed in that separate environmental analysis.

Potential development of the Otter Creek tracts is discussed in Section 6.4.3 of the Draft SEIS concerning cumulative impacts. SEA maintains that coal mine development in the Ashland/Birney/Otter Creek area is likely to occur, and the potential for such development is likely to increase with improvements to the transportation system (i.e., the Tongue River Railroad). If such development were to occur concurrently with the Tongue River railroad project, it would be reasonable to consider it as part of the cumulative analysis. However, as discussed in Section 6.4.3 of the Draft SEIS, SEA concludes that there has been no discernible change in social, economic, or environmental factors since the analysis in Tongue River II to significantly increase or decrease the potential for mine development as a result of construction of either the Four Mile Creek Alternative or the proposed Western Alignment. Furthermore, SEA concludes that there are no material changes to warrant an assumption of increased coal production (either generally or in the Ashland/Birney/Otter Creek area) beyond what was analyzed in Tongue River II.

SEA consulted again with 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 the 2004 test borings, MT DNRC compiled up-to-date information on the volumes 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, there are currently no proposals under review for leasing of the tracts and no industry group has identified a time line for submitting such a proposal.

Based on these factors, SEA has not included the development of mining operations in the Otter Creek tracts in the cumulative analysis.

- T2.58 As shown in Table 4-42 of the Draft SEIS, the annual construction wages (for the 3 year construction period) generated among residents of Forsyth are estimated at over \$1 million for either the Western Alignment or the Four Mile Creek Alternative. The annual wages in Miles City are estimated at more than \$3 million in Miles City for either alignment. Taxes on these wages would increase the tax base in Forsyth and Miles City. It is difficult to predict whether families would move from Miles City or Forsyth for jobs in other parts of the region. However, it is anticipated that most locally hired employees, including employees from Miles City and Forsyth, would commute from their homes each day. These workers would have the option of receiving travel allowances for their commute or living in one of the two construction camps. For employees with families who opted to reside in the construction camps, it is not expected that they would relocate their families. Furthermore, it is likely that most of these workers would return to their homes on most weekends and that they would spend earned wages on goods at local stores. The project is not expected to impact the existing mines at Colstrip. Those mines could continue operations concurrently with the Tongue River project, and the existing BNSF rail lines that serve the Colstrip mines would remain operational. It is not expected that this project would result in a loss of jobs in Wyoming. The Gillette area mines would remain fully operational during and after construction of the project.
- T2.59 The commenter is concerned that an adequate water supply does not exist to allow for construction of this project. For a discussion of this issue, please refer to Master Response 19, Availability of Water During Construction.
- T2.60 Assuming that TRRC decides to exercise its Section 10901 authority to construct and operate a rail line, landowners will be approached by TRRC concerning acquisition of property needed for the railroad ROW following a final decision in Tongue River III and a determination of where the alignment will be positioned within the 400-foot ROW corridor.
- T2.61 The purpose of TRRC's entire rail line from Miles City to Decker is to provide for the transport of coal from existing and future mines to markets in the midwestern and northeastern states. This includes coal from mines in the Gillette, Wyoming area, as well as coal from several existing and possible future mines in Montana. Therefore, both Wyoming and Montana stand to benefit from this project. The anticipated economic benefits to Montana are discussed on page 2-5 of the Draft SEIS under the subsection entitled "Tax and Employment Benefits".

- T2.62 The commenter is concerned that erosion associated with project construction would adversely affect water quality and change the water flow patterns in the Tongue River. For a discussion of these issues, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.
- T2.63 The BA, included as Appendix L in Volume II of the Draft SEIS, states that bald eagles can occur in the project area in nesting, wintering, and migrant populations. The BA discusses the importance of Tongue River to winter/migrant populations. Survey data of wintering individuals are included, as well as a commitment to conduct pre-construction surveys of these populations.

For the SEIS, nests are used as indicator of potential direct impacts associated with the project. Indirect impacts are also acknowledged. Preservation of bald eagle habitat has been a major priority of the Tongue River Railroad planning process. Mitigation measures included in the Draft SEIS and BA included as Appendix D of this Final SEIS are intended to reduce any potential impacts to the species.

