

into surface waters that could adversely affect fisheries or other water uses.

Picloram is a particularly persistent, mobile and toxic herbicide. Drainage ways and ditches leading to intermittent and perennial streams should be flagged as no-spray zones and not sprayed with picloram based herbicides or other herbicides that are mobile and toxic to aquatic life. We recommend that picloram not be used at rates greater than 0.25 lbs/acre. We also suggest that the TRRC consider applications of persistent herbicides such as picloram only once per year to reduce potential for accumulation in soil. Potential for persistent herbicides to accumulate in soil in harmful amounts are reduced if sites are treated only once per year (twice being the limit). Trade-offs between effective weed control and effects on soil productivity and leaching concerns may need to be considered. A second treatment application if needed should only occur after 30 days (or according to label directions).

57 cont.

For your information, Dow AgroSciences, the manufacturer of Tordon 22K, has recently developed supplemental labeling for Tordon 22K for areas west of the Mississippi River. They have directions for wick or carpet roller applications. Tordon 22K herbicide can be applied using wick or carpet roller equipment where drift presents a hazard to susceptible crops, surface waters, and other sensitive areas. One part Tordon 22K is mixed with 2 parts water to prepare a 33% solution. The wick method of application is more labor intensive but very effective at targeting particular noxious weeds adjacent to surface waters, wetlands, or protected plants.

Most picloram products, including Tordon 22K, are Restricted Use Pesticides (RUPs) requiring pesticide applicator certification to purchase and apply. It is important that TRRC employees involved in chemical weed control be certified. If commercial applicators will be contracted for RUP applications, we recommend checking to make sure their MT commercial RUP license is current. Please contact Montana Dept. of Agriculture at (406) 444-5400 for more information. Also, please note that registration for Access (which has picloram as an active ingredient) is cancelled.

Some suggestions we have to reduce potential water quality and fisheries effects from herbicide spraying are to assure that applicators: 1) are certified and fully trained and equipped with the and appropriate personal protective equipment; 2) apply herbicides according to the label; 3) clean and wash construction equipment to remove weed seed sources; 4) use treatment methods that target individual noxious weed plants in riparian and wetland areas (depending on the targeted weed species, manual control or hand pulling may be one of the best options for weed control within riparian/wetland areas or close to water); and 5) reseed disturbed sites as soon as possible following disturbance. The herbicide application technique of hand or manual wipe-on (especially applicable for contact systemic herbicides such as glyphosate) may be an option to control individual plants up to the existing water level adjacent to streams or sensitive aquatic sites.

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For your information, the website for EPA information regarding pesticides and herbicides is <http://www.epa.gov/pesticides/>. The National Pesticide Telecommunication Network (NPTN) website at <http://nptn.orst.edu/tech.htm> which operates under a cooperative agreement with EPA and Oregon State University and has a wealth of information on toxicity, mobility, environmental fate on pesticides that may be helpful (phone number 800-858-7378).

58 cont.

We encourage revegetation (reseeding with native grass mix) to seed disturbed areas where the vegetation density is low enough to allow reinfestation or introduction of other noxious weeds, or erosion. The goal of the seeding program should be to establish the sustainability of the area. Where no native, rapid cover seed source exists, we recommend using a grass mixture that does not include aggressive grasses such as smooth brome, thereby allowing native species to eventually prevail. Mr. Phil Johnson, Botanist, Montana Dept. of Transportation, in Helena at 444-7657, may be able to provide guidance on revegetation with native grasses.

Wildlife, Threatened and Endangered Species, and Recreation

28. It is stated in the Biological Assessment in Appendix L that the TRR project is not likely to adversely affect the threatened bald eagle, pending MDFWP 2004 data (page 46). The Biological Assessment also concludes that the TRR is not likely to adversely affect other threatened and endangered species that may be in the project area (e.g., black-footed ferret, whooping crane, interior least tern, pallid sturgeon). Our discussions with U.S. Fish & Wildlife Service (USFWS) staff indicate that there are concerns regarding potential adverse effects to the bald eagle. We understand from dialogue with USFWS staff that bald eagles use the Tongue River Valley for foraging, nesting and roosting activities, and there may be as many thirteen eleven bald eagle nests along the Tongue River, and as many as 50 bald eagles using the Tongue River Valley between Miles City and Tongue River Reservoir during migration periods; and that there is potential for adverse impacts to the bald eagle along the modified TRR route via the Western Alignment.

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We believe the TRRC should be required to work with the USFWS and MDFWP to gather more up-to-date information on threatened & endangered (T&E) species potentially impacted by the TRR, and should be required to monitor actual effects to T&E species, particularly effects to the bald eagle to assure that adverse effects to T&E species do not occur, and if adverse effects are found, to mitigate those effects. There may be a need for the TRRC and STB to enter into formal consultation with the USFWS if adverse effects to the bald eagle are found to be likely to occur. We are pleased that the TRRC will be required to adhere to mitigation conditions imposed by the USFWS in a Biological Opinion or Biological Assessment (page 7-17). Mitigation Measure 24 should also specify wildlife monitoring requirements as determined by the USWFS.

29. The DSEIS indicates that access to Block Management Areas would be restricted during TRR construction and hunting areas and wildlife populations would be fragmented (page 4-176, 177, 5-26). We are concerned that the proposed TRR may adversely affect recreational opportunities by affecting public access to fishing and hunting during railroad construction. 60

Cumulative and Indirect Effects

30. Several coal mines that would be served by the TRR (e.g., CS Ranch Mine, King Creek Mine, Otter Creek Mine, East and West Decker Mine, Spring Creek Mine, page 2-4) are mentioned in the DSEIS, and it is also stated that the largest remaining undeveloped reserves of low sulfur, high BTU, sub-bituminous coal in the U.S. are located near Ashland, Montana, and the TRR would provide the first rail service to these reserves, and is essential to their development (Appendix D, pages 7, 8). However, the maps in the DSEIS and on page 10 in the Appendix D Conceptual Habitat Mitigation Plan, do not appear to clearly show the locations of all the existing and reasonably foreseeable future mines and coal reserves that would be served by the TRR. It would be helpful if all the existing and reasonably foreseeable future mines and coal reserves that would be served by the proposed TRR would be shown on a map(s). It would also be helpful if all perennial streams, such as Hanging Woman Creek, Otter Creek and the Tongue River were shown on maps so that the location of future coal mine development to surface waters was evident. 61

31. As noted earlier, the DSEIS states (Appendix D, page 8) that the TRR is essential to the development of Ashland area mines, which have no alternative means of economic transport without the railroad. The largest remaining undeveloped reserves of low sulfur, high BTU, sub-bituminous coal in the U.S. are located near Ashland (Appendix D, page 7). It is further stated that the State of Montana recently acquired an estimated 530 million tons of coal reserves from the federal government in the Otter Creek tracts near Ashland. It is likely that an indirect effect of the TRR may be facilitation or inducement of future coal mine development in these areas. The DSEIS indicates that development of the Montco Mine and other potential mines in the Ashland area with production of up to 18 million tons of coal by 2012 to be transported by the TRR have already been evaluated in earlier EIS documents. It is not clear to us, however, if the indirect and cumulative environmental impacts of potential reasonably foreseeable future coal mining that may be induced or facilitated by the TRR has been adequately analyzed and presented in accordance with 40 CFR 1508.7 and 1508.8. 62

32. It is stated that Wyoming coal is presently transported to midwestern markets via the circuitous Sheridan to Miles City BNSF railroad route, and some of this Wyoming coal is likely to be transported over the more direct TRR route (Appendix D, page 8). Concerns have been evidenced that a more efficient transportation route for Wyoming coal may lead to additional mining of Wyoming coal, and that may also have an impact on the 63

production of coal in Montana, with resultant environmental, social and economic effects. Is it likely that this more efficient TRR coal transport route may result in additional mining of Wyoming coal in this area, resulting in additional associated environmental, social and economic impacts? If so, these additional associated environmental, social and economic impacts should be more fully and clearly analyzed and presented.

63 cont.

33. Table 6-1 (page 6-8) shows planned power plants in Montana and Wyoming. We note that on September 24, 2004 a Notice of Intent to prepare an EIS was published by the Rural Utilities Service of the USDA regarding a proposal by the Southern Montana Electric Generation and Transmission Cooperative to construct and operate a 250 megawatt (MW) coal-fired electric generation plant near Great Falls, Montana. This potential future new power plant is missing from Table 6-1. Mr. Nurul Islam of the Rural Utilities Service may be contacted at 202-720-1414 for further information regarding this project.

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34. We are concerned about the cumulative impacts that may occur in the project area due to additive effects from energy development, particularly coal bed methane (CBM) development (e.g., such as aquifer drawdown near CBM gas wells, additional soil erosion and compaction from well and road construction, water quality impacts, disruption and fragmentation of wildlife, dust and particulate air emissions from construction, and localized increases in CO, NO_x, SO₂, PM_{2.5}, and PM₁₀ concentrations, page 6-10). CBM development along with the added effects of TRR construction and operation and future coal development are likely to result in significant cumulative environmental effects in the project area, and these effects need to be considered in evaluating railroad impacts and by decision makers in determining acceptable levels of impacts to the project area.

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Cultural Resources

35. The DSEIS states that the proposed Western Alignment could affect paleontological and cultural resources (page 4-118), and that impacts would be mitigated by provisions in the Programmatic Agreement (Appendix G, Mitigation Measure 52). We are pleased that efforts have been made to consult with Native Americans (Appendix M), and that the draft Programmatic Agreement (Appendix G) includes the Northern Cheyenne and Crow Tribes. Has this Programmatic Agreement been finalized? Are the above noted Tribes signatory to this Agreement? If the Tribes have not signed this Programmatic Agreement how will National Historic Preservation Act cultural resource consultation requirements be met? We understand that the Northern Cheyenne Tribe has concerns about potential TRR impacts to paleontological and cultural resources in the area, and it is not clear how these concerns will be addressed.

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Tribal Trust Responsibilities

36. President Clinton's memorandum of April 29, 1994, describes government-to-government relations with Native American tribal governments. The U.S. has a unique relationship with tribal governments which requires that federal government plans, projects, programs and activities assess impacts on tribal trust resources. Trust resources are located within the exterior boundaries of reservations and outside the reservation in Usual and Accustomed fishing and hunting areas. Agencies should assess all impacts to tribal trust resource and include those impacts in the agencies' environmental documents. Each agency shall consult to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally-recognized tribal governments. The environmental document shall fully disclose the potential environmental impacts, both negative and positive, on tribal trust resources.

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

Environmental Justice

37. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires that Federal agencies make environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations. The Executive Order makes clear that its provisions apply fully to Native Americans.

Environmental justice issues encompass a broad range of impacts covered by NEPA, including impacts on the natural or physical environment and interrelated social, cultural, and economic impacts. The STB should develop a strategy for effective public involvement of minority (e.g., Native American) and low-income populations in determining siting considerations, analyzing environmental, social, cultural and economic effects, and developing mitigation measures. Detailed guidance on addressing Executive Order 12898 in NEPA documents is available from the Council on Environmental Quality.

We are pleased that Mitigation Measure 82 indicates that the TRRC will appoint a liaison with the Northern Cheyenne Tribe to ensure that tribal members receive an equal opportunity to apply for and secure temporary construction and full time operational jobs with the railroad (page 4-163), and that Mitigation Measure 83 requires TRRC to make available to the Northern Cheyenne Tribe all public data and studies concerning facilities

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and services that may be required as a result of mine development in the area (page 7-33).

We note that the DSEIS states that the SEA preliminarily concludes that the construction and operation of the TRR will not have a disproportionately high and adverse impacts on minority or low-income populations (page 4-175). Does this preliminary conclusion include adequate evaluation of potential indirect and cumulative human health and environmental effects from coal development on or near Northern Cheyenne Reservation boundaries that may be induced by TRR development, and potential effects to Tribal cultural and paleontological resources?

68 cont.

Pollution Prevention

38. We raise the pollution prevention issue here in a general manner to simply note that there is a national policy directed at reduction of pollution, recycling, and conservation of resources. Under Section 6602(b) of the Pollution Prevention Act of 1990, Congress established a national policy that organizes preferences for pollution prevention:

- Pollution should be **prevented** or **reduced** at the source whenever feasible (i.e. increase efficiency in use of raw materials, energy, water, etc.);

- Pollution that cannot be prevented should be **recycled** in an environmentally safe manner whenever feasible;

- Pollution that cannot be prevented or recycled should be **treated** in an environmentally safe manner whenever feasible;

- **Disposal** or other **release** into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner

The Council of Environmental Quality provided additional guidance for incorporating pollution prevention into NEPA through a January 12, 1993 memorandum to Federal Department and Agency heads (Federal Register, January 29, 1993, pages 6478 - 6481). The EPA issued internal guidance to complete a Pollution Prevention analysis as an integral part of its Section 309 (Clean Air Act) review of NEPA documents as an attachment to a February 24, 1993 memorandum to Directors and Coordinators entitled Guidance on Incorporating EPA's Pollution Prevention Strategy into EPA's Environmental Review Process.

The EIS should address how it will avoid/reduce pollution at the source as the preferred course of action to lessen the need to recycle, treat and otherwise implement the objectives of Pollution Prevention.

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The Montana State University-Extension Service in Bozeman has initiated development

of a Montana Pollution Prevention program to provide information to businesses and industries in Montana regarding waste reduction, pollution prevention, and recycling. We encourage you to contact the MSU-ES Pollution Prevention Program at (406) 994-3451 to seek new ideas and technology (<http://www.mtp2.org>).

69 cont.

SEA's Response to Comment Letter F6
United States Environmental Protection Agency (December 2, 2004)

F6.1 The comment raises concerns as to whether the proposed project is justified on the basis of the benefits cited in the Draft SEIS (e.g., a shorter transportation route to eastern and Midwestern mines from the Decker/Spring Creek mines, reductions in fuel consumption and locomotive emissions, etc.). As explained in Master Response 9, Determination of Public Convenience and Necessity, after the environmental review is completed, the Board will determine whether the project is in the public interest in accordance with 49 U.S.C. 10901, which directs the Board to grant rail line construction applications unless the Board finds that the proposal is inconsistent with "public convenience and necessity" (PC&N). The lack of a need to complete a comprehensive Cost-Benefit Analysis in conjunction with the Draft SEIS is discussed in Master Response 10, Cost-Benefit Analysis. As explained in that response, NEPA does not require that Federal Agencies prepare a comprehensive cost-benefit analysis as part of an EIS (40 CFR 1502.23). Moreover, the Board's well established process in rail construction cases calls for SEA to consider environmental issues, and for the Board to then address the transportation merits of construction proposals (including financial fitness issues), considering and weighing the safety and environmental concerns discovered by SEA during the environmental review against the transportation (or other public) benefits of a rail construction proposal. The SEIS does disclose to the public appropriate information related to the project's purpose and need and its purported economic and operational benefits and economic costs, as well as its potentially significant environmental effects.

F6.2 The statute does not define "PC&N"; however, historically, the agency has evaluated whether there is a public demand or need for the proposed service, whether the applicant is financially fit, and whether the proposal is in the public interest and would not harm existing services. Safety and environmental concerns are considered and weighed against transportation or other public benefits in evaluating the public interest and deciding whether the benefits of a proposal outweigh the environmental impacts disclosed during the environmental review.

Regarding the portion of the comment related to the No-Build Alternative, please refer to Master Response 3, the No-Action Alternative. As explained in this response, the no-build alternative in relation to Tongue River III is the already approved Four Mile Creek Alternative.

F6.3 This comment identifies four primary issues: 1) the need to avoid further water quality degradation of 303(d) water quality-limited stream segments within the project area; 2) the need to achieve consistency between the proposed construction and operation activities and the water quality restoration plans and associated total maximum daily load (TMDL) of sediments that are being prepared for the Tongue River TMDL Planning Area by Montana DEQ and EPA; 3) a suggestion that existing sources of sediment and other pollutants within the

project area could be controlled to offset unmitigated increases in pollutant loads that may occur as a result of the proposed action; and 4) a recommendation that the proposed project be closely coordinated with the development of TMDLs for the Tongue River planning area by Montana DEQ and EPA.

For a detailed discussion of these issues, please refer to Master Response 20, TMDL.

- F6.4 The Draft SEIS and the BA (Appendix L of the Draft SEIS) are revised to include the latest available bald eagle survey data. As described in Section 4.2.2.2 of the Draft SEIS, Federal Species of Concern, Bald Eagle, the Four Mile Creek Alignment ROW would be farther from known bald eagle nest 3 than the proposed Western Alignment ROW. In addition, as discussed in Section 4.3.2.2 of the Draft SEIS, Wildlife, Federal Species of Concern, Bald Eagle, bald eagles would be less disturbed by the construction of the approved Four Mile Creek Alternative than by the proposed Western Alignment, based on relative distances from the Tongue River. This information indicates that a greater potential for bald eagle impacts would result from construction of the proposed Western Alignment than from construction of the Four Mile Creek Alternative.

However, the recommended mitigation measures set forth in Chapters 4 and 7 of the Draft SEIS (Mitigation Measures 14, 22 through 29) have been designed to substantially reduce the possibility of potential adverse impacts to threatened and endangered species, including the bald eagle. As a result, the difference in potentially adverse impacts to the bald eagle is expected to be negligible for either of the two routes if SEA's recommended mitigation is imposed and implemented. In particular, these mitigation measures include the creation of a Multi-agency/Railroad Task Force that will include the USFWS. The purpose of this Task Force would be to approve the implementation and monitoring of appropriate biological mitigation measures, including conducting the review of any terrestrial or aquatic issues that could arise during construction and initial operation of the rail line. In short, given the above mentioned mitigation and the other potential environmental impacts described in Chapter 4 of the Draft SEIS (including effects to wetlands and other habitat types that generally show that the proposed Western Alignment would affect less wetland habitat and less acreage overall when compared to the Four Mile Creek Alternative), SEA believes that the proposed Western Alignment is the least environmentally damaging practicable alternative when compared to the Four Mile Creek Alternative.

Regarding EPA's suggestion that SEA consider the feasibility of a hybrid alignment that combines the lower portion of the Four Mile Creek alignment with the upper portion of the Western Alignment, SEA asked TRRC to consider such an option and to submit documentation regarding the potential to implement such a proposal. This documentation is included in Appendix I of this Final SEIS and

- demonstrates that such an alignment would not be practicable due to adverse grades, the need for a much longer crossing of the Four Mile Creek drainage with concurrent fill requirements, the reduced safety of such an alignment during operation, and the inability to meet the design criteria for the project, which are as stringent as, or more stringent than, the criteria of the American Railway Engineering and Maintenance-of-Way Association.
- F6.5 SEA agrees with EPA that TRRC should be required to provide compensatory mitigation to replace the function and values of wetlands and waters of the U.S. that are filled in order to construct the rail line, in accordance with applicable requirements under Section 404 of the Clean Water Act (see Chapter 7, Mitigation Measure 22, of the Draft SEIS). Mitigation Measure 22 would require TRRC to implement mitigation measures included in the Detailed Habitat Mitigation and Monitoring Plan to address impacts to waters of the U.S. A conceptual draft of this plan was included in Appendix D of the Draft SEIS. The Conceptual Habitat Mitigation plan was prepared in consultation with the Corps, which is also a Cooperating Agency for the preparation of this SEIS. As stated in the Plan, pre-construction surveys would be conducted, if required by the Corps, to identify and delineate waters of the U.S. These surveys would be conducted in accordance with The Corps of Engineers Wetland Delineation Manual.
- F6.6 SEA acknowledges that additional surveys of wetlands and waters of the U.S., as well as more detailed mitigation plans, may be required by the Corps prior to issuance of any Section 404 permit(s). Because more detailed biological studies (and possible localized mitigation) may be warranted after the final alignment for this rail line is selected and the final engineering is completed, SEA developed a mitigation condition requiring the establishment of a Multi-agency/Railroad Task Force that would approve the implementation and monitoring of biological mitigation measures for each section of the rail line before construction could begin. The Corps would be a member of the Task Force and, with the other members, would be in a position to ensure that wetland mitigation plans developed by TRRC would adequately meet the Corps' wetland criteria and replace the functions and values of the lost wetlands. Under SEA's proposed conditions, the Corps would have final approval of any wetland mitigation plans, which would have to be finalized before the Corps could issue a permit pursuant to Section 404 that allowed actual construction of any segment of the line to begin.
- F6.7 Issuance of Section 404 permit(s) for the project is the responsibility of the Corps. SEA agrees that it appears that an individual permit would be preferable; however, ultimately for the Corps must decide what type of permitting is appropriate based on the Section 404 regulations. Construction of the rail line would not be allowed to proceed until the Corps has issued a 404 permit.
- F6.8 The comment states that the cumulative effects of reasonably foreseeable coal mine development that may be induced or facilitated by the Tongue River

Railroad should be fully analyzed in the EIS. For a discussion of this issue please refer to Master Response 21, Adequacy of Cumulative Analysis.