Section 4, page 19, lines 4 to 10 of the Draft SEIS mention the existence of a golden eagle population in the Tongue River area. Mitigation Measure 26 (Data Reconnaissance) in section 4, page 82 of the Draft SEIS requires that aerial and ground surveys be conducted to determine the location of certain habitat areas and nesting sites. Lines 43 and 45 of page 82 specifically state that surveys for active golden eagle nests will be performed prior to the construction of any rail segments. The survey results will be used to develop appropriate mitigation measures, as needed, for approval by the multi-agency Task Force in accordance with the process set forth in Mitigation Measure 14.

- T2.64 Full access would be restored following construction, except in the areas within the railroad ROW. The ROW would be restricted to TRRC personnel only for purposes of safety and security. The ROW would extend approximately 200-feet from either side of the railroad centerline. Access gates would be provided to landowners at private grade crossings. It would be up to the individual landowners to determine who may utilize these crossings.
- T2.65 The commenter expresses concern as to the adequacy of the biological resource studies that have been completed as part of the Draft SEIS. For a discussion of the methodologies followed by SEA in conducting these studies, please refer to Master Response 1, Adequacy and Timing of Studies, and Master Response 2, Biological Resources - Conclusions and Mitigation. While TRRC would be responsible for conducting many of the supplemental studies required by the mitigation measures, SEA has included Mitigation Measure 14 (Task Force), which would establish a Multi-Agency/Railroad Task Force for the express purpose of providing an independent review of the implementation and monitoring of biological mitigation measures.

T2.66 According to the Montana Natural Heritage Program and the Montana Bird Distribution Database, the American white pelican is a state species of concern with a state rank of S3B.⁹ As a transient or migrant, the American white pelican occurs within an area that extends north of Birney, Montana and includes the Western Alignment (and alternative route) project area.

The description of the American white pelican on page 4-16 of the Draft SEIS has been modified as follows:

American White Pelican (*Pelecanus erythrorhynchos*), S3. The American white pelican is a migratory bird that travels extensively. Breeding colonies are found within the state of Montana; however, within the project area the American white pelican is considered a transient or migrant (MT NHP 2005). It uses a variety of aquatic habitat types for foraging. It is found on rivers, streams, lakes, ponds, and marshes that are typical in the Tongue River Reservoir and Tongue River region. Its breeding habitat is restricted to flat, barren, earthen islands. Nesting colonies are usually in areas unobstructed by vertical structures.

T2.67 The commenter expresses concern that the Draft SEIS does not adequately cover the potential for impacts to the Battle of Wolf Mountain historical site. For a discussion of this issue, please refer to Master Response 14, Effect of the Project on the Battle Butte Battlefield. Regarding potential effects to the site caused by the construction and use of temporary access roads, a temporary access road would be constructed within the ROW to minimize the use of local roads during construction.

T2.68 As stated in Mitigation Measure 54, access roads shall be confined, to the extent possible, to the areas within the ROW. Should roads outside the ROW be required, resulting in displacement of the land, TRRC shall ensure that contractors make necessary arrangements with landowners or affected agencies to gain access from private or public roadways. The access road shall be used only during construction of the railroad grade, after which construction shall be confined to the ROW.

T2.69 It is not expected that additional police personnel would be needed as a result of construction or operation of the project. If there is an increase in crime during construction that warrants an increase in police personnel, the increases in tax revenue (from wages and business taxes) that are expected to result from the project would offset associated costs.

T2.70 The comment requests that a more inclusive EIS be prepared. For a discussion of this issue, please refer to Master Response 16, The Need for a New EIS.

⁹ “S3” refers to species that are potentially at risk because of limited and potentially declining numbers, extent and/or habitat, even though it may be abundant in some areas. The “B” refers to the breeding population of the species in Montana.

T2.71 See Response T2.67.

T2.72 The comment indicates that the SEIS should include an analysis of CBM development plans in combination with the proposed rail line. In fact, the Draft SEIS included such an analysis in Chapter 6. In addition, SEA has updated the analysis of potential cumulative impacts in this Final SEIS, including an update regarding CBM development in combination with the rail line. See Master Response 21, Adequacy of Cumulative Analysis.

T2.73 Potential development of the Otter Creek tracts is discussed in Section 6.4.3 of the Draft SEIS. SEA maintains that coal mine development in the Ashland/Birney/Otter Creek area is likely to occur, and that the potential for such development is likely to increase with improvements to the transportation system (i.e., the Tongue River Railroad). If such development were to occur concurrently with the Tongue River railroad project, it would be reasonable to consider it as part of the cumulative analysis. However, as discussed in Section 6.4.3 of the Draft SEIS, SEA concludes that there has been no discernible change of social, economic, or environmental factors since the analysis in Tongue River II to significantly increase or decrease the potential for mine development as a result of construction of either the Four Mile Creek Alternative or the proposed Western Alignment. Furthermore, SEA concludes that there are no material changes that warrant an assumption of increased coal production generally or increased coal production in the Ashland/Birney/Otter Creek area beyond what was analyzed in Tongue River II.