- F6.9 As shown on Figure 6-1 in the Draft SEIS, the Otter Creek Tracts (1, 2, and 3) are relatively close to the eastern border of the Northern Cheyenne Indian Reservation. SEA is aware that a development consortium has proposed the construction of a 750-megawatt coal-fired generator on these tracts and a 100-mile power line to tie into existing transmission lines. Moreover, the consortium indicated the need for a 3-million ton-per-year coal mine to supply the power plant. SEA acknowledges that the Tongue River rail line would increase the likelihood of coal mine development on the Otter Creek tracts, which in turn could increase the likelihood that the coal-fired generator plant and the power line are constructed. However, as discussed in Master Response 21, Adequacy of Cumulative Analysis, there are no reasonably foreseeable prospective mine development projects in the Otter Creek tracts or elsewhere in the Ashland area with potential environmental impacts that could be assessed. Furthermore, the development consortium has not yet received any leases or permits for development of the tracts to date nor has the Consortium been granted transmission rights.

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. MT DNRC stated that, while 2004 test borings have confirmed large coal reserves in these areas and the State Governor supports development of these tracts, possibly with a mining operation, there are no current 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 does not consider the generator plant, the transmission line, or other mine development projects to be reasonably foreseeable, and thus did not include them in the cumulative analysis of the Draft SEIS.

- F6.10 EPA expresses concern that the project might result in increased production of Wyoming coal, which could trigger a decrease in the production of Montana coal and subsequent social and economic effects. For a discussion of how these concerns relate to the NEPA analysis presented in the Draft SEIS, please refer to Master Response 11, Loss of Competitive Advantage Held by Montana Coal.
- F6.11 The Final PA is included in this Final SEIS as Appendix C. Although the Board's goal throughout the planning process has been to involve the Tribes in development and implementation of the PA, including the studies and mitigation requirements therein, and the Board hopes the Tribes will sign the PA as concurring parties, the PA will be final regardless of whether all Tribes sign it. The Board's efforts to make the Tribes part of the process are summarized in

Section 1.6.3 of the Draft SEIS. The Board's efforts to include the Tribes fulfill the requirements for consultation as set forth by NHPA.

- F6.12 TRRC has agreed to a work plan to study the potential effects of vibration on the pallid sturgeon. This methodology is presented in detail in the "Revised Work Plan for High Resolution Vibration Monitoring, Evaluation of Potential Effects of Tongue River Railroad Construction and Operation, and Potential Mitigation at Miles City Fish Hatchery" which is included in Appendix G of the Final SEIS. TRRC is committed to executing the work plan.
- F6.13 This comment repeats issues identified in comment 12. Please see response to comment F6.12.
- F6.14 Because Tongue River I has long since been administratively final and because, based on the information available to date, there are no changed circumstances that would warrant revisiting the long settled alternative routing analysis in Tongue River I, SEA has not reexamined in the Draft SEIS the earlier determination on the appropriate routing of Tongue River I that would bring the TRRC line near the Miles City Fish Hatchery (MCFH). TRRC and the State of Montana, Department of Fish, Wildlife, and Parks recently have reached agreement on several issues related to operation of the rail line in proximity to the MCFH, and SEA is recommending mitigation to minimize the potential adverse effects on the hatchery (Mitigation Measures 84-87, and 92).
- F6.15 As discussed in the response to comment F6.14, Tongue River I has long been administratively final, and no circumstances have changed that would warrant a revisiting of the route approved by the ICC in Tongue River I. As a result, a cost-benefit analysis for alternative alignments at Miles City is not included as a part of Tongue River III.
- F6.16 Comment noted. The text is revised to clarify that Prevention of Significant Deterioration PSD thresholds are used for comparison purposes. (Please see Chapter 5: Errata where it references Page 4-149, line 35.) The document "Air Quality Impact Analysis Update TRR III Tongue River Railroad Project" has also been included as Appendix H of this Final SEIS.

Tables 4-32 and 4-33 of the Draft SEIS are revised to compare the total emissions in tons for construction-period fugitive dust emissions and construction-period combustion emissions for the proposed Western Alignment and the Four Mile Creek Alternative. (Please see Chapter 5: Errata, where it references Table 4-36.) Table 4-36 is revised to clarify that the comparison of operation-period emissions is between the proposed Western Alignment and the Four Mile Creek Alternative rather than the entire line as previously indicated. This clarification is needed to maintain the consistency in Chapter 4 when comparing impacts between the two alignment alternatives. The data in Table 4-36 support SEA's conclusion in the

Draft SEIS that the proposed Western Alignment would result in lower total emissions than the Four Mile Creek Alternative.

F6.17 Comment noted.

F6.18 EPA provides a summary of EPA's review of the Draft SEIS. The comments reiterate EPA's request that the analysis be expanded to include a more complete discussion of the project purpose and need and a more comprehensive cost/benefit analysis. With regard to the issue of purpose and need, please refer to Master Response 9, Determination of Public Convenience and Necessity. With regard to the issue of a cost/benefit analysis, please refer to Master Response 10, Cost-Benefit Analysis.

F6.19 The comment that the inclusion of tables, maps, and chronologies in Draft SEIS are useful is noted.

F6.20 The stated mileage of the two segments (89 and 41 miles) is accurate as reported in Volume I of the Draft SEIS. The mileage information presented in the Conceptual Habitat Mitigation and Monitoring Plan, which is included in Appendix D of the Draft SEIS has been revised to reflect the correct distances, and a total of 130 miles. Please see Chapter 5: Errata, where it references Appendix D, page 1.

F6.21 EPA raises several issues here, some of which already have been discussed. The first comment is a request for a clearer and more comprehensive cost-benefit analysis as part of the NEPA process. For a discussion of this issue, please refer to the response to comment F6.2. In the second part of the comment, EPA has identified five issues that it feels warrant additional discussion in this Final SEIS. For ease of review, SEA's response to each issue is presented in the following list:

1. *Evaluation of unquantified environmental impacts:* Please refer to Master Response 10, Cost-Benefit Analysis, for a discussion of how such impacts are considered by the Board in rail construction cases.
2. *Comparison of key issues against No-Action Alternative:* As explained in Master Response 3, The No-Action Alternative, the "no action" alternative in Tongue River III is not the "no build" alternative. "No-Action" would simply be the Board's denial of TRRC's current application to construct the proposed Western Alignment. Even if the railroad's request for authority to construct the proposed Western Alignment is denied, TRRC still would have authority to construct the 41-mile Ashland to Decker alignment via the already-approved Four Mile Creek Alternative. In these circumstances, EPA is incorrect in suggesting the no action alternative here is "no build."

3. *Post-construction plan for existing BNSF lines:* If the TRRC rail line is constructed and operations begin, the BNSF line would continue to carry a considerable number of non-coal freight traffic and some coal trains, particularly those servicing the Sarpy Creek, Big Sky, and Western Energy mines. In addition, the existing BNSF lines would provide auxiliary lines to the proposed TRRC line in the event that the TRRC line was temporarily non-operational. Lastly, as discussed in Section 2.3 of the Draft SEIS, one of the operating scenarios currently being considered by TRRC and BNSF would involve BNSF's operation of the proposed rail line via the Western Alignment or Four Mile Creek Alternative from Miles City to Decker with its own crews and locomotives. The revenues generated from this operating scenario would help offset any reduction in rail traffic on the existing BNSF lines.

4. *Comparison of Operational Advantages (Tongue River Railroad and BNSF):* The purpose of TRRC's entire line from Miles City to Decker is to provide for coal transport from existing and future mines to markets in the midwestern and northeastern states. Tongue River I is administratively final. The purpose and need for Tongue River II was, in part, to provide a more efficient routing for coal in the southeastern areas of Montana and northern areas of Wyoming. The purpose of Tongue River III is to determine whether an alternate routing of the previously approved Tongue River II alignment (via Four Mile Creek) would be environmentally preferable. The Board has already found that Tongue River II is not inconsistent with the public convenience and necessity. Thus, the discussion of impacts, environmental, operational, economic, etc. throughout the Draft SEIS properly focuses on a comparison of potential effects of the Four Mile Creek alignment and the proposed Western Alignment.

The BNSF line would not be downgraded or abandoned as a result of the construction and operation of Tongue River III. While some PRB coal carried by BNSF would move on the TRRC line (rather than the existing line) as a result of this project, the BNSF line would continue to serve existing markets.

5. *Is project justifiable considering impacts:* This question was previously addressed in the responses to Comments F6.1 and F6.2 of this letter. Please refer to those responses for additional information.

F6.22 Comment noted. Coal being transported to Washington State from the Powder River Basin or Decker region would most likely utilize the existing BNSF line. However, coal being transported to Washington State from potential mines in the Ashland area would require transport, for at least part of the route, on the TRRC line.

F6.23 Comment (in support of TRRC realignment to shift railroad farther away from the Tongue River and from structures and homes in the Birney area) noted.

- F6.24 With regard to the concerns about potential impacts on the bald eagle, please see response to F6.4. Regarding the potential for increased sediment loads in the Tongue River due to earthwork, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates.
- F6.25 The issues raised in this comment include: 1) the need to avoid further degradation of impaired stream and reservoir segments, especially with regard to sediment impacts; and 2) the need to offset any unmitigated increases in sediment or other pollutants resulting from the proposed action through additional control of existing pollutant sources. Similar concerns were raised in comment F6.3 of this letter. As in response to comment F6.3, the reviewer is asked to please refer to Master Response 20, TMDL, which addresses the concerns raised in this comment.
- F6.26 This portion of EPA's comments suggests that the "no-build" alternative would be the environmentally preferable alternative. SEA's response is presented in response to F6.2 above. Please refer to that response for additional information.
- F6.27 Comment supporting creation of the Task Force noted. As requested, EPA will be included on the mailing list for the Task Force's written reports and findings. The text of mitigation measure 14 is revised to state that the Task Force will inform EPA of critical issues related to EPA's jurisdiction. Please see Chapter 5: Errata, where it references Page 4-69, line 19; and Chapter 4: Mitigation Measures.
- F6.28 This part of EPA's comment raises several issues related to the project's potential impacts on wetlands and waters of the U.S.: 1) the need for consultation with the Corps; 2) the need for additional wetland surveys; 3) the methodology to be employed for such surveys; and 4) identifying appropriate mitigation for potentially significant impacts on wetlands and waters of the U.S.

SEA concurs that a functional assessment of wetlands based on field verified wetland delineations will be required for the Corps to make a determination and issue a permit pursuant to Section 404 of the Clean Water Act. However, this level of analysis is not needed for the SEIS. As explained in the Draft SEIS, wetlands and other aquatic habitats categorized in the *Revised Initial Analysis of Waters of the U.S., Tongue River Railroad Alternatives* (Revised Analysis) were appropriately identified from aerial images, national wetland inventory (NWI) maps, and limited field verification in representative habitats (methods described in more detail in Appendix D of the Draft SEIS).

As explained in Revised Analysis, the biologists surveyed a 400-foot corridor (200 feet either side of the centerline) for each of the alternative alignments proposed, which is substantially greater than the proposed 200-foot ROW. Therefore, conservative acreages were presented in the Draft SEIS to ensure that

impacts would not be greater than disclosed. Once potential areas of wetlands and waters of the U.S. were identified, calculations of those areas to the nearest hundredth of an acre were completed. Thus, wetlands have been carefully assessed in preparing this SEIS.

As with any application to the Corps, field verification will be required before the Corps formally establishes its jurisdiction. The procedures governing final wetland delineation and field verification would be completed for the proposed rail line (from Miles City to Decker) as part of the Corps permitting process pursuant to Section 404 of the Clean Water Act, before the proposed line is constructed. Mitigation Measure 22 would require TRRC to adhere to any mitigation measures imposed by the Corps as part of the issuance of any Section 404 permits. SEA believes this process is fully adequate and, as a Cooperating Agency, the Corps agrees with this approach.

- F6.29 The wetland impact assessment included in the Draft SEIS accounts for all of the construction-related factors identified in EPA's comment, except for construction camps. The camps were omitted because the camp locations are yet to be determined by TRRC. When the locations are decided, and if development of a construction camp would potentially impact wetlands or waters of the U.S., approval of this activity would be subject to the provisions of Section 404 of the Clean Water Act.
- F6.30 A revised BA is included in this Final SEIS as Appendix D. As documented in Section 4.2.2.2 of the Draft SEIS, specific aerial surveys were conducted in February 2004 to identify bald eagles nesting and/or wintering (BLM 2002b) along the entire proposed TRRC line, including the proposed Western Alignment and the approved Four Mile Creek Alternative. The location of nests on both the proposed Western Alignment and the Four Mile Creek Alternative is also presented in Section 4.2.2.2 of the Draft SEIS. Additional information regarding the potential existence of the bald eagle and other listed species would be obtained through the surveys required under proposed Mitigation Measure 25.

Regarding EPA's suggestion that SEA consider the feasibility of a hybrid alignment that combines the lower portion of the Four Mile Creek alignment with the upper portion of the Western Alignment, SEA asked TRRC to consider such an option and to submit documentation regarding the potential to implement such a proposal. This documentation is included in Appendix I of this Final SEIS, and demonstrates why such an alignment would not be practicable due to adverse grades, the need for a much longer crossing of the Four Mile Creek drainage, the reduced safety of such an alignment during operation, and the inability of such an alignment to meet the project's design criteria (which are based on the American Railway Engineering and Maintenance-of-Way Association). Therefore, EPA's suggested hybrid alignment is not a reasonable or feasible alignment.

F6.31 Comment noted. Recommended Mitigation Measure 22 has been revised as suggested to require TRRC to develop a detailed wetland mitigation plan that replaces lost functions and values, as determined by the applicable regulatory agency prior to implementation of the project. Please refer to Chapter 4, Final Recommended Mitigation, for the revised language.

The Corps will require that the wetlands mitigation plan be finalized before issuance of a Section 404 permit. SEA expects that the Section 404 permitting process will include specific requirements to maintain wetland characteristics, and that TRRC will be required to comply with any such requirements imposed by the Corps as part of its Section 404 permitting process. The Section 404 permit would be obtained prior to implementation of this project.

F6.32 As stated in the Conceptual Habitat Mitigation Plan (the plan) in Appendix D of the Draft SEIS, two of the main goals of wetland creation are to: 1) locate created wetlands in the Tongue River Valley as closely to disturbed wetlands as possible; and 2) establish wetlands with functions and values as similar to those disturbed as possible. In support of these goals, the plan recognizes several of the key factors raised in this comment that are essential to successful wetland creation (e.g., adjacency to streams). The plan includes several preliminarily proposed wetland sites for review by the Corps, which include areas adjacent to existing wetlands. SEA acknowledges EPA's comment that areas that have been converted from wetland to cropland could provide a viable location for wetland creation. TRRC will be required to identify and secure sites in accordance with the Corps' direction pursuant to the Section 404 permitting process. The location of all final wetland mitigation sites will be determined by the Corps before construction activities begin.

EPA echoes several key considerations to successful wetland creation that are included in the Habitat Mitigation Plan and regulated by the Corps as part of its implementation of the Corps' wetland delineation manual. More detail regarding these criteria will be provided to the Corps as part of the Section 404 permitting process, and all criteria will be required to be met before a Section 404 permit is issued.

Section 5.5 of the Habitat Mitigation Plan, "Permanent Protection Measures," discusses the use of conservation easements and/or written agreements with private property owners to ensure the long-term protection of the created wetlands. As part of the Section 404 permitting process, TRRC will be required to implement the Corps' most recent approaches to successful wetland creation and long-term maintenance.

F6.33 Comment noted. TRRC does intend to construct the project over several years. Issuance of Section 404 permit(s) for the project is the responsibility of the Corps, and the Corps and TRRC will determine the most effective and efficient method for the permitting required under Section 404.

- F6.34 Comment noted. Pursuant to recommended Mitigation Measure 43, TRRC would be required to obtain approval from the state of Montana's Department of Environmental Quality prior to any construction on the line. The state's permitting requirements are set forth in more detail in Appendix F of the Draft SEIS.
- F6.35 Table 4-23 in the Draft SEIS notes the number of crossings of perennial and non-perennial streams. Neither the Western Alignment nor the Four Mile Creek Alternative would cross any perennial streams. The tributaries to the Tongue River are all considered to be non-perennial, including Otter Creek and Hanging Woman Creek, both of which would be crossed by the Western Alignment and Four Mile Creek Alternative. Appendix A of this Final SEIS contains a series of aerial photographs covering the entire proposed rail line from Miles City to Decker, Montana, which illustrate stream crossings.
- F6.36 SEA concurs with EPA's view that it is important to utilize all possible means of avoiding and reducing sediment production and transport to surface water bodies. Therefore, SEA has recommended Mitigation Measure 36 as a result of this project, which would require TRRC to prepare a SWPPP and an Erosion Control Plan using Montana Department of Environmental Quality Guidelines best management practices (BMPs) and to obtain coverage under the Montana Pollutant Discharge Elimination System General Permit for storm water discharges associated with rail construction activity. The SWPPP and the Erosion Control Plan would therefore result in compliance with applicable state and tribal water quality standards.

For information on potential degradation of impaired water bodies, as identified pursuant to Section 303(d) of the Clean Water Act, which governs the identification and treatment of impaired water bodies, please refer to Master Response 20, TMDL.

- F6.37 The comment summarizes the following information pertaining to water quality:
- (1) the status of Section 303(d)-listed stream and reservoir segments within the Tongue River watershed, as described in 1996 and subsequent 303(d) lists;
 - (2) Montana's water quality restoration planning and TMDL development process for Section 303(d) water bodies; and
 - (3) Montana state requirements and EPA's policy pertaining to any proposed new or expanded non-point source pollution-producing activities pending the completion of the required TMDLs.

Please refer to Master Response 20, TMDL for a complete response to these issues.

- F6.38 Table 4-22 of the Draft SEIS has been revised to include a quantitative assessment of sediment delivery following the implementation of BMPs. Please refer to Table 4-22 in the Errata, where it references Page 110, line 1, Chapter 5 of this Final SEIS.
- F6.39 This comment reiterates points discussed earlier in response to EPA's comments F6.3 and F6.24. As noted in these responses, please refer to Master Response 20, TMDL for a complete response to these issues.
- F6.40 The text of recommended Mitigation Measure 41 in the Draft SEIS is revised for clarity, without any alteration of the intent of the mitigation. Please see Chapter 4 and Chapter 5: Errata, where it references Page 4-107, line 23.
- F6.41 EPA raises several issues related to the construction of bridges and culverts to cross the Tongue River and its tributaries. The primary concerns raised in the comment are encroachment on floodplains and riparian corridors, alteration of existing hydrology, and the future habitation and migration of wildlife. SEA acknowledges the importance of these issues and has recommended eight mitigation measures (Measures 44-51 in the Draft SEIS) to mitigate potentially significant effects. These measures are identified in Chapter 4 of this Final SEIS. The issues identified in the comment and key points from the relevant mitigation measures are as follows:

Crossing should maintain the integrity of floodplain: Recommended Mitigation Measure 50 addresses these concerns. Under that recommended condition, the final alignment of the railroad would be designed to avoid the floodplain to the maximum extent possible. Where the railroad grade infringed upon the floodplain, TRRC would be required to install drainage structures to assure that the grade does not restrict or reroute the 25-year flood. Recommended Mitigation Measure 51 would impose additional requirements to minimize the potential encroachment on floodplains. This measure states that for any bridge located in the 100-year floodplain, the bridges would be designed so that the upstream elevation of the 100-year flood would not increase by more than 0.5 feet or significantly increase flood velocities.

Crossings of tributaries should maintain the integrity of existing channels by simulating natural stream grade and substrate: Recommended Mitigation Measure 49 addresses EPA's concern. Under that condition, TRRC would be required to incorporate culverts into the existing grade of streambeds to avoid, to the maximum extent possible, changing the character of the streambed.

Crossings should provide for fish and other wildlife passage: Recommended Mitigation Measure 48 would require that the side abutments for the two Tongue River crossings be placed a sufficient height above the high-water mark to allow for wildlife passage. For tributary crossings, recommended Mitigation Measure 49 would require that culverts be incorporated into the existing grade of the

streambed, to minimize impacts on migrating amphibians and reptiles. This mitigation, if imposed and implemented, addresses EPA's concerns.

Crossings should minimize encroachment on riparian corridors and vegetation: For the Tongue River crossings, recommended Mitigation Measure 48 would require that TRRC design the crossing of the Tongue River so that it does not require a center abutment, and so that the side abutments are placed outside the riparian zone. Recommended Measures 45 and 47 include requirements for bank stabilization related to the Tongue River crossings and stream crossings, respectively. These measures would require that TRRC pursue strategies minimizing impacts to riparian corridors and related vegetation, such as reclaiming disturbed embankments, as quickly as possible.

Bridge and culvert construction should be conducted during periods of low stream flow: Recommended Mitigation Measure 46 would require that stream crossings, including bridges and culverts, and activities requiring stream-bank encroachments (riprap, for example), occur during periods of low or no flow in the affected streams. This would address EPA's concerns.