Lastly, SEA consulted again with 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 volumes 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 currently under review for leasing of the tracts, and no industry group has identified a time line for submitting such a proposal.

Therefore, based on the information available to date, SEA concludes that assumptions related to coal mine development in the Ashland/Birney area and contained in Section 1.3.1 (Coal Production and Coal Traffic Volumes) of Tongue River II are still accurate because the potential for mine development in the area has not materially changed. For additional discussion of this issue, please refer to Master Response 21, Adequacy of Cumulative Analysis.

T2.74 Section 4.3.9 of the Draft SEIS includes a discussion of how the geographical distribution of jobs may shift throughout the region as a result of the project.

- T2.75 The comment is concerned with what water sources would be used for the project, and whether such sources have sufficient capacity. For a discussion of these issues, please refer to Master Response 19, Availability of Water During Construction.
- T2.76 Mitigation Measure 36 would require preparation of a SWPPP to minimize soil mobilization and transport during the construction process. Implementation of the BMPs detailed in the SWPPP will ensure that erosion is controlled in storm conditions.
- T2.77 The commenter is concerned that increased sedimentation in the Tongue River will affect fisheries and agricultural operations, which extract water from the Tongue River for irrigation. For a discussion of these issues, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.
- T2.78 The project is not expected to impact the existing mining operations at Colstrip. Those mines likely would continue operations concurrently with the Tongue River project, and the existing BNSF rail lines that serve the Colstrip mines would remain operational.
- T2.79 One of the functions of the project would be to facilitate the transport of Wyoming (Decker area) coal to midwestern and eastern markets. However, one of the primary objectives of the project is to provide rail access to the Ashland area for the possible development of low-sulfur coal mines in that area. The railroad would be a common carrier with the obligation to transport any freight upon reasonable request. Condemnation of private property to accommodate the railroad ROW would take place following completion of the environmental review process and the engineering plans.
- T2.80 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 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 along the entire rail line from Miles City to Decker; it does not take into account the train crew jobs that 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 that significant new job opportunities would become available at any new surface mines in the Ashland area (see Chapter 6 of the Draft SEIS, "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.

- T2.81 It is acknowledged that the permanent conversion of farmland in the project corridor would constitute a significant impact. The potential economic impact associated with this would be mitigated through recommended Mitigation Measure 1 and off-set by the socio-economic benefits that would result from the project, as discussed under the Tax and Employment Benefits subsection of Chapter 2 of the Draft SEIS. In addition, see Master Response 9, Determination of Public Convenience and Necessity.
- T2.82 Regarding the project's effects on game hunting in the Tongue River Valley, SEA acknowledged in the Draft SEIS that the project could have impacts on game (e.g., mule deer and upland game birds) during the construction and operation of the project. As a result, SEA has developed the following mitigation measures to address these impacts:
- Recommended Mitigation Measure 26 would require that habitat surveys for big game (winter range) be conducted from December 1 to February 28 for each year of construction. Using the results of the surveys, TRRC would then develop appropriate mitigation measures, as needed, for approval by the Task Force in accordance with the process set forth in Mitigation Measure 14.
 - Recommended Mitigation Measure 30 would require that construction activities be coordinated and timed to minimize construction at big game wintering sites from December through March.
 - Recommended Mitigation Measure 91 included in this Final SEIS would require that TRRC participate in the development of a reasonable compensation program for lost wildlife habitat along the rail line prior to beginning construction on any portion of the rail line. Habitat values of acreage lost would be assessed using the U.S. Fish and Wildlife Service's Habitat Evaluation Procedure. The process of valuing habitat loss for individual species or habitat types would include an as-needed analysis of potential "habitat fragmentation" i.e., an assessment of the direct loss of wildlife habitat, reduction in the size of existing habitat patches, creation of more edge-type habitat, and creation of barriers that block movement of wildlife between patches.
 - Recommended Mitigation Measure 32 would require several provisions such as the establishment and enforcement of fencing standards that would ensure the ability of pronghorn antelope (and deer) to safely cross the railroad corridor.