- F6.42 The provisions identified in recommended Mitigation Measures 44 through 51 set out requirements pertaining to the design, planning, and construction processes for bridges and stream crossings. The MDEQ and Corps, as part of their review and approval of TRRC's plans for bridge and culvert construction, would ensure that TRRC's designs are in accordance with all applicable regulations and best design practices.
- F6.43 Recommended Mitigation Measure 45 addresses bridge crossings and specifies the use of logs, trees, and other vegetative plantings along with rock riprap for bridge sites and stream encroachment areas. Mitigation Measure 47 specifies the use of trees, shrubs, and grass to stabilize banks and that riprap, and gabions shall only be used as a supplement where such methods would improve fish habitat, or in cases where engineering requirements dictate. The MDEQ and Corps, as part of their review and approval of TRRC's plans for bridge and culvert construction, would ensure that TRRC's designs are in accordance with all applicable regulations and best design practices, including minimizing the use of riprap.
- F6.44 The railroad plans to use an existing maintenance yard in Glendive, Montana, east of Miles City, and will not construct any new maintenance facilities. However, the suggested text is added to recommended Mitigation Measure 62 to ensure that BMPs are implemented at the existing facility (see Chapter 4; and Chapter 5: Errata, where it references Page 4-134, lines 30-47).
- F6.45 Several of the issues raised in this comment have been previously addressed in response to F6.16. Please refer to this response for additional information.

Regarding the PM₁₀ measurement shown in Tables 4-34 and 4-35 of the Draft SEIS, these tables have been deleted as part of a substantial revision of this section. Please see Chapter 5: Errata, where it references Page 4-146-150.

- F6.46 Table 4-36 in the Draft SEIS (Operational Emissions by County-Tons per Mile per Year) provides quantitative data supporting SEA's conclusion that the Four Mile Creek Alternative would result in a higher level of annual emissions during the operation period than the proposed Western Alignment. The table is revised to clarify that the data pertain to the Western Alignment and Four Mile Creek alternative and not to the entire line as previously indicated. The text in Section 6.6.7 of the Draft SEIS that is referred to in EPA's comment is revised for clarity in regard to tons of NO_x per year (see Chapter 5: Errata, where it references page 6-23, lines 3 and 4).
- F6.47 Comment noted. Table 4-35 of the Draft SEIS is deleted as it was erroneously based on the addition of the emission rates in Tons/Mile/Year for the two affected counties shown in Table 4-36. The phrase "Miles City to Decker" is omitted from the first column in Table 4-36 so that it does not appear that the emissions apply to the entire length of the line. Please refer to Chapter 5: Errata, where it references Pages 4-146 through 4-150 for the corrected information.
- F6.48 EPA is correct in that additional air quality modeling is not identified as one of the recommended mitigation measures in Section 4.3.7 of the Draft SEIS. The text of that section is revised to remove references to this type of mitigation. Based on the air quality analysis conducted for the SEIS, additional air quality modeling is not necessary (see Chapter 5: Errata of this Final SEIS)
- F6.49 As suggested in the comment, Table 4-32 of the Draft SEIS is revised to compare total annual emissions (in tons) for the Four Mile Creek Alternative and the proposed Western Alignment (see Chapter 5: Errata: where it references Pages 4-146 through 4-150). The relevant text in Section 8.0 of the Draft SEIS is revised for consistency with the information presented in the modified Table 4-32 (see Chapter 5: Errata, where it references Pages 4-146 through 4-150).
- F6.50 SEA shares EPA's view regarding the need to ensure the integrity of the Tongue River Dam throughout construction. As stated in recommended Mitigation Measure 76, TRRC would be required to conduct a seismic analysis and develop its blasting plans prior to construction. For construction that would take place within 2 miles of the dam, TRRC would be required to consult with MT DNRC during the development of geotechnical drilling or blasting plans. SEA believes that this measure, if imposed and implemented, will ensure that the project does not jeopardize the integrity of the Tongue River Dam.

F6.51 This issue is addressed in the response to F6.12.

F6.52 This issue is addressed in the response to F6.12 and F6.14.

F6.53 The Tongue River Railroad Company has agreed to implement an April 13, 2006 “Revised Work Plan for High Resolution Vibration Monitoring, Evaluation of Potential Effects of Tongue River Railroad Construction and Operation, and Potential Mitigation at Miles City Fish Hatchery.” A copy of the monitoring program is included in Appendix G of the Final SEIS. A new mitigation measure (92) has been included to ensure TRRC’s implementation of the monitoring program.

F6.54 Comment noted.

F6.55 Comment noted.

F6.56 Comment noted. In response to the part of the comment calling for tracking weed infestations and monitoring the effectiveness of the overall program, recommended Mitigation Measure 17 states that TRRC shall submit to SEA, no less than every 4 months, reports that document the status of implementation for final environmental mitigation conditions. This enforcement mechanism would ensure that the success of the weed control program is tracked.

F6.57 SEA shares EPA’s concerns related to the potential effects of herbicides on water quality in the Tongue River and its tributaries. Furthermore, SEA is aware that potential impacts from the use of herbicides to maintain the ROW would depend on the type of herbicide used, the application procedure, the weather at the time of application, and the proximity of the ROW to the river.

In response to EPA’s concerns on this issue, the text of Mitigation Measure 21 in the Draft SEIS is revised to state that TRRC shall prioritize the use of non-chemical treatments before chemical-based herbicides are applied (see Chapter 4 and Chapter 5: Errata, where it references Page 4-77, lines 12-26). Mitigation Measure 21, as revised, also states that TRRC shall use mechanical removal of weeds near watercourses wherever feasible, depending on the time of year. Regarding the certification of personnel who would be applying herbicides, Mitigation Measure 21 provides that only trained, licensed personnel shall be involved in this task. Furthermore, as stated in Section 2.3 of the Draft SEIS, only herbicides approved and licensed by the State of Montana would be used to control trackside vegetation.

Recommended Mitigation Measure 85 provides limits on the use of herbicides on MCFH property. As this measure states, herbicides would only be used with prior approval from the MT DFWP, specifically detailing the type of herbicides to be used, application rates, and means of application.

F6.58 EPA makes several recommendations specific to herbicide spraying applicators to minimize potentially adverse effects to fisheries and water quality. Relevant text is incorporated into final recommended Mitigation Measure 21. Please refer to

Chapter 4 and Chapter 5: Errata, where it references Page 4-77, lines 12-26 for the specific text changes.

For ease of review, SEA outlines below its response to each item in EPA's comment:

- 1) As stated in Mitigation Measure 21 of the Draft SEIS, only trained, licensed personnel would be involved in the application of herbicides. In light of EPA's concerns, Mitigation Measure 21 is modified to require that appropriate protective equipment shall be provided to the personnel responsible for the application of herbicides.
- 2) Mitigation Measure 21 is modified to specifically state that herbicides shall be applied according to the label specifications.
- 3) Mitigation Measure 21 is modified to clarify that construction equipment shall be washed prior to use to remove weed seed sources.
- 4) Methods for addressing weeds in wetlands are specified in the wetland monitoring and maintenance portions of the Conceptual Habitat Mitigation Plan included in Appendix D of the Draft SEIS. In light of EPA's concerns, recommended Mitigation Measure 21 is modified to state that, if methods prove unsuccessful in eradicating certain weed species, specific methods shall be identified by the Task Force to target individual noxious weed plants. See Chapter 5, Errata, where it references Page 4-77, lines 12-26.
- 5) As stated in recommended Mitigation Measure 19, reclamation on disturbed soils shall begin as soon as practicable after construction ends, with all cut and fill slopes to be mulched and seeded as they are completed.
- 6) Regarding seeding, the variety of seed types (including grass seeds) that would be used in revegetating disturbed areas is identified through recommend Mitigation Measure 19, which requires the use of native species appropriate for the soil chemical and physical properties.

F6.59 SEA entered into formal consultation with the USFWS. A revised BA is included in Appendix D of this Final SEIS; the BA concludes that construction and operation of the Tongue River Railroad may affect the bald eagle. The USFWS has issued a Biological Opinion, which is included as Appendix D of this Final SEIS and provides authorization for incidental take of bald eagles during construction and operation of the proposed rail line.

With respect to surveys for other special-status species, pre-construction aerial surveys would be conducted, in accordance with recommended Mitigation Measure 25, to identify specific locations for ground surveys and any new winter ranges of species of concern. The aerial surveys would also attempt to locate potentially active raptor nests especially in deciduous tree areas while leaves are down. For additional discussion of future wildlife surveys, please refer to Master Response 1, Timing and Adequacy of Studies.

Regarding the monitoring of effects on special-status species during construction,

recommended Mitigation Measure 14 requires the creation of the Multi-agency/Railroad Task Force that would be responsible for approving the implementation and monitoring of biological mitigation measures, including a review of any terrestrial or aquatic issues that could arise during construction and initial implementation.

- F6.60 Regarding BMAs, the Draft SEIS explains that the ROW required for construction activities would restrict access to portions of BMAs in Custer and Rosebud counties. However, due to the size of the BMAs (the smallest of seven is 1,800 acres) and the relative acreages that would be required for construction, hunters and fishers could continue to use all BMAs throughout the construction period, thus alleviating EPA's concerns.
- F6.61 Figure 2-1 on page 2-2 of the Draft SEIS shows existing mines and proposed coal reserve areas. The names of the proposed mines in the Ashland area on Figure 2-1 of the Draft SEIS have been changed (see Chapter 5: Errata, where it references Page 2-2, Figure 2-1). The aerial maps included in Appendix A of this Final SEIS show the Tongue River and non-perennial streams along the length of the Tongue River I, II, and III. Neither the Western Alignment nor the Four Mile Creek Alternative crosses any perennial streams. Otter Creek and Hanging Woman Creek are both located north of the alignments analyzed in Tongue River III.

The mines and reserves are not illustrated in the Conceptual Habitat Mitigation Plan because the main functions of the Plan are to identify locations where the project would affect wetlands and to illuminate proposed mitigation sites.

- F6.62 EPA states that coal mine development in the Otter Creek tracts may be an indirect effect of the Tongue River rail line, and questions whether the cumulative effects associated with such development have been sufficiently analyzed. 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 in social, economic, or environmental factors, since the analysis in Tongue River II that would 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, 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.

For additional discussion of this issue, please refer to Master Response 21, Adequacy of Cumulative Analysis.

- F6.63 EPA suggests that construction of the Tongue River Railroad may lead to increased mining of Wyoming coal, which could adversely affect the production of coal in Montana. For a discussion of this issue, please refer to Master Response 11, Loss of Competitive Advantage Held by Montana Coal.
- F6.64 The text of the Draft SEIS is revised to reflect Southern Montana Electric Generation and Transmission Cooperative's proposal to construct a 250-megawatt coal-fired electric generation plant near Great Falls, Montana (see Chapter 5: Errata, Page 6-8, line 4). As Great Falls is approximately 270 miles to the northwest of Miles City, the construction and operation of this plant would not change the conclusions in the cumulative impact analysis of the Draft SEIS concerning power plants.
- F6.65 The comment raises several concerns related to potential cumulative impacts of coal bed methane well development in combination with the construction and operation of the Tongue River Railroad. For a discussion of this issue, please refer to Master Response 21, Adequacy of Cumulative Analysis.
- F6.66 This comment raises questions that have already been addressed in response to F6.11.
- F6.67 The first part of the comment relates to the need for coordination with Native American tribes and full disclosure of potential of impacts on the tribes. For a discussion of SEA's coordination efforts to date with Native Americans tribes and a reference to the discussion of potential impacts in the Draft SEIS, please refer to Master Response 15, Effect of Project on Native Americans. The second part of the comment is related to the potential for cumulative impacts on the Northern Cheyenne Reservation, which has already been addressed in the response to F6.9. Please refer to that response for additional information.
- F6.68 The comment is concerned with whether the analysis in the Draft SEIS has adequately accounted for potential cumulative impacts on the Northern Cheyenne

Reservation that could result from CBM development in combination with railroad construction and operation. This comment has been previously addressed. Please refer to the response to F6.9

F6.69 Comment noted. SEA acknowledges the importance of pollution prevention and the efforts to provide relevant and useful information to businesses and industries.

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F7

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COMMITTEES:
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SMALL BUSINESS

United States Senate

WASHINGTON, DC 20510-2603
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December 1, 2004



Surface Transportation Board
Attn: Kenneth Blodgett
Case Control Unit
Washington, DC 20423-0001

RE: STB Docket No. FD 30186 (Sub-No. 3)

Dear Mr. Blodgett:

I am writing to restate my support for the Surface Transportation Board's ("Board") approval of the Tongue River Railroad Company, Inc. ("TRRC") application for authority to construct and operate the Western Alignment. The Western Alignment is being proposed to replace the southernmost 17 miles of the Four Mile Creek alternative alignment approved by the Board in 1996. The Draft Supplemental Environmental Impact Statement ("Draft SEIS") issued by the Board on October 15, 2004 addresses the environmental effects and the mitigation measures associated with the construction and operation of the Western Alignment.

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On previous occasions, I have filed statements of strong support for the Tongue River Railroad project. I have applauded the Board for approving the extension of the TRR project from Ashland, Montana to Decker. In my opinion, approval of the Western Alignment in place of the Four Mile Creek alternative provides for the design, construction and operation of the most efficient rail alignment between Miles City, Montana and the Spring Creek mine spur. The Western Alignment is by far the most efficient rail alignment from an operating and maintenance standpoint and certainly the most capable of serving the energy needs of this country. With the mitigation measures proposed by the Board in the Draft SEIS, the construction and operation of the Western Alignment ensures the protection of our state's important natural resources.

I currently serve on U.S. Senate Committees on Appropriations, Commerce, Science and Transportation, and, Energy and Natural Resources. One of my goals as a member of these committees is to ensure that dependable, economic rail transportation services are available for the transport of Montana's agricultural and natural resource products.

In April of 2002, the State of Montana became a major stakeholder in the coal assets to be served by the Tongue River Railroad project as a result of the Crown Butte Exchange legislation. I supported the Crown Butte legislation which resulted in the

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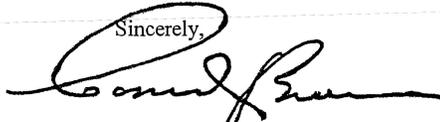
<http://burns.senate.gov>

Federal government transferring to the State of Montana the mineral ownership to 533 million tons of economic coal beneath Otter Creek Tracts 1, 2 and 3. I also applaud efforts by the 2003 Montana legislative session to pass legislation to fund development drilling, coal quality analysis and cultural surveys. The rail transportation infrastructure offered by the approved Tongue River Railroad and the proposed Western Alignment is essential to ensure the State of Montana recognizes the value of its coal assets contemplated by the transfer of federal coal resources to the State.

I continue to fully support the Tongue River Railroad project and the Western Alignment application. The Western Alignment presents the best balance between meeting environmental requirements and providing efficient, economic, reliable and safe operating rail transportation.

I urge the Board's careful deliberation and approval of the Western Alignment application in Finance Docket No. 30186 (Sub-No. 3).

Sincerely,



Conrad Burns
United States Senator

cc. Roger Nober, Chairman

SEA's Response to Comment Letter F7
United States Senate: Conrad Burns (December 1, 2004)

F7.1 Comment noted.

Denny Rehberg
State of Montana

Transportation and
Infrastructure Committee
Highways and Transit
Aviation

F8

Congress of the United States
House of Representatives
Washington, DC 20515

EI# 1206

Agriculture Committee
Department Operations, Oversight,
Nutrition and Forestry, *Vice Chairman*
General Farm Commodities and
Risk Management
Specialty Crops and Foreign
Agriculture Programs

Resources Committee
Energy and Mineral Resources,
Vice Chairman
Forests and Forest Health



December 6, 2004

Surface Transportation Board
Attn: Kenneth Blodgett
Case Control Unit
Washington, DC 20423-0001

RE: STB Docket No. FD 30186 (Sub-No. 3)

Dear Mr. Blodgett:

I am writing to express my support for the Surface Transportation Board ("Board") to approve the Tongue River Railroad Company, Inc. ("TRRC") application for authority to construct and operate the Western Alignment in Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment, STB Finance Docket 30186 (Sub-No.3). The Western Alignment has been proposed to replace the southernmost 17-miles of the Four Mile Creek alternative alignment approved by the Board in 1996.

The Board issued a Draft Supplemental Environmental Impact Statement ("Draft SEIS") on October 15, 2004. The Draft SEIS addresses the environmental effects and proposed mitigation measures associated with the construction and operation of the Western Alignment. I am of the opinion the Western Alignment offers the most economic, efficient, reliable and safe operating rail alignment. With the mitigation measures proposed by the Board in the Draft SEIS, the construction and operation of the Western Alignment ensures the protection of our state's important natural resources and allow the State of Montana to recognize the economic benefits of this important infrastructure.

As a member of the House of Representatives committees on Resources, Agriculture, and Transportation and Infrastructure, I recognize the important role that coal plays in our nation's energy supply. The State of Montana's ownership of in excess of 630 million tons in the Otter Creek Tracts resulting from the Crown Butte Exchange legislation and resultant transfer of federal coal assets to Montana can play an important role in America's future energy supply. The Tongue River Railroad project provides the key transportation component necessary to develop these valuable assets.

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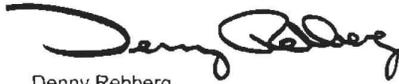
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As I noted in my submittal to the Board in February 2003, the proposed Western Alignment provides the most efficient and dependable rail alignment. I urge the Board to act promptly in approving TRRC's Western Alignment application.

1 cont.

Thank you for your consideration. If I can provide any further information, please contact Jay Martin in my Washington office at 202-225-3211.

Sincerely,



Denny Rehberg
Member of Congress

cc. Roger Nober, Chairman

SEA's Response to Comment Letter F8
United States Congress: Denny Rehberg (December 6, 2004)

F8.1 Comment noted.



-WOHEHIV-
The Morning Star

NORTHERN CHEYENNE TRIBE ADMINISTRATION

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-WOHEHIV-
The Morning Star



December 6, 2004

Surface Transportation Board
Case Control Unit
Washington, DC 20423
Attn: Kenneth Blodgett

Re: STB Docket No. FD 30186 (Sub-No. 3)

Mr. Blodgett,

I would like to take this opportunity to provide comments on behalf of the Northern Cheyenne Tribe related to the Draft Supplemental Environmental Impact Statement for the Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment, Tongue River III – Rosebud and Big Horn Counties, Montana Project. This project, and its associated cultural, economic, and environmental impacts, is of the highest concern to the Northern Cheyenne Tribe.

As you are aware, the Surface Transportation Board (STB) is statutorily required under Section 106 of the National Historic Preservation Act to conduct official consultation with Tribes whose cultural resources may be impacted by development activities. This consultation process must occur throughout the entire project including the planning, construction, and final close-out stages of project implementation. Although a number of contacts have been made with various Tribal representatives, these contacts in no way constitute formal consultation with the Northern Cheyenne Tribe. The Northern Cheyenne Tribe is very disappointed with the efforts by the STB to date to schedule and hold consultation meetings on the proposed project. While we understand the difficulty in coordinating some of these meetings, given that Tribal representatives change from time to time with Tribal elections being held every two years, it is the STB's responsibility nonetheless to ensure that consultation occurs on every level of project implementation – including Environmental Impact Statements.

1

The Northern Cheyenne Tribe has many concerns related to cultural resources located along the entire Tongue River Railroad alignment. These concerns are not only related to historic and pre-historic sites and artifacts, but also, to contemporary sites being utilized in the Tongue River Valley for various cultural practices currently. These sites are associated with various cultural and religious ceremonies that would be disrupted by trains passing through the area. Historically speaking, there are also a number of sites associated with Northern Cheyenne homesteads throughout the Tongue River Valley that would be affected by the proposed project. Additionally, the large amount of ground clearing that will be performed as part of the project has the potential to impact a large number of culturally significant plant species utilized by

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LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

members of the Northern Cheyenne Tribe. These plants serve very significant roles in contemporary religious ceremonies and many have medicinal properties associated with them.

3 cont.

The National Environmental Policy Act requires that any environmental analysis conducted as a result of a federal action address the cumulative impacts of all activities, current and proposed, and identify appropriate mitigation measures to offset such impacts. The proposed project would have a number of short and long term cumulative impacts that have not been addressed in the DEIS for this project. The DEIS does not take into account Coalbed Methane (CBM) development that will occur throughout southeastern Montana; it does not address air increment consumption by CBM development activities and the Colstrip, Round-up, and Hardin Power Plants; and it does not address impacts to water quality in combination with discharges to the Tongue River from CBM development activities. Additionally, it does not take into account that the U.S. Environmental Protection Agency is currently reviewing the Northern Cheyenne Tribe's Water Quality Standards, to be implemented on the Tongue River, for approval.