Based on the information available to date, SEA concludes that these recommended mitigation measures would be adequate to ensure that the impacts on deer and pronghorn antelope from the construction of either the proposed

Western Alignment or the approved Four Mile Creek Alternative would not be significant.

Based on the analysis in the Draft SEIS and the mitigation measures identified in this Final SEIS, SEA also concludes that potential impacts on game species during construction or operation of either the proposed Western Alignment or the approved Four Mile Creek Alternative would not be significant. Therefore, SEA does not expect that the viability of commercial hunting operations in the Tongue River Valley would be jeopardized from this project.

- T2.83 The commenter expresses concern related to the impacts of the project on Native Americans in the region and on the Tongue River Valley.

Potential impacts to the Tongue River Valley and Native American tribes are discussed throughout Sections 4.3 and in 4.3.5 of the Draft SEIS. For additional discussion of potential effects on Native Americans, please refer to Master Response 15, Effect of the Project on Native Americans.

Based on the results of these investigations called for in the Programmatic Agreement, a detailed Treatment Plan in consultation with the parties to the PA and the Native American community will be developed and implemented. The Northern Cheyenne and the Crow are concurring parties to the PA. SEA will seek the cooperation of the Northern Cheyenne and the Crow in the identification and evaluation of sites along the entire Tongue River railroad route. The Northern Cheyenne and the Crow will also be asked for their assistance in the identification and evaluation of sites, if they are encountered during the construction process.

- T2.84 Recommended Mitigation Measures 9-13 are intended to reduce the potential for a fire and include emergency response measures should a fire occur. Trained fire fighters would respond to a fire. SEA believes that implementation of these measures would be adequate to reduce potential impacts related to fires to a less-than-significant level.
- T2.85 The commenter suggests that there is no actual need for the proposed project. For a discussion of this issue, please refer to Master Response 9, Determination of Public Convenience and Necessity.
- T2.86 Both the public noticing procedures completed prior to the release of the Draft SEIS and the 45-day review period comply with NEPA requirements.
- T2.87 The preference for no-action and the claim of violation of the Montana Constitution are noted. This Final SEIS is a public information document that is open to review and legal challenge.
- T2.88 The purpose of this environmental analysis was to identify all foreseeable project impacts on the environment and mitigation measures that would reduce these

impacts to a less-than-significant level. SEA acknowledges that, if the proposed project is implemented, some impacts would remain significant and unavoidable after mitigation.

- T2.89 Comment noted. If physical property (capital improvements) of the business owner is displaced, he or she would be compensated at fair market value, according to Mitigation Measure 4. Aside from the area within the railroad ROW, guided hunting and fishing excursions could continue in all areas adjacent to the rail line.
- T2.90 The commenter suggests that there is no need for the proposed project. For a discussion of this issue, please refer to Master Response 9, Determination of Public Convenience and Necessity.
- T2.91 Regarding the imposition of a time limit on construction, please refer to Master Response 13, Imposition of a 3-year Time Limit on Construction.
- T2.92 The relationship of the proposed action to the TMDL planning process for the Tongue River planning area is addressed in Master Response 20, Total Maximum Daily Load (TMDL).

The Draft SEIS acknowledges the potential for short-term construction-related impacts to water quality, hydrology, and streamflows. To address these concerns, SEA developed a total of 16 mitigating measures in the SEIS to reduce potential construction-period water quality impacts. Ongoing consultation with the agencies prior to and during construction activities is one component of the mitigation measures proposed by SEA that is intended to provide consistency with TMDLs for the Tongue River if and when established by the state. Additionally, recommended Mitigation Measure 43 would require the applicant to submit detailed plans for review by local, state, and federal agencies to ensure that overall water quantity and quality is not unnecessarily altered or diminished by the proposed project.

- T2.93 It is acknowledged in the Draft SEIS that the project would affect the existing aesthetic environment of the Tongue River Valley. However, it is speculative to state that the land value would decrease by 50 percent.
- T2.94 The commenter is concerned with the quality of maps provided in the Draft SEIS, and requests that SEA's maps provide a higher level of detail. In response to these concerns, please refer to Master Response 6, Maps of the Adopted and Proposed Alignments, and also refer to Appendix A of this Final SEIS, which includes additional mapping of the proposed rail line ROW from Miles City to Decker, Montana.

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