4

The Northern Cheyenne Reservation is currently classified as a Class I Air-shed, and the community of Lame Deer, located in the center of the Reservation, has been re-designated as a PM₁₀ Non-attainment area by the U.S. EPA. Recently, the Tribe conducted an air increment analysis that showed that most of the air increment available under the Class I Air-shed designation has already been consumed by various emissions sources in the area. Additionally, a recent EIS developed for the Round-up Power Project identified air impacts to the Northern Cheyenne Tribes air quality and exceedences of the available air increment. Furthermore, three other potential emissions sources, a new power plant currently being constructed in the Hardin, MT area, Coalbed Methane compressor stations, and the proposed Otter Creek Coal Mine, will further impact the Northern Cheyenne Tribe's air quality. The current DEIS does not account for all of these impacts in its analysis of short and long term impacts to air quality from the Tongue River Railroad.

5

Currently, the U.S. Environmental Protection Agency is reviewing the Northern Cheyenne Tribe's application for Treatment as a State for the authority to establish water quality standards for all surface waters within the exterior boundaries of the Northern Cheyenne Reservation. This includes establishing water quality standards for that reach of the Tongue River that flows through the eastern boundary of the Reservation. The Tribe has completed the development of numeric water quality standards for a wide array of constituents in this water body and has formally adopted them as Tribal Law. With the increasing occurrence of CBM development related discharges into the Tongue River, there exists great potential that some of these standards may be violated. The DEIS does not take into account proposed CBM development activities in its analysis of cumulative impacts, nor does it analyze the Northern Cheyenne Tribe's water quality standards as part of this process. This could have serious detrimental impacts to proposed dredge and fill activities related to the construction of the Tongue River Railroad.

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The Ft. Laramie Treaty of 1868 granted members of the Northern Cheyenne Tribe certain hunting and fishing rights. To this day, many members of the Northern Cheyenne Tribe rely heavily on subsistence hunting and fishing along the Tongue River Valley. This includes State sanctioned hunting and fishing during established hunting and fishing seasons outside the external boundaries of the Reservation. The proposed project, in conjunction with CMB

8

development activities has great potential to disrupt these important resources throughout the Tongue River Valley. Migration corridors utilized by Elk populations that exit throughout the proposed project area would be significantly impacted by the cumulative effects of these projects. Fish populations in the Tongue River itself could be impacted by siltation associated with dredge and fill activities required to establish the Tongue River Railroad and by those caused by erosion associated with CBM development. The high number of roads associated with railroad construction and with CBM development could have serious negative impacts on a number of species including raptors, deer, grouse, and various species of fox.

9

Finally, the Northern Cheyenne Tribe feels that the DEIS needs to take a more comprehensive look at social and economic impacts that the proposed project may have on the communities in southeastern Montana. With the new Clean Air Interstate Rule (CAIR) being proposed by the U.S. EPA, there exists potential for negative impacts to several of the coal mines around the Colstrip area - more specifically, the Western Energy Mine, the Peabody Coal Co. Mine, and the Sarpy Creek Mine. These mines could be potentially impacted by the opening of the new railway that would allow low sulfur coal to be purchased from Wyoming at a reduced rail cost by markets to the east of these mines. Markets that previously may have purchased their coal from the Colstrip area mines may terminate their purchase agreements and cause serious economic impacts to these Mines. This in turn could result in negative economic impacts to the Northern Cheyenne Tribe as a number of Tribal members are currently employed by these mines. Additionally, any economic analysis should also analyze the potential for beneficial impacts to the Northern Cheyenne Tribe through the utilization of common carrier rail service agreements from the Ashland area to potential markets to the east for the production of Tribal goods and services.

10

The Northern Cheyenne Tribe strongly urges the Surface Transportation Board to revisit the DEIS and conduct a more comprehensive analysis of all the impacts and potential mitigation scenarios related to this proposed project. As a matter of history, the Northern Cheyenne Tribe was not consulted on the first environmental analysis, and had it been, these same issues would have been identified and could have been analyzed long ago. As the newly elected President of the Northern Cheyenne Tribe I look forward to working with the Surface Transportation Board to address these many issues. If you have any questions, please feel free to contact my office at (406) 477-6284.

11

Sincerely,



Eugene LittleCoyote,
President,
Northern Cheyenne Tribe

cc: file.

**SEA's Response to Comment Letter F9
Northern Cheyenne Tribe Administration (December 6, 2004)**

- F9.1 As stated in Section 1.6.3 of the Draft SEIS, SEA conducted consultation with Native Americans in accordance with Section 106 and evaluated potential impacts on the Native American communities in Tongue River I, Tongue River II, and again in Tongue River III, particularly involving the Northern Cheyenne. SEA's consultation and evaluation has been designed to determine if the construction and operation of the rail line would result in any significant impacts on social, economic, or cultural resources, particularly traditional and sacred sites. SEA's outreach efforts included phone calls and letters directed to members of the Northern Cheyenne Tribe, Arapaho Business Council, Crow Tribal Council, Shoshone Business Council, Oglala Sioux Tribal Council, and Standing Rock Sioux Tribal Council. SEA also consulted with Native American representatives in the development of the PA that addresses the protection of cultural resources that would be encountered during construction of the entire rail line between Miles City and Decker.
- F9.2 Tongue River I and Tongue River II approved a route for the Tongue River Railroad to traverse the Tongue River valley region. The purpose of the Draft SEIS that has been prepared for Tongue River III is two-fold: 1) to ascertain whether modifications to the Tongue River I and Tongue River II would result in new significant impacts; and 2) to determine whether the substitution of the proposed Western Alignment for the Four Mile Creek Alternative is likely to result in greater impacts in all areas, including cultural resources, than the alignment approved in Tongue River II. It is not the purpose of the SEIS to review the overall alignment previously approved in Tongue River I and Tongue River II.

As shown in Table 5-3 of the Draft SEIS, the proposed refinements to the Tongue River II alignment would affect 36 fewer known cultural resources than the approved Tongue River II alignment. The proposed refinements to the Tongue River I alignment would affect a similar number of resources (eight). However, if the proposed Western Alignment is approved and implemented, an ochre gathering location that is currently used by the Northern Cheyenne would be adversely impacted. The original alignment would not impact this location.

Regarding the potential impacts to Northern Cheyenne homesteads, Brownell (2005) has compiled information on the general placement of the homesteads in the area. The exact location is identified for only ten homesteads. Most of these are outside the 3,000-foot study corridor of the railroad routes approved (with refinements) in Tongue River I and Tongue River II; however three homesteads in the study corridor are included. They include a house, which may or may not be associated with a Northern Cheyenne homestead: Big Head's homestead; and an Indian cabin. All the sites are located outside the 200-foot construction corridor: however, the house and Big Head's homestead are located within the 3,000-foot

study corridor for Tongue River I and the Indian cabin is located within the 3,000-foot study corridor for Tongue River II. The Indian cabin is identified as the “Birney, Indian Cabin” in Table 5-3 of the Draft SEIS. Although Brownell (2005) identified the general location of additional homesteads, their specific locations are unknown. Therefore, the potential impact of the railroad cannot be defined without further investigation.

To ensure proper identification of cultural resources associated with the construction and operation of the Tongue River railroad, SEA developed a PA that will cover the entire rail line. The PA guides and regulates the procedures by which the identification and treatment of cultural resource would occur. The PA requires additional investigation of the entire rail line ROW from Miles City to Decker prior to construction. These investigations would identify and evaluate prehistoric, historic, traditional, and/or contemporary cultural sites or structures; develop a detailed Treatment Plan in consultation with the parties to the PA and the Native American community; and establish procedures for reviewing and addressing objections and/or disagreements. The PA developed for Tongue River III would replace the previous PA developed for Tongue River II and would apply to construction of the entire rail line from Miles City to Decker. The Final PA is included in Appendix C of this Final SEIS. SEA has consulted with the Advisory Council and the Bureau of Land Management and provided the Final PA to all signatory and concurring parties for review prior to signing.

SEA sought the cooperation of the Northern Cheyenne and the Crow in the identification and evaluation of sites along the Tongue River railroad route as part of the preparation of the PA. The Northern Cheyenne and the Crow also are concurring parties to the PA. The Northern Cheyenne and the Crow also will be asked for their assistance in the identification and evaluation of sites, if they are encountered, during the construction process. SEA is confident that implementation of the PA will ensure that that all Native American sites that could be impacted by the project are identified before any construction takes place.

- F9.3 SEA recognizes that the Northern Cheyenne continue to utilize plants for contemporary economic, religious, and medicinal purposes. As part of an ethnographic overview conducted by Ethnoscience in 2002, in conjunction with an EIS prepared for coal bed methane development in southeastern Montana, elder members of the Northern Cheyenne were consulted to identify areas of cultural importance, including plant gathering areas. None of the locations identified were within the area currently identified as the 400-foot ROW for the TRRC project. This does not mean that there are no areas of cultural significance within the ROW, however. It is possible that if other members of the Northern Cheyenne had been consulted, they would have shared different information as to the location of such gathering areas. Nonetheless, as part of the PA process, the Northern Cheyenne will again be consulted to identify whether culturally significant plants exist in the proposed ROW.

F9.4 SEA acknowledges the importance of a cumulative analysis in determining what impacts the project may have in combination with other projects. This comment identifies four specific concerns with regard to the cumulative analysis.

First, the comment raises the concern that CBM development is not accounted for in the cumulative analysis. However, CBM development is discussed in Section 6.5.2 of the Draft SEIS and further discussed in Master Response 21, Adequacy of Cumulative Analysis. SEA believes that the information presented in these two sources is sufficient to meet the requirements of NEPA.

Second, the comment states that the cumulative analysis does not address air increment consumption⁴ by CBM development activities and the Colstrip, Round-up, and Hardin Power Plants. As shown in Table 4-36 of the Draft SEIS, however, operation of the proposed Western Alignment would result in fewer emissions than the approved Four Mile Creek Alternative for each criteria pollutant. Because the proposed Western Alignment would follow a shorter route and a more gradual grade, it would burn less fuel and result in reduced emission tonnages. Moreover, as explained in Section 4.3.7.3 of the Draft SEIS, when compared to EPA's project significance thresholds, it is apparent that neither alternative exceeds the 100-tons-per-year definition that would trigger extensive analysis of National Ambient Air Quality Standards (NAAQS), Prevention of Significant Deterioration (PSD) increments, air quality-related values, visibility, and deposition. Therefore, a cumulative analysis based on air increment consumption that includes CBM development and power plants is not appropriate in this case.

Third, the comment states that potential cumulative impacts to water quality from discharges into the Tongue River are not sufficiently analyzed. This issue is discussed in Section 6.6.4 of the Draft SEIS and in Master Response 21, Adequacy of Cumulative Analysis. Based on the information presented in Section 6.6.4 and presented in Master Response 21, Adequacy of Cumulative Analysis, SEA has concluded that the cumulative effects on hydrology and water quality within the Tongue River watershed would not be significant as a result of this project.

Fourth, the comment states that the analysis does not account for EPA's current review of the Northern Cheyenne Tribe's Water Quality Standards. As discussed in Master Response 20, TMDL, TRRC would be required to comply with EPA's and/or the Montana DEQ's water quality (i.e., TMDL) standards for the Tongue River when final standards are issued.

⁴ An increment may be defined as the increase in ambient concentration of a pollutant at a particular location over the ambient concentration of the pollutant that occurred in the baseline year. Increment consumption reflects the ambient pollutant concentration change attributable to increment-affecting emissions.

F9.5 The comment states that the Draft SEIS does not account for several other projects, which, in combination with the proposed project, could have significant air quality effects on the Northern Cheyenne Reservation. As discussed in Section 4.2.7.2 of the Draft SEIS, EPA classified Lame Deer as a moderate nonattainment area⁵ for PM₁₀ in 1990. Based on consultation with EPA in 2005, this designation still applies. Lame Deer is located in the Northern Cheyenne Reservation, which has been designated by EPA as a Class I area that is sensitive to increases in air pollutants.

With regard to the Round-Up Power Plant, Section 6.5.1 of the Draft SEIS notes that it is one of the power generating facilities that may be constructed in Montana. However, as discussed in Section 6.5.1, the plant is not geographically close enough to the proposed action to be treated as a cumulative impact that needs full consideration. Roundup is located approximately 60 miles to the west of the Tongue River valley, and is therefore outside the Montana Air Quality Control Region 143 established by SEA as the spatial boundary for the analysis of cumulative air quality impacts. Therefore, the combined effect of the Roundup power plant and the proposed project on the air quality in the Northern Cheyenne Reservation is not required to be analyzed in the SEIS.

The Hardin Plant is considered in the cumulative analysis of the Draft SEIS, even though the plant is located outside Montana Air Quality Control Region 143 and is approximately 60 miles away from the Tongue River Railroad project area. The Hardin plant is included because it represents the nearest reasonably foreseeable power plant project to the proposed action. The MDEQ indicates that the Hardin Plant has received all required permits for operation. As explained in Section 6.6.7 of the Draft SEIS, plant emissions are regulated by MDEQ to ensure compliance with state and Federal air quality standards. Emission rates for the proposed Hardin Plant were modeled for PM₁₀, SO₂, and NO_x, as shown in Table 6-2. Based on dispersion modeling, emission levels at all 5,200 receptors within a 6-mile radius of the proposed plant were within the limits of the NAAQSs and Montana Ambient Air Quality Standards. Therefore, the dispersion of emissions within close proximity to the Hardin Plant would not be expected to result in adverse cumulative effects with the proposed rail line, located approximately 60 miles away. As a result, SEA believes that emissions from the Hardin Plant would not contribute to adverse cumulative effects in conjunction with the proposed action.

With regard to CBM compressor emissions, operation-related impacts to air quality from CBM gas wells are addressed by BLM in its requirements to mitigate

⁵ Moderate non-attainment is the designation for areas that are not in attainment of PM₁₀ air quality standards. Once an area is designated as moderate non-attainment, the area must, through a State Implementation Plan, try to reach attainment status for the specified pollutant. If this cannot be achieved, the area is then classified as serious non-attainment.

emissions of particulate matter (PM₁₀ and PM_{2.5}), NO₂, and SO₂. As explained in 6.6.7 of the Draft SEIS, these mitigation measures include utilizing Best Available Control Technology (BACT) by reducing compression requirements and using electric instead of natural gas-fired compressor engines to reduce emissions from the compressors. Based on the use of BACT, it is expected that with the proposed rail line construction and operations, CBM compressor emissions would not create adverse cumulative effects on air quality. A supplemental environmental impact statement is currently being prepared, which will further analyze cumulative air quality and provide more information on any associated impacts.

Furthermore, the BLM's 2003 Record of Decision associated with the Statewide Oil and Gas Development EIS states that a Plan of Development (POD) and an Application for a Permit to Drill (APD) for CBM gas must demonstrate compliance with air quality standards. PODs and APDs that may violate air quality standards will not be approved.

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 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.

Lastly, SEA consulted again with MT DNRC in August 2006 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, 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. Based on these factors, SEA has not included the development of mining operations in the Otter Creek tracts in the cumulative analysis.

- F9.6 This comment suggests that coal bed methane development activities in the Tongue River watershed, when coupled with the proposed action, may result in violations of Northern Cheyenne tribal water quality standards. The Tribe states that, while it has recently adopted water quality standards for the Northern Cheyenne Reservation as of May 2005, these standards have not yet been approved by EPA.

Cumulative effects of the proposed action, in conjunction with planned and ongoing coal bed methane development activities, are addressed in Section 6.5.2 and 6.6.4 of the Draft SEIS (p. 6-8, 6-15). This analysis concluded that the two

projects (the proposed Western Alignment and the CBM gas well development) would not result in significant adverse cumulative effects to hydrology or water quality. The evaluation suggested that of the two, CBM gas well operations have the greatest potential to impact water quality, but this impact would not be made greater (or more adverse) by construction- or operation-period impacts from TRRC. SEA continues to believe that this conclusion is correct. Please also refer to Master Response 21 Adequacy of Cumulative Analysis.

- F9.7 This comment suggests that coal bed methane development activities in the Tongue River watershed, when coupled with the proposed action, could result in violations of Northern Cheyenne tribal water quality standards.

Cumulative effects of the proposed action, in conjunction with planned and ongoing coal bed methane development activities are addressed in Section 6.5.2 and 6.6.4 of the Draft SEIS (p. 6-8, 6-15) and Master Response 21, Adequacy of the Cumulative Analysis. The analysis in the Draft SEIS concluded that the two projects (the proposed Western Alignment and the CBM gas well development) would not result in significant adverse cumulative effects to hydrology or water quality. The Northern Cheyenne's water quality standards were not given specific consideration as part of the cumulative analysis because, as discussed above, the standards are still pending approval by EPA.

- F9.8 and F9.9

The comment identifies three main concerns regarding potential cumulative impacts of the proposed project in combination with CBM development. These concerns include potential impacts on elk migration corridors, fisheries in the Tongue River, and other wildlife due to road construction.

Regarding the potential for effects on elk migration corridors, MT DFWP has not identified this as an issue of concern as part of its consultation with SEA. Elk are currently assigned an S-5 ranking by the MT DFWP, which means that they are considered to be common, widespread, and abundant. Elk are not identified as a special-status species by any federal agencies.

In addition, Elk are primarily a forest species, and only about 6 percent of the entire project area falls into this category. Elk may also utilize the breaks between forested and non-forested land; however, these areas constitute only 16 percent (approximately) of the total project area. Due to the limited amount of preferred habitat for elk within the project area and the availability of preferred habitat outside the project area, it is expected that the project would not contribute to an adverse cumulative effect on migration corridors used by this species.

Regarding potential impacts on fisheries, please refer to Master Response 12, Effects of the Project on Erosion and Sedimentation Rates. As explained in this response, SEA's analysis of erosion and sedimentation is based on the revised

universal soil loss equation (RUSLE), which is included in Appendix I of the Draft SEIS. The RUSLE is used to predict the long-term average annual rate of erosion based on factors including rainfall, soil type, and topography. The RUSLE rating of the Tongue River Project, without mitigation, ranges from 26.9 to 56 tons/acre/year. The rating would be lowered to near current levels (1 to 3 tons/acre/year) through implementing and monitoring the effectiveness of the BMPs and mitigation identified in Master Response 12, Effects of the Project on Erosion and Sedimentation Rates). Because erosion levels would be returned to near existing levels, it is not expected that the project would contribute to adverse cumulative effects on fisheries.

Regarding roads and the potential impacts on wildlife due to road building, Recommended Mitigation Measure 54 in Section 7.2.6 of the Draft SEIS is specifically intended to minimize the need for new roads. Measure 54 specifically states that TRRC would confine all construction-related traffic to a temporary access road within the ROW. The access road would be used only during construction of the railroad grade, after which construction would be confined to the ROW. Therefore, it is not expected that the proposed project would require a substantial number of new roads that could adversely affect wildlife.

- F9.10 The comment states that the Draft SEIS should include a more comprehensive cost-benefit analysis, including an examination of how the proposed project could result in adverse economic effects to Montana coal markets. For a discussion of these issues, please refer to Master Response 10, Cost-Benefit Analysis and Master Response 11, Loss of Competitive Advantage Held by Montana Coal. With regard to the common carrier issue, SEA understands that the Northern Cheyenne could potentially benefit as a shipper of goods generated on the Northern Cheyenne Reservation to markets in the east and upper mid-west via the Tongue River Railroad. If the Northern Cheyenne wished to ship goods on the Tongue River Railroad, the tribe would be required to coordinate with TRRC to specify its operating needs and what materials it intends to transport. As the parent company of the rail line, TRRC would be required to coordinate with FRA to ensure that the common carrier agreement was compliant with FRA's applicable operation and safety policies.
- F9.11 The current Draft SEIS provides a comprehensive analysis of potential project impacts. As explained in Master Response 16, the Need for a New EIS, SEA completed several new studies and updates to previous analyses to ensure the thoroughness and accuracy of the SEIS. In addition, SEA's final recommended mitigation measures would apply to entire line. Several of these measures were newly developed for Tongue River III. In addition, mitigation measures carried over from Tongue River I and Tongue River II have been modified to clarify the intent and/or responsible parties, to reflect new timeframes, and to incorporate new conditions and legal requirements.

SEA has conducted extensive consultation with the Northern Cheyenne Tribe and other Native American tribes during the environmental review process for Tongue River I, Tongue River II, and Tongue River III. SEA's consultation and evaluation was designed to determine if the construction and operation of the rail line would result in any significant impacts on social, economic, or cultural resources, particularly traditional and sacred sites. SEA's outreach efforts included phone calls and letters directed to members of the Northern Cheyenne Tribe, Arapaho Business Council, Crow Tribal Council, Shoshone Business Council, Oglala Sioux Tribal Council, and Standing Rock Sioux Tribal Council.

The Northern Cheyenne Tribe participated in Tongue River I as a cooperating agency. In Tongue River II, SEA held a formal meeting with the Northern Cheyenne on February 5, 1990, and conducted separate communications with other tribes (Crow, Arapaho, Miniconjou, and Oglala) in April 1990. The purpose of these consultations was to explain the project and to seek comments regarding the scope of the EIS. Also, as part of the PA process, SEA will seek the cooperation of the Northern Cheyenne and the Crow in the identification of sites of cultural significance to them along the proposed Western Alignment, if Tongue River III is approved and implemented, to ensure proper identification and treatment of cultural and paleontological resources during construction.

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